Comité Maritime International

BULLETIN N° 104

Conférence d'Amsterdam

1949

Président : Mr. le Prof. J. OFFERHAUS

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COMITÉ MARITIME INTERNATIONAL

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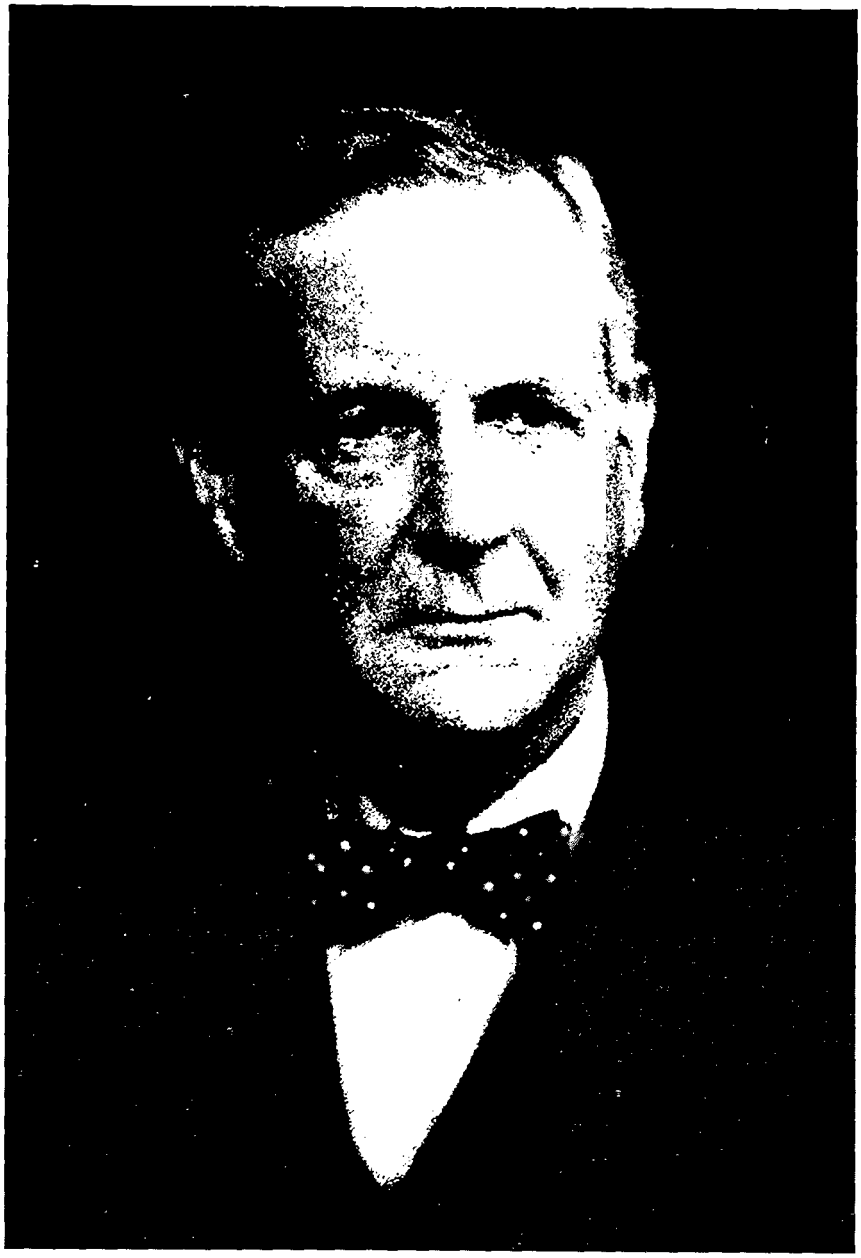

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IN MEMORIAM LESLIE SCOTT.

Leslie Scott était intimement associé à l'œuvre du Comité Maritime International depuis sa fondation en 1897. Il entretenait avec Louis Franck, l'illustre fondateur du Comité, des liens d'étroite amitié, et avait lui-même participé à la création de l'Association Nationale Britannique, le Comité Maritime Britannique, précurseur de l'actuelle Association Britannique de Droit Maritime.

Il fut admis au Barreau anglais en 1894. Ses rapides succès professionnels, qui, en peu de temps, firent de son cabinet l'un des plus importants de l'époque, ne réussirent pas à détourner son attention sagace des affaires du Comité, auxquelles il ne mesura jamais le bienfait de son immense érudition dans le domaine du droit et des affaires. Présent à toutes les Conférences du Comité Maritime International et contribuant largement à leur succès, il fut également, à diverses reprises, le représentant du Gouvernement de Sa Majesté aux Conférences Internationales de Droit Maritime tenues à Bruxelles en 1909, 1910, 1922 et 1926. L'on peut dire, sans crainte de se tromper, qu'aucun homme de son temps n'a fait plus que lui pour le développement du droit maritime de son pays dans un esprit résolument international.

C'est, sans doute, la variété des activités qui frappe le plus dans la longue vie de labeur qui a été celle de Leslie Scott. Son passage par les humanités classiques l'avait, dès l'abord, désigné comme un élément de premier ordre. Il conquit rapidement le doctorat en droit civil anglais, qui le plaça d'emblée au premier rang des spécialistes les plus en vue. A la même époque, il s'astreignit à l'étude approfondie des aspects pratiques de l'activité économique et acquit bientôt une position éminente parmi les avocats spécialisés dans les affaires commerciales et maritimes. C'est cette nouvelle discipline qui conféra tant de valeur au rôle qu'il tint et aux avis qu'il prodigua dans la conduite des affaires tant de l'Association Britannique que du Comité Maritime International. Mais ses talents ne se confinèrent pas au droit. De 1910 à 1929, il représenta la « Liverpool Exchange Division » au Parlement ; pendant quelque temps, il assuma la haute charge de « Solicitor General » ; depuis la fin de la première guerre

mondiale jusqu'à sa mort, il déploya une activité intense en matière de politique intérieure et fut l'auteur d'un grand nombre de réformes légales et administratives. En 1935, il fut créé « Lord Justice of Appeal » et siégea à la Cour d'Appel jusqu'à sa retraite en 1948. Jusqu'au dernier jour de sa carrière, aucun procès, si compliqué fût-il, qu'il ne pût démêler avec sa maîtrise et sa lucidité coutumières, aucun problème de droit qui ne fût trop ardu pour l'empêcher de rendre un jugement clair et décisif.

Mais le double souvenir que la plupart des amis de Leslie Scott, ceux de l'étranger en particulier, garderont de lui, sera celui d'un juriste qui comprenait et considérait le droit au niveau international, sans se confiner dans la sphère du droit de son pays, et celui d'un homme dont le charme inné et la gentillesse suscitaient l'affection profonde de tous ceux qui avaient le privilège de l'approcher. Jusqu'au jour de sa mort, il était prêt à combattre pour des concepts et des systèmes juridiques nouveaux, chaque fois qu'il avait la conviction qu'ils réalisaient un progrès sur les anciens, dût-il avoir été nourri de ceux-ci. A ceux qui avaient le bonheur de travailler avec lui il ne cessa de témoigner la courtoisie et l'indulgence inaltérables qui lui étaient naturelles et de leur prodiguer les trésors de sa riche expérience.

Parmi les honneurs qu'il reçut, ceux qui le touchaient le plus étaient la Commanderie de l'Ordre de Léopold que la Belgique, berceau du Comité Maritime International, lui avait décernée, et son élévation à la présidence d'honneur de ce Comité.

Il est consolant de penser qu'il a pu assister, comme Président d'honneur, aux deux Conférences d'après-guerre. Sa mort a été profondément ressentie par toutes les Associations Nationales, qui nous ont adressé, à nous, membres de l'Association Britannique de Droit Maritime, tant de marques d'hommage à la mémoire du disparu. Nous voulons remercier ici les Associations et les nombreux amis de l'étranger qui nous ont exprimé leurs sentiments de déférente affection à l'égard du grand homme qui nous a été ravi.

G. St. CLAIR PILCHER CYRIL MILLER

PREFACE.

Le Comité Maritime International s'est réuni en Conférence à Amsterdam du 19 au 24 septembre 1949.

Les séances eurent lieu dans la grande salle de la Chambre de Commerce et d'Industrie pour la Hollande du Nord, qui avait bien voulu mettre ses locaux et ses services à la disposition de la Conférence dans le vaste bâtiment de la Bourse d'Amsterdam. Le Gouvernement de Sa Majesté la Reine des Pays-Bas avait fait à la Conférence l'honneur de déléguer le Ministre de la Justice, Mr. M. Wijers, pour le représenter à la séance d'ouverture, présidée par Mr. Albert Lilar, président du Comité Maritime International et Ministre de la Justice de Belgique. L'intérêt manifesté par les hautes autorités et les milieux compétents de Hollande fut éloquemment exprimé par le discours de Mr le Ministre Wijers, qui, définissant en un langage précis les buts du Comité Maritime International, attribua le succès de ses travaux à la prudence avec laquelle le Comité s'est avancé dans la voie de l'unification du droit privé.

Mr. Albert Lilar remercia le Ministre de la Justice des Pays-Bas et s'attacha à mettre en relief les méthodes de travail et l'esprit essentiellement réaliste qui distinguent l'activité du Comité Maritime International. Il rendit hommage à l'International Law Association, représentée par son éminent Président, Mr. le Ministre Albert Devèze, et au Président d'honneur du Comité, Sir Leslie Scott, sous l'égide duquel s'est accompli l'immense effort de l'Association Britannique de Droit Maritime dans la phase préparatoire de la révision des Règles d'York et d'Anvers 1924.

Après ce discours, le premier acte du président, Mr. Albert Lilar, fut de proposer à l'assemblée l'élection de Mr. le Professeur J. Offerhaus, président de l'Association Néerlandaise de Droit Maritime, comme président de la XXIe Conférence. Cette proposition fut adoptée par acclamations.

Après avoir constitué le Bureau de la Conférence, le président, Mr. Offerhaus, fit une pénétrante synthèse des problèmes que pose et des méthodes que nécessite l'effort vers l'unification internationale du droit. Il donna ensuite la parole à Mr. le Ministre Albert Devèze, qui retraça devant

l'assemblée les circonstances dans lesquelles le Comité Maritime International fut chargé par l'International Law Association de l'étude de la réforme du code de l'avarie commune, et se réjouit autant des résultats obtenus que de la cordialité des rapports entre les deux grandes Associations amies.

Tour à tour; les présidents des délégations présentes remercièrent l'Association Néerlandaise de Droit Maritime au nom des Associations de la Belgique, du Danemark, des Etats-Unis d'Amérique, de la France, de la Grande-Bretagne, de l'Italie, de la Norvège, de la Suède, de la Finlande, du Portugal. Des observateurs de la Grèce et de l'Irlande se joignirent à eux.

Aussitôt après, le premier point de l'ordre du jour de la Conférence fut abordé, à savoir :

I. — L'état des ratifications des Conventions Internationales de Bruxelles:

Nous devons à Mr. Jul. A. Denoël, directeur au Service des Traités du Ministère des Affaires Etrangères de Belgique, d'avoir pu distribuer aux membres de la Conférence un état mis à jour des ratifications. Cet état est publié dans ce Recueil à la suite des résolutions adoptées par le Conférence d'Amsterdam.

Grâce à l'énergique et compréhensive intervention du Département belge des Affaires Etrangères, tous les pays intéressés, soixante environ, ont été saisis des conventions non encore ratifiées et des projets non encore soumis à la Conférence Diplomatique. Cet effort préparera d'une manière efficace la nouvelle session que la Conférence Diplomatique est appelée à tenir.

II. — Révision des Règles d'York et d'Anvers 1924 :

C'est assurément l'objet le plus important parmi ceux que la Conférence d'Amsterdam a dû traiter. Il a permis au Comité Maritime International de marquer un de ses plus grands succès, grâce à la préparation minutieuse du sujet et à la façon éminente dont le président Offerhaus a dirigé le vaste débat.

Il convient de rappeler que c'est à l'invitation de Lord Porter, agissant comme président du Comité Exécutif de l'International Law Association, que le Comité Maritime International s'attela à l'étude du sujet. L'Association Britannique de Droit Maritime accepta la lourde tâche de centraliser les recherches et les travaux, en établissant le contact avec les milieux

intéressés du monde entier. En moins d'un an, elle put soumettre à la Commission Internationale, présidée par Mr. Léopold Dor, secrétaire général du Comité, et dont Mr. Reading assisté de Mr. Edmunds, fut le rapporteur, un ensemble impressionnant de matériaux qui mirent la Commission à même de présenter un rapport complet à la Conférence d'Amsterdam.

La revision proposée n'impliquait pas un remaniement profond des Règles. A peu d'exceptions près, il s'agissait plutôt d'améliorations de détail d'ordre technique ou même simplement rédactionnel. Les quelques réformes d'une nature plus substantielle étaient relatives à l'adjonction d'une nouvelle Règle d'Interprétation et à la mise au point des questions tant controversées de l'admission en avarie commune des dépenses substituées et du règlement par différence ou par quotité des pertes survenues aux marchandises transportées.

La Règle d'Interprétation fut adoptée à la demande pressante des délégations britannique et américaine, afin de dissiper la confusion créée dans leurs pays respectifs par le jugement rendu par Mr. le Juge Roche dans le procès concernant le navire « Makis ». Cette nouvelle Règle fixe le rapport entre les Règles numérotées et les Règles précédées de lettres, et accorde la préséance aux premières, conformément d'ailleurs à l'interprétation qui a toujours eu cours dans les pays de l'Europe Continentale. En outre, la Règle exclut formellement du nouveau code de l'avarie commune toute loi ou tout usage contraires à ses dispositions.

En matière de dépenses substituées, la Conférence a dû se résigner à un compromis. On connaît les deux thèses qui s'affrontent : selon l'une, il n'y a pas lieu d'avoir égard aux avantages recueillis par certains intérêts à raison des dépenses substituées ; selon l'autre au contraire, l'équité commande de tenir compte de ces avantages dans la répartition des charges de l'avarie commune. La première a triomphé dans les Règles F et XIV ; la seconde a prévalu dans les cas visés par la Règle X d.

Ce n'est pas le lieu d'entrer ici dans de plus amples détails. Certes, l'œuvre ainsi réalisée n'atteint pas l'idéale perfection ; elle ne donne pas une égale satisfaction à tous, mais il suffira de souligner que, grâce aux réformes adoptées par la Conférence d'Amsterdam, les Règles d'York et d'Anvers 1950 connaîtront désormais une application plus uniforme et universelle, puisqu'elles verront leur autorité s'étendre aux Etats-Unis d'Amérique, qui, jusqu'ores, ne les avaient adoptées que partiellement et

avec réserve. Ainsi un nouveau et grand progrès a pu être réalisé dans l'œuvre d'unification du droit maritime.

Les Règles adoptées à Amsterdam seront consacrées par l'International Law Association au cours du Congrès que celle-ci tiendra à Copenhague en 1950, d'où le millésime sous lequel les Règles nouvelles seront désignées.

Il importe de signaler ici qu'à l'occasion de la réunion de la Commission Internationale à Londres les 4 et 5 juillet 1949, l'idée a été émise par Mr. Reading et Mr. Edmunds de créer au sein du Comité Maritime International une Commission Permanente des Règles d'York et d'Anvers, Commission qui serait, en quelque sorte, un centre d'information et un organe régulateur destinés à assurer l'application uniforme des Règles. Il faut souhaiter que cette idée prenne corps.

III. — Limitation de la responsabilité des Propriétaires de Navires de Mer et de celle du Transporteur. — Clauses-or :

Ces questions ont été débattues à la Conférence d'Anvers de 1947 et fait l'objet d'une résolution instituant une Commission chargée de rechercher une solution pratique assurant l'uniformité nationale de la limite de responsabilité. Cette Commission a siégé le 12 et le 13 décembre 1948 à Anvers, sous la présidence de Mr. Albert Lilar, et le 6 juillet 1949 à Londres, sous la présidence de Mr. Léopold Dor, sans parvenir à un accord sur une formule déterminée. Dans un rapport extrêmement fouillé, Mr. Cyril Miller a mis en relief les graves difficultés suscitées par les problèmes touchant la responsabilité des propriétaires de navires et des transporteurs, concluant à la nécessité de reprendre l'étude de la question à son début, en s'inspirant des données du moment et des souhaits du monde maritime. Celui-ci s'est justement ému du chaos créé dans ce domaine par la diversité des lois et par l'impossibilité de traduire les clauses-or dans la réalité. Mais jusqu'à ce jour, les tenants du système britannique fixant la limite à une somme par tonneau de jauge sont demeurés sur leurs positions, sans se rallier pour autant à la solution de compromis, qui est, en somme, celle de la Convention Internationale de 1924. Les discussions assez sommaires qui ont eu lieu à Amsterdam sur ce sujet, ont permis de dégager une tendance générale qui se traduit par une préférence pour la généralisation de l'un ou de l'autre des deux systèmes, en rejetant celui de la convention existante. C'est dans cet esprit qu'a été adoptée la Résolution

confiant à la Commission Internationale déjà en fonction, la charge de réexaminer tout le problème de la responsabilité et des clauses-or dans son ensemble et de proposer à l'une des prochaines Conférences un texte entièrement nouveau. Décision grave, qui n'a pas été prise sans discussions ardentes, mais qui a paru s'imposer en raison des circonstances.

IV. — Saisie conservatoire de Navires :

On se souvient de ce que la Conférence de Paris de 1937 a approuvé le texte d'un projet de convention en cette matière. Le Conférence d'Anvers de 1947 a décidé que ce projet serait soumis à la Conférence Diplomatique. Cependant, le champ ouvert par ce projet a paru trop limité. Aussi, l'Association Britannique et l'Association Néerlandaise ont-elles pris l'initiatiave d'en proposer l'élargissement et MM. Miller et Asser se sont occupés de l'établissement d'un questionnaire, qui a été adressé à toutes les Associations. La proposition dont la Conférence d'Amsterdam était saisie, ne visait qu'une prise en considération du sujet nouveau ; elle fut accueillie avec une faveur telle que la Conférence décida la création d'une Commission Internationale, avec mission d'étudier tous les problèmes directement ou indirectement liés à l'unification internationale de toute la matière touchant la saisie conservatoire des navires, de faire rapport avant la prochaine Conférence et, si possible, de présenter un nouveau projet de convention, la Commission ayant toute liberté d'examiner et de présenter telles recommandations qu'elle estimera opportunes.

Cette résolution est une nouvelle preuve de l'esprit de coopération et d'entente, des aspirations vers plus d'unité internationale que la dernière guerre semble avoir renforcés, malgré les craintes que l'on pût concevoir à ce sujet. La résolution d'Amsterdam marque un net progrès sur celle de Paris, où, à force de réserves et de concessions, la sphère d'application du projet avait été réduite au seul cas d'abordage. Ce résultat plutôt mince était dû à l'opposition entre le système législatif en vigueur dans la plupart des pays continentaux et celui de la Grande-Bretagne. Le premier autorise la saisie conservatoire pour sûreté de toutes espèces de créances ; il permet également de saisir un navire autre que celui auquel la créance se rattache. En vertu du second, seule une créance de nature maritime peut donner lieu à la saisie conservatoire du seul navire auquel la créance se rapporte.

A présent, l'on propose de limiter la faculté de saisie aux seules créances maritimes, mais de l'étendre à tout navire appartenant au propriétaire ou à l'armateur débiteur. Au cours des discussions, l'accent a été mis sur le

lien unissant la matière de la saisie à celle des privilèges, hypothèques et mortgages, de même qu'à celle de la limitation de responsabilité des propriétaires de navires. Cet aspect du probleme ne manquera pas de retenir l'attention de la Commission Internationale dans l'étude de l'importante question qui lui est soumise.

V. — Hypothèques et « Mortgages » :

Ce sujet a été discuté sur la proposition de l'Association de Droit Maritime des Etats-Unis d'Amérique. Mr. Prizer, ancien présisent de cette Association et membre de la délégation américaine à Amsterdam, a introduit le sujet en soulignant que l'Etat et les Instituts spécialisés américains ont mortgage, à concurrence d'un montant qui peut être estimé à un millier de millions de dollars, sur les navires vendus aux Nations pressées de restaurer leur flotte éprouvée par la guerre. La Convention du 10 avril 1926 sur les privilèges et hypothèques maritimes, a dit Mr. Prizer, proclame la validité de l'hypothèque dans tous les pays contractants, mais ne dispose rien relativement à l'exécution du droit garanti par cette hypothèque ou mortgage. Il a, en conséquence, proposé l'adoption d'une motion qui se trouve reprise dans la Résolution reproduite ci-après, qui recommande, par ailleurs, à tous les Etats intéressés de donner leur ratification et leur adhésion à la Convention de Bruxelles de 1926, inséparable du sujet proposé par la délégation américaine. Le Bureau Permanent a donné pouvoir au Président du Comité Maritime International de nommer une Commission chargée de l'étude de la question.

VI. — Cour Internationale Maritime et Aérienne :

L'étude de ce sujet nouveau a été proposée par l'Association Néerlandaise de Droit Maritime et introduite par Mr. Cleveringa, professeur à l'Université de Leiden. Celui-ci a rappelé l'essentiel d'un discours qu'il fit à Londres en 1948 et qui eut un grand retentissement. Il s'agit d'un vaste et noble projet, qui fait honneur à ses promoteurs et auquel la Conférence d'Amsterdam a fait écho en chargeant une Commission Internationale de l'étude plus approfondie de la question. Il a été entendu que, conformément aux traditions du Comité, cette Commission entreprendrait une vaste enquête à l'effet de connaître les résonnances du projet dans les divers pays et des possibilités de réalisation.

VII. — Transports combinés :

Cette question, qui figure depuis de longues années à l'ordre du jour des Conférences du Comité Maritime International, se heurte à des difficultés de réalisation pratique. Mr. Algot Bagge, président de l'Association Suédoise de Droit Maritime et promoteur de l'idée de la création d'un titre uniforme couvrant les transports combinés, a bien voulu entreprendre une vaste enquête à travers le monde à l'effet de se rendre compte des nécessités du commerce international et des souhaits des intéressés sous ce rapport. Dans son discours introductif, il a résumé les étapes parcourues et a fait le point des résultats acquis. Il a exposé que les difficultés ne consistaient pas précisément dans la rédaction d'un document uniforme, mais dans l'établissement d'un régime unique de responsabilité des transporteurs successifs et celui du recours du porteur du document.

La Commission des Usagers de la Chambre de Commerce Internationale participant à l'élaboration du projet de réglementation uniforme, a décidé d'utiliser au maximum les correspondances entre la Convention de Bruxelles sur les Connaissements, la Convention de Berne sur les Transports par fer et la Convention de Varsovie pour les Transports par air.

L'Association Britannique, tout en manifestant son adhésion de principe au projet de Mr. Algot Bagge, a, néanmoins, exprimé l'avis que ce projet lui paraissait difficilement réalisable dans les circonstances actuelles. Cette intervention a motivé la résolution de la Conférence décidant que le problème relatif à l'établissement d'un document de transports combinés sera renvoyé à la Commission déjà désignée pour son étude en lui recommandant d'examiner s'il convient de consulter les milieux commerciaux intéressés sur le point de savoir si, et à quelles conditions, un tel document serait susceptible d'une utilisation pratique.

* * *

La cordialité et le faste de l'accueil que le Conférence a reçu auprès de l'Association Néerlandaise de Droit Maritime ne l'ont cédé en rien à l'intérêt et à l'efficacité des travaux. Les autorités à tous les échelons, les municipalités et autorités portuaires d'Amsterdam et de Rotterdam, les grands armements maritimes, la Compagnie « Nederland » et « la Holland-Amerika Lijn », les Groupements des négociants et industriels rivalisèrent d'attentions et de prévenances. Des réceptions inoubliables, des dîners somptueux, dans la ligne des grandes traditions de l'hospitalité néerlandaise, occupèrent tous les loisirs laissés par le travail, pourtant intensif.

En particulier, le président, Mr. Offerhaus, et les membres du Comité Directeur de l'Association Néerlandaise de Droit Maritime se sont dépensés sans compter. Qu'ils en soient tous ici chaleureusement remerciés. L'aimable empressement et le dévouement inlassable du Comité des Dames, présidé par Mme Offerhaus, n'ont pas peu contribué à l'éclat de cette Conférence. Le banquet qui, le mercredi soir, réunit à l'Hôtel Amstel les membres de la Conférence et un nombre impressionnant de personnalités éminentes du droit, de la politique et des affaires, a montré à quel point l'Association Néerlandaise de Droit Maritime est l'organe représentatif des milieux directement mêlés à l'industrie et au négoce maritimes de ce pays, répondant en cela au vœu que le fondateur Louis Franck exprimait jadis comme indispensable au succès du Comité. Mais la semaine passée à Amsterdam n'a pas seulement attesté du crédit dont jouit l'Association Néerlandaise ; elle a aussi témoigné du relèvement prodigieux de la nation hollandaise si durement éprouvée.

CONFERENCE D'AMSTERDAM

(septembre 1949).

RESOLUTIONS.

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I. Limitation de la Responsabilité des Propriétaires de Navires. — Clauses-Or.

La Conférence exprime le vœu que le Bureau Permanent charge la Commission Internationale pour la Limitation de la Responsabilité des Propriétaires de Navires et pour les Clauses-or d'étudier à nouveau tout le problème de la limitation de la responsabilité des propriétaires de navires et spécialement celui de la clause-or ainsi que le problème de la clause-or dans la convention sur les connaissements, de consulter à ce sujet toutes les Associations Nationales et de présenter un rapport comportant, le cas échéant, un nouveau projet de convention, à la prochaine conférence du Comité Maritime International.

II. Saisie des Navires.

La Conférence décide d'inviter le Bureau Permanent à nommer une commission internationale et de donner mission à cette commission d'étudier tous les problèmes directement ou indirectement relatifs ou liés à l'unification internationale de toute la matière de la législation

AMSTERDAM CONFERENCE

(September 1949).

RESOLUTIONS

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I. Limitation of Liability of Shipowners. — Gold-Clauses.

The Conference expresses the wish that the Bureau Permanent should instruct the International Commission on the Limitation of Liability of Shipowners and the Gold-Clause to renew its consideration of the whole question of the Limitation of Liability of Shipowners as well as the question of the Gold-Clause in the Convention on Bills of Lading, to consult the National Associations on these questions and to present a report embodying, if necessary, a new draft convention, to the next Conference of the International Maritime Committee.

II. Arrest of ships.

The Conference resolves to request the Bureau Permanent to appoint an International Commission and instruct this Commission to study all problems directly or indirectly appertaining to or connected with the international unification of the whole field of the

sur la saisie conservatoire des navires ; de faire rapport en temps utile avant la prochaine Conférence du Comité Maritime International et, si possible, de présenter un projet de convention. La commission aura toute liberté d'examiner et de présenter telles recommandations qu'elle estimera opportunes.

III. Hypothèques et „Mortgages".

« Sous réserve des dispositions exceptionnelles des lois nationales qui interdiraient la saisie d'un navire pendant le cours d'un voyage, la Conférence adopte, en principe, la résolution suivante proposée par la délégation américaine :

« Il est décidé que la Conférence approuve le principe qu'un créancier ayant sur un navire un „mortgage" ou une hypothèque valables selon la loi de son pavillon devrait pouvoir demander à toute juridiction dans le ressort de laquelle le navire se trouverait, la reconnaissance de son droit, et à cet effet, être autorisé à y saisir ou arrêter le navire jusqu'à ce qu'une garantie adéquate ait été fournie ou que la question ait été tranchée par la juridiction saisie.

« Afin de donner effet à la présente résolution, les Associations des Etats dont les lois n'accor-

law of arrest of ships ; to report thereon in good time before the next Conference of the International Maritime Committee and, if possible, to submit a draft convention ; the Commission having a free hand to consider and make such recommendations as it thinks proper.

III. Mortgages and „Hypothèques".

«Under reservation of exceptional provisions of municipal laws prohibiting the arrest of a ship during the course of a voyage, the Conference agrees in principle to the following resolution proposed by the American Delegation :

« It is resolved that the Conference approves the principle that a mortgage or « hypothèque » valid by the law of her flag shall carry the right to enforce the security in any jurisdiction in which the vessel may be found and for that purpose to have the vessel arrested or otherwise detained within such jurisdiction until adequate security has been lodged or the Court has adjudicated on the matter.

« In order to implement this resolution, National Associations, whose municipal law does not provide the above remedies, are respectfully requested to urge

dent pas ces droits, sont priées de demander instamment à leurs Gouvernements respectifs, une modification des lois en vigueur pour atteindre ce but. »

upon their Governments that the necessary changes be effected in their law in order to achieve this purpose ».

« et afin d'assurer la protection la plus efficace des créanciers qui ont ,,mortgage'' ou hypothèque sur les navires, recommande que tous les Etats intéressés donnent, le plus rapidement possible, leur ratification ou leur adhésion à la Convention de Bruxelles de 1926, pour l'unification de certaines règles en matière de privilèges et hypothèques maritimes.

« and, in order to ensure the most efficient protection to mortgage and « hypothèque » creditors, the Conference recommends that all interested States should as soon as possible ratify, or adhere to, the Brussels Convention of 1926, for the unification of certain rules in the matter of liens and mortgages.

IV. Cour Internationale Maritime et Aérienne.

La Conférence décide d'inviter le Bureau Permanent à nommer une commission internationale et à donner mission à cette commission d'étudier le problème de la création d'une Cour Internationale Maritime et Aérienne et de présenter un rapport à la prochaine Conférence.

IV. International Court for Navigation by Sea and by Air.

The Conference resolves to request the Bureau Permanent to appoint an International Commission and instruct this Commission to study the problem of the creation of an International Maritime Law Court and to report thereon to the next Conference.

V. Transports Combinés.

La Conférence décide que le problème relatif à l'établissement d'un document de transports combinés sera renvoyé à la Commission déjà désignée pour son étude et recommande à cette Commis-

V. Combined Transport.

The Conference recommends that the question of combined transport be referred to the Sub-Committee appointed for its study; that this Sub-Committee be invited to consider taking the evidence

sion d'examiner s'il convient de consulter les milieux commerciaux intéressés sur le point de savoir si, et à quelles conditions, un tel document serait susceptible d'une utilisation pratique.''

from the commercial interests concerned as to if and under what conditions such document is practicable and useful.''

CONVENTIONS INTERNATIONALES

Etat des Ratifications et Adhésions

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CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE D'**ABORDAGE,** SIGNEE A BRUXELLES, LE 23 SEPTEMBRE 1910.

Allemagne,	ratification 1er février 1913
Argentine,	adhésion 28 février 1922
	notification 15 mars 1922
Autriche,	ratification 1er février 1913
Belgique,	ratification 1er février 1913
Brésil,	ratification 31 décembre 1913
Danemark,	ratification 18 juin 1913
Dantzig,	adhésion 2 juin 1922
	notification 15 juin 1922
Egypte,	adhésion 29 novembre 1943
Espagne,	adhésion 17 novembre 1923
	notification 30 novembre 1923
Estonie,	adhésion 15 mai 1929
	notification 20 janvier 1930
Finlande,	adhésion 17 juillet 1923
	notification 28 juillet 1923
France,	ratification 1er février 1913
Grande-Bretagne,	ratification 1er février 1913
Afrique Orientale,	adhésion 1er février 1913
	notification 3 février 1913
Australie,	adhésion 9 septembre 1930
	notification 24 septembre 1930
Bahamas, Barbades, Bermudes,	adhésion 1er février 1913
	notification 3 février 1913

Canada,	adhésion 25 septembre 1914 notification 28 septembre 1914
Ceylan, Chypre, Côte-d'Or, Falkland, Fidji, Gambie, Gibraltar, Gilbert-et-Ellice, Guyane Britannique, Honduras Britannique, Hong-Kong,	adhésion 1er février 1913 notification 3 février 1913
Inde,	adhésion 1er février 1913 notification 3 février 1913
Jamaïque (Caimans, Caïques et Turques), Labouan, Leeward (Antigoa, Dominique, Monserrat, Saint-Christophe - Nevis, Iles Vierges),	adhésion 1er février 1913 notification 3 février 1913
Etats Malais Fédérés,	adhésion 1er février 1913 notification 3 février 1913
Malte, Maurice, Nigerie du Sud, Norfolk,	adhésion 1er février 1913 notification 3 février 1913
Nouvelle Zélande,	adhésion 19 mai 1913 notification 26 mai 1913
Papoua, Sainte-Hélène, Salomon, Seychelles, Sierra-Leone, Somaliland, Straits Settlements,	adhésion 1er février 1913 notification 3 février 1913
Terre-Neuve,	adhésion 11 mars 1914 notification 20 mars 1914
Tobago, Trinité, Wei-Hai-Wei, Windward (Grenada, Sainte-Lucie, Saint-Vincent).	adhésion 1er février 1913 notification 3 février 1913
Grèce,	ratification 29 septembre 1913
Hongrie,	ratification 1er février 1913
Italie,	ratification 2 juin 1913
Colonies Italiennes,	adhésion 9 novembre 1934 notification 5 décembre 1934

Japon,	ratification 12 janvier 1914
Lettonie,	adhésion 2 août 1932
	notification 16 août 1932
Mexique,	ratification 18 juillet 1913
Nigaragua,	ratification 18 juillet 1913
Norvège,	ratification 12 novembre 1913
Pays-Bas,	ratification 1er févvrier 1913
Pologne,	adhésion 2 juin 1922
	notification 15 juin 1922
Portugal,	ratification 25 juillet 1913
Colonies Portug.,	adhésion 20 juillet 1914
	notification 30 juillet 1914
Roumanie,	ratification 1er février 1913
Russie,	ratification 1er février 1913
Suède,	ratification 12 novembre 1913
U.R.S.S.,	adhésion 10 juillet 1936
	notification 27 juillet 1936
Uruguay,	adhésion 21 juillet 1915
	notification 24 juillet 1915
Yougoslavie,	adhésion 31 décembre 1931
	notification 12 janvier 1932

CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE D'**ASSISTANCE ET DE SAUVETAGE MARITIMES,** SIGNEE A BRUXELLES, LE 23 SEPTEMBRE 1910.

Allemagne,	ratification 1er février 1913
Argentine,	adhésion 28 février 1922
	notification 15 mars 1922
Autriche,	ratification 1er février 1913
Belgique,	ratification 1er février 1913
Brésil,	ratification 31 décembre 1913
Danemark,	ratification 18 juin 1913
Dantzig,	adhésion 15 octobre 1921
	notification du 17 octobre au 14 décembre 1921

Egypte,	adhésion 29 novembre 1943
Espagne,	adhésion 17 novembre 1923 notification 30 novembre 1923
Estonie,	adhésion 15 mai 1929 notification 20 janvier 1930.
Etats-Unis d'Amérique,	ratification 1er février 1913.
Finlande,	adhésion 17 juillet 1923 notification 28 juillet 1923
France,	ratification 1er février 1913
Grande-Bretagne,	ratification 1er février 1913
Afrique Orientale,	adhésion 1er février 1913 notification 3 février 1913
Australie,	adhésion 9 septembre 1930 notification 24 septembre 1930
Bahamas, Barbades, Bermudes,	adhésion 1er février 1913 notification 3 février 1913
Canada,	adhésion 25 septembre 1914 notification 28 septembre 1914
Ceylan, Chypre, Cote d'Or, Falkland, Fidji, Gambie, Gibraltar, Gilbert-et-Ellice, Guyane Britannique, Honduras Britannique, Hong-Kong,	adhésion 1er février 1913 notification 3 février 1913
Inde,	adhésion 1er février 1913 notification 3 février 1913
Jamaïque (Caïmans, Caïques et Turques) Labouan, Leeward (Antigoa, Dominique, Montserrat, Saint-Christophe-Nevis, Iles Vierges),	adhésion 1er février 1913 notification 3 février 1913
Etats Malais Fédérés,	adhésion 1er février 1913 notification 3 février 1913
Malte, Maurice, Nigeria du Sud, Norfolk,	adhésion 1er février 1913 notification 3 février 1913
Nouvelle-Zélande,	adhésion 19 mai 1913 notification 26 mai 1913

Papoua, Sainte-Hélène, Salomon, Seychelles, Sierra-Leone, Somaliland, Straits Settlements.	adhésion 1er février 1913 notification 3 février 1913
Terre-Neuve,	adhésion 11 mars 1914 notification 20 mars 1914
Tobago, Trinité, Wei-Hai-Wei, Windward (Grenade, Sainte-Lucie, Saint-Vincent),	adhésion 1er février 1913 notification 3 février 1913
Grèce,	ratification 15 octobre 1913
Hongrie,	ratification 1er février 1913
Italie,	ratification 2 juin 1913
Erythrée, Somalie Italienne,	adhésion 2 juin 1913 notification 11 juin 1913
Colonies Italiennes,	adhésion 9 novembre 1934 notification 5 décembre 1934
Japon,	ratification 12 janvier 1914
Lettonie,	adhésion 2 août 1932 notification 16 août 1932
Mexique,	ratification 1er février 1913
Norvège,	ratification 12 novembre 1913
Pays-Bas,	ratification 1er février 1913
Pologne,	adhésion 15 octobre 1921 notification du 17 octobre au 14 décembre 1921.
Portugal,	ratification 25 juillet 1913
Colonies Portug.,	adhésion 20 juillet 1914 notification 30 juillet 1914
Roumanie,	ratification 1er février 1913
Russie,	ratification 1er février 1913
Suède,	ratification 12 novembre 1913
U.R.S.S.,	adhésion 10 juillet 1936 notification 27 juillet 1936
Uruguay,	adhésion 21 juillet 1915 notification 24 juillet 1915
Yougoslavie,	adhésion 31 décembre 1931 notification 12 janvier 1932.

CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES CONCERNANT LA **LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER** ET PROTOCOLE DE SIGNATURE, SIGNES A BRUXELLES, LE 25 AOUT 1924.

Belgique,	ratification 2 juin 1930
Brésil,	ratification 28 avril 1931
Danemark,	ratification 2 juin 1930
Espagne,	ratification 2 juin 1930
Finlande,	adhésion 12 juillet 1934
France,	ratification 23 août 1935
Hongrie,	ratification 2 juin 1930
Monaco,	adhésion 15 mai 1931
Norvège,	ratification 10 octobre 1933
Pologne,	ratification 26 octobre 1936
Portugal,	ratification 2 juin 1930
Suède,	ratification 1er juillet 1938

CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES RELATIVES AUX **PRIVILEGES ET HYPOTHEQUES MARITIMES** ET PROTOCOLE DE SIGNATURE, SIGNES A BRUXELLES, LE 10 AVRIL 1926.

Belgique,	ratification 2 juin 1930
Brésil,	ratification 28 avril 1931
Danemark,	ratification 2 juin 1930
Espagne,	ratification 2 juin 1930
Estonie,	ratification 2 juin 1930
Finlande,	adhésion 12 juillet 1934
France,	ratification 23 août 1935
Hongrie,	ratification 2 juin 1930
Monaco,	adhésion 15 mai 1931
Norvège,	ratification 10 octobre 1933
Pologne,	ratification 26 octobre 1936
Portugal,	adhésion 24 décembre 1931
Roumanie,	ratification 4 août 1937
Suède,	ratification 1er juillet 1938.
Italie,	ratification 7 décembre 1949

CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE **CONNAISSEMENT** ET PROTOCOLE DE SIGNATURE, SIGNES A BRUXELLES, LE 25 AOUT 1924.

Allemagne,	ratification 1er juillet 1939
Belgique,	ratification 2 juin 1930
Danemark,	adhésion 1er juillet 1938
Egypte,	adhésion 29 novembre 1943
Espagne,	ratification 2 juin 1930
Etats-Unis d'Amérique,	ratification 29 juin 1937
Finlande,	adhésion 1er juillet 1939
France,	ratification 4 janvier 1937
Grande-Bretagne et Irlande du Nord,	ratification 2 juin 1930
Ascension,	adhésion 3 novembre 1931
Bahamas, Barbades, Bermudes, Borneo du Nord, Cameroun, Ceylan, Chypre, Cote d'Or, Falkland, Fidji, Gambie, Gibraltar, Gilbert et Ellice, Guyane Britannique, Honduras Britannique, Hong-Kong, Jamaïque (Caïman, Caïques et Turques), Kenya, Leeward (Antigoa, Dominique, Mont-Serrat, Saint-Christophe-Nevis, Iles Vierges),	adhésion 2 décembre 1930
Etats Malais Fédérés,	adhésion 2 décembre 1930
Etats Malais non Fédérés,	adhésion 2 décembre 1930
Maurice, Nigeria,	adhésion 2 décembre 1930
Palestine,	adhésion 2 décembre 1930
Sainte-Hélène,	adhésion 3 novembre 1931
Salomon,	adhésion 2 décembre 1930
Sarawak,	adhésion 3 novembre 1931

Seychelles, Sierra-Leone, Somaliland, Straits Settlements, Tanganyika, Tobago, Tonga Trinité, Windward (Grenade, Sainte Lucie, Saint-Vincent),	adhésion 2 décembre 1930
Zanzibar,	adhésion 2 décembre 1930
Hongrie,	ratification 2 juin 1930
Italie,	ratification 7 octobre 1938
Monaco,	adhésion 15 mai 1931
Norvège,	adhésion 1 juillet 1938
Pologne,	ratification 26 octobre 1936
Portugal,	adhésion 24 décembre 1931
Roumanie,	ratification 4 août 1937
Suède,	adhésion 1er juillet 1938.

CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES CONCERNANT LES **IMMUNITES DES NAVIRES D'ETAT**, SIGNEE A BRUXELLES, LE 10 AVRIL 1926.

Allemagne,	ratification 27 juin 1936
Belgique,	ratification 8 janvier 1936
Brésil,	ratification 8 janvier 1936
Chili,	ratification 8 janvier 1936
Estonie,	ratification 8 janvier 1936
Hongrie,	ratification 8 janvier 1936
Italie, Colonies Italiennes,	ratification 27 janvier 1937
Norvège,	ratification 25 avril 1939
Pays-Bas,	ratification 8 juillet 1936
Curacao, Indes Néerlandaises, Surinam,	ratification 8 juillet 1936
Pologne,	ratification 8 janvier 1936
Portugal,	ratification 27 juin 1938
Roumanie,	ratification 4 août 1937
Suède,	ratification 1er juillet 1938

PROTOCOLE ADDITIONNEL A CETTE CONVENTION, SIGNE A BRUXELLES, LE 24 MAI 1934.

Allemagne,	ratification 27 juin 1936
Belgique,	ratification 8 janvier 1936
Brésil,	ratification 8 janvier 1936
Chili,	ratification 8 janvier 1936
Estonie,	ratification 8 janvier 1936
Hongrie,	ratification 8 janvier 1936
Italie, Colonies Italiennes,	ratification 27 janvier 1937
Norvège,	ratification 25 avril 1939
Pays-Bas,	ratification 8 juillet 1936
Curacao, Indes Néerlandaises, Surinam,	ratification 8 juillet 1936
Pologne,	ratification 8 janvier 1936
Portugal,	ratification 27 juin 1938
Roumanie,	ratification 4 août 1937
Suède,	ratification 1er juillet 1938.

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ADDENDUM

Ratification par le Danemark le 16 novembre 1950.

COMITE MARITIME INTERNATIONAL

Conférence d'Amsterdam — Septembre 1949.

COMMISSIONS INTERNATIONALES.

Résolution I. Limitation de la Responsabilité. Clause-or.

La Commission internationale existante a été chargée de réexaminer entièrement la question.

Les membres de cette commission sont :

S. E. Albert Lilar, Sénateur, Ministre de la Justice, président
M. Léopold Dor ..... Vice-président
M. Carlo Van den Bosch ..... Belgique (Secrétaire)
M. J. T. Asser ..... Pays-Bas
Baron van der Feltz ..... Pays-Bas
M. James-Paul Govare ..... France
M. N. E. Kihlbom ..... Suède
M. Kaj. Pineus ..... Suède
M. Niels Tybjerg ..... Danemark
M. C. D. Raynor
M. G. C. Charles
M. Martin Hill
M. Cyril Miller
..... Grande-Bretagne
M. Sjur Braeckhus ..... Norvège

Résolution II. Saisie de navires.

La Conférence a désigné comme membres de cette commission (le vendredi 23 septembre) :

M. Ant. Franck, président
M. W. Koelman ..... Belgique
M. J. de Grandmaison ..... France
M. George de Forest Lord ..... Etats-Unis
M. le Prof. G. Berlingieri ..... Italie

M. Lindahl ..... Suède
M. Per Gram ..... Norvège
M. N. V. Boeg ..... Danemark
M. C. T. Miller ..... Grande-Bretagne
M. J. T. Asser ..... Pays-Bas (Secrétaire)

Résolution III. Priviléges et hypothèques maritimes.

Cette commission internationale n'a pas encore été designée.

Résolution IV. Cour internationale de justice maritime et aérienne.

Le Président du Comité Maritime International, en vertu des pouvoirs lui conférés par le Bureau Permanent, a composé cette commission comme suit :

Président : M. le Professeur Cleveringa.
Membres :
M. A. Lilar (Belgique).
M. Robert Coulet (France).
M. Rafael Valle y Carreras (Londres).
M. Sjur Braekhus (Norvège).

Résolution V. Transports directs combinés.

Le Bureau Permanent a désigné (le jeudi 22 septembre) comme membres de cette commission :

M. Algot Bagge, président ..... Suède
Sir Leslie Scott, P.C.,
ou alternativement M. Maurice P. Hill ..... Grande-Bretagne
M. James-Paul Govare ..... France
M. Loeff ..... Pays-Bas
M. N. V. Boeg ..... Danemark
M. le Prof. G. Berlingieri ..... Italie
Dr. Sjur Braekhus ..... Norvège
Mr. Oscar Houston
alternativement M. John C. Prizer ..... Etats-Unis

Les membres désignés peuvent toujours se faire représenter s'ils sont empêchés d'assister eux-mêmes à une réunion de commission. Le Bureau Permanent a le pouvoir de compléter les commissions.

COMITE MARITIME INTERNATIONAL

STATUTS

Art. 1. — Le Comité Maritime International se propose :

a) de contribuer par ses conférences, ses publications et ses autres travaux à l'Unification du droit maritime :

b) de provoquer la création d'associations nationales pour l'Unification du Droit Maritime ;

c) de maintenir entre ces associations des rapports réguliers et une action concordante.

Art. 2. — Le Comité Maritime International se compose de membres titulaires et de délégués des associations nationales.

Les membres fondateurs sont de droit membres titulaires. Leur nombre est limité, en général, à dix par pays.

Le nombre de délégués des associations nationales est limité à six par pays.

Pour compléter le nombre des membres titulaires, comme en cas de vacance, il pourra être procédé à l'élection, à la première réunion des membres titulaires qui suivra la constitution du Comité ou la vacance. L'élection a lieu au scrutin secret entre les titulaires à la majorité absolue des suffrages exprimés. Dans l'intervalle entre deux conférences, les nouveaux membres sont désignés par le Bureau permanent. La prolongation de leur mandat est soumise à la ratification de la prochaine Conférence.

Art. 3. — Chaque conférence compose son bureau et prend les mesures nécessaires pour veiller à l'exécution de ses décisions et à la préparation des réunions prochaines ; à défaut de décisions à cet égard, il y sera pourvu comme dit à l'article suivant.

Art. 4. — Dans l'intervalle entre les conférences, l'administration du Comité est confiée à un bureau permanent. Le bureau permanent, nommé pour trois ans, se compose :

1° d'un président, d'un vice-président, et d'un ou de plusieurs secrétaires, qui pourvoiront aux rapports avec les associations nationales, à la gestion ordinaire et à l'exécution des décisions du Comité ;

2° de membres nommés à raison d'un délégué par pays représenté dans le Comité et choisis soit parmi les membres titulaires, soit parmi les délégués des associations nationales.

Le bureau ainsi composé arrête le cas échéant le programme des réunions. Il prend les mesures nécessaires pour assurer la représentation autonome.

Les membres du Bureau permanent sont nommés par le Comité Maritime International. Les élections se font au scrutin secret et à la majorité des membres présents.

Art. 5. — Les membres titulaires du Comité Maritime International payent une contribution annuelle de £ 1.1.0 (150 fr. belges). Peuvent être réputés démissionnaires, les membres qui restent en défaut de verser cette cotisation.

Art. 6. — Les associations nationales seront invitées à contribuer aux frais du Comité.

Art. 7. — La durée du mandat des membres titulaires est indéfinie ; elle peut prendre fin par démission ou par délibération du Comité.

Art. 8. — Les présents statuts peuvent toujours être modifiés sur la proposition du bureau et après mise à l'ordre du jour de la réunion.

Art. 9. — Le Comité Maritime International se réunira, à moins de circonstances imprévues, au moins une fois par an. Il désigne directement ou par délégation le lieu et la date de la conférence. Il sera convoqué en outre extraordinairement par décision du Bureau permanent ou à la demande de quinze membres. Dans ce cas il se réunira dans le pays où se trouvera établi le siège du Bureau permanent.

Aucun vote ne sera valablement acquis si plus de la moitié des pays ayant constitué des associations affiliées au Comité n'est représentée, et si le vote ne réunit pas la majorité absolue des pays représentés, les membres votant par nationalité.

Art. 10. — Le Comité désignera tous les trois ans le siège du Bureau permanent.

BUREAU PERMANENT

du Comité Maritime International

Président d'Honneur :

The Right Hon. Lord Justice SCOTT, Président de la British Maritime Law Association, Londres.

Président :

M. ALBERT LILAR, avocat, sénateur, Ministre de la Justice, Professeur à l'Université de Bruxelles, Président de l'Association Belge de Droit Maritime, Anvers.

Vice-président :

The Hon. Mr. Justice PILCHER, vice-président de la British Maritime Law Association, Londres.

Secrétaires-généraux :

MM. FREDERIC SOHR, docteur en droit, assureur, vice-président de l'Association Belge de Droit Maritime ; professeur à l'Université de Bruxelles, Anvers.

LEOPOLD DOR, avocat, Directeur de la Revue de Droit Maritime Comparé, Paris.

ANT. FRANCK, avocat, secrétaire-général de l'Association Belge de Droit Maritime, Anvers.

CYRIL MILLER, secrétaire-général de la British Maritime Law Association, Assureur, Londres.

Secrétaire :

M. CARLO VAN DEN BOSCH, avocat, secrétaire de l'Association Belge de Droit Maritime, Anvers.

Conseillers :

MM. EDVIN ALTEN, Juge à la Cour Suprême, Président de l'Association Norvégienne de Droit Maritime, Oslo.

MM. ALGOT BAGGE, Juge à la Cour d'Appel, Président de l'Association Suédoise de Droit Maritime, Stockholm.

CHARLES C. BURLINGHAM, avocat à New-York.

GEORGES RIPERT, membre de l'Institut de France, Professeur à la Faculté de Droit, président d'Honneur de l'Association Française de Droit Maritime, Paris.

GIORGIO BERLINGIERI, avocat, Professeur à l'Université, Gênes.

le Professeur J. OFFERHAUS, Président de l'Association Néerlandaise de Droit Maritime, Amsterdam.

N. V. BOEG, Conseiller à la Cour d'Appel, Président de la Branche Danoise du Comité Maritime International, Copenhague.

MEMBRES TITULAIRES
DU COMITE MARITIME INTERNATIONAL.

MM. Edvin ALTEN, Juge à la Cour Suprême, Président de l'Association Norvégienne de Droit Maritime, Oslo.

Carl Erik AHMANSSON, Directeur de la Sveriges Angfartygs Assuransförening, Gothembourg.

Hendrik AMELN, Avocat, dispacheur, Président de la Commission législative du Storting, Président du Véritas Norvégien, Bergen.

Herb. ANDERSSON, armateur, Helsingfors.

Dr. J. T. ASSER, Avocat à Amsterdam.

Algot BAGGE, Juge à la Cour Suprême de Suède, Président de l'Association Suédoise de Droit Maritime, Stockholm.

Norman B. BEECHER, Conseiller d'Amirauté du Shipping Board, Washington, D. C.

Dr. Giorgio BERLINGIERI, Professeur à l'Université, vice-président de l'Association Italienne de Droit Maritime, Avocat, Gênes.

N. V. BOEG, Conseiller à la Cour d'Appel, Président de la Branche Danoise du Comité Maritime International, Copenhague.

Raymond BOIZARD, docteur en droit, dispacheur, secrétaire du Comité des Assureurs Maritimes de Paris, Paris.

Paul BONCOUR, Avocat, ancien Ministre, Paris.

Biagio BORRIELLO, M. P., Président du Comité régional de l'Association Italienne à Naples.

Sjur BRAEKHUS, docteur en droit, professeur de Droit Maritime à l'Université, Oslo.

Hugo BRANDT, Directeur de la Norddeutsche Versicherungsgesellschaft, Hambourg.

Antonio BRUNETTI, Prof. de Droit Maritime à l'Université de Venise.

Dr. BURCHARD-MOTZ, ancien Bourgmestre de Hambourg, Président de l'Association allemande de Droit Maritime.

MM. Charles C. BURLINGHAM, Avocat à New-York.

Gunnar CARLSSON, Directeur de la Transatlantic Steamship Company, Gothembourg.

Juan CARLOMAGNO. Avocat, Professeur à l'Université, Buenos-Ayres.

Hawley T. CHESTER, assureur, New-York.

Placido CIVILETTI, Avocat, Gênes,

R. P. CLEVERINGA, Professeur à l'Université, Leyden.

Antonio COSULICH, Président de la « Cosulich », Società Triestina di Navigazione, vice-président de l'Association Italienne de Droit Maritime, Trieste.

Juan Carlos CRUZ, Professeur à la Faculté de Droit à l'Université de Buenos-Aires.

George de FOREST LORD, Avocat, New-York.

Jean de GRANDMAISON, Avocat, Paris.

Dr. A. DELPRAT, Administrateur-directeur de la Stoomboot Maatschappij « Nederland », Amsterdam.

de MICHELIS, Haut Commissaire de l'Emigration, Ambassadeur honoraire, Rome.

Henry DEVOS, Doct. en droit, Directeur général de l'Administration de la Marine, Bruxelles.

Albert DEVEZE,avocat, Ministre d'Etat, Membre de la Chambre des Représentants, Bruxelles.

Léopold DOR, Avocat, Directeur de la « Revue de Droit Maritime Comparé », Secrétaire-Général du Comité Maritime International, Paris.

Dr. DUCKER, Syndic de la Chambre de Commerce, Hambourg.

Nils DYBWAD, Avocat, Directeur de Nordsk Skibrederforening, Oslo.

H. B. EDMUNDS, Commissaire d'avaries, Londres.

D. Roger ENGLAR, Avocat, ancien-président de la Maritime Law Association of the United States, New-York.

Augustin FICQ, Docteur en droit, Directeur de la Companie Maritime Belge (Lloyd Royal), Anvers.

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Mario BELGRANO, Buenos-Aires.

Trésorier :

Pedro MICHANOVICH, Armateur, Buenos-Aires.

SUEDE

Association Suédoise de Droit Maritime.

Président :

MM. Algot BAGGE, Conseiller à la Cour Suprême de Suède, Président Arbitral Anglo-Allemand, Stockholm.

Secrétaire :

Erik HAGBERGH, Juge à la Cour d'Appel, Stockholm.

LISTE DE PRESENCE.

BELGIQUE

MM. Albert LILAR, Avocat, Sénateur, Ministre de la Justice, Professeur à l'Université de Bruxelles. Président du Comité Maritime International et de l'Association Belge de Droit Maritime, Anvers.

Antoine FRANCK, Avocat, Secrétaire-général du Comité Maritime International et de l'Association Belge de Droit Maritime, Anvers.

Albert DEVEZE, Avocat, Ministre d'Etat, Membre de la Chambre des Représentants, Bruxelles.

Carlo VAN DEN BOSCH, Avocat, secrétaire du Comité Maritime International et de l'Association Belge de Droit Maritime, Anvers.

Jean VAN RIJN, Avocat à la Cour de Cassation, Professeur à l'Université, Bruxelles.

Jules DENOEL, Directeur, Chef de la Section des Traités au Ministère des Affaires Etrangères, Bruxelles.

Léon DESCAMPS, Conseiller d'Administration au Ministère des Communications, Bruxelles.

Werner KOELMAN, Avocat, Délégué de l'Union des Armateurs Belges, Anvers.

Paul VAN REEPINGEN, Délégué de la Fédération des Industries Belges, Bruxelles.

Robert DE SMET, Avocat, Président de la Ligue Maritime Belge, Bruxelles.

Henri VOET, Docteur en Droit, Dispacheur, Anvers.

G. VERBEECK, à Anvers.

F. VINCENTELLI, Avocat, Anvers.

DANEMARK.

MM. N. V. BOEG, Conseiller à la Cour d'Appel, Président de la Branche Danoise du Comité Maritime International, Copenhague.

Alfred GARTNER, Secrétaire de la East Asiatic Company, Copenhague.
Niel KLERK, Juge à la Haute Cour, Copenhague.
Erik KOFOED, Dispacheur, Copenhague.
Peter LETH, Directeur de Private Assurandeuren Limited, Copenhague.
R. NIELSSON, Directeur de la East Asiatic Company, Copenhague.
André SORENSEN, Administrateur-Délégué de la Danish Shipowners' Defence Association, Copenhague.
Niels TYBJERG, Dispacheur, Copenhague.
H. STEUCH, Administrateur-délégué de la Baltic and International Maritime Conference, Copenhague.
V. WENZELL, Directeur-adjoint de la Danish Steamshipowners' Association, Copenhague.

ETATS-UNIS D'AMERIQUE

MM. Cletus KEATING, Avocat, New-York.
Oscar R. HOUSTON, Avocat, New-York.
Hawley T. CHESTER, Assureur, New-York.
Joshua P. NELSON, Avocat, New-York.
John C. PRIZER, Avocat, New-York.
William G. SYMMERS, Avocat, New-York.
Porter GORE, Dispacheur, New-York.

FINLANDE

MM. Captain H. A. ANDERSSON, Administrateur de la Finland Steamship Company, Helsingfors.
Tönne ANTELL, Avocat, Secrétaire de l'Association Finoise de Droit Maritime, Helsingfors.
Prof. Arvo SIPILA, Dispacheur, Helsingfors.

FRANCE

MM. Francis SAUVAGE, Avocat, Président de l'Association Française de Droit Maritime, Paris.
Prof. Georges RIPERT, Président d'Honneur de l'Association Française de Droit Maritime, Membre de l'Institut de France, Paris.

James Paul GOVARE, Avocat, Membre de l'Academie de Marine, Vice-Président de l'Association Française de Droit Maritime, Paris.

Léopold DOR, Avocat, Secrétaire Général du Comité Maritime International, Paris.

Robert COULET, Avocat, Paris.

Michel DUBOSC, Avocat, Le Havre.

René GERVAIS, Conseiller Juridique du Comité des Assureurs Maritimes de Paris, Vice-Président de l'Association Française de Droit Maritime, Paris.

Jean de GRANDMAISON, Avocat, Paris.

Mademoiselle Claire LEGENDRE, Secrétaire-adjoint du Comité Central des Armateurs de France, Paris.

Jacques MARCHEGAY, Secrétaire-général du Comité Central des Armateurs de France, Paris.

J. PRODROMIDES, Conseiller Juridique du Comité Central des Armateurs de France, Paris.

GRECE

M. Dr. K. B. SPILIOPOULOS, Professeur à l'Université Athènes.

GRANDE-BRETAGNE

MM. The Right Hon. Lord Justice SCOTT, Président à la Cour d'Appel, Président de la British Maritime Law Association, Président d'Honneur du Comité Maritime International, Londres.

The Hon. Mr. Justice PILCHER, K. C., Vice-Président de la British Maritime Law Association, Vice-Président du Comité Maritime International, Londres.

Cyril MILLER, Secrétaire-Général du Comité Maritime International et de la British Maritime Law Association, Assureur, Londres.

Col. G. BEAZLEY, Lloyds, Londres.

F. G. HOGG, Londres.

E. W. READING, Dispacheur, Londres.

Georges Thomas CHARLES, Assureur, Londres.

Bruce DONALD, Londres.

E. H. N. DOWLEN, Londres.

Horace EDMUNDS, Commissaire d'Avaries, Londres.

IRLANDE

MM. Senateur Joseph BRENNAN, Président de la Irish Institute of Marine Underwriters, Dublin.

S. V. KIRKPATRICK, Avocat, Dublin.

N. J. ROBERTSON, Représentant d'Assureurs, Dublin.

ITALIE

MM. Dr. Giorgio BERLINGIERI, Professeur à l'Université, Vice-président de l'Association Italienne de Droit Maritime, Avocat, Gênes.

Roberto SANDIFORD, Conseiller d'Etat, Secrétaire-général de l'Association Italienne de Droit Maritime, Rome.

NORVEGE

MM. Edvin ALTEN, Juge à la Cour Suprême, Président de l'Association Norvégienne de Droit Maritime, Oslo.

Hendrik AMELN, Avocat, Dispacheur, Président de la Commission législative du Storting, Président du Véritas Norvégien, Bergen.

Sjur BRAEKHUS, Docteur en Droit, Professeur de Droit Maritime à l'Université, Oslo.

Fr. HALVORSEN, Oslo.

Sverre HOLT, capitaine Wilh. Wilhelmsen, Oslo.

Arne RYGH, Avocat à la Cour Suprême, Secrétaire de la « Oslo Rederforening », Oslo.

PAYS-BAS

MM. J. OFFERHAUS, Professeur à l'Université, Président de l'Association Néerlandaise de Droit Maritime, Amsterdam.

Dr. J. T. A. ASSER, Avocat, Amsterdam.

H. M. BOOT Assureur, ancien Président de l'Association d'Assureurs Maritimes aux Pays-Bas, Aerdenhout.

R. P. CLEVERINGA, Professeur à l'Université, Leyden.

D.A. DELPRAT, Administrateur-Directeur de la Stoomvaartmaatschappij « Nederland » N.V., Amsterdam.

le baron F. van der FELTZ, Avocat, Amsterdam.

C. C. GISCHLER, Administrateur-Directeur de la N.V. Ph. Van Ommeren's Scheepvaartbedrijf, Rotterdam.

J. J. KAMP, Assureur, Rotterdam.
A. LOEFF, Armateur, Rotterdam.
J. A. L. M. LOEFF, Avocat, Rotterdam.
H. E. SCHEFFER, Chef du Département Contentieux du Directorat-Général de l'Indication au Ministère de la Circulation, Wassenaar.
K. JANSMA, Avocat, Amsterdam.
H. R. HOEKSTRA, Amsterdam.
F. KRANENBURG, Amsterdam.
R. MICHIELSEN, Rotterdam.
Y. SCHOLTEN, Amsterdam.
L. J. E. van STEENWIJK, Amsterdam.
H. SCHADEE, Rotterdam.
W. H. VAN DE SANDE, BAKHUYZEN, Amsterdam.

PORTUGAL

M. le Professeur Inoncencio Galva TELES, Lisbonne.

SUEDE

MM. Algot BAGGE, Juge à la Cour Suprême de Suède, Président de l'Association Suédoise de Droit Maritime, Stockholm.
E. HAGBERGH, Juge à la Cour d'Appel, Stockholm.
N. E. KIHLBOM, Directeur-Général du Oeresund Sjöförsäkrings, Malmö.
Sven LANGE, Directeur de la Société d'Assurance Maritimes « Atlantica », Gothembourg.
LINDAHL, Stockholm.
C. PALME, Stockholm.
K. PINEUS, Dispacheur, Gothembourg.

CHAMBRE DE COMMERCE INTERNATIONALE

Délégué :
M. Philip Maurice HILL, Chamber of Shipping of the United Kingdom, Londres.

UNION INTERNATIONALE D'ASSURANCES TRANSPORTS.

Délégué :
M. N. E. KIHLBOM, Directeur-Général de Oeresund Marine Insurrance Co. Ltd. Malmö.

COMITE MARITIME INTERNATIONAL

Conférence d'Amsterdam

PROGRAMME :

(Les séances ont lieu dans la grande Salle de la « Kamer van Koophandel en Fabrieken voor Noord-Holland », à la Bourse d'Amsterdam, Damrak.)

Lundi, 19 septembre :

10 h. Séance inaugurale

Discours de Monsieur WIJERS, Ministre de la Justice des Pays-Bas.
Discours du Président du Comité Maritime International.
Election du Président de la Conférence. Constitution du Bureau.
Discours du Président de la Conférence.
Réponses des Présidents des délégations.

11,30 h. Etat des ratifications des Conventions Internationales de Bruxelles.

Rapports des délégations.
Communication du délégué de l'Association de Droit Maritime des Etats-Unis d'Amérique au sujet de la Convention Internationale pour l'unification de certaines règles en matière de privilèges et Hypothèques maritimes.

14.30 h. Revision des Règles d'York et d'Anvers 1924.

Mardi, 20 septembre :

10 h. Revision des Règles d'York et d'Anvers 1924 (Continuation).

14.30 h. Revision des Règles d'York et d'Anvers 1924 (Continuation).

Mercredi, 21 septembre :

10 h. Revision des Règles d'York et d'Anvers 1924 (Continuation).

14.30 h. Examen des „ clauses-or " dans les Conventions Internationales pour l'Unification de certaines règles en matière de Limitation de la responsabilité des propriétaires de navires de mer et en matière de Connaissements.

Jeudi, 22 septembre :

9.30 h. Etude d'un projet de document uniforme régissant les transports combinés.

Vendredi, 23 septembre :

10 h. Revision du projet de Convention pour l'Unification de certaines règles en matière de saisie conservatoire de navires.

14.30 h. Examen du projet visant la création d'une Cour Internationale maritime et aérienne.

Samedi, 24 septembre :

9.30 h. Séance administrative.

10.30 h. Revision du projet de convention pour l'Unification de certaines règles en matière de saisie conservatoire de navires (Continuation éventuelle).

Divers

Clôture des travaux de la Conférence.

THE

YORK - ANTWERP RULES, 1950

AS ADOPTED BY THE

International Maritime Committee

AND BY THE

International Law Association

AT THE

AMSTERDAM CONFERENCE

OF

SEPTEMBER 1949

YORK-ANTWERP RULES, 1950

RULE OF INTERPRETATION

In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

RULE A. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

RULE B. General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

RULE C. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

RULE D. Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure ; but this shall not prejudice any remedies which may be open against that party for such fault.

RULE E. The onus of proof is upon the party claiming in general

average to show that the loss or expense claimed is properly allowable as general average.

RULE F. Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

RULE G. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

RULE I. **Jettison of Cargo.**

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

RULE II. **Damage by Jettison and Sacrifice for the Common Safety.**

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

RULE III. **Extinguishing Fire on Shipboard.**

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

RULE IV. **Cutting away Wreck.**

Loss or damage caused by cutting away the wreck or remains of spars or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

RULE V. **Voluntary Stranding.**

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average, but loss or damage incurred in refloating such a ship shall be allowed as general average.

In all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

RULE VI. **Carrying Press of Sail - Damage to or Loss of Sails.**

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.

RULE VII. **Damage to Machinery and Boilers.**

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage ; but where a ship is afloat no loss or damage caused by working the machinery and boilers, including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average.

RULE VIII. **Expenses Lightening a Ship when Ashore, and Consequent Damage.**

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

RULE IX. **Ship's Materials and Stores Burnt for Fuel.**

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

RULE X. **Expenses at Port of Refuge, etc.**

(a). When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b). The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(c). Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if reasonably incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's

condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to the date of completion of discharge.

(d.) If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transshipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

RULE XI. Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc.

(a.) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a).

(b.) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the extra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the

abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(c.) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms or articles of employment.

(d.) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred.

RULE XII. **Damage to Cargo in Discharging, etc.**

Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

RULE XIII. **Deductions from Cost of Repairs.**

In adjusting claims for general average, repairs to be allowed in general average shall be subject to deductions in respect of «new for old» according to the following rules, where old material or parts are replaced by new.

The deductions to be regulated by the age of the ship from date of original register to the date of accident, except for provisions and stores, insulation, life- and similar boats, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

No deduction to be made in respect of provisions, stores and gear which have not been in use.

The deductions shall be made from the cost of new material or parts, including labour and establishment charges, but excluding cost of opening up.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

No cleaning and painting of bottom to be allowed, if the bottom has not been painted within six months previous to the date of the accident.

A. — Up to 1 year old.

All repairs to be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted.

B. — Between 1 and 3 years old.

Deduction off scaling, cleaning and painting bottom as above under Clause A.

One-third to be deducted off sails, rigging, ropes, sheets and hawsers (other then wire and chain), awnings, covers, provisions and stores and painting.

One-sixth to be deducted off woodwork of hull, including hold ceiling, wooden masts, spars and boats, furniture, upholstery, crockery, metal- and glass-ware, wire rigging, wire ropes and wire hawsers, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, chain cables and chains, insulation, auxiliary machinery, steering gear and connections, winches and cranes and connections and electrical machinery and connections other than electric propelling machinery ; other repairs to be allowed in full.

Metal sheathing for wooden or composite ships shall be dealt with by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt and labour metalling are subject to a deduction of one-third.

C. — Between 3 and 6 years.

Deductions as above under Clause B, except that one-third be

deducted off woodwork of hull including hold ceiling, wooden masts, spars and boats, furniture, upholstery, and one-sixth be deducted off ironwork of masts and spars and all machinery (inclusive of boilers and their mountings).

D. — **Between 6 and 10 years.**

Deductions as above under Clause C, except that one-third be deducted off all rigging, ropes, sheets, and hawsers, ironwork of masts and spars, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, insulation, auxiliary machinery, steering gear, winches, cranes and connections and all other machinery (inclusive of boilers and their mountings).

E. — **Between 10 and 15 years.**

One-third to be deducted off all renewals, except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

F. — **Over 15 years.**

One-third to be deducted off all renewals, except chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

RULE XIV. **Temporary repairs.**

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions «new for old» shall be made from the cost of temporary repairs allowable as general average.

RULE XV. **Loss of Freight.**

Loss of freight arising from damage to or loss of cargo shall

be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. Amount to be made good for Cargo Lost or Damaged by Sacrifice.

The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Where goods so damaged are sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

RULE XVII. Contributory Values.

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passenger's luggage and personal effects not shipped under bill of lading shall not contribute in general average.

RULE XVIII. **Damage to Ship.**

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, subject to deduction in accordance with Rule XIII. When not repaired, the reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

RULE XIX. **Undeclared or Wrongfully Declared Cargo.**

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. Provision of Funds.

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

RULE XXI. **Interest on Losses made good in General Average.**

Interest shall be allowed on expenditure, sacrifices and allowances

charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

RULE XXII. **Treatment of Cash Deposits.**

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

TEXTE FRANÇAIS

DES

REGLES D'YORK ET D'ANVERS 1950

ADOPTÉ PAR LE

Comité Maritime International

ET PAR

l'International Law Association

Règles d'York et d'Anvers 1950

Lors de la Conférence du Comité Maritime International, tenue à Amsterdam en 1949, un texte de règles fut voté en anglais, en réservant toutefois la rédaction du texte français qui doit avoir exactement la même valeur probante.

Le Bureau a décidé de confier à l'Association Française de Droit Maritime, le soin de rédiger, avec le concours du British Maritime Committee, le texte officiel français.

Le texte français des Règles a, en conséquence, été rédigé par une commission, désignée par le Comité de l'Association Française de Droit Maritime, composée de : Mr. le Doyen Ripert, président honoraire, Mr. René Gervais et Maître James Paul Govare, vice-présidents et Maître J. de Grandmaison, membre du Comité.

Cette commission s'est assuré la collaboration du British Maritime Law Association et de son secrétaire-général, Mr. Cyriel Miller.

Le texte a également été approuvé par l'International Law Association.

(s) F. SAUVAGE,
Président de l'Association Française
de Droit Maritime.

Règles d'York et d'Anvers 1950

Texte officiel français.

REGLE D'INTERPRETATION.

Dans le règlement d'avaries communes, les règles suivantes précédées de lettres et de numéros doivent s'appliquer à l'exclusion de toute loi et pratique incompatibles avec elles.

A l'exception de ce qui est prévu par les règles numérotées, l'avarie commune doit être réglée conformément aux règles précédées de lettres.

REGLE A. — Il y a acte d'avarie commune quand, et seulement quand, intentionnellement et raisonnablement, un sacrifice extraordinaire est fait ou une dépense extraordinaire encourue pour le salut commun, dans le but de préserver d'un péril les propriétés engagées dans une aventure maritime commune.

REGLE B. — Les sacrifices et dépenses d'avarie commune seront supportés par les divers intérêts appelés à contribuer sur les bases déterminées ci-après.

REGLE C. — Seuls les dommages, pertes, ou dépenses, qui sont la conséquence directe de l'acte d'avarie commune, seront admis en avarie commune.

Les pertes ou dommages subis par le navire ou la cargaison, par suite de retard, soit au cours du voyage, soit postérieurement, tels que le chômage, et toute perte indirecte quelconque telle que la différence de cours, ne seront pas admis en avarie commune.

REGLE D. — Lorsque l'évènement qui a donné lieu au sacrifice ou à la dépense aura été la conséquence d'une faute commise par l'une des parties engagées dans l'aventure, il n'y en aura pas moins lieu à contribution, mais sans préjudice des recours pouvant être ouverts contre cette partie à raison d'une telle faute.

REGLE E. — La preuve qu'une perte ou une dépense doit effectivement être admise en avarie commune incombe à celui qui réclame cette admission.

REGLE F. — Toute dépense supplémentaire encourue en substitution d'une autre dépense qui aurait été admisible en avarie commune sera réputée elle-même avarie commune et admise à ce titre, sans égard à l'économie éventuellement réalisée par d'autres intérêts, mais seulement jusqu'à concurrence du montant de la dépense d'avarie commune ainsi évitée.

REGLE G. — Le règlement des avaries communes doit être établi, tant pour l'estimation des pertes que pour la contribution, sur la base des valeurs au moment et au lieu où se termine l'aventure.

Cette règle est sans influence sur la détermination du lieu où le règlement doit être établi.

REGLE I **Jet de cargaison.**

Aucun jet de cargaison ne sera admis bonifié en avarie commune, à moins que cette cargaison n'ait été transportée conformément aux usages reconnus du commerce.

REGLE II. **Dommage causé par jet et sacrifice pour le salut commun.**

Sera admis en avarie commune le dommage causé au navire et à la cargaison, ou à l'un d'eux, par un sacrifice ou en conséquence d'un sacrifice fait pour le salut commun, et par l'eau qui pénètre dans le cale par les écoutilles ouvertes ou par toute autre ouverture pratiquée en vue d'opérer un jet pour le salut commun.

REGLE III. **Extinction d'incendie à bord.**

Sera admis en avarie commune le dommage causé au navire et à la cargaison, ou à l'un d'eux, par l'eau ou autrement, y compris le dommage causé en submergeant ou en sabordant un navire en feu, en vue d'éteindre un incendie à bord ; toutefois, aucune bonification ne sera faite pour dommage causé à toutes parties du navire et du chargement en vrac, ou à tous colis séparés de marchandises qui ont été en feu.

REGLE IV. **Coupement de débris.**

La perte ou le dommage résultant du coupement des débris ou restants d'espars ou d'autres objets qui ont été enlevés par fortune de mer ne sera pas bonifié en avarie commune.

REGLE V. **Echouement volontaire.**

Quand un navire est intentionnellement mis à la côte, et que les circonstance sont telles que si cette mesure n'était pas adoptée, il serait inévitablement drossé à la côte ou sur les rochers, aucune perte ou avarie résultant pour le navire, le chargement et le fret, ou pour l'un deux, de cet échouement intentionnel ne sera admise en avarie commune, mais les pertes ou dommages encourus en renflouant un tel navire seront admis en avarie commune.

Dans tous les autres cas où un navire est intentionnellement mis à la côte pour le salut commun, la perte ou le dommage qui en résulte sera admis en avarie commune.

REGLE VI. **Forcement de voiles,**
Avarie ou perte de voiles.

L'avarie ou la perte de voiles et d'espars, ou de l'un d'eux, ayant pour cause les efforts faits pour renflouer un navire échoué ou l'amener sur un plus haut fond en vue du salut commun, sera admis en avarie commune ; mais lorsqu'un navire est à flot, aucune perte ou avarie causée au navire, au chargement et au fret, ou à l'un d'eux, par forcement de voiles, ne sera bonifié en avarie commune.

REGLE VII. **Dommages aux machines et aux chaudières.**

Le dommage causé aux machines et aux chaudières d'un navire échoué dans une position périlleuse par les efforts faits pour le renflouer, sera admis en avarie commune, lorsqu'il sera établi qu'il procède de l'intention réelle de renflouer le navire pour le salut commun au risque d'un tel dommage ; mais lorsqu'un navire est à flot, aucune perte ou avarie causée par le fonctionnement des machines et chaudières, y compris la perte ou avarie due à un forcement de machines ou une mesure de ce genre ne sera en aucune circonstance admis en avarie commune.

REGLE VIII. **Dépenses pour alléger un navire échoué et dommage résultant de cette mesure.**

Lorsqu'un navire est échoué et que la cargaison, ainsi que le combustible et les approvisionnements du navire, ou l'un d'eux, sont déchargés dans des circonstances telles que cette mesure constitue un acte d'avarie commune, les dépenses supplémentaires d'allégement, de location des alléges, et, le cas échéant, celles de réembarquement ainsi que la perte ou le dommage en résultant, seront admis en avarie commune.

REGLE IX. **Objets du navire et approvisionnements brûlés comme combustible.**

Les objets et approvisionnements du navire, ou l'un d'eux, qu'il aura été nécessaire de brûler comme combustible pour le salut commun en cas de péril, seront admis en avarie commune quand et seulement quand le navire aura été pourvu d'un ample approvisionnement de combustibles. Mais la quantité estimative de combustible qui aurait été consommée, calculée au prix courant au dernier port de départ du navire et à la date de ce départ sera portée au crédit de l'avarie commune.

REGLE X. **Dépenses au port de refuge, etc.**

a) Quand un navire sera entré dans un port ou lieu de refuge ou qu'il sera retourné à son port ou lieu de chargement par suite d'accident, de sacrifice ou d'autres circonstances extraordinaires qui auront rendu cette mesure nécessaire pour le salut commun, les dépenses encourues pour entrer dans ce port ou lieu seront admises en avarie commune ; et, quand il en sera reparti avec tout ou partie de sa cargaison primitive, les dépenses correspondantes pour quitter ce port ou lieu qui auront été la conséquence de cette entrée ou de ce retour seront de même admises en avarie commune.

Quand un navire est dans un port ou lieu de refuge quelconque, et qu'il est nécessairement déplacé vers un autre port où lieu parce que les réparations se peuvent être effectuées au premier port ou lieu, les dispositions de cette Règle s'appliqueront au deuxième port ou lieu comme s'il était un port ou lieu de refuge. Les dispositions de la Règle XI s'appliqueront à la prolongation de voyage occasionnés par ce déplacement.

b) Les frais faits pour manutentionner à bord ou pour décharger la cargaison, le combustible ou les approvisionnements soit à un port soit à un lieu de chargement, d'escale, ou de refuge, seront admis en avarie commune si la manutention ou le déchargement était nécessaire pour le salut commun ou pour permettre de réparer les avaries au navire causées par sacrifice ou par accident si ces réparations étaient nécessaires pour permettre de continuer le voyage en sécurité.

c) Toutes les fois que les frais de manutention ou de déchargement de la cargaison, du combustible ou des approvisionnements seront admissibles en avarie commune, les frais de leur rechargement et de leur arrimage à bord du navire, ainsi que tous frais de magasinage (y compris l'assurance, si elle a été raisonnablement conclue) seront également ainsi admis. Mais si le navire est condamné ou ne continue pas son voyage primitif, aucun frais de magasinage encouru après la date de la condamnation du navire ou de l'abandon du voyage ne sera admis en avarie commune. En cas de condamnation du navire ou d'abandon du voyage avant l'achèvement du déchargement de la cargaison, les frais de magasinage, dont il est question ci-dessus, seront admis en avarie commune jusqu'à la date de l'achèvement du déchargement.

d) Si un navire en état d'avarie se trouve dans un port ou lieu où il serait pratiquement possible de le réparer de manière à lui permettre de poursuivre son voyage avec toute sa cargaison, et que, en vue de réduire les dépenses, on prenne le parti, soit de le remorquer jusqu'à son port de destination, soit de transborder la cargaison, en tout ou en partie, sur un autre navire ou de la réexpédier de toute autre manière, en pareil cas, la dépense supplémentaire de ces remorquage, transbordement et réexpédition, ou de l'un d'eux (jusqu'à concurrence du montant de la dépense supplémentaire épargnée) sera supportée par les divers intéressées dans l'aventure proportionnellement à la dépense extraordinaire épargnée.

REGLE XI. **Salaires et entretien de l'équipage et autres dépenses pour se rendre au port de refuge, et dans ce port...**

a) Les salaires et frais d'entretien du Capitaine, des Officiers et de l'équipage raisonnablement encourus ainsi que le combustible et les

approvisionnements consommés durant la prolongation du voyage occasionnée par l'entrée du navire dans un port de refuge ou par son retour au port ou lieu de chargement, doivent être admis en avarie commune quand les dépenses pour entrer en ce port ou lieu sont admissibles en avarie commune par application de la Règle X a).

b) Quand un navire sera entré ou aura été retenu dans un port ou lieu, par suite d'un accident, sacrifice ou autres circonstances extraordinaires qui ont rendu cela nécessaire pour le salut commun, ou pour permettre la réparation des avaries causées au navire par sacrifice ou accident quand la réparation est nécessaire à la poursuite du voyage en sécurité, les salaires et frais d'entretien des Capitaine, Officiers, et équipage raisonnablement encourus pendant la période supplémentaire d'immobilisation en ce port ou lieu jusqu'à ce que le navire soit ou aurait dû être mis en état de poursuivre son voyage, seront admis en avarie commune. Quand le navire est condamné ou ne poursuit pas son voyage primitif, la période supplémentaire d'immobilisation sera réputée ne pas dépasser la date de la condamnation du navire ou de son abandon du voyage ou, si la cargaison n'est alors pas déchargée, la date d'achèvement de son déchargement.

Le combustible et les approvisionnements consommés pendant la période supplémentaire d'immobilisation seront admis en avarie commune à l'exception du combustible et des approvisionnements consommés en effectuant des réparations non admissibles en avarie commune.

Les frais de port encourus durant cette période supplémentaire d'immobilisation seront de même admis en avarie commune, à l'exception des frais qui ne sont encourus qu'en raison de réparations non admissibles en avarie commune.

c) Pour l'application de la présente Règle ainsi que des autres Règles, les salaires comprennent les paiements faits aux Capitaine, Officiers et équipage ou à leur profit, que ces paiements soient imposés aux armateurs par la loi ou qu'ils résultent des conditions et clauses des contrats de travail.

d) Quand des heures supplémentaires sont payées aux Capitaine, Officiers ou équipage pour l'entretien du navire, ou pour des réparations dont le coût n'est pas admissible en avarie commune, ces heures supplémentaires ne seront admises en avarie commune que jusqu'à concurrence de la dépense qui a été évitée et qui eut été encourue et admise en avarie

commune, si la dépense de ces heures supplémentaires n'avait pas été exposée.

REGLE XII. **Dommage causé à la cargaison en la déchargeant, etc.**

Le dommage ou la perte subis par la cargaison, le combustible ou les approvisionnements dans les opérations de manutention, déchargement, emmagasinage, rechargement et arrimage sera admis en avarie commune lorsque le coût respectif de ces opérations sera admis en avarie commune et dans ce cas seulement.

REGLE XIII. **Déduction du coût des réparations.**

Dans le règlement des réclamations pour avarie commune, les réparations admises en avarie commune seront sujettes à des déductions pour différence du ,,neuf au vieux'' selon les règles suivantes quand du vieux matériel sera, en totalité ou en partie, remplacé par du neuf.

Les déductions sont fixées d'après l'âge du navire depuis la date de son premier enregistrement jusqu'à la date de l'accident, excepté pour les approvisionnements et matières consommables, isolants, canots de sauvetage et similaires, équipements de gyro-compass, de radio-communications, de radiogonométrie, de sondage par écho et similaires, les machines et chaudières pour lesquelles les déductions seront calculées d'après l'âge des différentes parties auxquelles elles s'appliquent.

Aucune déduction ne sera faite sur les approvisionnements, matières consommables et apparaux qui n'auront pas été utilisés.

Les déductions seront effectuées sur le coût du matériel nouveau ou de ses parties, y compris la main-d'œuvre, les frais généraux mais à l'exclusion de la dépense exposée pour accéder à la pièce à remplacer.

Les frais de cale sèche, de slip et de déplacement du navire seront admis en entier.

Aucun nettoyage ou peinture de la carène ne sera admis si la coque n'a pas été peinte dans les six mois qui ont précédé la date de l'accident.

A. — **La première année.**

Toutes les réparations seront admises en entier, excepté le piquage, le nettoyage et la peinture ou l'enduit de la coque, dont un tiers sera déduit.

B. — **Entre 1 et 3 ans d'âge.**

Déduction pour piquage, nettoyage et peinture de la coque, comme ci-dessus, clause A.

Un tiers sera déduit des voiles, du gréement, des cordages, des écoutis et haussières (autres que les filins métalliques et chaînes), des bâches, prélarts, approvisionnements, matières consommables et peinture.

Un sixième sera déduit des parties en bois de la coque, y compris le vaigrage de la cale, des mâts en bois, des esparts et canots, des meubles et tapisseries, de la vaisselle, des articles de verre et de métal, des gréements, filins et haussières métalliques, des équipement de gyro-compass, de radio-communication, de radiogonométrie, de sondage par écho et similaires, des chaînes d'ancre et chaînes, des isolants, des machines auxiliaires, des appareils à gouverner et de leurs accessoires, des treuils et grues et leurs accessoires, des machines électriques et de leurs accessoires autres que les machines électriques de propulsion ; les autres réparations seront admises en entier.

Le doublage en métal pour les navires en bois ou mixtes sera réglé en admettant en entier le coût d'un poids égal au poids brut du doublage retiré du navire, sous déduction du produit de vente du vieux métal. Les clous, le feutre et la main d'œuvre pour pose du nouveau doublage subiront une réduction de un tiers.

C. — **Entre 3 et 6 ans.**

Déduction comme ci-dessus, clause B, excepté que un tiers sera déduit des parties en bois de la coque, y compris le vaigrage de la cale, des mâts en bois, des esparts et canots, des meubles et tapisseries et que un sixième sera déduit des parties en fer des mâts et esparts et de toute la machinerie (y compris les chaudières et leurs accessoires).

D. — **Entre 6 et 10 ans.**

Déductions comme ci-dessus, clause C, excepté que un tiers sera déduit de tout gréement, cordages, écoutes et haussières, parties en fer des mâts et esparts, des équipements de gyro-compass de radio-communication, de radiogonométrie, de sondage par écho et similaires, des isolants, des machines auxiliaires, des appareils à gouverner, des treuils, grues et accessoires et de toutes autres machines (y compris les chaudières et leurs accessoires).

E. — **Entre 10 et 15 ans.**

Un tiers sera déduit de tous remplacements, excepté des parties en fer de la coque, du ciment et des chaînes d'ancre pour lesquels un sixième sera déduit, et des ancres qui seront admises en entier.

F. — **Au-delà de 15 ans.**

Un tiers sera déduit de tous les remplacements, excepté pour les chaînes d'ancre pour lesquelles il sera déduit un sixième et pour les ancres qui seront admises en entier.

REGLE XIV. **Réparations provisoires.**

Lorsque des réparations provisoires sont effectuées à un navire, dans un port de chargement, d'escale ou de refuge, pour le salut commun ou pour des avaries causées par un sacrifice d'avarie commune, le coût de ces réparations sera bonifié en avarie commune.

Lorsque des réparations provisoires d'un dommage fortuit sont effectuées simplement pour permettre l'achèvement du voyage, le coût de ces réparations sera admis en avarie commune, sans égard à l'économie éventuellement réalisée par d'autres intérêts, mais seulement jusqu'à concurrence de l'économie sur les dépenses qui auraient été encourues et admises en avarie commune, si ces réparations n'avaient pas été effectuées en ce lieu.

Aucune déduction pour différence de vieux au neuf ne sera faite du coût des réparations provisoires admissibles en avaries communes.

REGLE XV. **Perte de fret.**

La perte de fret résultant d'une perte ou d'un dommage subi par la cargaison sera admise en avarie commune, tant si elle est causée par un acte d'avarie commune, que si cette perte ou ce dommage est ainsi admis.

Devront être déduites du montant du fret brut perdu les dépenses que le propriétaire de ce fret aurait encourues pour le gagner, mais qu'il n'a pas exposées par suite du sacrifice.

REGLE XVI. **Valeur à admettre pour la cargaison perdue ou avariée par sacrifice.**

Le montant à admettre en avarie commune pour dommage ou perte de

marchandises sacrifiées sera le montant de la perte que le propriétaire des marchandises aura éprouvée de ce fait en prenant pour base le prix du marché au dernier jour du déchargement du navire, ou à la fin de l'aventure lorsqu'elle se termine à un autre lieu que celui de la destination primitive.

Quand des marchandises ainsi avariées sont vendues et que le montant du dommage n'a pas été autrement convenu, la perte à admettre en avarie commune sera la différence entre le produit net de la vente et la valeur nette au dernier jour du déchargement du navire ou à la fin de l'aventure, lorsqu'elle se termine à un autre lieu que celui de la destination primitive.

REGLE XVII. **Valeurs contributives.**

La contribution à l'avarie commune sera établie sur les valeurs nettes réelles des propriétés à la fin du voyage, auxquelles sera ajouté le montant admis en avaries communes des propriétés sacrifiées s'il n'y est pas déjà compris. Du fret et du prix de passage en risque pour l'armateur seront déduits les frais et les gages de l'équipage qui n'auraient pas été encourus pour gagner le fret si le navire et la cargaison s'étaient totalement perdus au moment de l'acte de l'avarie commune et qui n'ont pas été admis en avarie commune. De la valeur des propriétés seront également déduits tous frais y relatifs, postérieurs à l'évènement qui donne ouverture à l'avarie commune mais pour autant seulement qu'ils n'auront pas été admis en avarie commune.

Les bagages de passagers et les effets personnels pour lesquels il n'est pas établi de connaissement ne contribueront pas à l'avarie commune.

REGLE XVIII. **Avaries au navire.**

Le montant à admettre en avarie commune pour dommage ou perte subis par le navire, ses machines et/ou ses apparaux, lorsqu'ils ont été réparés ou remplacés, sera le coût réel et raisonnable des réparations et du remplacement de ces dommages et pertes, sous réserve des déductions à opérer en vertu de la règle XIII. Lorsqu'il n'y a pas eu de réparations, il sera alloué une dépréciation raisonnable n'excédant pas le coût estimatif des réparations.

Lorsqu'il y a perte totale effective, ou perte réputée totale, du navire, le montant à allouer en avarie commune pour perte ou dommage causé

au navire par un acte d'avarie commune, sera la valeur estimative du navire à l'état sain sous déduction du coût estimatif des réparations du dommage n'ayant pas le caractère d'avarie commune, ainsi que du produit de vente, s'il y a lieu.

REGLE XIX. **Marchandises non déclarées ou faussement déclarées.**

La perte ou le dommage causé aux marchandises chargées à l'insu de l'armateur ou de son agent, ou à celles qui ont fait l'objet d'une désignation volontairement fausse au moment de l'embarquement, ne sera pas admis en avarie commune, mais ces marchandises resteront tenues de contribuer si elles sont sauvées.

La perte ou le dommage causé aux marchandises qui ont été faussement déclarées à l'embarquement pour une valeur moindre que leur valeur réelle sera admis sur la base de la valeur déclarée, mais ces marchandises devront contribuer sur leur valeur réelle.

REGLE XX. **Avances de fonds.**

Une commission de deux pour cent sur les débours d'avarie commune autres que les salaires et frais d'entretien du capitaine, des officiers et de l'équipage et le combustible et les approvisionnements qui n'ont pas été remplacés durant le voyage, sera admise en avarie commune ; mais lorsque les fonds n'auront pas été fournis par l'un des intérêts appelés à contribuer, les frais encourus exposés pour obtenir les fonds nécessaires au moyen d'un prêt à la grosse ou autrement, de même que la perte subie par les propriétaires des marchandises vendues dans ce but, seront admis en avarie commune.

Les frais d'assurance de l'argent avancé pour payer les dépenses d'avarie commune seront également admis en avarie commune.

REGLE XXI. **Intérêts sur les pertes admises en avarie commune.**

Un intérêt sera alloué sur les dépenses, sacrifices et bonifications classés en avarie commune, au taux de cinq pour cent par an, jusqu'à la date du règlement d'avarie commune, en tenant compte toutefois des remboursements qui ont été faits dans l'intervalle par ceux qui sont appelés à contribuer ou prélevés sur le fonds des dépôts de l'avarie commune.

REGLE XXII. **Traitement des dépôts en espèce.**

Lorsque des dépôts en espèces auront été encaissés en garantie de la contribution de la cargaison à l'avarie commune, aux frais de sauvetage ou frais spéciaux, ces dépôts devront être versés, sans aucun délai à un compte joint spécial aux noms d'un représentant désigné pour l'armateur et d'un représentant désigné pour les déposants, dans une banque agréée par eux deux. La somme ainsi déposée augmentée s'il y a lieu, des intérêts, sera conservée à titre de garantie pour le paiement aux ayants droit en raison de l'avarie commune, des frais de sauvetage ou des frais spéciaux payables par la cargaison et en vue desquels les dépôts ont été effectués. Des paiements en acompte ou des remboursements de dépôts peuvent être faits avec l'autorisation écrite du dispacheur. Ces dépôts, paiements ou remboursements seront effectués sans préjudice des obligations définitives des parties.

RAPPORTS PRÉLIMINAIRES

ITALIE

RAPPORT

de Mr. G. BERLINGIERI, Conseiller pour l'Italie du Bureau Permanent du Comité Maritime International.

Au cours des deux réunions qui ont eu lieu le 3 mai 1948 à Londres et le 11 octobre à Anvers, le Bureau Permanent a nommé une commission composée de délégués de toutes les Associations Nationales qui avaient exprimé le désir d'y être représentées, à raison d'un délégué par Association.

Ont été désignés pour en faire partie :

Pour l'Angleterre : Mr. Martin Hill
Pour la Belgique : Mr. Carlo Van den Bosch, avec fonctions de secrétaire
Pour le Danemark : Mr. Tybjerg
Pour la France : Mr. James Paul Govare
Pour l'Italie : Mr. G. Berlingieri
Pour la Norvège : Mr. Braekhus
Pour la Suède : Mr. Pineus
Pour les Pays-Bas : Baron van der Feltz.

La première réunion de cette Commission a été fixée au 12 décembre 1948 à Anvers, et les membres qui auraient été empêchés d'y intervenir ont été priés de faire parvenir un rapport ou leurs observations écrites au Secrétariat Général au plus tard le 30 novembre.

Les délégués ont été invités à faire des propositions d'amendement à la Convention relative à la limitation de la responsabilité des propriétaires de navires de mer et à celle relative aux Connaissements, avec l'avertissement que ces amendements ne devaient pas nécessairement se limiter aux clauses-or, mais pouvaient aussi viser d'autres dispositions de ces conventions dont la révision semblerait utile.

Il a été donné faculté aux délégués de saisir les Associations Nationales

respectives de la question, et de transmettre à la Commission les vœux qui seraient émis par ces Associations, en conseillant d'avoir aussi recours à des experts.

— I —

CONVENTION SUR LE CONNAISSEMENT

A l'extension de la tâche de la Commission au delà de la question restreinte des clauses-or peut-être ne suis-je pas étranger, puisqu'à l'occasion de la réunion du Bureau Permanent du mois d'octobre écoulé, j'ai plaidé pour qu'à l'ordre du jour de la prochaine Conférence d'Amsterdam fût insérée aussi une proposition d'amendement de la Convention sur le connaissement à l'égard de l'art. 10 relatif au domaine d'application de la Convention.

Puisque l'occasion m'en est encore donnée, je me permets d'insister sur l'opportunité que, en profitant de la révision des articles 4, par. 5 et de l'art. 9 relatifs à la clause-or, on élimine l'absurdité de l'art. 10.

L'ART. 10

L'Art. 10 de la Convention pour l'unification de certaines règles en matière de connaissement, est formulé comme suit :

> « Les dispositions de la présente Convention s'appliqueront à
> » tout connaissement créé dans un des Etats contractants ».

La significations de cette règle est, hélas, même trop claire : le seul fait qu'un connaissement soit émis dans le territoire d'un des Etats contractants, est condition suffisante pour qu'il soit assujetti aux dispositions de la Convention.

La nationalité des parties intéressées — transporteur et chargeur ou réceptionnaire — n'a pas la moindre influence.

Les fâcheuses conséquences de cette disposition sont de toute évidence.

D'un côté on voit tout de suite l'absurde vacuité d'imposer l'application de la Convention — par le seul fait que le connaissement a été créé dans un des Etats contractants — à un transport dont aucune des parties n'est ressortissant d'un des Etats contractants. Mais le pire est, que si par contre les intéressés dans le transport sont ressortissants des Etats contractants, la Convention ne recevra pas application si le connaissement a été créé dans le territoire d'un Etat non contractant.

La malheureuse disposition de cet article 10 est d'autant plus surprenante, qu'elle ne trouve aucun parallelisme dans les autres Conventions maritimes.

A savoir : la Convention en matière d'abordage est appliquée, d'après son art. 12, à l'égard de tous les intéressés, lorsque tous les navires en cause seront ressortissants aux Etats contractants ; l'art. 15 de la Convention en matière d'assistance et de sauvetage maritimes dispose que la convention sera appliquée à l'égard de tous les intéressés lorsque soit le navire assistant ou sauveteur, soit le navire assisté ou sauvé appartient à un Etat contractant ; la Convention sur la limitation de la responsabilité des propriétaires de navires est applicable, d'après son art. 12, lorsque le navire pour lequel la limite de responsabilité est invoquée est ressortissant d'un Etat contractant ; l'art. 6 de la Convention sur l'immunité des navires d'Etat prévoit son application dans chaque Etat contractant, sous la réserve de ne pas en faire bénéficier les Etats non contractants et leurs ressortissants, ou d'en subordonner l'application à la condition de réciprocité.

Toutes ces dispositions sont évidemment inspirées par des conceptions tout à fait rationnelles, conformes aux buts qu'une Convention internationale doit se proposer.

En nous trouvant, par contre, en face de l'anomalie consacrée dans cet article 10 de la Convention sur le connaissement, il est bien naturel d'en rechercher les origines.

D'après ce j'ai trouvé, la question a été soulevée pour la première fois à la fin de la discussion sur l'« Avant-Projet » de la Convention en question, dans la septième séance plénaire du 25 octobre 1922. L'« Avant-Projet » finissait avec un autre article, de la teneur suivante :

> « Les présentes règles auront effet pour et à raison du transport
> » de marchandises par des navires de mer transportant des mar-
> » chandises d'un port situé dans un Etat contractant à tout autre
> » port quelconque situé sur le territoire de ce pays ou ailleurs,
> » chaque fois que l'une des parties intéressées est sujet ou citoyen
> » d'un autre Etat contractant ».

Or, sans que dans les procès-verbaux il soit fait mention de la moindre discussion sur une telle proposition, dans le projet définitif on trouve l'article en question.

Il faut encore mettre en évidence que si une disposition comme celle de l'art. 10 trouve sa juste place dans une loi nationale (Voir, p.e., l'art.

I du Carriage of Goods by Sea Act 1924), par contre elle est tout à fait déplacée dans une convention internationale : où on devrait plutôt disposer, d'après le conseil de Sir Leslie Scott, que la convention est applicable toutes les fois que les parties sont ressortissants des Etats contractants.

LA CLAUSE-OR

Cette question est strictement liée au problème monétaire international, c'est-à-dire à une question dont la solution parait aujourd'hui insaisissable.

Il est toutefois d'une urgence extrême de modifier la Convention, dans le sens d'abolir les £ 100 sterling-or, étant donné que la limitation de la responsabilité à £ 100 or (à peu près un million de lires italiennes) équivaut à une responsabilité pratiquement illimité. On ne doit pas oublier que la présence de la clause des 100 livres sterling-or produit des situations vraiment insoutenables, particulièrement vis-à-vis des législations qui, comme l'italienne et la française, ont établi des limites excessivement réduites (lires 5000 et francs 8000). En effet, la responsabilité qu'un même transporteur peut rencontrer pour la perte de deux colis de la même valeur, pourra être tour à tour limitée à 5000 lires si le transport a été effectué entre deux ports italiens et à 8000 francs si le transport a été effectué entre deux ports français (ou encore à 17.500 francs belges s'il s'agit d'un transport entre deux ports belges), mais elle ne trouvera une limite que dans les £ 100-or (de façon que, je le répète, elle sera pratiquement illimitée), si le même colis aura eu comme destination un port situé dans le territoire d'un autre Etat contractant.

Or, puisque, pour les raisons très convaincantes qui sont bien connues, il ne paraît pas possible de maintenir l'étalon-or, on ne peut envisager aucune autre solution que celle d'avoir recours à la monnaie de quelque Etat.

Si on se persuade de cela, on se trouve déjà à mi-chemin dans la recherche d'une solution, puisque nous n'aurons qu'à passer en revue les devises des différents pays, pour nous arrêter à celle qui pourra nous donner le plus de confiance au point de vue de la stabilité et qui soit en même temps la plus connue comme moyen d'échange dans les affaires internationales.

D'après mon avis ces qualités se trouvent sans doute réunies dans le dollar américain plus que dans n'importe quelle autre devise ; et il est souhaitable que tous les Etats puissent se rallier à cette proposition.

Il ne restait alors qu'à décider à combien de dollars on devra limiter

la responsabilité ; mais une fois qu'on aura accepté la monnaie des Etats-Unis, il n'y aurait aucune raison pour ne pas accepter aussi la limite de 500 dollars que les Etats-Unis ont adoptée dans leur ,,Carriage of Goods by Sea Act, 1936, d'autant plus que la Convention a été ratifiée par eux, comme j'apprends par KNAUTH (On Ocean Bills of Lading, the American Canadian Law 1937, p. 67) avec cet ,,understanding''.

Il va de soi que tous les ressortissants des autres Etats contractants auront le droit, comme il est déjà dit dans le dernier paragraphe de l'art. 9 de la Convention, de se libérer dans la monnaie nationale, d'après le cours de change au jour de l'arrivée du navire au port de destination.

— II —

CONVENTION SUR LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES.

Aussi dans le domaine de cette convention se présente, en se plaçant sur un premier plan, la question de la clause-or. Mais ici, comme nous verrons plus loin, le problème peut être détourné.

Comme il est bien connu, les principes qui ont été adoptés par la Convention sont les suivants :

1) Le propriétaire de navire est responsable, jusqu'à concurrence de la valeur du navire, du fret et des accessoires, pour les obligations et indemnités mentionnées dans l'article premier.

Avec cette disposition a été introduit dans la Convention le système qui en doctrine était connu sous la dénomination de ,,système européen continental'', et qui est aussi adopté par les Etats-Unis (au moins dans un principe fondamental).

2) Après avoir établi cette règle, la Convention dispose que pour les créances visées dans les premiers 5 numéros (on fait exception pour les obligations naissant d'un fait d'assistance ou de sauvetage, pour les contributions en avarie commune et pour les obligations contractées par le capitaine en vertu de ses pouvoirs légaux), la responsabilité ne pourra pas dépasser une somme de 8 livres sterling par tonneau de jauge du navire pour dommages à la cargaison, et de 16 livres en cas de mort ou de lésions personnelles.

On ajoute dans la Convention, que l'estimation du navire est faite d'après son état au moment de l'arrivée au premier port, mais si avant

ce moment un nouvel accident, distinct du premier, a diminué la valeur du navire, la moins-value ainsi occasionnée n'entre pas en compte à l'égard des créances se rattachant à l'accident antérieur. Avec cette deuxième limitation de responsabilité à 8 et à 16 livres sterling par tonneau de jauge du navire, calculée pour chaque accident, la Convention a voulu adopter le système traditionnel anglais, avec ses vertus et ses défauts.

Mais il est évident que c'est à cause de l'introduction du système anglais dans la Convention, que le problème de la clause-or a pu naître, et que par conséquent il disparaitrait aussitôt que ce système serait abandonné.

Je dois ajouter tout de suite que si l'introduction du double système de limitation de responsabilité avait rencontré les sympathies que les auteurs du projet avaient bien le droit d'attendre après tous les efforts généreux dont les procès-verbaux sont la lumineuse documentation, il ne pourrait être question de la remettre en discussion, et il faudrait nécessairement se limiter à trouver une solution au problème de la clause-or, problème qui d'ailleurs se pose, sans possibilité de détour, au sujet de la convention sur le connaissement.

Mais nous pouvons nous avouer que ces sympathies sont bien loin d'avoir été créées autour de la Convention.

L'Angleterre en premier lieu, quoique presque 25 ans soient depuis lors écoulés, s'est toujours refusée de ratifier la Convention ; ce qui ne peut pas ne pas justifier — même dans les milieux les plus favorables aux travaux et aux efforts du Comité Maritime International — des doutes bien sérieux sur la bonté substantielle de la Convention.

Pour ce qui a trait à l'Italie, je dois rappeler que, quoique la Convention ait été rendue exécutoire avec le R.D.L. 6 janvier 1928 n. 1958 converti dans la loi 19 juillet 1929 n. 1638, le dépôt de ratification (et par conséquent l'entrée en vigueur l'effective de la Convention aux effets internationaux) avait été laissé en suspens, en attendant de connaître l'attitude des plus importants Etats maritimes. Une loi du 25 mai 1939 n. 868 avait quand même introduit la Convention dans notre législation intérieure.

Mais un courant antiunificateur s'était entretemps formé, et c'est à lui que le Gouvernement avait confié la tâche d'élaborer un nouveau code maritime, qui prit le nom de ,,Codice della Navigazione''. La loi du 25 mai 1939 n. 868 a été ainsi abrogée, car un système tout à fait différent de limitation de la responsabilité des propriétaires de navires avait été introduit dans le nouveau code.

Sur ce système adopté par le Codice della Navigazione j'aurai occasion de revenir sous peu.

Je crois utile de faire auparavant quelques remarques sur le système de la Convention.

La responsabilité du propriétaire de navire est contenue, dans la Convention, entre un minimum et un maximum.

Le maximum est déterminé par les 8 et les 16 livres sterling, c'est-à-dire sans aucune relation avec la valeur du navire. Il s'agit d'une règle que tout le monde reconnait comme surannée, car tandis que les £ 8 sterling par tonne pouvaient s'approcher, dans les temps passés, de la valeur moyenne du marché d'un navire d'une jauge moyenne, maintenant ces £ 8 ne représentent plus qu'un simple souvenir historique.

A côté de ce maximum la Convention a fixé un minimum, qui est envisage comme un fret calculé préalablement à forfait dans un prix pour cent de la valeur du navire au commencement du voyage, mais qui dans la réalité n'est pas un fret. Il est bien facile de se convaincre qu'il ne s'agit pas d'un fret, si on pense que ce minimum est dû ,,même si le navire n'aurait gagné aucun fret''.

Donc ce minimum représente si peu un fret, qu'on peut se demander pourquoi la Convention lui donne ce nom.

Ce minimum n'est en réalité qu'une fraction de la valeur du navire, calculée en pourcentage.

C'est à ce point, qu'une question se pose, et s'impose.

Pourquoi ne pas avoir aussi recours à une fraction de la valeur du navire calculée en pourcentage, pour fixer le maximum de la responsabilité ?

Quelle raison sérieuse y a-t-il pour ne pas adopter, pour la fixation du maximum de la responsabilité, le même criterium qu'on a trouvé satisfaisant pour la détermination du minimum de la responsabilité ?

On pourra bien dire que c'est ,,l'uovo di Colombo'', parce que, si on adopte ce même criterium du pourcentage de la valeur du navire, on s'échappe tout simplement de l'impasse de la clause-or.

Et c'est bien ça qu'on trouve dans notre ,,Codice della Navigazione'', dont je fais suivre la traduction des articles les plus importantes :

> Art. 274 : « L'armateur est responsable des faits de l'équipage » et des obligations contractées par le capitaine pour ce qui a » trait au navire et à l'expédition... »
>
> Art. 275 : « Pour les obligations contratées à l'occasion et » pour les besoins d'un voyage et pour les obligations naissant

» des faits ou actes effectués pendant le même voyage, exception » faite de celle provenant de son propre dol ou faute grave, l'ar- » mateur peut limiter la dette complexive à une somme équiva- » lente au montant du fret et de n'importe quel autre profit du » voyage... »

Art. 276 : « Aux effets de la détermination de la somme limite » on prend la valeur du navire au moment où la limitation est » demandée et en tout cas pas au delà de la fin du voyage, **pour- » vu que la dite valeur ne soit pas inférieure au cinquième ni » supérieure aux deux cinquièmes de la valeur du navire au » commencement du voyage.**

» Si la valeur du navire au moment où la demande de limita- » tion a lieu est inférieure au minimum prévu dans le paragraphe » précédent, on prend la cinquième partie de la valeur du navire; » si elle est supérieure au maximum, on prend les deux cinquiè- » mes de la valeur au commencement du voyage. »

Il va de soi que ces pourcentages respectivement d'un cinquième et de deux cinquièmes peuvent faire objet de discussion et ils peuvent être modifiés selon les opinions, comme peut aussi faire l'objet de discussion une autre particularité du système adopté par le ,,Codice della Navigazione''; mais ce système, consistant dans l'adoption d'un minimum et d'un maximum calculés tous les deux en pourcentage de la valeur du navire — sauf à choisir le moment où cette valeur doit être déterminée — me semble sous tous points de vue, vraiment souhaitable.

La brièveté du temps qui, après la réception de la circulaire du Secrétariat Général du 10 novembre, a été donnée aux mebres de la Commission pour faire parvenir au dit Secrétariat Général leurs rapports, ne m'a pas permis de soumettre ces importants problèmes à l'Association Italienne de droit maritime dont on aurait dû réunir l'assemblée, tandis que, d'autre côté, le caractère des observations qui précèdent ne rendaient pas nécessaire d'avoir recours à l'œuvre d'experts. Par conséquent, ce rapport n'exprime, pour le moment, que mon opinion personnelle : opinion toutefois qui, d'après quelques pourparlers que j'ai eu l'occasion d'avoir, à titre privé, avec des juristes italiens, pourra probablement exprimer l'avis de l'Association.

(s) G. Berlingieri.

Gênes, le 25 novembre 1948.

ITALIE

— I —

RATIFICATION DES CONVENTIONS INTERNATIONALES DE BRUXELLES.

Pour ce qui concerne l'Italie la situation des ratifications des conventions de Bruxelles n'a eu aucune modification. On doit seulement indiquer que presque toutes les dispositions conventionnelles ont été incorporées dans le code de navigation de 1942.

— II —

PROJET DE REVISION DES REGLES D'YORK ET ANVERS DE 1924.

L'Association italienne de Droit Maritime, profitant de la coopération de juristes et de personnes particulièrement qualifiés, a pris connaissance des Rapports et Memorandums des Associations de droit maritime des autres pays et de l'Association italienne des dispacheurs d'avaries communes, suivant elle aussi le système le plus simple et le plus rationel qui consiste à étudier successivement, dans leur ordre actuel les dispositions contenues dans les Règles.

Mais avant de procéder à un examen on estime nécessaire de faire une proposition d'ordre général, c'est-à-dire de proposer que la Conférence adopte le vœu que tout pays cherche à supprimer dans sa législation maritime les dispositions qui concernent les avaries communes, proposition qui d'autre part, a fait l'objet d'une motion au Congrès de l'Union des Assurances Maritimes qui eut lieu à Nurmich (Pays-Bas) au mois de Septembre 1948. Cette abolition donnerait sans doute la plus grande efficacité aux dispositions des Règles d'York et Anvers, qui deviendraient ainsi les seules lois pour la réglementation des Avaries communes.

Cette considération générale étant faite, l'Association italienne doit constater que l'expérience acquise depuis 1924, nous a confirmé la bonne

utilisation de ces Règles et le peu d'importance des points qui ont donné lieu à des entraves, de manière que l'on considère toute modification comme devant être très limitée et tendre surtout à rendre certaines de ces Règles plus compréhensibles afin d'en faciliter une interprétation uniforme.

L'Association italienne ne soulève aucune objection à la proposition au regard d'une Règle Nouvelle, Makis, servant en quelque sorte de préface à l'ensemble des Règles ; toutefois elle croit utile de se rallier à la proposition française, qui ne change en rien l'indicatif actuel des Règles affectées d'une lettre.

Règle A — Il a été suggéré que pour éviter certains abus il soit précisé dans cette Règle que le péril justifiant l'ouverture d'une procédure d'avarie commune doit être un **péril réel.** La difficulté d'apprécier la portée de cette précision conseille de ne rien changer au texte actuel.

Règle B — L'Association italienne des dispacheurs d'avaries proposerait de supprimer la Règle, en conservant les dispositions de la Règle XVII. En effet cette Règle n'a aucun sens, surtout après l'insertion de la Règle Makis.

Règle C — L'Association italienne se ralllie à la proposition britannique qui donne à la règle une rédaction plus claire. La règle pourrait s'exprimer comme suit :

,,Seront seuls admis en avaries communes les dommages, pertes au dépenses qui sont la conséquence directs de l'acte d'avarie commune. Les dommages ou pertes subis par le navire ou la cargaison par suite de retard, soit au cours du voyage, soit postérieurement, et les pertes indirectes provenant de la même cause, telles que celles résultant du chômage ou de différence des cours, ne seront pas admis en Avarie Commune ''.

Règle D — E — Sans changement.

Règle F — Ont été mises en relief par l'Association française certaines contradictions entre cette règle et la règle X d ; en effet alors que la Règle F paraît admettre que les dépenses bonifiées en Avaries Communes à titre de dépenses substituées seront supportées par la Communauté sans limitation ni réserve, la règle X d décide que lorsqu'on aura recours au remorquage, transbordement ou récxpédition, la dépense supplémentaire pour ce fait sera repartie entre les divers intéressés qui auront profité, proportionnellement à la dépense extraordinaire épargnée. Par contre la Règle XIV, qui considère aussi les dépenses substituées n'envisages pas cette répar-

tition qui par souci d'uniformité et d'équité s'imposerait comme dans le Règle X d.

L'Association française, après avoir considéré deux solutions possibles, serait d'accord de modifier le texte de la Règle F de telle sorte qu'il soit bien précisé que dans tous les cas d'application du principe des dépenses substituées en matière d'avarie commune, une répartition de ces dépenses sera effectuée si les circonstances le justifient, entre la Communauté et les autres bénéficiaires de la mesure extraordinaire à laquelle on a eu recours. — Ainsi il n'y aurait plus lieu de maintenir à la Règle X d les dispositions qui prévoient cette répartition, ni d'en faire état dans une rédaction nouvelle de la règle XIV.

Les raisons qui ont incité l'Association française à préférer cette solution à l'éventuelle suppression de la répartition prévue par la Règle X d proposée par différents pays, semblent raisonnables et appropriées.

Ainsi la Règle F pourrait être complétée de la manière suivante :

Toute dépense supplémentaire encourue en substitution d'une autre dépense qui aurait été admissible en Avarie Commune sera réputée elle-même Avarie Commune et admise à ce titre, mais seulement jusqu'à concurrence du montant de la dépense d'avarie commune ainsi épargnée. Toutefois si cette dépense supplémentaire ainsi bonifiée en Avarie Commune a profité également à d'autres intéressés dans l'aventure, elle sera supportée par la Communauté et les divers intéressés proportionnellement au montant de la dépense épargnée à chacun d'eux.

En conséquence la Règle X d devrait être ainsi modifiée :

La dépense supplémentaire de ces remorquages, transbordement et réexpédition de l'un d'eux (jusqu'à concurrence du montant de la dépense supplémentaire épargnée) sera supportée par la Communauté et les divers intéressés dans l'aventure dans les conditions prévues par la Règle F."

Et la règle XIV serait ainsi complétée :

..... ,,le coût de ces réparations ne sera bonifié en avaries commune dans les conditions prévues à la Règle F, que jusqu'à concurrence de la somme épargnée."

On ne voit aucun inconvénient à ajouter le mot **perte** au mot dépense à la première ligne de cette règle, comme le propos la Commision britannique.

Règle G — Sans changement.

Règle H — Le Commision française propose d'insérer une nouvelle Règle H qui serait ainsi conçue :

Il n'y aura pas lieu à répartition d'avaries communes, lorsque le montant des avaries, pertes et dépenses admissibles en Avaries Communes au profit du navire et de la cargaison ou de l'un d'eux sera inférieur à L. 1000 ou à une somme équivalente en toute autre monnaie.

Etant donné les fluctuations des valeurs des monnaies, l'Association italienne considère opportun de ne pas fixer une règle qui soit en rapport avec une valeur quelconque en argent.

S'il peut convenir d'adopter une règle pour la limitation afin de donner lieu à répartition, il serait préférable de se rapporter à un quantum proportionné à la valeur du navire ou de la cargaison.

La Commission française propose de considérer si, en adoptant la proposition ,,Makis'' précisant que les Règles affectées d'une lettre fixent les principes généraux d'après lesquels est réglée l'Avarie Commune, il convient de maintenir encore certaines règles numérotées, qui ne sont que l'application pure et simple de ces principes. Tel est le cas des Règles II-IV et XII.

L'Association italienne, considérant que le but actuel est de mieux coordiner les Règles, estime que la proposition française devrait être prise en considération et donner lieu à une étude sur la question.

REGLES NUMEROTEES.

Règles I - II — Sans changement.

Règle III. — On est d'avis qu'il convient de ne rien changer à la rédaction actuelle.

Règle IV — Sans changement.

Règle V — On est tout à fait d'accord d'invertir la formulation de la règle en posant avant tout le principe et ensuite l'exception. — Cette anomalie avait été soulevée par notre Association des despecheurs d'Avaries — et elle devrait être suivie aussi à la règle VII.

Règle VI — D'accord avec la Commission française de modifier le titre de cette règle en ajoutant chaudières au mot machines.

L'Association italienne se déclare adversaire de la modification proposée par la Commission Britannique mais changerait la rédaction en proposant la dernière partie ,,but where'' ect. de manière qu'elle devienne le

principe auquel se rapporte l'exception considérée dans la première partie de la Règle.

Règle VIII — L'Association italienne se rallie à la proposition formulée par certains pays de mentionner aussi les bagages des passagers, le courrier cet.

Ils en serait de même pour les règles X b, X c et XVII.

Règle IX — L'Association italienne considère qu'on ne peut accepter la proposition suggérée par la Commission française d'ajouter à la fin les mots ,,et au débit du navire''.

Règle X — L'Association italienne se rallie à la proposition que le titre actuel soit mis en exergue puisqu'il s'applique aux 4 paragraphes de la Règle.

On ne croit pas que la proposition de la Commission Américaine et celle de la commission française de supprimer le mot ,,fire'', dans la phrase ,,including fire insurance if incurred'' et d'y substituer la phrase ,,y compris toutes assurances **raisonnablement** souscrites'', soit acceptables, car le mot raisonnable donnerait lieu à discussion. — Il serait préférable de suivre la proposition américaine, ou de préciser les espèces d'assurances qui devraient être comprises.

Pour le paragraphe C) voir la Règle F.

Règle XI — D'accord pour fusionner cette Règle avec la Règle XX et pour le titre de ces deux Règles ,,Dépenses pendant le déroutement et au cours du séjour au port de refuge''.

Dans le même sens que, en l'assurance en avarie commune soient également comprises les charges nécessaires prévues par la législation nationale ou par le contrat de travail.

Règle XII — Sans changemment.

Règle XIII — L'Association italienne est d'accord pour une révision de la Règle surtout pour éliminer le contraste entre le contenu de la lettre G et les mots ,,repairs'' des lettres précédentes.

La proposition de la Commision française d'une révision complète et d'un nouveau classement des réparations et remplacements pourrait être envisagée avec l'aide des experts maritimes assistés des dispacheurs.

Règle XIV — On est tout à fait d'accord sur la proposition française

de prévoir un délai raisonnable après l'achèvement du voyage dans lequel l'armateur devrait conserver à sa charge une partie des réparations provisoires dont il a personnellement bénéficié. — On pourrait toutefois faire quelque réserve sur la rédaction proposée et sur le quantum de 50 %.

Règle XV — Sans changement.

Règle XVI — On ne serait pas d'accord avec la proposition française de remplacer les mots ,,à la date de l'arrivée du navire'' par ,,à la fin du déchargement'' à moins qu'il ne soit indiqué un délai dans lequel le déchargement doit en tout cas être terminé. Il faudrait aussi préciser ,,la fin de l'aventure'', si ces mots devaient remplacer les mots ,,arrivée du navire''.

Règle XVII - XVIII - XIX — Sans changement.

Règle XX — Cette Règle doit être fusionnée avec la Règle XI.

Règle XXI — L'Association italienne se rallie à la proposition americaine que l'avance de fonds ne doit être allouée que sur les dépenses extraordinaires, avec la limitation proposée par la Commision britannique.

Règle XXII — On peut adopter la formule votée en août 1948 à la Conférence de Bruxelles de l'I. L. A.

Règle XXIII — L'Association italienne se rallie au texte proposé par la Commision américaine.

Enfin l'Association italienne donne volontiers son appui à la proposition française que le texte des Règles nouvelles soit à la fois rédigé en anglais et en français, ainsi qu'il a été admis à Stockholm en 1924.

Le Rapporteur.
Roberto SANDIFORD.

— V —

SAISIE CONSERVATOIRE DES NAVIRES.

L'Association italienne considère qu'il est désirable que le projet de convention adopté à la Conférence de Paris soit revisé avant d'être soumis à la conférence diplomatique. Dans sa première rédaction (Anvers), on avait réglé la saisie conservatoire en général. Mais dans les conférences d'Oslo et de Paris, on arriva à restreindre l'application de la convention seulement aux cas d'abordage en vue d'arriver à un accord. Cette solution,

acceptée par l'Association italienne uniquement par esprit de conciliation, mais non sans réserves, n'est pas logique, parce qu'on ne peut pas régler une institution juridique par brides et morceaux. Le projet peut avoir une portée générale si on modifie les précédents articles qui réglent le champ d'application de la convention.

L'Association italienne considère qu'un accord ne devrait pas être difficile en matière maritime, étant donné que le même argument a été réglé en matière de navigation aérienne par la convention de Rome du 29 mai 1933.

L'Association italienne tient à déclarer que si on soumet à la Conférence diplomatique le projet de Paris, elle se trouverait dans la condition de ne pas pouvoir conseiller au Gouvernement italien, pour ce qui est de sa compétence, l'acceptation du projet, ainsi limité

— VI —

ASSISTANCE ET SAUVETAGE DES AERONEFS OU PAR DES AERONEFS EN MER.

L'Association nationale italienne doit d'abord remarquer que les conventions de Varsovie (1929) et de Rome 1933) indiquées dans l'ordre du jour — n'ont rien à voir avec l'assistance et le sauvetage des aéronefs ou par des aéronefs en mer. Cette matière est réglée dans une convention signée à Bruxelles le 30 Septembre 1938. Le Gouvernement italien a signé et accepté la convention. L'Association italienne n'est pas en mesure d'indiquer si on envisage une révision de la convention (ce qui est demandé pour la Convention de Varsovie et a fait l'objet d'études d'abord de la part du CITEJA et aujourd'hui de l'ICAO). En Italie on ne le demande pas, et, de l'avis de l'Association italienne, on ne voit aucune raison de le faire. Il semble quand même utile de rappeler que ladite convention fut élaborée par le CITEJA d'accord avec les organisations internationales de droit maritime et aussi avec notre Comité, et on eut soin de maintenir, autant que possible, un parallelisme entre la convention de Bruxelles de 1938 et celle de 1910 qui concerne le sauvetage et l'assistance maritimes. On doit également remarquer que ladite convention du 1938, signée au moment de la crise tchècoslovaque et de la conférence de Moscou, n'a pas eu une expérience pratique en raison du conflit mondial qui s'est produit l'année suivante et il serait inopportun de recommencer des discussions sur le texte adopté après de longues études sans une expérience suffisante.

FRANCE

ASSOCIATION FRANCAISE DU DROIT MARITIME

RAPPORT

sur l'état des ratifications en France
des CONVENTIONS INTERNATIONALES de BRUXELLES.

1° — La Convention pour l'unification de certaines règles en matière d'abordage, du 26 septembre 1910, a été ratifiée le 1e février 1913.

2° — La Convention pour l'unification de certaines règles en matière d'assistance et de sauvetage maritimes, du 26 septembre 1910, a été ratifiée le 1er févrer 1913.

3° — La Convention pour l'unification de certaines règles concernant la limitation de responsabilité des propriétaires de navires de mer, du 25 août 1924, a été ratifiée le 23 août 1935.

4° — La Convention pour l'unification de certaines règles en matière de connaissements, du 25 août 1924, a été ratifiée le 4 janvier 1937.

5° — La Convention pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes, du 10 avril 1926, a été ratifiée le 23 août 1936.

6° — La Convention pour l'unification de certaines règles concernant les immunités des navires d'Etat, du 10 avril 1926, a été soumise au Parlement qui, par une loi du 21 août 1939, a autorisé le Président de la République à ratifier.

Cette ratification n'est pas encore intervenue, à raison de la guerre.

Il est permis d'espérer que cette ratification interviendra dans un bref délai.

Sous réserve de cette prochaine ratification, la France a donc ratifié toutes les Conventions Internationales maritimes de Bruxelles.

Avocat à la Cour d'Appel de Paris.
Jean de GRANDMAISON
2 juillet 1949.

FRANCE

RAPPORT

au nom de l'Association Française du DROIT MARITIME
sur LA SAISIE CONSERVATOIRE DES NAVIRES
par
Me. Georges MARAIS, Avocat à la Cour de Paris,
Président honoraire de l'Association.

Nous allons, dans le présent Rapport, nous efforcer de répondre à chacune des questions qui ont été posées par le COMITE MARITIME INTERNATIONAL.

1°) POUR QUELLES CREANCES, D'APRES VOTRE LOI NATIONALE, UN NAVIRE PEUT-IL ETRE SAISI CONSERVATOIREMENT ?

Réponse — Pour toute créance civils ou commerciale.

2°) D'AUTRE BIENS QUE LES NAVIRES PEUVENT-ILS ETRE SAISIS POUR LES CREANCES CI-DESSUS, D'APRES VOTRE LOI NATIONALE ?

Réponse — D'après la loi française (art. 2.092 C. C.), tous les biens d'un débiteur sont la gage de ses créanciers.

Sans doute, aux termes des articles 581 et 582 C. Pr., certains bien tels que, par exemple, les provisions alimentaires adjugées par justice, sont déclarées insaisissables. Mais cette question de l'insaisissabilité de certains biens relève d'un point de vue humanitaire et n'est pas susceptible d'intéresser le Droit Maritime.

3°) D'AUTRES NAVIRE APPARTENANT AU MEME PROPRIETAIRE QUE CELUI AU SUJET DUQUEL EST PRODUITE LA CREANCE, PEUVENT-ILS ETRE SAISIS CONSERVATOIREMENT?

Réponse — Une réponse affirmative est certaine puisque tous les biens d'un débiteur sont le gage de ses créanciers.

4°) DANS L'HYPOTHESE D'UN JUGEMENT OBTENU EN FA-

VEUR D'UN DEMANDEUR, QUELS BIENS PEUVENT ETRE SAISIE DANS LE BUT D'EXECUTER LE JUGEMENT, D'APRES VOTRE LOI NATIONALE ?

Réponse — Tous les biens d'un débiteur condamné peuvent être saisis, sauf naturellement, comme il a été indiqué au n° 2, ceux que la loi déclare insaisissables. Mais pratiquement, ceux-ci ne comptent pas en matière de droit maritime.

5°) PRECISEZ VOTRE LOI NATIONALE AFFERENTE AUX CREANCES PRIVILEGIEES OU HYPOTHECAIRES, EN RELATION AVEC LA LOI DE L'ARRET OU DE LA SAISIE.

Réponse — Le navire, une fois saisi conservatoirement, fera ensuite l'objet d'une procédure de saisie exécution réglementée par les articles 197 et suivants du Code de Commerce, quand le créancier aura obtenu un titre exécutoire. La saisie exécution aboutira alors à la vente du navire. Sur le prix ainsi obtenu, les droits des créanciers s'exerceront dans l'ordre suivant :

a) d'abord les privilèges.

En ce qui concerne ceux-ci, la question est maintenant réglée par la loi du 19 février 1949, qui a introduit dans la législation nationale les dispositions de la Convention Internationale du 10 avril 1926, sur les privilèges et hypothèques maritimes, convention mise en vigueur en France par la loi du 22 février 1935 et par le décret du 29 novembre 1935.

La Convention du 10 avril 1926 est trop connue pour que son analyse, même sommaire, présente ici quelque utilité.

b) viennent ensuite les hypothèques maritimes.

Celles-ci, aux termes de l'article 191 bis du Code de Commerce, (créé par la loi du 19 février 1949) prennent rang, dans leur ordre d'inscription, immédiatement après les créances privilégiées mentionnées dans l'article précédent. Ces créances privilégiées sont celles qui ont été créées par la Convention du 10 avril 1926.

Quant aux règles organiques de l'hypothèque maritime, celles-ci se trouvent inscrites dans la loi du 10 juillet 1885.

Toutefois, il est à noter que la loi du 19 février 1949 a cru devoir abroger l'article 1er et le premier alinéa de l'article 2 de cette loi du 10 juillet 1885. Leurs dispositions se trouvent reportées dans le nouvel article 190 C. Com., tel qu'il résulte de la loi du 19 février 1949.

c) puis après les privilèges de la Convention de 1926 et les hypothèques conventionnelles de la loi de 1885, l'article 191 bis § 2, admet ,, tous les privilèges'', notamment les privilèges fiscaux.

(Voir sur cette question G. RIPERT, **Précis de Droit Maritime** 5è éd. N° 246 en note).

d) enfin, en dernier rang, nous citerons les créanciers chirographaires.

Mais pratiquement, ceux-ci ne viennent jamais ou presque jamais en ordre utile.

6°) ETES-VOUS D'AVIS QUE L'UNIFICATION INTERNATIONALE DE LA LOI DE LA SAISIE CONSERVATOIRE SOIT DESIRABLE ?

Réponse — Une réponse affirmative s'impose, sous certaines réserves plus loin indiquées.

7°) SUR QUELLES BASES L'UNIFICATION DEVRAIT-ELLE ETRE PROPOSE PAR LE C.M.I. EU EGARD AUX DIVERGENCES ENTRE LES LOIS NATIONALES, SPECIALEMENT ENTRE CELLES QUI RESULTENT DU SYSTEME ANGLO-SAXON D'UNE PART ET DU SYSTEME CONTINENTAL D'AUTRE PART ?

Réponse — 1° — Une première observation doit être présentée.

D'après la loi française, la loi relative à la saisie conservatoire en tant qu'acte de mainmise matérielle sur un bien du débiteur relève essentiellement des règles de la procédure. Celles-ci se réfèrent à l'organisation judiciaire de chaque pays. Les formes mêmes de la saisie conservatoire ne peuvent que relever de chaque loi nationale.

Ainsi, pour prendre un exemple, tiré de l'organisation judiciaire française, rappelons que tout prétendu créancier, dépourvu de titre exécutoire, qui veut procéder à la saisie conservatoire d'un navire, doit toujours s'adresser au Président du Tribunal de Commerce du lieu de la saisie, obtenir une ordonnance de ce magistrat et le faire signifier au saisi par huissier dans les formes et avec les mentions prescrites par la Code de Procédure Civile pour ce genre de signification.

Mais, il faut avouer que ces divergences internationales inévitables dans la forme des saisies sont de peu d'importance puisque, de toutes façons, pour réaliser la saisie, le saisissant doit nécessairement s'adresser à un conseil technique local qui n'aura aucune difficulté à mettre en mouvement la procédure nécessaire.

2° — En ce qui concerne le fond même de la question de l'unification entre les deux systèmes, il faut franchement reconnaître que celle-ci est d'une solution difficile.

Pour essayer d'y parvenir, distinguons tout d'abord entre :

a) le droit de saisie exécution

et

b) le droit de saisie conservatoire.

a) En ce qui concerne le droit de saisie exécution.

Ce droit ne peut s'exercer qu'autant que le créancier qui en use est muni d'un titre exécutoire.

Dans ces conditions, il semble impossible de refuser à ce créancier l'exercice de ce droit contre un navire de son débiteur, fut-ce pour une dette commerciale sans rapport avec l'exploitation du navire. Autrement, on arriverait à constituer au profit des propriétaires de navires un patrimoine spécial qui serait doté d'une insaisissabilité relative. La saisie exécution ainsi pratiquée ne confère d'ailleurs par elle-même au saisissant aucun privilège sur le prix à provenir de la vente.

b) En ce qui concerne la saisie conservatoire elle-même.

Il semble que, sur ce point, il puisse y avoir lieu à de très utiles discussions.

Rappelons, en effet, que d'après la jurisprudence française, une saisie conservatoire peut être autorisée par le Président du Tribunal de Commerce, si ce magistrat estime que la créance du saisissant est au moins vraisemblable. C'est cette notion qui constitue la différence fondamentale avec l'autorisation de saisir-arrêter une créance.

L'autorisation de saisir-arrêter ne peut être accordée par le Président du Tribunal Civil que si le principe de la créance du demandeur est certain (art. 557 C. pr. et jurisprudence conforme).

Dès lors, l'Association Française ne verrait aucun inconvénient à ce qu'un créancier civil ou même commercial, mais non maritime, qui n'aurait pas de titre exécutoire et qui ne produirait, contre un propriétaire de navire, qu'un titre de créance seulement vraisemble et non pas d'ores et déjà certain, soit privé du droit de saisie conservatoire.

La même solution devrait-elle être adoptée si le créancier non maritime produisait au Président du Tribunal de Commerce un titre de créance dont le principe serait d'ores et déjà certain ?

Dans ce cas, en effet, si le créancier avait agi par voie de saisie-arrêt sur

une créance et non pas par voie de saisie-conservatoire sur un navire, il est certain que le Président du Tribunal Civil aurait autorisé la saisie-arrêt. La solution devrait-elle être différente en cas de recours à la procedure de saisie-conservatoire ?

Nous proposons, pour le moment, de réserver la question, pour la discuter lors des séances de la Conférence. Sous cette réserve, il semble que la position prise par l'Association Franjaise contribue à rapprocher, dans une certaine mesure, les systèmes anglo-saxons et le système français.

8°) **DANS LE CAS OU LE NAVIRE EST EXPLOITE PAR UN AFFRETEUR PRINCIPAL (OPERATOR)**

a) D'APRES VOTRE LOI NATIONALE, CONTRE QUI LA PROCEDURE DOIT-ELLE ETRE DIRIGEE ?

b) EST-IL DESIRABLE D'ARRIVER A QUELQUE ACCORD INTERNATIONAL SUR CE POINT ?

Réponse — a) Puisqu'il s'agit de mettre provisoirement et d'urgence le navire à la chaîne, l'ordonnance doit être signifiée au Capitance du navire saisi conservatoirement. Le saisissant, muni de son ordonnance, se pourvoira, en outre, auprès des autorités du port pour empêcher le départ du navire.

La saisie conservatoire a ainsi atteint son but qui consiste à immobiliser le navire jusqu'à ce que des procédures d'exécution puissent être menées à bonne fin.

En ce qui concerne la procédure d'exécution elle-même, si le navire est exploité par un affréteur principal qui a armé le navire et choisi le Capitaine, le saisissant-conservatoire qui aura postérieurement obtenu un titre exécutoire contre cet armateur exploitant devra ensuite, sur la conversion de la saisie conservatoire en saisie exécution, mettre en cause le propriétaire du navire tenu seulement ,,ob rem'' et dont la propriété se trouve grevée des privilèges et hypothèques prévus par la Convention Internationale et par le droit civil en vigueur.

Même solution a fortiori si le navire est armé par le propriétaire et le Capitaine choisi par celui-ci.

b) Sur ces deux points qui nous paraissent secondaires, il semble désirable et même facile d'arriver à une entente internationale.

Georges MARAIS
Avocat à la Cour de Paris.

FRANCE

RAPPORT

présenté au Nom de l'Association Française du Droit Maritfme
sur le **Projet de Création d'une Cour de Justice Maritime Internationale**
de M. le Professeur CLEVERINGA
par Me Robert COULET, avocat à la Cour de Paris,
Secrétaire Général Adj. de l'Association Française du Droit Maritime.

Dans sa séance du jeudi 2 juin 1949, l'Association Française du Droit Maritime a examiné, à la lumière du questionnaire transmis par le Comité Maritime International, la proposition de M. le Professeur CLEVERINGA, relative à la création d'une Cour de Justice Maritime Internationale.

L'Association Française a émis, au cours de cette séance, un vote favorable à la mise à l'étude du problème de l'établissement de cette Cour.

La délégation française à la Conférence d'Amsterdam soutiendra donc cette proposition, le présent rapport résumant les opinions émises au cours de sa discussion au sein de l'Association Française.

L'Association Française considère d'une manière générale que la création d'une Cour Internationale chargée d'examiner les litiges internationaux du commerce maritime ne peut qu'être un élément favorable au développement de la civilisation, et estime que sa réalisation future constituerait un progrès incontestable.

1°) Pour répondre plus particulièrement aux différents points du questionnaire, les membres de l'Association Française ont estimé tout d'abord que la Cour devrait limiter sa compétence aux seuls litiges présentant un aspect maritime, en écartant de celle-ci les litiges d'ordre aérien.

Ces derniers, en effet, sont, dans la plupart des pays, soumis à des règles juridiques très particulières, et totalement différentes de celles du Droit maritime.

Certains membres de l'Associations Française ont estimé qu'il y avait lieu d'aller plus loin, et de limiter aux seuls litiges résultant des conventions internationales ou des règles telles que celles d'York et d'Anvers la

compétence du nouvel organisme, en l'absence de textes plus généraux sur lesquels la Cour Internationale pourrait baser ses décisions.

2°) Les pouvoirs de la Cour Internationale, selon l'opinion française, devraient être définis d'une manière aussi précise que concise : des règles strictes de procédure sont en effet indispensables pour asseoir logiquement et normalement la compétence d'une juridiction quelconque, et ici plus particulièrement, en raison du caractère international de cette compétence, les limites de celle-ci devraient être parfaitement définies.

3°) Il a été demandé à l'Association Française de dire si, à son avis, la juridiction devrait être facultative ou impérative.

Il est apparu à une grande majorité des membres que, tout au moins pour ses débuts, quitte à modifier sur ce point ultérieurement ses règles de compétence, la nouvelle juridiction réussirait plus facilement à s'imposer si elle prenait le caractère essentiellement facultatif que peut présenter une cour d'arbitrage, car on ne peut concevoir de quelle manière, en l'état actuel de l'organisation des nations souveraines, elle pourrait avoir un caractère impératif.

4°) La question de savoir si l'on peut donner aux divers Gouvernements la possibilité de former un pourvoi dans l'intérêt du Droit contre des jugements nationaux rendus en dernier ressort, sans cependant que ce pourvoi puisse porter atteinte aux droits des parties résultant du jugement rendu par la juridiction nationale, a été résolue par l'affirmative au sein de l'Association Française.

Une telle possibilité existe en effet dans la loi française, ,,le pourvoi dans l'intérêt de la loi'', prévu par l'article 88 de la loi du 27 Ventôse an VIII, toujours en vigueur, qui accorde au Ministère Public en toutes matières le droit de déférer à la Cour de Cassation les jugements rendus cependant en dernier ressort, qui apparaîtraient ,,contraires aux lois et aux formes de procéder'', et contre lesquels aucune des parties n'a formé de pourvoi en cassation.

Il convient à ce sujet de rappeler que l'activité de la Cour Permanente de La Haye peut déjà se manifester sous la forme d'un ,,avis consultatif'' à la demande des Gouvernements intéressés.

5°) La cinquième question du questionnaire, subdivisée en deux sous-questions, est ainsi conçue :

a) Faut-il que les arrêts de la Cour soient rendus exécutoires moyennant un acte de l'autorité nationale dans le pays où l'on désire exécuter l'arrêt,

autorité qui n'aura à examiner que l'authenticité de l'expédition qui lui sera présentée ?

b) Faut-il faire dépendre l'autorité de chose jugée de l'arrêt entre les parties dans les différents pays d'un acte pareil ?

L'Association Française a été d'avis que, si l'organisme nouveau devient une cour véritable, investie d'un pouvoir de juridiction, il est évidemment indispensable que ses décisions soient revêtues de la formule indispensable que ses décisions soient revêtues de la formule exécutoire sans laquelle elles ne pourraient avoir aucun effet.

Mais il est bien évident que c'est à la condition préalable que cette cour ait des procès à juger, sinon, si elle n'est qu'un simple [illegible]isme consultatif, ses décisions ne sauraient être considérées comme [illegible]tibles d'être opposées aux parties.

La deuxième sous-question est apparue, peut-être par suite d'une erreur dans la traduction de sa rédaction originaire, quelque peu obscure, et l'Association n'a pu émettre à son sujet une opinion définitive.

6°) En ce qui concerne la sixième question, l'Association a estimé que la réponse donnée à la précédente était valable pour cette question, et n'a pas émis une opinion spéciale à ce sujet.

7°) Sur la septième question relative à la composition de la Cour et à la nomination de ses membres, l'Association Française a été d'avis que les propositions de nomination des nouveaux magistrats devraient être faites par le Comité Maritime International lui-même, mieux à même que tout autre organisme national, ou même international, de juger, par sa connaissance des personnalités du monde maritime, quels seraient ceux qui sembleraient le mieux susceptibles de remplir la haute mission de membre du nouvel organisme.

8°) Sur le point de savoir (huitième question) quel serait le pays qui serait indiqué comme siège permanent de la Cour, et si celle-ci pouvait siéger ailleurs qu'à son siège permanent, l'opinion française s'est ralliée à la solution consistant à proposer pour siège de la nouvelle juridiction Genève ou telle autre ville suisse : Le choix de ce pays lui est apparu comme justifié d'une part par ses traditions d'hospitalité, son aptitude à assurer librement le fonctionnement d'institutions à caractère international, et enfin, par les possibilités d'installations matérielles remarquables qu'offrirait la ville de Genève par la présence du Palais de l'ancienne Société des Nations.

En ce qui concerne la possibilité pour la Cour de siéger ailleurs qu'à son siège permanent, il a semblé que cette disposition pourrait présenter une grande utilité dans certains cas :

Le Tribunal International devrait en effet avoir la possibilité de se transporter sur place dans le pays du litige, voire même sur mer, et cette mesure d'instruction correspondant à une sorte de ,,descente sur lieux'' pourrait être ordonnée, dans chaque cas d'espèce où elle serait nécessaire, par la Cour elle-même.

9°) Le problème de la détermination de la langue ou des langues officielles du Tribunal a reçu de la part de l'Association Française une solution qui lui est apparue la meilleure, non point par suite d'un amour-propre national excessif, mais bien parce que les leçons de l'histoire et des précédents récents ont confirmé ce que le grand humaniste français de la Renaissance que fut Henri Estienne appelait ,,la précellence du langage français''.

,,La gentillesse et la bonne grâce'' de notre langue lui paraissaient un excellent argument en faveur de sa thèse, ainsi, disait-il, ,,que sa gravité et sa brièveté qui lui semblaient les plus propres à lui valoir le pas sur les autres langages.''

Parmi les sources d'enrichissement du français, Estienne s'était bien gardé d'oublier la marine et le commerce maritime.

« Rien ne fut de bonne heure aussi naturellement du droit des gens que » les coutumes de la mer, ce qui explique en partie la vocation internatio- » nale du français comme langue diplomatique ». a dit dans son remarquable discours sur la langue française M. le Sénateur Marcel Plaisant, membre de l'Institut, Président de la Commision des Affaires Etrangères du Conseil de la République, à la séance du 6 décembre dernier de l'Académie des Sciences Morales et Politiques.

Et, avec notre éminent compatriote, nous pourrons invoquer auprès de la conférence, la récente décision prise sur l'initiative de M. Marcel Plaisant à la Conférence diplomatique du Droit d'Auteur de Bruxelles en juin 1948 où, à une imposante majorité, il a été décidé que les actes officiels de cette conférence seraient établis uniquement en français, un texte équivalent étant cependant, mais à titre secondaire seulement, établi en anglais, le texte français étant le seul qui, en cas de contestation sur l'interprétation des actes, serait appelé à faire foi.

En ce qui concerne les quatre questions suivantes, les 10ème, 11ème, 12ème et 13ème questions, l'Association Française a estimé qu'elles avaient

prise en considération d'un projet si conforme aux idées et aux traditions Internationale d'en apprécier elle-même l'opportunité.

La quatorzième et dernière question sur l'utilité de cette Cour a réuni un vote unanime de la part de l'Association Française qui, comme il a été trait à des matières essentiellement secondaires, et que le caractère de questions de procedure qu'elles présentaient pourrait permettre à la Cour dit au début de ce rapport, a adopté avec le plus grand enthousiasme la de la France.

Robert COULET.

RAPPORT SUR LA CLAUSE-OR.

Répondant au vœu exprimé par le Comité Maritime International, l'Association Française le Droit Maritime a constitué une commission, pour rechercheur des solutions pratiques permettant d'atteindre l'uniformité internationale des limites de responsabilité des armateurs et transporteurs maritimes, stipulées dans les conventions diplomatiques de Bruxelles.

La Commission présidée par Maître Govare, était composée de MM. Amiaud, Bigard, Dor, Melle, Legendre, Lesueur, Prodromidès, Ripert et Sauvage, et avait pour rapporteur Maitre Warot.

Le rapport ci-dessous reproduit à été ratifié à l'Assemblée Générale de l'Association, le jeudi 24 février 1949.

Après avoir successivement étudié les modifications qui pourraient être apportées a certaines règles de la Convention sur la limitation de la responsabilité des propriétaires de navires de mer et à celles de la Convention relative aux Connaissements, l'Association s'est également prononcée sur la question délicate du domaine d'application de cette dernière Convention.

1.

Limitation de Responsabilité des Propriétaires de Navires de Mer.

Selon les dispositions de la Convention de Bruxelles, il est prévu deux catégories de responsabilité, et par conséquent deux degrés de limitation.

1°. En ce qui concerne le réparation des dommages matériels, l'article premier établit au profit du propriétaire de navire le droit d'opter entre deux modes de limitation de sa responsabilité :

Il peut : a) **soit limiter sa responsabilité à la valeur du navire,** du fret et des accessoires de ce navires. Cette valeur, déterminée selon l'article 3 de la Convention, est la valeur du navire immédiatement après l'accident.

b) **soit désinteresser ses créanciers sur la base de £ 8-or, par tonneau de jauge du navire.**

2°. En ce qui concerne les dommages corporels, et suivant les termes de l'art. 7 de la Convention, le propriétaire est déclaré responsable au-dela de la limite déjà fixée à £ 8-or par tonne de jauge brute du navire, mais

jusqu'à concurrence d'une nouvelle somme égale à £ 8 or par tonneau de jauge.

Les créanciers pour dommages corporels ont seuls droit ou partage de cette deuxième somme. Si elle ne suffit pas à solder leurs créances, ils viennent en concurrence sur la première, avec les créanciers pour dommages matériels.

En résumé, le propriétaire a le choix entre deux solutions : soit régler d'après la valeur du navire, soit s'en tenir à une limitation forfaitaire.

L'Association Française ne méconnait certes pas les avantages de la solution que l'on souhaite abandonnée :

La limitation forfaitaire ; le forfait en argent calculé par tonne possède l'immense avantage d'exclure toute possibilité de discussion sur la valeur à attribuer au navire, il ne s'agit plus que d'une évaluation mathématique.

Cependant les inconvenients résultant de l'application de l'étalon-or sont tellements évidents qu'il faut se résigner à chercher une formule nouvelle.

L'Association Française estime d'abord, qu'il n'y a pas lieu de modifier le principe même de la Convention et le droit d'option doit subsister.

Mais tandis qu'il convient de maintenir la première solution que l'Armateur peut choisir, la seconde doit être modifiée, et elle seule.

La limitation de £ 8 par tonne disparaissant ainsi, quelle autre formule convient-il d'adopter ?

L'Association a retenu la proposition suggérée par M. le Doyen Ripert et par Me Govare, qui consiste à modifier le dernier alinéa de l'article premier de la Convention et à le libeller ainsi :

> « Toutefois pour les créances prévues aux Nos 1, 2, 3, 4 et 5 » la responsabilité visée par les dispositions qui précèdent, ne » dépassera pas 60 % de la valeur agrée dans la police d'assu- » rance, s'il est assuré, ou s'il n'est pas assuré, 60 % de sa valeur » au commencement du voyage. »

Le pourcentage ainsi retenu comprend les fret et accessoires, estimés forfaitairement à 10 % dans la Convention.

Cette définition présente deux avantages, tout d'abord celui de se rapprocher de la formule simple du forfait, ensuite de s'appuyer sur une base d'estimation très sérieuse, puisqu'il s'agit de celle fixée avant le voyage, et comme valeur agréée dans la police.

En ce qui concerne la question non moins importante de la réparation de dommages corporels, l'art. 7 devrait être ainsi modifié : ,,En cas de

mort ou de lésions corporelles... le propriètaire est responsable, au delà de la limite fixée aux article précédents, jusqu'à concurrence d'une somme forfaitaire égale à 60 % de la valeur agréée dans la police d'assurance du navire s'il est assuré, ou s'il n'est pas assuré, de 60 % de sa valeur au commencement du voyage" .....les victimes....." (le reste sans changement).

II.

Convention sur les Connaissements.

Les mêmes difficultés se présentent également à propos de cette Convention qui édicte une limite de £ 100-or par colis ou unité.

L'Association Française propose le système suivant :

,,La limite de la responsabilité s'établira à une somme corespondant à 10 fois le montant du fret brut total perçu par l'Armateur afférant au colis perdu ou endommagé.

Lorsqu'il s'agira de marchandises en vrac, la somme sera égale à 10 fois le fret afférant à la quantité de la marchandise sinistrée."

L'Association Française se rend parfaitement compte que sa proposition ne réalise pas l'idéale perfection. Elle présente néanmoins l'avantage de maintenir le principe du forfait, et de lier la limite de responsabilité du transporteur au montant du fret perçu par lui, tandis que l'ancien système fixait un forfait arbitraire, puisque le chiffre de £ 8 et de £ 16 n'avait aucun rapport avec le coût si variable de la tonne du navire.

L'Association fait pourtant observer que la limitation de la responsabilité à 5, 10 ou 20 fois le montant du fret devrait être l'objet d'une étude technique très approfondie. Le multiple de 10, envisagé dans des premiers pourparlers provisoires, limiterait maintes fois la responsabilité à une somme bien inférieure à celle actuellement admise dans les lois nationales et qui est en France de 50.000 frs par colis ou unité depuis la loi du 22 novembre 1948.

III.

Une troisième question soulevée dans les rapports préliminaires d'Anvers, concerne le domaine d'application de la Convention sur les connaissements.

Avant de formuler une proposition il importe de se reporter aux textes :

l'art. 10 de la Convention stipule que : ,,Les dispositions de la présente

Convention s'appliqueront à tout connaissement créé dans un des états contractants". Mais le protocole de signature prévoit que : „Les Hautes parties contractantes pourront donner effet à cette convention, soit en lui donnant force de loi, soit en introduisant dans leur législation nationale, les règles adoptées par la Convention sous une forme appropriée à cette législation". Et en outre, les Hautes parties contractantes se réservent expressement le droit 1°..... ; 2° d'appliquer en ce qui concerne le cabotage national, l'art. 6.....".

Ainsi les pays signataires se sont réservés le droit de limiter l'application de la Convention, en excluant certains territoires dépendant de leur souveraineté, et certaines navigations.

La France, qui à ratifié la Convention, le 4 janvier 1937, a exclu de son domaine d'application, les colonies françaises, les territoires de protectorats et les possesions d'outremer. La Belgique en a fait autant pour le Congo. De leur côté les Etats Scandinaves ont exclu la navigation de cabotage et les transports intervenant entre eux, dans la mer Baltique.

Le domaine d'application n'est donc pas nettement déterminé. La plus grande incertitude règne encore faute de règle précise et les décisions jurisprudentielles en sont le reflet.

L'Association s'est ralliée sans peine aux remarques particulièrement brillantes et judicieuses qu'un de ses membres M. Prodromidès avait fait prévaloir au sein de la Commission.

Il est certain que la Convention est applicable aux rapports internationaux. Mais comment définir des rapports internationaux ? Faut-il, comme on le fait généralement en matière de droit international privé, s'attacher à la nationalité des parties ?

L'Association Française estime qu'en cette matière, il ne faut tenir aucun compte de la nationalité des parties. Les connaissements sont l'objet de si multiples transmissions entre des personnes de nationalités différentes, qu'il est impossible d'avoir le moindre égard pour la nationalité du dernier bénéficiaire du connaissement. Or il convient que l'armateur, les assureurs, les banquiers soient fixés dès le départ, sur l'étendue de leurs obligations. Celles-ci ne doivent donc pas dépendre de la nationalité du réceptionnaire qui n'est souvent connu qu'à l'arrivée du navire.

Faut-il alors retenir uniquement le pavillon du navire ; la convention n'étant applicable que lorsque le navire appartient à un pays signataire ? Il serait normal d'appliquer la convention en raison de la seule nationalité du navire, le transport pouvant avoir lieu entre deux ports d'un même

pays. Tout comme il serait anormal d'écarter l'application de la convention au cas ou le navire n'appartiendrait pas à un pays contractant.

L'Association s'est finalement ralliée à un système qui se rapproche du texte de la Convention.

La Convention stipulé que ses dispositions sont applicables à ,,tout connaissement créé dans un des états contractants'', la Commission est d'avis de compléter ainsi le texte :

,,.....à condition qu'il s'agisse d'un transport pour un autre état, et ce, sans tenir compte aucun, de la nationalité des parties''.

En conséquence d'après ce système, si le connaissement est émis dans un pays contractant, la convention sera applicable quelle que soit la nationalité des parties, fussent-elles même toutes de la nationalité de ce pays, du moment que les marchandises dans un port, ont été prises en charge pour un port d'un autre pays. Et celà, même si ce port dépend d'un pays non contractant.

Le Rapporteur :
James WAROT.

Le Président :
James P. GOVARE.

PORTUGAL

Comissâo Permanente de Direito Maritimo International.

Ministerio da Marinha Lisboa — Portugal.

La commision Permanente de Droit Maritime Internationale de Lisbonne,

ayant pris connaissance de la lettre du Comité Maritime International du 12 Novembre 1948 et de la copie d'une circulaire adressée aux membres de la **Comission „Clause-Or".**

Considérant qu'elle ne croit pas possible, même dans la conjoncture actuelle, l'application de l'étalon-or qui fait le sujet de l'alinea I de l'article 15 de la Convention sur la limitation de la responsabilité des propriétaires des navires de mer, et de l'alinea I de l'article 9 de la Convention des Connaissements ;

et considérant, d'autre part, que la liberté reconnue par l'alinéa II des mêmes articles à certaines Etats contractantes, de convertir en chiffres ronds, d'après leur système monétaire, les sommes indiquées en livres sterling dans les conventions, est la cause de divergences qui ne permettent pas d'obtenir l'uniformité désirable ;

a l'honneur de proposer la supression du dit alinéa II, de l'article 15 de la Convvention sur la limitation de la responsabilité des propriétaires les navires de mer et de l'article 9 de la Convention des Connaissements.

PAYS - BAS

ASSOCIATION NEERLANDAISE DE DROIT MARITIME.
CLAUSE-OR.

A. **Convention Internationale pour l'unification de certaines règles concernant la limitation de la responsabilité des propriétaires de navires de mer.**

La résolution prise par le Comité Maritime International à la Conférence d'Anvers 1947, part de deux faits, à savoir :

1° l'impossibilité d'appliquer, dans la conjoncture actuelle, la clause-or contenue dans l'alinéa premier de l'article 15 de la Convention ;

2° les divergences qui se sont produites dans la fixation de la limite dans les monnaies nationales de différents pays, fixation qui résulte de la disposition du deuxième alinéa de l'article 15.

Avant la Conférence d'Anvers un effort avait été fait de trouver une solution dans le rattachement de la clause-or aux règles du Fonds Monétaire International (l'accord de Bretton Woods). (1) Au cours des débats de la Conférence d'Anvers un grand nombre des délégués ont exprimé un manque de confiance à l'égard de l'efficacité de l'accord de Bretton Woods, de sorte que la suggestion fut rejetée.

Aucune autre solution n'ayant été trouvée ou même proposée qui permît de conserver la clause-or, il est clair que si l'on voulait résoudre le problème d'une façon efficace et pratique, il fallait supprimer toute référence à l'étalon or.

Pour que la solution soit efficace et pratique, c'est-à-dire une solution qui répond tant aux besoins des armateurs que des assureurs, il est nécessaire qu'elle remplisse deux conditions, à savoir :

1° il faut que la limite de la responsabilité soit vraiment une limite internationale et uniforme et qu'elle représente donc la même valeur partout où l'armateur serait amené à l'invoquer ;

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1) Voir e. a. : les rapports des Associations belge et néerlandaise de Droit Maritime.

2° il faut que dans chaque cas particulier le montant de la limite soit facile à établir.

Dans la réunion de la commission internationale qui a été chargée par le Bureau Permanent de l'étude du problème, l'Association belge ensemble avec M. Fr. Sohr a formulé une proposition qui diffère essentiellement de toutes propositions et suggestions auparavant faites.

La Convention prévoit deux méthodes selon lesquelles l'armateur peut limiter sa responsabilité. Il peut invoquer la limite visée au début de l'Article premier, à savoir la valeur du navire, du fret et des accessoires ou, en se prévalant du dernier alinéa du dit article premier, il a la faculté de limiter sa responsabilité, pour ce qui concerne les créances visées aux Nos. 1, 2, 3, 4 et 5 dudit article, à un montant de £ 8.— par tonneau de jauge, le tout sous réserve de la disposition de l'article 7.

Suivant la proposition belge la limite de la responsabilité dont traite le dernier alinéa de l'article premier, serait à fixer à la moitié de la valeur du navire au commencement du voyage (ou avant l'accident ou au dernier port), valeur augmentée du fret et des accessoires, alors qu'en cas de sort ou de lésions corporelles la limite serait augmentée de l'autre moitié de cette valeur, quelque soit le sort du navire.

Les associations danoise, française, norvégienne et suédoise ont adhéré ,,grosso modo'' à cette proposition, tandisque la Grande-Bretagne désire le maintien du ,,status quo'' et l'Italie suggère une solution qui se rapproche des dispositions légales italiennes relatives à la limitation de la responsabilité, dispositions qui, elles aussi, ont pour base la notion de la valeur réelle du navire.

De l'avis de l'association néerlandaise, la proposition belge ne répond à aucune des deux conditions énoncées ci-dessus.

Avant de procéder à une discussion de la proposition belge, il échet d'examiner quels sont les résultats auquels a donné lieur jusqu'ici l'application de la convvention.

Il est vrai que l'article premier de la convention part d'une responsabilité maxima à concurrence de la valeur du navire, du fret et des accessoires (art. 1er), mais il s'est avéré que dans tous les pays qui ont ratifié la Convention et dans les autres pays où le système de la Convention fait partie de la législation nationale (comme, par exemple, la Grande Bretagne) le fait que la valeur totale du navire, du fret et des accessoires restât au-dessous de la somme totale de £ 8.— ou, le cas échéant, de £ 16.— par tonneau de jauge, (ou des contravaleurs des dites sommes dans les mon-

naies nationales respectives), ne s'est jamais ou presque jamais produit. La difficulté de devoir établir les dites valeurs ne s'est donc pratiquement jamais présentée.

Actuellement, à raison de l'absence totale d'un marché international libre de navire, la valeur qui est à attribuer à un même navire pourra être très différente dans les différents pays du monde. Dans chaque pays cette valeur dépendra d'un nombre d'éléments, comme, par exemple, le prix de l'acier et des autres matières premières, le prix de la main d'œuvre, les dispositions législatives nationales concernant la sécurité et l'installation du navire, comme par exemple le logis de l'équipage, le taux des frets, etc. etc.

Ces éléments, qui tous contribuent à la fixation de la valeur, se modifient de pays en pays.

D'après l'opinion unanime de tous les intéressés néerlandais il serait vain d'espérer qu'il serait possible de réaliser actuellement une limite vraiment uniforme, lorsque cette valeur serait basée sur un élément qui, dans l'espace et même dans le temps, est si peu constant, tel que la valeur du navire.

La première des conditions susvisées ne serait donc pas remplie. Il en serait de même en ce qui concerne la deuxième, vu que, dans l'état actuel des choses, l'établissement de la valeur, c.-à-d. de la limite, pourra donner lieu à toutes sortes de difficultés, abstraction faite des méthodes divergentes de calcul et d'évaluation appliquées dans les différents pays.

Il y a deux autres objections d'ordre pratique qui s'opposent au système proposé par l'Association belge.

Le système comporterait une augmentation injustifiée de la limite de la responsabilité lorsqu'il s'agit de navires neufs et surtout de grande paquebots modernes.

Par contre, le système donnerait un avantage également injustifié aux armateurs de vieux navires ou de navires mal entretenus; en fait, ce serait une véritable prime pour l'exploitation de navires de cette dernière catégorie.

Dans ces conditions, l'Association néerlandaise veut revenir sur une suggestion qui a déjà été faite au cours des débats de la Conférence d'Anvers, suggestion qui comporterait la suppression pure et simple dans la Convention de toute référence à l'or.

De l'avis de l'Association néerlandaise, cette solution présenterait deux grands avantages, à savoir :

1e elle ne changerait en rien le système de la Convention tel que ce système a été appliqué dans la pratique ;

2e elle pourrait assurer une vraie uniformité internationale **dans l'espace.**

Seulement, pour que, d'une part, cette solution donne également la stabilité **dans le temps,** et que, d'autre part, elle tienne compte dans une certaine mesure des circonstances changées depuis la date de la signature de la Convention, il faudra, qu'elle soit accompagnée de trois modifications supplémentaires.

En sacrifiant toute référence à l'or, référence qui, dans l'esprit des auteurs de la convention, avait pour but de donner une valeur immuable à la limite de la somme de £ 8.— (ou de £ 16.—) par tonneau, il échêt d'exprimer cette limite dans une monnaie qui, tout en étant une monnaie vraiement internationale, semble promettre les plus grandes chances de stabilité sur le marché mondial. Actuellement, ce ne sont que le dollar des Etats-Unis et la livre sterling qui puissent être considérés comme possédant ces deux qualités.

Pour répondre à la deuxième condition il faudra fixer la limite visée au dernier alinéa de l'article premier soit à U.S. $ 50.—, soit à £ 12.10.— et celle visée au premier alinéa de l'article 7, également soit à U.S. $ 50.—, soit à £ 12.50.—.

La troisième et dernière modification concerne le deuxième alinéa de l'article 15 qui permet aux Etats contractants où la livre sterling n'est pas employée comme unité monétaire de convertir, en chiffres ronds, d'après leur système monétaire, les sommes indiquées en livres sterling.

A raison des fluctuations dont presque toutes les monnaies des pays ayant ratifié la Convention ont fait l'objet, l'application dans ces pays du dernier alinéa de l'article premier et de l'article 7 fait montrer des divergences énormes de la limite. Le rapport très intéressant que M. Pineus a présenté à la Conférence d'Anvers, a irréfutablement démontré ces divergences.

Il sera donc indispensable de supprimer le deuxième alinéa de l'article 15, ce qui veut dire, qu'à l'exception des Etats-Unis ou, le cas échéant, la Grande-Bretagne, les Etats contractants, en ratifiant la Convention, seront obligés d'adopter une limite exprimée dans une autre monnaie que leur monnaie nationale.

Il est difficile de croire que cela puisse se heurter à des susceptibilités

nationales, étant entendu qu'il s'agit d'une Convention destinée à jouer sur le plan international.

Finalement, le troisième alinéa de l'article 15 contient une disposition qui vise seulement **le mode de paiement** dans chaque pays du montant de la limite fixée, en disant que le paiement peut être effectué, dans la monnaie nationale, d'après le cours du change aux époques fixées à l'article 3. Cette disposition est en conformité avec le principe admis dans presque tous les pays du monde, à savoir le principe en vertu duquel un jugement rendu par un juge national ne peut contenir une condemnation à payer dans une autre monnaie que dans la monnaie nationale de ce juge.

Cette disposition ne visait pratiquement que le cas où le propriétaire s'était prévalu de la limitation de sa responsabilité **à la valeur du navire, du fret et des accessoires,** va que tous les Etats qui ont ratifié la Convention, ont usé du droit de conversion leur conféré par le deuxième alinéa de l'article 15.

Ceci explique le renvoi dans le troisième alinéa aux époques fixées à l'article 3.

Seulement, en suppriment le deuxième alinéa de l'article 15, le troisième alinéa devra fatalement s'appliquer à tous les modes de paiement, donc également aux paiement des montants visée au dernier alinéa de l'article premier et à l'article 7. Or, il n'y a aucune raison pour renvoyer, en ce qui concerne ces derniers paiements, au cours du change des époques fixées à l'article 3, les montants visés au dernier alinéa de l'article premier et à l'article 7 étant applicables quel que soit l'évènement dont la navire a été la victime et quelque soit son état.

De l'avis de l'association néerlandaise il sera opportun de laisser aux législations nationales le soin de fixer les dates au cours du change desquelles le débiteur pourra se libérer dans la monnaie nationale.

Eu égard à ce qui précède l'Association néerlandaise de Droit Maritime propose les modifications suivantes :

I. Dans le dernier alinéa de l'article premier les mots : ,,8 livres sterling seront remplacés par ,,U.S. dollars 50'' ou par ,,£12.10.—''.

II. Dans le premier alinéa de l'article 7 les mots ,,8 livres sterling'' seront remplacés par ,,U.S. dollars 50'', ou par £ 12.10.—.

III. Les premier et deuxième alinéas de l'article 15 seront supprimés.

IV. Dans le troisième alinéa de l'article 15 les mots : ,,d'après le cours du change aux époques fixées à l'article 3'' seront supprimés.

B. **Convention Internationale pour l'Unification de Certaines Règles en Matière de Connaissements.**

Les mêmes obstacles qui s'opposent au maintien de la Clause-or dans la Convention concernant la limitation de la responsabilité de l'armateur, se présentent lorsqu'il s'agit de l'application de la limite-or prévue à la Convention sur les connaissements.

La proposition faite par l'Association belge et M. Sohr veut supprimer la clause-or (alinés premier de l'article 9 de la Convention) et remplacer le montant de £ 100.— par colis ou unité (article 4 N° 5) par une somme égale à dix fois le fret par colis ou unité, appliqué à la marchandise sinistrée.

En fait, cette proposition écarte toutes difficultés auxquelles l'application de la clause-or pourrait se heurter ; en outre, elle séduit par sa simplicité.

C'est avec autant plus de regret que l'Association néerlandaise croit ne pas pouvoir se rallier à cette proposition, et cela pour les raisons suivantes :

1° Généralement le montant du fret dépend de la longueur du transport ; il en résulte que, dans le cadre de la proposition belge, le montant de la limite pour des marchandises de la même catégorie serait différent suivant qu'il s'agit d'un long voyage ou d'un voyage court. Cette différence ne semble pas justifiable.

2°. Généralement, lorsqu'il ne s'agit pas d'armateurs faisant partie d'une „conférence", le fret payable pour un transport par un vieux navivre ou par un navire mal entretenu est plus bas que celui qui est stipulé par l'armateur d'un navire de premier ordre. Il en résulte qu'ici également le système préconisé par la proposition belge comporterait un avantage tout à fait injustifié pour les transporteurs se servant de vieux navires et de navires mal entretenus et représenterait une véritable prime pour l'exploitation de pareils navires.

Dans ces conditions l'Association néerlandaise propose de trouver une solution similaire à celle énoncée ci-dessus pour la convention concernant la limitation de la responsabilité des armateurs. Elle propose donc de procéder à la suppression pure et simple du premier alinéa de l'article 9 de la convention en question et de remplacer le montant de £ 100.— visé au premier alinéa de l'article 4 N° 5 par par un montant soit de U.S. $

500, soit de £ 125.—. Ces sommes tiennent également compte des circonstances changées depuis la signature de la convention.

Finalement il faudra pour les mêmes raisons que celles indiquées ci-dessus, supprimer le deuxième alinéa ainsi que la deuxième partie du troisième alinéa de l'article 9.

Amsterdam, avril 1949.

BELGIQUE

ASSOCIATION BELGE DE DROIT MARITIME.

RAPPORT

sur les questions soulevées par la référence à certaines valeurs-or dans les Conventions Internationales sur la Limitation de la Responsabilité des Propriétaires de Navires de mer et sur les Connaissements.

Conscients de l'impossibilité de maintenir l'or comme mesure internationale de valeur, la Conférence du Comité Maritime International réunie à Anvers en 1947 a décidé la création d'une Commission chargée de rechercher une solution pratique, de nature à instituer une limite uniforme et stable à la responsabilité des propriétaires de navires de mer.

L'Association Belge de Droit Maritime se doit de contribuer à cette recherche de manière à faire connaître à la Commissions susvisée l'opinion des intéressés belges.

I. — **Limitation de la responsabilité :**

Le rapport de cette Association, préalable à la Conférence d'Anvers, fondait quelques espoirs sur l'acte de la Conférence Monétaire et Financière des Nations Unies tenue à Bretton Woods, et proposait même un texte basant la limite sur la parité de la Livre reconnue par le Fonds Monétaire International. L'expérience acquise depuis n'a pas fortifié ces espoirs, au contraire. Non seulement les parités des monnaies ne sont toujours pas établies en fonction de la position économique réelle des états membres, mais on a vu que la France, par exemple, a pu dévaluer sa monnaie nonobstant le traité international.

Peut-on envisager d'investir un organisme international, tel que le Fonds Monétaire International, la Banque des Paiements Internationaux, l'ONU, de la charge de fixer les parités pour permettre le fonctionnement de la Convention sur la limitation de responsabilité ? Il n'est pas probable

qu'un pareil organisme veuille ou puisse l'accepter. Et, du reste, quel que soit le système utilisé, les Etats contractants useraient, comme ils l'ont déjà fait avec une grande liberté, du droit de fixer dans leurs lois nationales un équivalent „en chiffres ronds".

Reste, enfin, la référence à la Livre ou au dollar, sans référence une parité quelconque et prise uniquement à leur valeur cotée aux époques fixées par l'article 3 de la Convention au jour du paiement. Solution peu satisfaisante, puisqu'elle lie toute l'économie de la Convention aux caprices du cours de la monnaie envisagée, qui, à certain moment, pourrait perdre toute substance.

En présence de ces difficultés, le rapport susvisé de l'Association Belge faisait allusion à une solution bien plus radicale qui, en supprimant toute limite monétaire par tonneau du jauge, se rapprocherait de l'ancien système continental basé sur la valeur du navire.

Depuis, l'idée a gagné de nombreux adeptes. Elle est de tradition dans les pays de l'Europe Continentale ; elle est à la base du système légal actuellement appliqué aux Etats-Unis d'Amérique en Italie, en Argentine. Elle est défendue avec force par la Norvège, et même dans les pays où l'opinion officiellement exprimée lui est opposée, nombre de spécialistes l'approuvent.

Cependant, personne ne souhaite le retour pur et simple à l'ancien système continental. L'accroissement des charges qui en résulteraient pour l'armement martime par rapport à celles d'aujourd'hui, serait excessif. Aussi préfère-t-on une limite représentant une fraction de la valeur du navire. L'Italie applique une fraction comprise entre 20 % et 40 % ; la France propose 60 % ; la Norvège 50 %.

A part la loi italienne, d'autres précédents viennent à l'appui de l'adoption d'une fraction de la valeur : la Convention même, en son article 4, fixe le fret (ou le prix de passage) à 10 % de la valeur du navire au commencement du voyage ; la législation belge évalue à la moitié de son montant brut la contribution en avarie commune du fret non payé ou payé d'avance et restituable (art. 150 de la loi maritime).

Toutefois, à l'effet de pallier à l'inégalité injustifiable créée par une fraction uniforme au détriment de navires de grand prix, une échelle serait à prévoir en relation avec plusieurs catégories de navires. Question susidiaire qui devrait être mise au point par les techniciens.

En attendant, il semble que l'art. I de la Convention puisse être amendé comme suit, en son alinéa final :

« Toutefois, pour les créances prévues aux numéros 1, 2, 3, 4
» et 5, la responsabilité visée par les dispositions qui précèdent
» ne dépassera pas la moitié de la valeur du navire au moment
» de l'accident, augmentée du fret et des accessoires''.

et l'art. 7 :

» ..... au delà de la limite fixée aux articles précédents, et quel
» que soit le sort du navire, jusqu'à concurrence d'une somme
» forfaitaire représentant la moitié de la valeur du navire au
» moment de l'accident... ».

L'art. 15 est à supprimer entièrement.

Cette proposition implique le maintien du principe fondamental de la Convention, à savoir : le choix entre deux limites. Certains pays poussent l'innovation jusqu'à vouloir l'abolir ; ils ne proposent qu'une seule limite : celle d'une fraction de la valeur du navire avant l'accident et excluent la faculté de libération à concurrence de la valeur après l'accident.

L'Association Belge est d'avis qu'il n'est pas souhaitable de rompre de la sorte avec une longue tradition et de bouleverser l'économie d'une convention qui n'a pu être organisée qu'au prix de laborieux travaux et d'importantes concessions réciproques. Il est, d'autre part, infiniment improbable que l'on puisse jamais obtenir l'adhésion des Etats-Unis à cette formule extrême.

D'autres objecteront que le système préconisé complique l'application de la Convention et qu'il est malaisé d'évaluer la valeur d'un navire. Ces difficultés, cependant, sont plus théoriques que réelles. Elles se présentent tout autant dans les règlements d'avaries communes et elles n'ont jamais empêché, que l'on sache, les dispacheurs de déterminer la valeur contributive des navires.

Au reste, en fait, l'estimation d'un navire est basée sur son âge, son type, les prix généralement pratiqués sur le marché de Londres, etc., et il est plutôt rare que les experts aillent le visiter. S'il fallait renforcer les garanties et assurer plus d'uniformité, l'on pourrait prévoir que l'estimation sera basée sur la valeur au port d'attache et qu'elle vaudra erga omnes ; pareille dispostion trouverait sa place à l'article 8.

Le système proposé, — ou tout autre semblable — outre qu'il résoudrait le problème sans issue de la valeur-or, aurait aussi l'avantage de remédier à ce qu'a de choquant que limitation conçue en chiffres absolus. Il suffit,

pour en être convaincu, de considérer les variations qu'a subies le coût moyen de construction des navires ordinaires par tonne dead-weight dans les trente dernières années, telles qu'elles sont rapportées dans un article de la ,,Review'' du 4 avril 1947, intitulé : ,,The Marine Market'' :

novembre 1914	£. 7. 1. 0.
décembre 1920	£. 30. 0. 0.
décembre 1932	£. 8. 6. 8.
janvier 1939	£. 13. 6. 8.
juin 1946	£. 26. 8. 0.

* * *

II. — **Connaissements :**

Le tableau des limites de responsabilité par colis ou unité appliquées dans les différents pays, est, si possible, encore plus bizarre que le précédent. D'application plutôt exceptionnelle jadis, le § IV 5° de la Convention voit sortir ses effets beaucoup plus fréquemment depuis la hausse générale des prix.

Or, non seulement la référence à l'or prévue par la Convention ne peut être maintenue, mais une nouvelle difficulté très grave vient de surgir à propos de la définition du terme ,,unité''. La Cour de Cassation de France, par un arrêt récent, a décidé que l'unité visée par la Convention n'est pas nécessairement l'unité de fret, mais peut être l'unité de poids, et elle a appliqué la limite à chaque kilogramme d'un lot de 40500 kilos de cordes, dont le fret avait été stipulé à la tonne.

Tous ces inconvénients disparaissent si l'on supprime tout forfait exprimé en signe monétaire par colis ou unité.

Adoptant la suggestion de Mr Frédéric Sohr, d'accord avec plusieurs autres Associations, l'Associations Belge de Droit Maritime propose de fixer la limite à un multiple du fret brut afférent à la marchandise perdue ou endommagée. Ce multiple à retenir devrait faire l'objet d'une étude approfondie, mais il semble que le multiple 10 se rapproche d'une moyenne.

D'aucune objectent que cette limite est arbitraire et qu'elle est fonction de facteurs extrinsèques, telles que la longueur du voyage et la nature de la marchandise ; qu'au surplus, les propriétaires de bateaux rapides et bien équipés seraient désavantagés par rapport aux autres. On oublie que ces propriétaires sont moins exposés aux risques du transport. Certes, le système n'est pas d'une perfection idéale, mais il est très souple, plus

réaliste et plus équitable, en somme, que le régime actuel, bien plus arbitraire d'ailleurs. Il lie la responsabilité du transporteur au prix du transport, d'une part, à la valeur de la marchandise d'autre part ; et, tout en maintenant le principe du forfait, il supprime les aléas des variations monétaires.

Les rapporteurs : MM. Albert Lilar, Fréderic Sohr, Léon Descamps, Augustin Ficq, Alfred Gevers, Léon Gyselinck, Pierre Varlez, Carlo Van den Bosch.

DANEMARK

Section danoise du Comité Maritime Internatinoal et de l'International Law Association.

Clause-or dans les Conventions sur la Limitation de la Responsabilité des Propriétaires de Navire et sur les Connaissements.

A la suite de la lettre circulaire du 15 janvier 1949, une commission composée de

M. le Juge N. V. Boeg (président),
M. C. Kampmann,
M. Peter Leth,
M. le Professeur K. Sindballe,
M. André Sörensen,
M. Niels Tybjerg et
M. V. Wenzell

a été désignée par la Section Danoise du Comité Maritime International en vue de procéder à l'examen des questions indiquées dans cette lettre. Cette commision a étudié soigneusement ces problèmes et a également consulté les milieux maritimes danois.

I. **Convention sur la Limitation de la responsabilité des propriétaires de navires.**

Les propositions soumises par les divers membres de la sous-commission désignée par le Bureau Permanent ont été examinées, et plus spécialement les suggestions des délégués belges, français et scandinaves, selon lesquelles la limitation existante basée sur une somme fixe par tonne de jauge du navire devrait être remplacée par une limite comportant une quote-part de la valeur du navire à l'état sain ou au commencement du voyage.

La majorité de la commission danoise est d'avis que certaines objections peuvent être faites à ce système de limitation basée sur la valeur du navire. Comparé au système actuel, il placerait dans une situation désavantageuse les navires nouveaux et modernes, les navires d'un entretien coûteux et les navires pourvus d'un équipement spécial. Puis, la nécessité qu'il y

aurait de rechercher la valeur du navire pourrait causer des difficultés, spécialement dans des cas urgents lorsqu'il faut donner une garantie pour éviter la saisie, alors que, dans le système actuel la fixation du montant de la garantie est simple dans presque tous les cas. En outre si, comme certains délégués suggèrent, la limite basée sur la valeur du navire à l'état sain ou au commencement du voyage, devait être la seule limitation, supprimant ainsi l'alternative de la limite à la valeur du navire après l'accident, il faudrait renoncer au système scandinave d'assurance-corps si commode, pratiqué actuellement, selon lequel une assurance couvrant la valeur saine du navire suffira généralement pour payer aussi bien les dommages au navire que la responsabilité en cas d'abordage. Pour ces motifs, la majorité de la commission danoise n'est pas disposée à appuyer les propositions mentionnées plus haut.

La commission danoise tient à signaler que le Danemark a été l'un des premiers pays à introduire les dispositions de la Convention dans sa loi nationale et à les mettre en vigueur. Ce pays a renoncé au système beaucoup plus simple et satisfaisant de sa législation précédente dans l'espoir d'arriver à un accord international, qui, malheureusement, n'a pas été réalisé. De plus, parmi les pays qui ont ratifié la Convention, le Danemark a été seul, avec la Suède et la Finlande, à mettre en vigeur les dispositions de la Convention en ce qui concerne la valeur-or. Il parait donc compréhensible que le Danemark adopte cette fois une attitude plus réservée.

La majorité des membres de la commission danoise préfèrerait attendre les évènements et ne pas prendre position de façon définitive jusqu'à ce qu'apparaisse de façon plus claire s'il y a moyen de trouver un système qui puisse rencontrer une approbation internationale et qui puisse plus spécialement être accepté par ceux des plus grands pays maritimes qui n'ont pas encore adopté la Convention dans sa forme actuelle.

Entretemps, la commission danoise est d'avis qu'on devrait examiner s'il ne serait pas opportun de proposer de modifier les dispositions du Code Maritime danois fixant la limite de responsabilité à 145 Kroner-or par tonne et de la remplacer par 145 couronnes-papier, si nécessaire après dénonciation de la Convention.

Au cours des discussions de la commission danoise, il a été également suggéré que l'on pourrait essayer d'arriver à un accord entre ceux des pays où les dispositions de la convention sont en vigueur, pour fixer la limite à £ 8 papier par tonne.

II. **Convention sur les Connaissements.**

La majorité des membres de la commission danoise n'est pas disposée à appuyer la proposition des délégués français tendantà limiter la responsabilité à 10 fois (ou à un autre multiple) la valeur du fret. Pareille limite semble être encore plus arbitraire que celle prévue dans la Convention, soit £ 100 -or par colis ou unité, et qu'elle donnerait lieu à de grandes inégalités.

La loi danoise actuelle est conforme aux dispositions de la Convention, la limite étant fixée à 1800 Kroner valeur-or par colis ou unité. Tout comme pour la Convention sur la limitation de la responsabilité des propriétaires de navire, la commission pensé qu'il faudrait examiner si, à raison de l'attitude des autres pays, cette limite-or ne devrait pas être remplacée par une limite-papier.

Au nom de la Section danoise du Comité Maritime International

(s) Kjeld Rördam.

SUEDE

Association Suédoise de Droit Maritime International.

LOIS MARITIMES

Convention pour l'Unification de certaines règles relatives à la limitation de la responsabilité des propriétaires de navires de mer.

Cette convention a été le résultat de transactions poussées à l'extrême, qui n'ont été acceptées par les délégués de Suède que parce que ces transactions étaient considérées nécessaires pour arriver à des règles uniformes acceptées par le monde entier. Les avantages de cette uniformité semblaient justifier des transactions qui, en elles-mêmes, n'étaient pas désirables. Mais cet espoir d'uniformité ne s'est pas réalisé ; d'importants pays maritimes, dont on escomptait l'adhésion grâce à ces transactions, n'ont pas ratifié la convention.

D'autre part, la Suède a, tout comme les autres pays scandinaves d'ailleurs, incorporé la Convention dans sa loi nationale et ces règles sont en vigueur depuis le 1er janvier 1939.

Il ne paraît pas opportun, après dix années seulement, de modifier encore une fois la loi suédoise en la matière sans avoir la certitude qu'une convention nouvelle apportera l'uniformité tant désirée. Or, cela semble inprobable à présent. C'est pourquoi l'Association suédoise est d'avis qu'une revision de la convention existance ne doit pas être entreprise avant que l'on ait des garanties raisonnables d'arriver à une acceptation universelle de règles nouvelles. En attendant, le Comité Maritime International devrait faire tout ce qui est possible afin d'augmenter le nombre d'adhésions des Etats à la Convention existante.

Toutefois, il y a dans cette convention une stipulation spéciale qui, à la suite des modifications qui se sont produites dans la situation monétaire depuis l'existence de la Convention, a attiré spécialement l'attention, à savoir la clause-or.

A cet égard, l'Association suédoise a fait la déclaration suivante dans son rapport à la Conférence de 1947 :

,,Il n'y a pas se monnaie-papier nationale offrant la stabilité nécessaire, vers le haut ou vers le bas, pour constituer une unité stable pouvant servir de limite monétaire. Et quant au choix de l'or lui-même, soit en lingots, soit en monnaie, il semble bien qu'il ne puisse offrir une solution du problème dans les conditions actuelles... Dès lors on peut se demander s'il ne faudrait pas remettre le règlement définitif de cette question jusqu'à ce que les étalons monétaires internationaux aient été stabilisés de telle manière qu'il soit possible de trouver comme limite monétaire une unité pour une période plus longue qu'il ne serait possible en ce moment.

,,Mais la clause-or n'intéresse pas seulement les transporteurs par mer. Egalement dans les conventions de transport par air, par chemin de fer et dans les accords postaux, il est stipulé une limitation monétaire de la responsabilité des transporteurs. Une collaboration est donc souhaitable et le Comité Maritime International devrait en prendre l'initiative."

Dans la loi suédoise, la limite de £ 8 a, conformément à la Convention, été convertie en 135 couronnes-or. Du fait de cette stipulation, les armateurs suédois ont été placés dans une situation d'infériorité à l'égard de propriétaires de navires appartenant à d'autres pays, dont la loi ne contient pas cette stipulation. C'est pourquoi l'Association suédoise va proposer au gouvernement de Suède de suivre l'exemple de la Norvège qui depuis 1939, a voté une loi stipulant que le calcul de la limite ne se fera en or qu'en faveur de créanciers appartenant à des pays qui appliquent la même façon de calcul en faveur des créanciers nationaux, — dans ce cas des Suédois.

Convention internationale pour l'unification de certaines règles relatives aux Connaissements.

En ce qui concerne les clauses-or, articles 9 et 4 (5), nous nous référons à ce qui a été dit sub III, dernier paragraphe. La modification qui y est proposée devra donc être apportée également à la loi relative aux Connaissements, c.à.d. que le calcul ne se fera en or que dans le cas de créanciers appartenant à des pays qui appliquent le même mode de calcul en faveur de créanciers suédois. Cette modification apparaît comme justifiée encore par le fait que même dans des pays ayant adhéré à la convention, la stipulation de l'article 9 m.l. n'a pas toujours été observée.

En ce qui concerne certaines propositions de modification de la Convention qui ont été discutées à la réunion de la ,,Commission de la clause-

or du Comité Maritime International en décembre 1948, l'Association suédoise ne pense pas qu'aucune d'elles donne satisfaction. Par exemple, remplacer la limite actuelle de £ 100-or — comme il a été proposé — par dix fois le montant du fret, ne semble pas opportun. Le but de la présente règle de limitation paraît être d'empêcher que les armateurs, lorsqu'ils transportent des marchandises ayant une valeur beaucoup plus considérable que la valeur moyenne, puissent être exposés à des réclamation par trop élevées. Le propriétaire de marchandises obtiendrait donc une des dommages-intérêts pour perte ou avarie des marchandises suivant leur valeur, mais limitées à une certaine somme. Or, si en fixe la somme par rapport au fret, la conséquence serait que le montant de la limitation dependrait de facteurs qui n'ont rien à voir avec la valeur des marchandises, par exemple de la longue ou de la courte durée du voyage et d'autres circonstances qui influent sur le taux du fret à payer, mais sont indépendantes de la valeur des marchandises. L'Association suédoise est d'avis que pareille base de limitation n'est pas acceptable.

Après la réunion de la Sous-Commission de la Clause-Or en décembre 1948, une proposition a été faite d'examiner la possibilité d'introduire une règle qui détermine de façon nette laquelle des diverses règles nationales de La Haye sera applicable dans chaque cas déterminé. Ainsi, il a été recommandé que si les parties sont domiciliées dans des pays différents et que le déchargement s'effectue dans un pays qui est partie à la Convention, les lois de ce dernier pays seraient appliquées, tandis qu'en toutes autres circonstances, les lois du pays du transporteur devraient trouver leur application. Cette question mérite certes d'être examinée. Toutefois on pourrait se demander si ce sujet ne devrait pas être traité dans le cadre d'un problème plus vaste, à savoir l'opportunité de l'introduction d'une convention internationale, dont le besoin se fait si fortement sentir sur le point de savoir quelle est la loi nationale qui doit être considérée applicable aux contrats de fret en général.

Pour l'Association Suédoise de Droit Maritime International

Stockholm, le 10 juin 1949. Algot BAGGE.

GRANDE-BRETAGNE

ASSOCIATION BRITANNIQUE DE DROIT MARITIME.

Rapport sur la limitation de la responsabilité des propriétaires de navires et la clause-or.

1. Après la réunion tenue à Anvers le 12 décembre 1948 par la Commission du Comité Maritime International qui avait été désignée par la Conférence d'Anvers de 1947, aux fins d'étudier ces problèmes et d'en faire rapport, l'Association Britannique, en vue de son rapport à la Conférence a elle-même désigné une commission, chargée de préparer le rapport de la Grande-Bretagne. Il a paru opportun qu'en vue de ce rapport des discussions officieuses préalables devraient avoir lieu entre les représentents des milieux commerciaux intéressés à ces problèmes ; la commission s'est réunie pour examiner son rapport le 23 juin sous la présidence de M. C. D. Raynor, représentant de la Lloyds Marine Unterwriters Association.

2. La Commission constate que les questions soulevées par ces problèmes sont d'une complexité telle et ont donné lieu à de telles divergences d'opinion entre les associations nationales, qu'il serait à son avis peu sage d'essayer de rédiger, à la conférence d'Amsterdam, un avant-projet de convention unifiant les diverses lois nationales relatives à la limitation de la responsabilité des propriétaires de navires. Elle est d'avis que la conférence d'Amsterdam devrait référér la question à l'une des associations nationales de la même manière que la revision des règles d'York et d'Anvers a été référée à l'Association Britannique de Droit Maritime ; cette association aurait pour tâche de recueillir les vues de toutes les autres associations, d'essayer d'obtenir la plus grande mesure possible d'accord ou de transaction et ferait rapport au Comité Maritime International dans un délai à fixer.

Ce rapport serait alors soumis à la conférence de 1951 où il servirait de base de discussion. Si cette procédure est adoptée, la commission pense qu'il y aura une chance raisonable d'arriver à cette conférence à une convention acceptable pour toutes les nations maritimes. En formulant cet avis, la commission a le sentiment qu'il ne serait pas opportun d'ajouter

au présent rapport les avis des autres associations nationales qui ont été reçus jusqu'à présent et étudiés avec soin. C'est pourquoi la commission se borne à donner ci-après la résumé de ces rapports en question, auquel il est référé ci-après.

3. Deux problèmes distincts mais apparentés se posent :

(a) Dans tous les pays maritimes, la responsabilité d'un propriétaire de navire du chef de pertes ou dommages causés par son navire ou à raison de son navire, est limitée par la loi nationale Cette limite est distincte de celle dont jouissent les actionnaires, au cas ou l'armateur est une société anonyme, au montant de leur capital investi. Ce privilège spécial est accordé à raison des grands dommages qui peuvent être causés par ou à raison d'un navire, qu'il soit grand ou petit, à la suite du moindre acte de négligeance ou erreur de jugement dont le propriétaire est responsable ; dans tous les pays cette protection disparaît lorsqu'il y a faute personnelle dans le chef du propriétaire lui-même, ou s'il s'agit d'une société, dans le chef de ceux qui sont chargés de l'exploitation du navire. Aucune des associations nationales qui ont étudié cette question au cours des deux dernières années n'a suggéré que cette limite ne devrait plus être accordée aux propriétaires de navire ; en fait il est de la plus haute importance pour les pays martimes tels que la Grande-Bretagne, ayant une flotte commerciale nombreuse, que cette protection subsiste ; le problème qui se pose est de savoir comment arriver à une limitation uniforme entre les pays maritimes.

(b) Les principales nations maritimes ont adopté à présent les Règles de la Haye 1922 dans leur législation nationale, de sorte qu'actuellement, de façon générale, il y a uniformité de loi en ce qui concerne le transport des marchandises par mer. La Grande-Bretagne a adopté ces Règles par le ,,Carriage of Goods by Sea Act 1924''. En vertu de toutes ces lois, la responsabilité des propriétaires de navire est limitée à un montant spécifié exprimé en monnaie nationale par colis ou par unité de marchandise. Dans la loi britannique cette limite est de £ 100 ; dans la loi des Etats-Unis de 1936, elle est de 500 ; mais les Règles de la Haye contenaient une disposition selon laquelle toutes les unités monétaires exprimées dans les Règles devraient être considérées comme étant valeur-or. Certains pays, tels que la Grande-Bretagne, ses Colonies et l'Australie, ont incorporé la clause-or dans leur loi nationale, tandis que d'autres tels que les Etats-Unis, le Canada et la Nouvelle Zélande ne l'ont pas fait. Si l'effet de la Clause-Or dans ses lois (cette clause n'ayant jamais fait l'objet d'une

décision judiciaire en dernier ressort) est que la limite britannique est de £ 100 or à la valeur officielle de l'or aux Etats-Unis, la somme à payer réellement dépasserait actuellement £ 200. Il va de soi que cette incertitude, quant à la limite, est hautement indésirable et qu'elle persistera aussi longtemps que l'or sert d'étalon. Dès lors la question est de savoir par quoi remplacer la clause-or. Il est à noter que la convention de Varsovie limite la responsabilité des transporteurs aériens par référence au franc français-or. Mais ici la même difficulté surgit : par quelle valeur-or ce franc doit-il être mesuré ? Est-ce par le prix officiel américain de l'or ou par la valeur bien plus élevée dans le marché libre de l'or du monde, par exemple dans l'Inde ou l'Egypte ?

4. A la Conférence Internationale Maritime de Bruxelles de 1924 la Convention Internationale pour l'Unification de certaines règles relatives à la limitation de la responsabilité des propriétaires de navire en mer a été signée par 24 Etats, (Annexe I), mais jusqu'ici 12 Etats seulement l'ont ratifiée. En Grande-Bretagne on n'a jamais préparé le projet de loi à soumettre au parlement et le Président des Etats-Unis ne l'a jamais envoyé au Senat. Dans aucun de ces pays cette convention n'a rencontré un appui effectif dans sa forme présente. L'article 15 la convention dispose que les unités monétaires mentionnées s'entendent valeur-or, mais cette clause a été exclue par certains pays qui ont adopté la convention.

Le principe de base de la convention est que la responsabilité du propriétaire de navire sera limitée à la valeur du navire, son fret et accessoires ou £. 8 par tonne, selon que l'une ou l'autre somme soit la moins élévée. En cas de perte de vies humaines ou de dommages corporels une limite supplémentaire de £. 8 est ajoutée. En Grande-Bretagne, en vertu des Merchant Shipping Acts, la limite est de £. 8 par tonne avec un supplément de £. 7 pour perte de vies humaines ou dommages corporels. D'après la loi américaine, la limite est la valeur du navire et du fret plus $ 60 par tonne en cas de perte de vies humaines ou de dommages corporels. D'après la convention aussi bien que d'après la loi américaine, il s'agit de la valeur du navire après l'accident.

5. Cette question était l'une des premières qui ont été discutées par l'Association Britannique de Droit Maritime lors de sa reconstitution après la guerre fin 1946. Un rapport rédigé par le Secrétaire Général en janvier 1947 au sujet de la convention avec un tableau comparatif des lois britanniques et americaines est annexé (document 2). Il fut décidé de recourir

aux lumières d'experts économistes et Sir Henry Clay, Professeur de sciences économiques à l'Université d'Oxford, H. R. Thackstone, chef du Foreign Exchange Department de la Midland Bank, ont eu l'amabilité de mettre leur services à la disposition du Comité Maritime International. Ils ont assisté à une réunion du Bureau Permanent le 25 juin 1947 et le 28 juillet ils ont publié leur rapport. (Document 3). Leur conclusion était en substance que la responsabilité prévue par la convention devrait être définie sur la base de la parité entre les devises monétaires comme prévue par l'Acte Final de la Conférences Monétaire et Financière des Nations Unies à Bretton Woods en juillet 1944.

C'est là la solution la plus scientifique qui ait été suggérée jusqu'ici ; mais de l'avis de tous les intéressés, — et certainement en Angleterre, — il serait prématué et dangereux d'escompter à ce moment que Bretton Woods réalisera son but c.à.d. de maintenir des taux de change internationaux stables.

En outre il y avait l'objection que la valeur au pair de chaque devise doit, d'après cet Act, être exprimée en or. Depuis lors les évènements semblent justifier cette appréhension.

A la conférence suivante du Comité Maritime International à Anvers, en septembre 1947, on ne put arriver à une conclusion ; cependant, la conférence rejeta explicitement l'or comme étalon et chargea le Bureau Permanent de désigner une sous-commission chargée d'examiner s'il y avait un moyen de trouver une solution pratique du problème assurant un degré raisonable de stabilité internationale.

Après de nombreux échanges de vues, cette sous-commission s'est réunie à Anvers le 12 décembre 1948. Il résulte des avis exprimés à cette réunion que les pays continentaux ne sont pas disposés à retarder un nouvel examin de la convention jusqu'à ce que les conditions mondiales soient devenues plus stables ; qu'ils sont d'avis que la ,,clause-or'' devrait être rayée des lois nationales relatives aux Régles de la Haye et qu'en ce qui concerne la limitation de la responsabilité des propriétaires de navires en général ils sont disposés en faveur de la formule : pour dommages aux biens la valeur du navire après l'accident, ou bien 50 % de sa valeur saine avant l'accident, selon que l'une ou l'autre somme est inférieure et en plus 50 % de sa valeur saine pour perte de vies humaines et dommages corporels.

6. Un résumé de toutes les vues exprimées jusqu'ici est joint au présent rapport (document 4) Il importe d'ajouter qu'après la rédaction de

ce résumé un rapport danois a été reçu ; il en résulte que l'association danoise n'est pas disposée actuellement à se rallier à une limitation de responsabilité calculée sur un pourcentage de la valeur saine du navire ; ni à accepter une limite dans les Règles de la Haye basée sur un pourcentage du fret.

7. La sous-commission continue à discuter d'abord la limitation d'après les Règles de la Haye, qui dans la loi nationale anglaise est exprimée dans l'article IX du ,,Carriage of Goods by sea Act'' de 1924 rédigé comme suit :

,,Les unités monétaires mentionnées dans ces Règles s'entendant valeur-or''.

La commission comprend que l'effet de cet article pourrait bien être que la limite de la responsabilité par colis ou unité de £ 100 dans l'article IV Règle 5 est l'équivalent de £ 100-or, ce qui aujourd'hui, au prix officiel américain de l'or, est environ £ 200. D'autre part, comme il est dit dans la dernière édition de ,,Scrutton, on charter parties'' page 477, ce résultat n'est nullement certain. Cette disposition dans l'article IX est reprise des Règles de la Haye mêmes. Mais alors que la Grande-Bretagne, ses Colonies et le Dominion de l'Australie ont adopté cette clause, les Etats-Unis, le Canada et la Nouvelle Zélande (en vertu du nouveau New Zealand Sea Carriage of Goods Act 1940) ne l'ont pas fait. Ces lois disposent que les unités monétaires mentionnées dans les Règles de ces pays doivent être considérées comme la monnaie légale du pays. En France, la limite originale était de 8.000 francs français. Elle a été augmentée à concurrence de 50.000 francs mais toujours en monnaie française et non en valeur-or.

D'après les rapports des associations nationales reçus jusqu'ici, à savoir ceux de la Belgique, du Danemark, de la France, de l'Italie, de la Norvège, des Pays-Bas, du Portugal et de la Suède, il semble y avoir unanimité pour que la clause or soit supprimée et que par contre la limite de la responsabilité actuelle (£. 100 dans la loi anglaise) soit également modifiée ; mais les avis de ces associations quant à la forme précise de la modification varient considérablement. L'avis unanime de la sous-commission est que des deux propositions faites par les autres associations nationales, aucune ne pourrait être adoptée, à savoir :

(a) que la limite de la responsabilité par colis ou unité sera une somme égale à dix fois le fret.

(b) que la limite de responsabilité par colis ou unité serait fixée à une pourcentage déterminé de la valeur c.i.f ou assurée des marchandises.

En outre on a recueilli l'avis des Protection and Indemnity Associations; elles ont déclaré unanimement que la seule méthode acceptable d'effectuer cette modification serait d'augmenter la limite £. 100 dans le loi anglaise à un montant plus élevé qui serait accepté comme stable pour un période aussi longue que possible. On croit d'ailleurs que c'est la seule méthode qui emporterait l'adhésion des propriétaires de navire eux-mêmes.

La sous-commission exprime l'avis qu'il serait hautement inopportun d'essayer d'amender cette loi à l'heure présente par voie de législation au parlement. Pareille législation, si elle est nécessaire, devrait attendre la solution du problème plus important de la responsabilité des propriétaires de navire en général, de façon que l'on puisse résoudre en même temps sur une base législative toute la matière.

La sous-commission suggère qu'une alternative serait, tout au moins en ce qui concerne la Grande-Bretagne, un accord amiable entre les propriétaires de navire et leur Protection et Indemnity Associations d'une part et le Marché d'autre part, — l'accord MAKIS relatif à l'avarie commune en constitue un précédent, — selon lequel si les assureurs britanniques, n'insitaient pas sur l'article IX, les propriétaires de navire seraient d'accord d'augmenter la limite à une somme à convenir de commun accord.

8. En ce qui concerne le problème plus vaste de la limitation de la responsabilité en général, la sous-commission constate que les lois des divers pays maritimes diffère profondément en cette matière importante ; elle est d'avis que l'unification de ces lois, si elle est possible, est hautement désirable. Les deux principes divergents qui semblent avoir été adoptés sont les suivants :

(a) le principe anglais, limitant la responsabilité des propriétaires de navires à une somme spécifiée exprimé dans la monnaie du pays, sans rapport avec l'or, par tonne de jauge brute du navire.

(b) le système américain dérivé du système continental (c'était en effet le système anglais avant le vote des Merchant Shipping Acts du siècle dernier) limitant la responsabilité à la valeur du navire après l'accident, avec le fret et en plus une somme arbitraire additionnelle à tout évènement les réclamations pour couvrir les pertes de vies humaines.

La sous-commission est d'avis que la Convention Internationale pour l'Unification de Certains Règles relatives à la Limitation de la Responsa-

bilité des Propriétaires de navires de mer, rédigée par la Conférence Maritime Internationale de Bruxelles en 1925, ne repond plus sous bien des rapports aux conditions modernes, qu'elle ne serait plus acceptable dans sa forme actuelle, pour beaucoup d'associations nationales et certainement pas pour l'Association Britanique de Droit Maritime ; en effet il est douteux qu'elle puisse sevir même de canevas pour l'œuvre d'unification des lois à cet égard.

La sous-commission a le sentiment que cette matière est d'une telle importance qu'elle mérite une étude approfondie et, comme dit ci-dessus elle considère qu'à la conférence d'Amsterdam du Comité Maritime International, il faudrait proposer que cette matière soit soumise à l'une des associations nationales pour étude et, après avoir rassemblé les vues de tous les autres associations nationales faire rapport au Comité Maritime International dans un délai à fixer.

BELGIQUE

RAPPORT

de la Commission de l'Association Belge de Droit Maritime sur la création d'une Cour Internationale en matière maritime et aérienne. (*)

L'expérience démontre combien les Etats sont rétifs à l'abandon de leurs droits de souveraineté ; des juristes établissent des traités : lorsque ceux-ci ne lient que deux Etats, la ratification suit après de longs délais ; mais lorsqu'on entend lier un plus grand nombre de Hautes Puissances contractantes les années ne suffisent pas à conclure un accord clair et précis.

Cette idée de souveraineté s'expliquait aisément dans les siècles passés alors que les intérêts économiques se jouaient sur des territoires restreints et que les frontières étaient de vraies cloisons matériellement infranchissables.

Mais les progrès de la science, la facilité et la rapidité des déplacements ont étendu l'activité économique d'un grand nombre d'individus et il faudra bien dans un avenir plus ou moins prochain que ce principe de souveraineté cède, que cette ceinture rigide éclate. Mais cette évolution doit se faire avec prudence, si on ne veut pas qu'elle soit une révolution qui entraîne dans sa soudaineté des imperfections, voire de graves défauts.

Il faut procéder par étapes, créer un climat et démontrer sur un plan bien choisi et dans un cadre restreint l'utilité d'une justice internationale qui s'appliquera plus tard à des différends les plus divers.

Cependant, la conclusion de traités internationaux, l'incorporation de ces textes dans les lois nationales nécessitent des délais fort longs. On pourrait donc dès à présent, dans le cadre du Comité Maritime International faire un premier pas.

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* La commission est composée de : MM. Fr. Muûls, F. Vincentelli, R. De Smet, F. Marquet.

Des conventions internationales existent ; elles ont trait à la force exécutoire des sentences arbitrales.

Rien n'empêcherait donc la Comité Maritime International de créer des chambres arbitrales qui pourraient connaître des litiges maritimes et aériens ; les contrats pourraient comporter une clause prévoyant l'arbitrage ; chaque association pourrait constituer des chambres arbitrales auxquelles les litiges seraient soumis. L'exéquatur serait accordé conformément aux conventions internationales actuellement en vigueur.

L'inconvénient de cette juridiction c'est qu'elle nécessite un compromis arbitral ; et les Etats, généralement, ne peuvent pas compromettre : ce serait donc écarter tout litige dans lequel un Etat se trouverait intéressé.

La Cour Maritime et Aérienne Internationale serait une jurisdiction ayant plus de rayonnement. Mais l'inconvénient apparaît aussitôt : cette Cour, pour peu que l'habitude prévale de lui soumettre les litiges envisagés, serait rapidement encombrée ; il faudrait créer de nombreuses chambres ce qui entraînerait des frais extrêmement élevés. Aussi pourrait-on établir un filtre. Nous avons un exemple dans la compétence juridictionnelle de la Commission centrale pour la Navigation du Rhin qui date de plus d'un siècle : elle s'étend au degré d'appel aux contestations relatives à l'exercice de la navigation.

On pourrait donc imaginer que les parties litigentes pourraient prévoir, devant la Cour à constituer, un appel possible des jugements rendus en première instance par les Tribunaux nationaux en matière maritime et aérienne. Il faudrait, bien entendu, que dans les accords entre parties, soit lors de la conclusion du contrat, soit lors de la naissance du litige, que pareille compétence soit décidée ; ce ne serait donc pas un compromis arbitral, mais une attribution de jurisdiction que tout Etat pourrait accepter puisqu'il s'agit de se soumettre à une décision d'une véritable Cour de justice.

L'avantage de cette institution saute aux yeux : elle créerait en matière maritime et aérienne une jurisprudence uniforme pour tous les pays ayant signé la convention créant la Cour.

* * *

Ces considérations tendent à faire ressortir que si l'idée de créer une Cour Internationale est excellente et doit se réaliser un jour, elle nécessite cependant une étude approfondie pour laquelle le temps a fait défaut.

Mais à première vue, il apparaît que l'on ne pourra réussir qu'a deux conditions, tout au moins au début.

1° Le recours à la Cour Internationale doit rester strictement facultatif ; ce sont les parties qui doivent décider si elles lui soumettront leurs différents.

2° La Cour ne doit connaître que de l'interprétation et de l'application des normes maritimes et aériennes antérieurement établies et acceptées par des conventions internationales ; c'est dans ces matières seules que l'on peut espérer, pour le moment du moins, une uniformité ; dans les autres, le caractère national domine trop pour créer une jurisprudence interétatique.

Il faut ainsi poser un premier jalon vers une jurisdiction internationale complète.

Cette Cour créera nécessairement une jurisprudence uniforme pour de nombreux pays et une stabilité dans la définition des droits et des devoirs de chacun. Elle pourra même, en raison de son expérience, suggérer des règles nouvelles, que les Etats auront intérêt à accepter et créer ainsi peu à peu une législation identique dans divers pays.

Lorsque les justiciables se seront rendus compte de la haute qualité de cette justice, ils amèneront tout naturellement leurs gouvernements respectifs à la rendre obligatoire, et ce sera un nouveau lien entre les Etats, un nouvel élément de Paix.

NORVÈGE

ASSOCIATION NORVEGIENNE DE DROIT MARITIME.

RAPPORT

sur la Convention Internationale relative à la Limitation de la Responsabilité des Propriétaires des Navire, datée de Bruxelles, le 25 août 1924.

Ce rapport a été rédigé en collaboration avec une commission composée de MM. :

Sjur Braekhus, professeur de droit maritime,
H. C. Bugge, directeur de Sjöassurandörenes Centralforening,
Per Gram, avocat, Nordisk Skibsrederforening,
Sverre Holt, Capitaine, Wilhelm Wilhelmsen.

Le rapport ainsi que l'avant-projet de convention y annexé, a été approuvé par le bureau de l'Association norvégienne, en présence de MM. :

le Juge Edvin Alten,
Professeur Sjur Braekhus,
Juge E. C. Eckhoff,
Avocat Per Gram, et
Capitaine Sverre Holt.

Le temps a fait défaut pour mettre ce rapport en discussion à l'assemblée générale de notre Association.

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1. **Principes généraux.**

L'article 15 de la Convention contient une disposition relative à la valeur-or, qui provoque des difficultés à raison des taux de change actuels, ce qui a empêché certains pays de ratifier la Convention. C'est pourquoi la question d'une révision de l'art. 15 a été soulevée.

A notre avis, une solution séparée du problème de la valeur-or n'est pas possible ; il faut revoir toutes les dispositions de la Convention. On pourra alors proposér une convention amendée susceptible d'être acceptée plus généralement que la Convention actuelle.

Afin de résoudre le problème à cet égard, il convient de définir clairement le but des règles relatives à la limitation de la responsabilité des propriétaires de navire. La raison principale est que dans l'industrie maritime, les risques sont plus graves que dans d'autres. Pour encourager et protéger l'industrie maritime, la législateur a jugé nécessaire de prévoir en faveur des armateurs des exceptions aux règles usuelles de responsabilité. Le principe de base trouve son origine dans l'histoire et doit être accepté sans autre discussion ; mais à cet égard, il importe de souligner les considérations ci-après :

1) Actuellement les propriétaires de navire sont en mesure de couvrir leur responsabilité auprès d'assureurs sur corps et dans les Protection et Indemnity Clubs, ce qui est généralement le cas pour les grands navires effectuant un trafic international. Cependant le fait que la responsabilité peut être couverte par assurance n'enlève pas au principe de la limitation son importance. Mais l'importance fondamentale de l'assurance c'est qu'elle a pour effet de niveler les pertes. Ce ne sont que les catastrophes comportant des montants énormes de responsabilité qui peuvent être désastreuses pour les armateurs, et pareil désastre pourrait ruiner une entreprise autrement bien organisée, si ces dangers ne pouvaient être évités au moyen de l'assurance.

Du point de vue pratique les règles de la limitation trouveront actuellement leur justification dans le fait :

a) qu'elles fournissent une base praticable pour l'assurance de la responsabilité des armateurs, et

b) qu'elles maintiennent les primes pour ses assurances à un niveau raisonnable.

2) D'autre part, il ne faut pas perdre de vue les intérêts de ceux qui subissent un dommage ; la responsabilité ne doit pas être limitée de façon telle que les créanciers seraient pratiquement sans recours.

3) Il résulte de ce qui précède qu'on ne peut arriver à une limite appropriée de responsabilité par voie de déductions logiques. Il est vrai que, historiquement, la ,,fortune de mer'' a été le principe de base dans les différents systêmes de limitation, mais on ne peut prétendre que ce soit la seule ,,vraie''. La limite de responsabilité devrait au contraire être déterminée conformément au but que l'on a en vue. C'est pourquoi une grande variété de limites pourrait, en théorie, répondre aux exigences formulées sub 1 et 2 ci-dessus. Dans le cadre ainsi défini, il faudrait choisir, parmi

les limites possibles, celle qui donne la règle la plus simple et la moins ambigüe. Des limites finement ciselées comportant plusieurs additions et déductions, ne sont réellement plus de mise à raison de l'effet nivelant de l'assurance. Des dispositions simples et claires sur la limitation de la responsabilité des armateurs pourront éviter de diverses façons des frais et des difficultés, et elles auront plus de chances d'être acceptées internationalement.

Ces considérations seront développées plus avant ci-après. Tout d'abord la question du mode de limitation même et en second lieu la question des créances pour lesquelles la responsabilité devrait être limitée (c.à.d. le champ de limitation) seront examinées.

II. Mode de limitation.

L'alternative prévue dans la convention actuelle, à savoir la valeur du navire après l'accident ou £ 8 + 8 par tonne, est compliquée sans nécessité. Une limite suffirait.

S'il était possible de trouver une mesure de valeur internationale stable, la solution la plus simple au point de vue technique serait de fixer la limite de responsabilité au moyen d'un certain nombre de ces unités de valeur par tonneau de jauge du navire. Mais on sait que l'or ne peut plus servir comme une mesure internationale de valeur et les chances que les relations entre les diverses monnaies puissent devenir stabilisées internationalement sont plutôt minimes.

L'autre possibilité, la valeur du navire, doit donc avoir nécessairement la préférence. Techniquement, pareille limite n'est pas aussi bonne qu'une limite monétaire ; la valeur d'un navire ne peut pas être établie par l'arithmétique seulement. Mais il ne faut pas exagérer les difficultés du calcul de la valeur du navire au commencement ou à la fin du voyage. La valeur d'un navire est importante même d'après la Convention existante ; elle représente également un facteur bien connu dans d'autres branches du droit maritime, par exemple en matière de sauvetage et d'avarie commune. Une limitation à la valeur du navire présente cet avantage que la valeur des navires et, par voie de conséquence, la responsabilité des propriétaires de navire, suivront la tendance du marché mondial, de sorte que la responsabilité variera suivant la puissance financière de l'industrie de l'armement.

Ensuite se pose la question de savoir si c'est la valeur du navire avant ou après le sinistre qui doit devenir la règle. Tout le monde sait que dans

les systèmes continentaux, on a choisi la dernière solution, probablement parce que le principe de la limitation avait été formulé avant que l'assurance maritime se fût pleinement développée. Lorsqu'un navire faisait naufrage, le propriétaire perdait en même temps tout le capital qu'il y avait investi, et dans ces conditions il semblerait déraisonnable si en outre il avait à payer des indemnités. Toutefois, l'usage de plus en plus répandu de l'assurance sur corps a modifié cette situation : la perte du navire n'implique plus désormais la perte du capital investi, mais seulement un nouveau placement de capital. De plus, l'assurance recours de tiers a encore diminué la nécessité de la règle réduisant ou suppriment la responsabilité du propriétaire au cas où le navire est avarié ou perdu.

Dans le droit aérien, où des questions similaires surgissent mais où les solides traditions du droit maritime n'existent pas, personne ne voudrait jamais admettre une limitation de la responsabilité à la valeur de l'aéronef après le désastre ; le souci pour ceux qui subissent un dommage est évident dans ces cas, mais des considérations similaires se font valoir même en droit maritime.

La Convention de 1924 contient une solution intermédiaire : le propriétaire de navire est responsable à concurrence d'un maximum de 10 % de la valeur du navire au commencement du voyage + la valeur à la fin de voyage + une indemnité pour dommages et contribution en avarie commune du chef de dégâts matériels subis par le navire depuis le début du voyage et non réparés; en plus, quand y a des lésions corporelles, £ 8 par tonne. Lorsque plus d'un accident survient au cours du même voyage, la diminution de valeur causée par le dernier accident n'entrera pas en ligne de compte pour déterminer la limite de responsabilité à raison du premier accident. Cela est bien trop compliqué. La valeur du navire avant l'accident, sans aucune déduction ou addition, donne une limite beaucoup plus simple, couvrant de façon raisonnable ceux qui subissent un dommage.

Toutefois, à raison des prix élevés de la construction maritime, l'adoption de pareille limite équivaudra à une augmentation très considérable de la responsabilité comparativement à la limite actuelle de £ 8. Afin de rendre la transition plus aisée et de faciliter l'acceptation d'amendements à la Convention, la limite de responsabilité pourrait donc être fixée à 50 % de la valeur du navire avant l'accident ; mais la limite de responsabilité pour les lésions corporelles sera augmentée à concurrence de la valeur entière.

En examinant l'augmentation suggérée de la limite de responsabilité, il

ne faut pas trop se préoccuper de la responsabilité pour chaque navire séparément ; il faut prendre en considération le nombre total des cas où des questions de limitation de responsabilité peuvent se présenter, multiplier ce chiffre par la différence entre les deux limites de responsabilité et diviser le résultat par le chiffre du tonnage total assuré. De cette façon on obtient la charge que représente la responsabilité pour chaque navire séparément.

Il semble impossible de calculer exactement cette augmentation, mais il est permis de supposer que l'augmentation des primes d'assurance sur corps et des contributions aux Protection et Indemnity Clubs à payer par les propriétaires de navire, sera négligeable comparativement à toutes les autres charges qui sont des facteurs décisifs pour les bénéfices de l'armement, plus spécialement la fréquence des accidents et les fluctuations du marché des frets.

Il y a lieu également de se rappeler qu'à l'origine la limite de £ 8 par tonne a été adoptée comme représentant approximativement la valeur du navire ; si cette limite ne correspond actuellement qu'à env. 10-20 % de cette valeur, cela est simplement une conséquence, non souhaitée mais inévitable, de l'inflation. Une nouvelle inflation aurait pour résultat d'enlever de toute signification de la responsabilité en vertu des règles actuelles, et alors une intervention du législateur pour y porter remède sera inévitable.

III. **Le champ de la limitation.**

La limitation ne devrait s'appliquer qu'aux obligations qui, à raison de leur nature, peuvent atteindre des sommes élevées. Par conséquant certaines autres catégories de responsabilité devraient disparaître du champ de la limitation. Cela simplifierait la Convention et la ferait ressembler davantage au système anglais, augmentant ainsi les chances d'une acceptation internationale étendue.

1) Le plus grand besoin de limitation semble exister pour la responsabilité des propriétaires de navire du chef de dommages aux biens et de lésions corporelles, avec ou sans liens contractuels, causés par le capitaine l'équipage, le pilote ou autres personnes au service du navire. Dans cette catégorie se classe la responsabilité envers les propriétaires de cargaison et les passagers, la responsabilité du chef d'abordage et des dommages aux quais, docks, etc. C'est le champ actuellement couvert par la Convention dans l'art. I, N° 3 et l'art. 7.

2) Les catégories de responsabilité mentionnées dans l'art. 1, N° 3, 4 et 5, devraient être soustraites de la limitation. Par elle-même la responsabilité dans ces cas atteindra difficilement un montant tel qu'on doive réclamer une limitation. Mais ajoutée à la responsabilité conformément au N° 1 et 2, elle peut dépasser la limite.

Dans la pratique cependant, la limitation dans ces cas sera de minime importance pour l'assureur des recours de tiers. L'assureur ou le Club ne peut en aucun cas considérer le montant de la limitation comme un maximum absolu de ses engagements. Chaque voyage peut comporter des accidents entraînant une responsabilité ; même plus d'un accident distinct peut se produire au cours d'un même voyage et pour chaque accident le propriétaire sera responsable à concurrence du montant de la limitation. La responsabilité totale dans une période déterminée dépendra donc non seulement de montant de la limitation, mais aussi de la fréquence des accidents. Les légères rectifications suggérées par la limitation des catégories mentionnées sub N°3, 4 et 8 sont donc peu importantes ; ce sont précisément ces correctifs détaillés de la limite de responsabilité contre laquelle nous avons mis en garde sub I i.f.

3) De même les catégories de responsabilité mentionées à l'art. I N° 6 et 7 (responsabilité pour rémunération de sauvetage et contribution en avarie commune) devraient être supprimées de la limitation. Ces responsabilités sont déjà limitées en vertu d'autres règles :

La rénumération de sauvetage ne peut excéder les valeurs sauvées. (Voir Convention de Bruxelles de 1910 sur le Sauvetage, art. 2, 3).

Les contributions en avarie commune se feront sur la valeur des intérêts contribuants à la fin du voyage (Voir Y. A. R. G. et XVII), et ne dépasseront que très rarement ces valeurs. Si l'on enlève du champ de la limitation les contributions en avarie commune dans la présente convention, il paraîtrait naturel d'établir une limitation spéciale similaire à celle qui est applicable à la rénumération de sauvetage : à savoir que la contribution en avarie commune ne peut être supérieure la valeur contributive.

La rénumération de sauvetage aussi bien que la contribution en avarie commune ont un privilège de rang élevé dans l'ordre des priorités. (Voir Convention de Bruxelles de 1926 relative aux Priviléges Maritimes etc. Art. 1 N° 3). Même sous l'empire de la présente convention sur la Limitation de la Responsabilité, ces créances seront toujours couvertes en pratique. La limitation de responsabilité aura donc comme seul effet qu'il restera moins pour couvrir d'autres créances. C'est là le principe de ,,la

valeur du navire à la fin du voyage'' poussé jusqu'à ses dernières conséquences ; la valeur pour le propriétaire atteint exactement la pleine valeur, moins rémunération de sauvetage et contributions en avarie comme. Si la valeur avant l'accident devient la base, la raison de cette limitation spéciale disparatra.

Quant à la nécessité de maintenir la responsabilité totale de l'armateur dans des limites raisonnables, nous nous référons à ce qui est dit sub N° 2 ci-dessus.

4) Le groupe de responsabilités mentionnées à l'art. 1, N° 5 se trouve dans une position intermédiaire. Sans doute, ici la limitation de responsabilité est bien fondée, mais lorsque — comme ici — il est question d'une responsabilité sans ,,culpa'' (responsabilité stricte), il semblerait naturel de limiter la responsabilité à la valeur de l'épave ; cela correspondrait aux règles de responsabilité pour la rénumération de sauvetage et la contribution en avarie commune.

Ce n'est que lorsque la perte est due à la faute ou la négligence du Capitaine, de l'quipage, du pilote ou autre préposés du navire, qu'on devrait admettre une responsabilité au-delà de la valeur de l'épave ; mais même dans ces cas, elle devrait être limitée de la même manière que la responsabilité mentionnée à l'art. 1, N° 1 et 2.

Ce qui suit est un avant-projet de Convention amendée, basé sur ces principes généraux. Ce projet a simplement pour but d'indiquer les modifications suggérées sur des questions de principe ; nombre de détails doivent encore faire l'objet d'études et de décisions complémentaires.

Oslo, 30 novembre 1948 Sjur Braekhus.

ANNEXE au rapport de M. Braekhus.

Avant-projet de convention

sur la limitation de la responsabilité des propriétaires de navires de mer.

Article I.

1) La responsabilité du propriétaire d'un navire de mer à raison de créances pour des indemnités basées sur un contrat ou un délit du chef de dommages causés à terre ou sur mer, par des actes ou des omissions du capitaine, de l'équipage, du pilote ou de toute autre personne au service

du navire, sera limitée pour les dommages aux biens à la moitié de la valeur du navire.

2) S'il s'agit d'indemnités pour perte de vies humaines ou de lésions coporelles, la limite sera, moyennant les conditions ci-dessus, augmentée à concurrence de la pleine valeur du navire.

3) La responsabilité du propriétaire relativement à l'obligation de renflouer l'épave d'un navire coulé et d'obligations connexes, sera comprise dans la limite prévue au paragraphe 1).

4) Si la responsabilité du propriétaire résulte d'accidents distincts, les limites prévues s'appliqueront aux créances résultant de chaque accident séparément.

Article 2.

1) La valeur du navire s'entend de sa valeur avant l'accident donnant lieu aux créances énumérées dans l'article 1, et si l'accident est survenu en mer, de la valeur au départ du navire du dernier port.

2) La valeur du navire comprend toutes sortes de machineries, voiles, garnitures et équipement, à la seule exception des victuailles, du combustible et autres choses nécessaires pour les machines.

Article 3.

1) La limitation de responsabilité édictée dans les articles précédents ne s'applique pas aux créances résultant de la faute du propriétaire du navire.

2) Si le propriétaire ou un co-propriétaire du navire est en même temps son capitaine, il ne peut se prévaloir de la limitation de responsabilité pour ses fautes personnelles, à la seule exception des fautes de navigation ou de la conduite du navire.

Article 4.

1) Les diverses créances résultant d'un même accident seront payées au moyen d'un fonds qui, à leur égard, représente l'étendue de la responsabilité du propriétaire, tout en tenant compte du rang des priviléges.

2) Les créances énumérées au paragraphe 2 de l'article 1 seront acquittées au moyen du fonds qui leur est réservé. Si elles ne sont pas couvertes intégralement au moyen de ce fonds, le solde sera payé au moyen du fonds constitué au paragraphe I du même article, en tenant compte toutefois du rang des priviléges.

2) En toutes procédures de distribution des fonds ci-dessus, les décisions judiciaires rendues par les tribunaux compétents des Etats contractants vaudront preuve prima facie des créances.

Article 5.

Le propriétaire qui se prévaut de la limitation de sa responsabilité est tenu de faire la preuve de la valeur du navire.

Article 6.

Lorsqu'un exploitant d'un navire, qui n'en est pas le propriétaire, ou un affréteur est tenu de créances mentionnées à l'article, les dispositions de la convention s'appliqueront également en sa faveur.

Article 7.

— rempl. l'art. 8

Article 8.

— rempl. l'art. 9

Articles 9-11.

— rempl. art. 12-14.

Articles 12-17.

— rempl. art. 16-21.

NORVEGE

Limitation de la Responsabilité des Propriétaires de Navires, Connaissements.

CLAUSE-OR

Comme suite à l'invitation formulée dans votre lettre du 15 janvier dernier, l'Association Norvégienne a étudié les differentes propositions formulées par les membres de la Commission de la Clause-or.

En ce qui concerne la Convention sur la **Limitation de la Responsabilité,** notre Association adopte la proposition faite par le membre norvégien de la Commission. Nos considérations qu'une simplification des règles, qui fait l'objet de cette proposition, constitue un avantage considérable ; eu égard au développement actuel de l'assurance, les limitations suggérées ne doivent pas être de nature à augmenter les frais des propriétaires de navire de façon appréciable.

Quant à la proposition belge, notre Association tient à signaler qu'elle est de nature à compliquer encore les dispositions de la Convention.

Pour ce qui est de la **Convention sur les Connaissements,** nous avons examiné avec intérêt la proposition française de remplacer la limite de £ 100 prévue à l'art. 4 n° 5 et l'article 9, par une limite représentant dix fois le fret. Nous sommes toutefois d'avis que cette proposition devrait être étudiée de plus près. Ainsi, il paraît évident qu'un multiple plus élevé que dix fois le fret devrait être fixé. Dans le trafic européen, une limite de dix fois le fret représentera une réduction considérable de la responsabilité comparativement à la règle existante.

En outre, nous recommandons un examen plus approfondi de la proposition italienne tendant à modifier l'art. 10 de la Convention en ce sens que la convention s'appliquera dans tous les cas où les intéressés appartiennent à des Etats contractants, sans égard au fait si le connaissement à été emis ou non dans un Etat contractant.

Il faudrait examiner en même temps la possibilité d'adopter une disposition fixant la loi nationale relative aux Règles de la Haye qui aura la préférence au cas ou plusieurs de ces lois sont applicables. Pour le moment, nous nous contentons de suggérer une disposition dans le sens que voici :

« Lorsque les intéressés sont domiciliés dans des pays differents, et le » déchargement a lieu dans un Etat contractant, c'est la loi de ce dernier » pays qui s'appliquera. En tous autres cas, la loi nationale du transpor- » teur sera applicable. »

PAYS-BAS

ASSOCIATION NEERLANDAISE DE DROIT MARITIME

Saisie conservatoire de navires.

1. De façon générale, l'Association Néerlandaise de Droit Maritime se déclare en faveur de la suggestion contenue dans les remarques préliminaires précédant le Questionnaire, à savoir l'idée de l'unification internationale du droit régissant la saisie des navires, par la voie d'une convention internationale.

Ainsi qu'il résulte des divers rapports annexés au questionnaire, des divergences considérables existent actuellement entre les législation nationales des divers pays en la matière.

De façon générale, on peut dire qu'il y a trois systèmes différents : celui qui donne la plus grande latitude tant en ce qui concerne les biens (y compris les navires) qui peuvent être sujets à saisie, qu'en ce qui concerne les créances du chef desquelles cette saisie peut être pratiquée ; en vertu de ce système tout navire peut être saisi à raison de toute créance à charge de son propriétaire. Il y a ensuite le système d'après lequel un navire peut être saisi à raison de toutes dettes appelées « maritimes » de son propriétaire, y compris les créances résultant de l'exploitation d'un autre navire par le même armateur ou y relatives, mais à l'exclusion des dettes non-maritimes. Enfin le troisième système selon lequel un navire ne peut être saisi qu'à raison de créances maritimes surgissant à propos de l'exploitation de ce même navire.

Au point de vue international, cette situation est peu satisfaisante non seulement pour les propriétaires de navires et leurs assureurs, mais aussi pour les créanciers et leurs assureurs. C'est pourquoi il est hautement désirable d'établir un système international uniforme.

Eu égard aux grandes divergences existant entre les diverses législations nationales, il semble bien que l'uniformité ne peut être atteinte que par la voie d'une transaction ; d'une part les pays dont la législation accorde les possibilités de saisie les plus étendues (c.à.d. les pays continen-

taux) consentant à réduire ces possibilités, tandis que les autres pays (plus spécialement l'Angleterre) devraient étendre les possibilités de saisie. Il semble bien qu'il y aurait pas d'objection à limiter cette transaction au domaine international, c.à.d. en la limitant à la convention internationale, tout en permettent à chaque pays soit de maintenir leur loi nationale actuelle pour tous les cas ne tombant pas sous l'application de la convention sauf naturellement à adapter leur loi nationale entièrement ou partiellement à la convention, pour autant qu'une modification de la loi nationale pourrait être requise afin de mettre la convention en vigueur, par exemple au point de vue de la compétence.

II. D'après la loi néerlandaise, aucun navire d'Etat étranger ne peut être saisi si ce n'est dans les cas où cette saisie est permise en vertu de la Convention internationale sur l'Immunité des Navires d'Etat.

A première vue, il n'existe aucune raison de réexaminer la question de cette immunité à propos du problème actuellement en discussion.

III. **Questionnaire.**

Remarques préliminaires.

1. En répondant aux diverses questions posées, l'Association Néerlandaise se réfère tout d'abord au rapport de M. J. T. Asser qui était annexé au questionnaire.

Toutefois, il y a lieu de remarquer que ce rapport doit être amendé sur les deux points que voici :

(1) Section I § 4 contient l'énumération des cas dans lesquels les tribunaux néerlandais sont compétents. Il faut y ajouter les deux les deux sous-sections suivantes, à savoir :

(f) au cas d'abordage, lorsque la collision survient dans les eaux territoriales néerlandaises ou lorsque le navire défendeur est inscrit au registre néerlandais, où lorsque le navire est saisi aux Pays-Bas.

(g) au cas de sauvetage, lorsque celui-ci a lieu dans les eaux territoriales néerlandaises ou lorsque les biens sauvés sont amenés aux Pays-Bas, ou si le navire y est saisi en vue de garantir la créance du chef d'indemnité de sauvetage.

(ii) En tant que la saisie dont question sub (f) résulte des articles 542 et 543 du code de commerce néerlandais, et que la saisie

dont question sub (g) résulte des articles 566 et 570 du même code, il y aurait lieu d'ajouter au § 1 de la section I du rapport les mots « et dans le code de commerce. »

2. En vertu de la loi néerlandaise, c'est l'armateur-exploitant et non le propriétaire effectif d'un navire qui est généralement responsable du chef de ce qu'on appelle brièvement des « dettes maritimes » (Voir p. 5 et 6 du rapport de M. Asser).

Lorsque l'exploitant n'est pas le propriétaire du navire, les dettes maritimes encourues par l'exploitant peuvent être récupérées sur le navire, mais seulement lorsque ces dettes sont privilégiées d'après le code de commerce.

En outre, toutes dettes privilégiées à l'exception de celles surgissant à raison du navire ou résultant des affaires maritimes ou qui sont basées sur la responsabilité de l'exploitant du navire telles qu'elles sont définies dans l'art. 321 du code de commerce (*) continuent à grever le navire en cas de changement de propriétaire.

Toutefois, il est généralement admis que lorsque l'exploitant n'est pas le propriétaire du navire, le créancier privilégié n'a pas le droit de saisir le navire sauf pour des créances résultant d'abordage ou de sauvetage. Pour toutes autres dettes privilégiées, il faut obtenir au préalable un jugement contre l'exploitant. Ce jugement peut ensuite être exécuté sur le navire en le saisissant. En pareil cas, il est recommandable d'appeler au procès le propriétaire comme tierce partie

Réponses aux questions.

1e **Question :** Pour quelles créances un navire peut-il être saisi d'après votre loi nationale ?

Réponse : En droit néerlandais, un navire peut être saisi à raison de toutes créances quelconques à charge de son propriétaire. En outre le navire peut être saisi pour toutes créances resultant d'abordage ou de sauvetage à charge de l'exploitant non-propriétaire.

2me **Question :** Peut-on, d'après votre loi nationale saisir d'autres biens qu'un navire à raison de ces créances ?

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* Les mots entre parenthèses sont repris de l'art. 3189 du Code de Commerce.

A la page 4, Sect. (VI) du rapport de M. Asser sont indiquées les dettes dont il s'agit.

Réponse. En droit néerlandais, tous les biens du propriétaire peuvent être saisis à raison de toutes créances à charge de ce propriétaire.

Lorsque l'exploitant du navire n'en est pas le propriétaire, tous les biens de cet exploitant peuvent être saisis à raison de toutes créances de quelque nature qu'elles soient à charge de cet exploitant.

De plus, un navire exploité par un armateur non-propriétaire peut être saisi à raison de créances du chef d'abordage ou de sauvetage.

3me **Question :** D'autres navires appartenant au même propriétaire que celui à raison auquel la créance est née peuvent-ils être saisis ?

Réponse. Voir les réponses aux questions 1 et 2.

4me **Question :** Au cas où un jugement est rendu en faveur d'un créancier, quels sont les biens pouvant être saisis pour exécuter ce jugement ?

Réponse. D'après le droit néerlandais, un jugement peut être exécuté par la saisie de tous les biens du défendeur. Par conséquent, un jugement obtenu contre le propriétaire d'un navire du chef d'une créance quelconque peut être exécuté sur tous ses biens. Un jugement obtenu contre l'armateur non-propriétaire d'un navire du chef d'une créance maritime privilégiée peut être exécuté sur tous les biens de cet armateur ainsi que sur le navire lui-même, pourvu que toutes les mesures nécessaires aient été prises.

5me **Question :** Que dispose votre loi nationale au sujet de créances maritimes privilégiées ou de privilèges maritimes par rapport au droit de saisie-arrêt ou de saisie exécution ?

Réponse : Voir le rapport de M. Asser, les observations préliminaires dans le § III de ce rapport et la réponse à la question 4 ci-dessus.

6me **Question :** Etes-vous d'avis que l'unification internationale du droit de saisie est désirable ?

Réponse : Oui, l'avant projet de convention de Paris (1937) relatif à la saisie des navires ne traite que du cas d'abordage et est donc trop restreint.

7me **Question :** Dans l'affirmative sur quelle base le C.M.I. doit-il proposer cette unification, eu égard aux divergences dans les lois nationales, spécialement entre le droit anglo-saxon d'une part et les lois continentales d'autre part ?

Réponse : De l'avis de l'Association Néerlandaise, on pourrait trouver une base d'unification en limitant dans le droit continental, la possibilité de saisie d'un navire aux « créances maritimes » à charge du propriétaire et en étendant, dans le système anglo-saxon, le droit de saisie à tous les navires appartenant au même propriétaire à raison de ces créances, à condition toutefois qu'il soit possible d'énumerer et de définir avec précision quelles sont ces « créances maritimes ».

A cette fin, l'Association Néerlandaise propose la désignation d'une commission internationale chargée d'étudier le problème et de faire rapport à la prochaine conférence du Comité Maritime International.

En outre une convention sur la matière devrait se limiter à règler le droit de saisie du chef de créances qui ne résultent pas du droit public, y compris les lois le finance. d'impôt et d'accises.

IV. Questions a et b du Questionnaire.

Ainsi qu'il a déjà été exposé dans le rapport de M. Asser (pages 5 et 6), l'art. 320 du code de commerce qualifie d'« exploitant » : « celui qui emploie le navire à des buts maritimes (navigation) et conduit lui-même le navire ou en charge un capitaine à son service ».

Dans la pratique, l'exploitant est celui qui désigne le capitaine.

En outre ce même rapport (page 6) énumère une série de circonstances dans lesquelles l'exploitant d'un navire n'en est pas le propriétaire légal.

D'après le droit anglais, l'exploitant est tenu de toutes dettes qu'il encourt personnellement comme armateur ainsi que de tous les contrats conclus par ceux qui sont, à titre temporaire ou permanent, au service du navire durant et dans l'exercice de leur fonction et enfin de tous quasi-délits commis par ceux qui sont, à titre permanent ou temporaire, au service du navire ou exécutant des travaux à bord de celui-ci au profit du navire ou de la cargaison (art. 321 du code de commerce).

Pour toutes ces dettes, une action doit donc être intentée à l'armateur exploitant du navire, qu'il en soit ou non le propriétaire légal.

Dès lors, il paraît désirable de tenir compte de cette distinction entre le propriétaire et l'exploitant non-propriétaire, dans toute convention internationale dans laquelle il s'agit de dettes maritimes.

Jusqu'ici, pareille distinction n'a été faite que dans la Convention Internationale pour l'Unification de Certaines Règles concernant la Limitation de la Responsablilité des Propriétaires de Navires et dans la Conven-

tion Internationale pour l'Unification de certaines Règles concernant les Hypothèques et Privilèges Maritimes. Cet état de choses pourrait donner lieu, dans le domaine international, à bien des incertitudes et des complications. C'est pourquoi il semble désirable d'arriver à un accord international règlant toute la matière ; cela pourrait se faire par la voie d'une Convention internationale créant un droit uniforme ou décrétant une règle uniforme en cas de conflit

Nous proposons donc de soumettre également cette question à la Commission internationale dont il est question au paragraphe III ci-dessus.

Août 1949.

MEMORANDUM

concerning a preliminary draft of an international convention concerning certain rules relating to contract of combined carriage of goods

elaborated by

the SOUS-COMITE DES USAGERS of the INTERNATIONAL CHAMBER OF COMMERCE 1949.

One of the deplorable consequences of the late two world ware has been the introduction of more and more hindering barriers to international commerce.

At every congress, of late, the International Chamber of Commerce has considered measures for removing these barriers. The Havana Charter is one step in this direction. But the difficulties consisting in different national interests have been great.

Removal of barriere is however only the negative side of promoting international commerce. The positive side, the development of f.i. the most important factor of international trade, viz. the international transports, offers a much more encouraging aspect.

A comparison between the carrying capacity of the old means of the transport, by sea and by rail, as it is now and as it was before the ware shows a striking increase of their capacity and speed. To this come the new means of transport, the transport by road and by air, which are developing their possibilities of carrying goods in a most astonishing way.

This increase of the carrying capacity is of course of the utmost importance to international trade. But it may lead to a competition between the carriers which can in the long run have unfavorable consequences also to international commerce. Cooperation and ,,Suum cuique'' — to everyone his due — ought to be the motto to be followed, how difficult it may be.

Are there then possibilities to increase the effectiveness of international transport to the advantage of international commerce without encroaching

on the legitimate interests of the carriers ? Of course there are such possibilities as f.i. better harbours, better and faster means of loading and unloading, better service on land, better pilot- and lighthouse service etc. which may be promoted internationally. But even international legislation as regards the contract of transport may be useful.

Through an international legislation as regards contracts of carriage in international trade the parties to the contract get to know easier than if they have to deal with different national laws, whose contents and applicability often are not easy to state, their juridical rights and responsibilities — on the presumtion, of course, that the international legislation is accepted by a considerable number of important commercial countries.

Another advantage of an international legislation is that countries having discriminating and nationalistic laws must when adhering to an international legislation, abandon these nationalistic tendencies.

Internatinoal maritime legislation has often been met with resistance or indifference on the side of the shipowners. So was the case f.i. with the legislation concerning the unification of certain rules relative to bills of lading. But when the shipowners were, after the first world war, prevalied upon by the British Government to accept rules in that respect, they took the matter in their own hands, through the International Maritime Committee and the International Law Association, and the result was the Hague Rules, which though not always clear and well drafted, anyhow seem to have worked in a satisfactory way.

Other maritime conventions have been drafted by the International Maritime Committee and accepted by the Brussels Diplomatic Conference but have, most of them, not been ratified by the greater seafaring countries. I do not know the reason ; whether the shipowners are considering them unfavourable to their interests or whether the lawyers do not like them because lawyers are traditionally in favour of their own national legislation.

When now presenting to you the preliminary Draft-Convention elaborated by the Sous-Comité des Usagers of the International Chamber of Commerce I have, of course, to take into consideration the feelings of these two very powerful groupes of the maritime community.

I will first, following what I have said earlier about the desirability of helping the international commerce not only by removing barriers but also by positive measures, in this case by international legislation as regards certain contracts of transport, try to explain why I think that an

international legislation concerning document of combined transport could be useful.

There exists at present, I have been told, a certain cooperation between carriers using different means of transport for the forwarding of goods from one place to another which cannot be reached by a single mean of transport. Such a cooperation is far from universal but seems to exist to a certain extent between sea and rail transport, sea and road transport, rail and road transport and also between air and some of the other means of transport.

I suppose that nobody can deny that to the international commerce a development of such a co-operation is desirable.

It has been said, however, that international commerce has not shown any active interest for such a development of transport facilities. I think that this passivity, if it exists, is more due to the very active disinclination of the shipowners to such a development and that if the shipowners would change their attitude, the merchants and their insurers would be only too glad.

It seems difficult to understand that the merchant who is bound to use more than one mean of transport should not consider it to be a great advantage to have to address himself only to the first carrier and from him get a document of title covering the whole transport which enables the holder of the document to get the goods (or damages if lost or damaged) from the last carrier. This is, in reality, only the same arrangement which has made the maritime bill of lading indispensable for international contracts of sale. But the advantages of such a document are, in combined transport not limited to those of the maritime bill of lading. In the combined transport there must be a transshipment of the goods at every place where there is a change of means of transport. The sender of the goods must then for each transshipment have a contract with a forwarding agent in conformity, generally, with the law and the custom of the place of transshipment. No international legislation restricts at present the use of negligence clauses on the part of the forwarding agents or other people who on land take care of the goods. The sender of the goods and his insurer are more or less defenceless in this respect.

The carrier, of course, now may take the position that he will have no responsibility for the goods when they are out of his reach. He may say : I will not be responsible for what happens to the goods when I cannot take care of them myself.

This principle is quite right in the cass of an ordinary maritime bill of lading but if it is upheld in combined carriage the consequences are the following. If the first carrier issues a document of title covering the whole voyage, the document gives the holder of the document the right to claim the goods from anyone of the carriers or from any other who has the goods in his care during the voyage. If the goods are lost or damaged or the transport unduly delayed, the holder of the document however may claim damages only when he can prove that the damage had arisen when the co-operating carrier, the intermediary agent or any other against whom the claim for damages is made, had the goods in his care, when the damage arose. If the holder of the document can prove that the damage has arisen during the combined transport but can not prove when and where during that transport it arose, he gets no damages. And if a carrier or another holder of the goods, who is not bound by compulsory international rules against negligence clauses and the like, exonorates himself by such a clause, the holder of the document of title to the goods gets no damages. And the holder of the document can not turn to the last carrier for propayment of damages for which any of the other co-operating parties in the combined transport are responsible.

This state of things deprives the document of such a title of combined transport of much of the value which has the ordinary maritime bill of lading. The holder of such a bill of lading is in a good position. There is only one carrier. If the goods are lost or damaged or delayed he has only to prove — partly by the content of the bill of lading — the loss he has suffered. Through the Hague Rules he is generally protected against clauses which nullify the responsibility of the carrier. The party to the contract of sale on whom is the risk of the transport can have it insured. The seller can get his money quickly by way of documentary credit (rembours).

Is there no possibility to give to the document of title of combined carriage the same value as has at present the bill of lading ? The difficulty is, course, that in the combined carriage there are more than one carrier and that the shipowners, even though they are co-operating, will not, as the railways are doing according to the Berne convention, take on themselves to make, as against the holder of the document of title, a prepayment of damages due to him for loss or damage for which the prepaying carrier is not finally responsible.

The reason why the shipowners seem to object to such a prepayment is, I suppose, the uncertainty whether the paying carrier will get the money

prepaid back from the responsible carrier with whom he is co-operating. It is here a question of trusting the people with whom one is co-operating and of having a good knowledge of their financial situation. And it is a question whether the carrier who has to make the prepayment has the sufficient means for this outlay of money. And, at last, that there will be no difficulties of repayment because of exceptions of non-responsibility.

The last-named difficulty can, of course, be avoided by legislation. The others which are matters of trust and organisation must be solved by the co-operating carriere themselves. If they can not do it they should not make use of the international legislation offered to them and their clients.

The proposed international legislation is a purely voluntary one. This voluntary character may in an international legislation come to an expression in two ways. Either so that the co-operating carriers together announce to an international institution created for that purpose, that they want the legislation to apply to certain of their co-operative transports. The applicability of the legislation ceases when a wish to this respect is registered. Or the legislation may be applicable provided it is not inserted in the document of title that this shall not be the case, or, the other way round, the legislation may be made applicable only where it is inserted in the document of title that this shall be the case.

In this way it shall depend on the carriers themselves whether they will make use of the legislation or not. They will do only if they can organize their co-operative combined transport service in such a way that economical difficulties mentioned above can be avoided.

According to the Draft-Convention the first and the last carrier are subject to the obligation of prepayment. To the holder of the document of title it is, of course, especially important that he can turn to the last carrier for getting the damages due to him and not have to address himself to one carrier after another in foreign countries for getting payment. There should be considered whether some arrangement between the co-operating carriers can not be made making it possible to the last carrier to fulfil this duty and to get back the prepaid damages from the carrier whose responsibility is proved.

If it can be proved that the loss, damage or delay has arisen during the voyage but not when and where it has happened, the choice is between dividing up the loss between the co-operating carriers or to let the holder of the document be without compensation. From a practical point of view it may be better to let the carriers divide the loss. This may contribute

both to their interest to take care of the goods and to find out where the loss, damage or delay really has happened. This greater responsibility should be compensated by a higher freight.

But a loss, damage or delay may during such a combined transport happen when the goods are in the care of, not the carriers but forwarding agents, wharfingers, harbour authorities or customs. There is no reason why these people should not come under the same rules of responsibility as the carriers. These rules should also for them be compulsory just as they are for the carriers. The simplest way of carrying out such a scheme is to use also here the rule of prepayment viz. that the carrier who has to deliver the goods to the beneficiary, after the goods have been in the hands of such a person or authority on land, will have to settle the compensation for damage then arisen with the beneficiary and then get back the money from the person or authority who is responsible for the damage.

The transport of the goods which devolves upon each carrier being the transport from the moment the carrier receives the goods until ho has delivered them to a successive carrier or the beneficiary, each carrier is liable for damage incurred during this portion of the voyage. Where f.i. transshipment takes place during the voyage, the carrier who delivers the goods to the forwarding agent is liable to the beneficiary for damage incurred when the forwarding agent had the goods in his custody and care, but the carrier has a right under the compulsory rule of Article 33 to get his propaid money back from the forwarding agent.

If such a rule is introduced there will be no possibility for the forwarding agents, the harbour authorities or the customs, who have had the goods in their care when the loss, damage or delay arose, to avoid paying damages according to the rules of responsibility stipulated for the carriers in so far as these rules can be applied.

Such a compulsory stipulation making forwarding agents, harbour authorities, customs and other people who have the goods in their care when they are on land during the course of the combined transport, would probably make the people which thus are responsible for the goods more anxious than they now seem to be not to expose the goods to damage or loss by theft.

If the principles of the Draft-Convention elaborated by the Sous-Comité des Usagers are accepted this will mean also an important step in the extension of the application of the Hague Rules and the Berne and Warsaw Conventions. In article 15 it is proposed that if there is a multilateral

Convention on the transport of goods this Convention shall be applicable as regards the liability of the carriers in all cases which come under the proposed Draft-Convention. In this way the applicability of the Hague Rules and the Berne and Warsaw Conventions will in this respect be extended to all countries who ratify the Draft-Convention, even if the Hague Rules and the Berne and Warsaw Conventions are not ratified by them. The Draft-Convention will thus pave the way for a general unification of contracts of transport law.

A Committee, composed by members nominated by the International Road Union, the International Chamber of Commerce and the International Institute for the unification of private law and presided by me, has, in collaboration with the transport groups of the Sub-Committee of Road Transport of the E.C.E. at Geneva elaborated a Draft-Convention on international rules concerning the contract of transport by road. In this Draft the principles of the already existing transport Conventions, adopted to road transport, have been to a great extent accepted, amongst others the compulsory rule against negligence clauses.

If this Draft is turned into an international Convention, the system on which the Draft-Convention of a uniform document of title of combined transport is based will be complete. We have then internationallt valid uniform rules for contracts of carriage concerning all means of international carriage to which the Draft-Convention refers.

The Draft-Convention is divided in seven chapters and 34 articles. The first chapter : ,,The purpose and scope of the Convention'' ; the second : ,,Of the combined transport document'' ; the third : ,,Performance of contract of carriage'' ; the fourth : ,,Liability of the carriers'' ; the fifth : ,,Claims for compensation'' ; the sixth : ,,Claims between carriers ; and the seventh : ,,Miscellanous provisions''.

The most important chapters are the chapter of the combined transport document and of the liability of the carriers.

The rules of the combined transport document are very much like the rules of the transport document of the Hague Rules with amendments made necessary by the fact that here is a case of combined transport.

As is the case with the transport document of the Hague Rules the document is issued by the first carrier and covers the whole transport. But the fact that the transport shall be executed by more than one carrier makes it necessary that not only the first carrier but all carriers taking

part in the transport are bound by the document, issued by the first carrier (Art. 6).

Another amendment necessitated by the combined carriage is that at the request of the consigner or of the first carrier the stipulated route, the names of the subsequent carriers and their means of transport and details or limitations concerning the place of delivery shall be entered into the document of transport.

It may be necessary for the insurer of the goods to know the route and the means of transport. It may be nessary to the carriers to limit the places of delivery in case that the document of transport is to order or to the bearer (Art. 9).

In addition to the document of transport which, inter alia, states which goods the first carrier has received from the consignor, there ought in the combined carriage to be introduced a document dealing with the same question as regards the other carriers. The subsequent carriers cannot be made responsible if it can not be proved which goods they have received and the apparent order and condition of the goods.

Therefore Article 12 prescribes that at the delivery of the goods to the first carrier, the consignor shall furnish, in such a number of copies as the goods which, in addition to any other particulars as the parties may agree, shall contain the particulars which according to articles 7-8 shall be mentioned in the document of transport issued by the first carrier. Each carrier shall retain a copy of this consignment note. Each successive carrier shall, on the copy retained by the provious carrier, sign a declaration to the effect that he has received the goods into his charge and, if appropriate, make reservations as to the accuracy, at the time he received the goods, of the particulars supplied as to leading marks, number, quantity or weight and apparent order and condition in the transport document issued by the first carrier and in the consignment note. This consignment note is prima facte evidence between the carriers as regards the facts now named just as the document issued by the first carrier as regards the relations between the carriers and the beneficiary. (Art. 12. 2).

In this way every carrier who takes part in the combined carriage has the same means of proving which goods he has delivered and received as has, through the document of carriage, the carrier as against the consignor.

The carriers, with the exception of the first and the last carrier, are responsible only for the goods which they have received. (Arts 13 and 15).

The first and the last carrier in this respect hold a special position in the combined carriage.

The first carrier, whether he be only a forwarding agent, concluding the contract of carriage in his own name, or is a carrier, executing himself the first part of the transport, is the one who concludes with the consignor the contract of carriage for the whole voyage. It seems then appropriate that he should be primarily responsible for the contract concluded by him. He is the man who makes the arrangements with the carriers and forwarding agents and he ought to take the proper steps to prevent people co-operating with him who have not a good reputation.

The last carrier has not this possibility. He must, as often is the case in commercial life, trust the people with whom he is co-operating and abstain from doing business with people whom he does not trust.

If the last carrier himself has not such an economic position as to be able to settle not only the damage incurred during the portion of the transport which devolves upon him (Art. 15, 1) but also the prepayment of the claims for compensation for which the other carriers are responsible (Art. 15. 2), arrangements should be made between the carriers on the basis of Art. 24, to make such a prepayment economically possible. It seems not necessary to settle this matter in the Convention. The Committee has found it better to leave to the co-operating carriers to arrange this matter between themselves.

The obligation of prepayment thus established leads, of course, to a certain extent to a common responsibility for the carriers.

The principle is that each carrier is responsible only for damage incurred the portion of the transport which devolves upon him. If the damage has taken place during the combined transport but it can not be proved during which portion of the transport it has arisen, who is finally to pay? Evidently not the carrier who has made the prepayment. There must then in this case be a kind of common responsibility for the carriers to the carrier who has made the prepayment. This has been stipulated in Art. 24 c).

There is however another very important question of liability to be solved. According to which principles shall the responsibility of the carriers be determined ?

At present the responsibilty of the railways in Europe is regulated in the Berne Convention. This regulation, however, does not apply to railways in the British Commonwealth, America, Asia and African. For the

sen-transport there are the Hague Rules, but in many States they do not apply. The same is the case as regards the Warsaw Convention. For the contract of transport by road, which is growing in importance, there is at present no multilateral Convention.

It would therefore seem to be a natural and useful thing to try to draft uniform rules of responsibility as regards contracts of transport by these four means of carriage, let it be only for the limited domain of combined carriage.

In another Draft of a document of combined transport elaborated by me I made a try in this respect, taking as a basis the rules of responsibility of the Hague Rules but modifying them as to suit the other means of transport. This way of regulating the responsibility has to a certain extent been accepted in the aforcementioned Draft of international rules concerning contract of carriage by road.

At the meeting of the Sous-Comité des Usagers at Paris in the beginning of March 1949 the members of the Committee however found it too difficult in this respect to arrive at a uniformity as regards different means of transport. They profered to still let every kind of transport be governed by its own rules, which are adapted to that special mean of transport.

They met however then with another difficulty. The document of combined transport is meant not only for Europe but for the whole world, and especially for combined transports to and from the inner parts of Europe to and from the inner parts of the other continents. The Berne Convention does not, f.i., apply to the railways of these other continents. To apply to each case the national railway rules could, of course, formally be done but was not considered satisfactory.

The Committee therefore has made a very fargoing proposition. It is here a case of a restricted domain of international legislation viz. concerning combined transport in cases of voluntary co-operation between carriers. Such an international co-operation will chiefly take place between carriers who do business as liners, whether shipowners, airways, motorlorry owners or railways. States who would object to adhere to international rules which would have a far reaching effect would perhaps not object to accept rules for such a limited sphere as here is proposed. The application of the Berne Convention, the Hague Convention and the Warsaw Convention should then be extended in a way, which from the point of view of unification, would be very satisfactory.

There is, however, a domain of contract of transport where there are at

present no international rules viz. the transport by road. In this case then the national law would have to apply. It is however, as has previously been said, probable that in a near future this gap will be filled.

If there are nations, which are strictly opposed to the application of the rules of the above named Conventions they may, of course, if this is an indispensable condition for their adherence to the Draft-Convention, when ratifying the Convention make a reservation as to the use of their own laws as regards the principles of liability which in the Draft-Convention are dealt with in Article 15. 2, but each such reservation will of course meka the Convention less valuable from a practical point of view.

Where it has not been possible to determine during which portion of the transport the damage was incurred, an international uniform rule of responsibility is, of course, unavoidable. One cann of then in combined carriage have recourse to any national rule. The Draft-Convention for this case has followed the principle of responsibility which has at present won the widest application nationally and internatinnolly. The first and last carriers shall be exonerated from all liability provided they can prove that no fault or negligence of anyone who is under the Convention responsible for the goods contributed to the causing of the damage. Then no obligation of prepayment exists. But if they cannot prove this, then they will have to pay and those of the carriers who cannot exonerate themselves or those for which they have to answer will have to repay.

The introduction of the consignment note will however to a great extent prevent that it will not be possible to determine during which portion of the voyage the damage was incurred.

Another important matter is the limitation of the amount of the compensation to be paid. This question has so far been solved in a way different to that of the Hague Rules that ,,gross kilogram'' has been taken as a basis for the limitation. This corresponds with the stipulations in the other international transport Conventions with the exception of the Hague Rules.

Stockholm, 31 July 1949. Algot BAGGE.

Brussels Conference, 1948

REPORT OF THE INTERNATIONAL LAW ASSOCIATION ON AMENDMENT OF YORK-ANTWERP RULE XXII.

RAPPORT GENERAL

I

Objet du Rapport

Le Comité Maritime International, dans son assemblée tenue à Anvers avec le vœu que cette question soit portée à l'ordre du jour de sa proposition de revision de l'article XXII des Règles d'York et d'Anvers avec le vœu que cette question soit portée à l'ordre du jour de sa prochaine conférence.

Le Comité Exécutif de l'I.L.A. a prié, en conséquence, les sections régionales qui s'y intéressaient particulièrement, de lui communiquer un rapport exposant leur manière de voir. A ce jour, les sections britannique, française, néerlandaise et belge, ont donné suite à cette demande. Il y a lieu d'y ajouter les observations contenues dans la correspondance échangée entre certains membres anglais et américains de l'ILA. et notamment entre Sir W. McNair, Chairman du Comité britannique et M. Oscar Houston de la branche des Etats-Unis.

La motion du Comité Maritime International priait l'I.L.A. d'examiner l'opportunité de réviser la Règle XXII par l'élimination des taux d'intérêt, nécessairement variables, en vigueur au port de débarquement et, le cas échéant, par la fixation d'un taux applicable universellement. Les sections britannique et néerlandaise se sont strictement limitées à l'examen du problème ainsi déterminé.

Les sections française et belge ont étendu leur travail à la fixation

éventuelle explicite du moment où les intérêts dûs prendraient cours et de celui où ils cesseraient d'être alloués à leurs bénéficiaires.

L'objet du présent rapport est de proposer à la Conférence l'attitude à prendre sur les divers points ainsi définis au cours de l'étude préparatoire à laquelle ont procédé les sections régionales.

II

La Règle XXII.

A. Le taux fixe des intérêts moratoires doit-il être étendu à tous les cas d'avarie commune, sans égard au taux légal pratiqué au port de destination ?

Les rapports anglais, belge et néerlandais, sont d'accord pour l'affirmative. Tous trois admettent le caractère illogique dans son principe et inéquitable dans son application de la disposition actuelllement en vigueur.

De plus, la correspondance échangée entre les membres américains de l'I.L.A. et les membres britanniques, permet de prévoir l'adhésion des Etats-Unis.

Seul, le rapport français, tout en admettant les critiques dirigées contre la solution de Stockholm, se prononce pour le maintien de la formule actuelle, amendée toutefois en ce sens que le taux légal pratiqué au port de destination ne soit pris en considération que lorsqu'il est inférieur au taux fixe applicable à son défaut (actuellement 5%). Cette solution ne paraît pas entièrement satisfaisante, parce qu'elle laisserait subsister en cette hypothèse des anomalies regrettables auxquelles il est souhaité de mettre fin.

B. Quel doit être le taux fixe et uniforme ?

Les taux proposés dans les différents rapports sont les suivants :
Belgique — France — Pays-Bas : 5%.
Grande Bretagne : 4%ou, à défaut d'accord sur ce chiffre, 5%.
Etats-Unis 4% ou 5%.

Unanimement, il est convenu que le taux doit être suffisant pour ne pas détourner les armateurs de faire l'avance des frais nécessaires en recourant à d'autres procédés beaucoup plus onéreux. D'autre part, le souci s'affirme d'éviter autant que possible des revisions continuelles pour suivre les fluctuations du marché de l'argent.

Il semble donc que la Conférence sera amenée à fixer son choix dans la limite de 4 à 5%.

C. **La détermination du taux fixe est-elle actuellement opportune ?**

Les américains objectent les différences considérables qui existent entre les taux pratiqués dans les divers pays ainsi que la rapidité et la fréquence des modifications apportées à ces taux.

Cette objection, rencontrée notamment par le rapport britannique, semble devoir être écartée par la Conférence. Les circonstances actuelles ne permettent pas de prévoir une stabilisation plus grande dans une temps assez rapproché. Si l'objection était admise, on aboutirait à une remise indéfinie de la revision et au maintien du statu quo avec tous les inconvénients qu'il présente.

D. **A partir de quel moment et jusqu'à quelle date les intérêts moratoires doivent-ils courir ?**

Le texte de la règle XXII ne détermine pas **in terminis** le point de départ des intérêts. Mais les règles générales du droit suffisent à son interprétation. Pour les avances, les intérêts courent évidemment du jour où elles sont effectivement faites. Pour les sacrifices, ils prennent cours au jour où le propriétaire de la marchandise sacrifiée eût repris la disposition de son bien — c'est à dire au jour de l'arrivée au port de déchargement. Tous reconnaissent qu'aucune difficulté pratique ne s'est manifestée et aucune section ne propose de compléter à cet égard le texte de la règle XXII

Les intérêts moratoires ne cessent actuellement de courir qu'au jour du règlement d'avarie commune.

Les rapports français et belge font ressortir les inconvénients de cette solution, dérivant de la complexité du travail confié aux dispacheurs et de la durée souvent fort longue de liquidation des Règlements Généraux d'avarie commune.

Le rapport belge propose de ne faire courir les intérêts que « jusqu'à la date probable, fixée par les dispacheurs, de la liquidation effective du règlement ».

Le rapport français propose de limiter à cinq années le cours des intérêts.

Il appartiendra à la Conférence d'apprécier l'opportunité de préciser ce point et de choisir éventuellement entre les solutions qui lui sont proposées.

CONCLUSION.

Sous le bénéfice des observations ci-avant, le rapporteur estime que la

question principale est parfaitement traitée dans le rapport de la section britannique, ci-joint en annexe, dont il fait siennes les considérations et propositions.

Bruxelles, le 18 mai 1948.
Le Rapporteur Général,
Albert Devèze.

Arthur Jaffé, W. Harvey Moore,
Hon. Secretaries.

REPORT OF THE LONDON COMMITTEE APPOINTED TO CONSIDER THE AMENDMENTS OF RULE XXII OF THE YORK/ANTWERP RULES, 1924.

Part. I. Preliminary.

1. It will be recalled that at a meeting of the International Maritime Committee held at Antwerp in September, 1947, it was resolved « to invite the International Law Association to examine whether Rule XXII of the York/Antwerp Rules, 1924, should be altered so as to eliminate the legal rate of interest prevailing at the final port of destination and in such case to provide a fixed rate for all countries. » At a meeting of the Executive Council of the Association held on 25th October, 1947 it was agreed that M. Devèze should act as Rapporteur of a small committee to be appointed in consultation with him to undertake this reference. In accordance with this resolution steps were immediately taken to form a small committee of experts in London familiar with the practical questions involved in the reference and a committee consisting of the following members was formed :—

Sir William McNair, the Chairman ;

Mr. Martin Hill, representing the Chamber of Shipping of the United Kingdom and the Liverpool Steam Ship Owners' Association ;

Mr. G. T. Charles of the London Assurance, and

Mr. H. B. Edmunds of the London & Provincial Marine Insurance Co., Ltd., representing the Institute of London Underwriters and

Mr. E. W. Reading of Messrs. Hogg Lindley & Co., Average Adjusters with

M. Albert Devèze, Ministre d'Etat, ancien Bâtonnier de l'Ordre des Avocats of Brussels as Rapporteur.

2. All Branches of the Association were notified by the Secretary-General on 20th December, 1947, that this Committee had been constituted and were invited to form local committees to examine the problem and to report to the London Committee as the co-ordinating Committee, by 15 th February, 1948. It is understood that the Belgian and French branches have in fact constituted Committees for this purpose and have had the matter under consideration.

3. On 23rd January, 1948, a meeting of the London Committee was pleased to welcome M. Devèze and Maitre Govare, the Chairman of the Committee of the French Branch concerned with this question, both of whom were able to inform the London Committee informally of the lines of thought along which their respective Committees would probably approach the question. Though no reports have yet been received from the other branches, with the exception of a valuable contribution from Mr. Oscar Houston of Messrs. Bigham Englar Jones & Houston of New York who was asked to deal with this matter on behalf of the American Branch, your Committee feel that a useful purpose would be served by preparing forthwith for circulation amongst the branches this preliminary report.

Part II, The Problem.

4. Rule XXII is in the following terms :—

« **Interest on Losses made good in General Average** :—
Interest shall be allowed on expenditure, sacrifices and allowances charged to General Average at the legal rate per annum prevailing at the final port of destination at which the adventure ends, or, where there is no recognised legal rate, at the rate of 5 per cent. per annum, until the date of the General Average statement, due allowance being made for any interim reimbursement from the contributory interests or from the General Average deposit fund ». This rule first introduced in 1924 has aptly been described as « one of the most important and far reaching additions to the York/Antwerp Rules». (The York Antwerp Rules by G. R. Rudolf : London, 1926). Up to this date it had not been the practice in England to allow interest at all though the practice varied in other countries as to the rate at which and the period for which interest should be allowed. Mr Rudolf (at p. 132) says that « the reason for allowing interest on General Average expenditure or sacrifice at all is that the person whose pocket or property has suffered for the general benefit shall be compensated to a

degree more accurately representing his true loss through the sacrifice than the allowance of the bare outlay or of his immediate loss would provide ». Your Committee, being limited by their terms of reference to the consideration of the two questions (1) whether the Rule should be altered so as to eliminate the legal rate of interest prevailing at the final port of destination and (2) if so, whether a fixed rate should be provided for all countries, accept this statement as the reason behind the Rule. But the following illustration will serve to show that the present Rule under existing conditions may, and in many cases will, confer unjustifiable benefits on the party (generally the shipowner) making the disbursement and will impose a corresponding unjustifiable detriment on the other contributing interests (generally the cargo-owners). **Example** :— A British ship whose owners are in London, while on a voyage from London to a port in a foreign country which we may call Ruritania where the legal rate of interest is 10 % per annum incurs general average disbursements amounting to £10,000 which the shipowner remits from London. She then proceeds to her port of final destination in Ruritania. A General Average bond is there given by the cargo. Owing to delays not within the control of the cargo interests the preparation of the final statement is delayed for five years. Under the Rule in its present form the shipowner would be allowed in general average no less than 50% interest on his disbursements notwithstanding that the cost of financing the disbursements may have been say 5% p.a. and notwithstanding that he was adequately secured by the General Average bond. He thus obtains an unjustifiable enrichment, not warranted by the reason behind the Rule.

5. Furthermore the Rule is capricious in its operation. If in the example stated above the nationality of the ship be altered to Ruritanian and the voyage be reversed so that the port of final destination be London, then, notwithstanding that it may have cost the Ruritanian shipowner 10% per annum to finance his disbursements, he will only recover in general average 5% per annum there being no legal rate of interest in London. In practice no doubt the shipowner being in control would minimise his loss by calling for « interim reimbursement » from the other interests.

6. Your Committee accordingly have no hesitation in expressing the view that no case can be made out for retaining in the Rule the reference to legal rate of interest at the port of destination and that the fixing of a

definite rate of interest to be applied in all cases would more accurately give effect to the general principles underlying the conception of General Average.

7. The more difficult questions however are (1) whether the present time is the appropriate time for making the change (2) if so, what the rate should be.

8. The case against making any change at the present time may be thus stated :— « Rates of interest in different countries at the present time are generally in a most abnormal condition and are changing rapidly. All that one can now be sure of is that whatever the present rate in a given country may be, it will be substantially different two years from now, and whatever would be a fair international rate of interest now, will certainly be different in a few years. In the United States and in Great Britain interest rates are abnormally low, largely due to temporary Government pressure, though there are already signs of a change ; in some other countries the rates are probably abnormally high. Until monetary values and financial transactions are reasonably stabilised it may prove difficult to obtain any agreement in respect of interim rates and any attempt to amend the rule at the moment may only result in creating another point of conflict in the Bills-of-Lading issued under various flags ». These arguments are of great weight. Nevertheless your Committee feel that, since there is in their view no reasonable prospect of financial stability being achieved within any measurable period of time, the acceptance of these arguments would involve an indefinite postponement of remedying an evil which as stated above they consider calls for action. It is further to be borne in mind that since 1924 the fixed rate of 5 per cent. has been applied in all cases under the rules where the port of destination is in a country where no legal rate of interest prevails — and this includes the majority of the main importing countries — notwithstanding that during that period very substantial fluctuations in money rates have been experienced. Your Committee therefore conclude that notwithstanding the present difficulties the balance of advantage and convenience plainly lies in favour of making the change now.

9. On the question of rate your Committee feel that no case can be made out in favour of **increasing** the present rate of 5 per cent. On the other hand there are substantial arguments in favour of **reducing** the rate. It may be argued with force that the rate fixed should be one more nearly

approaching the rate of interest ruling for first-class Government Stocks than the current commercial rate for unsecured debts, since the shipowner, if he takes proper precautions, can in all cases get adequate security by calling for deposits or unimpeachable security and in proper cases can call for interim reimbursements. This argument, if accepted would justify on a short view a rate of (say) 3 per cent. or on a longer view probably (say) 4 per cent. Seeing that any agreed alteration in the Rule may be expected to be in operation for a considerable period, your Committee feel that the balance of the argument lies in favour of a rate of 4 per cent. in all cases. They appreciate, however, that it may below 5 per cent. (the rate at present in force where there is no legal rate) and, if agreement cannot be reached on a rate of 4 per cent., they would be prepared to recommend that 5 per cent. be accepted as the fixed rate applicable in all cases.

Part III. Recommendations.

10. Your Committee accordingly recommends that at the next conference of the Association in Brussels approval be asked for the amendment of Rule XXII of the York-Antwerp Rules by the elimination of all reference to the legal rate of interest at the final port of destination and by the substitution therefor of a fixed rate of four per cent. or, if general agreement cannot be reached on this rate, five per cent. in all cases to which the Rule applies.

11. As a matter of machinery, effect could in your Committee's view best be given to this proposal by the adoption of a new Rule in the following terms :—

York/Antwerp Rule, 1948.

« Amendment to Rule XXII of the York/Antwerp Rules, 1924 :— Notwithstanding anything contained in Rule XXII the rate at which interest shall be allowed under that Rule shall in all cases be [4 (four)] per cent. per annum ; and this Rule and the York/Antwerp Rules 1924 shall be read together and known as the York/Antwerp Rules 1924/1948.

If this Rule is adopted the minimum alteration to current commercial documents e.g. Bills-of-Lading and policies will be involved since effect can be given to its adoption by the simple addition of the figure « 1948 »

after the words commonly appearing in those documents « General Average payable according to York/Antwerp Rules 1924 ».

Signed on behalf of the Committee,
William L. McNair,
Chairman.

1st March, 1948.

INTERNATIONAL MARITIME COMMITTEE

Revision of York/Antwerp Rules 1924

REPORT OF THE INTERNATIONAL COMMISSION

The International Commission appointed by the Permanent Bureau of the Comite Maritime International met in London on the 4th and 5th July, 1949, under the chairmanship of Mr. Leopold Dor, Vice-chairman of the International Commission, who took the Chair in the unavoidable absence of the Chairman, Senator Albert Lilar, President of the Comite Maritime International.

All the Members of the Commission were present, namely :—

*Mr. Cyril Miller *Me. Carlo van den Bosch	Secretaries-General of the C.M.I.
*Mr. E. W. Reading Mr. C. T. Ellis Mr. Martin Hill Mr. C. D. Raynor	Great Britain.
*Baron F. van der Feltz	Holland.
*Maitre G. P. Govare M. Rene Gervais	France.
*Captain N. E. Kihlbom Mr. Kaj Pineus	Sweden.
*Mr. Niels Tybjerg	Denmark.
*Dr. Henry Voet	Belgium.

Mr. H. B. Edmunds of Great Britain acted as Honorary Secretary to the Commission.

*(Note:— Only these Members as Secretaries-General of the C.M.I. or Leaders of their delegations had voting powers).

The Commission was honoured with the presence at some of its meetings of Sir Leslie Scott, P.C., President d'Honneur of the C.M.I. and President of the British Maritime Law Association.

In the morning of the 4th July the Commission met in the Committee Room of the Salvage Association, and in the morning and afternoon of the 5th July in the Board Room of Messrs. T. R. Miller & Son.

The Commission reached decisions on all points of difference but it was found necessary before so doing to appoint a special Committee representing the different views on the question of the treatment of Substituded Expenses. This Committee consisted of Mr. E. W. Reading, Baron van der Feltz, Mr. R. Gervais and Captain Kihlbom, together with the Secretary.

The Commission also appointed a Drafting Committee who were instructed to prepare the amended Rules in accordance with the decisions reached, and to submit the draft on behalf of the Commission direct to the Permanent Bureau for circulation to the various National Associations. The following were the Members of the Drafting Committee :—

Maitre Leopold Dor (Chairman)
Mr. E. W. Reading
Baron van der Feltz
Mr. Martin Hill
Mr. Niels Tybjerg
together with the Secretary.

After the termination of the meetings of the Commission it was decided by agreement to invite Captain Kihlbom to become a Member of the Drafting Committee in view of the fact that he was a Member of the small committee to which reference has been made above.

The Drafting Committee now submits in its turn its report and there is attached to this report a draft of the amended York/Antwerp Rules for submission to the Amsterdam Conference.

The Drafting Committee is at present engaged in preparing a further report setting out briefly the reasons for the decisions of the International Commission and it will be submitting this further report in the near future to the Permanent Bureau before circulation to the National Associations.

Signed on behalf of the International Commission :

LEOPOLD DOR, Chairman.
H. B. EDMUNDS, Secretary.

PARIS & LONDON, 25th July, 1949.

DRAFT OF REVISED YORK-ANTWERP RULES FOR CONSIDERATION AT THE AMSTERDAM CONFERENCE

RULE OF INTERPRETATION.

In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

(New Rule giving effect to Makis Agreement)

RULE A. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

(Old Rule Unamended).

RULE B. General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

(Old Rule Unamended).

RULE C. Only such losses, damages or expenses which are the direct consequence of the General average act shall be allowed as general average.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

(Old Rule redrafted and added « Whether on the voyage, or subsequently »).

RULE D. Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure ; but this shall not prejudice any remedies which may be open against that party for such fault.

(Old Rule Unamended).

RULE E. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

(Old Rule Unamended).

RULE F. Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

(Old Rule, with addition of the words, « Without regard to the saving, if any, to other interests »).

RULE G. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

(Old Rule Unamended).

RULE I. Jettison of Cargo.

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

(Old Rule Unamended).

RULE II. Damage by Jettison and Sacrifice for the Common Safety.

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrfice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

(Old Rule Unamended).

RULE III. Extinguishing Fire on Shipboard.

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average ; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

(Old Rule Unamended).

RULE IV. Cutting away Wreck.

Loss or damage caused by cutting away the wreck or remains of spars

or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

(Old Rule Unamended).

RULE V. Voluntary Stranding.

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average, but loss or damage incurred in refloating such a ship shall be allowed as general average.

In all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

(Old Rule with addition of words, « But loss or damage incurred in refloating such a ship shall be allowed as general average, » and deletion of word, « But. »)

RULE VI. Carrying Press of Sail-Damage to or Loss of Sails.

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average ; but where a ship is afloat, no loss or damage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.

(Old Rule Unamended).

RULE VII. Damage to Machinery and Boilers.

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage ; but where a ship is afloat no loss or damage caused by working the machinery and boilers, including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average.

(Old Rule with title altered and with addition of words, « including loss or damage due to compounding of engines or such measures, » and « in any circumstances. »)

RULE VIII. Expenses Lightening a Ship when Ashore, and Consequent Damage.

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and re-shipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

(Old Rule Unamended).

RULE IX. Ship's Materials and Stores Burnt for Fuel.

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

(Old Rule Unamended).

RULE X. Expenses at Port of Refuge, etc.

(a). When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average ; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

(b). The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(c). Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if reasonably incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the

voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.

(d). If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved. **(Old Rule with title lifted and in subsection « c » word « fire » delected and « reasonably » added.)**

RULE XI. Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc.

(a). Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b). When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or for the purpose of repairs necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the extra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average, except that port charges incurred during repairs not allowable in general average shall be admitted in general average only if they would have been payable in consequence of the detention, whether repairs were effected or not.

(c). For the purpose of this Rule wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the articles of employment.

(d). Overtime paid to the master, officers and crew for work or repairs, the cost of which is not allowed in general average, shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred. »

(Old Rules XI and XX amalgamated and redrafted).

RULE XII. Damage to Cargo in Discharging, etc.

Damage to or loss of cargo, fuel or stores caused by handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

(Old Rule with words, « in the act of » replaced by the word, « by »).

RULE XIII. Deductions from Cost of Repairs.

In adjusting claims for general average, repairs to be allowed in general average shall be subject to deductions in respect of « new for old » according to the following rules, where old material or parts are replaced by new.

A. — Generally.

The deductions to be regulated by the age of the ship from date of original register to the date of accident, except for provisions and stores, insulation, life- and similar boats, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

No deduction to be made in respect of provisions, stores and gear which have not been in use.

The deductions shall be made from the cost of new material or parts only.

No cleaning and painting of bottom to be allowed, if the bottom has not been painted within six months previous to the date of the accident.

B. — Up to 1 year old.

All repairs to be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted.

C. — Beween 1 and 3 years old.

Deduction off scaling, cleaning and painting bottom as above under Clause B.

One-third to be deducted off sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers, provisions and stores and painting.

One-sixth to be deducted off woodwork of hull, including hold ceiling, wooden masts, spars and boats, furniture, upholstery, crockery, metal- and glass-ware, wire rigging, wire ropes and wire hawsers, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, chain cables and chains, insulation, auxiliary machinery, stearing gear and connections, winches and cranes and connections and electrical machinery and connections other than electric propelling machinery; other repairs to be allowed in full.

Metal sheathing for wooden or composite ships shall be dealt with by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt and labour metalling are subject to a deduction of one-third.

D. — Between 3 and 6 years.

Deductions as above under Clause C, except that one-third be deducted off wood work of hull including hold ceiling, wooden masts, spars and boats, furniture, upholstery, and one-sixth be deducted off iron work of masts and spars and all machinery (inclusive of boilers and their mountings).

E. — Between 6 and 10 years.

Deductions as above under Clause D, except that one-third be deducted off all rigging, ropes, sheets and hawsers, iron work of masts and spars, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, insulation, auxiliary machinery, steering gear, winches,

cranes and connections and all other machinery (inclusive of boilers and their mountings).

F. — Between 10 and 15 years.

One-third to be deducted off all renewals, except iron work of hull and cementing and chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

G. — Over 15 years.

One-third to be deducted of all renewals, except chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

RULE XIV. Temporary repairs.

Where temporary repairs are effected to a ship at port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average.

(Old Rule with words, « without regard to the saving, if any, to other interests » added).

RULE XV. Loss of Freight.

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

(Old Rule Unamended).

RULE XVI. Amount to be made good for Cargo Lost or Damaged by Sacrifice.

The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has

sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Where goods so damaged are sold the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

(Old Rule amended in first paragraph to « last day of discharge » and with a new second paragraph).

RULE XVII. Contributory Values.

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average ; deductions being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passengers' luggage and personal effects not shipped under bill of lading shall not contribute in general average.

(Old Rule Unamended).

RULE XVIII. Damage to Ship.

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, deduction being made as above (Rule XIII.) when old material is replaced by new. When not repaired, the reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

(Old Rule Unamended).

RULE XIX. Undeclared or Wrongfully Declared Cargo.

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

(Old Rule Unamended).

Note. — Old Rule XX has been amalgamated with old Rule XI in the new draft Rule XI.

RULE XX. Provision of Funds.

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

(Old Rule renumbered and amended to limit the disbursements on which commission is to be allowed).

RULE XXI. Interest on Losses made good in general average.

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

(Old Rule (renumbered) as amended by Resolution of International Law Association, September, 1948).

RULE XXII. Treatment of Cash Deposits.

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without delay into a special account in the joint names of a representative

nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

(Old Rule renumbered and redrafted).

INTERNATIONAL MARITIME COMMITTEE

Revision of York/Antwerp Rules 1924

REPORT OF INTERNATIONAL COMMISSION

In its report to the Permanent Bureau dated the 25th July, 1949, the Drafting Committee made mention that it was engaged in preparing a further report setting out briefly the reasons for the decisions of the International Commission.

The Drafting Committee has now completed this further work, and it submits this report to the Permanent Bureau.

RULE OF INTERPRETATION.

It has been found necessary to insert this new rule because of a decision in the British Courts in the case of Vlassopoulos v. The British & Foreign Marine Insurance Company (The Makis). In this case it was decided that the numbered rules were not necessarily absolute in respect of the particular matters with which they dealt but were qualified by the lettered rules.

RULE C. This rule has been re-drafted to make it clear that there is to be no allowance in General Average for any losses due to delay such as loss of use of the vessel or loss of market or deterioration in goods, whether such losses occur on the voyage or subsequently.

RULES F, X(d) and XIV. All these Rules deal with Substituted Expenses. There has been much discussion both in the Branches and in the International Commission as to the method to be adopted in dealing with Substituted Expenses. The International Commission found it necessary to appoint a Special Committee of its members to consider the different points of view and to report back to the Drafting Committee. After receiving the report of the Special Committee, the Drafting Committee decided to make the following recommendations :—

RULE F. and RULE XIV. The Substituted Expenses are to be allowed without regard to the saving, if any, to other interests.

RULE X(d). The rule has been left unamended and Substituted Expenses allowable thereunder will be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

Some Branches have maintained that if this rule were amended to agree with Rule F. there would be occasions when Shipowners could derive considerable benefit by a saving in cost of repairs at the expense of other interests.

In Rules F. and X(d) there have been suggestions that provision should be made not only for extra expenses incurred but also for extra losses sustained, but the International Commission has decided that to make provision in the rules for extra losses sustained would only further complicate the adjustment. It is understood, however, that probably this point will be raised again at the Conference in Amsterdam.

RULE III. Although no amendment is recommended in this Rule the Drafting Committee thinks that it should mention that the Rule has been discussed fully in all the Branches. It is agreed that it is illogical not to allow in General Average damage sustained through extinguishing operations to such portions of the ship and cargo as have been on fire. It is suggested that the Rule should be left in its present form because to amend it might cause delay in the issuing of survey reports and would complicate further and delay the issue of General Average Adjustments.

RULE V. There having been suggestions that there was difficulty in interpretating this rule, some words have been added to make it clear that when a ship is intentionally run on shore when it seemed inevitable that she would drive on shore, the costs of refloating should be allowable as General Average. Doubts have been expressed as to the meaning of the word « consequent » in the second paragraph now that there has been embodied in the Rules a rule of interpretation. It is feared that indirect losses may now be recoverable, and it is suggested that the matter should be discussed at the Conference in Amsterdam.

RULE VII. This rule has been much criticised and it is believed that part of the trouble has been caused by the title in the 1924 Rules. The International Commission recommends that the title should be amended. The Rule itself has been amended and re-drafted to make it clear that when a ship is afloat no loss or damage caused by working the engines

shall be allowable in General Average. In the discussions both in the International Commission and in the Drafting Committee consideration has been given to defining what is meant by « machinery, » and it has been found impossible to find any clear definition. The Drafting Committee therefore feels that it should state in its report that what is meant is the main engines and the propelling machinery of a vessel and not machinery such as pumps even though these form part of the main enginer.

RULE X. The title has been lifted so that it appears in the new draft as the title to the rule and not to X(a). No amendments have been made in Sub-sections X(a) and (b), but in Sub-section (c) the word « fire » has been deleted and the word « reasonably » added. As pointed out under the heading of Rule F, no amendment has been made in X(d).

A suggestion has been made that provision should be made in Sub-section (a) to deal with the cost of wages, etc., during the removal from a port of refuge where repairs cannot be effected to a port where repairs can be effected. There is a Rule of Practice of the Association of Average Adjusters in Great Britain dealing with this point. The Commission does not recommend any such amendment.

RULE XI. The Commission has come to the conclusion that it would be advisable to amalgamate Rules XI and XX into one comprehensive rule dealing with wages and maintenance of crew. Since 1924 many countries have introduced legislation dealing with social services, etc., and some doubt has been expressed as to really what is meant by « wages ». It is for this reason that the sub-section has been introduced with its defition of wages. In order to obtain uniformity of practice a provision has been inserted in the new rule dealing with port charges. As in many countries the permitted hours of work of a crew are limited and the necessity often arises for overtime to be paid, Sub-section (d) has been drafted to deal with overtime and when such overtime should be allowed in General Average.

RULE XII. The International Commission has decided after reading the reports of the various Branches to amend this rule by extending it to cover damage to cargo consequent on handling, discharging, etc., but in the further discussion in the meetings of the Drafting Committee some doubt was felt as to the advisability of making such an amendment ; the Committee therefore recommends that it would be advisable for the Con-

ference at Amsterdam to discuss this question. The Rule has been amended by substituting the word « by » for the words « in the act of ».

RULE XIII. This technical rule has been considered by consulting surveyors in several countries. The Commission has decided that not only should the rule be brought up-to-date, but that attempts should be made to simplify it. The Commission also decided that deductions should only be made from renewals of « old material or parts. » There has been much discussion over this decision, and whilst the rule has been amended in accordance with the decision, the Drafting Committee is of the opinion that it would be advisable for this point to be discussed at Amsterdam.

RULE XIV. The only amendment in this rule is the addition of the words « without regard to the saving, if any, to other interests » This has been done to bring it in line with Rule F.

RULE XVI. This rule has been amended in two respects. Provision has been made that the values shall be based on those on the last day of discharge. The second paragraph has been amended to provide that where goods are sold, the value realised shall be deducted from the sound value at the last day of discharge.

RULE XVIII. There has been a suggestion that provision should be made in this rule to deal with those cases where the actual proceeds of the wreck are reduced by damage of a General Average nature. The Commission has reached the decision that the number of cases in which these circumstances arise are few, and it would be better not to make a somewhat complicated amendment in the rule to deal with them.

RULE XX. Views having been expressed that commission should not be allowed on such items as wages, maintenance, etc., fuel and stores, the rule has been amended to limit the disbursements on which commission is to be allowed.

RULE XXI. This rule has been amended in accordance with the resolution of the International Law Association in September, 1948.

RULE XXII. Owing to the difficulties over questions of Trust Accounts in some countries, amendments have been made in this Rule. The Commission recommends the insertion of the words « without delay » so that it shall be understood that the deposits when collected must be paid into the special account as quickly as possible.

The Commission discussed the advisability of inserting in the Rules an entirely new one setting forth the occasions when there should not be an adjustment of General Average when the sacrifices and expenditures were not of a serious nature. The Commission is of the opinion that it is inadvisable to include any rule dealing with such matters in York/Antwerp Rules and that it is better to leave such a question to be dealt with by individual Shipowners by the insertion of suitable clauses in Contracts of Carriage.

Signed for and on behalf of the Drafting Committee,

LEOPOLD DOR, Chairman.

H. B. EDMUNDS, Secretary.

Paris and London, 26th July, 1949.

BRITISH MARITIME LAW ASSOCIATION

Revision of York/Antwerp Rules 1924

At a meeting of the British Maritime Law Association on the 28th July, 1948, it was decided to set up a Sub-Committee to examine and report to the Association on what amendments were desirable in York/Antwerp Rules with a view to facilitating their general adoption.

The Sub-Committee was constituted as follows :—

Mr. E. W. READING, representing Association of Average Adjusters (Chairman).
Mr. G. T. CHARLES, representing Institute of London Underwriters.
Mr. C. T. ELLIS, representing Association of Average Adjusters.
Mr. Martin HILL, representing Chamber of Shipping and Liverpool S.S.O. Association.
Mr. C. H. JOHNSON, representing Liverpool Underwriters' Association.
Mr. Cyril MILLER, representing London Group of P. & I. Associations.
Mr. D. E. NATHAN, representing British Federation of Commodity Associations.
Mr. J. RAULIN, representing British Federation of Commodity Associations.
Mr. C. D. RAYNOR, representing Lloyds Underwriters' Association.
Mr. G. R. RUDOLF, Average Adjuster (Deputy Chairman).
Mr. W. D. WATTLEWORTH, Average Adjuster.

Mr. H. B. EDMUNDS was appointed Honorary Secretary to the Sub-Committee.

The Sub-Committee reports that Committees have been set up by the National Branches of the International Maritime Committee in the United States, Denmark, Norway, Sweden, Holland, Belgium and France and

that all these Committees have had circulated to them all reports, memoranda and minutes of the British Sub-Committee. Invitations have been regularly sent to the Continental Committee and on two occasions Dr. Voet of the Belgian Committee, and on one occasion Maître F. Baron van der Feltz, of the Dutch Committee, have attended meetings.

His Excellency Senator Lilar — President of the Comité Maritime International — attended a meeting of the British Committee on the 31st January, 1949.

The Sub-Committee now has the following recommendations to make as to amendments in the York/Antwerp Rules.

Four years after the 1924 Rules came into being an English Court decided in the case of « Vlassopoulos v. British and Foreign Marine Insurance Company » (The Makis) that the numbered Rules were not necessarily absolute in respect of the particular matters with which they dealt but were qualified by the lettered Rules. This decision caused considerable concern in shipowning circles and as a consequence on the 17th January, 1929, an agreement was arranged between the Underwriters and the Shipowners in this country to the following effect :—

« In consequence of the decision in the case of « Vlassopoulos v/British » and Foreign (that of The Makis) questions have arisen as to the inten- » tion of the parties in framing the York/Antwerp Rules, 1924, and it is » desirable to set doubt at rest by agreeing that the Rules shall be con- » strued as if they contained the following provision :—

> « Except as provided in the numbered rules I — XXIII inclusive » the adjustment shall be drawn up in accordance with the lettered » rules A—G. »

This Agreement known as « The Makis » Agreement is in line with the practice of most, if not all, of the Continental countries. The Sub-Committee points out that an Agreement outside the terms of the York/Antwerp Rules, 1924, is most unsatisfactory and steps should be taken to make the position quite clear now that there is an opportunity of amending York/Antwerp Rules.

It is suggested therefore that the Rules should be headed as follows :—

« Except as provided in the numbered Rules the adjustment shall be » drawn up in accordance with the following lettered Rules ».

It is recommended that Rules A, B, D, E and G, Nos. I, II, IV, V, VI, VIII, IX, XII, XV, XVII, XVIII, XIX, should not be altered.

RULE C. — « Only such damages, losses or expenses which are the » direct consequence of the general average act shall be allowed as gene- » ral average. Damage or loss sustained by the ship or cargo through » delay, whether on the voyage or subsequently, and indirect loss from the » same cause, such as demurrage and loss of market, shall not be admit- » ted as general average. »

The words « whether on the voyage or subsequently » have been added in order to make it clear that damage or loss by delay is absolutely irrecoverable in general average.

RULE F. — « Any extra expense incurred in place of another expense » which would have been allowable as general average shall be deemed to » be general average and so allowed without regard to the saving, if any, » to other interests, but only up to the amount of the general average » expense avoided. »

The words « Without regard to the saving, if any, to other interests » have been added.

In the Sub-Committee there has been considerable discussion on the substituted expenses Rules, i.e., Rules F, X(d) and XIV. The question was whether in all these Rules the savings to all parties should be taken into account or whether the saving to general average should be a first charge.

In the end the following views have been adopted :—

(1) That while it is the duty of the Shipowner to complete the adventure as soon as possible and with the least possible expense to all parties, and a substituted expense should only be incurred with this in view, it is frequently impossible to calculate all the savings to the various parties, although the saving to general average can usually be calculated with reasonable accuracy. It is therefore felt that as general average is usually the interest most directly concerned in the saving it is a practical, and not inequitable, method to debit general average with the substituted expense up to, but not exceeding, the amount saved to it. General average will still be in no worse a postion, and possibly in a better one, than if the substituted expense had not been incurred.

(2) This method applied to all the affected Rules (F,X(d) and XIV) has the merit of simplicity, it will secure uniformity of practice throughout and should help to enable adjustments to be completed expeditiously.

The Netherlands Committee has suggested that the words « or loss » should be added after the word « expense » in the first line of Rule F since there are occasions when losses are incurred in substitution of a general average expenditure, and the Netherlands Committee feel that in such cases it is only fair that such losses should be allowed as general average.

The Sub-Committee has given very careful consideration to this proposition and whilst feeling that there is some substance in the suggestion from the Netherlands Committee, they find it very difficult to make any amendment in the Rule which would be so limiting in its effect as not to open the Rule to abuse. It therefore recommends that the suggested words should not be added to the Rule.

RULE III. **Extinguishing Fire on Shipboard.**

It has been suggested that it is illogical not to allow in general average damage through extinguishing operations to such portions of the ship and cargo as have been on fire.

This Rule has existed in its present form since 1890 and to change it now would be to increase the burden of general average, add to the difficulties of Surveyors and, in some cases, cause delay in the issue of their reports pending agreement of proportions, and complicate adjustments and perhaps delay their issue.

After discussion it is recommended that this Rule should remain unaltered.

RULE VII. **Damage to Engines in Refloating a Ship.**

There have been difficulties over the interpretation of this Rule, brought about in some cases undoubtedly by its title « Damage to Engines in refloating a Ship. » The first part of the Rule deals with damage to machinery working a ship off a strand, whereas the second part, which is separated from the first part by a semicolon, provides that no damage to machinery, etc., shall be allowed in general average when a vessel is afloat.

In some countries this second part is considered absolute and in no circumstances whatsoever is such damage allowed when a vessel is afloat, whereas in other countries reference is apparently made to the title and damage to machinery is only disallowed when sustained after a ship has been stranded. In France, and Italy, there are legal decisions allowing

damage caused by compounding engines as General Average. This Rule has been the subject of much consideration by the Sub-Committee.

In the first instance endeavours were made to draft a Rule which would allow damage sustained by engines in certain circumstances, and the following draft was considered :—

Damage to Machinery and Boilers.

« Damage caused to machinery and boilers of a ship, which is ashore » and in a position of peril, in endeavouring to refloat, shall be allowed in » general average when shown to have arisen from an actual intention to » float the ship for the common safety at the risk of such damage. Where » a ship is afloat and in a position of peril owing to the breakdown of her » machinery there shall be made good in general average any further » loss or damage deliberately caused to the machinery and boilers by wor- » king the engines in order to bring the ship into a place of safety, but in » no other circumstances where a vessel is afloat shall damage to machi- » nery and boilers caused by working the engines be made good as general » average. »

But after further careful discussion the Sub-Committee has come to the conclusion that it would be better to make only such amendments to the Rule as to make it quite clear that no damage to machinery is to be made good, in any circumstances, when a ship is afloat.

In coming to this decision the Sub-Committee has been influenced by the fact that it is the duty of a Shipowner to use his engines to the utmost to complete the venture and that it is always difficult to differentiate between abnormal use and abuse. It is admitted that there are cases whereby a deliberate abuse of the engines, expenses of a general average nature may have been avoided, but such cases are few and when they occur it is possible usually to make some special agreement with the various parties concerned.

The Sub-Committee recommends therefore—

(1) That the title be changed to « Damage to Machinery and Boilers » and

(2) That the words « in any circumstances » be added after the words « Machinery and Boilers » at the end of the present Rule.

The Rule will read—

Damage to Machinery and Boilers.

« Damage caused to machinery and boilers of a ship which is ashore » and in a position of peril, in endeavouring to refloat, shall be allowed in » general average when shown to have arisen from an actual intention to » float the ship for the common safety at the risk of such damage ; but » where a ship is afloat no loss or damage caused by working the machi- » nery and boilers shall in any circumstances be made good as general » average. »

RULE X. Expenses at Port of Refuge, Etc.

(a) When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading, in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average ; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

(b) The cost of handling on board or discharging cargo, fuel or stores, whether at a port or place of loading call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the comdemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.

(d) If a ship under average be in a port or place at which it is practicable to repair her so as to enable her to carry on the whole cargo, and if,

in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them, shall be allowed in general average without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

The heading « Expenses at Port of Refuge, Etc. », has been lifted so as to make it clear that it applies to all the paragraphs in the Rule. Further, instead of the paragraphs reading X(a), X(b), X(c) and X(d), they have been altered to read simply (a), (b), (c) and (d).

The Sub-Committee does not recommend that any amendments should be made in paragraphs (a) and (b), but it does recommend that in paragraph (c) the word « fire » be omitted from the phrase in parenthesis (including fire insurance if incurred). There are occasions when a Shipowner, with a vessel at a port of refuge and it is necessary to discharge part of the cargo, considers it advisable not only to insure against the risks of fire but also against some other risks such as those of theft, pilferage, etc. It appears that the practice of Average Adjusters in this country is not uniform, as some would limit the allowance in General Average to the cost of the fire insurance, whereas others would allow the extra premium charged for theft, pilferage, etc., as part of the cost of storage.

Paragraph (d) has been amended so that it may be consistent with amended Rule F.

Enquiry has shown that adjustments seldom take into account the savings to other parties to the adventure other than General Average. As a matter of fact when circumstances arise which necessitate exceptional measures being taken to complete a voyage, such as transhipping or otherwise forwarding, it is frequently found necessary to take instructions from the parties interested and to submit proposals to them which are later incorporated in a Memorandum of Agreement.

RULE XI. **Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, Etc.**

(a) Wages and maintenance of master, officers and crew incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expen-

ses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b) When a ship shall have entered or been detained in any port or place under the circumstances, or for the purpose of repairs mentioned in Rule X, the wages and maintenance of the master, officers and crew, fuel and stores consumed and port charges incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon the voyage, shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average and such port charges as are incurred during such repairs, unless payable solely as a result of the entering of such port or place. But when the ship is condemned or does not proceed on her original voyage, the expenses as above incurred after the date of the ship's condemnation or of the abandonment of the voyage shall not be admitted as general average. In the event of the condemnation of the ship or of the abandonment of the voyage before completion of discharge of cargo, the expenses incurred as above shall be admitted as general average up to the date of completion of discharge.

(c) For the purposes of this Rule wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the articles of employment.

(d) Overtime paid to the master, officers and crew for work or repairs, the cost of which is not allowed in general average, shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred. »

Rule XI has been amended so as to include the old Rule XX. It was felt that Rule XX was wrongly placed and that allowances for wages and maintenance of crew, etc., should be dealt with in a comprehensive Rule.

With regard to port charges, it is realised that in most countries other than the United Kingdom it is considered that York/Antwerp Rules, 1924 permit the allowance as general average of port charges incurred during the whole period of general average detention, whether charged on entry or on a day to day or other time basis. In the United Kingdom the majority opinion has been that when a vessel puts into a port of

refuge on account of particular average damage the 1924 Rules do not provide for the allowance of port charges other than dues and charges payable on the day to day or other time basis being thus excluded. To place the matter beyond doubt provision for the allowance of these intermediate « occupation » port charges has been made in Rule XI (b), with the proviso that any port charges incurred in effecting repairs with are not allowable in general average and which are not payable solely as a result of entering the port or place of refuge shall not be allowed as general average.

It is realised that in many countries the permitted hours of work are limited and overtime is invariably paid and as such should be regarded as wages, but it is felt that general average should not be burdened with the cost of overtime which a Shipowner may pay at a port of refuge in respect of work or repairs not being effected to enable the voyage to be completed. For example, a ship may put into a port because of damage to her rudder and the Shipowner takes advantage of the detention to carry out upkeep repairs perhaps to the boilers in order to save time which would be spent on such repairs when the voyage was completed.

It has been suggested that provision should be made in this Rule for the allowance of the cost of wages and maintenance and of fuel, etc., during the removal of the vessel from a port of refuge where repairs cannot be effected to a port where repairs can be effected. The Sub-Committee has ascertained from the various countries in which Committees have been set up that in those countries it is considered permissible under York/Antwerp Rules, 1924, to allow such wages, etc., and fuel in general average. The Sub-Committee therefore does not recommend that any provision should be made in the Rule for such wages, etc., and fuel, but suggests that this matter should be discussed once again by the British Association of Average Adjusters.

RULE XIII. **Deductions from Cost of Repairs.**

In adjusting claims for general average, repairs to be allowed in general average shall be subject to the following deductions in respect of « new for old » where old material or parts are replaced by new.

The deductions shall be made from the cost of the new material or parts only. No deduction to be made in respect of provisions, stores and gear which have not been in use.

In the case of iron or steel ships from date of original register to the date of accident :

Up to 1 year old (A).

All repairs to be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted. No painting of bottom to be allowed if the bottom has not been painted within six months previous to the date of the accident.

Between 1 and 3 years (B).

One-third to be deducted off sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers and painting. One-sixth to be deducted off woodwork of hull, masts and spars, furniture, upholstery, crockery, metal — and glass-ware, wire rigging, wire ropes and wire hawsers, wireless, direction finding and similar apparatus, chain cables and chains, insulation, auxiliary machinery, steering gear and connections, winches and connections, cranes and connections and electrical machinery and connections other than electric propelling machinery ; other repairs in full.

Between 3 and 6 years (C).

Deductions as above under Clause B, except that one-third be deducted off woodwork of hull, masts and spars, furniture, upholstery, crockery, metal — and glass-ware and one-sixth be deducted off ironwork of masts and spars and all machinery (inclusive of boilers and their mountings).

Between 6 and 10 years (D).

Deductions as above under Clause C, except that one-third be deducted off insultaion, ironwork of masts and spars, auxiliary machinery, steering gear, winches, cranes and connections, renewal of all machinery (inclusive of boilers and their mountings), wireless, direction finding and similar apparatus and all hawsers, ropes, sheets and rigging.

Between 10 and 15 years (E).

One-third to be deducted off all renewals except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted. Anchors to be allowed in full.

Over 15 years (F).

One-third to be deducted off all renewals. Anchors to be allowed in full. One-sixth to be deducted off chain cables.

Generally (G).

The deductions (except as to provisions and stores, insulation, wireless, direction finding and similar apparatus, machinery and boilers) to be

regulated by the age of the ship and not the age of the particular part of her to which they apply.

In the case of Wooden or Composite Ships.

When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made. After that period a deduction of one-third shall be made, with the following exceptions :— Anchors shall be allowed in full. Chain cables shall be subject to a deduction of one-sixth only.

Metal sheathing shall be dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labour metalling are subject to a deduction of one-third.

When a ship is fitted with propelling, refrigerating, electrical or other machinery, or with insulation, or with wireless, direction finding or similar apparatus, renewals of such machinery, insulation or apparatus to be subject to the same deductions as in the case of iron or steel ships.

In the case of Ships Generally.

Drydock and slipway dues, including expenses of removals, cartage, cranage, stages and drydock and slipway materials shall be allowed in full.

The Sub-Committee has found that differences of practice exist in the application of the deductions in respect of « new for old. » Some Adjusters make the deduction from the cost of material only, others make the deductions from the cost of opening up and installing the new part as well as from the cost of the material, and others make the deduction from the cost of material and installation and not from the cost of opening up. It is essential that the practice should be uniform. It is obvious that no method will achieve complete equity. If the deduction is made from the cost of material only the enhancement of value may be greater than the deduction.

But generally, enhancement of value is not likely to amount to the deduction if that deduction is from the cost of labour as well as from the cost of new material. In particular, it is felt that there is little advantage to a Shipowner when the machinery in a modern vessel has to be opened up for the replacement of a few parts which have been damaged and that to make the deduction from the heavy cost of labour in such a case is unfair. The Sub-Committee feel that on balance there is less injustice

to all concerned if the deduction is made from the cost of new material only.

It will be noticed that the two last paragraphs in the old Clause G. have been removed and inserted in other parts of the Rule. It is thought that this makes for clarity.

Technical advice was received from the Salvage Association's Surveyors regarding the deductions themselves. Having regard to the fact that the deductions have to be applied to every class of vessel ranging from a modern liner to a small coaster, it is felt that on the whole the deductions should remain as in the old Rule.

The chief amendment made is that between 1 and 3 years one-sixth only should be deducted off woodwork of hull, masts and spars, etc., and not one-third as in the old Rule. The deduction off insulation between 3 and 6 years has been amended to one-sixth.

Provision has been made also for deductions from direction finding and similar apparatus and it will be noticed that electrical propelling machinery has been excluded from the term electrical machinery. The Surveyors' advice has been that electrical propelling machinery is not liable to wear and tear greater than other forms of propelling machinery.

In the last paragraph the words « drydock and slipway dues » have been substituted for « graving dock dues » and the word « cranage » for « use of shears. »

RULE XIV. **Temporary Repairs.**

« Where temporary repairs are effected to a ship at a port of loading, » call or refuge, for the common safety, or of damage caused by general » average sacrifice, the cost of such repairs shall be admitted as general » average.

» Where temporary repairs of accidental damage are effected, the cost » of such repairs shall be admitted as general average without regard to the » saving (if any) to other interests but only up to the saving in expense » which would have been incurred and allowed in general average if such » repairs had not been effected there ; but there shall be no allowance in » general average for the cost temporary repairs of accidental damage un- » less permanent repairs would have been practicable at the port of loa- » ding, call or refuge, and then only to the extent that such repairs were » necessaryto enable the adventure to be completed. No deductions « new

» for old » shall be made from the cost of temporary repairs allowable as » general average. »

This Rule has been altered to make it clear that the cost of temporary repairs is to be treated on the principles laid down in Rule F.

The Sub-Committee thinks that the cost of temporary repairs of accidental damage should only be allowed in general average as a substituted expense. Therefore it is made clear that the cost of temporary repairs to accidental damage cannot be allowed if there was no alternative. It has also been thought necessary to make it clear that the temporary repairs considered should be limited to those necessary to enable the adventure to be completed.

RULE XVI. **Amount to be made good for Cargo lost or damaged by Sacrifice.**

« The amount to be made good as general average for damage to or » loss of goods sacrificed shall be the loss which the owner of the goods » has sustained thereby, based on the market values at the last day of » discharge of the vessel or at the termination of the adventure where » this ends at a place other than the original destination.

« Where goods so damaged are sold the loss to be made good in general » average shall be the difference between the net proceeds of sale and the » net sound value at the last day of discharge of the vessel or at the ter- » mination of the adventure where this ends at a place other than the » original destination. »

The last Section of this Rule has been amended to provide that the allowances in general average shall be on a salvage loss basis. This recommendation has been generally approved by the other Committees and is most desirable as Rule XVI has never been adopted in the United States, and an amendment such as is recommended by the Sub-Committee would bring the Rule into conformity with American practice.

RULE XXI. **Provision of Funds.**

It appears to the Sub-Committee that there are varying views held about this Rule in the various countries. There seems to be a feeling in some directions that no commission should be allowed or that it should be reduced to 1%. On the other hand there is a feeling in certain directions that as commission is allowed on general average disbursements it should also be allowed on loss made good in respect of cargo sacrifices.

In the United States the practice is to confine the allowance to extraordinary disbursements incurred during the voyage. The Sub-Committee therefore recommends that this Rule should be amended as follows :—

« A commission of 2% on general average disbursements, other than » the wages and maintenance of master, officers and crew and fuel and » stores not replaced during the voyage, shall be allowed in General » Average, but when the funds are not provided by any of the contribu- » ting interests, the necessary cost of obtaining the funds required by » means of a bottomry bond or otherwise, or the loss sustained by owners » of goods sold for the purpose, shall be allowed in general average.

« The cost of insuring money advanced to pay for general average dis- » bursements shall also be allowed in general average. »

RULE XXII. **Interest on Losses Made Good in General Average.**

« Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5% per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund. »

This Rule has been amended to give effect to the resolution which was adopted by the International Law Association at its conference in Brussels in September, 1948.

RULE XXIII. **Treatment of Cash Deposits.**

« Where cash deposits have been collected in respect of cargo's liability » for general average, salvage or special charges, such deposits shall be » paid into a special account in the joint names of a representative nomi- » nated on behalf of the Shipowner and a representative on behalf of the » Depositors, in a bank to be approved by both. The sum so deposited, » together with accrued interest, if any, shall be held as security for pay- » ment to the parties entitled thereto of the general average, salvage or » special charges payable by cargo in respect to which the deposits have » been collected. Payments on account or refunds of deposits may be » made if certified to in writing by the Average Adjuster. Such deposits » and payments or refunds shall be without prejudice to the ultimate » liability of the parties. »

The alteration to this Rule is the suggestion of the United States Committee. The old Rule was not adopted in the United States because it was

believed that it conflicted with the anti-trust laws in certain States. The new Rule still provides that deposits are to be placed in a special account on behalf of the Shipowner and the Depositors, but all words are omitted from which it might be inferred that the deposit account is in the nature of a trust.

Owing to the amalgamation of Rule XX with Rule XI, Rules XXI, XXII and XXIII will need to be re-numbered, XX, XXI and XXII respectively.

This report represents the unanimous views of all the members of the Sub-Committee.

Signed on behalf of the Sub-Committee,

E. W. Reading, Chairman.

London, 24th March, 1949.

BRITISH MARITIME LAW ASSOCIATION

York/Antwerp Rules 1924.

Minutes of a Meeting of the Committee held at the Salvage Association on Thursday afternoon, 6th January, 1949, at 2.30 p.m.

Present :—

Mr. E. W. Reading in the Chair.

Messrs. G. R. Rudolf
C. D. Raynor,
C. H. Johnson,
J. Raulin,
C. T. Miller,
C. T. Ellis,
W. D. Wattleworth

and the Secretary — Mr. H. B. Edmunds.

It was reported that Mr. Martin Hill, Mr. D. E. Nathan and Mr. G. T. Charles were unable to attend owing to illness.

The Chairman welcomed Mr. Wattleworth, Mr. Johnson and Mr. Raulin.

The Chairman explained that the Drafting Sub-Committee had made no suggestions as regards the Rules to which objections had been raised in the United States and that the Committee hopes soon to have comments from the United States on such Rules.

The Drafting Sub-Committee had set out the suggestions on other Rules which had been discussed in the General Committee but had not been able to make any recommendations concerning the substituted expense Rules, and in respect of the substituted expense Rules it asks for further instructions.

As they existed, at the moment the substituted expense Rules were inconsistent. Under Rule X(d) provision was made for the cost to be apportionable over the several parties to the adventure in proportion to the extraordinary expense saved, whereas under Rule F and Rule XIV

it seemed that the substituted expense could be allowed as General Average up to the amount of the General Average expense avoided, i.e. the General Average expense avoided was the first charge on the substituted expense.

There were three ways in which to deal with these Rules :—

(1) Subject to the consideration of other questions which arose in connection with Rule XIV the inconsistency could be allowed to remain. There was no particular virtue perhaps in consistency. Rule X(d) covered those circumstances in which serious substituted expenditure was incurred and did provide for the expense to be paid by all parties who benefited. Under Rule F. it was possible to allow other substituted expenses without going into the involved question as to who besides General Average had benefited by the expense. There might be dangers in applying the principles of Rule X (d) to Rule F. in that some countries and some Adjusters might feel compelled on every occasion to consider expenses such as loss of freight avoided or incurred which might only remotely arise from the substituted expense.

(2) In order to be consistent all Rules dealing with substituted expenses should be subject to the principle of Rule X(d), that is, that the saving to all parties should be considered.

(3) The principle of Rule F., as usually applied in practice, namely, that the saving to General Average should be the first charge, should apply also to Rule X(d). It already applies to Rule XIV in this country by virtue of a Uniformity Resolution of the Association of Average Adjusters.

During the discussion which followed the Chairman's opening remarks it was suggested that the Committee had no intention of including in Rule F extra losses or sacrifices in addition to extra expenses. This point had been fully discussed at Stockholm and it had been decided unanimously to delete all mention of losses and to limit the Rule to expenses only .

That there had been some difficulty in interpreting Rule XIV was obvious as the Association of Average Adjusters had found it necessary to pass the following Uniformity Resolution :—

« That, in practice, in applying Rule XIV of Y/A Rules 1924 the cost » of temporary repairs of accidental damage there referred to shall be » allowed in general average up to the saving to general average by ef-

» fecting such temporary repairs, without regard to the saving (if any) to » other interests. »

There had been cases where temporary repairs had been effected and there was more than a suspicion that the real reason for such temporary repairs was not solely the completion of the adventure but also to enable permanent repairs to be deferred for an indefinite period. In answer it was pointed ou that the allowance is restricted to the saving in expense to General Average and that Adjusters should see that the allowance is in respect of such repairs as are necessary and of no more. It was admitted, however, that whatever alteration or amendment might be made to the Rule it would be impossible to avoid the possibility of some incidental benefit in some cases. Further, that the Rule on the whole had worked very satisfactorily and probably if the Rule was elaborated by trying to further define « accidental damage » and « to enable the adventure to be completed » it would only further complicate general average adjustments.

The Committee eventually decided to refer these Rules back to the Drafting Sub-Committee with the request that an endeavour should be made to bring Rule F and XI (d) into line if possible, and that Rule XIV should be reconsidered in conjunction with the Uniformity Resolution.

RULES DEALT WITH IN REPORT No. 1.

It was agreed that the Rules should be prefaced with the Makis Agreement with the insertion of the word « following » before « lettered Rules ».

The actual wording will be :—

« Except as provided in the numbered Rules Nos. I-XXIII inclusive, » the adjustment shall be drawn up in accordance with the following let- » tered Rules, A to G inclusive ».

RULE B. Committee agreed no amendment.

RULE C. Committee agreed the recommendation of the Sub-Committee that the Rule should be amended to make it clear that damage or loss through delay was not to be admitted in general average whether incurred on the voyage or subsequently.

The new Rule will read as follows :—

« Only such damages, losses or expenses which are the direct conse- » quence of the general average act shall be allowed as general average. » Damage or loss sustained by the ship or cargo through delay, whet- » her on the voyage or subsequently, and indirect loss from the same

» cause, such as demurrage and loss of market, shall not be admitted as » general average. »

RULE E. Committee agreed no amendment.

RULE G. Committee agreed no amendment.

RULE I. Committee agreed no amendment.

RULE II. Committee agreed no amendment.

RULE III. The Committee gave careful consideration to this Rule. Whilst it is true that the last part of the Rule in disallowing from compensation any package or part of the ship which may have been damaged by means to extinguish a fire when such package or part had itself been on fire, does in most cases fall heavily on the parties concerned, to amend the Rule to allow compensation would further complicate adjustments of general average. There was an evident desire these days to simplify rather than complicate adjustments, and this being so the Committee is of the opinion that, provided there is no strong desire from other branches to amend the Rule, it would be better to leave the Rule in its present form.

The Committee also considered whether it was advisable to alter the word « otherwise » in the first sentence of the Rule, but came to the conclusion that the Rule would not be improved by using such words as « other means ».

RULE IV. Committee agreed no amendment.

RULE V. Committee agreed no amendment.

RULE VI. Committee agreed no amendment.

RULE VII. The Sub-Committee in its report pointed out that this Rule has come in for a good deal of criticism. It appears that both in Italy and France there have been decisions of the Courts which in part bullify the absolute effect of the last sentence of the Rule. Doubtless a part of the trouble over the interpretation of this Rule has been brought about by the unfortunate title of the Rule.

Further, it appears that there is a lack of uniformity in interpreting the last part of this Rule both in this country and in Continental countries. This being so, the Committee is of the opinion that it is necessary to amend this Rule in order at any rate to bring it in line with the decisions in the Italian and French Courts.

In considering what amendments are necessary, the Commitee has borne

in mind that it is the duty of a Shipowner to work his engines to the utmost in order to carry out his contract of carriage, but feels that it is a little unfair on a Shipowner when his engines have already been damaged that compensation is not allowed for further damage deliberately caused when a vessel is in peril in order that the vessel can be taken to a place of safety for the common benefit. The Committee therefore came to the following decisions :—

(1) That the title of the Rule should be « Damage to Machinery and Boilers ».

(2) That the second part of the Rule be amended to read as follows :—

« Where a ship is afloat and in a position of peril owing to the break-
» down of her machinery there shall be made good in general average any
» further loss or damage deliberately caused to the machinery and boilers
» in order to bring the ship into a place of safety, but in no other circum-
» stances where a vessel is afloat shall damage to machinery and boilers
» be made good as general average. »

RULE VIII. There have been suggestions from several countries that it would be an advantage if special mention were made in this Rule and also in Rule X(b) and (c) of Passengers' Baggage, Mails, etc. The Committee, after considering the question, has come to the conclusion that if by reference Passengers' Baggage etc. is included in these two Rules, difficulties will undoubtedly arise under Rule XVII which deals with the question of contribution.

As it is the desire of the Committee not to do anything which may further complicate adjustments of general average, it was decided that no amendment should be made in this Rule, nor in Rule X(b) and (c).

RULE IX. Committee agreed no amendment.

RULE X. The recommendation of the Sub-Committee that the title to sub-section (a) should be deleted and used as the title to the whole Rule was approved.

(a) The Committee considered the words « place » and « other extraordinary circumstances » as there have been suggestions that it might be possible to find more suitable words to express the intention of the Rule. After due consideration the Committee came to the decision that it would be better not to make any amendment.

(b) Committee recommend no amendment. See Passengers' Baggage etc. under Rule VIII.

(c) Committee recommend no amendment. See Passengers' Baggage etc. under Rule VIII.

(d) Whilst the Committee is aware that there has been some discussion in various quarters about the meaning of the words « practicable to repair » it has come to the decision after considering such alternative expressions as « reasonably possible », « reasonably practicable » etc. that there is no real alternative to the words «practicable » etc. and it therefore considers that there should be no amendment to this sub-section.

(This sub-section may require re-drafting when a final decision is reached by the Committee on the question of Substituted Expenses).

The recommendation of the Drafting Sub-Committee that Rule XX should be embodied with Rule XI and a fresh Rule drafted with a new title was approved.

NEW TITLE —

RULE XI. Wages and maintenance of crew and other expenses bearing up for and in a port of refuge.

(a) Wages and maintenance of master, officers and crew incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

This sub-section is old Rule XX except the last paragraph which is now embodied in sub-section (b) of this new Rule. The wording of the opening phrase has been changed round slightly to conform with the title of the new Rule.

(b) When a ship shall have entered or been detained in any port or place under the circumstances, or for the purpose of repairs mentioned in Rule X, the wages and maintenance of the master, officers and crew, fuel and stores consumed and port charges incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon the voyage, shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average and such port charges as are

incurred during such repairs, unless payable solely as a result of the entering of such port or place. But when the ship is condemned or does not proceed on her original voyage, the expenses as above incurred after the date of ship's condemnation or of the abandonment of the voyage shall not be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, the expenses incurred as above shall be admitted as general average up to the date of completion of discharge.

This sub-section embodies old Rule XI and the last paragraph of old Rule XX. The consolidation has necessitated some slight alteration in the old wordings. The opportunity hasbeen taken to clear up the doubt as to whether Dock Dues were allowable in General Average, and as Adjusters in various Continental countries also allow such expenses as watching etc., the Committee instead of using the words « Port Dues » has used « Port Charges » in the hope that the various doubts may be removed.

(c) For the purposes of this Rule wages shall include all payments made to or for the benefit of the crew whether such payments be imposed by law upon the shipowners or be made under the articles of employment of the crew except such overtime as may be paid for work or repairs, the cost of which is not allowable in general average.

This sub-section is a definition of « Wages ». Practice varies considerably as to what comprises wages. This is chiefly brought about by doubts over such items as compulsory social insurance, pension funds, overtime brought about by crews' articles limiting the number of hours' work per week etc. The Committee feels, consequently, that the only way to bring about uniformity is to include in the new Rule a definition of « Wages ».

(d) Overtime paid for work or repairs, the cost of which is not allowable in general average, shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred.

The principle embodied in this sub-section was approved by the Committee, but as the wording requires amending in view of the suggestions made at the meeting, the Drafting Sub-Committee was asked to submit a new draft.

RULE XII. Committee agreed no amendment.

RULE XV. Committee agreed no amendment.

RULE XVI. The Committee approves the wording submitted giving

effect to the change to « the last day of discharge ». The first part of the Rule will now read as follows :—

« The amount to be made good as general average for damage to or » loss of goods sacrificed shall be the loss which the owner of the goods » has sustained thereby, based on the market values at the last day of » discharge of the vessel or at the termination of the adventure where this » ends at a place other than the original destination. »

The Committee also approved the deletion of the second part of the clause and provision being made for the salvage loss basis to be used, but it referred the actual wording back to the Drafting Sub-Committee wich the request that further consideration should be given to the necessity of providing for a sale when the voyage is abandoned at some port other than the original destination.

Attention was also drawn to the fact that the net proceeds should be deducted from the net sound value.

RULE XVII. Committee agreed no amendment.

RULE XVIII. Committee agreed no amendment.

RULE XIX. Committee agreed no amendment.

RULE XX. Delete as replaced by new Rule XI.

Confirmed

CHAIRMAN.

BRITISH MARITIME LAW ASSOCIATION

York/Antwerp Rules 1924

Minutes of the Meeting of the Committee held at The Salvage Association on Tuesday afternoon on 9th August, 1949, at 2 o'clock.

Present

Mr. E. W. Reading in The Chair
Mr. G. T. Charles
Mr. Martin Hill
Mr. C. D. Raynor
Mr. G. R. Rudolf
and The Hon. Sec. Mr. H. B. Edmunds.

The Minutes of the Meeting of the 24th March, 1949 were signed by the Chairman.

The Meeting opened with a discussion as to exactly what the Committee was expected to do now that the reports of the International Commission had been issued and it was decided that the Committee should consider the draft rules and where considered advisable request the British Delegation to take up various points at the Conference in Amsterdam.

RULE OF INTERPRETATION. The new wording was noted and consideration was given to the remarks made by Mr. Wattleworth in his letter dated the 5th instant to the Secretary. It was felt that nothing embodied in York/Antwerp Rules could over-side an express provision in a local law to the contrary but it did not seem that any harm could be done by inserting in the Rules, one in the form of the words as suggested.

As Sir Wm. McNair, K. C. had been consulted about the previous draft rule, it would be as well to ask him for his views on the new draft.

RULE C. The Committee felt that some of the words inserted by the International Commission were unnecessary from the British point of view but it was appreciated that there were differences in the meaning of

direct and indirect losses in various countries and this being so probably it would be as well not to make any criticisms of the new drafting.

RULE D. Mr. Knauth's letter of the 8th July to Mr.Rudolf was noted with some interest but it was generally felt that it would be very unwise to insert a Jason Clause in Y/A Rules as such a clause was only drafted to meet the position in The United States.

RULE V. This new draft came in for some criticisms as it was felt that the added words were quite unnecessary in this country and it was felt, therefore, that perhaps it might have been better to have added the words at the end of the clause and thus make it perfectly clear that they applied to both paragraphs.

RULE VII There was much discussion on the new draft, particularly of the words « compounding of engines », it being felt that the Rule in its new form was a little hard on shipowners. It was appreciated how difficult it was to frame a rule which was not capable of being abused.

A suggestion was made that it would be advisable to insert « main » before « engines ».

RULE X(d). Disappointment was expressed that this rule had not been amended to bring it into line with Rules F and XIV and it was decided to recommend to the British delegates that they should support any amendment to re-instate the British views.

RULE X(c). The Secretary asked to enquire from the U.S. Committee why they desired the word « fire » deleted.

RULE XI. The Committee considered several amendments suggested to Rule XI by the Institute of London Underwriters.

(I) XI (b) Delete words « for the purpose of repairs necessary for the safe prosecution of the voyage » and insert in their place « to enable damage to the ship caused by sacrifice or accident to be repaired ».

The Committee points out, however, that it is necessary to add the further words from the Rule X(b)

« if the repairs were necessary for the safe prosecution of the voyage ».

The following amendments were adopted :

(II) XI(b) Port charges incurred during the extra period of detention shall likewise be admitted as General Average except such charges as are incurred solely by reason of repairs not allowable in General Average.

(III) XI (d) When overtime is paid to the master, officers or crew for

work or repairs, the cost of which is not allowed in General Average, such overtime shall be allowed in General Average only up to the saving in expense which would have been incurred and admitted as General Average, had such overtime not been incurred.

RULE XII. The Secretary was asked to enquire from the Belgian Committee whether they would support an amendment to add the word « directly » before « caused by ».

RULE XIII. The Committee was told of the difficulties which had arisen over the re-drafted rule.

The new draft was based on a Swedish draft amended to embody the decision of the International Commission that deductions should be made only from renewals of « old material or parts », doubt, however, had been expressed as to the meaning of the word « material ».

The Committee suggested that the position would be clarified by using « the cost of the new article or part exclusive of the cost of carriage » and installation ».

The Committee's previous decisions that deductions should not be made either from drydock dues &c. or from shifting expenses, cartage, etc. etc. were re-affirmed.

RULE XVI. It was decided to recommend to the delegates that an amendment should be moved to include after the words «are sold » in the first line of the second paragraph the words «and the amount of the damage has not been otherwise agreed » as desired by the U.S. Committee.

The suggestion put forward by Mr. Martin Fryer to the Legal Committee of the Chamber of Shipping that there should be included in Y/A Rules a provision to overcome the effect of the House of Lords decision in the case of Mr. Cheldale was considered by the Committee.

The point in this case was whether cargo could include in its claim for damages from a wrongdoing vessel the contribution to General Average recoverable in accordance with the terms of the bill of lading. The fact that Y/A Rules were included in the bill of lading was simply incidental and an amendment to Y/A Rules would not necessarily overcome the decision. To try and deal with the matter by inserting a provision to overcome a rule of British and American law would, like inserting a Jason Clause in Y/A Rules, only further complicate what was intended to be a code of general average.

Confirmed

CHAIRMAN.

THE NORWEGIAN ASSOCIATION OF MARITIME LAW

REPORT

on

The Revision of York/Antwerp Rules 1924

Reference is made to Report No. 1 of the Drafting Sub-Committee of the British Maritime Law Association, dated 29 th December 1948 with amendments made at a meeting held by the Main Committee on the 6th January, 1949, and with further reference to Report No. 2 from the Drafting Sub-Committee, dated 24 th January, 1949.

Makis Agreement : We agree that the Rules should be prefaced with the exact words of the Agreement, which are :

« Except as provided in the numbered Rules Nos. I to XXIII inclu- » sive, the Adjustment shall be drawn up in accordance with the lettered » Rules, A to G inclusive. »

This interpretation of the distinction between the lettered and numbered Rules has always been practised in Norway, and is therefore superfluous according to Norwegian Law. On the grounds of consistency, however, we raise no objections.

RULE C.. We are in agreement with the recommendation of the Sub-Committee that Rule C should be amended in order to make it clear, that damage or loss through delay was not to be admitted in General Average whether incurred on the voyage or subsequently. Rule C. second part will read as follows :

« Damage or loss sustained by the ship or cargo through delay, whet- » her on the voyage or subsequently, and indirect loss from the same » cause, such as demurrage and loss of market, shall not be admitted as » general average. »

According to Norwegian jurisprudence it would also seem superfluous

to extend this paragraph with the new words. The meaning of same has by us neverbeen disputed. With a reference to a previous paragraph, we have, however, no objection to the proposed amendments.

RULE III. The Sub-Committee has put forward two alternatives for consideration :

1) Delete the last sentence of the Rule from the word « except » to the words « on fire ».

2) Delete as in 1) and insert the following :

« where portions of the ship and of bulk cargo, or separate packages of » cargo have been on fire, there shall be made good only the damage » done by the means used to extinguish such fire ».

The Main Committee is of the opinion that it would be better to leave the Rule in its present form.

Even if the Sub-Committee's proposal from a theoretical point of view is quite justified, we do not from practical reasons agree to any alteration in the Rule as far as the cargo is concerned. The work of the G. A. Adjusters as well as of the Surveyors will be complicated by the Sub-Committee's proposal, and the object of a revision of the York/Antwerp Rules should be to simplify the G.A. settlements.

As regards damage done to portions of the vessel in quenching a fire, the circumstances are somewhat different and we would propose the word « ship » to be deleted in the last sentence of Rule III. The exception should then read :

« except that no compensation shall be made for damage to such por- » tions of bulk cargo or to such separate packages of cargo as have been » on fire. »

As a matter of interest in this connection, we would mention that the Norwegian Maritime Law 190 No. 6 does not exclude fire extinguishing damages done to such portions of the vessel which have been on fire from allowance in General Average.

RULE VII. Rule VII, last sentence, reads :

« but when a ship is afloat no loss or damage caused by working the » machinery and boilers shall be made good as general average. »

It is proposed that the second part of this Rule should read :

« Where a ship is afloat and in a position of peril owing to the break- » down of her machinery there shall be made good in general average any

» further loss or damage deliberately caused to the machinery and boilers » in order to bring the ship into a place of safety, but in no other circum- » stances where a vessel is afloat shall damage to machinary and boilers » be made good as general average. »

According to our opinion it would seem quite clear that the proposed extention of damage to machinery and boilers to be compensated in G.A. would complicate matters and involve great risk of abuse.

We would not recommend this alteration, which undoubtedly would involve many practical difficulties in dealing with break-downs of machinary and the ensuing danger, also in the distinction of machinery damages between G.A. and P.A.

RULE VIII. We agree to the words « Passengers Baggage, Mails etc. » not being mentioned in this Rule and join in the conclusion arrived at by the Main Committee.

RULE X. We agree that the title to Rule X (a) should be deleted and instead used as the title to the whole Rule.

RULE XI. We agree that this Rule and Rule XX should be consolidated into a new Rule XI, as both Rules deal with expenses incurred following the resort to a port of refuge.

The Rule must have a new heading, which ought to read :

« Wages and maintenance of crew and other expenses bearning up for » and in port of refuge etc. »

We do not, however, agree to the words « port dues » being embodied in the Rule. This addendum seems to be unnecessary, as the question whether port charges are allowable in G.A. or not can be solved on basis of the prevailing Rules. Neither do we think it necessary to insert a provision defining the conditions for allowing overtime in G.A., the new proposal being in full accordance with the ruling practice.

As there has in practice been some doubt about what expenses are to be considered as part of the wages, (per example social insurances, pension funds) there should, as proposed by the Committee, be inserted a definition of the word « Wages ». Rule XI should therefore read :

« Wages and maintenance of Master, Officers and Crew incurred and » fuel and stores consumed during the prolongation of the voyage occa- » sioned by a ship entering a port or place of refuge or returning to her » port or place of loading shall be admitted as general average when the

» expenses of entering such port or place are allowable in general average » in accordance with Rule X(a). —

» When a ship shall have entered or been detained in any port or place » under the circumstances, or for the purpose of repairs mentioned in » Rule X, the wages and maintenance of the master, officers and crew, » fuel and stores consumed during the extra period of detention in such » port or place until the ship shall or should have been made ready to » proceed upon the voyage, shall be admitted as general average, except » such fuel and stores as are consumed in effecting repairs not allowable » in general average.

» But when the ship is condemned or does not proceed on her original » voyage, the expenses as above incurred after the date of ship's con- » demnation or of the abandonment of the voyage shall not be admitted » as general average.

» In the event of the condemnation of the ship or the abandonment of » the voyage before completion of discharge of cargo, the expenses in- » curred as above shall be admitted as general average up to the date of » completion of discharge.

» For the purpose of this Rule wages shall include all payments made » to or for the benefit of the crew whether such payments be imposed by » law upon the shipowners or be made under the articles of employment » of the crew ».

RULE XIII. The Salvage Association has asked its principal surveyors in London, Liverpool and Newcastle-on-Tyne to consider this Rule and report. We await this report but should like to mention that it appears from the introduction to Rule XIII that the Rule is based on the principle « new for old ». As will be remembered, however, it is mentioned in several places that the deductions should be applied not only to renewals but also to repairs. The wording therefore ought to be corrected.

RULE XVI. It is proposed that the words « date of arrival » in the first part of the Rule be substituted by the words : « last day of discharge ». We fully agree to this, as the other Y.A. Rules provide for the G.A. allowances as well as the contributing values to be based on the values at the termination of the adventure. (See Rule G and Rule XVII).

We also agree that the provision of Rule XVI second paragraph, viz : that the allowance in G.A. should be influenced by a rise or fall in the market value after the termination of the adventure, is unreasonable. We

think, however, that it will be sufficient to delete the whole of Rule XVI, 2nd section without substituting any new provision.

Rule XVI should therefore read :

« The amount to be made good as general average for damage to or » loss of goods sacrificed shall be the loss which the owner of the goods » has sustained thereby, based on the market values at the last day of » discharge of the vessel or at the termination of the adventure where » this ends at a place other than the original destination. »

Substituted Expenses. Rules F, X(d) and XIV, which are dealing with Substituted Expenses, are inconsistent.

Under Rule X(d) provision is made for the costs to be apportioned over the several parties to the adventure in proportion to the extraordinary expenses saved. —

Rule F and Rule XIV state that the substituted expenses shall be allowed as General Average up to the amount of the General Average Expenses avoided without regard to the saving, if any, to other interests.

In order to bring Rule F into line with Rule X(d) the Sub-Committee has recommended, that a new sentence should be added to Rule F, reading as follows :—

« This amount shall be arrived at by taking into account the extraor- » dinary expense saved to General Average as well as to the several par- » ties of the adventure. »

Another alternative, in order to bring Rule F, Rule X(d) and Rule XIV on to the same basis, has also been proposed, viz : To add to the end of the present Rule F and X(d) the following words : —

« Without regard to the saving, if any, to other interests ».

We agree to the last proposal. The result will be a clear and easily practicable Rule. Such apportionment as provided for in Rule X(d) is very seldom practiced, and the new proposal will not therefore in reality mean any essential alteration of the existing Rules.

We have no objections to there being inserted in Rule XIV in plain terms, that temporary repairs are allowed in G.A. only if permanent repairs could have been effected at the port or place of refuge.

According to the above and in accordance with the provisionally drafted Rules, the wording of the Rules dealing with Substituted Expenses should read :

RULE F. « Any extra expense incurred in place of another expense » which would have been allowable as general average shall be deemed to » be general average and so allowed, but only up to the amount of the » general average expense avoided without regard to the saving, if any, » to other interests ».

RULE X(d). « If a ship under average be in a port or place at which » it is practicable to repair her, so as to enable her to carry on the whole » cargo, and if, in order to save expenses, either she is towed thence to » some other port or place of repair or to her destination, or the » cargo or a portion of it is transhipped by another ship, or otherwise for- » warded, then the extra cost of such towage, transhipment and forwar- » ding, or any of them, shall be allowed in general average, but only up » to the amount of the general average expenses avoided without regard » to the saving, if any, to other interests. »

RULE XIV. « Where temporary repairs are effected to a ship at a port » of loading, call or refuge, for the common safety, or of damage » caused by general average sacrifice, the cost of such repairs shall be » admitted as general average.

« Where temporary repairs of accidental damage are effected the cost » shall be admitted as general average without regard to the saving (if » any) to other interests but only up to the saving in expense which » would have been incurred and allowed in general average if such repairs » had not been effected there, but there shall be no allowance in general » average for the cost of temporary repairs of accidental damage unless » such repairs were necessary to enable the adventure to be completed » and permanent repairs would have been practicable at the port of loa- » ding, call or refuge. »

The above remarks have been occasioned by the proposals for a revision of York/Antwerp Rules made in England.

We make the reservation that we later on may put forward other proposals for revision of the Rules.

On the other hand we already now beg to emphasise, that no other alterations ought to be made in the Rules than those which are necessary in order to facilitate the G.A. adjustments, and to ensure uniform practice in the application of the Rules as far as possible.

Oslo, 15th February 1949.

Sverre Holt	Leif Strom-Olsen jr.	Charles O. Herlofson
(sing.)	(sign.)	(sign.)

SWEDEN

REPORT

of the Swedish Committee appointed to study and report on the proposed revision of the York/Antwerp Rules, 1924. dated May 25th, 1949.

The Swedish Association of International Maritime Law has appointed the following members to form a Committee :

Captain N. E. Kihlbom, Chairman, representing Swedish Marine Underwriters' Association,

Mr. P. G. Hasselrot, Average Adjuster,

Mr. K. Pineus, Average Adjuster,

Mr. C. E. Ahmansson, representing Swedish Steamship Owners' Insurance Association,

one representative to be elected by the Swedish Joint Chambers of Commerce,

one representative to be elected by the Swedish Shipowners' Association.

The Swedish Joint Chambers of Commerce have elected

Mr. T. Andell as their representative.

The Swedish Shipowners' Association has elected

Mr. C. E. Ahmansson as their reprensentative.

The mandate given to the Committee is to study and report on the proposed revision of the York/Antwerp Rules, 1924.

The Committee now presents the following Preliminary Report :

The Committee has taken due notice of the reports of various national Committees and the Report of the General Average Committee to the Council of the International Union of Marine Insurance.

Makis Agreement. The Committee is not opposed to this agreement being introduced in the Rules, but favours the wording suggested by the Danish Committee :

« Except as provided in the numbered Rules below general average

» shall be adjusted in accordance with the following lettered Rules :— »

RULE A. The Committee has carefully considered, whether the addition of the word « imminent » before the word « peril » or other amendment would materially contribute towards checking tendencies to extend the scope of the Rules. The Committee, however, has arrived at the conclusion that this Rule can remain unchanged. It will be for the parties concerned and the average adjusters to see to it that such tendencies do not develop too far.

RULE B. No change proposed.

RULE C. The Committee is of opinion that the British proposal in respect of this Rule should be adopted :

« Only such damages, losses or expenses which are the direct conse-
» quence of the general average act shall be allowed as general average.
» Damage or loss sustained by the ship or cargo through delay, whether
» on the voyage or subsequently, and indirect loss from the same cause,
» such as demurrage and loss of market, shall not be admitted as general
» average. »

RULES D and E. No change proposed.

RULE F. No change proposed. As for the reasons for this view the Committee refers to the arguments put forward below under Rule XIV.

RULES G, I and II. No change proposed.

RULE III. No change proposed.

RULES IV, V and VI. No change proposed.

RULE VII. The Committee is of opinion that the British proposal in respect of this Rule should be adopted :

Damage to Machinery and Boilers.

« Damage caused to machinery and boilers of a ship which is ashore
» and in a position of peril, in endeavouring to refloat, shall be allowed
» in general average, when shown to have arisen from an actual intention
» to float the ship for the common safety at the risk of such damage ; but
» where a ship is afloat no loss or damage caused by working the machinery
» and boilers shall in any circumstances be made good as general average.»

RULES VIII and IX. No change proposed.

RULES Xa and X b. The Committee is of opinion that the British proposals in respect of these two Rules should be adopted :

Expenses at port of refuge etc.

(a) « When a ship shall have entered a port or place of refuge, or shall » have returned to her port or place of loading, in consequence of acci- » dent, sacrifice or other extraordinary circumstances, which render that » necessary for the common safety, the expenses of entering such port » or place shall be admitted as general average ; and when she shall have » sailed thence with her original cargo, or a part of it, the corresponding » expenses of leaving such a port or place consequent upon such entry » or return shall likewise be admitted as general average.

(b) « The cost of handling on board or discharging cargo, fuel, or » stores, whether at a port or place of loading, call or refuge, shall be » admitted as general average when the handling or discharge was neces- » sary for the common safety or to enable damage to the ship caused by » sacrifice or accident to be repaired, if the repairs vere necessary for the » safe prosecution of the voyage. »

RULE X c. The Committee is of opinion that the British proposal in respect of this Rule should be adopted with the following amendment « (including insurance if reasonably incurred) » :

(c) « Whenever the cost of handling or discharging cargo, fuel, or » stores is admissible as general average, the cost of reloading and sto- » wing such cargo, fuel, or stores on board the ship, together with all sto- » rage charges (including insurance if reasonable incurred), on such » cargo, fuel or stores, shall likewise be so admitted. But when the ship » is condemned or does not proceed on her original voyage, no storage » expenses incurred after the date of the ship's condemnation or of the » abandonment of the voyage shall be admitted as general average. In » the event of the condemnation of the ship or the abandonment of the » voyage before completion of discharge of cargo, storage expenses, as » above, shall be admitted as general average up to date of completion of » discharge. »

RULE X d. No change proposed. As for the reasons for this view the Committee refers to the arguments put forward below under Rule XIV.

RULE XI a. The Committee is of opinion that the Danish proposal in respect of this Rule should be adopted.

Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc.

(a) « Wages and maintenance of master, officers and crew incurred and » fuel and stores consumed during the prolongation of the voyage occa- » sioned by a ship entering a port or place of refuge or returning to her » port or place of loading shall be admitted as general average when the » expenses of entering such port or place are allowable in general average » in accordance with Rule X (a). »

RULE XI b. The Scandinavian Maritime Codes contain a provision according to which wages in port of refuge are allowed in general average, unless they might be avoided by paying off some of the crew. The Committee thinks it would be advantageous, if the duty to discharge part of the crew, if practicable, is not entirely lost sight of in the Rules. The Committee therefore suggests, that Rule XI b should read as proposed by the Danish Committee with addition of the following words « ...shall be admitted in General Average unless these costs might reasonably have been avoided by discharging the Master, Officers and crew »:

(b) « When a ship shall have entered or been detained in any port or » place in consequence of accident, sacrifice or other extraordinary cir- » cumstances which render that necessary for the common safety, or for » the purpose of repairs necessary for the safe prosecution of the voyage, » the wages and maintenance of the master, officers and crew during the » extra period of detention in such port or place until the ship shall or » should have been made ready to proceed upon her voyage, shall be » admitted in general average unless these costs might reasonably have » been avoided by discharging the master, officers and crew. When the » ship is condemned or does not proceed on her original voyage, the » period of detention shall be deemed not to extend beyond the date of » the ship's condemnation or of the abandonment date of the voyage or, » if discharge of cargo is not then completed, beyond the date of com- » pletion of discharge.

« Fuel and stores consumed during the extra period of detention shall » be admitted as general average, except such fuel and stores as are con- » sumed in effecting repairs not allowable in general average.

« Port charges incurred during the extra period of detention shall like- » wise be admitted as general average, except that port charges incurred » during repairs not allowable in general average shall be admitted in

» general average only if they would have been payable in consequence » of the detention, whether repairs were effected or not. »

RULE XI c. The Committee accepts the British proposals :

(c) « For the purposes of this Rule wages shall include all payments » made to or for the benefit of the master, officers and crew, whether such » payments be imposed by law upon the shipowners or be made under » the articles of employment. »

RULE XI d. In the Committee's opinion the British proposal does not bring out certain important points about overtime and the Committee believes that the proposal would cause uncertainties and possibly friction. It should be possible to frame a rule about overtime where the essential points are brought forward, clearly establishing that overtime paid for upkeep and maintenance work on ship, boilers and machinery shall in no case be allowed in General Average.

RULE XII. No change proposed.

RULE XIII. The Committee fails to see any cogent reason why deductions new for old should be made on the costs of new material only. The Committee thinks the suggestion illogical and is not aware of any practical reasons necessitating the abandonment of the present principle taken over from the YAR 1890. The Committee therefore suggests that the British proposal should be amended accordingly and that the second section of Rule XIII should be read thus : « The deductions shall be made from the costs of renewals » :

Deductions from cost of repairs.

« In adjusting claims for general average, repairs to be allowed in gene- » ral average shall be subject to the following deductions in respect of « new for old » where old material or parts are replaced by new.

« The deduction shall be made from the costs of renewals. No deduc- » tion to be made in respect of provisions, stores, and gear which have » not been in use.»

The further technical sections of Rule XIII will be examined by Swedish technical experts and the Committee does not offer any opinion as to these sections at the present stage.

RULE XIV, RULE F, RULE X d. **Substituted expenses.**

It is felt that at the preliminary stages of a General Average it would

unnecessarily hamper the interested parties in their negotiations on the subject if the YAR contained express provisions according to which savings to other interests than General Average were entirely disregarded. For these reasons the Committee holds that Rule F and Rule X d should remain unchanged and that Rule XIV should be adopted in the wording suggested by the Danish Committee, omitting the words « without regard to the saving, if any, to other interests » :

Temporary Repairs.

« Where temporary repairs are effected to a ship at a port or place of » loading, call or refuge, for the common safety, or of damage caused by » general average sacrifice, the cost of such repairs shall be admitted as » general average. Where temporary repairs of accidental damage which » are not necessary for the common safety are effected at a port or place » of loading, call or refuge at which permanent repairs would have been » practicable, and general average expense is thereby saved, the cost of » such temporary repairs shall be admitted as general average, but only » up to the amount of general average expense avoided, and only if, and » to the extent that, the temporary repairs were necessary to enable the » adventure to be completed.

« No deductions « new for old » shall be made from the cost of tem- » porary repairs allowable as general average. »

RULE XV. No change proposed.

RULE XVI. The Committee is of opinion that the British proposal in respect of this Rule should be adopted :

Amount to be made good for Cargo lost or damage by Sacrifice.

« The amount to be made good as general average for damage to or » loss of goods sacrificed shall be the loss which the owner of the goods has » sustained thereby, based on the market values at the last day of dis- » charge of the vessel or at the termination of the adventure where this » ends at a place other than the original destination.

« Where goods so damaged are sold the loss to be made good in gene- » ral average shall be the difference between the net proceeds of sale and » the net sound value at the last day of discharge of the vessel or at the » termination of the adventure where this ends at a place other than the » original destination. »

RULE XVII. Owing to the varying conditions at present the Com-

mittee feels it would be preferable to leave it to the Adjusters and the parties to decide the question of the contributing values according to the general principles laid down in the present Rule. The Committee therefore at present recommends that the Rule should undergo no change.

RULE XVIII. The Committee is inclined to recommend the addition suggested by the Danish Committee but has not yet taken up its final position on this point.

RULE XIX. No change proposed.

RULE XX. Amalgamated in Rule X.

RULE XXI. The Committee feels that present banking facilities have made this Rule somewhat antiquated. Moreover the comparatively high rate of interest in Rule XXII ought to act as a sufficient stimulant for putting up cash for General Average purposes. The present Rule gives undue advantage to payments in cash and entirely disregards for instance freight and cargo losses. On the other hand the Committtee is aware that a proposal for the total abolishment of the Rule or the extension of it also to freight and cargo allowances etc. may have little chances of international success. The Committee therefore confines itself to recommend that the commission should be 1 (one) per cent instead of the present 2 (two), the Rule otherwise to remain as at present. The Committee has discussed, whether a special provision should be added to the Rule, in which it is expressly said that the various parties have the right to advance funds for General Average purposes.

RULE XXII. In view of the fact that the present favourable rate of interest might lead the parties to regard a General Average expenditure as a profitable investment and indirectly create tendencies towards delays in the winding up of General Average, the Committee feels that an addendum to the Rules, whereby a time limit is created, might be useful. The Committee therefore suggests that the British proposal in respect of this Rule should be adopted with the following addendum : « However if a party unduly delays the settlement of General Average no interest shall be made good to him for the time the settlement is thus delayed. » :

Interest on losses made good in general average.

« Interest shall be allowed on expenditure, sacrifices and allowances » charged to general average at the rate of 5 % per annum, until the date

» of the general average statement, due allowance being made for any » interim reimbursement from the contributory interests or from the gene- » ral average deposit fund. However, if a party unduly delays the settle- » ment of general average no interest shall be made good to him for the » time the settlement is thus delayed. »

RULE XXIII. In view of the fact that a shipowner or his agent may collect deposits with the intention of putting them in a joint account but may wait for some time to place then in such account and perhaps meanwhile uses them (and loses them) for himself, the Committee believes that the British proposal in respect of this Rule should be adopted with the addition of the words « without delay » :

Treatment of cash deposits.

« Where cash deposits have been collected in respect of cargo's liability » for general average, salvage or special charges, such deposits shall be » paid without delay into a special account in the joint names of a repre- » sentative nominated on behalf of the Shipowner and a representative » on behalf of the Depositors, in a Bank to be approved by both. The » sum so deposited, together with accrued interest, if any, shall be held » as security for payment to the parties entitled thereto of the general » average, salvage or special charges payable by cargo in respect to which » the deposits have been collected. Payments on account of refunds of » deposits may be made if certified to in writing by the Average Adjus- » ter. Such deposits and payments or refunds shall be without prejudice » to the ultimate liability of the parties. »

The French Committee has suggested a new Rule (Rule H.) according to which no General Average apportionment should be made, where the claims, losses and expenses allowable in General Average are less than £1,000.

The Swedish Committee concurs in the wish that apportionment of General Average should not be made, when the amounts at stake do not warrant the work and costs of such apportionment. A Rule along the lines of the French suggestion nevertheless does not appeal to the Committee for the following reasons :

A fixed sum may look insignificant in the eyes of a transatlantic concern, but the same figure might be regarded as a considerable sum for the owner of craft in coastal traffic. Moreover, it is not always clear at an early stage that the basic amount to be apportioned in General Average

is only insignificant. A shipowner may have gone to the trouble and expense of calling in Average Bonds etc. in an entirely excusable belief that the amounts of General Average expenses and losses warrant such steps only afterwards to discover that the General Average amounts were comparatively insignificant. Should the parties to the adventure agree on a B/L clause, whereby they waive their right for an apportionment of small General Average, they are entirely at liberty to do so. The Swedish Committee feels that it might be left to the parties in the adventure to arrange that uneconomical apportionments are not made. On the other hand one must not lose sight of the fact that if no alteration is made there exists a legal right for any party in the adventure to demand the drawing up of an adjustment however insignificant in comparison with other values or costs of apportionment the interest of that party may be.

Stockholm, Gothenburg, Malmö, May 25th, 1949.

N. E. Kihlbom

P. G. Hasselrot

K. Pineus

C. E. Ahmansson

T. Andell

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

REPORT OF THE ASSOCIATION'S COMMITTEE TO CONSIDER AND RECOMMEND AMENDMENTS TO THE YORK-ANTWERP RULES, 1924.

The Committee have conferred at length amongst themselves, have had extensive correspondence with the representatives of the British Maritime Law Association Sub-Committee, and have examined reports of various other Associations which are considering a revision of the York-Antwerp Rules, 1924. The Committee recommends that the York-Antwerp Rules, 1924 be amended as indicated below :

(The portions of the existing text of the Rules which the Committee recommends be deleted are enclosed in square brackets. New matter to be inserted is printed in bold.)

The Committee recommends inserting the following at the beginning of the Rules :

« Except as provided in the numbered Rules, the adjustment shall be drawn up in accordance with the following lettered Rules ».

RULE A. No amendment.

RULE B. No amendment.

RULE C. The Committee recommends that this Rule be amended to read as follows :

« Only such damages, losses or expenses which are the direct consequen- » ce of the general average act shall be allowed as general average.

« Damage or loss sustained by the ship or cargo through delay, **whet- » her** on the voyage **or subsequently,** and indirect loss from the same » cause, such as demurrage and loss of market, shall not be admitted as » general average. »

RULE D. No amendment. The Committee agrees that it will be necessary to insert a proper Jason clause in all bills of lading.

RULE E. No amendment.

RULE F. The Committee recommends that this Rule be amended to read as follows :

« Any extra expense incurred in place of another expense which would » have been allowable as general average shall be deemed to be general » average and so allowed, **without regard to the saving, if any, to other » interests,** but only up to the amount of the general average expense » avoided. »

RULE G. No amendment.

RULES I, II, III, IV, V and VI. No amendment.

RULE VII. The Committee recommends that this Rule be amended to read as follows :

« Damage to [Engines in Refloating a Ship] **Machinery and Boilers.**

« Damage caused to machinery and boilers of a ship which is ashore and » in a position of peril, in endeavouring to refloat, shall be allowed in gene- » ral average when shown to have arisen from an actual intention to float » the ship for the common safety at the risk of such damage ; but where » a ship is afloat, no loss or damage caused by working machinery and » boilers shall **in any circumstances** be made good as general average. »

RULE VIII. No amendment.

RULE IX. No amendment.

RULE X. The Committee recommends that this Rule be amended to read as follows :

« Expenses at Port of Refuge, etc. »

(a) No amendment.

(b) No amendment.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including [fire] insurance, if incurred) on such cargo, fuel or stores, shall

likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.

(d) If a ship under average be in a port or place at which it is practicable to repair her so as to enable her to carry on the whole cargo, and if, in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transshipped by another ship, or otherwise forwarded, then the extra cost of such towage, transshipment and forwarding, or any of them, [(up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved] **shall be allowed in general average without regard to the saving, if any, to other interests, but only up to amount of the general average expense avoided.** »

RULE XI. The Committee recommends that this Rule and Rule XX be amended to read as follows :

Wages and Maintenance of Crew **and Other Expenses Bearing up for and** in a Port of Refuge, etc.

[RULE XX.]

(a) [Fuel and stores consumed and wages and maintenance of master, officers and crew incurred,] **Wages and maintenance of master, officers and crew incurred and fuel and stores consumed,** during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a).

[RULE XI.]

(**b**) When a ship shall have entered or been detained in any port or place under the circumstances, or for the purpose of repairs mentioned in Rule X, the wages [payable to the] **and maintenance** of the master, officers and crew, [together] with the cost of maintenance of the same,] **fuel and stores consumed and port charges incurred** during the extra period of

detention in such port or place until the ship shall or should have been made ready to proceed upon [her] **the** voyage, shall be admitted as general average, **except such fuel and stores as are consumed in effecting repairs not allowable in general average and such port charges as are incurred during such repairs, unless payable solely as a result of the entering of such port or place.** But when the ship is condemned, or does not proceed on her original voyage, the [wages and maintenance of the master, officers and crew,] **expenses as above** incurred after the date of the ship's condemnation or of the abandonment of the voyage shall not be admitted as general average. In the event of the condemnation of the ship or of the abandonment of the voyage before completion of discharge of cargo [wages and maintenance of crew] **the expenses incurred** as above shall be admitted as general average up to the date of completion of discharge.

(c) **For the purposes of this Rule, wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the articles of employment.**

(d) **Overtime paid to the master, officers and crew for work or repairs, the cost of which is not allowed in general average, shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred.** »

[RULE XX, 2nd Par.]

[Fuel and stores consumed during extra detention in a port or place of loading, call or refuge shall also be allowed in general average for the period during which wages and maintenance of master, officers and crew are allowed in terms of Rule XI, except such fuel and stores as are consumed in effecting repairs not allowable in general average.]

RULE XII. No amendment.

RULE XIII. The Committee recommends that this Rule be amended to read as follows :

« Deductions from Cost of Repairs.

In adjusting claims for general average, repairs to be allowed in general average shall be subject to the following deductions in respect of « new for old » [viz.] **where old material or parts are replaced by new.**

The deductions shall be made from the cost of the new material or parts only. No deduction to be made in respect of provisions, stores and gear which have not been in use.

In the case of iron or steel ships, from date of original register to the date of accident :

Up to 1 year old (A) — All repairs to be allowed in full, except **scaling and cleaning and** painting or coating of bottom, from which one-third is to be deducted. **No painting of bottom to be allowed if the bottom has not been painted within six months previous to the date of the accident.**

Between 1 and 3 years (B) — One-third to be deducted off [repairs to and renewals of woodwork of hull, masts and spars, furniture, upholstery, crockery, metal, and glassware, also] sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers and painting. One-sixth to be deducted off **woodwork of hull, masts and spars, furniture, upholstery, crockery, metal- and glass-ware,** wire rigging, wire ropes and wire hawsers, wireless, **direction finding and similar** apparatus, chain cables and chains, insulation, [donkey engines] **auxiliary machinery,** [steam] steering gear and connections, [steam] winches and connections, [steam] cranes and connections and electrical machinery **and connections other than electric propelling machinery ;** other repairs in full.

Between 3 and 6 years (C) — Deductions as above under Clause B, except that one-third be deducted off [insulation] **woodwork of hull, masts and spars, furniture, upholstery, crockery, metal- and glass-ware,** and one-sixth be deducted off ironwork of masts and spars, and all machinery (inclusive of boilers and their mountings).

Between 6 and 10 years (D) — Deductions as above under Clause C, except that one-third be deducted off **insulation,** ironwork of masts and spars, [donkey engines, steam] **auxiliary machinery,** steering gear, winches, cranes, and connections, [repairs to and] renewal of all machinery (inclusive of boilers and their mountings), wireless, **direction finding and similar** apparatus and all hawsers, ropes, sheets and rigging.

Between 10 and 15 years (E) — One-third to be deducted off all [repairs and] renewals except ironwork of hull and cementing and chain cables, from which one-sixth to be deducted. Anchors to be allowed in full.

Over 15 years (F) — One-third to be deducted off all [repairs and] renewals. Anchors to be allowed in full. One-sixth to be deducted off chain cables.

Generally (G) — The deductions (except as to provisions and stores,

insulation, wireless, **direction finding and similar** apparatus, machinery and boilers) to be regulated by the age of the ship, and not the age of the particular part of her to which they apply. [No painting bottom to be allowed if the bottom has not been painted within six months previous to the date of the accident. No deduction to be made in respect of old material which is repaired without being replaced by new, and provisions, stores and gear which have not been in use].

In the Case of Wooden or Composite Ships. — When a ship is under one year old from date of original register, at the time of accident, no deduction new for old shall be made. After that period a deduction of one-third shall be made, with the following exceptions :

Anchors shall be allowed in full. Chain cables shall be subject to deduction of one-sixth only.

[No deduction shall be made in respect of provisions and stores which had not been in use.]

Metal sheathing shall be dealt with, by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt, and labor metalling are subject to a deduction of one-third.

When a ship is fitted with propelling, refrigerating, electrical or other machinery, or with insulation, or with wireless, **direction finding or similar** apparatus, [repairs to] **renewals of** such machinery, insulation or [wireless] apparatus to be subject to the same deductions as in the case of iron or steel ships.

In the Case of Ships Generally. — [In the case of all ships, the expense of straightening bent ironwork, including labor of taking out and replacing it, shall be allowed in full.]

[Graving dock dues] **Drydock and slipway dues,** including expenses of removals, cartage, [use of shears] **cranage,** stages and [graving dock] **drydock and slipway** materials, shall be allowed in full. »

RULE XIV. The Committee recommends that this Rule be amended to read as follows :

« Temporary Repairs

« Where temporary repairs are effected to a ship at a port of loading, » call or refuge, for the common safety, or of damage caused by general » average sacrifice, the cost of such repairs shall be admitted as general » average.

« [But] Where temporary repairs of accidental damage are effected » merely to enable the adventure to be completed, the cost of such repairs » shall be admitted as general average **without regard to the saving (if » any) to other interests, but** only up to the saving in expense which » would have been incurred and allowed in general average [had] **if** such » repairs **had** not been effected there.

« No deductions « new for old » shall be made from the cost of tempo- » rary repairs allowable as general average. »

RULE XV. No amendment.

RULE XVI. The Committee recommends that this Rule be amended to read as follows :

« Amount to be Made Good for Cargo Lost or Damaged by Sacrifice.

« The amount to be made good as general average for damage to or » loss of goods sacrificed shall be the loss which the owner of the goods » has sustained thereby, based on the market values at the [date of the » arrival of the vessel] **last day of discharge of the vessel** or at the termi- » nation of the adventure where this ends at a place other than the origi- » nal destination.

« When goods so damaged are sold after arrival **and the amount of the » damage has not been otherwise agreed,** the loss to be made good [in » general average], shall be calculated by [applying to the sound value » on the date of arrival of the vessel the percentage of loss resulting from » a comparison of the proceeds with the sound value on date of sale.] » **deducting from the net sound value on the last day of discharge the net » proceeds realized at sale.** »

RULE XVII, XVIII and XIX. No amendment.

RULE XX. Now combined with Rule XI.

RULE XXI. The Committee recommends that this Rule be amended to read as follows :

« Provision of Funds.

« A commission of 2 per cent. on general average disbursements, **other » than the wages and maintenance of master, officers and crew and fuel » and stores not replaced during the voyage,** shall be allowed in general » average, but when the funds are not provided by any of the contribu- » ting interests, the necessary cost of obtaining the funds required by

» means of a bottomry bond or otherwise, or the loss sustained by owners » of goods sold for the purpose, shall be allowable in general average.

« The cost of insuring money advanced to pay for general average dis- » bursements shall also be allowed in general average. »

RULE XXII. The Committee recommends that this Rule be amended to read as follows :

« Interest on Losses Made Good in General Average.

« Interest shall be allowed on expenditures, sacrifices and allowances » charged to general average at the [legal rate per annum prevailing at » the final port of destination at which the adventure ends, or where there » is no recognized legal rate, at the] rate of 5 per cent, per annum, until » the date of the general average statement, due allowance being made » for any interim reimbursement from the contributory interests or from » the general average deposit fund. »

RULE XXIII. The Committee recommends that this Rule be amended to read as follows :

« Treatment of Cash Deposits.

« Where cash deposits have been collected in respect of cargo's liability » for general average, salvage or special charges, such deposits shall be » paid into a special account [earning interest where possible] in the joint » names of [two trustees] **a representative** [(one to be] nominated on » behalf of the shipowner and [the other] **a representative nominated*** on » behalf of the depositors, [)] in a bank to be approved by [such trus- » tees] **both.** The sum so deposited, together with accrued interest, if » any, shall be held as security for [and upon trust for] payment to the » parties entitled thereto of the general average, salvage or special char- » ges payable by cargo in respect [of] **to** which the deposits have been » collected. [The trustees shall have power to make] Payment on ac- » count or refunds of deposits [which may be] **may be made if** certified » to in writing by the average adjuster. Such deposits and payments or » refunds shall be without prejudice to the ultimate liability of the parties.»

In view of the fact that Rules XI and XX have been combined, Rules XXI, XXII and XXIII should be re-numbered Rules XX, XXI and XXII, respectively.

The foregoing recommendations for amendments are in agreement with

(*) This word is omitted in the proposed Rule as recommended by the British Sub-Committee.

the recommendations of the Sub-Committee of the British Maritime Law Association, as indicated by the Report of that Committee dated March 24, 1949, with the exception of Rules XIV and XVI, and also Rule XXIII in a minor respect as indicated at the bottom of this page.

The text of Rules XIV and XVI as recommended by the Sub-Committee of the British Maritime Law Association is as follows :

« RULE XIV. Temporary Repairs

« Where temporary repairs are effected to a ship at a port of loading, » call or refuge, for the common safety, or of damage caused by general » average sacrifice, the cost of such repairs shall be admitted as general » average.

« Where temporary repairs of accidental damage are effected, the cost » of such repairs shall be admitted as general average without regard to » the saving (if any) to other interests but only up to the saving in ex- » pense which would have been incurred and allowed in general average » if such repairs had not been effected there ; but there shall be no allo- » wance in general average for the cost of temporary repairs of accidental » damage unless permanent repairs would have been practicable at the » port of loading, call or refuge, and then only to the extent that such » repairs were necessary to enable the adventure to be completed. No » deductions « new for old » shall be made from the cost of temporary » repairs allowable as general average. »

RULE XVI. Amount to be Made Good for Cargo Lost or Damaged by Sacrifice.

« The amount to be made good as general average for damage to or » loss of goods sacrificed shall be the loss which the owner of the goods » has sustained thereby, based on the market values at the last day of » discharge of the vessel or at the termination of adventure where this ends » at a place other than the original destination. Where goods so dam- » maged are sold, the loss to be made good in general average shall be the » difference between the net proceeds of sale and the net sound value at » the last day of discharge of the vessel or at the termination of the ad- » venture where this ends at a place other than the original destination.»

Cletus KEATING, Chairman
Oscar R. HOUSTON
J. P. NELSON
Hawley T. CHESTER.

At the Fiftieth Annual Meeting of the Association on May 6, 1949, it was ordered that the foregoing recommendations of the Committee be circulated to the membership of the Association and others interested for their consideration and comment. Comments or suggestions should be submitted, preferably in quadruplicate, to Cletus Keating, Esq., Chairman, 120 Broadway, New York 5, N. Y.

Inasmuch as the revision of the York-Antwerp Rules, 1924 is one of the subjects on the agenda of the Conference of the Comite Maritime International to be held at Amsterdam in September, 1949, and the delegates of this Association to that Conference must receive their instructions before departing for the Conference, all persons interested are urged to submit their comments and suggestions to the Chairman at the earliest possible date.

John W. R. ZISGEN
Secretary
99 John Street
New York 7, N. Y.

BRITISH MARITIME LAW ASSOCIATION

Revision of York/Antwerp Rules 1924

To :— The Members of the International Commission.

The copies of the Digest which were sent to you on Saturday last were Printer's proofs sent off direct from the Printers' works, and they had not been checked. On checking, a number of errors have been found, the most important of which are as follows :—

Will you delete what has been printed and insert :—

RULE D. Norway. No amendment.

RULE F. Norway. Approve British amendment. Disapprove Dutch proposal to add « or loss ».

RULE VII. Norway. Approve British amendment.

RULE XIV. U.S.A. Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected, the cost of such repairs shall be admitted as general average without regard to the saving (if any) to other interests but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there ; but there shall be no allowance in general average for the cost of temporary repairs of accidental damage unless permanent repairs would have been practicable at the port of loading, call or refuge, and then only to the extent that such repairs were necessary to enable the adventure to be completed. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average.

The Digest properly corrected will be available to Members at the first meeting of the Commission on the 4th July, 1949.

H. B. EDMUNDS.
Hon. Secretary.

London, 27/6/49.

THE SWEDISH HULL INSURANCE ASSOCIATION

York/Antwerp Rules

P.M. REGARDING DEDUCTIONS, RULE XIII.

1) The reason why it is stipulated that repairs allowed in general average shall be subject to deductions in respect of « new for old » is that the parts in question are considered to have suffered a certain depreciation already through their age and that therefore the shipowner as a rule will get a certain advantage through the enhancement of value resulting from the renewal which should be about equaled by the deduction.

This enhancement is naturally a certain percentage of the total cost of the renewal and not only of the material. It therefore seems to be logical that the deductions should be calculated on the total cost of the renewal.

2) The percentage of cost of material of the total cost of renewal varies very much for different objects.

An investigation made by us regarding parts of propelling machinery of reciprocating type shows that the cost of material for highly finished smaller engine parts varies between about 15-25 %, for small details down to only 5% of the total cost. For other engine parts the cost of material seems to vary from about 30-75 % of the total cost.

This percentage is naturally highly dependent on how complicated the construction is, but it will also vary very much — even for the same kind of object — depending on size and kind of material, for instance if it is cast iron, cast steel, bronze etc.

Below under item 3) we have made a special note of the difficulty in the case of machinery and similar to define what is really to be counted as cost of material.

But even apart from this, as a consequence of the above mentioned big variation in percentage of cost of material comparad with the total cost of renewal, it will often be unfair to make the deduction from the cost of material only. Because it is obvious that the renewal of a part, where the cost of material is only a small percentage of the total cost, may be

just as great an advantage for the shipowner as a renewal, where cost of material is the main part of costs.

In the case of certain wood work the cost of material may in this country vary from about 30-75 % of the total cost depending on if the material is fir or f. i. teak. This is another example of how unfair deducting only on material may be. The owner would — even figured on percentage — have to bear a considerably greater deduction for an object of teak than for one of fir.

3) It is, especially in the case of machinery, instruments and similar apparatus, very difficult to define what shall be reckoned as cost of material. Below are mentioned only a few of the questions that will arise :

Shall « material » only mean raw material or also material in more or less finished state i.e. semi-manufactures ?

Shall f. i. for cast engine parts as cost of material be counted the raw unfinished casting, which of course in itself already includes part of the total cost of labour for the finished object, or shall only be calculated with raw material ?

Shall cost of necessary patterns be included in cost of material ?

Shall in the case of forgings, as f.i. for crank shafts, as cost of material be counted only the raw material or the ready forging roughly finished, in which shape it is frequently bought by the shipyards from special forging manufacturies ? Here in practice great differences may arise depending on what principle the calculation is based on.

Shall freight and transport from the manufacturer be included in the cost of material ?

In the case of the many different kinds of instruments and apparatus that exist on board a ship, what shall be counted as material ? The complete finished instruments that are installed, or only raw material ?

As a principle in all ship yards in the case of ship repairs as « material » is counted all material that is bought from outside firms as well as work that is executed by such firms as subcontractors and in cases also some other costs. It is therefore quite obvious, that the debited cost of material for a certain work will be highly dependent on to what extent the ship yard in question uses finished or partly finished material from outside firms or itself executes the whole process of manufacturing.

On account of the above mentioned difficulties we think it would be practically impossible in the YAR to give a short and acceptable definition of what shall be counted as « cost of material ». As a consequence of

this the practice would certainly not be uniform all over the world, which must be one of the aims of the rules.

4) In addition to the above mentioned difficulty to define « cost of material » we think that in practice it will be difficult to find surveyors, who — anyhow without undue delay — can calculate cost of material and labour separately for every part and plant on board a ship. In any case such detailed apportioning of the costs would make the estimating much more difficult and tedious, and the work of the Adjuster would certainly often have to be based on very approximate estimates or even assumptions. It is doubtful, if the ship repairers always could or would be willing to give the Adjuster detailed information regarding the separate cost of material and labour in cases, where such was needed.

5) On account of the above mentioned it is our firm opinion, that the deductions should be made on the total cost for the renewal including labour, material and all other costs directly connected with the renewal but excluding opening up of machinery etc. for inspection.

To stipulate deduction only on material would certainly bring about so many difficulties that this seems quite impracticable.

Gothenburg the 15th September 1949.

SVERIGES ANGFARTYGS ASSURANS FORENING.

York/Antwerp Rules 1924

PAYS-BAS

The Nederlandse Vereniging voor Zeerecht (the Netherlands Branch of the Comite Maritime International) set up a sub-Committee to examine what amendments are desirable in the York/Antwerp Rules 1924.

This Sub-Committee was constituted as follows :

Dr. F. Baron van der Feltz, representing the Nederlandse Vereniging voor Zeerecht.

Dr. H. R. Hoekstra, representing the Nederlandse Redersvereniging.

Mr. L. J. E. van Steenwijk, representing the Vereniging van Transportassuradeuren in Nederland.

Dr. C. M. Riechelmann, Average Adjuster.

Dr. H. Schadee, Average Adjuster.

The following suggestions were made by the Sub-Committee.

No amendments are proposed in the Rules A, B, D, E, I, II, IV, V, VI, VII, VIII, IX XII, XV, XVIII, XIX, XXI, XXIII.

Prefatory Rule.

In the past difficulties have arisen as to the exact meaning of the lettered rules. It has been held that the matters dealt with in the numbered rules were not to be exclusively decided according to these rules but that these numbered rules were qualified by the lettered rules. On the other side it was contended that the lettered rules only applied in cases not covered by the numbered rules. This view was expressed in the Makis Agreement, which was arranged in 1929 between English Underwriters and Shipowners.

It is now proposed that this Makis Agreement should precede the York/Antwerp Rules and the Sub-Committee agrees to this proposal. The York/Antwerp Rules should therefore be headed by a Prefatory Rule, reading as follows :—

« Except as provided in the numbered Rules the adjustment shall be » drawn up in accordance with the following lettered Rules. »

RULE C. It has been contended that damage sustained through delay

after the voyage and caused by repairing damage which was made good in general average, was to be admitted as such. Although this decision has since been overruled it seems advisable to make it absolutely clear that no damage or loss trough delay will ever be recoverable in general average.

The Sub-Committee therefore proposes to add the words « whether on on the voyage or subsequently ». Rule C will then read :

« Only such damages, losses or expenses which are the direct conse-
» quence of the general average act shall be allowed as general average.
» Damage or loss sustained by the ship or cargo through delay, whether
» on the voyage or subsequently, and indirect loss from the same cause,
» such as demurrage and loss of market, shall not be admitted as general
» average. »

RULE F. The question of substituted expenses is dealt with in the 1924 York/Antwerp Rules F, Xd and XIV. Of these Rules rule Xd provides that the substituted expenses dealt with in this rule shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved. No such proviso is contained neither in rule F nor in rule XIV. Clearly the system followed by rule Xd is the better one, but it often results in complicated calculations in which much is to be left to estimates and which may considerably delay the adjustment. It is therefore felt that this system should be left for the simpler one contained in rules F and XIV by which the extra expenses incurred are allowed up to the general average expense avoided and without regard to the saving, if any, to other interests.

According to rule F only extra expenses incurred in place of another expense which would have been allowable as general average and be deemed to be general average and all losses are excluded from such allowance. This exception seems to be an unreasonable one. When instead of definite repairs (which would have laid up the vessel in a port of refuge for a considerable time) a Shipowner decides to execute temporary repairs, thereby limiting the cargo space so that some cargo has to be left behind, it seems logical and fair to allow in general average the loss of freight and cargo on the same footing as the expenses of the temporary repairs. The same applies when instead of accepting tug assistance the master decides to reach a port of refuge under own power thereby causing damage to his engines, etc. etc. The Sub-Committee therefore proposes to read Rule F as follows :

« Any extra expense or loss incurred in place of another expense which » would have been allowable as general average shall be deemed to be » general average and so allowed without regard to the saving, if any, to » other interests, but only up to the amount of the general average ex- » pense avoided. »

RULE III. The exception contained in the last sentence is illogical and unfair. The argument put forward to defend it is that if the damage by extinguishing measures had not been done the goods would have been totally lost by the fire. However this argument holds good for all general average: when the general average measure had not been taken ship and cargo would have been a total loss! It seems illogical to base the exceptions of Rule III on an argument which would annihilate all general average. In most cases it is quite feasible to draw a distinction between the damage caused by the fire and the damage done by the extinguishing measures. Especially when this latter is far in excess of the fire damage it is unfair not to allow it in General Average. By omitting this exception an end will also be made to the existing divergence of opinion about what is to be deemed a « portion » of the ship, a « separate package of cargo », whether damage by heating or by smoke is to be treated as damage by fire, etc. etc. Greater uniformity in interpreting this rule wile thereby be reached.

It is not to be feared that much delay will be caused by the assessing of fire and water damage in separate percentages and should this be so, this will be amply compensated by the greater fairness of the adjustment. The Sub-Committee therefore proposes to leave out the last sentence of rule III and to draft this rule as follows:

« Extinguishing fire on shipboard. Damage done to a ship and cargo, » or either of them, by water or otherwise, including damage by beaching » or scuttling a burning ship, in extinguishing a fire on board the ship, » shall be made good as general average. »

Rule Xa. The heading of Rule X a « Expenses at port of refuge etc. » should be lifted so as to make it clear that it applies to all the paragraphs of the Rules.

Difference of opinion exists in those cases that a vessel is lying at a port of refuge, where it proves to be impoossible to repair her and whence she is therefore towed to another port where she can be repaired. Some contend that the second port can not be seen as a port of refuge because

the vessel was in complete safety at the first port. Others held that the stay at the second port is to be considered a prolongation of the stay at the first port. The British Association of Average Adjusters expressed this latter opinion in a Rule of Practice and the Sub-Committee proposes to add this Rule as a second paragraph to Rule Xa. This addition reads as follows :

« That, in practice, where a vessel is at any port or place in circumstan-
» ces in which the wages and maintenance of crew during detention
» there for the purpose of repairs necessary for the safe prosecution of the
» voyage would be admissible in general average under Rule XI of the
» York/Antwerp Rules 1924, and the vessel is necessarily removed thence
» to another port or place because such repairs cannot be effected at the
» first port or place, the provisions of Rule X(a) shall be applied to the
» second port or place as if it were a port or place of refuge within that
» Rule and the provisions of Rule XI shall be applied to the prolonga-
»tion of the voyage occasioned by such removal. »

RULE X c. Suggestion has been made to omit the word « fire » from the phrase in parenthesis. The Sub-Committee does not agree with this proposal as this would mean that the premiums of all insurances on the cargo effected at the port of refuge would have to be made good in General Average. In the view of the Sub-Committee this would be too wide an extension of General Average and is therefore to be avoided.

RULE X d. The Sub-Committee recommends that this Rule should be redrafted so as to make it consistent with the proposed Rule F. It should then read :

« If a ship under average be in a port or place at which it is practicable
» to repair her so as to enable her to carry on the whole cargo, and if, in
» order to save expense, either she is towed thence to some other port or
» place of repair or to her destination, or the cargo or a portion of it is
» transhipped by another ship, or otherwise forwarded, then the extra
» cost of such towage, transhipment and forwarding, or any of them and
» any loss being the direct consequence thereof, shall be allowed in gene-
» ral average without regard to the saving, if any, to other interests, but
» only up to the amount of the general average expense avoided. »

RULE XI. This rule has been completely redrafted by the Sub-Committee set up by the British Maritime Law Association. The new rule

meets the approval of the Sub-Committee but some small alterations seem necessary.

According to section b of the proposed Rule « port charges which are incurred in effecting repairs not allowable in general average » shall not be admitted as general average unless payable solely as the result of the entering the port or place (of refuge) ». In the view of the Sub-Committee this provision is most undesirable. It will result in highly complicated calculations, the Average Adjuster will have to thoroughly investigate the way in which port charges are levied in the port of refuge and adjustments will be delayed for trifling differences. In the Sub-Committee's opinion — and such has always been the practice in the Netherlands — all port charges incurred in the port of refuge are to be allowed in general average irrespective of the nature of the repairs effected.

In paragraph c of the proposed rule XI a definition of the term « wages » is given. The Sub-Committee agrees to this definition but fears that the reference to « the articles of employment » is apt to be misunderstood. The « articles of employment » are a typically British institute and it may be difficult to adopt this term to the various national laws which may govern the relation between Shipowners and Crew. The Sub-Committee would therefore prefer a much wider term comprising al relations between Shipowners and Crew whether created by law, or by contract and either between Shipowners and Crew directly or between Shipowners and Seafarer's Associations or between Shipowners' associations and crew etc. In rule XI d of the proposed Rule a proviso is given about overtime. The Sub-Committee has no objections against this Rule but it seems to be superfluous as the practice has always been in accordance with it. In the view of the Sub-Committee rule XI therefore should read :

« Wages and maintenance of crew and other expenses bearing up for » and in a port of refuge, etc.

« a. Wages and maintenance of master, officers and crew incurred and » stores consumed during the prolongation of the voyage occasioned by » a ship entering a port or place of refuge or returning to her port or » place of loading shall be admitted as general average when the expen- » ses of entering such port or place are allowable in general average in » accordance with Rule X(a).

« b. When a ship shall have entered or been detained in any port or » place under the circumstances, or for the purpose of repairs mentioned

» in Rule X, the wages and maintenance of the master, officers and crew, » fuel and stores consumed and port charges incurred during the extra » period of detention in such port or place until the ship shall or should » have been made ready to proceed upon the voyage, shall be admitted » as general average, except such fuel and stores as are consumed in » effecting repairs not allowable in general average.

« But when the ship is condemned or does not proceed on her original » voyage, the expenses as above incurred after the date of the ship's » condemnation or of the abandonment of the voyage shall not be admit- » ted as general average. In the event of the condemnation of the ship or » of the abandonment of the voyage before completion of discharge of » cargo, the expenses incurred as above shall be admitted as general ave- » rage up to the date of completion of discharge.

« e. For the purpose of this Rule wages shall include all payments made » to or for the benefit of the master, officers and crew, whether such pay- » ments be imposed by law upon the shipowners or be made.

« d. Overtime paid to the master, officers and crew for work or repairs, » the cost of which is not allowed in general average, shall be allowed in » general average only up to the saving in expense which would have » been incurred and admitted as general average had such overtime not » been incurred. »

RULE XIII. Having received technical advice from the Salvage Association the British Sub-Committee drafted a new rule to which the Sub-Committee completely agrees.

The proposed new rule reads :

« Deductions from cost of repairs, In adjusting claims for general » average, repairs to be allowed in general average shall be subject to the » following deductions in respect of « new for old » where old material or » parts are replaced by new. The deductions shall be made from the cost » of the new material or parts only. No deduction to be made in respect » of provisions, stores and gear which have not been in use. In the case » of iron or steel ships from date of original register to the date of acci- » dent :

« Up to 1 year old (A).

« All repairs to be allowed in full, except scaling and cleaning and pain- » ting or coating of bottom, from which one-third is to be deducted.

» No painting of bottom to be allowed if the bottom has not been pain-
» ted within six months previous to the date of the accident.

« Between 1 and 3 years (B).

« One-third to be deducted off sails, rigging, ropes, sheets and hawsers
» (other than wire and chain), awnings, covers and painting.

« One-sixth to be deducted off woodwork of hull, masts and spars, fur-
» niture, upholstery, crockery, metal — and glass — ware, wire rigging,
» wire ropes and wire hawsers, wireless direction finding and similar appa-
» ratus, chain cables & chains, insulation, auxiliary machinery, steering
» gear and connections, winches and connections, cranes and connections
» and electrical machinery and connections other than electric propelling
» machinery ; other repairs in full.

« Between 3 and 6 years (C).

« Deductions as above under Clause B, except that one-third be deduc-
» ted off woodwork of hull, masts ans spars, furniture, upholstery, croc-
» kery, metal- and glass-ware and one-sixth be deducted off ironwork of
» masts and spars and all machinery (inclusive of boilers and their
» mountings).

« Between 6 and 10 years (D).

« Deductions as above under Clause C, except that one-third be deduc-
» ted off insulation, ironwork of masts and spars, auxiliary machinery,
» steering gear, winches, cranes and connections, renewal of all machinery
» (inclusive of boilers and their mountings), wireless, direction finding
» and similar apparatus and all hawsers, ropes, sheets and rigging.

« Between 10 and 15 years (E).

« One-third to be deducted off all renewals except ironwork of hull and
» cementing and chain cables, from which one-sixth to be deducted. An-
» chors to be allowed in full.

« Over 15 years (F).

« One-third to be deducted off all renewals. Anchors to be allowed in
» hull. One-sixth to be deducted off chain cables.

« Generally (G).

« The deductions (except as to provisions and stores, insulation, wire-
» less, direction finding and similar apparatus, machinery and boilers) to
» be regulated by the age of the ship and not the age of the particular
» part of her to which they apply.

« In the case of wooden or composite ships.

« When a ship is under one year old from date of original register, at » the time of accident, no deduction new for old shall be made. After that » period a deduction of one-third shall be made, with the following ex- » ceptions :

« Anchors shall be allowed in full. Chain cables shall be subject to a » deduction of one-sixth only.

« Metal sheathing shall be dealt with, by allowing in full the cost of a » weight of metal sheathing stripped off, minus the proceeds of the old » metal. Nails, felt, and labour metalling are subject to a deduction of » one-third.

« When a ship is fitted with propelling, refrigerating, electrical or other » machinery, or with insulation, or with wireless, direction finding or » similar apparatus, renewals of such machinery, insulation or appara- » tus to be subject to the same deductions as in the case of iron or steel » ships.

« In the case of Ships Generally.

« Drydock and slipway dues, including expenses of removals, cartage, » cranage, stages and drydock and slipway materials shall be allowed » in full. »

RULE XIV. This rule should be brought in consistency with the proposed rule F. It should therefore read as follows :

« Temporary repairs.

« Where temporary repairs are effected to a ship at a port of loading, » call or refuge, for the common safety, or of damage caused by general » average sacrifice, the cost of such repairs and any loss being the direct » consequence thereof shall be admitted as general average ; but where » temporary repairs of accidental damage are effected merely to enable » the adventure to be completed, the cost of such repairs shall be admit- » ted as general average only up to the saving in expense which would » have been incurred and allowed in general average had such repairs » not been effected there without regard to the saving, if any, to other » interests.

» No deductions « new for old » shall be made from the cost of tem- » porary repairs allowable as general average. »

RULE XVI. There is a discrepancy between York/Antwerp Rules 1924 XVI and XVII as the latter provides for the contributory value to be

based on the value « at the termination of the adventure », whereas rule XVI holds that the amount to be made good in general average shall be based on the value at the date of the arrival of the vessel. Both, allowance and contribution, should be based on the same value and in accordance with the universal practice it is therefore recommended to bring rule XVI in conformity with rule XVII.

The last paragraph of Rule XVI provides for the allowance to cargo damaged and sold to be calculated on the « par quotite-system ». Whatever the merits of this system may be it has proved a highly complicated and unpractical one. It is therfore suggested to drop it and to replace it by the fair and simple way of assessing the damage on a salvage loss basis.

The proposed new Rule should therfore read :

« Amount to be made good for cargo lost or damaged by sacrifice.

« The amount to be made good as generel average for damage to or » loss of goods sacrificed shall be the loss which the owner of the goods » has sustained thereby, based on the market values at the last day of » discharge of the vessel or at the termination of the adventure where » this ends at a place other than the original destination.

« Where goods so damaged are sold the loss to be made good in gene- » ral average shall be the difference between the net proceeds of sale and » the net sound value at the last day of discharge of the vessel or at the » termination of the adventure where this ends at a place other than the » original destination. »

RULE XVII. It is usual practice, and not only in the Netherlands, to except mails and time-charterhire from contribution to General Average. This exception is mainly based on practical arguments : it is almost impossible to ascertain the value of the many parcels of mails which may be on board a big liner ; it will be impossible toget a deposit paid by the receivers who have no contract with the shipowners but only with the postal autorities, the time-charterhire at risk is not easily found, etc.

It is therefore recommended to give this practice a sanction in the rules and in the opinion of the Sub-Committee the last paragraph of Rule XVII should therefore read :

« Passengers' luggage and personal effects not shipped under bill of » lading, mails and time-charterhire shall not contribute in general aver- » age. »

RULE XXI. It has been suggested that commission should only be given on extra-ordinary disbursements incurred during the voyage. The Sub-Committee fears that it will hardly prove possible to define between ordinary and extra-ordinary disbursements and would therefore recommend to preserve the rule in its present form.

RULE XXII. This should be amended to give effect to the resolution which was adopted by the International Law Association at its conference in Brussels in September 1948 and should therefore read :

« Interest on losses made good in general average. Interest shall be al-
» lowed on expenditure, sacrifices and allowances charged to general aver-
» age at the rate of 5% per annum, until the date of the general average
» statement, due allowance being made for any interim reimbursement
» from the contributory interests or from the general average deposit
» fund. »

RULE XXIII. The Sub-Committee has no amendments to propose but does not object against any proposals which may make this Rule acceptable in U.S.A. as long as its quintessence is not altered.

FRANCE

Proposed Revision of the York/Antwerp Rules 1924

The Committee entrusted by the French Association for Maritime Law with the task of studying the alterations and amendments to be made in the York/Antwerp Rules 1924 consisted of the following persons :

Chairman : M. James Paul GOVARE ;

Members : MM. BISSON DE LONGUEIL, Léopold DOR, HUNZIKER, GERVAIS, John Paul GOVARE, MARCHEGAY, MARTIN & PITOIS ;

Rapporteur : M. GERVAIS.

This Committee made up of jurists, shipowners, marine underwriters and general average adjusters, all of them persons particularly qualified to express enlightened opinions on the contemplated reform, has studied with deep interest the Report of the General Average Commission appointed by the International Union of Marine and Transport Insurance Companies, the conclusions of which were adopted by the General Meeting held by that body at Noordwijk in September 1948.

It has also gathered valuable information from the particularly well documented reports of the Branches of the Comite Maritime International which, in various countries, were invited to express their feeling as to this Revision of the York/Antwerp Rules 1924.

Several methods of carrying out this work could be considered. The French Committee, like the other foreign Committees, has adopted the simplest system, if not the most rational, that which consists of studying successively, in their present order, the provisions contained in the Rules, with the object of seeking the reforms which might be made in each one of them.

Bearing in mind the experience acquired since 1924 and the wish expressed by the promoters of this revision, it has made a point, above all, of making some of these Rules clearer, in order to facilitate and standardize the interpretation thereof.

With this in view and although from the French point of view the respective scope of the Lettered and Numbered Rules has never excited controversy, the French Committee has adhered to the British proposal, providing for the insertion of a new Rule, serving in a way as a preface to the Rules as a whole and defining the scope of each category of them. However, it cannot accept the wording which is proposed and which reads as follows :

« Except as provided in the numbered Rules Nos. I to XXIII inclusive, » the adjustment shall be drawn up in accordance with the following let- » tered Rules, A to G inclusive. »,

as this wording would completely distort the interpretation to be given to them. For the numbered Rules are in no way exceptions to the Lettered Rules, but are indeed complementary to these Rules or examples of their application. Therefore, the French Committee proposes that this new Rule should be worded as follows :

« Les Règlements d'avaries communes seront établis conformément aux » Règles affectées de la lettre A à G, complétées et précisées par les Règles » numérotées de I à XXIII. »

This Rule would be inserted before Rule A and be separated by a line so as not to change in any way the present marking of the Rules bearing a letter.

RULE A. It has been suggested that in order to avoid certain abuses, it should be specified in this Rule A., that the peril justifying the opening of general average procedure should be a real peril, and not a mere accident of navigation not affecting the safety of the common adventure.

It would indeed be desirable to put an end to certain practices tending to multiply the number of general average adjustments, but it seems difficult with this in view to make the present wording of Rule A., more precise than it is. It is the duty of the average adjuster to judge from the documents which are produced to him and from the inquiry which he can always make, whether the general average adjustment which he is asked to draw up does in fact comply with the conditions laid down by Rule A.; moreover, the parties always have the right to dispute an adjustment which they consider does not comply with these conditions.

RULE B. No change.

RULE C. The Committee has considered that from the French point

of view and according to the interpretation given to this Rule by our Courts (case of the Eleni) its present wording seems sufficiently clear and precise and that it does not appear necessary to alter it. However, in view of the doubts of the British Committee, it sees no objection to accepting the new wording proposed, which may be translated into French as follows :

« Seront seuls admis en avaries communes les dommages, pertes ou » dépenses qui sont la conséquence directe de l'acte d'avarie com- » mune. Les dommages ou pertes subis par le navire ou la cargaison par » suite de retard, soit au cours du voyage, soit postérieurement, et les » pertes indirectes provenant de la même cause, telles que celles résultant » de chomâge ou de différence de cours, ne seront pas admis en Avarie » Commune. »

RULE D. No change.

RULE E. No change.

RULE F. The interpretation of this Rule, which admits in respect of general average, the application of the principle of substituted expenses, ought not to raise any difficulty if there did not exist between it and Rule X (d), which provides, in certain cases, for the application of this same principle, certain contradictions or at least a lack of harmony which cannot reasonably be explained.

Whereas, indeed, Rule F., appears to admit that expenses allowed as general average in respect of substituted expenses shall be borne by general average without limitation or reservation, Rule X (d) provides, on the contrary, that, in the event of towage, transhipment or forwarding being resorted to, the extra expense thereby incurred shall be apportioned among the several parties who have benefited thereby, in proportion to the extraordinary expense saved.

On the other hand, Rule XIV which provides also for the application of the principle of substituted expenses in the case of temporary repairs carried out at a port of refuge, does not contemplate such apportionment among the parties who have benefited thereby, whereas in all logic and fairness this was the solution that ought to have been applied just as in the cases provided for by Rule X (d).

What conclusions are to be drawn from these contradictions which nothing appears to justify, and which it is essential to eliminate ?

There are only two possible solutions for this :

1) either to alter the wording of Rule F., in such a way that it is made quite clear that in all cases where the principle of substituted expenses is applied in general average, an apportionment of such expenses shall be made, if the circumstances warrant it, between general average and the other beneficiaries of the extraordinary measure adopted. Thus, it would no longer be necessary to retain in Rule X(d) provisions for this apportionment, nor to take them into consideration in a new wording of Rule XIV.

2) or to adopt the solution proposed by various countries to do away with the apportionment provided for by Rule X (d) and in order to avoid all further argument, to provide expressly in Rule F., that general average alone shall bear the expenses allowed as substituted expenses, irrespective of whether this measure has benefited other parties.

The French Committee favours the first solution for the following reasons.

It wishes first of all to recall that Rule X (d) already existed in the 1890 Rules and that if its practical application had given rise to the difficulties which are now cited, it would have been either amended or abolished in 1924. However, the commentators of the Stockholm Conference make no allusion to the existence of any controversy in connection therewith.

As to Rule XIV which was an innovation of this Conference as regards the application of the principle of substituted expenses in the case of temporary repairs executed at a port of refuge, one cannot understand the reasons why the members of this Conference, although the question was discussed, did not admit, as regards the case provided for in this Rule, the system of apportionment provided for by Rule X (d) ; Mr. George Rupert Rudolf, the eminent English expert on general average rightly expresses astonishment at this (see York/Antwerp Rules (1926 Edition) Pages 94 and 95).

However this may be,to abolish now the provisions on this subject contained in Rule X (d) would be a prime error which nothing would justify. It would, indeed, be really shocking and contrary to all fairness to make the contributing interests alone bear expenses by which private interests have also benefited. It too frequently happens nowadays that general average is regarded as the normal receptacle for expenses which have not always in view the common safety of the adventure and to abolish a provision the precise object of which is to prevent it, would be to aggravate further this abuse.

In this connection, it is interesting to recall the resolution passed by the Members of the International Transport Insurance Union at the General Meeting held at Montreux in September 1933, asking for the strict application of Rule X (d) in all similar cases, but one cannot overlook in this connection the wish expressed by the marine underwriters who are the principal parties interested in the question.

The objection will not fail to be raised, and it is the main, if not the only argument put forward by those who ask for the abolition of this apportionment provided for by Rule X (d), that it is physically impossible to ascertain, in the cases envisaged by this Rule, the savings effected both by general average and by the several parties to the adventure.

This objection could not be upheld. Although it is true that this apportionment is often difficult, it is certainly not impossible and average adjusters are often faced with more serious difficulties. In this connection, it is of interest to refer to various articles which appeared in the « Revue Internationale d'Assurances Maritime », one from the pen of « Examiner » (Volume 13 p. 58), another signed by Mr. H. VOET (Volume 17 p. 85 and 107), and a third signed by G. HOCHGRABER of Berlin (October 1938 number, p. 124), which recognize that this Rule X (d) is perfectly applicable in practice.

Such are the reasons why the French Committee considers that the provisions of Rule X (d) must be not only retained but indeed extended to the case of temporary repairs effected at a port of refuge (Rule XIV) and to all other similar cases.

With this object, it proposes that the wording of Rule F., which lays down the principle of substituted expenses in general average, should be completed as follows :

« Toute dépense supplémentaire encourue en substitution d'une autre » dépense qui aurait été admissible en Avarie Commune sera réputée elle- » même Avarie Commune et admise à ce titre, mais seulement jusqu'à » concurrence du montant de la dépense d'avarie commune ainsi épargnée. » Toutefois si cette dépense supplémentaire ainsi bonifiée en Avarie Com- » mune a profité également à d'autres intéressés dans l'aventure, elle » sera supportée par la Communauté et les divers intéressés proportion- » nellement au montant de la dépense épargnée à chacun d'eux. »

If this proposal is accepted, the last part of the wording of Rule X (d) would have to be revised and worded as follows :

« La dépense supplémentaire de ces remorquage, transbordement et » réexpédition, ou de l'un d'eux (jusqu'à concurrence du montant de la » dépense supplémentaire épargnée) sera supportée par la Communauté » et les divers intéressés dans l'aventure, dans les conditions prévues par » la Règle F. »

the wording of this Rule ending with this last sentence.

Likewise in Rule XIV, it would be necessary to complete the sentence reading :

« ..... le coût de ces réparations ne sera bonifié en ava- » ries communes, dans les conditions prévues à la Règle F., que jusqu'à » concurrence de la somme épargnée ..... ».

The rest of this sentence remaining unchanged, subject, however, to the proposals made below, when this Rule is considered.

Finally, as regards the wording of Rule F., the French Commission see no objection to the word « loss » being added to the word « expense » in the first line of this Rule, as is proposed by the British Committee.

RULE G. No change.

RULE H. The French Committee, taking into consideration the many complaints of shipowners, shippers and their insurers, believes that it is necessary, as far as is practicable, to reduce the number of general average adjustments by limiting them to those cases where the amount of the expenses or losses to be classified as such would reach a figure which would justify the cost of an adjustment. The French Hull Policy contains a clause to this effect, but it obviously has no effect except as between the Insured and their Insurers.

It would be advisable to generalize this practice and to provide that the same solution should be adopted as between shipowners and shippers. In this spirit, the French Committee proposes the insertion of a new rule which would be Rule H and which would read as follows :

« Il n'y aura pas lieu à répartition d'avaries communes, lorsque le » montant des avaries, pertes et dépenses admissibles en Avaries Commu- » nes au profit du navire et de la cargaison ou de l'un d'eux sera infé- » rieur à £1,000 ou à une somme équivalente en tout autre monnaie. »

If the forthcoming Conference agrees to the « Makis » proposal providing for the insertion of a new rule specifying that the rules bearing a letter lay down the general principles by which general average is gover-

ned, the question will arise as to whether it is advisable to retain certain numbered rules which are merely the application of these principles. Such would be the case, for example, as regards Rules II, IV and XII.

The French Committee would like to have opinion of the Committees of the other countries on this point before going further into the question.

NUMBERED RULES

RULE I. **Jettison of Cargo.**

No change.

RULE II. **Damage by Jettison and Sacrifice for the Common Safety.**

No change.

RULE III. **Extinguishing Fire on Shipboard.**

The French Committee, after considering the proposal made by certain foreign branches for the deletion of that part of the Rule which reads :

« Toutefois, aucune bonification ne sera faite pour dommage causé à » toutes parties du navire et du chargement en vrac ou à tous colis sépa- » rés de marchandises qui ont été en feu »,

considers that it would be dangerous to go against the decision adopted at Stockholm in 1924 where this question was discussed at length. While recognizing that the discrimination provided for by the Rule is at times difficult to make, it is of the opinion that the proposed alteration could only extend the scope of damage allowable as general average, which is precisely what it is wished to counteract.

Nor does it think that it can agree — and for the same reasons — to the intermediate proposal made by the Norwegian Committee, which suggests the deletion of the words « ship, and », so that the Rule would then only apply, as, moreover, is provided by the legislation of that country, to bulk cargo and to separate packages of cargo.

RULE IV. **Cutting away Wreck.**

No change.

RULE V. **Voluntary Stranding.**

The Netherlands Committee points out that the wording of this Rule is illogical, since it commences by formulating an exception to the principle which it expresses, this principle being relegated to the second part of its text.

This observation is correct and the French Committee quite agrees to this anomaly being removed.

RULE VI. **Carrying Press of Sail. Damage to or Loss of Sails.**

No change, but this Rule might perhaps be amalgamated with the following rule.

RULE VII. **Damage to Engines in Refloating a Ship.**

The French Committee, after studying the proposals made by certain foreign branches, considers that the Title of this Rule could be usefully altered by adding « Chaudières » to the word « Machines ».

On the other hand, it has declared its opposition to any alteration of the second part of this Rule tending towards the making good as general average of such damage when the ship is afloat, whatever the circumstances which may have led the master to resort to such measure.

This question was discussed at length at Stockholm in 1924 where it was sought to stop the extension of too frequent abuses. The new wording proposed by the British Committee, in spite of its reservations, would run counter to the object sought ; this is why the French Committee is of the opinion that the present wording should be retained, except as just stated, as regards the title of the Rule itself.

Moreover, this opinion is shared by the Committees of the United States and Norway.

RULE VIII. **Expenses Lightening a Ship when Ashore, and Consequent Damage.**

The French Committee considers that the proposal made by certain countries to mention specially mail, passengers' luggage etc., would only complicate the drawing up of a general average adjustment.

The same would apply to Rules X (b), X (c) and XVII.

The Committee therefore proposes that the « status quo » should be maintained.

RULE IX. **Ship's Materials and Stores Burnt for Fuel.**

In order to make the interpretation of this Rule more comprehensible, the French Committee suggests adding at the end, after the words : « sera porté au crédit de l'avarie commune » the words « et au débit du » navire ».

RULE X. **Expenses at Port of Refuge.**

The French Committee fully agrees with the proposal of the majority of the other Committees that the present Title should stand as a separate heading, since it actually applies to the 4 paragraphs of the Rule, whereas its present position leads one to think that it only concerns Paragraph (a).

Subject to this reservation, the French Committee is of the opinion that no alteration should be made to Paragraphs (a) and (b) ; but it proposes, like the American Committee, deleting the word « fire » appearing in the phrase « including fire insurance if incurred », in Paragraph (c), for it may indeed be essential to take out other insurances than fire insurance, for example, an insurance against theft or war risks. However, in order to avoid abuses, it is suggested that this phrase should be worded as follows : (« including any insurances reasonably incurred »).

As to Paragraph (d), it was considered at the same time as Rule F. (see above).

RULE XI. **Wages and Maintenance of Crew in Port of Refuge.**

The French Committee is in full agreement that this Rule should be amalgamated with

RULE XX. **Expenses Bearing up for Port, etc.**

It suggests that the title of these two combined Rules should be as follows :

RULE XI. **Expenses during Deviation and in Port of Refuge.**

Furthermore, taking into consideration the suggestions made by certain foreign Committees, it also agrees to the wages and victuals of the crew allowable, in the circumstances, as general average including also the additional charges in connection therewith provided for by the legislation of certain countries or by labour contracts.

It therefore proposes that the new Rule should be worded as follows :

« Quand un navire sera entré ou aura été retenu dans un port ou autre » lieu, dans les circonstances ou en vue de réparations mentionnées à la » Règle X, on admettra en Avarie Commune les gages et les frais d'entre- » tien du Capitaine, des Officiers et de l'équipage ainsi que le combustible » et les approvisionnements consommés pendant la prolongation du » voyage depuis le début de l'immobilisation ou du déroutement jusqu'à » ce que le navire ait été mis en état de reprendre ses opérations normales » ou sa route ou jusqu'au moment où il aurait dû être en état de

» le faire. Mais, si le navire est condamné ou ne poursuit pas son voyage » primitif, les dépenses (encourues dans les conditions indiquées ci-des- » sus) postérieures à la date de la condamnation du navire ou de l'aban- » don du voyage, ne seront pas admises en Avarie Commune. En cas de » condamnation du navire ou d'abandon du voyage avant l'achèvement » du déchargement de la cargaison, les dépenses (encourues dans les con- » ditions précisées ci-dessus) seront admises en Avarie Commune jusqu'à » la date de l'achèvement du déchargement.

« Les gages bonifiables en Avarie Commune comprennent toutes som- » mes payées au capitaine, aux officiers et à l'équipage ainsi que tous » frais et dépenses accessoires s'y rapportant dûs par l'armateur en vertu » de dispositions légales ou conventionnelles.

« Les heures supplémentaires payées pour travail ou réparations dont » le coût n'est pas bonifiable en avarie commune ne seront admises que » jusqu'à concurrence de la somme épargnée sur les frais qui auraient été » exposés et admis en Avarie Commune si le travail en heures supplémen- » taires n'avait pas été éffectué.

« Aucune bonification ne sera accordée pour le combustible et les ap- » provisionnements consommés pour l'exécution de réparations non ad- » missibles en Avarie Commune.

RULE XII. **Damage to Cargo in Discharging, etc.**

No change.

RULE XIII. **Deductions from Cost of Repairs.**

The people who drafted this Rule in 1924 made only a few alterations, confining themselves to adapting the new wording to the progress made in shipbuilding since 1890, by specifying, in particular, the deductions to be made in respect of « new for old » on electrical machinery, wireless telegraphy apparatus, etc.

It is regrettable that the Committees of the various countries now engaged in studying the alterations to be made to the York/Antwerp Rules 1924 have not paid attention to this Rule XIII which, in the opinion of the French Committee, is in great need of being simplified and brought up to date. This is obviously a delicate task and it should be made the subject of a special study by marine experts assisted by average adjusters. However, in view of the present conditions of construction of iron and steel ships, and with the object of simplification, one might contemplate reducing the classification of ships according to age to 3 categories, for

example, instead of the 7 existing at present. This alteration should involve, besides, a complete revision and a new classification of the repairs and renewals, with a view to the reductions to be made in respect of them.

The view of the French Committee is that these 3 new categories should comprise :

1) ships aged from 1 to 10 years ;

2) ships aged from 10 to 30 years ;

3) ships over 30 years old.

But before going further into this question the French Committee would be glad to have the opinion of the foreign branches as to the advisability of a complete revision of this Rule at the present time.

RULE XIV. **Temporary Repairs.**

Apart from the comments made above in connection with Rule F., the French Committee proposes that certain clarifications should be made in the wording of this Rule XIV, in order, on the one hand, to make it clearer and, on the other hand, to prevent certain abuses to which its interpretation might give rise.

It is a question, in the first place, of clarifying the meaning of the phrase appearing at the end of the second part of the 1st Paragraph of this Rule which, for the sake of clarity of the comments which will follow, we think it necessary to quote here « in extenso » :

« .....mais, lorsque des réparations provisoires d'un dommage » fortuit sont effectuées simplement pour permettre l'achèvement du » voyage, le coût de ces réparations ne sera bonifié en Avaries Commu- » nes que jusqu'à concurrence de la somme épargnée sur les dépenses » qui auraient été encourues et bonifiées en Avaries Communes si les dites » réparations n'avaient pas été effectuées dans ce Port. »

What can be the meaning of this phrase :

« si les dites réparations n'avaient pas été effectuées dans ce port » ?

Commentators on this rule consider that the draughtsmen intended to allude to the case where, instead of temporary repairs, permanent repairs have been effected at the port of refuge ; if such is the case, there is no doubt that the time taken by such permanent repairs would have been much longer, without reckoning that, in order to do this, it might perhaps have been necessary to discharge all or part of the cargo, to warehouse it, etc.

In these circumstances, if such is in fact the meaning of Rule XIV, it would be much more logical to word it in such a way as to avoid any misunderstanding, and the French Committee therefore proposes the following wording :

RULE XIV. **Temporary Repairs.**

« ..... mais, lorsque les réparations provisoires d'un dommage » fortuit sont effectuées simplement pour permettre l'achèvement du » voyage, le coût de ces réparations ne sera bonifié en A.C. que jusqu'à » concurrence de la somme épargnée sur les dépenses qui auraient été » encourues et bonifiées en Avaries Communes si des réparations defini- » tives avaient été effectuées dans ce port. »

Furthermore, although this Rule XIV provides for the admission of temporary repairs on the conditions which have just been cited, it specifies that it can only be a question in this instance of temporary repairs effected merely to enable the adventure to be completed. But it is frequent for the shipowner or the surveyors, after the completion of the adventure, to decide that permanent repairs shall not be carried out until a later date and quite often when the ship goes into drydock for renewal of her classification.

It is therefore not rare to see ships continuing their navigation for a more or less long period, thanks to temporary repairs which have been paid for by the parties to a previous adventure. This is a shocking thing and, which is more, one that is clearly contrary to the wording and to the spirit of this Rule.

In order to prevent such abuses, the French Committee proposes that a new paragraph be added to this Rule XIV, providing that, if the permanent repairs are not effected within a reasonable period after the completion of the adventure, the shipowner shall bear a part of the temporary repairs by which he has personally benefitted.

Taking into consideration this comment, the one that preceded it and those which were made when Rule F., was considered, the French Committee proposes that the second part of Rule XIV, commencing with the words : « mais lorsque des réparations provisoires ..... » should be worded as follows :

« Mais, lorsque des réparations provisoires d'un dommage fortuit sont » effectuées simplement pour permettre l'achèvement du voyage, le coût » de ces réparations ne sera bonifié en Avaries Communes, dans les con-

» ditions prévues à la Regle F., que jusqu'à concurrence de la somme » épargnée sur les dépenses qui auraient été encourues et bonifiées en » Avaries Communes, si des réparations définitives avaient été effectuées » dans ce port. Toutefois dans le cas où après l'achèvement du voyage, le » navire ayant repris sa navigation, il n'aurait pas été procédé dans un » délai de 6 mois à l'exécution de ses réparations définitives, le montant » des réparations provisoires admissibles en Avaries Communes, dans les » conditions ci-dessus indiquées, serait réduit de 50 %. »

RULE XV. **Loss of Freight.**

No change.

RULE XVI. **Amount to be made good for Cargo Lost or Damaged by Sacrifice.**

The French Committee agrees to the words « à la date de l'arrivée du navire » in the 1st Paragraph of this Rule being replaced by « à la fin du déchargement ».

As regards the 2nd Paragraph and contrary, in particular, to the American proposal, the French Committee urges that the present wording be retained. This question of adjustment by percentage or by difference was discussed at length at Stockholm in 1924. By deciding for adjustment by percentage, the Conference adopted the only logical system ; furthermore, it has been upheld in France by our jurisprudence in the case of the « Seine » and the application thereof is also provided for in our Cargo Policy.

If the second paragraph of Rule XVI is retained, it would also be advisable to replace in this paragraph, as in the first, the words « arrivée du navire » by « à la fin de l'aventure ».

RULE XVII. **Contributory Values.**

The application of this Rule gives rise, in many countries, owing to the present situation, to serious difficulties both as regards the valuation of ships, in the absence of an international market, and as regards the appraising of a large number of cargoes. How indeed can one ascertain the actual net value of products at the end of the voyage, when the prices of many goods are fixed by the Government, irrespective of any consideration based on the law of supply and demand.

The solution proposed by the British Committee does not solve the difficulties.

The French Committee, believing that these are only transitory, is of the opinion that Rule XVII, which it may soon be possible to apply again in the normal way, should not be altered.

RULE XVIII. **Damage to ship.**

No change.

RULE XIX. **Undeclared or Wrongfully Declared Cargo.**

No change.

RULE XX. **Expenses Bearing up for Port, etc.**

This rule has been amalgamated with Rule XI (see above).

RULE XXI. **Provision of Funds.**

The French Branch considers that this commission for the provision of funds, in addition to interest, constitutes a heavy burden on general average, which is precisely what it is sought to guard against. Furthermore, it may be the source of numerous abuses.

The United States Branch has proposed altering the wording of this Rule so that this commission for the provision of funds shall only be allowed on extraordinary expenditure.

This suggestion is perfectly reasonable, but it is to be feared that this too general formula, lacking in precision, may leave the door open to abuses, and it is for this reason that the French Committee would agree to the British proposal which may be expressed in French as follows :

« Une commission de 2% sur les débours d'avarie commune, autres » que les gages et vivres du capitaine, des officiers et de l'équipage et des » matières consommées, non remplacées pendant le voyage, sera bonifiée » en avaries communes, mais ..... (the rest of the phrase » stands unchanged).

RULE XXII. **Interest on Losses made good in General Average.**

The French Committee adopts without change the wording resolved upon in August 1948 at the Brussels Conference of the International Law Association.

RULE XXIII. **Treatment of Cash Deposits.**

The French Committee sees no objection to accepting the wording proposed by the United States Committee, which translates into French as follows :

Present wording Rule XXIII.

Lorsque des dépôts en espèces auront été encaissés en garantie de la contribution de la cargaison à l'avarie commune, aux frais de sauvetage ou frais spéciaux, ces dépôts devront être versés à un compte joint spécial, portant intérêt si possible, ouvert aux noms de deux séquestres (dont l'un sera désigné pour le compte de l'armateur et l'autre pour celui des déposants) dans une banque acceptée par les dits séquestres.

Les sommes ainsi déposées, augmentées, s'il y a lieu, des intérêts, seront conservées à titre de garantie et à charge du paiement, à ceux qui y ont droit, de l'avarie commune, des frais de sauvetage ou des frais spéciaux payables par la cargaison et en vue desquels les dépôts ont été perçus.

Les séquestres auront le pouvoir de faire des paiements d'acomptes ou des remboursements de dépôts en tant qu'ils pourront y être autorisés par écrit par le dispacheur.

Ces dépôts, paiements ou remboursements seront effectués sans préjudice de la responsabilité définitive des parties.

Proposed wording.

Lorsque des contributions provisoires auront été déposées pour garantir la contribution de la cargaison à l'avarie commune, au sauvetage ou à des charges spéciales, ces dépôts devront être versés à un compte joint special ouvert aux noms d'un représentant nommé par l'armateur et d'un représentant nommé par les déposants, dans une Banque agréée par les deux représentants.

La somme ainsi déposée, augmentée des intérêts, le cas échéant, sera conservée en garantie du paiement, aux personnes y ayant droit, des charges d'avaries communes, de sauvetage ou des charges spéciales payables par la cargaison, en considération desquelles les contributions provisoires ont été perçues. Des paiements d'acomptes ou des remboursements de dépôts pourront être effectués sur autorisation écrite du dispacheur et sans préjudice de la responsabilité des parties.

In conclusion, the French Committee insists that the official wording of the new rules should be drawn up both in English and in French, as was agreed to at Stockholm in 1924.

René GERVAIS
Rapporteur

James Paul GOVARE
Chairman.

Révision des règles d'York et d'Anvers

(Conférence d'Amsterdam 1949)

RAPPORT PRESENTE PAR LA SOUS-COMMISSION BELGE

étant

M. Albert LILAR, Président du Comité Maritime International et de l'Association Belge de Droit Maritime.

M. Henry VOET, Rapporteur.

M. Albert DEVEZE, Président de l'« International Law Association » et de la Branche Belgo-Luxembourgeoise de l'International Law Association ».

M. Aug. FICQ

M. Jean VAN RIJN

M. Pierre VARLEZ

M. Carlo VAN DEN BOSCH, Secrétaire.

AVANT PROPOS.

A. GENERALITES. —

La Révision des Règles d'York et d'Anvers a été portée à l'ordre du jour de la Conférence d'Amsterdam du Comité Maritime International prévue pour septembre 1949.

En abordant cette étude, il sied tout d'abord de rendre un juste hommage à nos devanciers qui patiemment depuis plus de 80 ans ont élaboré les Règles existantes, et en plusieurs étapes ont su faire accepter par la libre volonté du Commerce des Nations de l'Univers (Armateurs, Assureurs et les autres branches intéressées), un Code de l'Avarie Commune et 23 Règles visant des cas concrets d'application courante.

B. PLUS SPECIALEMENT. —

Cependant aux Etats Unis et au Canada, si le principe même de l'Avarie Commune aussi bien que l'application des Règles numérotées sont d'usage, certaines des Règles sont cependant rejetées d'une manière constante.

D'autre-part, on s'est demandé si les Règles d'York et d'Anvers de 1924 ne présentent pas certaines lacunes, ne recélent pas, peut être certaines erreurs, au moins si leur rédaction ne pourrait recevoir utilement certaines retouches.

Elaborer un texte qui soit acceptable par les intéressés de toutes les Nations.

Eliminer ou accentuer ou préciser là où c'est nécessaire les formules de 1924.

Telle est la tâche soumise à l'examen des diverses Sous-Commissions.

DISCUSSION

PREMIERE QUESTION. —

Doit-on maintenir le principe de l'Avarie Commune.

Doit-on maintenir les Règles d'York et d'Anvers.

Quand un principe existe depuis 25 siècles, qu'il est d'application dans toutes les législations, qu'il ne s'en trouve aucune qui propose une formule différente, il peut paraître assez oiseux d'en vérifier le bien fondé et la justesse.

L'Union Internationale d'Assurance-Transport, en intéressée au plus haut chef à la question, a été saisie. Elle a formé un Comité pour son examen.

Ce Comité était composé d'hommes éminents. Il a examiné la question sous l'angle de l'Assurance Maritime.

Il a conclu à l'unanimité

(a) That the principle of general average cannot be abolished, and that there are no adequate grounds for abolition of the application of the system.

(b) That the replacement of general average by other suggested sys-

tems would not be in the interests of the commercial world, as they would cause insecurity, confusion and increased litigation.

Il ajoute cependant

(c) That the criticism is sufficiently well founded to give reason for considering ways and means of simplification and of some reform.

Cette réponse dispose également de la 2° branche de la question, s'il faut abolir les Règles d'York et d'Anvers.

Ici aussi l'avis unanime est négatif, notre Sous-Commission étant donc d'avis :

1°. — Que le principe de l'Avarie Commune doit être maintenu.

2°. — Que les Règles d'York et d'Anvers doivent être maintenues.

2°. QUESTION. —

Est-il utile de maintenir les Règles littera A à G ?

Elles constituent la codification du principe de l'Avarie Commune et ont été introduites en 1924 à Stockholm.

Antérieurement il n'existait que les Règles numérotées qui visaient des cas d'espèce.

Nos devanciers à Stockholm ont eu l'ambition de codifier. Ils y ont réussi puisque les Règles de 1924 sont maintenant d'application depuis 25 ans et ont certes uniformisé les usages.

Mais leur réussite n'a été que partielle puisque les Etats Unis notamment y objectent.

Cependant leur objection ne vise pas apparemment le principe même de la codification, puisqu'ils admettent unanimement la Rule G.

La réponse est donc affirmative.

D'ailleurs pour tout esprit logique il apparaît que s'il y a moyen d'obtenir l'unanimité non seulement sur des cas d'espèce mais également sur les principes qui forment la base d'une réglementation, la codification est salutaire.

Mais ici se pose la question de savoir s'il y a lieu dans un préambule de dire quelle est exactement la portée des Règles à littera vis à vis des Règles numérotées.

Pour nous la question ne se pose pas :

Les Règles à littera ont codifié les principes généraux, les Règles numérotés donnent la solution à apporter dans certains ces d'espèces.

D'après les principes généraux de notre Droit, la Règle fixant l'exception

doit être préférée à la Règle générale pour l'application au cas visé par la Règle d'exception.

Mais nous savons que la Sous-Commission anglaise pour un motif péremptoire, insiste pour que cette vérité soit dite expressément dans la rédaction des nouvelles Règles en préparation.

Nous nous rallions cordialement à cette demande. Nous nous permettons cependant de faire observer que la formule proposée ne nous semble pas heureuse.

Except as provided in the numbred Rules the Adjustment shall be drawn up in accordance with the following lettered Rules.

Nous comprenons parfaitement le motif pour lequel cette rédaction est proposée, mais pourquoi limiter le principe ainsi admis à l'établissement du Règlement Général.

Remarquons que nulle part dans les Règles il n'est question de Règlement Général et que le mot « Dispacheur » (Adjuster) ne s'y trouve qu'une seule fois (à la Règle XXIII) et encore pour lui donner un pouvoir qui n'a qu'un rapport lointain avec le Règlement Général.

Il semble préférable de dire :

Les principes généraux en matière d'Avarie Commune sont exprimés par les Règles A à G, les Règles I à XXIII régissant des cas spéciaux d'application ou d'exception.

Elles devront dès lors être appliquées aux cas visés par elles de préférence aux Règles A à G, en cas de conflit ou de doute.

En conséquence les Règlements Généraux devront être établis sur base des Règles A à G excepté dans les cas prévus par les Règles numérotées où celles-ci seront préférées.

3° QUESTION. —

Faut-il encore étendre les Règles a littera.

On ne voit pas bien comment, car elles paraissent complètes avec cette seule exception qu'elles ne contiennent aucune disposition relative à la Procédure.

Chose étrange, alors que les Avaries Communes entrainent parfois des débours énormes à répartir sur de très nombreux débiteurs, il n'existe aucune disposition qui précise où le Règlement devra être établi, par qui, quel sera l'organisme qui désignera les répartiteurs, quels sont les pouvoirs et les responsabilités de ceux-ci.

Le seul cas où il est fait une mention quelconque à ce sujet est la Règle

XXIII qui donne aux Dispacheurs le pouvoir à coup sûr important d'autoriser des payements à valoir à effectuer par les Trustees des dépôts d'avarie Commune provisoire. La seule disposition effective est que cette autorisation doit être donnée par écrit.

Les anciennes règles de 1890 contenaient une Règle XVIII prévoyant l'établissement du Règlement au port de reste et notre Loi prévoit en ses Art. 163 et 164 la désignation des Dispacheurs par le Tribunal du Port de destination, leur Rapport devant être homologué par le Tribunal.

Disposition éminemment sage, puisqu'il est légitime que les intérêts des parties, tant créancières de l'Avarie Commune que débitrices des conditions soient déterminés d'une manière indiscutable, sur rapport de personnalités indépendantes des parties.

Mais il est impossible d'exiger l'insertion dans les Règles d'York de cette disposition car l'institution de nos Tribunaux de Commerce n'est pas universelle : les pays Anglo-Saxons ne la connaissant pas, et l'on ne voit pas bien comment combler cette lacune.

Il paraît dès lors inutile d'exprimer un vœu à cet égard.

Quant à la nécessité d'établir le Règlement au port de reste ce n'est pas par caprice que cette disposition a été abolie. Il ne faut pas perdre de vue en effet que les Règles d'York et d'Anvers sont applicables dans le monde entier visant des transports pour les destinations les plus diverses, qu'il est parfois difficile de déterminer le port de reste et que sa détermination peut tenir à ce que le navire garde à bord quelques colis sans importance pour un port étranger.

Bref, la Sous-Commission pense qu'ici le mieux serait l'ennemi du bien et que l'on peut laisser aux Armateurs le soin de déterminer le Port, où le Règlement sera établi, s'ils jugent opportun de le stipuler.

Quant à la désignation des Dispacheurs, ce point sera traité plus spécialement lors de l'examen de la Règle XXIII.

On peut bannir à cet égard toute crainte d'abus car si les Règles sont muettes au sujet de la désignation des Dispacheurs elles le sont également quant aux droits des Armateurs vis à vis des signataires de compromis qui seraient récalcitrants à l'exécution volontaire du Règlement d'Avarie Commune, de sorte que pour obtenir l'exécution, l'Armateur devra s'adresser aux Tribunaux qui auront à trancher le différend.

Il échet cependant de signaler ici deux situations spéciales :

1. — Certains compromis d'Avarie Commune conférent au Dispacheur la qualité d'arbitre dont la Règlement est exécutoire sans recours aux

Tribunaux. C'est là une déviation fâcheuse du Droit Commun et même de la profession de Dispacheur, qui doit avant tout rester un Expert.

2. — Une disposition légale Suédoise rend le Règlement exécutoire par sa simple publication, après l'expiration d'un délai de 30 jours à partir de celle-ci. Pareille publication se fait par le dépôt au Greffe du Tribunal, si nous sommes bien informés. A l'époque de la rédaction de cette disposition — en 1789 sauf erreur — pareille publicité pouvait être suffisante pour des intéresses habitant la même ville et pouvant la surveiller. Actuellement on peut dire sans crainte qu'elle ne sauvegarde pas suffisamment les droits légitimes des intéressés étrangers. Il serait souhaitable que les intéressés Suédois eux-mêmes adaptent cette publicité aux exigences des temps actuels.

4°. QUESTION. —

Quelles sont les modifications à apporter aux Règles à littera.

Règle A.

Le Comité de l'Union Internationale dont question ci-dessus voudrait une définition plus stricte de la notion de péril. Il désirerait que le péril soit actuel et réel. Ceci pour le motif d'ordre général qu'il y a lieu de restreindre plutôt que d'élargir la zone d'applicabilité de l'Avarie Commune.

Le mot péril comprend la notion de danger. Il ne suffit pas dès lors d'un simple intérêt commun. Il est également inutile de parler de péril « réel » le mot est suffisamment clair par lui-même d'autant plus que dans le même phrase se rencontre le terme de « **salut** » commun.

La Sous-Commission s'est efforcée de trouver une formule qui tout en précisant la notion de péril ne serait pas de nature à frustrer ceux qui ont fait le sacrifice ou dont les biens ont été sacrifiés, d'une juste compensation, au cas où une définition trop rigide serait adoptée.

La Sous-Commission reconnaît qu'elle n'a pu trouver pareil terme.

Elle déclare cependant qu'il lui paraîtrait nocif de restreindre la notion de péril au point de vue du temps ou de l'espace. La seule définition possible ne porterait que sur la gravité du péril, mais encore une fois elle n'a pu trouver à cet égard un terme qui lui paraisse adéquat.

Une autre question que l'on pourrait envisager est celle de savoir si le péril doit exister dans la réalité des faits et non pas seulement dans l'idée que s'en fait le Capitaine.

Là également il serait dangereux de préciser, dans un sens ou dans l'autre.

Il appartiendra en cas de contestation aux Tribunaux compétents de décider si le sacrifice a été fait « dans le but de préserver d'un péril quand un sacrifice est fait pour le salut commun ».

La Sous-Commission propose de laisser le texte adopté à Stockholm tel quel sans ajoute ni restriction.

Règles B. D. et G.

Il est proposé de les laisser telles quelles.

Règle C.

A l'effet de combattre certaine théorie qui entendait faire admettre comme sacrifice le chômage du Navire pendant les réparations des sacrifices ayant intéressé la coque du Navire et étant donné que l'allocation de ce chômage a été admise non pas dans l'application des Règles d'York et d'Anvers mais dans celle de certaines Législations Nationales, il a été demandé de préciser ce point dans la Rédaction de la Règle C.

Cette demande est légitime.

Il est proposé d'amender la Règle C comme suit :

1er paragraphe : inchangé.

2nd paragraphe : les dommages ou pertes subis par le navire ou la cargaison par suite de la prolongation du voyage ou les pertes indirectes et notamment le chômage pendant le voyage ou par après, tout comme les différences de cours ou la perte d'intérêts, ne seront pas admis en Avarie Commune.

Règle F.

Cette règle a donné lieu à discussion, non pas dans son texte, mais parce qu'elle est en conflit avec la Règle Xd. Dans la Règle F. en effet on admet en Avarie Commune la dépense substituée à concurrence du montant de la dépense d'avarie commune évitée.

La Règle XIV admet un principe analogue, mais la Règle Xd. prévoit que la dépense substituée sera supportée par les divers intéressés dans l'aventure proportionnellement à la dépense extra épargnée.

Il se peut, en effet, que par suite de cette accélération du voyage — par remorquage — ou de cette discontinuité — par transbordement — l'Armateur épargne des dépenses personnelles qui ne seraient pas bonifiées, que des propriétaires de cargaison périssable reçoivent leurs marchandises

en bon état, alors que si elles avaient dû rester à bord, elles seraient devenues perte totale, non bonifiable en vertu de la Règle C.

Il faudrait donc répartir la dépense substituée entre tous ces intérêts.

Faut-il dès lors modifier la Règle F. ou la Règle X(d).

A notre sens la règle X(d) doit être amendée. Non pas qu'elle soit injuste. Bien au contraire, elle constitue le maximum de l'équité. Mais comment calculer le montant de la perte ou des débours n'ayant pas caractère d'Avarie Commune qui ont été épargnés ? Quel nid à discussions. Il n'est déjà pas si simple de calculer les allocations en Avarie Commune épargnées bien que celles-ci peuvent être estimées avec quelque précision. Mais comment distinguer pour les autres intéressés.

Et puis il existe une soupape de sûreté. La dépense substituée ne sera Avarie Commune que dans la mesure où elle restera inférieure ou égale à la dépense d'Avarie Commune épargnée. Les contribuants ne subissent dès lors aucun préjudice.

Par ailleurs comment — en vertu de quel titre — le créancier qui a effectué le débours qui se trouve avoir diminué à bon escient la charge de l'Avarie Commune, va-t-il récupérer, le cas échéant, à charge d'un porteur de Connaissement la quote-part lui incombant d'après le Règlement dans ce débours ? Quel lien juridique existe-t-il entre eux ? La gestion d'affaires ? L'enrichissement sans cause ? Pourra-t-il invoquer contre lui la signature du Compromis ?

Que la Règle X (d) est conforme à l'équité poussée à l'extrême, c'est certain. Que pratiquement elle ne donnera lieu dans son application qu'à des difficultés de procédure et d'exécution c'est presque aussi certain.

Le texte de la Règle paraît suffisamment clair et il paraît inutile de l'alourdir si bien entendu on remet sur le métier la Règle X (d).

5°. QUESTION. —

Quelles sont les modifications à apporter aux Règles numérotées.

Règle I.

Est suffisament claire et précise, bien que cette forme négative « Aucun jet... à moins que » ne paraisse pas heureuse.

Règle II.

A maintenir.

Règle III.

Cette Règle adoptée en 1890 est en conflit avec notre Loi, en tant qu'elle

refuse bonification pour toute partie du chargement en vrac ou à tous colis séparés qui ont été en feu. Notre Loi ne connaît pas paraille exception.

D'autre part elle donne lieu à des difficultés sérieuses : quand un colis a-t-il été en feu ? Cette question amène des divergences entre experts.

Mais cependant si on l'abolit des discussions analogues vont surgir pour déterminer dans un colis qui a été en feu quel est le dommage par feu et quel le dommage par eau.

D'autre part, quid des parties métalliques du navire ? de la peinture intérieure des cales ?

La Sous-Commission est d'avis de maintenir le texte sans changement.

Règle IV.

Passons.

Règle V.

Cette Règle est bizarrement construite. Elle commence par détailler une exception dans le 2° paragraphe consacre le principe.

Toutefois cette rédaction qui a été libellée ainsi intentionnellement peut être maintenue. Intentionnellement en effet car on a voulu prévenir les abus de la part de capitaines de vieux navires devant subir une révision.

Le texte n'est cependant pas heureux. A le lire on dirait que tout droit à bonification pour les frais encourus en renflouant ce navire ainsi échoué volontairement est refusé.

Ce n'est certainement pas là l'intention du rédacteur ainsi que le démontre le texte Anglais ; ce que l'on a voulu exclure c'est le dommage résultant de l'échouement même sans plus.

La Sous-Commission émet l'avis d'ajouter à la fin du Ier paragraphe « Les sacrifices faits en renflouant ce navire ainsi échoué étant cependant bonifiés ».

Règle VI.

N'est plus guère d'application.

Règle VII.

Cette Règle doit absolument être amendée.

On commence par intituler la Règle : dommage aux machines en renflouant un navire, et effectivement on détermine quels seront les dommages ainsi bonifiés. Puis on ajoute : « mais lorsqu'un navire est à flot,

aucune perte ou avarie causée par le fonctionnement des machines et chaudières ne sera bonifiée ».

On dira : « cela va de soi, une fois qu'il est à flot, il n'est plus échoué » mais que vient alors faire cette disposition sous cette Règle VII.

D'autre part en séparant cette dernière phrase de l'intitulé de la Règle on arrive à cette conclusion, que quoiqu'il arrive, jamais l'Armateur n'a droit à indemnité pour avaries à ses machines.

Or il se produit que le navire, à la suite d'une déficience de ses machines se trouve désemparé loin des côtes. Le Capitaine a l'option ou bien d'appeler à grands frais des remorqueurs à son secours ou de mettre ses machines « en compound » sachant bien entendu que de cette manière il va les détériorer.

Si l'on prend le texte tel quel, l'Armateur ne recevra aucune indemnité pour ce dommage.

Cette solution a paru excessive et certaine jurisprudence italienne et française ont alloué ce dommage en admettant qu'il ne s'agissait pas de fonctionnement des machines et chaudières, mais de l'abus qu'on en avait fait.

Dans un autre cas le Capitaine avait fait marcher ses machines sans huile, un incendie ayant éclaté à bord, afin de gagner d'urgence le port le plus proche où l'incendie avait pu être éteint par les pompiers de la ville.

Cependant ici, plus encore que dans le cas de la Règle V il s'agit d'éviter les abus. La généralisation de la T.S.F. permet de consulter l'Armement sur ce qu'il y a lieu de faire, dans la plupart des cas, à moins de péril imminent dû non pas directement à la déficience des machines mais aux circonstances atmosphériques.

La Sous-Comission proposes d'élaguer dans l'intitulé de la Règle les mots « en renflouant un navire » et de dire « Dommages aux machines et chaudières ».

Quant aux cas énoncés ci-dessus, la Sous-Commission, après mûr examen, estime qu'il est préférable de laisser le texte tel quel.

Pour émettre cette suggestion elle se laisse guider par la nécessité évidente d'empêcher les abus que vraisemblablement un texte plus large ferait naître, tout en ne rejetant pas à priori la jurisprudence vantée dans des cas qui dès lors resteront forcément exceptionnels et où l'équité serait par trop violentée.

Les Règles VIII et IX n'appellent aucune remarque.

Règle X.

Cette règle d'une rédaction très touffue prévoit le cas où le navire entre dans un port de détresse à la suite d'avaries qui rendent la poursuite du voyage impossible sans réparations.

La division A traite des frais d'entrée ou de sortie.

B et C l'allègement nécessaire de la cargaison pour effectuer les réparations et spécialement ce qui se passe si le navire n'est pas réparable et est condamné.

D. L'hypothèse où il est préférable de ne pas effectuer les réparations ou de ne pas en attendre l'achèvement et de remorquer le navire à destination ou d'acheminer la cargaison par un autre moyen.

Bien que la rédaction de cette Règle soit touffue, elle exprime clairement ce qu'elle veut dire mais trois corrections s'imposent.

1. Rédactionnelle. Telle qu'elle se présente les mots « dépenses au port de refuge » ne s'appliquent qu'à la Règle X(a).

Ce n'est évidemment pas le cas.

Il faudrait donc dire. Règle X : Dépenses au port de refuge etc... puis (a), (b), (c) et (d).

2. Dans la Règle (C) n'est visée que l'assurance contre l'incendie. Cette restriction n'a pas de raison valable. Il faut donc dire : « la prime des assurances raisonnablement conclues ».

3. Comme dit dans le commentaire de la Règle F la partie finale de la Règle doit être remaniée et mise en rapport avec la Règle fondamentale.

Il est proposé de dire, au lieu de la phrase « sera supportée par les divers intéressés dans l'aventure proportionnellement à la dépense extraordinaire épargnée » — nouveau texte — « sera bonifiée conformément à la Règle F ».

Règle XI.

Il est à remarquer que l'hypothèse prévue par la Règle XI est la même que celle envisagée par la Règle XX et que dans les deux cas une solution identique est adoptée.

L'emplacement de la Règle XI est logique, aussitôt après la Régle X qui vise également le « Port de détresse » tandis que la Règle XX est placée dans le voisinage de Règles qui visent de tous autres objets.

Il est donc préférable de déplacer la Règle XX mais comme lui donner

un N° suivant obligerait à décaler également les suivantes, il est préférable de fondre les Règles XI et XX en une seule.

A cette occasion il y a lieu d'examiner également la question des frais de port encourus à la suite de cette entrée en relâche et la consommation de combustibles.

On se trouve en effet dans beacoup de cas devant un conflit de principes.

D'une part le navire à la suite d'avaries fortuites se trouve en danger et doit réparer. Il se réfugie donc dans le port le plus proche. Cette entrée au port de refuge a toujours été considérée comme un acte d'Avarie Commune.

Mais tout aussi unanimement et à juste titre on a classé en Avarie Particulière, les réparations des avaries fortuites.

Mais depuis toujours également on a admis en Avarie Commune les vivres et gages payés à l'équipage pendant le séjour nécessité par les réparations fortuites ? Pourquoi ? Apparement parce qu'on ne saurait raisonnablement exiger que l'Armement licencie son équipage pendant ce temps.

En 1924 on y a ajouté le combustible consommé pendant ce séjour forcé sauf pour le combustible employé pour effectuer les réparations d'origine fortuite.

Quant aux frais de port eux-mêmes il n'en est pas question dans les Règles.

Comme on le voit, il n'y a pas de démarcation nettement tracée entre ce qui est bonifiable comme conséquence de l'entrée en relâche et ce qui ne l'est pas comme conséquence des réparations de nature particulière.

Il y a donc lieu de tracer cette ligne de démarcation.

Il en est d'autant plus ainsi qu'il peut arriver que les réparations à effectuer soient de nature mixte, partie résultant d'un sacrifice, partie d'un cas fortuit et que d'autre part il peut arriver que l'Armement profite de ce que le navire soit en cale sèche pour effectuer d'autres travaux qui n'étaient pas nécessités par l'état de péril, mais sont uniquement de sa convenance.

Enfin il serait bon de préciser ce que l'on entend par gages.

Pour répondre à ces multiples desideratas, la Commission propose de réviser la Règle XI selon le texte suivant :

Pendant la prolongation du voyage occasionnée par l'entrée du navire dans un port ou lieu de refuge ou par son retour au lieu de chargement, les gages payables au Capitaine, aux officiers et à l'équipage, y compris

les allocations complémentaires et les charges sociales régulièrement supportées par l'Armement, le coût de leur entretien, la combustible, **les lubrifiants,** les approvisionnements et **objets d'inventaire consommés,** les droits et frais de port encourus pendant la durée de l'escale, seront bonifies en avarie commune jusqu'à ce que le navire ait été mis en état de poursuivre son voyage ou jusqu'au moment où il aurait dû l'être, chaque fois que cette entrée ou ce retour ont lieu dans les circonstances ou en vue des réparations mentionnées à la Règles Xa.

Mais si le navire est condamné ou ne poursuit pas son voyage primitif, les bonifications ci-dessus ne seront pas allouées après la date de la condamnation du navire ou de l'abandon du voyage, ou de la fin du déchargement de la cargaison lorsque la condamnation ou l'abandon du voyage survient avant cette fin.

Cependant le combustible, **les lubrifiants,** les approvisionnements et **objets d'inventaire** consommés ne seront pas bonifiés lorsqu'ils auront été employés pour des réparations n'ayant pas un caractère d'avarie commune. Aucune bonification d'aucune sorte ne sera allouée pendant la période employée **exclusivement** à l'exécution de travaux qui ne seraient pas nécessaires pour permettre au navire de poursuivre son voyage.

Règle XII.

Le texte de cette Règle est trop restrictif lorsqu'il spécifie : le dommage ou la perte subie **dans les opérations** de manutention etc.

Il peut se faire — et nous en connaissons des exemples — qu'en extrayant les marchandises de la cale ou par ex. des chambres frigorifiées, la cargaison éprouve des dommages que le Capitaine sait parfaitement devoir être la conséquence nécessaire de cet allègement. Puisque l'avarie est prévue, elle constitue un sacrifice. Le texte de la Règle semble cependant refuser bonification puisqu'elle se borne à parler des avaries « dans les opérations d'emmagasinage etc. »

Nous proposons : « comme conséquence de manutention, déchargement, magasinage » au lieu des mots : « dans les opérations de manutention etc... ».

Règle XIII.

La Sous-Commission estime n'avoir pas la compétence technique nécessaire pour amender cette Règle qui paraît cependant surannée et devoir être remise sur le métier.

Règle XIV.

La 2me partie du 1er paragraphe applique à juste titre à ce cas les dispositions de la Règle F.

Cependant cette Règle prévoit une exception sérieuse au principe même de l'Avarie Commune en ce qu'elle bonifie des réparations d'un dommage fortuit et ce pour permettre l'achèvement du voyage, sans qu'il soit établi que le navire soit en danger, et par consequent il y a lieu d'enterrer tout doute au sujet de l'application restrictive.

La Sous-Commission propose de substituer aux mots : « sont effectuées simplement pour permettre l'achèvement du voyage » les mots : « mais les réparations provisoires d'un dommage fortuit ne seront bonifiées en A/C. qu'en tant qu'elles sont indispensables pour permettre l'achèvement du voyage et même dans ce cas le coût de ces réparations etc... ».

Règle XV.

Sans commentaire.

La Sous-Commission a cependant connaissance de demande en bonification pour perte d'une Charte Partie à exécuter après la fin du voyage comme conséquence du sacrifice. On pourrait se contenter d'invoquer que c'est là une conséquence indirecte.

La Sous-Commission pose cependant le problème de savoir s'il n'y aurait pas lieu d'exclure ici pareille demande, comme il a été fait à la Règle C pour la perte de marché ou le chômage pendant les réparations.

Elle propose de libeller : « la perte de frêt correspondant à une perte subie par la cargaison sera bonifiée... etc. ».

Règle XVI.

C'est une des 2 règles numérotées que les Américains rejettent.

Ce rejet est basé sur l'insertion en 1924 de la partie de la Règle ayant trait à la vente après arrivée.

Cette ajoute est conforme aux usages en matière d'Avarie Particulière et très compréhensible.

Elle n'est cependant pas des plus heureuses, d'abord parce qu'elle donne lieu à complication et qu'ensuite elle est en conflit avec cette notion élémentaire que chacun doit contribuer au sacrifice dans la mesure exacte où il en retire profit.

Dans l'hypothèse prévue par la Règle XVI et en cas de baisse, le récep-

tionnaire ne contribue pas sur base de ce qu'il a effectivement reçu c'est à dire le produit de la vente mais sur un montant supérieur.

La Sous-Commission ne voit aucun inconvénient à laisser tomber cette ajoute, et ainsi tout le second paragraphe.

A cette occasion il y aurait lieu de remplacer dans le premier paragraphe les mots : « à la date de l'arrivée du navire » par les mots : « à la date de la fin du déchargement dans chaque port ».

Règle XVII.

La Sous-Commission est d'avis qu'il faut maintenir la non contribution des bagages et effets personnels, auxquels on pourrait ajouter le courrier postal.

La Sous-Commission estime qu'il y aurait lieu de prévoir ici le cas soulevé dans son projet relatif à la Règle XX si son projet n'était pas adopté.

Règles XVIII et XIX.

Sans commentaires.

Règle XX.

Il est envisagé de supprimer cette Règle XX et de l'amalgamer à la Règle XI pour les motifs indiqués lors de l'examen de cette Règle XI.

Le résultat de cette suppression serait que le numérotage des Règles XXI à XXIII devrait être remanié et que la Règle XXI deviendrait la Règle XX etc.

Pareille proposition entrainera inévitablement des confusions surtout pendant les premières années d'application des Règles remaniées.

Pour éviter cette situation et pour répondre d'ailleurs à ce qu'elle considère comme une précision extrèmement utile la Sous Commission propose de traiter dans une nouvelle Règle XX le cas de la pluralité d'Avaries Communes pendant un voyage et celui de la pluralité de tentatives de sauvetage.

Aucun texte ne prévoit la pluralité d'Avaries Communes ni la manière dont les diverses parties intéressées doivent y contribuer : c'est certainement une lacune car la réponse à cette question n'est nullement évidente.

D'autre part il se peut que les opérations de sauvetage se passent en plusieurs épisodes. Ainsi — circonstance qui s'est produite — après l'échouement et avant toute tentative de sauvetage effective le Capitaine débarque des objets précieux (comme des lingots d'or) puis il allège par-

tie de la cargaison sans obtenir de résultat, puis recourt aux services d'un Sauveteur. A ce moment la cargaison allègée ni les lingots ne se trouvent plus à bord. Devront-ils contribuer à l'indemnité allouée au Sauveteur. Evidemment dira-t-on.

L'évidence n'est cependant pas absolue car le contraire a été soutenu avec insistance et comme les Règles d'York et d'Anvers doivent être appliquées en tous pays et par les Tribunaux les plus divers, il paraît opportun de préciser.

La Sous-Commission propose le projet suivant.

Règle XX.

Pluralité d'Avaries Communes au cours du même voyage. Opérations complexes.

Il sera établi un seul Règlement d'Avarie Commune pour tout le voyage en cas de survenance à intervalles distincts, de périls communs ayant nécessité chacun des sacrifices ayant le caractère d'Avarie Commune.

Règle XXI.

Cete règle a fait l'objet de critiques, d'autant plus que la Règle suivante alloue des intérêts relativement élevés. On a dit d'autre part que cette Règle avantage l'Armateur puisque pareille faveur n'est pas accordée à la cargaison. On a critiqué aussi le taux. Notre opinion est qu'il ne faut pas oublier que les Règles d'York et d'Anvers doivent être applicables au monde entier et aux Armateurs grands et petits et que d'autre les Législations fournissent en général au Capitaine le droit de se procurer des fonds soit par un gage sur le Navire (emprunt à la grosse) soit par la vente partielle de la cargaison, qui constituent tous deux des opérations extrêmement onéreuses et qu'il faut éviter dans toute la mesure du possible.

D'autre part il serait malséant de distinguer selon que l'Armateur est solvable ou ne l'est pas, a facilité pour se procurer des fonds ou n'en a pas.

Il y a donc lieu de maintenir la Règle, tout en en restreignant l'application car on ne voit pas pourquoi une commission d'avance de fonds devrait être accordée pour payements effectués après la fin du voyage (telle que l'indemnité de sauvetage) ni pour les vivres et gages auxquels l'Armateur doit en tous cas faire face, ni pour le sacrifice de combustibles

et approvisionnements se trouvant à bord et qui dès lors étaient déjà payés.

Il y a dès lors lieu de préciser la première phrase comme suit :

Une Commission de 2% sur les débours d'Avarie Commune effectués avant le déchargement de la cargaison ou la fin de l'aventure (Règle XVI) mais à l'exception des vivres et gages et — pour le préciser — de la consommation du combustible ou des approvisionnements se trouvant à bord au moment du sacrifice, sera admise en Avarie Commune.

Règle XXII.

Cette règle ayant été revisée à la Conférence de Bruxelles de 1948 peut être reprise dans sa forme nouvelle.

Contribueront à chacun d'eux — sur base des valeurs définies ci-dessus — tous intéressés au sacrifice pour les biens existant au moment de la survenance de chacun de ces périls successifs ayant nécessité ces sacrifices.

Il est entendu toutefois que la valeur contributive au sacrifice pour péril antérieur sera diminuée de la contribution nécessitée par le sacrifice pour péril postérieur.

Règle XXIII.

C'est la seconde Règle numérotée qui soulève les objections des intéressés Américains.

A dire vrai cette objection est plutôt formelle que substantielle et vise l'emploi du mot « Trustee ».

Ce mot n'est pas utilisé dans le Texte français et l'objection ne nous concerne donc pas. D'ailleurs nous savons que la Section Anglaise a préparé un texte qui n'emploie plus cette locution. Il paraît qu'un accord pourra être ainsi aisément obtenu.

Mais la Sous-Section Belge désirerait à propos de cette règle faire certaines suggestions qu'elle soumet à l'appréciation des autres Sous-Sections.

Tout d'abord telle que libellée la Règle XXIII ne répond pas dans son texte au motif qui l'a fait créer.

Le but était d'obtenir que les fonds déposés à titre de garantie par les propriétaires de la Cargaison sous le nom de « Dépôt d'Avarie Commune Provisoire », soient réellement réservés à cette fin et restitués pour le surplus aux déposants. D'où l'institution de Sequestres.

Mais la Règle continue en disant qu'il pourra être prélevé sur ces dépôts sur simple écrit du Dispacheur sans aucun contrôle.

Certes, en fait, il ne s'est pas produit d'abus à notre connaissance mais

il faut reconnaître qu'une construction juridique mettant à disposition libre d'un tiers désigné par le créancier seul et sans contrôle ne donne pas en théorie beaucoup plus de sécurité que la mise à disposition du créancier directement.

Nous avons antérieurement souligné la lacune que présentaient les Règles au point de vue de la procédure (v.P.6).

D'autre part des plaintes ont été élevées contre le fonctionnement actuel de l'Avarie Commune. (V.p.4)

Il serait opportun de donner satisfaction à ce desideratum.

Ces plaintes sont de deux ordres :

1°. — **Immobilisation des capitaux.**

Quand le Capitaine délivre sa marchandise, il perd le gage que lui confèrent toutes les Législations.

Il doit veiller par conséquent non pas seulement vis à vis de son Armateur, mais aussi vis à vis de la Cargaison qu'il a éventuellement sacrifiée à ne se déssaisir de son gage qu'en échange d'une sécurité adéquate.

Mais comment fixer à l'arrivée le montant allouable en Avarie Commune en cas d'incendie par ex. Comment déterminer à l'avance le montant qui sera alloué aux Sauveteurs qui, eux, ont une tendance compréhensible à exagérer la valeur du service rendu. Comment déterminer la valeur du navire et de la Cargaison.

Il se doit de ne se dépouiller de son gage que moyennant une sécurité très ample qui le mettra à l'abri de tous les aléas d'autant plus qu'aux créances à garantir vont s'ajouter une commission d'avance de 2 %, des intérêts à 5 % et des frais généralement importants.

C'est donc là un mal nécessaire. Certes on essaie d'obvier à cet inconvénient en exigeant des garanties fiduciaires (tel que le prescrit d'ailleurs notre Loi) mais dans l'insécurité actuelle, même en matière de monnaies, ce genre de sécurités présente souvent des aléas et on ne conçoit pas qu'il soit imposé obligatoirement comme semble l'envisager le Comité de l'Association Internationale des Assureurs Maritimes.

Ce n'est donc pas là qu'il faut chercher le remède.

2. **La solution de l'Avarie Commune est trop lente,** ce qui entraîne un alourdissement abusif de la contribution par l'ajoute des intérêts et prive l'Armement ou les ayants droit ou encore les déposants de leurs capitaux pendant un temps excessif.

Il faut reconnaître que le reproche est parfois justifié. Certes l'établis-

sement d'un Règlement d'Avarie Commune est un travail compliqué et difficile. Il doit réunir toutes les garanties d'exactitude car le redressement d'une erreur est pratiquement impossible.

La Règle XXIII a prévu un remède : la faculté pour les Dispacheurs d'autoriser des payements à valoir hors des fonds du « Trust Account ». Dès lors les ayants droits sont remboursés partiellement de leurs avances et les intérêts à 5 % cessent de courir.

La Sous-Section est d'avis qu'il y a lieu d'amplifier et de perfectionner l'emploi de ce remède qui coupera court à des plaintes justifiées.

Il faut tendre à rendre l'usage de ce droit de disposer provisoirement des fonds déposés, plus fréquent et même d'application courante.

Mais alors il faut aussi que ce payement à valoir soit entouré de toutes les garanties nécessaires : il n'y a évidemment pas moyen d'étendre à la nomination des Dispacheurs les dispositions si sages de notre Loi qui prévoit l'intervention du Tribunal, remplacée en fait par le libre accord des parties. Il ne faut pas, si l'on revêt le Dispacheur de ce pouvoir exceptionnel que sa nomination soit laissée à l'arbitraire d'une des parties seulement qui est en même temps presque toujours créancière.

Cette remarque ne vise pas à mettre le moins du monde en doute la compétence ou l'honorabilité des Dispacheurs Anglais, Américains ou Canadiens. Tout au contraire, il y a lieu de leur rendre ici un hommage amplement mérité.

Mais il ne faut pas oublier que les Règles d'York et d'Anvers sont applicables dans le monde entier, et qu'il vaut mieux éviter de songer ce que pourraient être les effets de la Règle XXIII dans certains cas particuliers : Si la Règle XXIII a été instituée c'est précisément à cause des abus qui avaient surgi après la 1ère Guerre et une extension inconsidérée du pouvoir du ou des Dispacheurs aurait cette conséquence de revenir en fait à la situation antérieure.

La Sous-Commission estime donc qu'il y a lieu de prévoir.

1.— que le ou les Dispacheurs soient nommés par les parties c.à.d. en fait dans le compromis d'Avarie Commune.

2. — que ce ou ces Dispacheurs aient pouvoir de réclamer production de tous documents indispensables aux parties intéressées.

3. — qu'il aura ou qu'ils auront pouvoir d'ordonner aux Trustees d'effectuer des payements à valoir.

4. — qu'ils seront tenus d'expliquer pourquoi ils n'auront pas ordonné de payement intérimaire, lorsque l'établissement d'un Règlement dépassera un délai à determiner.

La sous-Commission propose en conséquence le texte suivant :

Règle XXIII.

Traitement des dépôts en espèce. Règlements provisionnels.

Les **deux premiers paragraphes** restent tels qu'ils sont.

3e Paragraphe : Toutefois le ou les Dispacheurs désignés selon la procédure légale ou par la volonté des parties consignée dans le Compromis d'Avarie Commune, auront pouvoir d'autoriser les sequestres à faire des paiements d'acomptes ou des remboursements des dépôts, après remise préalable aux parties d'un Règlement intérimaire ou provisoire.

A cette fin, parties sont tenues de remettre aux Dispacheurs avec célérité les documents que ceux-ci leur réclameront.

Seront tenus les Dispacheurs de justifier dans leur Règlement les causes d'un retard éventuel dans son établissement ou de l'omission d'émettre des Règlements intérimaires ou provisoires.

4e Paragraphe : reste tel quel.

DENMARK

DANISH BRANCH OF THE INTERNATIONAL MARITIME COMMITTEE

Revision of York/Antwerp Rules, 1924.

Additional Report of the Danish Committee.

(Cf. Report dated 16th March, 1949).

Notes to Report of the British Committee, dated London, 24th March, 1949.

MAKIS AGREEMENT. Agree to British proposal.

RULE C. Agree to British proposal.

RULE F. Agree to British proposal.

RULE III. Maintain suggestion in Report 16/3/49 that the last sentence (« except ..... fire ») should be deleted.

RULE VII. Agree to British proposal.

RULE X. Agree to British proposal, except that in X (c) the word « fire » should not be omitted, see Report 16/3/49.

In view of the Probationary Rule of Practice adopted by the British Association of Average Adjusters in May, 1949, the suggested amendment to Rules X, XI and XX regarding removal to a second port is now thought unnecessary.

RULE XI. Maintain suggestions in Report 16/3/49.

RULE XIII. The Danish Committee have discussed the British proposal, but have not been able to reach agreement as to the question whether the deductions should be made from the cost of new material only, or also from the cost of labour in connection with the installation of the new parts. The question will be further discussed and technical advice sought.

With regard to the drafting of the Rule the Danish Committee would suggest that the contents of Clause G (« The deductions ...apply ») be placed in the beginning of the Rule (as a third paragraph) thus being made applicable to all ships. Further that the second sentence of Clause A (« No painting of bottom... accident ») be placed as Clause G, so as to apply to all iron or steel ships irrespective of their age. The Committee would also point out that if it is decided that deductions shall be made from the cost of new material only, the last clause of the Rule (« In the case of ships generally. Drydock and slipway dues... in full ») would seem to become superfluous.

RULE XIV. Maintain suggestions and wording submitted in Report 16/3/49.

RULE XVI. Agree to British proposal.

RULE XVII. Maintain suggestion in Report 16/3/49.

RULE XVIII. Maintain suggestion in Report 16/3/49.

RULE XXI. Agree to British proposal according to which no commission is to be allowed on wages and maintenance etc. If, however, the British proposal should not find sufficient support to be carried, the Danish Committee would recommend, as an alternative, that the commission be reduced to 1 %, the Rule otherwise being left unaltered.

RULE XXII. Agree to British proposal, but recommend an addition to the Rule, limiting the interest allowable to a party who unduly delays the adjustment. A provision to this effect would conduce to a speedier winding up of General Average cases, and would prevent a party from benefiting from a delay for which he is responsible.

RULE XXIII. Agree to British proposal, but suggest that the words « , without undue delay, » be inserted after the words « such deposits shall be paid ».

NEW RULE. Maintain suggestion in Report 16/3/49.

Copenhagen, 3rd June, 1949.

N. V. Boeg Peter Leth Rud. Nilsson
Kjeld Skovgaard-Petersen Niels Tybjerg.

BRITISH MARITIME LAW ASSOCIATION

Revision of York/Antwerp Rules 1924.

All of the final reports from the various branches of the Comité Maritime International have now been received.

In the hope that it might be of assistence to Members of the Association in considering the whole matter in preparation for the Conference in Amsterdam in September this year, we have prepared the following report setting out the differences in opinions expressed in the reports from the various branches.

As you know during our discussions in Committee we had the benefit of the views of some of the branches on some points ; often those views altered our own outlook and we decided to amend our views. This being so we want it to be understood that what is called in this report, a British amendment, is one that appears in the British report and that such amendment is sometimes based on helpful advice from other branches.

You will notice that where there are differences in opinions in some instances we have expressed views as to a fair way of meeting such differences, and in other instances we have suggested a method by wich the differences can be smoothed out.

It may be that you will think it advisable to circulate this report to other branches as it may be of assistance to their Members in considering this problem. If you decide on such a course we shall have no objection, but we think it would be as well to point out to those other branches that any views expressed in the report are personal ones and do not of necessity represent the views of the Committee of the British Maritime Law Association.

(signed) : E. W. READING, G. R. RUDOLF, H. B. EDMUNDS.

There seems to be general agreement that it would be preferable to preface the new York/Antwerp Rules with a provision setting out clearly the relationship between the lettered rules and the numbered rules. So far as this country is concerned it is almost imperative. All the branches,

with the exception of the French, seem to agree that whereas the numbered rules lay down principles, they should not be referred to when there is a numbered rule dealing with the particular point. The French Branch holds the opposite view and considers that the lettered rules are absolute and that the numbered rules are complementary to the lettered or examples of their application. The wording suggested by the British Branch has been approved by all the branches except the French and to a lesser degree the Belgian, but since the British report was issued, Sir William MacNair, K.C., has considered the suggested new Clause, and he has put forward an alternative which will be considered by the British Committee in due course.

Sir William's wording reads as follows :—

« (1) The provisions of the numbered Rules shall be given full effect » in all cases falling within their terms notwithstanding that by the appli- » cation of the lettered Rules the case would be otherwise determined.

« (2) Subject to (1) the general principles stated in the lettered Rules » shall be applied to the exclusions of any rule of law or practice that » would have governed the adjustment had the Contract of Affreightment » not contained a Clause to pay General Average according to the York/ » Antwerp Rules 195 »

It seems that this new wording probably meets the Belgian point of view.

RULE A. No amendment suggested by any Branch.

RULE B. No amendment suggested by any Branch.

RULE C. All the branches approve the spirit of the wording put forward by the British Branch with the exception of the Belgian Branch which has put forward an alternative wording. In this Branch's opinion the first paragraph of the Rule should be left unchanged, but the second paragraph should be amended to read as follows :—

« Damage or loss sustained by the ship or cargo through delay on the » voyage and indirect loss, in particular demurrage during the voyage or » afterwards, as well as loss of market or interest, shall not be admitted » as General Average ».

The difference between this wording and that proposed by the British Branch is very small and it is suggested that on the principle of making the fewest possible amendments to the Rules, the British amendment should be adhered to.

RULE D. No amendment suggested by any Branch.

RULE E. No amendment suggested by any Branch.

RULE F. This is the first of the Rules dealing with Substituted Expenses. The others of course are Rule X(d) and Rule XIV. In all these rules the question has to be considered as to whether in dealing with the savings, not only the savings to the General Average should be considered, but enquiries should be made as to whether other parties to the adventure have obtained benefits. It is only right that all benefits should be considered, but such a course necessitates considerable enquiries by the Average Adjuster, with a consequent delay in issuing of the Adjustment. During this delay of course interest at the rate of 5% is mounting up.

The British, American, Belgian, Danish, Dutch and Norwegian Branches are all of the opinion that only the savings to General Average should be taken into account. The Swedish branch apparently approves the intention of the amendment but would prefer that the wording of Rule F should remain unaltered. The French Branch is radically opposed to the principle of the rule and proposes that it should be re-drafted to make it perfectly clear that the savings to all parties should be taken into consideration as is provided in the present Rule X(d).

In considering this problem the Belgian Branch has put forward a somewhat difficult question. It enquires how a Shipowner who has incurred disbursements, part of which have been apportioned to a Bill-of-Lading holder in respect of some saving made to him, can obtain a recovery as there is no legal link existing between the Shipowner and that Biil-of-Lading holder. The Branch suggests that the Shipowner could not recover against the General Average security as there is nothing in the Average Bond which provides for such a course.

In view of the fact that the majority of the branches agree to the practical suggestion embodied in the British amendment it is hoped that those branches which are still of the contrary view will eventually decide to come into line and approve the British amendment.

The Dutch Branch has suggested that not only extra expenses incurred but also extra losses sustained should be taken into consideration. This point has been considered by all the other branches and there is a general feeling that to add the extra words suggested by the Dutch Branch would be dangerous and lead to a possible abuse.

It is appreciated that there are occasions when extra losses are sustained

in order to avoid General Average expenditure, but in these cases it is generally possible to get into touch with the various parties concerned and to arrange some special agreement for dealing with such losses. It is felt, therefore, that it would be inadvisable to make any provisions for such extra losses in Rule F and that the amendment put forward by the British Branch and supported by most of the other branches should be adhered to.

RULE G. No amendment suggested by any branch.

RULE H. (New). The French Branch has put forward for consideration an entirely new rule providing that there shall not be an adjustment of General Average where the General Average sacrifices and expenditures are less than £ 1,000.

During the war the British Ministry of War Transport set up a committee to consider what steps could be taken to avoid where possible adjustments of General Average and to simplify such adjustments when they were necessary. One of the suggestions to which much thought was given was that of dispensing with adjustments when the sacrifices and expenditures were not serious.

When considering this problem it must be remembered that York/Antwerp Rules are inserted in Bills-of-Lading in respect of vessels of all types and sizes, and there-fore nothing should be included in the Rules which would place undue hardship on an Owner of small vessels as compared with an Owner of large vessels. £1,000, when you have a vessel valued at £1,000,000, is quite a small item, but when you are dealing with a vessel valued at only say £10,000 or £15,000 it becomes a very serious item indeed. It is felt that it is not advisable to include in York/Antwerp Rules a Clause such as is suggested by the French Branch, but rather that such a Clause is better placed in Bills-of-Lading by Shipowners themselves.

It is known that some Liner Owners already have Clauses not dis-similar to that proposed by the French Branch, but the vessels concerned are high valued vessels. If such a Clause were included in York/Antwerp Rules, shipowners would be forced to make special arrangements with their Hull Underwriters in order that they might be fully protected when no adjustment of General Average was prepared.

RULE I. No amendment suggested by any Branch.

RULE II. No amendment suggested by any Branch.

RULE III. It is obvious from the reports from the branches that this rule has been the subject of much thought and consideration chiefly by reason of the fact that the rule provides that there shall be no allowance in General Average in respect of damage caused extinguishing a fire when the portion of the ship or package of cargo has already been damaged by fire. Many cases are known where this provision has been of hardship but to amend the rule it is generally agreed would cause work in the preparation of adjustments of General Average.

The French, Belgian, Swedish, Norwegian, British and American Branches have come to the conclusion that despite the hardship it is better to leave the rule in its present from. The Danish and Dutch Branches think that it would be better to delete the last part of the rule which deals with such fire damaged portions of the ship, cargo, etc. and leave it to the Surveyors and the Adjusters to make such allowances as they think advisable.

It is felt that as the majority of the branches do not recommend any alternation in the Rule it is better to leave it in its present form as it has been since 1890.

RULE IV. No amendment suggested by any Branch.

RULE V. Several of the branches have suggested that the wording of this Clause is illogical, but most of them have come to the conclusion that it is better to leave it in its present form.

The Belgian Branch suggests that there should be added at the end of the first sentence the words :

« Sacrifices made in refloating a ship so run on shore shall, however, be » allowed in General Average ».

The insertion of these words would certainly make the rule clearer.

RULE VI. The only suggestion made about this clause is one from the French Branch which suggests that possibly Rules VI and VII might be amalgamated.

As there are still some sailing vessels, probably it would be better not to make any amendment in this rule at the present time.

RULE VII. This rule has come in for very much criticism by practically all of the branches. Part of the trouble which has arisen over this rule is probably due to the unfortunate title, and all branches agree that the title should be changed to :

« Damage to Machinery and Boilers ».

As is clear from the report of the British Branch, much thought has been given to this rule in this country, and as the other branches have all had the benefit of the various reports and minutes of the British branch, it is obvious that in coming to their decisions they have considered the rule from all angles.

The American, Norwegian, Swedish and Danish Branches agree with the British amendment, as probably also does the French Branch. The Dutch and the Belgian Branches, however, prefer to make no amendment in the rule.

It is obvious that there is a desire on the part of all branches to try and make the rule clear, as all Branches fear the abuse of the rule. This being so, probably the majority view that the British amendment is desirable should be followed.

RULE VIII. No amendment suggested by any Branch.

RULE IX. The French Branch suggests that the interpretation of the rule would be made clearer if, after the words at the end of the rule « shall be credited to General Average » were added — « and debited to the ship ».

No other branch has any comments to make on the rule.

If there is any misunderstanding as to the meaning of the rule, perhaps it would be as well to try and make the rule clear. The wording suggested will not be suitable, as sometimes fuel is the property of the Charterer. It might be that words « debited to the Owners of the fuel » would be better.

RULE X. All of the branches agree that the title « Expenses at port of refuge etc. » should appear in the revision as a title to the Rule.

As there was some doubt in Britain as to whether the cost of wages etc. during the removal from a port of refuge where repairs could not be effected to a port where repairs could be effected, were allowable in General Average, in 1938 at the Annual Meeting of the Association of Average Adjusters a Rule of Practice was proposed to deal with the difficulty. The proposed Rule was not passed. However, in May this year the rule was brought up again for consideration, and in view of the practice in other countries it has now been adopted as a probationary rule. The position in Britain has thus been clarified.

The Dutch branch suggest, however, that it would be advisable to make provision in York/Antwerp Rules for the allowance of such wages

and provisions. The Danish Branch were of the same opinion but have now changed their opinion in view of what has taken place in Britain.

Possibly now that the position has been clarified in Britain it would be desirable not to make any amendment in York/Antwerp Rules.

X(a). No amendment suggested by any Branch.

X(b). No amendment suggested by any Branch.

X(c). There is a proposal from the American branch that the word « fire » in the phrase « including fire insurance, if incurred » should be deleted. With the exception of the Dutch and the Danish Branches, all the branches appear to be in agreement with the American proposal. Both the Dutch and the Danish Branches fear that on occassions unnecessary insurances might be effected if the word « Fire » is deleted. The Swedish, Belgian and Norwegian Branches suggest, however, that the word « reasonably » should be added before « incurred ».

Probably such a course would allay the fears of the Dutch and the Danish Branches.

X(d). This is the second of the rules which deal with Substituted Expenses. In its present form it provides that savings shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved. The majority of the branches are of the opinion that this rule should be re-drafted to conform with Rule F. The Swedish and the French Branches, however, do not wish any change made in the Rule, the French Branch adding, however, that it might be advisable to change the last words in the clause to read :—

« shall be payable by General Average and by the several parties to » the adventure as provided for in Rule F. ».

The Belgian branch, whilst agreeing with the majority view, also thinks that it would be advisable to make changes in the wording at the end of the rule, and their suggestion is :—

« shall be allowed in accordance with Rule F. »

Here again it is suggested that as the majority of the branches agree to the practical suggestion embodied in the British amendment it is hoped that these branches which are still of the contrary view will eventually decide to come into line and approve the British amendment.

RULE XI and RULE XX. Both deal with expenses arising out of the

resort to a port of refuge. Rule XX appears to be badly sited in the rules and it should naturally follow Rule XI. It has been suggested by the British Branch — and the same view is held by the American, Norwegian, Danish, Dutch and Belgian Branches — that the two rules should be amalgamated into a new Rule XI. Naturally there has been a good deal of controversy about the wording of the new rule, and various suggested drafts have been submitted. All these drafts are more or less in agreement.

There is a suggestion from the Norwegian, Swedish and Danish Branches that provision should be made in the new rule that wherever possible members of the crew should be paid off in order to avoid unnecessary expense, and the Danish Branch also points out that sometimes it is difficult to interpret the words : —

« Under the circumstances, or for the purposes of repairs mentioned in » Rule X. »

It is suggested that probably the best thing to do is to refer the reports of the various branches to the Drafting Sub-Committee of the Committee of the British Branch so that all the reports can be considered and a new wording prepared.

RULE XII. With the exception of the Belgian Branch, no other branch has suggested any amendment to this rule. The Belgian Branch, however, points out that the wording of the rule is to restrictive and that often there is damage to cargo which is being discharged not in the actual act of handling but during the operations of handling ; as a result it is suggested that the wording should be amended to read :—

« in consequence of handling, discharging, storing etc. »
instead of :—

« in the act of handling, discharging, storing etc. »

It seems that there is substance in this suggestion, but it does seem that an alternative such as is suggested might be open to abuse and that probably it would be better not to make any amendment in the rule.

RULE XIII. This is a technical rule and whereas the amendment suggested by the British Branch has been adopted by several other branches, some of the branches have decided to refer the new clause to experts, and probably there may be some delay receiving these further reports.

RULES XIV. This it the last of the rules dealing with Substituted Ex-

penses and the amendment proposed by the British Branch, whilst it has been adopted by some branches, has been criticised by others.

The Danish Branch has submitted a re-draft of the clause which is much shorter and this re-draft has been approved by the Norwegian Branch and by the Swedish Branch except that this branch desires the deletion from the draft of the words :—

« without regard to the saving if any to other interests. »

The Belgian Branch has also submitted a re-draft which differs in some respects from those of the Danish and of the British Branches. The American Branch prefers the present rule with the addition of a provision that no regard is to be made to savings to other parties.

The French Branch also prefers the old rule but as it fears that many vessels continue to operate for some time on the temporary repairs effected at a port of refuge, thus deferring permanent repairs for an indefinite period, has suggested that a provision should be made in the old clause to the effect that if permanent repairs are not effected within six months, only 50 % of the temporary repairs should be allowed. The Dutch Branch, whilst preferring the old rule with the addition of a provision that no regard is to be taken to the savings to other parties, also wants included in the clause provision that any loss being the direct consequence of effecting temporary repairs shall also be admitted as General Average.

It is over this rule that there is the greatest division of opinion, and it is obvious that further discussion will have to take place about it. It is suggested that the British Branch should discuss this clause once more with the various Branches and see if it is possible to obtain some measure of agreement so as to limit discussions at Amsterdam.

RULE XV. The only Branch which desires any amendment in this clause is the Belgian Branch, and it suggests that there should be a provision in the clause that loss of a Charter Party to be performed after the termination of a voyage should not be admissible in General Average.

RULE XVI. With a minor amendment by the American Branch, the British draft has been approved by the Swedish, Danish, Norwegian and Dutch Branches. The Belgian Branch, whilst approving the amendment dealing with the last date of discharge, suggests that it would be better to leave out the second paragraph of the clause and not to adopt the new second paragraph as suggested by the British Branch.

The French Branch, whilst agreeing to the amendment dealing with the

last date of discharge, is strongly opposed to the new second paragraph suggested by the British Branch, and desires that there should be no amendment in the second paragraph of the present rule.

With the exception of the French Branch, all branches desire the amendment and this being so, the obvious course it to approve the amendment.

RULE XVII. The only Branches who desire any amendment made in this rule are the Danish, Dutch and Belgian. The Belgian Branch and the Dutch Branch suggest that mails should be mentioned in the clause and in additon, the Dutch Branch would like mention to be made of time charter hire. The Danish Branch would like the rule to be made clearer by defining what is meant by « actual nett values. »

It is suggested that it would be better not to make any mention of mails or time charter hire and that the Danish suggestion of market selling values is not really making any improvement in the rules, and that probably by so doing Adjusters would be discouraged from adopting those simple methods which they use such as C.I.F. plus a percentage.

RULE XVIII. There is a suggestion from the Danish Branch supported by the Swedish Branch that this rule should be amended to deal with those cases where the actual proceeds of the wreck are reduced by damage of a General Average nature.

It is known that this suggestion has been discussed by other Branches and as no mention of the result of these discussions is mentioned in the reports, it is felt, as was felt by the British Branch, that the number of cases in which these circumstances arise are so very few, that it would be better not to make a somewhat complicated amendment in the rule to deal with them.

RULE XIX. No amendment suggested by any Branch.

RULE XX. Now amalgamated with Rule XI.

RULE XXI. There has been much discussion about this rule which deals with Commission. The American and the French Branches agree with the British Branch. The Belgian Branch wants to go a little further and to provide that commission shall only be allowed on disbursements which are incurred before the actual discharge of the cargo or the termination of the adventure. The Swedish, Danish and Norwegian Branches suggest that the only amendment to be made in the rule should be one

reducing the commission from 2% to 1%. The Dutch Branch prefers to leave the rule in its present form.

Here again it seems advisable that there should be further discussion amongst the Branches to see if some general agreement cannot be reached.

RULE XXII. All the Branches agree to the rule being amended in accordance with the resolution of the International Law Association, but the Swedish and probably the Danish and the Norwegian Branches suggest that there should be a provision in the rule to the effect that a party who has been responsible for causing delay should not be allowed any interest.

Looking at this last suggestion from experience gained in this country it does not seem that any such amendment is necessary in the rule because British Adjusters, as do American Adjusters, limit interest to a reasonable period when there has been delay which could have been avoided.

RULE XXIII. All the Branches agree in principle with the amendment suggested by the American Branch, but the Swedish and the Belgian Branches have suggested some more or less minor amendments. The Swedish Branch thinks that it should be provided that the deposits are to be paid into the bank « without delay » and the Belgian Branch suggests an entirely new paragraph reading as follows —

« However, the Adjuster or Adjusters appointed in accordance with » legal procedure or by agreement of the parties expressed in the General » Average Bond shall have power to authorise the Trustees to make pay- » ments on account or refunds of deposits, after issuing to the parties an » interim or provisional adjustment.

« For this purpose the parties must deliver promptly to the Adjusters the » documents for which they ask.

« The adjusters shall be obliged to state in their adjustment the reasons » for any delay in the drawing up there of or for any failure to issue in- » terim or provisional adjustments. »

The Belgian Branch have obviously given very great thought to this rule and there seems to be a good deal of substance in what it is suggesting, and it is felt that very earnest thought and consideration will have to be given to the suggestions. Nowhere in the rules is it laid down what are the duties of the Adjusters or by whom they should be appointed.

To take the place of Rule XX which will be amalgamated with Rule XI the Belgian Branch has suggested a new clause reading thus : —

Several General Averages during one Voyage. Complex Operations.

« One single General Average adjustment shall be drawn up for the » whole voyage in the event of there having occurred at different times » common perils, each one of which has necessitated sacrifices admissible » as General Average.

« All the parties concerned in the sacrifice shall contribute to each one » of them — on the basis of the values as defined above — in respect of » the proporty existing at the time of the occurrence of each one of these » successive accidents which necessitated such sacrifices.

« It is understood, however, that the contributory value to the sacrifice » in respect of a previous accident shall be reduced by the contribution » necessitated by the sacrifice in respect of each subsequent accident. »

In proposing this new and novel rule the Belgian Branch points out that York/Antwerp Rules have to be applied in all countries and by many different Courts, some of whom are not very conversant with questions of General Average, and that a rule such as is suggested would tend to uniformity. This new rule has not yet been discussed by any other Branch, and it would be interesting to obtain further views. It is suggested that the other Branches should be asked to express their opinions as quickly as possible.

DENMARK.

DANISH BRANCH OF THE

INTERNATIONAL MARITIME COMMITTEE

Revision of York/Antwerp Rules 1924.

Report of the Danish Committee.

(Notes to Summary (dated London 7/2/49) of the Results of Discussions at a Meeting of the British Committee held on the 31st January, 1949.)

MAKIS AGREEMENT. — The Danish Committee agree to the principle that the provisions of the numbered Rules should be given preference to those of the lettered Rules, but suggest the following wording : —

« Except as provided in the numbered Rules below general average » shall be adjusted in accordance with the following lettered Rules : — »

so as to avoid the express mentioning of Rule XXIII, which does not concern adjustment, and to announce at the beginning of the Rules that their subject is general average.

RULE C. — Agree.

RULE F. — Agree, but suggest that the proposed addition : —

« without regard to the saving, if any, to other interests »

be inserted after the word « allowed », where it would seem more properly to belong. The amount of the general average expense avoided will be the same whether the saving to other interests be considered or not ; it is the determination of the amount to be allowed as a substitute that will be affected.

The Danish Committee are opposed to the addition of the words « or loss ». The suggested inclusion of « loss » **in the amount substituted** would lead to doubt and complications in practice, particularly if it were not expressly made subject to similar restrictions as those contained in Rule C. The inclusion of « loss » **in the amount saved** would also seem inadvisable in view of the hypothetical character of the saving.

RULE III. — The Danish Committee are of opinion that the last sentence of the Rule (« except... fire. ») should be deleted. It is often impossible for the adjuster to obtain the information required in order to give effect to the exception, even in the case of separate packages, and furthermore the phrase « such portions of the ship and bulk cargo... as have been on fire » is in itself very vague. In practice, therefore, the present Rule works rather unevenly. The deletion of the last sentence would facilitate the work of surveyors and adjusters.

RULE VII. — The Danish Committee consider that Rule VII though somewhat harsh has worked satisfactorily, and that the proposed amendment would give an unscrupulous shipowner an undue advantage and lead to disputes as to what constitutes a « breakdown » and as to the segregation between accidental and sacrificial damage to machinery, thereby further complicating adjustments of general average, and imposing a very difficult task on the surveyors. For example, a bearing runs hot under circumstances where it would be dangerous either to anchor or to let the vessel drift. The engines are therefore kept running, and the bearing and perhaps other parts of the machinery are damaged. Should this damage be made good under the proposed Rule ? The Danish Committee are strongly opposed to the amendment, which would increase the range of general average to a large extent.

RULE X. — Agree as to the heading.

Referring to the Rule of Practice proposed at the 1938 meeting of the Association of Average Adjusters (Report page 39), dealing with removal from a preliminary port of refuge without repair facilities to a second port for the purpose of repairs, the Danish Committee would suggest that the present Rules X, XI and XX be amended so as to embody the principle expressed therein. This principle is already given effect to in the Scandinavian, and, as it would seem, in most other countries.

X(c). — The Danish Committee are opposed to the word « fire » being omitted. In practice the result of including all insurance premiums in general average might easily be that shipowners or their agents for fear of incurring liability or, in the case of some agents, perhaps for other motives, would effect unnecessary insurances and thus increase the general average expenses. In most cases the goods stored will already be sufficiently covered by the ordinary marine insurance.

X(d). — Agree, but suggest that the words : —

« without regard to the saving, if any, to other interests »

in the proposed Rule be inserted after the words « allowed in general average ». (See note to Rule F).

RULE XI. — If Rule XI is to be revised the opportunity should be taken to make it clear what is meant by the words « under the circumstances... mentioned in Rule X », a question which has given rise to controversy and litigation in Scandinavia. According to one interpretation a detention in a port of loading, discharge or call not caused by the necessity of carrying out repairs is covered by Rule XI whenever it is due to extraordinary circumstances which render a prolonged stay necessary for the common safety (Rule X(a)), for example when a ship is detained in a port of call in order to extinguish a fire or to avoid the imminent risk of capture. According to another interpretation such detention is covered by Rule XI only if due to handling or discharge of cargo etc. necessary for the common safety (Rule X(B)). The Danish Committee consider the latter interpretation unnecessarily restrictive, but would suggest that the wording be amended so as to put the matter beyond doubt. (See wording below).

XI(b). — It would perhaps conduce to clearness if fuel and stores and port charges were dealt with in separate paragraphs. Port charges incurred during repairs not allowable in general average should be allowed, it is submitted, when due to the detention for repairs, but not to the repairs themselves. (See wording below).

XI (c&d). — It is extremely difficult to frame exhaustive rules covering the subject of overtime, and the Danish Committee are inclined to think that it would be better to leave this subject alone. It would seem possible to provide for the inclusion of such items as compulsory social insurance, pension funds etc. without giving a full definition of « wages », necessitating the mention of overtime. (See wording below).

In the proposed wording of subsection (d) the word « work » might be taken to include ordinary routine work of the crew carried out in overtime, the cost of which ought to be included in the allowance for wages without restrictions. On the other hand the wording of (d) might be taken to mean that overtime in connection with general average repairs should always be allowed in general average irrespective of saving, which is not correct.

The following wording of the entire Rule XI is submitted : —

Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, Etc.

« (a) Wages and maintenance of master, officers and crew incurred » and fuel and stores consumed during the prolongation of the voyage » occasioned by a ship entering a port or place of refuge or returning to » her port or place of refuge or returning to her port or place of loading » shall be admitted as general average when the expenses of entering such » port or place are allowable in general average in accordance with Rule » X(a).

(b) « When a ship have entered or been detained in any port or place » in consequence of accident, sacrifice or other extraordinary circumstances » which render that necessary for the common safety, or for the purpose » of repairs necessary for the safe prosecution of the voyage, the wages » and maintenance of the master, officers and crew during the extra pe- » riod of detention in such port or place until the ship shall or should have » been made ready to proceed upon her voyage, shall be admitted in » general average. When the ship is condemned or does not proceed on » her original voyage, the period of detention shall be deemed not to » extend beyond the date of the ship's condemnation or of the abandon- » ment of the voyage or, if discharge of cargo is not then completed, » beyond the date of completion of discharge.

» Fuel and stores consumed during the extra period of detention shall » be admitted as general average, except such fuel and stores as are con- » sumed in effecting repairs not allowable in general average.

» Port charges incurred during the extra period of detention shall like- » wise be admitted as general average, except that port charges incurred » during repairs not allowable in general average shall be admitted in » general average only if they would have been payable in consequence » of the detention, whether repairs were effected or not.

(c) « For the purposes of this Rule premiums of social insurance, con- » tributions to pension funds, leave pay and similar payments for the » benefit of the master, officers and crew shall be deemed to form part of » their wages, whether such payments be imposed by law upon the ship- » owners or be made under the articles of employment of the crew. »

RULE XIII. — The words « repairs and renewals » in the present Rule

are contradicted by the subsequent paragraph under (G) ; « No deduction to be made in respect of old material which is repaired without being replaced by new ».

Also, should not this latter paragraph refer to wooden ships as well ? According to Rule XVIII (« deductions being made as above (Rule XIII) when old material is replaced by new ») it would seem to be applicable to all ships.

It should be made clear whether «renewal » includes labour fitting the new material, as there seems to be divergency of practice on this point.

RULE XIV. — Agree, but would suggest that the words « or place » be inserted after the word « port » in the second part of the Rule (and in the first part, if the reference there to port of loading, call or refuge should not be deleted, so as to make the first part of the Rule apply also to temporary repairs at sea). Also that it should be made clear that the second part of the Rule does not apply to temporary repairs for the common safety, and does not deal with temporary repairs at sea. It is further submitted that saving to the general average should be mentioned before the words « without regard to the saving (if any) to other interests », in order to make these words immediately understandable.

As an amendment to the negative statement « no allowance... unless, and to the extent that » the words « unless, and except to the extent that», or « except where, and to the extent that », would seem logically more correct than « unless, and only to the extent that », as suggested by the British Sub-Committee.

The following wording of the entire Rule XIV is submitted : —

Temporary Repairs.

« Where temporary repairs are effected to a ship at a port or place of » loading, call or refuge, for the common safety, or of damage caused by » general average sacrifice, the cost of such repairs shall be admitted as » general average.

« Where temporary repairs of accidental damage which are not neces- » sary for the common safety are effected at a port or place of loading, » call or refuge at which permanent repairs would have been practicable, » and general average expense is thereby saved, the cost of such tempo- » rary repairs shall be admitted as general average without regard to the » saving, if any, to other interests, but only up to the amount of general

» average expense avoided, and only if, and to the extent that, the tem-
» porary repairs were necessary to enable the adventure to be completed.

« No deductions « new for old » shall be made from the cost of tem-
» porary repairs allowable as general average. »

RULE XVI. — Agree.

RULE XVII. — The Rule bases the contribution on the actual net values of the property at the termination of the adventure. To overcome frequent discussions with cargo interests it should be stated explicitly that cargo contributes on the basis of the actual net market value (spot value). Rule XVI dealing with allowances expressly refers to market value.

It is suggested that the beginning of the Rule be altered to read as follows : —

« The contribution to a general average shall be made upon the actual
» net values of the property at the termination of the adventure, such
» value, in the case of goods, to be based on the market selling value. To
» these values shall be added... ».

RULE XVIII. — The second part of this Rule frequently leads to unsatisfactory results, and should be amended in such a way that it would always be possible to make good such sacrifices as have actually reduced the proceeds of the wreck. A common instance is the sacrifice of anchors.

It is suggested that the following words be added at the end of the Rule : —

« ; provided that where it is estimated that greater proceeds of sale would
» have been realised but for the damage or loss caused by the general
» average act the allowance in general average for such damage or loss
» shall not be less than the difference between the estimated greater pro-
» ceeds and the proceeds actually realised. »

The point is that the words « the estimated cost of repairing damage which is not general average » in the formula for calculating the general average allowance do not fit the case where the non-general-average damage alone is sufficient to bring about the actual or constructive loss of the ship. In that case the true measure of the shipowners loss by non-general-average damage is not the estimated cost of repairing such damage (since it would have been either impossible or improfitable to repair it) but the difference between the sound value of the ship and the proceeds that would have been realised had there been no general average damage. If the

amount of this difference is inserted in the formula instead of the estimated cost of repairing the non-general-average damage, it will be found that the allowance for general average damage will equal the difference between the proceeds that would have been realised had there been no general average damage and the actual proceeds.

$(v \div (v \div p') \div p = p' \div p)$.

The defect in the formula seems to originate from a somewhat hasty alteration at Stockholm of the Rule proposed to the Conference.

EXAMPLE :—

Sound value of ship	£ 10.000
Cost of repairing non-general-average damage	£ 9.000
Proceeds of wreck	£ 2.000
Anchor and boat sacrificed, which if saved could have been sold for	£ 100
and thus increased proceeds to	£ 2.100

General average allowance under present Rule : —

£ 10.000 ÷ £ 9.000 ÷ £ 2000, or nil.

General average allowance under suggested Rule : —

£ 2.100 ÷ £ 2.000 = £ 100.

RULE XXIII. Agree.

NEW RULE. — The Danish Committee have discussed whether there ought to be a Rule dealing with the cost of furnishing security in respect of liability for contribution for general average. While the cost of collecting Average Bonds is generally allowed in general average it would seem that the expenses, such as bank commission, incurred by cargo interests furnishing security are disallowed in most countries, though not in all. It is felt that it would be right in principle to allow such expenses in general average, and perhaps also to allow loss of interest on cash deposits where they earn a lower interest than that fixed in Rule XXII ; but on the other hand a rule to this effect may be inadvisable as tending to complicate statements of general average, particularly in the case of ships carrying general cargoes.

The Danish Committee would propose that the question be considered by the Committee to be set up by the Comité Maritime International and by the Amsterdam Conference.

Copenhagen, 16th March, 1949.

N.V. Boeg Peter Leth Rud. Nilsson

Kjeld Skovgaard-Petersen Niels Tybjerg.

DANISH BRANCH

of the

COMITE MARITIME INTERNATIONL

Revision of York/Antwerp Rules, 1924.

Additional Report of the Danish Committee.

(Cf. Report dated 16th March, 1949).

Notes to Report of the British Committee, dated London, 24th March, 1949.

MAKIS AGREEMENT. — Agree to British proposal.

RULE C. — Agree to British proposal.

RULE F. Agree to British proposal.

RULE III. Maintain suggestion in Report 16/3/49 that the last sentence (« except... fire ») should be deleted.

RULE VII. — Agree to British proposal.

RULE X. — Agree to British proposal, except that in X(c) the word « fire »» should not be omitted, see Report 16/3/49.

In view of the Probationary Rule of Practice adopted by the British Association of Average Adjusters in May, 1949, the suggested amendment to Rules X,XI and XX regarding removal to a second port is now thought unnecessary.

RULE XI. — Maintain suggestions in Report 16/3/49.

RULE XIII. — The Danish Committee have discussed the British proposal, but have not been able to reach agreement as to the question whether the deductions should be made from the cost of new material only, or also from the cost of labour in connection with the installation of the new parts. The question will be further discussed and technical advice sought.

With regard to the drafting of the Rule the Danish Committee would

suggest that the contents of Clause G (« The deductions... apply ») be placed in the beginning of the Rule (as a third paragraph) thus being made applicable to all ships. Further that the second sentence of Clause A (« No painting of bottom... accident ») be placed as Clause G, so as to apply to all iron or steel ships irrespective of their age. The Committee would also point out that if it is decided that deductions shall be made from the cost of new material only, the last clause of the Rule (« In the case of ships generally. Drydock and slipway dues..... in full ») would seem to become superfluous.

RULE XIV. — Maintain suggestions and wording submitted in Report 16/3/49.

RULE XVI. — Agree to British proposal.

RULE XVII. Maintain suggestion in Report 16/3/49.

RULE XVIII. — Maintain suggestion in Report 16/3/49.

RULE XXI. — Agree to British proposal according to which no commission is to be allowed on wages and maintenance etc. If, however, the British proposal should not find suflicient support to be carried, the Danish Committee would recommend, as an alternative, that the commission be reduced to 1 %, the Rule otherwise being left unaltered.

RULE XXII. — Agree to British proposal, but recommend an addition to the Rule, limiting the interest allowable to a party who unduly delays the adjustment. A provision to this effect would conduce to a speedier winding up of General Average cases, and would prevent a party from benefiting from a delay for which he is responsible.

RULE XXIII. — Agree to British proposal, but suggest that the words « without undue delay, » be inserted after the words such deposits shall » be paid. »

NEW RULE. — Maintain suggestion in Report 16/3/49.

Copenhagen, 3rd June, 1949.

N. V. Boeg Peter Leth Rud. Nilsson

Kjeld Skovgaard-Petersen Niels Tybjerg

DENMARK.

DANISH BRANCH OF THE

INTERNATIONAL MARITIME COMMITTEE

Revision of York/Antwerp Rules, 1924.

Additional Report II of the Danish Committee.

(Cf. Report dated 16th March, 1949, and Additional Report dated 3rd June, 1949).

RULE XIII. The Danish Committee agree with the Norwegian and Swedish Committees that deductions should be made not only from the cost of the new material, but also from the cost of labour installing the new parts.

NEW LETTERED RULE PROPOSED BY FRANCE. — The Danish Committee agree with the British Committee that for the reasons set out in the British Report (page 4) it is not advisable to include in the York/Antwerp Rules a Clause fixing a minimum to General Average, such as suggested by the French Branch.

NEW NUMBERED RULE PROPOSED BY BELGIUM. — The Danish Committee are not aware that there is any divergency of practice as to the main lines to be followed when dealing with cases of several accidents during one voyage giving rise to General Average, and would therefore consider a Rule as proposed by the Belgium Branch unnecessary. The problems that may arise in special cases of this kind are, it is thought, not of sufficient practical importance to warrant a more detailed Rule, and had therefore better be left to the Adjusters.

Copenhagen, 29th June, 1949.

N. V. Boeg Peter Leth Rud. Nilsson

Kjeld Skovgaard-Petersen Niels Tybjerg

COMITE MARITIME INTERNATIONAL.

Meetings of the

INTERNATIONAL MARITIME COMMISSION

held in

The Board Room of the Salvage Association, Leadenhall St,

on Monday, 4th July, 1949,

and in

The Board Room of Messrs. T. R. Miller & Sons, 24 St. Mary Axe,

on Tuesday, 5th July, 1949,

to consider

Revision of York/Antwerp Rules, 1924.

Me. LEOPOLD DOR

(Vice-Chairman of International Commission)

in the Chair.

Extracts from the

MINUTES OF PROCEEDINGS

The Chairman. — Gentlemen, it is a very unexpected honour for me to preside over this meeting. As Vice-Chairman I thought I should have nothing to do but to sit quiet like a good boy, and listen to President Lilar's remarks, but it happens that there is a political crisis in Belgium and President Lilar, as you know, is a very important member of the Liberal Party there, which I understand plays a prominent part in the new political crisis, and so he is unfortunately unable to come today. I sincerely hope that we shall see him tomorrow, and that I shall then be able to resign the chairmanship into hands much more competent than

my own. In the meantime in his absence I will do my best, and you will have to excuse me if the best is not good enough.

I understand that the view of the British Branch on the revision of the York-Antwerp Rules are first going to be put before you by Mr. Edmunds. He, as we all know, has done most tremendous and most valuable work in respect of the revision of the rules. It is to him that we are indebted for many of these reports, and recently for the admirable digest which enables us at a glance to understand the positions of the various national associations. While expressing to him the gratitude of the French Association and all the Continental Associations, I now call upon Mr. Edmunds to give you the position as it now stands.

Mr. Edmunds. — Thank you, Mr. Chairman. I do not want it to be thought I am putting forward any British point of view. I have tried, since the President asked me to be Secretary of this Commission to divorce myself entirely from the British point of view, and look at it purely from an international point of view. This afternoon I want you to appreciate that I am not putting forward any British point of view in any remarks I make, but rather putting them forward with the idea of trying to get this job done.

First of all I would like to apologise for the printer's proofs which I circulated to you. I want you to appreciate that to get this job done was almost a superhuman task. It necessitated me spending nine hours last Saturday week at the printer's works sitting alongside the compositors setting up this thing. Then when I had the printer's proof I had to come to London to get it through the General Post Office, or else you would not have had it.

I would like to apologise too for making a mistake in the digest. When I looked the proofs over in my home the following Sunday I spotted that I had made a mistake in the American point of view, and had perpetrated it in the circular I sent out. But I have here today corrected prints of these things which I will hand round. I think I can guarantee they are correct now.

I want to remind this Commission that this is a Report to the British Maritime Law Association, but if you think the Commission would like to work on this we have no objection. As a matter of fact if you would like to take it for the International Commission we will give it to you, and you can take the title off the top and put on it « Commission Maritime International ». We do not mind.

I have had no opportunity, nor have any of us, of discussing this Commission with the President, so that we have no idea as to how you wish to run this rather complicated Commission. As I say, if you wish to work from the book we have no objection to your adopting it. We shall not mind. We offer it to you. This Report is in New York today. It was flow over on Friday to the members of the Committee there. I have sent off to all the Associations whose names I could trace with the exception of the Belgian 15 copies of the digest and the book. They are on the way to the branches. so that it has been circulated freely.

There is one point I must stress upon you, and that is that the American delegation, which is a very important one, sails from New York on the 20th August, and the chances of getting the International Commission's Report to America in time for anybody to do anything are practically nil. That is why we flew this one out, and it is there this morning.

If you suggest using this digest it is simple to put in the column at the end the Commission's recommendations. It will save trouble in printing, and we shall probably be able to get it out in a week or ten days. If you propose to use this little book, for which I was largely responsible, it explains fairly clearly all the views of the various Committees. It is putting in a report form what is in this digest without quoting in great lenght the various clauses. It just gives you the effect.

The Chairman. — Gentlemen, Mr. Edmunds is proposing that this digest should be taken as a working basis for the work of this International Commission. I should naturally like to be able to consult President Lilar about it, but I am afraid that is impossible. We must therefore decide upon that question at once. It seems to me that it is really important we should have one text upon which to work. We cannot just take one rule after the other and start all over again. This digest in the corrected form I have not seen before, but I saw the other one which is similar, and it is admirably drawn up and extremely clear. Therefore, is it your wish that we should take this digest as a basis, or if not what have you get to suggest ? Shall I put it in this way ? Will those in favour of taking this digest as a basis hold up their hands. To the contrary ? That it carried.

Then it is adopted unanimously that this digest should be our working basis.

Mr. Edmunds. — If you look at the book you will see it points out that all the branches with the exception of the French branch are agreeable

to the British proposal that we should start the rules with an explanatory note as to the relationship of the lettered and the numbered rules. Only the French branch are against it. This Commission has to decide what will be the recommendation.

Me. Govare. — I have to put forward the view of the French branch, although on some points I do not quite agree with that branch. The British draft is excellent in its idea that there should be a prefatory rule, but we do not agree with the wording of it, because logically you start by saying « Except as provided in the numbered rules », while in French we would prefer to say the rules are governed by the lettered rules, and to put after that « except as completed or defined by the numbered rules », because when you read the English draft you may think that the numbered rules are in contradiction with the lettered rules, and they must not be. If they are, they must be amended. The numbered rules may be exceptions to the rules or explanatory principles or examples, but they must not be in contradiction with the rules except that they make an exception to the rules. Therefore we have set out a rule which says the same thing, but it is better in the way it is worded. I think our Belgian friends would agree with us, because the Belgian draft is practically the same as ours except that it is worded in another way. It is a little longer, but it says practically the same as ours.

Mr. Kihlbom. — The Swedish Committee have approved of the British proposal, but as to the wording I can only express my personal opinion. For my part I approve of Sir William MacNair's wording. It is a little longer, but I think it is very clear.

Mr. Edmunds. — He is our leading legal authority on these things, and he is a very active member of the British Maritime Law Association. When he saw our report he wrote to Mr. Reading at the same time as Mr. Reading wrote to him. Their letters crossed. This is what Sir William suggests. We have not had a chance to discuss it, but I put it in because I thought it would meet the Belgian point of view to a very large extent, and I still think so. So far as our books are concerned, I think Mr. Miller will agree, we have to do something because we have an agreement with the underwriters, and as most of the continental people have adopted the agreement I suppose they must be somewhat similarly placed.

Me. Govare. — As far as Sir William MacNair's wording is concerned we think the first paragraph is perhaps something of the same kind as ours, but not quite as plain, and anyhow it gives to understand that there

may be conflict between the lettered rules and the numbered rules. There must be no conffict between them. When the numbered rules are not in accordance with the lettered rules, it is because they provide an example or an exception to the rules, but they do not break down the lettered rules. With regard to the second paragraph we understand it to mean this : when one is providing that a contract will be governed by the York-Antwerp rules it means the contract will be governed by the York-Antwerp rules. I think Mr. Lab said the same thing. If you have provided that it will be governed by the York-Antwerp rules it will be governed by the York-Antwerp rules notwithstanding any rule of law or practice. We do not understand the second paragraph.

Mr. Miller. — Both in English law, and the same applies to American law I understand, it is not only advisable but necessary to say « to the exclusion of rules of law or practice » even though those rules may or may not conflict with the general average code which you have drawn up. Whether customary methode of adjustment do or do not conflict with the York-Antwerp rules you may have both in America and in this country cases in the courts about their application, which it is desirable to avoid. So you exclude all rules of practice and custom, and rely entirely on the code.

Mr. Govare. — Are you not satisfied if we start our draft by saying « To the exclusion of any rule of law or practice general average adjustment shall be drawn up » ? If it must be put in, we will start the sentence with the words « With the exception of any rule of law or practice », and then you have our sentence : « General average adjustment shall be drawn up » etc.

Mr. Miller. — « To the exclusion of any rule of law or practice which would have come under the adjustment ! That would suit me.

Mr. Pineus. — Are we not more or less all agreed there should be some thing in the new draft to say more or less what is recorded in the present British proposal ? Could we not leave it to the French and the British branches to agree on the best wording ? I am afraid that to work that out would be difficult. Are we not all agreed there should be something along the lines suggested ?

Mr. Govare. — I second the motion. I think it is simply a question of drafting, as we have agreed now on the principle. Simply to satisfy a certain country we must mention in the rule that it is to the exclusion of the laws and practice of different countries.

The Chairman. — We have not yet agreed upon anything so far. I understand that the proposition is that when we have agreed on something there should be a small Drafting Committee. That is a different matter. But first of all, is there agreement on Mr. Govare's proposition? His proposition is that you should take the wording of the French text and have at the begining : « To the exclusion of any rule of law or practice ». Is there general agreement of Mr. Govare's proposition ?

Mr. Miller. — I am afraid not.

Mr. Reading. — The British difficulty is that under British law there is a conflict between the lettered rules and the numbered rules. That is where I differ from Mr. Govare. That difficulty is one which we cannot get over at all, and it exists in law. We have therefore got to have some preface that goes further than the French suggestion, which will make it quite clear as I think Sir William's wording in the first paragraph does, that the provisions of the numbered rules shall be given full effect notwithstanding that by the application of the lettered rules the case would be otherwise determined. In some of the numbered rules the case is determined on the question as to whether the adventure is to be completed. In the lettered rules the general average is determined by the degree of peril, in fact by the definition in Rule (A). In the Makis case it was argued on the one side that the numbered rules provided a special case to which we could refer. On the other hand it was argued that the definition in Rule A was an overriding provision. Unfortunately Mr. Justice Roche would accept neither point of view. He said the rules must be read as a whole. That means, therefore, that under English law we should be compelled if a case falls under the numbered rules to consider also whether it falls within the lettered rules. We cannot say the lettered rules form the general principle, and if something is governed by the numbered rules it is a special case. We are prohibited from doing that. So if we are to accept these rules — lettered rules and numbered rules — we must have something to get over that difficulty in law.

The Chairman. — May I submit to my friend that the difference arises from the fact that they have in this country a difficulty which would never arise with us. With us our courts would always consider that the lettered rules are the general code, and that the numbered rules are either special applications of the rules or exceptions to that code. Therefore our courts would never hesitate for a minute to apply a numbered rule even if some of the conditions put in Rule A were not there. But it is not so

in this country. This is not the first time that we have experienced that the French logical mind and the English alogical mind worked in different ways with the same principle but no-one can say that one works better than the other. We know how excellent the British law is. Therefore I suggest that the French delegation should accept what is apparently necessary in this country, thinking perhaps in their heart, « Poor English people, they must have it, let them have it ». You should not insist upon having a wording which is perfect in France but insufficient in this country.

Mr. Govare. — I think it is not sufficient. It is the words « completed and defined » which are not sufficient to make the court understand that it may be defined in so far as even making exception to this.

Mr. Miller. — I think the French wording would in effect in our courts lead to exactly the same position as in that case.

Mr. Govare. — What if instead of « completed and defined » we were to put in « with precision and derogation » ?

The Chairman. — It is a question of drafting something which would be understandable to an English judge. I think our British friends are better qualified than the French to draft something which their judge will understand.

Mr. Kihlbom. — I would like to ask whether Mr. Govare thinks that, while we could accept the French wording, Sir William's wording would do any harm ? I would like to put the question would the acceptance of Sir William's wording do any harm to France ?

Mr. Govare. — No, I do not think so. If we had drafted it as they have done we would not be very proud of it. But, if it is international nobody is responsible.

Mr. Reading. — Would it meet the objections if we leave it ?

The Chairman. — Do I take it that on the prefatory rule there is general agreement to accept Sir William MacNair's wording ?

Mr. Tybjerg. — I think that is rather dangerous. I have the impression that the numbered rules would never be allowed at all. There are many questions that are mentioned in the rules on general principle which would apply. Take any of the numbered rules, and you will find the principle will apply.

The Chairman. — Would you like better the original British draft ?

Mr. Tybjerg. — I would rather have the original British draft.

The Chairman. — Would it satisfy you all, Gentlemen, if we go back to the British original draft, which is, « Except as provided in the numbe-

red Rules the adjustment shall be drawn up in accordance with the following lettered Rules ». Are you all satisfied ? (Agreed).

Mr. Govare. — Must one not add to that, to satisfy our British friends, « To the exclusion of any rule of law or practice », because just now they were insisting on having it.

Mr. Miller. — I would certainly like to add that. I am very glad you have raised the point. I would personally not feel happy unless we said something like this : « Except as provided in the numbered rules the adjustment shall be drawn up it accordance with the following lettered rules to the exclusion of any rule of law or practice that would have governed the adjustment had the contract » etc.

Dr. Voet. — You say you cannot use rules of law and practice. If you put those words in « To the exclusion of any rule of law or practice that would have governed the adjustment », is not that more dangerous ? It all comes down to your having some rules of law and practice. In Rule XVIII of the 1890 rules it says « In accordance with the rules of law or practice », and now we are saying it is to the exclusion of all rules of law or practice.

Mr. Miller. — I think Mr. Reading would tell you — he will correct me if I am wrong — that the rules of practice which his Association lay down do not conflict with the York-Antwerp rules of 1924, and still less, we hope, will they conflict with the York-Antwerp rules of 1950. They are merely directions to the average adjuster which are within the rules. They are more a question of mechanism than anything else.

Mr. Reading. — Our rules of practice have no force in law. They are merely a guidance. In fact we have different rules. Some of them direct us as to how we shall adjust general average according to British law. We also have rules directing us how we shall settle adjustment according to the York-Antwerp rules of 1924. No doubt in time we shall find ourselves having rules of practice telling us how we are to deal with the York-Antwerp rules of 1950.

Dr. Voet. — The rules passed at the last annual meeting were not in conflict with the 1924 rules. They may be used in a wider sence than Rule X(a), (b), (c).

Mr. Reading. — A rule of practice is usually passed because there is a difference of opinion. As you have one opinion on that rule and others have other views, so there are different views amongst different adjusters. These rules of practice are merely a majority opinion which controls our

practical work because we do not want conflict. We want to get uniformity, and we want to get the work done.

Me. Govare. — Would not President Lilar be satisfied if we adopted the draft of Mr. Miller, but instead of saying « To the exclusion of any rule of law or practice » we put « to the exclusion of anything contradictory » ?

Mr. Miller. — « Any rule of law or practice to the contrary notwithstanding ».

The Chairman. — Will you please hand to the Chairman the written word, because it must go down. I want something which I can read to you, and which you can accept, and which can go down on the minutes.

Mr. Tybjerg. — You do not mention the words « general average » at all. You do not say the adjustment of what. Could we not say « the adjustment of general average » ?

The Chairman. — Mr. Miller will edit it. I have now got Mr. Miller's draft. This is it : « Except as provided in the numbered rules the adjustment of general average shall be drawn up in accordance with the following lettered rules notwithstanding any rule of law or practice to the contrary ». Will those in favour of this rule hold up their hands ?

Mr. Ellis. — Would it not be better to say, instead of « the adjustment shall be drawn up » — « general average shall be adjusted » ?

Mr. Miller. — Yes, that is much better.

The Chairman. — An excellent suggestion. Then I will read it again : « Except as provided in the numbered rules general average shall be adjusted in accordance with the following lettered rules notwithstanding any rule of law or practice to the contrary ».

Mr. Tybjerg. — As far as the numbered rules are concerned you can refer to the national law. You want to have two different things, and you ought to split it up into two paragraphs, because the lettered rules the exclude the national law, and then state how the relationship is between the two. You want to say two different things in one sentence.

Mr. Van den Bosch. — It is a matter of drafting.

The Chairman. — Gentlemen, I think we must get on. We are only at No. 1. I think I shall just put this to the vote. Do you want me to read it again ? Will those in favour of the text which I have read hold up their hands ? Those against ? The text is adopted with one vote against and the rest in favour.

Mr. Tybjerg. — I understand it is subject to further drafting ?

The Chairman. — The whole thing is. What we have decided is this : « Except as provided in the numbered rules general average shall be adjusted in accordance with the following lettered rules notwithstanding any rule of law or practice to the contrary.

Mr. Kihlbom. — I was in favour of the wording which you put to the vote until I heard what Mr. Tybjerg said. If we accept this wording is it clear that the exception « notwithstanding any rule of law or practice to the contrary » must not apply to the numbered rules, because the wording which you put to the vote means that the exception does not apply to the numbered rules.

Mr. Miller. — I would respectfully not agree with Mr. Kihlbom, but if he has doubts about it you could say this : « Notwithstanding any rule of law or practice to the contrary general average shall be adjusted in accordance with the following lettered rules except as provided in the numbered rules ». I do not know whether you would prefer that, Gentlemen ?

The Chairman. — Gentlemen, this is the new wording. I hope it will be the last. « Notwithstanding any rule of law or practice to the contrary general average shall be adjusted in accordance with the following lettered rules except as provided in the numbered rules set out thereafter ». It is very much better wording from the elegance jurist point of view. Are you all agreed on that text ? (*Agreed.*)

The Chairman. — Then the Minute will be :—

On observations by Mr. Tybjerg and Mr. Kilhlbom the preceding text was cancelled and the following text was unanimousley adopted : —

« Notwithstanding any rule of law or practice to the contrary general » average shall be adjusted in accordance with the following lettered » rules except as provided in the numbered rules set out thereafter ».

The Chairman. — I will now ask Mr. Edmunds to be kind enough to pass on to Rule C.

Mr. Edmunds. — In order to save time later on, and working on the assumption that the Permanent Bureau agree not to have one man, but to allocate it to the branches, may I suggest that Great Britain be allowed to look after the prefatory rule ? When you turn to Rule A, no branch has any amendment. I do not know whether anybody here wants to make an amendment. Also in the case of Rule B there is no amendment. When you get to Rule C. there is a minor alteration there. It is on the question

of demurrage during the voyage and afterwards. Everybody is agreed on this wording. I suggest we might adopt it.

The Chairman. — Is there any observation on Rule C ? I see there are two remarks, one by Great Britain and another by Belgium.

Mr. Edmunds. — It is purely a question of wording. Would you agree to the British wording ? I gather you will agree ?

The Chairman. — The Belgian delegation agrees to the British wording set out in the digest : « Only such damages, losses or expenses which are the direct consequence of the general average act shall be allowed as general average. Damage or loss sustained by the ship or cargo through delay, whether on the voyage or subsequently, and indirect loss from the same cause, such as demurrage and loss or market, shall not be admitted as general average ». Of course, the difficulty is this. This rule describes demurrage as being an indirect loss, which from our French legal point of view is not true, because we say that when a master decides to put the ship aground the repairs bill is a direct consequence of his grounding, and the fact of the ship being laid up one month is also a direct consequence of the grounding. So that in France we do not recognise demurrage as an indirect loss. But the French delegation is not making any comment, so that we can go on.

Mr. Miller. — Would it meet your objection if we used the word « detention », because demurrage in English law strictly means the agreed amount paid by a charterer for holding up a ship, whereas detention is quite a different thing.

The Chairman. — « Detention » is certainly a better word then « demurrage », which is absolutely wrong. But is does not meet the objection I have just put. Detention is a direct consequence of the grounding just as much as the repairs bill. But, as I say, the French are not pressing the point.

Mr. Edmunds. — I would like to point out that we have altered as little as possible the draft at Stockholm where you used the word « demurrage », and I would ask you, must you have discussion on this ?

The Chairman. — It does not alter the fact that it is wrong. I agree I must take my share of the blame.

Mr. Ellis. — Would it meet the French legal objection if instead of the words « such as » we used the word « including » ?

The Chairman. — To meet the objection you would have to put it in such a way that you did not say detention is on indirect loss.

Mr. Tybjerg. — Is it necessary to have the word « detention » ? There is « delay ». What is the difference between delay, and detention, and demurrage ? It is all the same thing.

Dr. Voet. — The English practice is all very well, but it is a question of the translation of it.

The Chairman. — We shall have to decide who will be in charge of the perilous task of translating those words into French, because we must not forget the two texts are legal. The rules are drawn up in English and French. It was decided both at Liverpool and Stockholm that French and English were both legal, so that somebody will have to undertake that task. Anyhow, we can adopt this thing, changing « demurrage » for « detention », which is a much better word.

Me. Van den Bosch. — It is wider.

Mr. Edmunds. — This is the translation suggested by the French branch in their report. (Handed to the Chairman).

The Chairman. — I am told the French translation would be : — (The Chairman read the French text.) The French text is perfect, and detention is so much better. But both the French and English texts leave the fact that we affirm something which is certainly wrong. The point is that the very old custom has been not to allow detention or demurrage in general average. When the French Supreme Court say that detention of the ship during repairs which are necessary, and which are admitted when the repairs are allowed in general average, is as much the direct consequence of the general average act as the repairs themselves, then the whole maritime insurance world are up in arms at such a decision, which was very logical, and when the 1924 rules were drafted everyone wanted to kill that French decision of the Supreme Court. I am responsible for some part of the drafting. It is not very elegant. If you excluded detention as an exception to the principle you put in the first sentence, that would be perfect. You say in the first sentence that only the direct consequence of the general average act will be allowed in general average. Then you ought to make it clear that the exclusion of detention in the case where repairs are general average is an exception. Instead of that you say that the detention is an indirect loss. It is not elegant because it is not true, but I am perfectly willing to have it. I make no objection myself.

Mr. Kihlbom. — Would it not be met by deleting « such as » and saying « demurrage » etc.

The Chairman. — You suggest deleting « such as » and saying « and demurrage ».

Dr. Voet. — No, because you will say it is not a demurrage.

Mr. Kihlbom. — Exclude it.

Me. Van den Bosch. — Reverse that part of the sentence, and instead of saying « indirect loss from the same cause such as demurrage » put it in this way : « demurrage and loss of market and indirect loss from the same cause ».

Baron van der Feltz. — It says « Damage or loss sustained by the ship ». Is that only material damage done to the ship ? What about lose sustained by the shipowner ? Damage sustained by the ship is only material damage.

The Chairman. — The proposition of Mr. Van den Bosch is to leave the first sentence as it is, and then to add : — « Damage or loss sustained by the ship or cargo through delay, whether on the voyage or subsequently, and demurrage and loss of market and indirect loss shall not be admitted as general average ». The advantage of that wording is that it does not say detention is indirect loss.

Mr. Edmunds. — I would like to ask the Commission not to make changes unless they are absolutely necessary, because the International Commission's report will not be received in America in time for delegates to have any opportunity of consulting their principals. I think this rule, with the exception of France, has worked well, and I do exhort the Commission not to change rules just for the sake of changing them. Do not let us make too many changes. As I have understood the thing, we are only saying to bring about uniformity. Do not let us change things just the sake of changing, because you will only have difficulties at Amsterdam. I am sure of that. We have got the Americans to come to Amsterdam. They have considered these things, and we have all had opportunities in Committee of considering this rule. And we are only representatives, we have not any authority from our own. Committees to change these rules. They have all been considered in Committee.

The Chairman. — I agree with all you have said, Mr. Edmunds, except the last sentence.. It is no use whatever if we have no right to change anything which has been drawn up by this or that Committee. I think our powers are larger than that. But apart from that, Mr. Edmunds' contention is that the great point is to have unanimity, and not to rouse people when it is not necessary. I suppose he will admit that the new

wording proposed would be better than the wording which stands now. But he says the wording as it stands now meets the wishes of our American friends, who will not have much time to consider any changes we make, and he therefore suggests letting well alone. Would you agree to that ? I repeat what I have said, that I personally have not the slightest objection to taking this rule as it is. I think Mr. Govare would like to say a word.

Mr. Govare. — I think we must provide something for detention, because in many countries where there has been a collision at sea the detention of the vessel is considered as a direct consequence just as the bill of repairs. We say in general average it is not a direct consequence, and I think we must put it in the rules. My branch second the motion of Mr. Van den Bosch, because this new drafting is far better. It does not involve any question of law or decision.

Mr. Martin Hill. — Is not Mr. Edmunds' suggestion good sense ? The word « indirect » has been there since 1924, and has not done any harm in France. It is consistent with what we want in England. If we alter it we may do harm. We know it has done no harm since 1924. It is a misstatement of fact, I agree, as regards the French law.

The Chairman. — It is not correct as regards any law.

Mr. Martin Hill. — It is correct in our law. It is that demurrage shall not be taken into account, that is all.

Me. Van den Bosch. — I think the actual wording has done harm, and it may do harm in the future. Perhaps it has not done harm in England, but it has done in France, and, may be, it could do harm in Belgium. I quite agree with the principle put forward by Mr. Edmunds what we should change as little as possible the actual wording, but this is only a matter of the correct wording and the meaning of it remains the same.

Mr. Kihlbom. — It is all very well saying we must not change too much. The main thing is to get the wording accepted. I have a feeling we can get nowhere in our further discussions because every alteration or amendment which is laid down will be met by the suggestion that we must not change anything because we cannot get the American agreement in time. If that is so, we may as well put our papers together and leave.

The Chairman. — Well, Gentlemen, shall I put the wording of Mr. Van den Bosch to the vote ? Shall I put first Mr. Edmunds' amend-

ment ? I think in British procedure we put the amendment first.

Mr. Edmunds. — I am not moving an amendment. I am just drawing attention to the fact that this report will not get to America in time, and you are going to present the American delegation at Amsterdam with a great many alterations. You all know that August is such a hot month in America that they just do not work.

Mr. Tybjerg. — Could I ask Mr. Edmunds to put it as an amendment ?

The Chairman. — But he does not move an amendment. I will read Mr. Van den Bosch's text as soon as I have it, and will put it to the vote. There is no amendment.

Mr. Raynor. — In those cases did the French courts accept demurrage as an indirect loss during the course of the voyage ?

The Chairman. — No. All those cases were founded on the fact of the ship being damaged in the course of the voyage for the safety of the ship and cargo, the repairs being made after the end of the voyage. The Supreme Court said if the payment of the repair bill is a direct consequence of the voluntary grounding of the ship the detention of the ship while those repairs are being made is also a direct consequence. The court did not accept it as indirect. They accepted it as a direct consequence.

Mr. Raynor. — It has never been suggested under the old rules that demurrage in the course of the voyage was a direct loss and was therefore not exluded.

The Chairman. — We now have a case pending where a shipowner is trying to recover detention during the course of the voyage. Judgment has been given by the Paris Court saying it is not general average, and that judgment is now submitted to the Court of Appeal. No decision has been arrived at on that point.

Mr. Raynor. — Then it seems we ought to make certain in the rule that detention is not described as indirect loss.

The Chairman. — We shall exclude detention just as safely but not through a mis-statement. I now have Mr. Van den Bosch's text. It is : — « Damage or loss sustained by the ship or cargo through delay, whether on the voyage or subsequently, and through demurrage or loss of market and any indirect loss whatsoever shall not be admitted as general average ».

Baron van der Feltz. — You cannot say there is damage to the ship through detention.

The Chairman. — It says damage or loss sustained by the ship or cargo.

Baron van der Feltz. — It is the shipowner who suffers loss by the detention of his ship.

Mr. Miller. — Throughout the rules we talk about the ship and shipowner as being the same. If we were going to make it absolutely verbally correct we should alter it, but it would be an unnecessary labour. And indeed in America it is quite correct. There the ship is regarded as personal ; and here none of our judges would say that when you say « damage to the ship » you do not mean damage to the shipowner.

The Chairman. — Gentlemen, do you agree to Mr. Van den Bosch's text ? Will those who agree hold up their hands ?

The voting was : —

For : 7

Against : 4.

The Chairman. — Mr. Van den Bosch's text is accepted by 7 votes to 4.

Baron van der Feltz. — There are two Belgians and only one Dutchman.

The Chairman. — I cannot take that into account. Will you agree to my replacing the word « demurrage » with « detention » ?

Mr. Van den Bosch. — Yes, I have no objection.

Mr. Kihlbom. — We know what is meant by « demurrage », but we do not know what is meant by « detention ».

The Chairman. — Very well. We now pass on to Rule F.

Mr. Edmunds. — Rule F is the first of the rules dealing with substituted expenses, and you have to decide in this Commission the principle of savings for substituted expenses, whether you should only take into consideration the savings to general average or whether you have to go into the other more difficult problem of the adjuster, of finding out the savings to all parties. That is the principle you have to decide first of all, and it will affect X(d) and XIV. You have to decide that principle which runs through the three rules dealing with substituted expenses. You will see that the British, American, Belgian, Danish, Dutch and Norwegian branches are all of opinion that the savings in general average should be taken into account only. The French branch is radically opposed to that. They want to go right the other way. The Swedish branch I think are of same view ; in effect they would rather not change the rule. That is the principle you have to decide first of all, I think.

The Chairman. — Who would like to speak on this point?

Mr. Gervais. — (Speaking in French).

Me. Govare (Translating M. Gervais). — M. Gervais says, speaking for the French branch, that the lettered rule F sets out the principle, and the numbered rules X(d) and XIV are simply applications and amendments of that same principle. In 1890 and even at Stockholm it was not taken into consideration. Nobody raised the slightest objection. Rule X(d) provides that the one who has saved an expense has to contribute to the general average to the amount of expenses which he has saved or which has been saved to him. This has always been thought very fair. Mr. Gervais gave examples of people who had dealt with the subject in articles and books and had approved of it. He says all the general average adjusters such as Mr. Wood and himself have often had to deal with this subject, and they have never met with any great difficulty. Therefore he suggests that the rule should be maintained as it is now. Then he goes further, and he says in Rule XIV, which is another application of the same principle, he does not see why a person who has had some expense saved should not be asked to contribute to the amount of the expense saved in the general average.

The Chairman. — Thank you, Mr. Govare. Does anyone want to express views on what Mr. Gervais has just said?

Mr. Reading. — In this country we have not found it quite so easy to interprete Rule F as it was introduced at Stockholm. It may be remembered Mr. Rudolf, who was a member of the Drafting Committee, expressed the view that it was the intention at Stockholm that under Rule F the principle was to be established that all parties who had benefited by the extra expenditure should contribute — that is to say general average repairs and so on. There was great conflict of opinion because it was felt by those who had not the privilege of being members of the Drafting Committee that it was not clear under the rules. It does not say anything in the rule about savings to other parties ; it merely says that any extra expense which would have been allowed as general average shall be deemed to be general average. A number of us took that to be a precise statement that we had to consider the general average first, and if the saving was more than the expenditure it would be allowed in general average. So apart from any question of the difference between Rule F, Rule X(d) and Rule XIV, I think we do want it make clear in Rule F, as Mr. Edmunds said, what we really mean. We gave consideration to this

point because, if it came to be altered, then this was the question : Was Rule F to be altered so as to bring it quite clearly into line with Rule X(d), or were Rules X(d) and XIV to be altered so as to bring them into line with what we thought was the principle regarding Rule F ? I think it is really a practical question. We made inquiries in London, particularly through the Recovery Department of Lloyds, who went through hundreds of adjustments, and they could only find two cases in the last twenty years which have come to them in which Rule X(d) had been applied. The reason, I think, is that on most occasions when you feel Rule X(d) should be applied, the situation under modern complicated conditions, is so difficult that the parties concerned resort, as a rule, to some form of agreement amongst themselves before the expenditure is incurred. It is not an easy matter to decide under Rule X(d) what the savings to other parties are which have to be taken into account. Do you take into account the fact that by finishing the voyage quickly a cargo owner may effect a safe delivery under a contract and so avoid a loss ? Could you take into account the fact that the shipowner may thereby be able to deliver his vessel under a new charter party which otherwise would have been cancelled ? To my mind it is not sufficient to think of Rule X(d) merely as considering expenses saved to general average and expenses saved to particular average. The vessel may be at a port where it may have to be towed for repairs to avoid expense, or may have to be moved quickly because otherwise the cargo would deteriorate ; there are so many conditions and so many calculations that in the end you arrive at some complicated agreement which you submit to the parties concerned, you submit to the underwriters, and in practice Rule X(d) is in our experience very seldom used. It is complicated, and from the point of view of trying to save time and trouble and delay in adjustment it is very much simpler to take the direct saving to general average. If you take the direct saving to general average are you in fact doing anything unjust to the parties concerned ? After all, the whole basis of contribution in general average is that it is one of the fairest ways yet found of apportioning the sacrifices and expenses which are incurred in order that the property may be saved and the adventure completed. I do not think in the long run you are going to have very much injustice to the shipowner and cargo owner if you really bring into the account simply the expenses saved to general average and allow the alternative expenses in general average and turn those over to interests that are saved. I am quite sure in practice

when there is so much urge on us from the parties concerned to avoid delay in general average adjusting and to avoid complications in general average adjusting, that in a practical sense it is better to consider the savings a direct charge on general average.

The Chairman. — Gentlemen, you have heard the very interesting and clear and precise statement of Mr. Reading. Does anyone want to make a comment ?

Mr. Kihlbom. — The important consideration is left out that Rule X (d) has been in operation since 1890 without any serious disadvantages, and not only that but with considerable benefit to fair and equitable arrangements when questions of decision regarding substituted expenses have arisen. The proposed amendments to Rules F, X(d) and XIV, to which the adjective « revolutionary » could well be applied — I call them nothing less — involve a reversion of what has for long by writers and in practice been thought to be fair and equitable. It is now conceded that the principle expressed in the present Rule X(d) is right. If we turn to the Minutes of the British Sub-Committee for the 18th March last, they state : « that as a matter of fact when circumstances arise which necessitate exceptional measures being taken to complete a voyage such as transshipping or otherwise forwarding, it is frequently found necessary to take instructions from the parties interested and to submit proposals to them which are later incorporated in a memorandum of agreement ». The most important and most conclusive objection, according to Sweden, to the proposed amendments is that the underlying reasoning in this report passes over the fact that the stipulations in the present rule form the basis of agreements between the parties. For this reason, along with other reasons, no amendment should be made, because it would take away from the weaker parties to the adventure — I call them the weaker parties because according to the law the master decides — the possibility of entering into negotiations with shipowners and from shipowners a good basis for entering into negotiations with cargo owners in all other cases except those exceedingly rare ones (if any) where the substituted expense would be larger than the saving to the general average. If you look at the proposed amendments from another angle than that of the proposers, one may put the new ruling something like this : As long as the shipowner does not contract higher substituted expenses than the calculated savings to the general average, the shipowner is allowed to benefit privately by towing a vessel from a port of refuge or forwarding the cargo by other

means, charging the costs to the general average. This is not fair. It would before long give rise to abuse and to such complaints from charterers and underwriters that either the York-Antwerp Rules would have to be changed again in a few years or else that some charterers would adopt and, let us say in the case of a shipping slump, get introduced into charter-parties a rival set of rules or a special clause, for which very likely a lower premium might be charged. I do think that from the point of view of a shipowner I would not accept these amendments. It would be foolish to do so. It would be short-sighted. They would cause no end of trouble, and I do not think that the reason given is good enough. It is the business of average adjusters to find out what is right and equitable, and it cannot be right that equity should suffer in this respect any more than any other respect.

Mr. Pineus. — May I just add a few words to what Captain Kihlbom has said. It has been argued against the Swedish view that it is not easy to make this apportionment over the various interests saved, and that the average adjuster never goes so far as to look into the matter. This may be true, but so far as I can make out it is also true that you could work it according to the present practice even with the rules as they stand, in the preliminary stage where the parties discuss how things should be dealt with before it goes to the adjuster. I think it would hamper and make it difficult if it was put outright in the rules what is suggested now. I think there is no need for an amendment, and I believe that it would not assist in reaching an equitable solution of this question. I think these rules should be changed.

Mr. Gervais. — (Speaking in French).

Me. Govare (Translating M. Gervais). — M. Gervais says if he has well understood our colleague Mr. Reading, only two cases in twenty years have given rise to the application of Rule X(d), But Mr. Gervais (who says he is a small French adjuster, when in fact he is the most important one we have), says this year he has had three cases in which he has had to deal with this. He gives the example of a ship which left Nantes to go to five ports in North Algiers, and five minutes after having left the quay where the cargo was put on board the ship was wrecked and damaged, and the whole cargo was unloaded and forwarded to Africa on three other ships. The cost of the carriage of the goods by the three other ships was admitted in general average. The owner of the first ship had got his freight rebate, and he defrayed all his expenses in the five ports in Africa.

He saved all the expenses of his journey — wages, food, cook, etc. He says, is it not fair that the shipowner should contribute personally for all the expenses saved to him ?

Dr. Voet. — It proves how difficult it is to decide in such cases, because here the shipowner earns his freight not as a consequence of the accident but in consequence of the chartering. These are rules of practice. If you consider the question from the point of view of absolute justice, then we must share Mr. Gervais' view without any doubt, but on the question of practice I think the British rule should remain.

Me. Govare. — To sum up the opinion of the French branch, it is that Rule F, whether amended as suggested by the British branch or not, is not very important. The French branch has no strong feeling about it. But it has a strong feeling that Rule X(d) should not be altered, and that the principle if possible should be extended to Rule XIV.

The Chairman. — Shall we not deal with this question when we get to Rule X(d) ? Or do you want to deal with it at once ?

Mr. Reading. — I should have thought, Mr. Chairman, it would have been as well to have got the principle decided if it can be decided. Are we going to decide that the principle regarding substituted expenses shall be the same throughout, or decide one thing in Rule F and something else in Rule XIV.

The Chairman. — You want me to put the question whether Rule X(d) is abolished or not ?

Mr. Reading. — No — Rule X(d) is going to be amended. But I understand the view of the French branch is that they do not mind very much what we do with Rule F, but they would like X(d) and XIV to remain. That would mean you would have one method which you would adopt under your general Rule F, and you would have a different method applying to Rules X(d) and XIV. It was our view that it would simplify practice. As an adjuster I do not mind what happens, I do not mind which way it goes, but one of the things that we took into account was this — and we had it from the International Union and from everybody who submitted views. They said « Will you please make this abominable burden on general average a little lighter burden on us all ». Therefore, as far as I was concerned, if I had hesitation or doubt, I came down on what in my opinion I thought would help to make the burden of general average a little less. That is really why, in choosing between the alternative methods, I think the British favour the simple and direct point.

Mr. Kihlbom. — I would point out that it was proposed that Rule F should be altered to bring it into line with X(d), making it clear that they are not a first charge. Everybody was unanimous on that point. A ship bound from the north of Sweden to America with a cargo of pulp runs aground and reaches a port of refuge in Sweden where she can be repaired but only after discharging her cargo. She can be dealt with in Germany, and the difference in the prices of repair show that the owner would save, say £ 10,000. These figures I give are only suppositions. The owner would save, say, £ 10,000 if the repairs were done in Germany. Let us take the value of the ship to be £ 100,000 to make it simple, and the cargo £ 100,000, and the general average £ 5,000. The saving of costs would be £ 10,000. If Rule X(d) were changed the owner would, without further ado, once he had these figures before him, tow the vessel to Germany leaving the owner of the cargo in this position. He would say « I do not want to have my cargo brought to Germany because of the very unstable conditions, and further, if she is discharged in Sweden I have my own very competent people to look after it and save a lot of damage to the cargo ; whereas if the cargo is discharged in Germany I do not know what will happen ». The ship goes to Germany and the cargo is discharged, and there is considerable damage to the cargo. Do you think the cargo owner would be able to prove the same damage would not have been sustained in Sweden ? There may be several other perfectly good reasons for the cargo owner saying « I do not want the cargo brought to Germany ». Under the present rule X(d) he would have the possibility of talking with this shipowner and saying, « Now look here, let us come to a settlement over this ». With first-class shipowners that would not happen, but there are so many other shipowners, and the good shipowners would be suffering along with the others. I must touch upon another point. It is said that it is impossible to calculate. If I am a shipmaster and I contend that the owners have made a saving I have to prove it. I do not think the question will be very difficult for the adjusters, because all these matters are settled in practice before they reach the adjuster. I think it would be very unfortunate to make any change in the present rules. If you take Rule X(d) as a rule of practice, and Rule XIV, generally the costs of the temporary repairs are small. Rule F would be there for such casses as fall outside Rule XIV according to the principle we have adopted in the preamble.

Mr. Pineus. — May I say just a few words. I believe Mr. Gervais would

approve, and nobody would object, that it would be logical to drop out the principle of X(d). But leaving those considerations aside, as it is merely a practical question I would say that when the average adjuster, as Mr. Reading has said, already now feels that he can do — and as he does in most cases — disregard the wording of Rule X(d), it cannot be much more than giving him a better conscience if he does it to change the present rule. I still stick to what I said, that if you hold on to the practical line and it is found that making those agreements would be easier if things are left as they stand, the average adjuster would be free, as he has already considered he was, to work more or less on the present lines and reach an agreement before-hand. I fail to understand that it can be very essential to have this amendment put through, and I submit it should be left as it is.

The Chairman. — Gentlemen, the time to rise is nearing. Do you not think we ought to have a decision on this question ?

Baron van der Feltz. — I think the amendment is better. An example has been given from which it must appear that it would be very unfair and unreasonable if in that case the shipowner did not contribute to the expenses saved. If the ship sank then the shipowner would have earned his full freight. In this case he has to contribute for the value of his ship to those substituted expenses although he is not earning his full freight. He has to pay his share. I do not know in that special case whether he is also paying his expenses saved at the discharging port. I think the British suggestion is fair.

Mr. Ellis. — I think as a result of what Mr. Gervais has said that probably everyone round this table will agree that the principle laid down in Rule X(d) is correct, but as Dr. Voet has pointed out we are trying to evolve rules of practice. In other words, whatever the correct principles, we are trying to get some rules which are workable. Mr. Gervais pointed out one example. You could multiply that example by a hundred, and have varying rules. There is another point I was rather struck by. The Belgian Committee brought out a difficulty which might arise if Rule X(d) were left as it is. It is page 3 of this last effort that we have made. I think the point is this : If you have apportioned certain expenses and charged the cargo with a proposition against what it has saved, then how is the shipowner going to recover that ?

Dr. Voet. — Not only the shipowner, but some other party.

Mr. Ellis. — That is one practical difficulty which could arise from the

retaining of Rule X(d) as it is. I think myself it would be a very great pity to have Rules F and X(d) and XIV at variance. If we are going to have a practice at all, and we are trying to agree rules of practice, let us have the things consistent. It adds to simplification. We have heard a good deal about a little simplification of general average and all sorts of things, and this proposal put forward now by the British Committee will certainly simplify it. I am not impressed by the 101 examples of hard luck cases which you can put up. If there are any hard luck cases they can be dealt with when they arise by a special agreement **ad hoc.**

The Chairman. — Gentlemen, I think unless this point is leftover till tomorrow we ought to come to a decision on it.

Mr. Pineus. — I am content to leave it till tomorrow.

The Chairman. — I have been reminded that there is still a lot to do tomorrow.

Mr. Pineus. — But this is the main point.

The Chairman. — First I shall take the feeling of the meeting on this point. Do you want this point which we have been debatting left till tomorrow ? Those in favour of leaving it till tomorrow ? Those in favour of taking the vote at once ? The majority is one in favour of taking the vote at once. In that case, I think the point for me to decide is whether to accept the British amendment or the British wording as it is.

Mr. Edmunds. — May I put it in this way. I think you should put to the meeting whether we should make Rules F, X(d) and XIV consistent, and only take into consideration the savings to general average. I think that is what you want to take into consideration when dealing with substituted expenses — the savings to general average. That is in effect the British amendment, and goes right through the rules.

The Chairman. — I put the British amendment proposed by Mr. Edmunds, that we should make Rules F, X(d) and XIV consistent so that the adjuster shall only take into consideration the savings to general average.

Mr. Kihlbom. — I very strongly doubt if it would serve any good purpose if we forced this matter, because if we do we will never come to agreement.

The Chairman. — Mr. Kihlbom, I cannot go further than the decision of the majority. This meeting has just decided by a majority of one that they want to decide this point at once. I am bound by that decision.

Therefore I put to the meeting the British amendment proposed by Mr. Edmunds.

Mr. Edmunds. — Mr. Reading proposed it.

The Chairman. — The British amendment proposed by Mr. Reading. Will those in favour of it raise their hands ?

The voting was : —

For : 9

Against : 4.

Me. Govare. — Does that mean that Rule F remains ?

The Chairman. — Yes. It is decided by 9 votes against 4.

Mr. Kihlbom. — Will you put in the minutes my reservation ? My reservation is that the matter should be left as it is — that Rules X(d) and XIV should be left as they are — and if we came to an agreement at Amsterdam we should not leave this matter because I know that there are differences of opinion in various countries and other countries will not accept it. We will never arrive at any agreement, and will make matters much worse than at Stockholm.

The Chairman. — Mr. Kihlbom, you have put your case to the meeting, and the meeting has decided. You have not now a court of appeal. The court of appeal is Amsterdam. After all, anything we do here is not binding. What will be binding will be the decision at Amsterdam. Therefore you can put views again before the Amsterdam Conference.

Me. Govare. — I quite agree with what you have said, Mr. Chairman, but with Captain Kihlbom I can only regret that we do not come here with agreement, because when we go to Amsterdam the whole discussion will again crop up. We shall not be able to put before the Conference a draft which has been unanimously adopted.

The Chairman. — Do you wish the Amsterdam Conference to be nothing but a rubber stamping affair ? You must have something for the Amsterdam Conference to do. Gentlemen, I thank you very much for your patience. We shall meet tomorrow at 10-30 at the offices of Messrs T. R. Miller & Sons, 24 St. Mary Axe. I do sincerely hope that President Lilar will find it possible to come and preside over our labours tomorrow morning.

Me. Govare. — Mr. Chairman, we all agree with you when you say we hope President Lilar will be here tomorrow, because we would all be delighted to see him, but I must say in his absence we all thank you for the able way in which you have conducted the discussion today.

(*Adjourned till the following day at 10-30 a.m.*)

TUESDAY, 5th JULY, 1949.

The Chairman. — Gentlemen, I am advised by Mr. Van den Bosch that the votes I took yesterday were not quite correct, because everyone who was present voted, while only those who are members of this Commission have a right to vote. The members of the Commission are only one for each country, apart of course from the members of the Permanent Bureau who are ex-officio members of this Commission. So I think I had better read the list of those who have voting powers : — Mr. Lilar, myself, Mr. Reading, Mr. Miller, Baron van der Feltz, Mr. Govare, Captain Kihlbom, Mr. Tybjerg, Mr. Voet, and Mr. Van den Bosch, Mr. Lilar, myself, Mr. Miller and Mr. Van den Bosch are ex-officio members, being the President and Secretaries-General of the Permanent Bureau, and there is only one vote for each country except for this country where there is both Mr. Edmunds and Mr. Reading.

Mr. Edmunds. — I would like you to strike my name off, Mr. Chairman, because I was asked to act as Secretary to this Commission, and I have tried, I think fairly, not to look at the matter from the British point of view. I have to think as a rapporteur. Please take my name off. I do not want to be a member of this delegation. I do not want a vote. I want just to think of that report which I have to prepare, so that when asking a question I am just seeking information for the report. I do not think I ever expressed an opinion yesterday. I tried not to.

The Chairman. — You do not want, I suppose, Mr. Van den Bosch, yesterday's votes to be gone over again ?

Me. Van den Bosch. — No.

The Chairman. — We will now proceed with the revision of the rules, Gentlemen.

Mr. Kihlbom. — Mr. Chairman, will you allow me to bring up another point. We accepted this report as a basis for talk and discussion. It seems very convenient for the British Committee to say that « what is called in this report a British amendment is one that appears in the British report and that such amendment is sometimes based on helpful advice from other branches ». If we keep up that principle —

The Chairman. — Which principle ?

Mr. Kihlbom. — The principle of calling all amendments which are accepted British amendments. When this passes to the International Commission the result will finally be that all amendments which are accepted are called British, and all the amendments which are not accepted are called by the names of other countries. That is not very diplomatic.

The Chairman. — Mr. Kihlbom, I think we may leave that point till the end of this meeting, because I may tell you this. I have been discussing the question with the other Secretaries-General, Mr. Miller and Mr. Van den Bosch, and I propose to suggest to the meeting that instead of having Mr. Edmunds' scheme of the one rapporteur for each different rule, which from a practical point of view I think will not work very well, especially as the time is so short, I intend to suggest to this meeting, if my two colleagues approve, that we should have exactly the same method as they adopted for the preparation of the Stockholm Conference, namely a small Drafting Committee appointed by this meeting consisting of three, or at the most four men. Naturally Mr. Edmunds would be a member of that Drafting Committee, and you would have to select the other members. That Drafting Committee would prepare the set of rules as decided by this Commission, and the Amsterdam Conference would then have before them not a British draft or British amendments and so on, but would have before them the draft of the Drafting Committee in accordance with the decision of this International Commission. If that scheme meets with your favour it would do away with the diplomatic objection you have of calling everything British. So that I think we may now proceed with the work.

Mr. Kihlbom. — Thank you very much, Mr. Chairman.

Mr. Edmunds. — Mr. Chairman, when I started making some suggestions yesterday you stopped me, but I would like to say this. I had never any intention of putting in that column British amendments. My suggestion was to put in that column the rules of this International Commission word by word. I want to make it perfectly clear that there is no intention on the part of the British delegation — I speak now as a Britisher who has spent a lot of time on this — to try and put in a lot of British amendments.

Mr. Raynor. — I do not think there is any cause for misunderstanding,

and I do not think it will help this Committee if we side-track the issues. I know both parties, and I think we ought to get on.

The Chairman. — Yes, we will get on now with the discussion of the rules. We dealt yesterday with Rule F, and now we come to the numbered rules in the admirable digest.

Baron van der Feltz. — Mr. Chairman, we have dealt with Rule F, but there was a Dutch proposal to alter Rule F in this way. Instead of it reading « Any extra expense incurred in place of another expense » our proposal was that it should read « Any extra expense or loss incurred in place of another expense ». I have observed from all the reports we have received in the meantime that no other branch is supporting this proposal, so that I do not think it necessary to speak very much about it, but I do not want you to have the impression that we drop this proposal. The Netherlands Shipowners Assocaition stress this point very much, and they are doing their utmost to alter this rule in the way they suggest. They have a slight amendment to the proposal I have made. They are of opinion that it is better that the rule should read : « Any extra expense incurred or sacrifice made in place of another expense ». That is the new proposal that the branch will make. I do not know if it is convenient to discuss this matter now in this Commission, because all the other Associations have already given their opinion, but it is not my idea to drop this proposal.

The Chairman. — Do you think it could be left to the Drafting Committee ?

Baron van der Feltz. — I quite agree it could be left to the Drafting Committee, if you will put it on record.

The Chairman. — We put it on record that we have heard the observation of Baron van der Feltz, and recommend it to the attention of the Drafting Committee.

Now we come to the numbered rules, and the first one where I find any amendment is Rule III. It is the rule about extinguishing fire on shipboard, and the Netherlands and Denmark want to alter it in the following way : — « Extinguishing fire on shipboard. Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average ». And the latter part of the rule is to be deleted. I suppose Baron van der Feltz will explain the Netherlands point of view ?

Baron van der Feltz. — Mr. Chairman, as we have already said in our

report, the argument put forward for the rule as it stands now is that if damage by water had not been done the goods would have been a total loss by fire, but in our opinion this argument fails because that argument holds good for all general average. If the general average measure had not been taken the ship and cargo would have been a total loss. I have read the report of the British branch, and I see it is advised there that it would be better to leave it to the Surveyors and the Adjusters to make such allowances as they think advisable. I do not understand that sentence very well because if the rule stands you have to make the allowances in accordance with the rule, and you cannot do it in another way. The rule as it stands now is not in our opinion very fair, and in some sense it is illogical. You have, for example, three cases with the contents damaged by water. One case shows some signs of fire. It has not been burned, but the fire has come to the case, and you can see the fire has come to the case. The contents have not been on fire, but the case has been on fire for a moment. You have to allow the damage to the other cases of the same consignment in general average, but for the one case which has been on fire — only the case, and not the contents — you cannot allow the damage. It is quite illogical and unfair and we therefore think it better to alter the rule in the way we have proposed.

The Chairman. — Gentlemen, you have heard the Dutch case stated by Baron van der Feltz. Will any of you express an opinion on the matter ?

Mr. Kihlbom. — We in Sweden have studied this, and at the beginning we were of the opinion expressed by Baron van der Feltz but when you come down to look at the practical application you finally find however you try and whatever you say you will have exactly the same trouble. So we came to the decision that for practical reasons it is better to have the rule as it stands to-day.

Me. Govare. — The French branch came to the same decision, after having studied the whole question, that it is better to leave the rule standing as it is.

Mr. Tybjerg. — The question is not one of principle. It is a practical question. It may appear very difficult to tell which package of the cargo has been on fire. Supposing you say a certain package has been damaged by fire and by water, when you do not know whether the package has actually been on fire, then you have to write and ask about it a very long time after. So I think as a practical thing it would be better to leave the last sentence out.

Mr. Raynor. — I speak as an underwriter, and I have looked into this point. I think in principle Baron van der Feltz is absolutely correct, but in practice it does lead to difficulties. I consulted a number of adjusters, and I found that it would lead to a good deal of expense in the way of correspondence with surveyors abroad and a good deal of loss of time. We always have the matter of the 5 per cent interest in our minds, and — as I say I speak as a cargo underwriter — it is a hardship which underwriters have put up with since 1887, and I think there would be no harm if the rule remained unaltered.

The Chairman. — Baron van der Feltz, you do not press for a division on this point, do you ?

Baron van der Feltz. — No, I do not think it is necessary.

The Chairman. — Then we can take it that the general opinion is to leave the rule to stand as it is. On Rule IV there is nothing, and now we come to Rule V.

RULE V.

The Chairman. — On this rule there is an amendment by Belgium. The Belgian Sub-Committee expresses the opinion that there should be added at the end of the first paragraph, the words : —

« Sacrifices made in refloating a ship so run on shore shall, however, be allowed in general average ».

Dr. Voet. — It is merely an expression of reduction, because everybody is of the opinion, I am sure, that when a vessel has been run aground and she is afterwards refloated the cost of that refloating should be allowed in general average. When you take the sentence as it is in the rule, then you should say in no case may any allowance be made for a vessel which is intentionally run ashore. That is the reason why I think it would be better and more clear to say this, because it is all well and good for the intentional running ashore, but for the refloating of the ship which is ashore you should take the general rule. It is merely a question of reduction.

The Chairman. — Does anyone want to express an opinion on the proposed addition ?

Mr. Reading. — I should like to say I support it.

The Chairman. — Can I take it that the general feeling of the meeting is to add the few words proposed by Belgium ?

Baron van der Feltz. — I should like to say a few words with regard

to it. If it is not absolutely necessary to alter the rule I am not in favour of altering it, because we have worked with this rule since 1924 and it has not been brought to my knowledge that there was any difficulty about it. So that I do not think it is wise to alter it.

The Chairman. — We are not altering it.

Baron van der Feltz. — If you alter the drafting, as you are doing because you are making an explanation, you can always say under the 1924 Rules another meaning was contained in the rule. We have now made it clear that it must be as it is stated in the amendment, so that you can always argue there is a difference. Therefore if it is not absolutely necessary I am not in favour of altering the wording of the rule.

The Chairman. — I do not think it is quite right to call it altering the wording or the principle of the rule. We are simply adding one sentence to make quite clear a point on which we all agree.

Me. Govare. — Mr. Chairman, do you not think as a principle we should do what we can not to touch the rules ? I do not even say alter them, but we should not even add words, so that there would be as little alteration as possible. Secondly, before adding this sentence, against which we have nothing to say, we would like to know whether there has ever been any discussion on the construction of this Rule V, because as far as we know in France it has always been construed in the same way and has never led to any discussion. So why make it quite clear, when it is quite clear enough as it is, and has always been understood in the same way ?

Mr. Edmunds. — I had a letter dated the 28th June from Norway — it only arrived a day or so ago — in which they say : « Even if the Belgian proposal seems reasonable, the Committee do not think it necessary to make any alteration in Rule V. That is the view of the Norwegian Committee. There are one or two later views I have had in the last two days, and as we come to the rules I will tell you what they are.

The Chairman. — Dr. Voet, there seems to be some opposition to your proposal. Do you insist very much upon it ? If you want me to take a vote on it I will.

Dr. Voet. — If you say no loss or damage to a vessel intentionally run ashore shall be made good, and if you still say the refloating of the stranded vessel is a direct consequence of the running ashore, then it is quite clear you should make some correction to the general principle.

Mr. Raynor. — I can see Dr. Voet's point. If you deliberately run a

vessel ashore you have the inevitable consequence of that action in refloating. Does the damage and expense of refloating follow as an inevitable consequence of that running ashore ? It might well be argued the wording of the old rule cuts them both out.

Mr. Miller. — We have had considerable judicial discussion in England on the meaning of this rule, but the point raised by Dr. Voet has never, so far as I can find, been discussed in our courts. But I personally would support Dr. Voet's amendment, because I think there is a danger, as Mr. Raynor has pointed out, that if a ship is intentionally run ashore in the circumstances mentioned in Rule V the deliberate damage done in refloating might not be allowed in general average.

Baron van der Feltz. — After the Makis agreement is in the rule ?

Mr. Miller. — I think it still might not be allowed. One never knows what a judge would say, but I think there is a danger, and I support Dr. Voet and Mr. Reading.

The Chairman. — Well, I think as there appears to be a good deal of conflict of opinion the best way is to put the matter to the vote, and I propose now for voting to adopt the following procedure, namely to call out the name of the voting member who will say « yes » or « no ». The question is, are you in favour of adding the words suggested by the Belgian delegation : « Sacrifices made in refloating a ship so run on shore shall however be allowed in general average ». I may say in respect of Mr. Lilar that Mr. Van den Bosch was able to get on the telephone with him this morning and President Lilar expressed regret that he could not come today, but he will do his best to attend the dinner tonight. He will have to fly back to Belgium tomorrow morning, but if we have the privilege and pleasure of having him with us tonight that would help immensely because we can discuss matters after dinner. There are many things we can discuss with him. I have told Mr. Van den Bosch that if President Lilar finds it impossible to come I am then quite ready to go to Belgium at the first week-end and report to him everythingg that has happened in this Conference, so that he can decide what he likes about the Amsterdam Conference. President Lilar is absent, and as for myself, as Chairman I think I do not vote.

The vote was then taken, with this result : —

For the addition 6

Against addition 2.

Mr. Tybjerg. — My vote was in favour of the additon, subject to drafting.

The Chairman. — Yes. The motion is carried by 6 votes in favour and 2 against.

Me. Van den Bosch. — Cannot we reach unanimity on this point as everyone agrees there should be this addition, and there is only opposition on principle ? I quite appreciate that we have to touch the rules as little as possible, but if everybody agrees with this addition why not make it an unanimous vote ?

Me. Govare. — The French branch voted against simply because we think we must alter the rules as little as possible, but once that is said we have no objection.

The Chairman. — Mr. Govare, may I make this observation. Although I agree that we must touch the rules as little as possible, on the other hand I warn you not to be filled too much with what I might call the « Elmslie » spirit. When we were discussing the 1890 rules before 1924, the point of view of Mr. Elmslie, who had been the great lion of the Liverpool Conference of 1890, was that it was a sacred text and you should not touch anything. I remember proposing the question of damage to machinery in 1910 at the London Conference and the altering of that rule, but it was refused owing to Mr. Elmslie's objection that the 1890 rules were the Bible and not a comma ought to be touched. The 1924 rules have now had twenty-five years of existence, and while receiving them and so on, if we think it is possible to improve them I do not think we ought to be too much afraid of touching the sacred text. Baron van der Feltz, I understand Mr. Govare withdraws. Do you withdraw ?

Baron van der Feltz. — Yes, I withdraw.

The Chairman. — Then Dr. Voet's proposition is adopted unanimously.

RULE VI.

Mr. Edmunds. — As regards Rule VI, there is a suggestion from the French branch that there should be an amalgamation of Rules VI and VII. I do not know whether it is pressed ?

The Chairman. — I am asked whether the French delegation press the amendment to amalgamate Rule VI with Rule VII, as nobody else is doing it ?

Me. Govare. — No. The French branch does not press it.

The Chairman. — Then we go to Rule VII.

RULE VII.

The Chairman. — Rule VII, if I may say so, is my child, because it was my proposition at the 1910 Conference when it was turned down by Mr. Emslie, but I got it adopted in 1924 at Stockholm.

Mr. Edmunds. — May we take it in two parts ? The suggestion to alter the title is the first part. Could we take that first and then go on to the wording of the rule ?

The Chairman. — Mr. Edmunds will explain why it is advisable, especially owing to some difficulty in the courts here, to alter the title.

Mr. Edmunds. — Mr. Reading will deal with it.

Mr. Reading. — The hope was that by changing the title we should make the rule more clear. What I think we are concerned with in this rule is the damage to the propelling machinery of the vessel and her boilers. Modern vessels have many engines on board today the damage to some of which we should not want to exclude. What we really want to exclude is damage to the vessel's propelling machinery when it is afloat. The word « engines » we thought was too wide having regard to modern conditions. In the days when this rule was first drafted I suppose the only engines on a ship were her propelling machinery, but today, particularly in large motor vessels, you have other engines of every possible kind which should not be affected by this rule. We also suggested that we should omit the words « in refloating a ship » because of the reference in the last paragraph of the old rule that « where a ship is afloat no loss or damage caused by working the machinery and boilers shall be made good as general average ». There is a contradistinction there which has led to a difficulty of interpretation, because the heading hitherto has said « damage to engines in refloating a ship » and some have said that the rule strictly speaking only applies to damage sustained in refloating and immediately after refloating, whereas others have thought that the intention was that when a ship was afloat no loss or damage to the machinery should be made good in general average.

The Chairman. — Thank you very much, Mr. Reading. As all the branches have accepted the change in title, I do not think there is any need to have any discussion.

Mr. Pineus. — May I ask a question. If it is perfectly clear that the intention is that it shall be the propelling machinery which you are dealing

with in this rule, is it sufficient in English to say « machinery », or should we say « propelling machinery » ?

M. Reading. — As a matter of fact when these rules were referred to the British Association of Average Adjusters a recommendation did come from some of those members that the rule would be more clear if we did insert the word « propelling » before « machinery ». I myself thought that in conjunction with the word « boilers » it was clear enough as it stood, but if there is any doubt it might be a good thing to insert the word « propelling ».

The Chairman. — May I point out, Mr. Pineus, that the change of title has been approved by all the branches, and if we alter it now that approval falls.

Mr. Pineus. — It was just a question I was asking.

Mr. Reading. — Might theDrafting Committee remember that that suggestion has been made — that it might be clearer if the word « propelling » was inserted.

The Chairman. — Well, shall we leave it that there is general approval of the change in title as it is here, and that there is a recommendation to the Drafting Committee to take into consideration Mr. Pineus' point. Then there is the second question of the altering of the rule itself. You have the British proposal to alter it as follows : — « Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage ; but where a ship is afloat no loss or damage caused by working the machinery and boilers shall in any circumstances be made good as general average ». That wording, as I understand, has merely the effect of making still clearer what I tried to achieve when I drafted Rule VII of the 1924 Rules. Therefore as far as I am concerned personally — though I hesitate to express an opinion when I am Chairman — I entirely agree with the British draft.

Me. Govare. — The French branch have made a report, and we have the exact wording of the new British draft. I see on this paper it is mentioned that France « approves the new title but otherwise no amendment». In fact, the French branch approve the new title and also the British amendment.

The Chairman. — Thank you. Is there anyone who does not approve the British amendment ?

Baron van der Feltz. — It is only the words « in any circumstances » which have been added ?

Me. Govare. — That is all.

Baron van der Feltz. — I agree.

Mr. Raynor. — It is merely fitting the child out with long trousers.

Me. Govare. — The Norwegians are very keen on having it.

Dr. Voet. — There is a very serious question which arises under this Rule VII, and it is the question of compounding the engines when there is a breakdown of machinery at sea, and the captain has often either to go for the coast to help her to arrive at her destination, or to compound his engines. By compounding his engines, of course, the vessel saves a heavy loss. Is it now the intention to say that this damage to the engines is cut out entirely ?

The Chairman. — Absolutely.

Dr. Voet. — That is a hardship.

The Chairman. — It has always been the intention because of the numerous times you have to say that he has tampered with his engines, and so on. We always find it put on general average « damage to the engines».

Dr. Voet. — Then I would suggest that you adopt another word for « working » for this reason. I know of some decisions in France and Italy by which they say that compounding the engines is not working the engines. If that is your decision I think it is very hard on the shipowner. But if you are unanimously of opinion it should be disallowed, then I think it would be better to say it with another word than « working ». I know of decisions given by the Genoa Tribunal and the Genoa Court of Appeal saying that compounding the engines is not working the engines.

Mr. Kihlbom. — Could you use the word « using » instead of « working » ?

Me. Govare. — In the French text the word is « fonctionnement ».

The Chairman. — We can put « using » instead of « working » if you like.

Dr. Voet. — I am not an Englishman. I do not know. As a matter of fact the decision has been given by an Italian court saying that working the engines is not compounding.

Mr. Raynor. — It is a matter for the Drafting Committee.

The Chairman. — Mr. Raynor proposes the matter should be left to the Drafting Committee. Is that agreed to ?

Mr. Edmunds. — To see if they can find another word for « working ».

Me. Govare. — Leaving the French word « fonctionnement ».

The Chairman. — Yes, to see if they can find an English word for the French word « fonctionnement ».

Mr. Miller. — It is « working ». There is no question about that.

The Chairman. — Then the decision is : The British amendment to Rule VII is unanimously adopted, with the recommendation that the attention of the Drafting Committee be drawn to finding instead of the word « working » an equivalent to the French word « fonctionnement ».

RULE IX.

The Chairman. — We now come to Rule IX — Ship's material and stores burnt for fuel. We have the French proposal : add after « shall be credited to general average » the words « and debited to the ship ». Will Mr. Govare or Mr. Gervais explain ?

Mr. Gervais (speaking in French).

Me. Govare (translating). — The French branch have discussed the matter, and thought it would be clear if those words were added. But only one or two members of the branch suggested it, and we do not know whether it is advisable to maintain it because we have put « and debited to the ship ». Sometimes it may be debited to the owner of the fuel, who may perhaps not be the ship. If nobody agrees with us, we withdraw our suggestion.

The Chairman. — Shall we for the sake of simplicity take it as withdrawn ?

Me. Govare. — Yes, it is withdrawn.

RULE X.

Mr. Edmunds. — On Rule X you have first of all to consider the question of lifting the title. Everybody agrees at present there is no heading to Rule X. The heading appears to Rule X (a). Really the title applies to sub-sections (a), (b), (c) and (d), so that you have the suggestion that the title of X(a) be lifted and made the title of the Rule. I think everybody will agree with that.

The Chairman. — Does everyone agree to the lifting of the title ?

(The lifting of the title was agreed to unanimously.)

Mr. Edmunds. — On subsection (a) there is no amendment with the exception of the Dutch. They want to put in something about removal from one port to another. But since the Dutch report that there is a

difficulty largely in this country, we have now a practice with our Association and we are quite happy. So that it is just a question whether the Dutch would wish this amendment made in X(a).

Baron van der Feltz. — The difficulty is whether that rule of practice is a rule of law. If you have not that rule of practice in other countries you can have other decisions, so that it is better to put the case in the rule itself, and not only rely on the rule of practice in London.

The Chairman. — Countries like France, where rules of practice do not exist.

Mr. Edmunds. — We were always told we were the only country that was out of step. Everyone else allowed these expenses in circumstances where they could not repair from one port to another. They allow most of them in America.

Baron van der Feltz. — The practice in other countries may be as you have put it in this rule of practice, but I am not sure the courts would accept it. It is very likely the judge may have another idea of the case, and disallow it in general average.

The Chairman. — Gentlemen, you have the amendment before you all. I do not think it is necessary for me to read it as it is rather long.

Baron van der Feltz. — The drafting of the amendment is not quite right. We have not drafted a legal proposal. We have only mentioned the rule of practice.

The Chairman. — What is your amendment ?

Baron van der Feltz. — My amendment is to add the new second paragraph in which this rule of practice is set out.

The Chairman. — Your amendment is to add new second paragraph.

Baron van der Feltz. — Could it begin with the words : « Where a vessel is at any port or place » ?

The Chairman. — That means leaving out the words « That in practice», and starting with the words « Where a vessel » etc. ?

Baron van der Feltz. — That is right.

Me. Govare. — What is mentioned in the Dutch proposal is what is already the practice in France, therefore as far as we are concerned we have no objection to raise to it ; but we think it is useless to put it in as far as we are concerned because it is already the practice in France.

The Chairman. — Has anybody else any view to express on that point ?

Mr. Edmunds. — May I make a suggestion ? Apparently nobody but Holland would like to have it in. I think the British branch would like

to consider along with the Dutch branch as to whether they would put the rule of practice before the Amsterdam Conference.

Baron van der Feltz. — I quite agree with that.

The Chairman. — Baron van der Feltz agrees that we leave it for the time being. Therefore it is not going to be added now, but it is agreed that the British branch and the Dutch branch will consult as to whether to put the matter before the Amsterdam Conference or not. Will that satisfy you?

Mr. Kihlbom. — Had you not better come to an agreement here on this point, as on all other points ?

The Chairman. — For the present you may take it that Baron van der Feltz withdraws temporarily his amendment, and reserves his right of presenting it again at the Amsterdam Conference after consulting with the British branch.

Mr. Kihlbom. — Could it not be left to the Drafting Committee ?

The Chairman. — You cannot prevent Baron van der Feltz withdrawing. He is withdrawing his amendment.

Mr. Kihlbom. — What I had in mind was trying to cut out a little work from our Amsterdam Conference.

The Chairman. — I cannot say to Baron van der Feltz please leave the amendment in. He has withdrawn it.

Then we go to subsection (b). Nobody has suggested any amendment. Then there is subsection (c). There is an amendment from the United States of America.

Mr. Edmunds. — Under the present rule we are only allowed fire insurance as a charge like a warehouse charge. It is suggested in America we should take out the word « fire » and say « including insurance, if incurred ». It is really on the question of the wording, if you take the word « fire » out, whether we are not opening the door too wide. We have suggestions that we should say « including any insurances if reasonably incurred ». That is the French proposal. Then there is some other proposal from Sweden. I think the Swedish proposal is to take out the word « fire » and say « including insurance if reasonably incurred ».

Mr. Kihlbom. — Yes, that it so.

Mr. Edmunds. — So that you are more or less unanimous we take out the word « fire », and then the question is whether you take out the word « fire » and say « including insurance if reasonably incurred » or whether you say « including any insurances if reasonably incurred », or « including insurance if incurred. »

The Chairman. — The French say : Delete « including fire insurance if incurred » and insert « including any insurances if reasonably incurred ».

Mr. Edmunds. — Denmark is against.

Mr. Tybjerg. — Denmark is against any amendment because of the fact that the relief is not necessary. I think some agents might profit by it, and it would give rise to a lot of unnecessary trouble, we say.

Me. Govare. — War risks and things of that sort.

Mr. Miller. — I would strongly support the Swedish and French proposal. I think we should put in the words « if reasonably incurred ». After all you must leave some discretion to the adjuster. Ample protection exists against the danger which the Danish national branch apprehend. One ought, I tink, in these troublous times certainly to have the power of charging cargo insurance against war risk.

Mr. Edmunds. — On shore you will not get it.

Mr. Miller. — Anyway, it is only on shore. You will get it on ship. There are certain other insurances where it might become prudent, and I think it should be left to the adjuster to decide.

Baron van der Feltz. — The only other insurance which will be reasonably, incurred will be the insurance against sacking and pilfering, but there is Rule XII which deals with that question.

The Chairman. — We cannot legislate for the future.

Baron van der Feltz. — If you allow the loss by sacking in the act of handling discharging and reloading cargo, and also allow the premiums against the sacking, you are doing the same thing twice. I think the insurance might be restricted to fire insurance, because if there is sacking and pilferage done in the act of handling discharging storing or reloading the cargo that loss will be allowed already in general average, so that it is not necessary to allow insurance premiums for that.

The Chairman. — In future you may have atomic risks.

Baron van der Feltz. — You cannot get credit for that.

Mr. Miller. — Not at the moment.

Baron van der Feltz. — I do not know what insurances are reasonably incurred. In our case we are not against deterioration or decay. If you have a cargo of potatoes where the cargo must be discharged and stored it is perhaps reasonable from the point of view of the cargo owner to allow insurance against deterioration or decay. I do not know wheter that is included or not, because Rule C expressly stipulates damage through delay on the voyage is not allowed in general average, and now we are

allowing premiums against that damage. We think it better to let the rule stand as it is, in which circumstances the adjuster has the right to allow fire insurance.

The Chairman. — Gentlemen, you have various propositions before you : (1) to leave the rule as it stands ; (2) according to the American wording « including insurance if incurred » ; (3) according to the Swedish wording « including insurance if reasonably incurred » ; and (4) according to the French wording « including any insurances if reasonably incurred ». Will those in favour of leaving the rule as it stands vote.

(The proposition was negatived by 6 votes to 2.)

The Chairman. — I will now put the American proposal.

Me. Govare. — Mr. Chairman, may one answer « Yes » to this question, and when you put the Swedish proposal say « Yes » to that too, and then when the French proposal is put, which adds another word, say « Yes » to that ?

Mr. Tybjerg. — Cannot we all just agree on the Swedish text ?

Me. Govare. — If I dare suggest it, would it not be better to put the French proposal first, because the American proposal has four words, the Swedish proposal has five words, and we put another word on to the Swedish one.

The Chairman. — Then I will take the vote another way. I will take the last one the one with the greater number of words, which is the French one. If that is negatived, then I will take the Swedish one, and then the American one. Therefore I will now put before you the French text, which reads : — « including any insurances if reasonably incurred ».

The proposal was negatived by 5 votes to 3. I now put the Swedish text, which is :— « including insurance if reasonably incurred ».

The proposal was agreed to by 7 votes to 1.

The Chairman. — The Swedish text is adopted by 7 yes to 1 no.

RULE X (d).

Mr. Edmunds. — You now come to Rule X(d). You dealt with X(d) last night.

The Chairman. — I may say this in respect of Rule X(d), on which there was a long discussion and a very divided vote. In my vieuw — it is only my view and I shall have to enquire latter on whether it is your view — the work of the Drafting Committee should be not only to make the draft which will come out of your discussions and propose it to the

Amsterdam Conference, but also to make a report of your discussions, and when a point has been debated with such a difference of opinion as that was the Drafting Committee should put in their report the two views — saying the view of the majority was so-and-so and the view of a strong minority was so-and-so. I think it would be fair, when there is a very sharp division of opinion, that the Drafting Committee should expose both points of view. Now are we to pass X(d) or not ?

Mr. Edmunds. — You took a vote last night.

The Chairman. — So that there is no discussion about it ?

Mr. Miller. — No discussion. It was passed by a majority.

The Chairman. — Last night it was decided that Rule X(d) was deferred.

Mr. Edmunds. — I am glad to hear you make that remark. I had rather come to that conclusion myself, that the substituted expenses question is going to be the point at Amsterdam. I would like to suggest to you that perhaps M. Kihlbom, Baron van der Feltz, and perhaps M. Reading and Mr. Govare with myself might prepare a special report for Amsterdam on substituted expenses. I think the four gentlemen I have spoken of have different views, and they can express in this one report the views of the four different sides. It can be published before-hand and the Amsterdam people can then know what is going to be said on this most important point. Then I think we shall all have to agree that no-one can say at Amsterdam the Conference could not understand this point. It is the big point in the revision of these rules. I think it is so important that I entirely agree with what you say. If this Commission would agree to those four gentlemen I have named, I will get in touch with them and a report can be prepared for submission to you.

The Chairman. — I entirely agree. I think it would be better to leave the matter till the end of our discussions as to the appointment of committees and so on, because if I understand your proposition it is that there should be a separate report for Rule X(d).

Mr. Edmunds. — Not quite. You will have to issue, I think without any doubt, a report from this Commission, but you will want supplementary reports because I am sure there is going to be something after this report. There will be no harm in having some special report from a Committee of this Commission set up to draft for submission to the Commission a special report on substituted expenses. I am speaking now because I am anticipating what is going to happen at Amsterdam, and I am sure it

is the wish of this Commission that everyone should understand this substituted expenses question.

Mr. Raynor. — That would take in the two rules X(d) and XIV ?

Mr. Edmunds. — Yes. It would have to give to the Drafting Committee the suggested rules, some in favour of this one and some in favour of that one. That, I think, meets Captain Kihlbom's point ?

Mr. Kihlbom. — Yes.

Mr. Edmunds. — That is fair. We are in agreement ?

Mr. Kihlbom. — Yes.

Mr. Edmunds. — We are in agreement, Sir.

The Chairman. — Then for the present we pass X(d) and go to RULE XI.

RULE XI.

Mr. Edmunds. — The question first of all is whether we shall recommend that Rules XI and XX should be amalgamated. Everybody wants to amalgamate these two rules.

The Chairman. — Does everyone want amalgamation ? There is no opposition to amalgamation ?

It was unanimously agreed Rules XI and XX should be amalgamated.

Mr. Edmunds. — The branches are all more or less agreed about this. It is really a question of drafting. I suggest to you it would be impossible for this Commission today to try and draft the new Rule XI, so that I have tried to pick out from the three branches that have submitted drafts where they differ most. Those branches are the British, Danish and Swedish. I suggest you might consider putting to this Commission whether those three branches should not submit to the Drafting Committee an agreed draft.

The Chairman. — If they are ready to do that I have not the slightest objection. Are the British, Swedish and Danish branches ready to submit to the Drafting Committee an agreed draft ?

Mr. Reading. — I am sorry not to agree with Mr. Edmunds. As you have said, later on we shall have to discuss some procedure with regard to Drafting Committees and so on. I think to have a number of Drafting Committees is going to involve us in so much correspondence between now and Amsterdam that it would be very difficult to get the work done. In fact there is tremendous correspondence already, and there is tremendous labour in trying to keep up with it. I known what it has meant in the

last six months. I think if we could agree on what rule is likely to be the best basis we might leave it to the Drafting Committee. There is only one other point I would like to make. These rules are more or less in alignment except on one particular point on which I think some guidance should be got today. That is on the question whether we should make any reference to overtime. The British rule does include it. On the whole I very much approve of the Danish draft as against the British draft. I think it is clearer. The only difference is that we refer to overtime, and they do not. Some other reports do include overtime, and others do not. There is a difference there which I should think we could settle now. It is not a very important point, and therefore it might be settled today, I think.

The Chairman. — May I say I entirely sympathise with your view, Mr. Reading, that there should be only one Drafting Committee. While agreeing completely with what Mr. Edmunds was saying about Rule X(d), I have my own objection to having a special Drafting Committee for Rule X(d). We must not multiply Drafting Committees, otherwise it will be extremely difficult to get the thing done before the Amsterdam Conference. With that reservation I should advise you to have only one Drafting Committee, otherwise it will be extremely difficult to get the thing done before the Amsterdam Conference. With that reservation I should advise you to have only one Drafting Committee. I entirely agree with what Mr. Reading has just said. Would you, Mr. Reading, formulate the point you want to submit ?

Mr. Reading. — Mr. Edmunds has said to a large extent these proposals on Rule XI do follow the same line, and it is just a case of the wording, and it is really a matter for a Drafting Committee to decide which is the best one. The point on which there is a difference is that the British Committee have wanted to add a subsection (d) which limits the overtime which may be recovered in general average, and some of the other Committees do not want any reference to overtime made at all. The reason for the British Committee making some reference to it is that it has been the practice in this country for some time, after discussion with underwriters, to limit overtime paid during detention, that is to say, not to treat the overtime as following the allowance of wages and maintenance. The reason has been that during the detention of a ship not only repairs which are necessary for the safe prosecution of the voyage may be done, or repairs which are the result of sacrifice, but a shipowner may take the

opportunity of a long detention to do maintenance repairs which are for his own benefit, and does in fact, as he is perfectly entitled to do, but in the course of doing those repairs there may be overtime, in the case of engineers in particular. It happens in respect of machinery repairs, which should not be charged to general average as part of the wages recoverable under our new Rule XI.

The Chairman. — Is everyone in favour of adding to the Rule paragraph (d) proposed by the British branch ?

Mr. Tybjerg. — The Danish branch has hesitation particularly about the words « work or repairs », because we feel « work » may be taken to mean all kinds of ordinary routine work which should be allowed, like wages, and should not be subject to any special condition. But if it is possible in drafting to find another word which would express it in another way, we would be perfectly agreeable to the British addition.

The Chairman. — Is anyone opposed to adding paragraph (d) : « Overtime paid to the master, officers and crew for work or repairs the cost of which is not allowed in general average, shall be allowed in general average, only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred. » It is not very clear.

Mr. Kihlbom. — The Swedish branch is very much against it, because we do not think the wording is clear. I suppose everybody agrees we do not want to allow general average to be charged for overtime paid for keep and maintenance of a ship and boilers and machinery which have nothing to do with general average. There are cases where it would only lead to a lot of trouble if you tried to find out whether there has been any saving on general average or not.

Me. Govare. — I do not want to speak in French, but in the French draft which has been circulated in the French report they have one paragraph which I would like to read, because when I read the translation into English I am not sure that I understand it clearly. What we have put in our draft is : — (The French text was read.) I think that is what the British draft says, and therefore, subject to drafting, the French branch approves the British draft.

The Chairman. — Very well. Is there any other opinion on the British draft ? The proposition I put before you is that it should be left to the Drafting Committee to amalgamate the various ways in which this is ex-

pressed and get the best drafting possible, but that we are going to express an opinion on paragraph (d) of the British draft.

Baron van der Feltz. — I should like to say a few words about paragraph (c) : « For the purposes of this rule wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the articles of employment. » We have said in our report that the term « articles of employment » means the British statutes, and it may be difficult to adapt this term to various national laws. Therefore I have a proposal to add a sentence to the British proposal after « articles of employment », namely : — « or by, or to give effect to agreements between shipowners and seafaring organisations , or undertakings given by a shipowner or a shipowners' organisation on behalf of its members regarding conditions of employment of the crew. »

The Chairman. — That is not in the proposal here in the digest ?

Baron van der Feltz. No.

The Chairman. — You will submit that to the Drafting Committee as an addition to your proposal, because the Drafting Committee is going to find the best possible draft. I first have to submit to you paragraph (d) of the British amendment. I will take the vote. Those in favour of paragraph (d) of the British amendment ?

The voting was : 5 yes, 2 no, 1 abstention.

The Chairman. — So that the decision is : That the Drafting Committee shall be left to find the best draft they can for Rule XI, and that paragraph (d) of the British amendment shall be part of it.

Mr. Pineus. — I am not quite clear whether we agreed to having a small Drafting Committee or a large Drafting Committee ?

The Chairman. — We have not agreed on anything in that respect. I intend to put that matter to the vote. If you like I can put it to the vote now, but I think it would be better to leave it till this afternoon.

RULE XII.

Mr. Edmunds. — On Rule XII there is a Belgian suggestion for changing some words.

The Chairman. — Belgium proposes : « in consequence of handling, discharging, storing » instead of the words « in the act of handling, etc. » Are there any remarks on the Belgian propositon ?

Dr. Voet. — The reason for the proposition is this. It may be that

owing to the discharging of a cargo the cargo suffers some damage which is not breakage or anything of that kind such as occur in the act of handling discharging or storing. It is not only a case of breakage, but there is possibly shock. It does not occur every day, of course, but you could, for instance, have frozen meat to be discharged, and there is no cold stores in the port. The cold meat would be sacrificed, there is no doubt about it, and if you take the words as they are « in the act of handling, discharging, storing, reloading and stowing » I suppose such damage would not be allowed.

The Chairman. — Is there any opposition to the Belgian amendment ? It makes things much clearer.

The Belgian amendment to Rule XII was unanimously adopted.

RULE XIII.

The Chairman. — Mr. Edmunds will explain this Rule.

Mr. Edmunds. — This Rule XIII is a technical rule dealing with deductions from cost of repairs allowed in general average. The British branch has submitted a re-drafting of the rule based on the advice of three consulting surveyors, and the American branch approves the British branch. The French branch suggests the rule should be simplified. The Belgian branch has no technical knowledge, and the Danish, Norwegian and Swedish branches consider deductions should be made from the cost of labour in installing renewals as well as from the renewals. The Commission has to consider two questions : firstly, the Commission has to decide whether the rule should be simplified or simply brought up to date ; and secondly it has to decide whether the deductions should be made from renewals only or from the cost of installing the renewals as well. There are two points you have to decide. First of all, are you going to bring the existing rule up to date, or are you going to have it all put into the melting pot and try to simplify it ? That is the first point I think you have to decide on this Commission.

The Chairman. — Gentlemen, would anyone like to express any views ?

Dr. Voet. — I am somewhat afraid that the rule must be overhauled or it will never be ready for September. Do you think there is any possibility of that overhauling of the rule before September ?

Mr. Edmunds. — In answer to that, the British branch got three of our leading consulting surveyors on it here, and two in New York, and we did submit a re-draft bringing it up to date. Some branches want to dissent

from the rule or bring up a rule of their own. But you have this other point : I think you should decide first, are you going to simplify it or bring the old rule up to date, because everything depends on that.

Mr. Kihlbom. — On the first point, I think we should formulate our decision first, that the rule should be brought up to date. In doing so, we might try to simplify it.

The Chairman. — I see Mr. Raynor is of the same opinion.

Me. Govare. — And the French branch too.

The Chairman. — Then the position is that there is general agreement that Rule XIII should be brought up to date, while at the same time being simplified.

Mr. Edmunds. — I think this Commission should consider how to deal with this very technical rule. I would suggest it is a little difficult, however capable a Drafting Committee you appointed from this Commission — to deal with a technical rule. It is question for consulting surveyors and experts.

The Chairman. — The Drafting Committee will receive the surveyors' and experts' reports, but we cannot leave it to the surveyors to draft.

Mr. Edmunds. — No, I do not suggest that.

Mr. Kihlbom. — The Swedish branch notified the British branch that we were consulting technical experts, and we have done so. Our expert, who we know is a very capable man, has made out a draft rule, which I only got two days ago. I have that draft rule here now, and also a translation of a memorandum on it, if you would like to see it.

(The Swedish draft rule and memorandum were handed round.)

The Chairman. — We are very much obliged to Captain Kihlbom for giving us this draft. I suppose it would be rather difficult to discuss all these technical questions and so on now. Is it the pleasure of this Commission that the question of article 11 should be left to the Drafting Committee, who will consider all the drafts submitted by the various technical surveyors and so on, or do you want to take decisions yourselves on certain points of principle, if any ?

Baron van der Feltz. — I should like to have the opinion of this Commission on a certain point of principle, not on detail but only on principle, because the French proposal is to have another division in years, namely 1 to 10 years, 10 years to 30 years, and over 30 years. That is a question of principle I should like to be discussed. I see also in the Swedish draft there is this suggestion : « The deductions shall be made from the cost of

new material or parts including labour and all other costs directly connected with the renewal ». That too is a question of principle, and the French proposal is a question of principle.

Mr. Edmunds. — I do not think this Commission should go into these technical matters. I raised the two points whether you should simplify, or whether you should bring it up to date, and it was agreed to bring it up to date and simplify. Now Baron van der Feltz is going back again, if I may say so, against that decision. I thought you had left it to the Drafting Committee to receive these reports, with the direction from this Commission to bring it up to date and simplify at the same time.

The Chairman. — The only thing on which there was a decision by this Commission was on the mere question, do you want to bring it up to date, or do you want to simplify ; and the answer was, we want to bring it up to date and at the same time to simplify. It has not been decided that it should be left to the Drafting Committee, and I was consulting this Commission as to whether it should be left to the Drafting Committee, and on that point Baron van der Feltz says, as he is entitled to do, « No, I am not ready to do that. I am quite ready to leave most things to the Drafting Committee, but there are one or two points of principle which I want to be decided by this Committee ». I can, if you like consult the Committee whether they want to discuss those two points of principle, or whether they do not want to discuss them.

Mr. Pineus. — If we just leave the matter to the Drafting Committee to work it out, I am afraid we shall not answer the question how deductions should be made, and that after all is a question of principle we ought to decide. I submit we discuss that here.

Mr. Edmunds. — I did suggest there were two suggestions you had to decide. The second was, should deductions be made from renewals only, or from the cost of installing renewals as well ? That is the second point that this Commission will have to decide because until the Drafting Committee gets a decision on that point they cannot draft.

The Chairman. — Will you be satisfied with that, Baron vand der Feltz ?

Baron van der Feltz. — Yes.

Mr. Edmunds. — In the British draft they say renewals only. Other Branches — though very few have submitted reports yet — have said we want you to take into account the cost of installing as well.

The Chairman. — We are seeking a decision on the question : Should

deductions be made from renewals only, or from the cost of installing renewals as well. Does anyone want to express an opinion on that ?

Baron van der Feltz. — I am in favour of the British proposal which is to have deductions of new materials only, because that is much simpler than, for instance, the Swedish proposal in which you have to investigate « the cost of new material or parts including labour and all other costs directly connected with the renewal but excluding opening up of machinery, etc. for inspection ».

The Chairman. — Baron van der Feltz is of opinion we should adopt the British proposition that new material only is to be admitted. Is anyone in favour of that, or opposing that ?

Mr. Kihlbom. — If we are going to simplify the issues, then such a matter should be very much the opposite. There are two principles in this case. One is what is right, and the other is what is practicable. If you take the last one first, how are you going to find out what is the meaning of « new material » with regard to a piece of machinery ? Is it the pure weight of the metal, or is it the price of the ready-made piece of machinery ? We shall come to no end of trouble if you go into that. Regarding the first question of principle, we think, as far as I can understand, if that be the meaning of these rules, that nobody should make a profit. If we accept that principle, then we must say we have to find out what is the right to profit. Now-a-days working costs amount sometimes up to 80 per cent of the cost of the renewal. If we were to make deductions only from the cost of material, that would mean in substance an owner who made a renewal would sometimes have 80 per cent of the cost without deductions which would otherwise be made.

Mr. Ellis. — I am not sure that we are not for getting that we are trying to evolve an improved code of general average, — as I said yesterday, a kind of navigating practice of general average. We are bound to cut across certain national laws in that process. We do in fact cut across many of the English law principles. For instance, in Rule X, port charges, and in Rule XI, wages, they are all against the English law. Incidentally, when it comes to equity, we are bound to do certain injustices possibly to some parties in the process of evolving a practical code, which is what I imagine we are trying to do. With regard to this problem that we are now talking about, namely whether deductions should be made from the cost of material only or from the cost of installing it as well, I am quite satisfied in my own mind the deductions should be made from

the cost of the installation as well as from the cost of the material. That is the correct principle, and it has been not only my own practice but the practice of all my partners past and present to do that up to the present day. But after hearing the discussion in the British Committee I came to the conclusion that in view of the simplification that we are aiming at, and the fact that the parties did not seem to object to following the principle of deducting from the cost of material only, I am prepared to accept that, and I think the British delegation as a whole were prepared to accept that position. It is the British view. With regard to Captain Kihlbom's difficulty, surely when you talk about the cost of installation it is not the cost of making the piece but the cost of putting it in that we are talking about. With those observations I support the view that deductions should be made from the cost of material only.

The Chairman. — Thank you very much. I think I will just take a vote on that question, and when that vote has been given we shall have disposed of Rule XIII. The question is, do you approve the British amendment that the cost of material only shall be allowed in general average ?

Mr. Reading. — Might I add that the British proposal was not « material ». It was « material and parts ».

The Chairman. — I will now take the vote.

The voting was : — 5 yes, 2 no, 1 abstention.

The Chairman. — The decision is : The British amendment that the cost of material only shall be allowed in the general average, is carried by 5 yes, 2 no, and 1 abstention.

(Adjourned for lunch.)

AFTERNOON SESSION.

The Chairman. — Gentlemen, I think I will put before you first of all the important question of the Drafting Committee, because I do not want to leave that till the end. So I will put before you the advice of the Permanent Bureau in respect of that Drafting Committee. First of all I want to remind you of what Sir Norman Hill said when we were preparing the 1924 Rules and appointing a Drafting Committee. He said the best Drafting Committee is one which consists of one man. I am not going to offer you that, but I would remind you that we were only three, and we were greatly helped by the fact that we were only three, because in a Drafting Committee you cannot have every country represented. It must be as small as possible. Our suggestion to you is that the Drafting Committee should consist of Mr. Reading, representing the British Agents, Mr. Martin Hill representing the British Maritime Law Association, Captain Kihlbom, Baron van der Feltz, and an American if the Americans choose to send us someone. I feel sure they will not send someone, but we must tell them that we are leaving room open for them. The suggestion is also that I should be the Chairman of the Drafting Committee, and that Mr. Edmunds should be the Secretary of that Drafting Committee. Do those proposals meet with your approval. We are already five members, not counting the Secretary, and there is the remote possibilty of an American, which I do not think will realise. We are already five, so that I do not think we ought to have any more than that. Does anyone want to discuss the proposition, or shall I just put it to the vote of the meeting ?

Mr. Kihlbom. — Mr. Chairman, would you replace me by Mr. Tybjerg ?

The Chairman. — Certainly. We wanted to have somebody from the north. If you choose Mr. Tybjerg we shall welcome him very much. Shall I now put that to the vote of the meeting ? The names are : — Mr. Dor, Chairman, Mr. Reading of Great Britain, Mr. Martin Hill of Great Britain, Mr. Tybjerg of Denmark, Baron van der Feltz of Holland, plus an American if appointed, and Mr. Edmunds as Secretary. I had forgotten to say — and I apologise to my colleagues for it — that the the recom-

mendation we are making is subject to President Lilar's approval if he comes tonight. We considered two courses ; one was to wait till tomorrow morning to appoint that Committee, and that was rejected because tomorrow we are discussing the Gold Clause, and there are some members who are interested only in general average, and we felt the decision should be taken by those who are taking part in the discussion on general average. We therefore submit these names to you subject to President Lilar's approval. I have no doubt that we shall be able to secure his approval, but still as a matter of courtesy to him it will be submitted for his approval. I will now take the vote.

The vote was unanimously in favour.

The Chairman. — The decision is that the Drafting Committee is unanimously elected subject to the President's approval.

As to the working of the Drafting Committee, I would suggest if I may that it should meet in London, or whatever place it chooses, as soon as the transcript of the shortband notes is ready. I think nothing useful can be done till we get the transcript of the shorthand notes. If Mr. Miller will be kind enough to send one copy to every member of the Committee we can study them and meet as quickly as possible. At Stockholm — if you will excuse me referring so much to the Stockholm Conference — we had a general meeting on the 16th June here, and the whole draft and report of the Drafting Committee were ready before the end of July, and there was plenty of time to print and circulate them. So that we ought to do our job in July, and not break off.

Mr. Pineus. — Mr. Chairman, we have discussed, and I believe we have decided that a special Committee shall be set up on substituted expenses. Are we to fix the meeting and the constitution of that special Commitee ?

The Chairman. — With respect to that, I understand Mr. Van den Bosch is of opinion that we ought to have a very small Committee, as suggested by Mr. Edmunds, and Mr. Miller and myself agree with his view, provided that the Drafting Committee will not wait for the report of that small Committee. If that small Committee is quick, as it ought to be, and brings out its agreed draft in time, that is within a week or ten days from now, well and good. If it does not do that, the Drafting Committee will go on with their work, and will simply put in their report this is the majority view and this is the minority view. But if the Drafting Committee is able to say everyone has agreed upon such and such a com-

promise, they would be very pleased to do it. Would you like to appoint at once that small Committee ?

Mr. Van den Bosch. — I propose that the members of that small Committee should be appointed now.

The Chairman. — Very well. I think Mr. Edmunds suggested Mr. Govare, Captain Kihlbom, Baron van der Feltz, and yourself Mr. Edmunds, and Mr. Reading.

Me. Govare. — It would perhaps be better to put Mr. Gervais in rather than myself.

The Chairman. — It is for you to decide. Mr. Gervais is a great authority on substituted expenses, and I think his addition to the Committee will be a most valuable thing. Then the names will be Baron van der Feltz, Captain Kihlbom, Mr. Gervais, Mr. Reading and Mr. Edmunds. I am asked whether there will be any difficulty about the language question.

Me. Govare. — Mr. Gervais thinks it would be better that I should be on the Committee, and I should refer to him if there is any question.

Mr. Edmunds. — I do not think we shall have this language question. My friend, Mr. Raynor, who knows Mr. Gervais very well, says he can understand him quite well. So that perhaps people like Mr. Reading and myself and Captain Kihlbom will understand him if he talks French.

The Chairman. — Very well. You will do your best. I repeat the names suggested for the small Committee on substituted expenses : Mr. Gervais, Baron van der Feltz, Captain Kihlbom and Mr. Edmunds. Do you agree to that Committee ?

The proposal was unanimously agreed to.

Mr. Edmunds. — Can those four gentlemen meet on Thurdsay ?

Mr. Gervais. — I leave this evening.

Mr. Kihlbom. — I had in mind to ask if the Committee could not come to Sweden next week. I think it would be better if we could meet somewhere next week.

The Chairman. — Mr. Kihlbon, if you want to be ready in time to give what you agree to the Drafting Committee you ought to meet as soon as possible. I have Mr. Edmunds' offer to have a meeting on Thursday morning. If you can manage it, very good.

Mr. Edmunds. — I think if three of us could meet I could put the French point of view, even about the vessel that was going to the five ports in North Africa.

Mr. Kihlbom. — I would like to consult the people in Sweden, Norway and Denmark on this question. We could meet again, say, at the end of next week. That would be in time for the full Committee, would it not ?

The Chairman. — Can you come then, Baron van der Feltz ?

Baron van der Feltz. — Yes. I had an appointment, but perhaps I can put it off.

Mr. Kihlbom. — I have nothing against meeting on Thursday, but I doubt that we will get through on Thursday.

The Chairman. — At least you will realise what the difficulties are, and so on.

Mr. Kihlbom. — Yes. Then we can decide what further to do.

The Chairman. — On Thursday you will decide when you next meet.

Mr. Edmunds. — I will fix a time, and tell you the time, and where.

RULE XIV.

The Chairman. — We will now turn to Rule XIV.

Mr. Edmunds. — There is a certain amount of agreement on Rule XIV between all the branches except the American. The American branch want to keep the old rule. You have some other suggestions. The French branch want to say to a man that if the temporary repairs are used as permanent repairs, if I may put it like that, for so long after that period they shall only get 50 per cent. So that you have one or two principles to decide about Rule XIV. If I might suggest it, might we tackle first of all the French proposition, because I am trying to get a certain amount of agreement.

The Chairman. — The French proposition is : Delete second half of first paragraph « but where temporary repairs... not been effected there » and insert : — « but where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average, as provided for in Rule F, only up to the saving in expense which would have been incurred and allowed in general average, if permanent repairs had been effected there. However, if after the completion of the adventure the ship has resumed her navigation and her permanent repairs have not been effected within a period of six months, the amount of the temporary repairs allowable in general average, in accordance with the conditions expressed above, shall be reduced by 50 per cent. Does anyone want to express an opinion on that French draft ?

Mr. Miller. — I would like to say this. I do feel that it is an unnecessary complication. Secondly, I personally would be against such a short period of time as six months. In the present state of the world — and it may long continue — it is a very frequent occurence that you cannot effect your permanent repairs because either you are not allowed by your Government, or else because you cannot find a suitable yard. Therefore a man might well allow more than six months to elapse before he effects his permanent repairs. I think it a great hardship from the practical point of view that the limit within which the permanent repairs have to be effected in order to form part of a claim in general average should be reduced to six months. There may be commercial reasons which render it justifiable to keep on trading a ship. It may be difficulty in finding accommodation in the yards, or it may well be — it certainly is with us — the fact that you cannot get a licence. I would be against it for those reasons.

Mr. Pineus. — With regard to the six months rule as suggested by the French delegation, there is one point, and that is the question of seaworthiness. If the surveyor says « If these temporary repairs are made I will not allow more than a certain amount of time », you have to obey what the surveyor says. I am not sure whether it would not be rather dangerous to have this rule, because it might induce people perhaps to do less than is necessary, and that would be regrettable. I think there is hardly sufficient ground, so far as my experience goes, to warrant this inclusion, and I would suggest that we leave it out.

Baron van der Feltz. — I agree with what Mr. Miller has said, and I am not in favour of the French proposal.

The Chairman. — What are you in favour of ?

Baron van der Feltz. — Of the British proposal.

Mr. Edmunds. — We are coming to that in a moment — if we can get a ruling on the French 50 per cent first.

Baron van der Feltz. — I am not in favour of the 50 per cent rule.

The Chairman. — There seems to be some opposition to the 50 per cent. Do the French delegation press that point, or do they want a vote on it ?

Me. Govare. — We think the rule is advisable, although perhaps the delay of six months may be thought a little short. I think if a ship could go on for two or three years with temporary repairs it is as good for the ship as if they were permanent.

Mr. Gervais (speaking in French).

The Chairman. — Will those who oppose the French proposition agree to the principle, making, for instance, the period of six months a longer period ? Mr. Gervais' point of view is that temporary repairs should not be permitted to allow a ship to go on for two or three years or more. If it goes on navigating for three or four years, it shows that those repairs are final.

Mr. Raynor. — I think the rule will tend to be too inelastic in practice if we take a period of six months. A period that may be reasonable for a tramp would be quite unreasonable for a liner. What is reasonable for a tramp this year may be quite unreasonable for a tramp in two or three years time. I think we should find in practice, although the idea underlying the suggestion is worth consideration, that the rule was too inelastic and it might create hardships which we cannot foresee at this moment. You will see that we have endeavoured to tie that up a little more carefully to the question of the allowance of temporary repairs when we come to consider the British amendment.

Me. Govare. — Mr. Chairman, may I draw your attention to the fact that Mr. Gervais stressed the point that the temporary repairs are only supposed to be such repairs as are necessary to enable the ship to terminate that voyage, and when the ship goes on to do another voyage or then other voyages during several other years it is no longer necessary temporary repairs.

Mr. Kihlbom. — As to that, you have to remember that it sometimes happens that to be seaworthy a vessel has to have certain repairs. She may, for instance, leave in the middle of winter to cross the Atlantic, and she would have to be perfectly seaworthy although those repairs were temporary. But they would be good enough to last her several voyages. That is in the nature of things, and I do not think you can do anything today.

Baron van der Fletz. — I would only say this. The question raised by Me. Govare is not a question of principle but a question of practice, in so far as the adjuster has discretion to allow such repairs as temporary repairs in general average, but if he is of opinion that in fact these are not temporary repairs effected merely to enable the adventure to be completed then he will disallow those repairs in general average. So that it is not necessary to alter the rule to achieve the object the French have in mind.

Mr. Gervais (speaking in French).

Me. Govare (translating Mr. Gervais). — Mr. Gervais says first that the repairs are either temporary or final ; they cannot be half one and half the other. So that the general average adjuster has no liberty to apportion it. But on the other hand he says you must give him a fixed rule, otherwise if it is left to the general average adjuster to decide whether they are admitted as temporary or not, or whether they are final or not, we shall not have uniformity in the way this rule is construed in the different countries.

Mr. Ellis. — Will not the last seven or eight lines in the British proposal look after the point that Mr. Gervais has made ? The words I refer to are : — « and then only to the extent that such repairs were necessary to enable the adventure to be completed ». Do not those words look after the point Mr. Gervais had in mind ?

Me. Van den Bosch. — May I say that the Belgian proposal meets the consideration put forward by our colleague, because it says : — « temporary repairs of accidental damage shall only be admitted as general average inasfar as they are essential to enable the adventure to be completed ». I think it is the same idea.

The Chairman. — The same, but stronger. Mr. Govare, does not the Belgian text meet you ?

Mr. Kihlbom. — There is one point which perhaps should be debated in this connection. It sometimes happens in practice that surveyors put down temporary repairs, and later an engineer comes along or a shipbuilder comes along and says « Why not do it this way and make it permanent ? », and later they say 25 or 50 per cent or even more of the repairs are O.K. by Lloyds or some Register as permanent repairs. How are we to deal with such a case ? I think it is up to the adjusters to see to that. I would like to have this in the Minutes as a pointer to adjusters.

The Chairman. — Mr. Govare, have you made up your mind whether the Belgian text is enough to meet your point ?

Mr. Govare. — It is not the same idea as ours.

The Chairman. — Except that it tightens up the allowance on temporary repairs.

Mr. Govare. — I believe Mr. Van den Bosch would say it is not the same idea as he has put forward there.

The Chairman. — In that case do you want me to put your idea to the meeting ?

Mr. Tybjerg. — I suppose the trouble is that temporary repairs are

repairs which are necessary to complete the voyage but they may also serve for a much longer period.

Me. Govare. — We think it is not fair that when temporary repairs are perhaps necessary to complete the voyage they should be sufficient to enable a ship to continue during four years sailing. Then we say they are permanent repairs.

The Chairman. — Very well, gentlemen. I will put it in this way. The French text wants to safeguard against temporary repairs being used not only to complete the voyage, but to go on and on for a very long time. We will not name any time now — six months or more. We shall drop all question of time, and of 50 per cent and so on. But do you agree in some way — the best way we can find — to have that safeguard which the French want ?

Mr. Raynor. — I was going to ask how many years we have to hold up general average adjustment in order to find out whether the temporary repairs are permanent ?

Mr. Govare. — That is why we have mentioned six months.

The Chairman. — Anyhow, I will put that French proposition to the vote, — whether you approve of having some safeguard against temporary repairs.

Mr. Pineus. — Before putting it to the vote, may I suggest an idea I have. I am not in favour of the French proposition, and it might be something to consider. If we left out the paragraph about deductions « new for old » not being made, that would I think meet the French view. Not that I suggest that, but if you make the deductions « new for old » even on temporary there is no question of too large an amount being charged to general average. I just put it out as a « ballon d'essai ».

The Chairman. — You want deductions to be made « new for old » even in the temporary repairs ? That is it, is it not ? In other words, you strike out the last paragraph of the rule. Would that meet with your approval, Mr. Govare ?

Me. Govare. — We would rather have ours.

The Chairman. — Very well, I will take the French proposal. The voting is whether you approve of the French idea of having some safeguard against temporary repairs.

The voting was : — 7 no, 1 yes.

Me. Govare. — The French branch withdraws the suggestion.

Mr. Edmunds. — Now we have one step more to take. In addition to repairs the Dutch branch want to bring in « and any loss ».

The Chairman. — You are asked to consider the Dutch draft. « Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average caused by general average sacrifice, the cost of such repairs » ...and then they add « and any loss being the direct consequence thereof » ... « shall be admitted as general average ». Do you approve of adding those words « and any loss being the direct consequence thereof » ?

Baron van der Feltz. — This proposal has only been made to bring this rule into line with Rule F and Rule X(d) if our proposal as regards Rule F had been accepted. It is still subject to comment, but I shall withdraw the proposal temporarily.

The Chairman. — You withdraw it temporarily. Very well, the Dutch proposal is temporarily withdrawn.

Mr. Edmunds. — In the remaining clauses which have been put forward there is a large degree of agreement. It is purely, if I may say so, a question of wording. I was wondering whether you might not look first of all at the Danish rule. I have studied them all, and I think it looks like the best one.

The Chairman. — The Danish draft is offered to you as a paragon of virtue. « Where temporary repairs are effected to a ship at a port or place of loading, call or refuge for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average. Where temporary repairs of accidental damage which are not necessary for the common safety are effected at a port or place of loading, call or refuge at which permanent repairs would have been practicable, and general average expense is thereby saved, the cost of such temporary repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the amount of general average expense avoided, and only if, and to the extent that, the temporary repairs were necessary to enable the adventure to be completed. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average. » Does that Danish draft meet with your approval ?

Mr. Kihlbom. — With the exception on the part of Sweden, — and I suppose in accordance with what was said yesterday, France — of the words « without regard to the saving, if any, to other interests ».

Mr. Edmunds. — That is the general question, is it not ?

Mr. Kihlbom. — Yes, that is the general question. But otherwise we are in agreement.

The Chairman. — Subject to that general question, is everyone agreed with that Danish draft ?

Mr. Pineus. — If we take the Danish draft, as I think we should, we have a suggestion made from the United States.

Mr. Edmunds. — I am coming to that.

Mr. Pineus. — We cannot take the Danish draft, because that includes the United States.

Mr. Edmunds. — I am coming to that. If you approve the Danish draft, you are now coming up against the great difficulty that the Americans do not want to charge the rule except for the substituted expenses question. Up to the present they have been rather adamant on it, but corespondence is at present taking place between the British and American branches, and I hope as a result of the last letter written by Mr. Reading, Mr. Rudolf and myself they may see our point of view. That is the point. The Americans are not here to put their views and perhaps you may agree with me that it is a little difficult to override one brach not on this International Commission who holds an exactly opposite view. I know they will have a strong delegation at Amsterdam. Mr. George de Forest Lord will probably arrive in this country by the Queen Elizabeth on Thurday.

The Chairman. — He is not coming to Amsterdam ?

Mr. Edmunds. — No. But there will be a very strong team headed by Mr. Keating. You will have four official delegates coming there for sure, possibly five, and may be seven.

The Chairman. — That means we shall not see them till the Amsterdam Conference. They will go to Amsterdam direct. Or will they come to this country first ?

Mr. Edmunds. — They are going to Italy first, and then to Amsterdam.

The Chairman. — Therefore as far as this matter is concerned we shall not see them till we meet them at Amsterdam.

Mr. Miller. — We all hope to see Mr. George Lord. He promised to ring me up as soon as he arrived.

The Chairman. — Perhaps he will see those who will be in London. Gentlemen, Mr. Edmunds points out that the Americans are against alte-

ring the rule at all except on one small point, and he warns you that it is rather difficult to override their view as they have no delegate here.

Me. Govare. — Mr. Chairman, do you think we can take a vote on Rule XIV in which there is this sentence « without regard to the saving, if any, to other interests », which must be consistent with what will be decided on Rule X(d) ?

Mr. Edmunds. — That is quite all right. I have made a note that this is the last of the substituted expenses rules, and anything to do with Rule XIV is subject to the decision on substituted expenses. We discuss it as a principle.

The Chairman. — Then we will take no vote on this, and we will go on to Rule XV.

RULE XV.

Mr. Edmunds. — On Rule XV no actual amendment has been put forward but the Belgian branch have suggested there should be some provision that loss of a charter party to be performed after the termination of a voyage should not be admissible in general average.

The Chairman. — Will the Belgian branch say something about it.

Mr. Van den Bosch. — There is nothing in it.

The Chairman. — Then we go on to Rule XVI.

RULE XVI.

Mr. Edmunds. — This is a question of the basis on which you are to make good cargo sacrifice, whether it should be on what we call salvage loss basis, or whether you should wait until it is sold and take the value on that basis. You will see the British and American drafts agree in principle, so that it is a question of wording, and I think that can be arranged. The Dutch, the Swedes, the Danes and the Norwegians all agree. The Belgians agree to the British amendment, but they want the second paragraph knocked out, which is the vital paragraph of course. The French people would like to leave the rule as it is. So that perhaps you will take the French first. It is really a question of principle, is it not ?

The Chairman. — It is entirely. Mr. Gervais, or Mr. Govare, would you explain the French point of view ?

Mr. Gervais (Speaking in France).

Mr. Govare (Translating Mr. Gervais). — The question set before us now is to know whether general average when taking the value of dama-

ged goods will take the pro rata value loss or simply the comparative cost price. In France we take a proportion. It is a rule that is adopted also for particular average. You compare the proportion of sound value compared to damaged value, and it is the same proportion you use, but not the difference. The question was discussed in Stockholm and one day one thing was voted, and the next day, having taken up the discussion again, a vote to the contrary was decided. The French branch say they prefer to have the difference pro rata, because it is like that for particular average, and because it is like that in all the agents' policies, and they hope it will be the rule adopted universally.

The Chairman. — I may add a few words as to what happened at Stockholm. Rule XVI, paragraph 2, is, like Rule VII, damage to engines, a special child of mine which was born in América ; which is rather amusing seeing that it is our American friends who are not now so keen to abolish that rule of reglement par quantite when it was they who started the ball rolling. It was as far back as 1921 that Sir D. Jones, as he was then called, instructed me to fight against an average adjustment at Le Havre which was reglement par difference and not reglement par quantité, and told me the only way of dealing with the matter was reglement par quantité. I said «We will go to the Court of Cassation». We lost at Le Havre and went to the court of appeal and got a judgment in our favour of reglement par quantite. Then it went to the Court of Cassation who refered us, as they always do, to another Court of Appeal at Caen, which re-affirmed the view of the first court of appeal and we went again to the Court of Cassation. We went to the full Court of Cassation. It is the only time in my career I have seen it. I saw 46 judges of the court in their red robes and ermine and so on, with the President, a most magnificent sight, and they unanimously decided in favour of reglement par quantite, and the thing has now been settled in France in that way. I want you to understand that it is the only just way. I know general average does not pretend often to be just, but merely to be practical and so on. The justice here is this. You have a bale of cotton which arrives at Le Havre, and the coton is so damaged that the expert says it is not receivable by the receiver, and it must be sold by auction. Months elapse, as sometimes happens, before the auction takes place, and in the meantime the market falls or rises, and the goods are sold. If you take the system of reglement par difference, you say that bale on arrival sound was worth 1,000 francs, and it has been sold for 500 francs, therefore we allow on general average

the difference between 1,000 and 500 francs. We allow 500 francs in general average, with the result that you make the general average pay not only for the damage to the cargo but for the rise or fall of the market. The way to do it by reglement par quantite is this. That bale sound on the day of arrival was worth 1,000 francs, and it has been sold for 500 francs, and on the day that it was sold the sound bale was worth 2,000 francs. Therefore the damage to that bale is 25 per cent. If a bale which is worth sound 2,000 francs is sold for 500 francs the damage is 75 per cent. I take this quantite or percentage of 75 per cent, and I apply it to the sound value on the date of arrival. That sound value is 1,000 francs, therefore I admit in general average 75 per cent of 1,000 francs, which is 750 francs. That is I think the only just way of doing things, and I do not think those who are in favour of reglement par difference say it is better from the point of view of justice, but simply say it is more practicable and that reglement par quantite is too complicated and so on. Having said all this, I quite accept the point of view of having reglement par difference if you agree.

Mr. Reading. — May I put the view of the British Committee, which is quite opposed tot he existing Rule XVI. Most of us never thought it was fair, and it had the most unfortunate effect of preventing our American friends accepting York-Antwerp, as they said there is no basis in the argument that because we have a particular average principle in marine insurance it should be applied to general average. It is applied in marine insurance because the contract is one of indemnity. That is the only reason why it is applied. In general average the basis is that the man who has had to sacrifice should be put in the same position as the man whose goods have arrived. Two men with the same class of goods of the same value have interests in the same vessel. In the one case his goods arrive sound, and they are valued for contributory purposes at their value existing at the last day of discharge. I have always failed to see how there is any other fair basis of adjusting the loss of the man whose goods have been damaged except by saying that he receives the same amount in total as the man who has received his goods sound, and that total can only be calculated by taking what he would have received if he had received them sound and deducting therefore what he has received by reason of sale or by reason of an allowance.

The Chairman. — As I have been arguing that case for ten years before all the courts of France, I think I could answer Mr. Reading's

point, but I will not do so, and will save your time. Everybody seems agreed, and there is nothing left to say de profundis on Rule XVI.

Mr. Edmunds. — Are we going to agree then on the British amendment, or is the Drafting Committee going to get out a rule based on the salvage loss basis ?

The Chairman. — We will say : The Committee unanimously agreed to drop paragraph 2 of Rule XVI, and to replace it by a paragraph which the Drafting Committee will draft and which will be based on the salvage loss principle.

Me. Govare. — The French branch will strongly oppose that. I agree personally, but the French branch does not.

The Chairman. — Then we will say that it is agreed unanimously except for the strong opposition of the French delegation.

Mr. Edmunds. — There is one small point. The existing rule says « on the date of arrival of the vessel ». Everybody always works on the last day of discharge, and so it was suggested it was just as well to change the rule. Everybody agrees to say « the last day of discharge of the vessel » ?

The Chairman. — Do you agree, gentlemen, to replace the words « the date of arrival of the vessel » by the words « the last day of discharge of the vessel » ? (*Agreed.*)

RULE XVII.

Mr. Edmunds. — This rule deals with the question of contributory values, and you have the suggestion from Holland that you should make some provision for « mails and time-charterhire », and for « mails » from Belgium.

The Chairman. — Holland's proposal is : « Passengers' luggage and personnal effects not shipped under bill of lading, mails and time-charterhire shall not contribute in general average. »

Baron van der Feltz. — The old draft was : « Passengers' luggage and personnal effects not shipped under bill of lading shall not contribute in general average ». It is the general practice that mails and time-charterhire does not contribute in general average, so we thought it wise, now that there is a revision of rules, to put in these words to conform to the practice which rules throughout the world.

The Chairman. — Is there anyone opposing this suggestion that mails

and time-charterhire shall be added to passengers' luggage and personal effects ?

Mr. Kihlbom. — I am not opposing passengers' luggage and personal effects, or mails, but time-charterhire is the question. I am not at the moment very sure whether time-charter hire should be accepted.

Mr. Miller. — I agree with Mr. Kihlbom. I do not think it ought to be accepted. I am merely expressing my personal point of view.

Mr. Pineus. — Is it necessary to have it ?

Baron van der Feltz. — It is always very difficult to say whether a thing is necessary or not. We have learned during our life that many things which were considered to be necessary in order to live are unnecessary.

The Chairman. — Would you agree to drop time-charter hire ?

Baron van der Feltz. — I agree. I withdraw that. But I should like to insert the word « mails ».

The Chairman. — Will everyone agree to insert, after « passengers' luggage and personal effects not shipped under bill of lading » the words « and mails » ?

Mr. Miller. — I think it is a little dangerous to exclude mails in contribution. It is true in practice the contribution from mails is ignored because of the practical difficulty of collecting the values, but under conditions today where you have some commodities of very high value, there is often a very high value package, or a number of packages, which may be sent by mail, and which might in some cases make a very big difference to the contributory value, and might be of such importance that it would be worth while tracing the value of that particular cargo and exacting a contribution from it.

Mr. Edmunds. — I think I might help the Committee. You know we have had a go-slow strike in this country, and that South Africa cancelled all import licences unless you had a bill of lading by the 16th June. What did a lot of these people do ? They actually shipped gas-stoves by parcel post. In fact there was 2,000 tons of mail on one ship. It might happen in these cases knowing that you might want to try and trace some of the big interests. This has just happened now, and it was so enormous a parcel post that we had to have special attention paid to it.

The Chairman. — May I add this. Now-a-days very valuable things like jewels and expensive furs and so on are shipped by mail, and some-

times with the declared value it is possible to trace their value. Would it not be better to say nothing about mails ?

Baron van der Feltz. — Well, I withdraw it.

The Chairman. — Then we have the Denmark proposal : « The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, such value, in the case of goods, to be based on the market selling value. To these values shall be added... » and so on.

Mr. Tybjerg. — In Denmark we experience a certain amount of trouble. There are people who maintain that the cargo should contribute on the invoice value only, even in cases where there is a definite value. In order to meet these objections we have suggested putting in « selling value ». In practice we should very often take the invoiice value, but where there is a definite value I think it should be included.

Mr. Kihlbom. — We must not forget that sometimes the market price drops. So that what you see in one case is the reverse in another case.

Me. Govare. — One might also mention that there are some goods which have a taxed price in different countries. It is no longer the market price, but the official price imposed by the State.

The Chairman. — Mr. Gervais and I have a case in our memory now where the taxed price, which is really the market value, is one half of the cost price. If you take the price you pay on the market for the goods, it is exactly double of what the taxed price is. It simply means the Government is subsidising the thing, and therefore the real value is the cost price and not the market price. It is very difficult with taxation and so on — extremely difficult.

Dr. Voet. — I should like to know, Mr. Chairman, the decision of the Commission about mails.

The Chairman. — The proposal has gone. The Dutch proposal is withdrawn.

Dr. Voet. — We have a proposal also. What action do you think should be taken about mails ?

The Chairman. — If you wish I will take the vote of the meeting on it, but the general feeling seems to be not to mention mails. It seems to be thought that mails is a difficult subject, and it would be better to keep wide of it.

Dr. Voet. — It is better to see the light than to remain in darkness.

The Chairman. — Well, if you like I will put the thing to the vote. We

will go back to the question of mails under this Rule XVII. Dr. Voet insists upon the Belgium proposal to add « and mails ». Will you please vote, gentlemen.

The voting was : 5 no, 3 yes.

The Chairman. — The proposal is rejected by 5 votes against to 3 in favour. I understand that the words « and mails » was going to be added to the last paragraph : « Passengers' luggage and personal effects not shipped under bill of lading, and mails, shall not contribute in general average ».

Dr. Voet. — In that case you have this position, that the mails are carried by the Government. The Government is carrying the mails. Is it the Government who will contribute to the general average, or the owner or what ? Everybody must know his duty. If you take a man who sends a registered letter, has he eventually to pay 60 per cent of the value of that letter because a sacrifice has been made in general average. I suppose everybody should know that. Now, instead of saying he shall not contribute, you say he shall contribute. In what manner then ?

The Chairman. — The decision of the Committee was not to say anything about mails. I cannot help it.

Baron van der Feltz. — The rule remains as it stands now.

The Chairman. — Yes.

Baron van der Feltz. — So that the question is open for discussion.

The Chairman. — Rule XVII remains as it stands. It is open to you at Amsterdam to propose to add « and mails », but in this particular Committee I am afraid the question has been decided.

Mr. Van den Bosch. — I think Mr. Voet would like to have the opinion of the members of the Committee on the question put forward. It is a difficulty which remains, and he just wishes to have some light on it.

The Chairman. — Will you formally address the question.

Dr. Voet. — Must mails contribute ?

Baron van der Feltz. — Generally speaking, no.

Me. Govare. — It is the practice that they do not contribute, but the practice may alter in the future, and therefore we say nothing about it.

Mr. Kihlbom. — Jewellery and diamonds are sent my mail now.

Dr. Voet. — And they shall contribute ?

The Chairman. — I am afraid we must go on because we have only one hour left.

Mr. Tybjerg. — What about the Danish proposal? If the feeling of the meeting is against it, I shall certainly withdraw it.

Then Chairman. — Thank you very much. The Danish proposal is withdrawn, and therefore Rule XVII stands as before.

RULE XVIII.

Mr. Edmunds. — On this rule we have a suggestion from Denmark, and I think you might ask the Danish representative to explain it.

Mr. Tybjerg. — I think it is rather a technical question, and perhaps rather a question of drafting. If I might be allowed to put it to the Drafting Committee, it would be quite sufficient I think.

The Chairman. — Very well. The Danish amendment is to be left to the Drafting Committee.

There is nothing on Rule XIX, and nothing on Rule XX, and now we come to Rule XXI.

RULE XXI.

Mr. Edmunds. — You have several suggestions here. The Dutch wish to make no amendment whatsoever in the rule, but there is a sort of general feeling throughout the branches that the rules are, if I may say so, a little liberal to shipowners on the question of giving them commission, particularly when it means paying their own wages and things like that. You have three different propositions. You have the simple proposition from the Swedes, which is approved by Norway, that you should simply cut the commission in half and make it 1 per cent. That is a simple proposal. Then you have the one from America which splits it up into expenses on the voyage and after the voyage. That is purely a question of principle.

The Chairman. — Then there is a proposal from Belgium.

Mr. Edmunds. — If you start first of all with no amendment, and then go to the Swedish amendment, and then go to the American one, which is only on certain things, and then go to the Belgian proposal which is not even on those, it gets worse and worse.

The Chairman. — Is it the opinion of the meeting to have no amendment whatsoever?

Mr. Pineus. — I suggest that we should take the American draft. We had not that draft, I believe, at the time we wrote out our amendment that we should take 1 per cent instead of 2 per cent. I suggest we should take

the American draft, and merge with it the Swedish suggestion of reducing the percentage. Take the American suggestion as being 1 per cent instead of 2 per cent.

The Chairman. — Is there anyone in favour of no amendment ? Nobody is in favour of that. Then are you in favour of the Swedish amendment, which is cutting the commission to 1 per cent ?

Mr. Martin Hill. — I cannot guarantee I can get that through with British shipowners. In fact I can guarantee that I shall not get that through with shipowners.

The Chairman. — Will Mr. Martin Hill get the shipowners to agree to the American draft ?

Mr. Martin Hill. — Yes. I have already done so.

The Chairman. — Would it not be more prudent to take a vote on the American amendment ?

Mr. Martin Hill. — I should have thought so. But I am not entitled to vote.

The Chairman. — Then I shall put to the meeting the American proposal. Do you approve the American amendment ?

The voting was : 6 yes, 1 no, 1 abstention.

The Chairman. — The decision is that the American draft is carried by 6 yes, 1 no, and 1 abstention.

Mr. Kihlbom. — There is now the Swedish and Norwegian proposal.

The Chairman. — As the American amendment is approved that disposes of the question.

Mr. Kihlbom. — Could you not put that to the vote as well — reducing the commission to 1 per cent ?

The Chairman. — Oh, yes.

Baron van der Feltz. — In the American draft you want to alter 2 per cent into 1 per cent ?

Mr. Kihlbom. — No. I want the 1 per cent and no amendment.

The Chairman. — We cannot have the two.

Mr. Kihlbom. — All right. The American amendment, with 1 per cent instead of 2 per cent.

The Chairman. — I am not sure that ought to be put to the vote, because there has been a clear vote on the following question : « Do you approve the American amendment ? », and the voting was 6 yes and 1 no. I cannot very well go back, and say to the meeting, do you want to

alter the American amendment ? The American amendment has been approved.

Mr. Kihlbom. — I respectfully press that the Swedish amendment has not been put to the test, and it should be voted on. Take a vote on that first, and take the American amendment afterwards again.

Me. Govare. — Mr. Chairman, we have approved of the whole American suggestion. There is one point only on which we might have a subsidiary vote, and that would be to amend the 2 per cent to 1 per cent. But as far as the Swedish proposal is concerned it is to reduce commission to 1 per cent, and otherwise no amendment. That cannot be passed because it would be a contradiction of the vote we have just passed. Therefore I suggest that we take a subsidiary vote on the question of amending simply the 2 per cent into 1 per cent.

The Chairman. — There is a proposition put forward by the French delegation that the 2 per cent in the American amendment should be reduced to 1 per cent. I will take a vote on that,as some of the members seem to approve.

The voting was : 5 no, 2 yes, 1 abstention.

The Chairman. — The Swedish proposal to reduce from 2 per cent to 1 per cent is rejected by 5 no to 2 yes, and 1 abstention.

Dr. Voet. — Mr. Chairman, we have put forward the proposition that the 2 per cent should be maintained but only on such expenses as are made during the voyage and not afterwards. I should like to explain why we have made this proposition. It frequently happens that high and important allowances are made to certain bodies who have to be paid by the shipowners, and those payments are effected possibly six months or a year after the general average has been completed and everything has been disposed of. I do not really see why, and the Belgian branch does not see why in that case — not for advancing that money but merely for collecting it from the underwriters — the shipowners should receive a commission of 2 per cent.

The Chairman. — Gentlemen, you have heard Dr. Voet. The question is, do you approve of the Belgian proposal, which is as follows : — « Propose a new first paragraph. A commission of 2 per cent on general average disbursements made before the discharge of the cargo or the termination of the adventure (Rule XVI), but with the exception of the wages and victuals and — in order to make it quite clear — of the consumption of fuel or stores on board at the time of the sacrifice, shall be allowed in

general average ». I do not know whether we can combine that with the American amendment which has already been accepted.

Mr. Van den Bosch. — I think it only completes the American proposal.

Dr. Voet. — In the American proposal it says no commission on wages.

The Chairman. — Then I will ask those in favour of adding to the American amendment the Belgian proposal.

Baron van der Feltz. — Do we know the American view about this proposal ?

The Chairman. — No. We shall not know the American view till the Amsterdam Conference.

Baron van der Feltz. — I did not know whether there was a letter.

Mr. Edmunds. — No. They have had all this before them.

Baron van der Feltz. — We may take it that they are against it ?

Mr. Edmunds. — The Belgian report was very late, but it has been in America a fortnight, and I have had no comments on anything.

The Chairman. — I will put the question : Do you approve of adding the Belgian amendment to the American draft, supposing it can be added without contradiction.

The voting was : — 4 no, 3 yes, 1 abstention.

The Chairman. — The proposal is negatived by 4 no to 3 yes, with one abstention.

RULE XXII.

Mr. Edmunds. — At the bottom of the British amendment to Rule XXII it says : — « Resolution of International Law Association, September 1948 ». Everyone agrees with it with the exception of Sweden and Denmark. The words they want added are : « However, if a party unduly delays the settlement of general average no interest shall be made good to him for the time the settlement is thus delayed ».

The Chairman. — I should beg our Swedish and Danish friends if possible, as a matter of international policy and courtesy to drop that, because at the Brussels Conference the one and only thing which the International Law Association did was to pass that rule. The International Law Association has handed over this work we are doing now to the International Maritime Committee, and it is not very polite, in just this one little thing they do, to tell them it is not good enough and so on, So, will you agree to leave the rule as it is ?

Mr. Pineus. — We do not bring this forward to make difficulties, but the position is this. If you feel in Sweden in one case or another that things have been allowed to drag on, and you want to reduce the interest and show that somebody has not acted as he should, the position of the general average adjuster being what it is, he felt he had no legal ground to stand on and that he had to give 5 per cent during the whole period. If you wanted to act as I understand my British and American colleagues do already because they have a freer hand, we should very much like to have something specific to point to. That is the main reason why we brought this forward. I am not suggesting we would withdraw. It is not that I want to make difficulties, but that is the special point which arises in Sweden.

Mr. Kihlbom. — May I ask, is it an accepted practice in England and America for adjusters to reduce interest or curtail interest in cases where they say there is deliberate delay ?

The Chairman. — I cannot answer that question, but perhaps Mr. Reading will.

Mr. Reading. — By consent in some cases, and in some cases by objections put forward by one of the contributing parties there is refusal to pay because they hold that the York-Antwerp Rules should be interpreted as implying that the parties shall be have reasonably, and if there is something such as unreasonably holding up the adjustments they hold they are not entitled to the privileges of this rule.

Mr. Edmunds. — It is exactly the same position in America. I can confirm that.

Mr. Kihlbom. — There is one thing we ought to think about, and that is that we do not know what is going to happen to interest. It may well be that interest is going to remain at a low level, or under political influence the level may be even further lowered. Then this addition becomes more important. If the practice in England has been to reduce the interest only by compromise, then somebody may say no.

The Chairman. — We have only 40 minutes left, and we still have to go into the question of the treatment of cash deposits.

Mr. Kihlbom. — In that case, if the matter is not to be dealt with fully because of the pressure of time, I would rather retain the amendment.

The Chairman. — Well, I will put it to the vote. Those in favour of retaining the Swedish amendment, which adds one sentence to the rule of the International Law Association of September 1948.

The voting was : — 6 no, 2 yes.

The Chairman. — The amendent is negatived by 6 noes to 2 ayes.

RULE XXIII.

Mr. Edmunds. — I am just wondering if the Dutch branch would not withdraw their suggestion of no amendment, and accept the rule as drafted by America at the present time. It has been approved by everybody else, with the exception of some minor details in the case of Belgium and Sweden.

Baron van der Feltz. — We have no objection against the American amendment.

Mr. Edmunds. — Very well. Let us go to the Swedish proposal next. They approve the American draft with the exception of words in line 7 — « such deposits shall be paid without delay ». They suggest inserting the words « without delay ». That is the only difference, I think I am right in saying, between the two drafts. If you could reach a decision on that, I think we have gone a long way. We have only then to pick up the Belgian suggestions afterwards.

The Chairman. — Is it necessary to add those words « without delay »?

Mr. Kihlbom. — Could we not leave that to the Drafting Committee ?

The Chairman. — Very well. Shall we leave that to the Drafting Committee ? That is agreed. We leave the question of inserting the words « without delay » to the Drafting Committee.

Mr. Edmunds. — The Belgian proposal accepts it, except that they want some new paragraph setting out something about the position of the average adjuster.

The Chairman. — What do the Belgian delegation say ?

Dr. Voet. — What we say is this. Rule XXIII has been made against possible abuses by some shipowners. In this rule you say that after the deposits have been placed in cash and so on, the trustees shall have power to make payments on accounts or refunds of deposits which may be certified to in writing by the average adjuster. I should like to add that the average adjuster must be appointed in accordance with legal procedure or by agreement of the parties expressed in the general average bond. Otherwise you have someone who is appointed by the shipowner himself, and I do not see how this is a protection for the cash deposit. If they have agreed in the general average bond to the name of the adjuster, or if the adjuster has been appointed under legal procedure,

then of course it is a protection ; but if the shipowner appoints, some one who is not worthy of confidence there is no protection.

Mr. Miller. — I think this is a most important point, and one on which we must be very careful. The adjuster is an entirely independent person. It does not matter what adjuster the shipowner (whose duty it is to find an adjuster and get an adjustment) appoints, because they are professional independent men, and the slightest suggestion that an adjuster could be persuaded in any way by partiality for one party or the other would, not only to the British but I am quite certain to other continental nations, be a quite impossible thought.

Dr. Voet. — It does not say shipowners of British nationality.

Mr. Miller. — But in the case of any shipowner, the adjuster is just as independent as an accountant. I shall most strongly oppose this, and I am quite certain it would not meet with the approval of the United States.

The Chairman. — You see, adjusters are high priests. They have always been so. Dr. Voet, do you want me to put that to the vote ?

Dr. Voet. — The only thing is we are making the York-Antwerp Rules not for England, or the United States, or France, or Belgium, but for the world. And if you think it necessary to take some precautions against shipowners it would be as well to say the shipowner will have to consult the cargo on the point of the adjuster.

The Chairman. — We do not want to offend the adjusters. They are most terrible people when they are offended.

Baron van der Feltz. — In Amsterdam there is a special agreement between shipowners and underwriters about the deposit of cash deposits, and in that agreement it is stated that a shipowner who does not get refunded his outlays is not entitled to claim interest. If there is a deposit he is forced to get his refund out of the deposit, otherwise he earns no interest. There is a special agreement in Amsterdam, and all shipowners are bound by it. If it is necessary you could make such an agreement in Antwerp too.

Dr. Voet. — If there is a personal feeling against the definition of the word « adjuster » I leave it. The only thing is that you may take this as being a precaution against certain shipowners.

Me. Govare. — I have the feeling that our American friends have made a great effort to meet us with Rule XXIII, because by accepting what they have themselves drafted they have given up a good deal of their own practice and habits in the States. I think it is partly due — only partly, but all the same partly due — to the interference of the French Govern-

ment when we have chartered vessels in America. I remember at that time Mr. Gervais wrote a full opinion at the request of underwriters to explain why deposits should be made in this way and not in that way, and the Americans have agreed. I think now they have made this draft to which we all generally agree except for minor points, we ought not to go any further. As this is satisfactory except for minor points, I suggest we adopt the American draft without amendment.

The Chairman. — The proposition is to adopt the American draft without amendment. I put that to the vote.

The voting was : — Unanimously in favour.

The Chairman. — That is unanimously agreed.

Mr. Edmunds. — There is one small point. We have amalgamated Rules XI and XX, so that we shall have to re-number the later rules. Rule XXI will now be Rule XX, and so on.

The Chairman. — Yes, there will be a re-numbering by the Draft Committee.

NEW LETTERED RULE.

The Chairman. — There is a new lettered rule proposed by France. « No general average adjustment shall be drawn up unless the damage, losses and expenses allowable as general average in favour of the ship and of the cargo or of one of them amounts to at least £ 1,000 or the equivalent thereof in any other currency ».

Mr. Edmunds. — I have some later information. Denmark, Norway and Sweden have already expressed disagreement. Great Britain and the United States will doubtless disagree. No news has yet been received from Belgium or Holland.

Mr. Van den Bosch. — As far as the Belgian Navigation is concerned, it agrees.

Baron van der Feltz. — As far as the £1,000 is concerned, are they gold pounds or sterling ?

The Chairman. — They are not gold pounds.

Baron van der Feltz. — We disagree with the French proposal.

The Chairman. — As there seems to be general disagreement, do you withdraw ?

Me. Govare. — Yes.

The Chairman. — The new lettered rule proposed by France is withdrawn.

New Numbered Rule proposed by Belgium.

Mr. Edmunds. — Denmark and Norway consider this unnecessary.

The Chairman. — You have before you that long new numbered rule proposed by Belgium. Is Belgium proposing it ?

Dr. Voet. — It is withdrawn.

New Numbered Rule proposed by Denmark.

The Chairman. — The Danish Committee suggests that consideration should be given to the allowance in general average of costs of furnishing security, loss of interest on cash deposits, etc. Is there any opinion on this rule ?

Baron van der Feltz. — I think such a suggestion would not simplify general average adjustment.

The Chairman. — So that you do not approve of it ?

Baron van der Feltz. — I do not approve of it.

The Chairman. — Does anybody approve of it ?

Mr. Kihlbom. — Yes.

The Chairman. — Apart from Sweden does anyone approve of the Danish proposal ?

Mr. Kihlbom. — I think it is a good proposal.

The Chairman. — Do you want me to put it to the vote ?

Mr. Kihlbom. — Yes.

The Chairman. — Then I put it to the vote. Those in favour of the Danish proposal ?

The voting was : — 6 no, 2 yes.

The Chairman. — The proposal is negatived by 6 no to 2 yes.

Mr. Edmunds. — That is the end of the rules. I think there are just one or two other matters to consider. This new revision of the York-Antwerp Rules has been found necessary largely owing to the lack of uniformity which has grown up since 1924. Various suggestions have been considered, and I have had letters from people asking would there be any possibility of trying to get them uniformity. A suggestion has been made — and I would like this Commission to consider it — whether it would not be possible for International Maritime Commission to have a branch for average adjusters — I do not say to have rules of practice, but to meet in conference every two years and discuss their difficulties. I think probably in that way you might avoid a lot of these little digressions. It

is a suggestion that has been put to me, and I am putting it to you in case you think it might be well to consider it.

The Chairman. — It is impossible for the International Maritime Committee to have a branch for general average. I suppose it is possible if the proposition was expressed, and if everyone was in favour of it, to request the Permanent Bureau to appoint a permanent general average committee, although it would be contrary to the practice of the International Maritime Committee. While the International Law Association has a great number of standing committees which have existed for years and years, the practice of the International Maritime Committee has always been to have only committees ad hoc, just for the purpose, and which drop out of existence when the thing is over. This is a point, Mr. Edmunds, which I shall want first of all to submit to President Lilar. And even before saying that the point may be considered we shall have the matter considered by the Permanent Bureau, as it is a point that touches the policy of the International Maritime Committee. It cannot be decided by this Committee off-hand.

Mr. Edmunds. — Would it not be a good idea to give the Permanent Bureau a rough idea of the views of the branches ?

Mr. Miller. — Judging from the meeting of the British Maritime Law Association which we have held, that proposal will be put before the International Maritime Committee, whether one puts it to the Permanent Bureau or at the Amsterdam Conference, that we should quite deliberately change our procedure in that respect. After all, conditions after the 1939-44 war are vastly different to what they were before. We feel there is such an immense amount of work to be done on the two topics that we have to tackle, the York-Antwerp Rules and the question of limitation of Liability that between the actual conferences of the Maritime Committee there should be in permanent session committees which can deal with it. We do not see how the work can be done otherwise. An ad hoc committee is not sufficient. That is a proposal which we shall put forward.

The Chairman. — It is a proposal which the Permanent Bureau can study, and which will come up at Amsterdam. There is one point about the title of the rules, that involves two questions. The first is that out of deference to the International Law Association we should call them the 1950 Rules, and not the 1949 Rules, as it is expected that at the Copenhagen Conference of 1950 the International Law Association will unani-

mously pass the rules. And even if the shipowners want to put the rules into practice quickly, it will certainly take them several months before they can get the thing printed, so that when the new print comes out it will be 1950. That is question No. 1 — whether it should be 1950 instead of 1949. It is easy to remember the date.

Then question No. 2 is this. I think it would be just and fitting that the rules should be called the York-Antwerp Rules 1924 to 1950, because after all the great work for the York-Antwerp Rules was done not at York or at Antwerp, nor even in Liverpool in 1890. It was done at Stockholm in 1924. It was only at Stockholm we got the lettered rules, and therefore we got a complete code on general average. Before that, you had only 17 rules which gave you solutions in 17 particular cases. At Stockholm we built a code on general average, but at Stockholm we did not want to add the name of one more town and call them the Stockholm-York-Antwerp Rules. The title was too long, and we thought our work would be sufficiently remembered by the date 1924. I ask you not to let that remembrance drop, and by allowing the title to be 1924-1950 that will remind future students of maritime law of the work at Stockholm.

Mr. Martin Hill. — There is this difficulty about that it this country, where when we talk about York-Antwerp Rules 1924-1950 and the Companies' Acts 1929-1936 we mean a series of things to be read together in one whole. But we are not doing that. We are amending the 1924 rules in 1950. I think if you call them 1924-1950 rules you will get into deep water. I think Mr. Miller will agree with me.

Mr. Miller. — I was going to say that. Mr. Martin Hill has put it much better than I can. I can see one of our judges saying « I must look at the 1924 rules ».

Mr. Martin Hill. — They sometimes read two things together. I do not think it would work, and it would be dangerous.

The Chairman. — Is there agreement about 1950 ?

Mr. Martin Hill. — Yes.

Me. Govare. — I think the idea is that we should congratulate ourselves on the work we did in 1924, and that students may see what we did in Stockholm before we came here. I think if we wanted to be grateful to somebody it would be to our Swedish friends for the way they gave us hospitality when we were there, and the way to show our gratitude would be to mention the name of Stockholm, which we do not do. Therefore I think the date 1924 would simply lead to confusion. If we remember the

work done in 1924, we must not forget what was done before us in 1890. Then we would have to say 1890-1924-1950. And what will happen in a few years if one of the rules is again altered ? I suggest we adopt 1950, and have no other date with it.

The Chairman. — In any case M. Hill's point was quite sufficient. As he says, it would confuse English judges. Is there any other point ?

Mr. Kihlbom. — May I just say that I entirely agree with Mr. Martin Hill.

The Chairman. — Is there any other point you wish discuss, gentlemen ?

Mr. Martin Hill. — Mr. Chairman, we all want to say thank you very much indeed for the very able way in which you have conducted the meeting, stepping into the breach arising out of President Lilar's absence.

(*Applaus*)

INTERNATIONAL SUB-COMMITTEE

ON

LIMITATION OF SHIPOWNERS LIABILITY

AND THE « GOLD CLAUSE »

INTERNATIONAL MARITIME COMMITTEE

INTERNATIONAL SUB-COMMITTEE

ON

LIMITATION OF SHIPOWNERS LIABILITY

AND THE «GOLD CLAUSE»

Meeting held at the Offices of the Salvage Association

in London

on Wednesday, 6th July 1949

MINUTES OF PROCEEDINGS

INTERNATIONAL SUB-COMMITTEE ON LIMITATION OF SHIPOWNERS LIABILITY AND THE « GOLD CLAUSE »

Me. LEOPOLD DOR : Gentlemen, as you know, Mr. Lilar had to go back to Antwerp this morning, so that he cannot attend this Committee. I suggested to Sir Leslie Scott that he really ought to be in the chair. He prefers, however, that I chould take the chair as Vice-Chairman.

SIR LESLIE SCOTT : I move that Me. Dor occupy the chair. Does everybody agree ?

(Agreed)

THE CHAIRMAN : (Me. Leopold Dor) : We have to deal first of all with the question of the Gold Clause, and I will now call on Mr. Cyril Miller who has done an enormous amount of work on this question, an he will tell you what the position is.

MR. MILLER : Gentlemen, the reason why we are met here to-day as the Commission Internationale is because although this problem, one must confess, has not far advanced in our deliberations, our President, Senator Lilar, thought it was of such importance that the Commission Internationale convened for the revision of the York/Antwerp Rules should also sit on this question if only to hear the position at which we have already arrived.

SIR LESLIE SCOTT : « We » being ?

MR. MILLER : The various National Associations with whom we have communicated and the British Maritime Association itself. As in the case of the York/Antwerp Rules, the British Maritime Law Association kept in close touch with the other national associations with the exception of the United States. The United States are at the moment only taking the attitude of observers. They feel they would like to see what the continental countries and Great Britain have to say about it. The report of the British Maritime Law Association, which I hope you all have, does not enclose the actual reports which we have received from the other national branches for two reasons. The first

is that we by no means have the reports of all the national associations. We have that of Denmark. We have an expression from a very eminent lawyer in Sweden, but we had not the Swedish report. We have only just received the Belgian report. I received that from Mr. Van den Bosch yesterday. I have just received the Swedish report. And as regards the Dutch report I had the advantage of seeing that when I was in Holland in May, through the courtesy of Dr. Asser, but certain corrections have been made to it by the Dutch shipowners and we have not the final form. Therefore we thought it better to use for the purpose of our report the summary which is the last document in the bundle which I circulated, for which we have to thank the Belgian National Association who during the past eighteen months have collected the opinions — not necessarily the final opinions — of Belgium, Denmark, France, Great Britain, Italy, Norway, the Netherlands, Portugal, and Sweden. I do not know where they got the Portuguese view from, because I have not seen it.

Mr. Van den Bosch has very kindly undertaken the labour of condensing those vieuws, and he has done it in three ways. In first column he puts the main proposals which are made by the various Associations with regard to the question of the limitation of shipowner's liability in general. Then he puts the subsidiary proposals, which are the proposals which each national association would adopt as a second string, as it were, if their own were not acceptable to the Comite International as a whole. Finally, dealing with the second point, namely the limitation of liability under the Hague Rules, the various proposals of the associations are set out in the last column.

Some of these views were collected at a meeting of the Comite Maritime Sub-Committee appointed at Antwerp in 1947 to study this question, which meeting was held on the 12th December 1948. I was not there, but Mr. Martin Hill I think attended as British delegate, and anything that occurred at that meeting on which the Commission may desire further information he will be able to give.

There are two problems in this study. We have thought fit to consider them together because they both deal with limitation, and we think that as a matter of practical convenience and politics if any legislation in the future is considered desirable then both problems should be dealt with as a matter of municipal legislation together. The first and wider problem is the question of the limitation of a

shipowner's liability in general, which means in practice, in 99 cases out of 100, his liability arising out of collision. Without ignoring his limitation of liability in other respects, it is in practice the collision liability which usually attracts the limit.

Now there are two main systems whereby, as you all know, this limitation is conferred in the municipal laws of the various countries. The first may I call the continental system, which was of course originally the Britisch system — that of limiting the liability of the shipowner to the value of the vessel which has been the cause of the damage plus the freight and accessories after the casualty. Maitre Dor will check me if I am wrong, but I think that was the basic continental system of limitation. As opposed to that there is what one might fairly call the British system of limitation, which is the limitation of so many units of currency, in our case sterling, upon the registered tonnage, which happen to be gross registered tons with us. It was not until the middle of the nineteenth century that Great Britain adopted this principle, and the way in which she arrived at the figure which she chose of £8 per ton plus £7 for life claims was very simple. The tonnage value of the British mercantile fleet in 1856 was calculated. I do not know how it was done, but it was done. The total tonnage was calculated, and the one was divided into the other, and that gave the figure of £8 per ton in 1856. That was in those days considered to be a fair stable value of the ship, and the intention obviously was not so much to depart drastically from the continental system, but to fix a value which should be known and stable for many years. And although that may not have been a very scientific way of doing it, the proof of its wisdom is that it has stood now for nearly a hundred years.

The desire of those engaged in commerce, and indeed the main function of the Comite Maritime is to obtain uniformity of the law if it should be possible. The great divergence which in practice has arisen after nearly a century of operation of these two systems of liability has caused considerable inconvenience in business. One of the main inconveniences we see as a matter of practical commerce is that when one is involved in a collision, whether one is a third-party underwriter, a cargo underwriter or a hull underwriter, or even the owner himself (whom we sometimes tend to overlook as underwriters), the first thing that we think is, where will it most suit us to have this litigated ?

Very often if we are cargo underwriters we think the U.S.A. would be a very fine jurisdiction, but that is not always so. There have been cases in which we as third-party underwriters have welcomed, I will not say manœuvred for, American jurisdiction rather than British because on the figures as we could see them it would suit us better. It is obviously most desirable that we should attempt to achieve the same result in whatever jurisdiction of the principal maritime countries the case is contested.

Secondly, a great inconvenience arises out of the fact that you may have two limitation funds. In a recent case an American vessel collided with a British vessel in the Scheldt in Belgium, and there was very little doubt that the American vessel was in fault. I am not saying that because the other vessel was British ; indeed, as far as our interests as P. & I. Underwriters were concerned they were wholly upon the American vessel. But there was very little doubt that the American vessel was to blame because her steering gear went wrong through some unexplained cause. The British owners started an action against the American owners in the English Admirality Court, and the American owners, because the British vessel was sunk and there was very heavy damage and the liability was extremely heavy, had to put up a limitation fund in sterling. But the owners of the cargo in the British vessel thought it a good idea to arrest the American vessel in the United States, and so they did, and proceedings were commenced in the United States with the resulthat the American owners were compelled to put up another very large limitation fund in dollars. So that you have two limitation funds in two different countries in two different currencies for the same collision. That is obviously of no advantage to anybody except the lawyers, and it would be a very good thing if this duality of limitation fund could in some way be avoided. In our opinion it could only be avoded by a unification of the law of limitation.

With these considerations in mind the British Maritime Law Association has given considerable study, and so have the other national associations, to this problem, but we find that the divergencies of view are so great and that the practical difficulties at the moment are so large that we do not consider that any good purpose would be served even if it were possible, which we definitely think it is not, by attempting at Amsterdam to come to an agreement upon a draft Convention with regard to limitation of liability. We think that is

quite impossible, and we think if it were possible it would be most inadvisable at present to attempt such a task.

We have, of course, most carefully considered the Brussels Convention of 1924, which was, as you all know, the International Convention for the Unification of certain Rules of Law relating to Limitation of Liability of Owners of Sea-going Vessels. (It is the first document attached to the British report.)

About that we have one main observation to make. Very few countries have adopted it, and those that have adopted it — and again I am open to correction by our continental lawyer friends — do not apply it universally, I understand.

Secondly, neither in Great Britain nor in the United States has it found any favour whatsoever. In the United States the President has not even sent it to the Senate. Great Britain, which is perhaps not unusual, I think was a signatory, but — and Sir Leslie Scott will correct me if I am wrong — no ratification was made, and indeed it has never even been discussed by our Parliament. So that you have two important maritime countries who have taken, if one might use a colloquialism, a poor view of the Convention. In these circumstances, although we find a good deal in the Convention which is admirable, we suggest it would not be advisable even to use that as a basis for our deliberations.

What the British Maritime Law Association has concluded with great reluctance is that this topic should be debated at Amsterdam with the object of getting as many preliminary views of the various nations as possible, and that it should then be referred to one of the national associations for study and report within a limited time. That national association should in our oipnion work in exactly the same way as the British Maritime Law Association had the honour to work at the request of the C.M.I. in the revision of the York/Antwerp Rules. It should have the duty of collecting all the views of all the other branches, if necessary holding meetings with delegations of those branches and discussing differences, and within a limited time, which we suggest should not be more than six months — or perhaps that is a little short, say nine months at the latest — that national association should report together with a summary of all the views which it has collected, and a statement of the topics upon which it has been able to achieve agreement, and those upon which it has not. In these circumstances we feel there is some reasonable chance of the Comite

Maritime being able to produce a draft Convention on this matter at its next meeting in 1951.

We offer the suggestion that it would be both appropriate and convenient to request the American National Association to undertake this task. After all, we here in Europe have done a good deal of work on this topic, but are unable up till now to find a solution ; if our American friends are willing to accept this burden, we think that they will bring fresh minds to the problem which may well devise an answer which will be generally acceptable. This procedure will enable all of us to express our views with complete freedom, and will bind nobody inadvance. I do think the Americans would object coming over here to discuss the matter from time to time when it was felt a meeting of delegations was necessary and the matter could no longer be done by correspondence, just as the European representatives will with pleasure visit the United States for the same purpose. As I say, we feel that would be an appropriate way to deal with this matter. We are of opinion we can put forward at the moment no concrete suggestions for the amendment of the law in this respect. We feel that the matter has not been sufficiently explored. It is an unfortunate position, but as I say we have a very strong view about it, and that is the view which we are presenting to the Comite International.

That leaves the subsidiary question of the limitation of liability in the Hague. As you all know, the Hague Rules have been adopted by nearly every maritime country, and those rules lay down a limitation of liability of a shipowner for loss of or damage to cargo, and also provide that the sum in which the limitation is stated should be of gold value. That was because in the happy days of 1922 our predecessors took the view, which has not been borne out by subsequent experience, that gold was a convenient medium for stabilising any unit of currency which you cared to express. What happened was that very few countries of those who adopted the Hague Rules and made them part of their municipal legislation inserted in their own laws a provision that the unit of limitation should be of gold value. As far as I know, of the English speaking countries the only countries which did adopt this so-called gold clause were, unfortunately, Great Britain, Australia, and the British Colonies. No other of the British Dominions, neither Canada nor I think South Africa, and certainly not New Zealand, inserted this provision. On the contrary they stated

that their particular limit of liability should be lawful currency of the realm — which means it is not tied to gold.

So that in Great Britain you have the position that the limit of liability or the unit per package of cargo lost or damaged is £100 which is deemed to be of gold value, whereas in New Zealand you have the limit of £100 which is the lawful currency of New Zealand. Now, of course, the position has greatly changed since Great Britain adopted the Hague Rules of 1922. At the present moment the value of £100 of gold is, if — and it is a big « if » — one is to take the official price at which the Federal Government of the U.S.A. purchase gold, something like £200. That is based upon a gold value of 35 dollars per fine ounce, and one sees in the paper only this morning that great pressure is being brought upon the United States to increase the official price at which the Federal Government purchase gold to 55 dollars per fine ounce. That is because in nearly every market in the world — and there are some altogether free gold markets, of which India and Egypt are two — the value of a fine ounce of gold is equivalent to nearly 75 dollars. Naturally, the gold producing countries, and particularly South Africa, are bringing very heavy pressure on the United States to take what the gold producing countries consider a more realistic view of the value of their precious product. What success they will have we do not know, but it is sufficient to state the fact that this pressure is being put on the main gold « merchant » of the world to show that it is most undesirable to have any limitation of liability linked to that metal.

This particular topic has been the subject of considerable study by the British Maritime Law Association for well over a year, and so difficult was the problem that we thought it would be advantageous to refer the matter...

SIR LESLIE SCOTT : May I ask Mr. Miller if he would identify the Report. The one I have is entitled : « Report on Convention for Unification of certain rules relating to Limitation of Liability of Owners of Seagoing Vessels. » And there is a date at the end of it, 7th January, 1947.

MR. MILLER : That Report was produced by myself at the request of the British Maritime Law Association when we first began to consider this topic. The British Maritime Law Association wanted a resumé of the Brussels Convention of 1924, and so I produced that. I thought,

although it is my production, that I might, with great diffidence, attach it to the British Report, because this report was accepted by the British Maritime Law Association as being our view of the problem raised by the Brussels Convention.

As I was saying, we thought it would be advantageous to refer this question to financial and economic experts to see if they could give us any help and throw any light upon a proper solution of the problem. So with the assistance of our Chairman, Sir Leslie Scott, we obtained the assistance of two of the most eminent economic experts in this country, Sir Henry Clay of the University of Oxford, and Mr. Thackstone who is Foreign Manager of the Midland Bank. We explained this problem to them, and I think I should here say we have always been extremely grateful for the great trouble they took in this matter, both being very busy men. But the only solution they were able to suggest was that the unit of limitation should be expressed in terms of what is known as the Final Act of the United Nations Monetary and Financial Conference at Bretton Woods. They said, if you express your unit of liability, your £100, in terms of, say, the dollar, and when you have to pay a claim you pay the equivalent of that dollar unit in your own currency, the rate of exchange being governed bij Bretton Woods you will get as near uniformity of value in whatever country you happen to make your claim.

No more scientific solution has been suggested, but in spite of that we felt that Bretton Woods was untried, and it was extremely dangerous to link by legislation — and it would be very difficult to alter if things went wrong — the unit of liability to this most excellent but then untried organisation, and we do feel justified in our apprehensions by subsequent events. Therefore the British Maritime Law Association with reluctance, but with gratitude to the experts who had taken so much trouble, unanimously rejected the solution as being impracticable, and worse than impracticable — decidedly dangerous.

SIR LESLIE SCOTT : One question. That report of the two experts was before the Antwerp Conference ?

MR. MILLER : Yes.

SIR LESLIE SCOTT : And was considered at the Antwerp Conference incidentally ?

MR. MILLER : I do not know if it was ever considered.

SIR LESLIE SCOTT : It was not discussed, but it was mentioned ?

MR. MILLER : I have not the proceedings of the Antwerp Conference.

THE CHAIRMAN : With regard to the report of those two experts, I remember I was present in London at the meeting where those two experts were heard. It was not a meeting of the British Maritime Law Association. It was a meeting of the Permanent Bureau. I think Maitre Govare was there.

MR. VAN DEN BOSCH : I was present as well.

THE CHAIRMAN : We heard those two experts and so on. But that was subsequent to the Antwerp Conference. It was prior to the meeting of the Gold Clause Committee at Antwerp about a year ago, in December 1948, but it was not prior to the Antwerp Conference.

MR. ASSER : In May, 1947.

THE CHAIRMAN : But it was not discussed at Antwerp.

MR. ASSER : No, but it was mentioned.

THE CHAIRMAN : I do not remember a discussion of the report of these experts at Antwerp.

MR. RAYNOR : It was mentioned to the Permanent Bureau on the 25th June 1947.

SIR LESLIE SCOTT : I apologise for interrupting, but I thought it would be convenient to ask the question.

MR. MILLER : I am obliged. I do not want to confuse the Commission. The dates are of great importance. Our Chairman is quite right. This report was made to the British Maritime Law Association, and subsequently at a meeting of the Permanent Bureau at which Maitre Dor and Maitre Govare were present the experts made their report to the Comite Maritime. I think I am right in saying that not only the British Maritime Law Association but all the members of the Permanent Bureau were of opinion that nothing could be done on these lines. Having regard to the violent fluctuations both in currency and in the price of gold which we have experienced, and which will probably become even more violent, we feel it is extremely dangerous to have the so-called Gold Clause dictating the unit of the limit of

liability. To us there is only one solution, and that is, by agreement betwewen those interested in cargo and those interested in the carrying of cargo — merchants and underwriters on the one side and shipowners on the other — the Gold Clause should be deleted, but on consideration of that it is obvious there must be some advance in the monetary unit of currency which is stated in the Act. Ours is £100, and some advance on the £100 — what advance is a matter of negotiation — should be made in consideration of the Gold Clause being deleted, or being considered as being deleted from the Act.

I do not know how many continental countries have the Gold Clause in their Hague Rules. Those who have not are in the happy position of not being very seriously disturbed by this problem, but those who have are in the same position as ourselves. We feel, as I said at the beginning, that these two problems should be dealt with as a matter of legislation together, and not separately. We feel, therefore, that it would be most inopportune at the present time, certainly for ourselves, and we think probably the other nations who are involved would take the same view, to start a legislative amendment of our Act. We do not mind doing that when limitation of liability in general has got to such a stage that a draft Convention can be put before all the maritime nations, but at the present time it cannot. Therefore our suggestion in the British report is that this result might be achieved by an agreement, which could not of course be enforceable in the Courts because it would be contrary to Statute, but an agreement on the lines of the Makis Agreement in general average, which has worked extremely well, whereby those interested in cargo claims would agree not to press the point that £100 is £100 gold in consideration of those who have to pay cargo claims agreeing to increase the unit of £100 to £100 plus X. We think that is a pratical solution of this problem, and those are the lines upon which in England we shall probably work. I should add that it is by no means certain in English law what the effect of the Gold Clause is. The great difficulty is to decide what is the value in sterling of £1 gold, the reason being that we have no indication of what market price of gold must be taken. Is it the American, which is regarded by a large number of countries as wholly arbitrary ? Is it the Egyptian ? Is it the Indian ? Is it the South African ? Or what is it ? It may well be that a court of law might find great difficulty in applying the gold clause at all to the Carriage of Goods by Sea Act. But that is not the point. We do not want to have

this question the subject of litigation. We would much rather have it the subject of agreement. The British Maritime Law Association feel that our proposition for an agreement between the various interests is the only immediate solution of this problem, although we recognise that when the whole question of the limitation of liability has been thrashed out and is ready for legislation, the Hague Rule Acts, if I may so call them, which contain the gold clause may be amended.

SIR LESLIE SCOTT : One question. I have a document which is called « Memorandum », which is on these topics generally. That, I imagine, is a document prepared by Mr. Miller himself ?

MR. MILLER : That is not before the Commission. That is a Memorandum to the British Maritime Law Association Sub-Committee which was set up to consider this problem and report to the Comite Maritime. That was merely a brief to them as to the problem to be considered.

MR. VAN DEN BOSCH : It has been printed in the report of the Antwerp Conference.

MR. MILLER : No. It was only produced about a week ago. It was a memorandum for the British Maritime Law Association Sub-Committee.

MR. VAN DEN BOSCH : I am sorry.

SIR LESLIE SCOTT : That is not before us to-day ?

MR. MILLER : No, because the B.M.L.A. agreed to some views and disagreed with others. Mr. Raynor, who is with us to-day, was Chairman, and he will correct me if I say anything wrong as to what happened there. In our report which is before you to-day I have endeavoured to summarise the conclusions reached at the British Maritime Law Association Sub-Committee. I think there is nothing further I have to say, and I regret that I have been so long.

THE CHAIRMAN : I am sure I express the feelings of all of us in thanking Mr. Miller very heartily for his thorough and complete and clear exposé. We are very much indebted to him for the tremendous work he has done in respect of the Gold Clause, and secondly for telling us this morning all the ins and outs of this most difficult question, and putting it before us in such a way that everyone can understand fully all the difficulties. Does anyone want to express an opinion ?

MR. ASSER : In Holland we are instructed by the interested parties, that is our shipowners and underwriters, that it is of the highest importance to arrive as soon as possible at international uniformity on the subject, because everybody interested in our country would very much like to know where they stand in any case of liability — both shipowners and third party underwriters and cargo underwriters. I quite agree it is quite impossible to reach this agreement at the Amsterdam Conference, but I should like to put one question to Mr. Miller, and to make one remark. The question is this. Mr. Miller stated that he wants the various national branches to submit to the national branch who will conduct the investigation of this problem their views on the Convention. Do you mean, Mr. Miller, they should also investigate and discuss the other provisions of the Convention — provisions other than those dealing with the limitation of liability ?

MR. MILLER : Yes, I mean they should express their views (1) on the whole of the Convention itself, whether they think it desirable or not desirable, and if so in what respect ; and (2) on the problem as a whole. Some might come to the conclusion that we reluctantly have come to, namely that it is not advisable to use it even as a basis for a draft Convention. Others might say « No, this is very well done » — as it was in 1926 — exceedingly well drafted. They may say « We think we can use this as a basis with certain drafting alterations ». That is the sort of thing they may say. And of course one does want them to say what basic limit of liability they think should be adopted.

MR. ASSER : Do you consider it necessary to overhaul also the other provisions of the Convention ?

MR. MILLER : Everything should be considered.

MR. ASSER : My remark would be this. I think the solution given by Mr. Miller with regard to the Hague Rules is very felicitous for the English market, but I am afraid an agreement like the one suggested by the B.M.L.A. would be very difficult to arrive at in continental countries. I am afraid it would be very difficult if not impossible to get all our shipowners and our underwriters into line. I therefore doubt whether this suggestion for an agreement would be acceptable to Holland in any way.

SIR LESLIE SCOTT : May I say just a word. I think we are up against a very formidable problem. We are all agreed that we do want a unit of value somehow or another, which will have the same effect in every country. It looks to me very much as if the lines of the existing Convention will not afford a remedy, and therefore I think we ought to treat that Convention as not in itself affording any guidance, though as a matter of history and information it is of immense value because it shows in a very clear way that the method then thought of will not work, and consequently it mmust be before the Comittee. But I think Mr. Miller's real substantial point is that world conditions have changed so much since 1924 that we have really to start *de novo* and see what solution is possible. The Bretton Woods agreement, he suggests — and I very much share that view — does not afford a secure basis for the future. We do not know where we are. We do not know long it will last, how long it will work, and whether it will work at all effectively for our purposes. Therefore we have to face the whole as a big new problem. Am I right, Mr. Miller ?

MR. MILLER, Yes, that is the view of the British Maritime Law Association. It must be started *de novo*.

SIR LESLIE SCOTT : That does not seem to me be a solution of the question at all, and I hesitate very much, being a lawyer, or having once been a lawyer, to intervene in these discussions because I think it is so essential that business people should settle their own affairs and ask the lawyers to help put them into shape.

THE CHAIRMAN : We have in our C.M.I. in the Permanent Bureau two very eminent lawyers. One is President of Honour, and the other is Vice-President. They always tell us on every occasion that the lawyers have nothing to do with forming maritime law, and ought to leave it to the pratical people.

MR. PINEUS : I just wanted at this preliminary stage to say a few words. I appreciate the very able way in which Mr. Miller put the whole case, but I should like to say that the schedule prepared by the Permanent Bureau was based on the reports as submitted to the Antwerp meeting in December. When the reports of the various experts were submitted to the various national branches they did not necessarily meet with success, and I think it would be well to put to the Amsterdam Conference the same sort of paper presented in the

same way showing the result of what the national branches had said. As for the matter itself of shipowners' liability, I will not speak about the Hague Rules. You are, of course, aware that we had another system in Sweden before. We went over to the 1926 Convention in the hope that the Anglo-Saxon countries would accept what we thought was a compromise, but they did not. They did not like it. Perhaps we were not so enthusiastic about it ourselves at the moment, but anyhow the reason why we changed was as I have said. Now if there is going to be a change somewhere I think my country's view would be that little initiative will come from Sweden anyway until we can rest assured that the new system, whatever it is, has any chance of success. And I should like to add that we have a special consideration to look at in the case of Sweden, namely that we have our ships going into the Baltic and we meet there with Russian ships. I am not going to start going into politics of any sort, but the limitation of Russian ships is, so far as I can make out, 50 roubles a ton, which certainly is not 50 gold roubles, and that means that we are not enthusiastic about increasing liability for this reason too. I think I will stop with that at this moment.

THE CHAIRMAN : Thank you very much.

MR. KIHLBOM : On both questions the position in Sweden is, in short, that we think the present position is so unstable that very reluctantly we shall have to wait till something stable is attained — till we know where we are. Meanwhile ways and means should be considered.

MR. RAYNOR : On the point raised by Mr. Asser — the question of agreement between underwriters and shipowners in this country — I think in order to prevent any misunderstanding it should be made clear that this is an interim agreement, and that we have our eyes on international uniformity as a long-term view. It is purely an interim agreement.

MR. TYBJERG : May I say our position is practically the same as that of Sweden as Mr. Pineus has stated it. I do not think I can say any more than that. We have given our report in a letter of the 16th June which was sent to the Secretary, and which no doubt has been circulated. I just refer to that. Our attitude is to stand back and await developments for the time being.

MR. ASSER : Holland has completely abandoned the Belgian proposal.

Me. GOVARE : I would just like to drawn your attention to this fact. When the International Conventions have been passed we always have great difficulty in obtaining from our National Governments that they ratify them and put them into the domestic law. I think therefore we must take great care and pay much attention to altering those Conventions as little and as seldom as possible, because we have already had this Convention of Brussels in 1924 and we only succeeded in having it put into force in our deomestic law in 1936, which is 12 years later. If we have a new International Convention, and we ask the Government to ratify it, and after that to incorporate it in our law, the Government will have the pious answer : « What is the use ? Wait for ten years, and in another ten years the Convention will be altered, and we shall have been saved the trouble ». Therefore I think if possible our efforts should be limited to the question of the gold clause, and everything else in the Convention should be kept as it is if it is not absolutely impossible to keep it.

THE CHAIRMAN : I can give an instance of what you have just said. In regard to the 1924 Convention or the Hague Rules our respected President, Mr. Franck, tried very hard for six years from 1924 to 1930 to get people to pass it through the French Parliament. He was going to Paris and giving good luncheons to which he invited me and eminent members of our Parliament, Ministers and ex-Ministers and so on, but he got nowhere. Then in 1930 at the Antwerp Conference he asked me to take up the matter and try to push it through the French Parliament, and it took me another six years when Mr. Franck had already been at it for six years, to get it through at the end of the Session when you pass 50 Bills through in half-an-hour, because we have people like our Algerian Members of Parliament who are opposed to any convention where there is limitation of liability on the shipowner. Those Algerian Members of Parliament succeeded in getting through a French Act for regulating things between Frenchmen. We have an Act of Parliament which is more severe on the shipowner when the case is between a French cargo owner and a French shipowner than in the Convention. If we ever go again before the French Parliament to ask to have that Convention modified the whole thing will be in the melting pot, for

we never know what the Algerian Members of Parliament will be able to do. So I entirely support Me. Govare's view, that we should limit ourselves with the Hague Rules Convention.

MR. VAN DEN BOSCH : I am very grateful to Sir Leslie Scott for what he said, that the problem of the gold clause should be dealt with from an entirely new point of view, and from a quite new starting point. As far as I see it there are four ways of dealing with it. The first would be that as a standard of measure we all agree that gold cannot be held for the purpose. Secondly, we founded great expectations on the International Conference at Bretton Woods, and the Final Act of Bretton Woods ; but since 1947 when we had our Conference in Antwerp the Bretton Woods agreement has not made much progress, and we think we have to waive that. We cannot build strong uniform regulations on the basis of the Bretton Woods agreement. Thirdly, in my opinion the standard might be one currency, whatever it may be, sterling dollar or another money, without any reference to gold or to another standard. The Belgian franc happens to be very unexpectedly one of the stronest valued currencies in the world at the moment, but I would hardly dare to propose to the Commission to use the Belgian franc as a uniform and stable monetary unit. Looking at the view put forward by Sir Lesly Scott I wonder whether the Belgian proposition could not be the new one which Sir Leslie asks for. That new one consists in taking part of the value of the ship instead of referring to a monetary unit. It was, as you all know, the traditional continental system, and it was also, if I remember rightly, the English system before the £8 rule. I think the Belgian proposal keeps the fundamental principle of the Convention as it is, as it allows a double limit : one limit up to the value of the ship after the accident, and the other limit a proportion of the sound sailing value of the ship. I know when we met in Antwerp in December last we were about to reach an agreement on a subsidiary basis, and I may say the delegates went to their respective countries and could not get the agreement of the nationally interested parties. Anyhow, it seems there might be some uniform regulation on that basis. I would not dare to say it could be done today, or even within two or three months, but possibly it might be reached within a certain time which would not be too far away. That is the point of view of the Belgian interests, and I submit to you as perhaps one possible way to settle a very difficult matter.

BARON VAN DER FELTZ : If the British suggestion were adopted it means we would have to face two main problems : not only the problem of the gold clause, but also the problem of the system of the limitation of liability. In 1924 we came to a compromise, and of course every compromise has its fault because it is a compromise. The advantage of a compromise is that both parties are not quite satisfied with it. So if we begin with a new Convention we get a new fight about which system is best. In this respect I should mention what I read in Memorandum No. 2. which I got when I came to London : « The Netherlands have not adhered to the Convention but in 1928 harmonised their Municipal Law to conform to the Convention, through to what extent I have not yet been able to ascertain ». In Holland we have adopted the British system of a certain amount as the limit, and it would be very difficult to go back to Holland with a new suggestion to alter that system to another system.

THE CHAIRMAN : Gentlemen, if I may say a few words, I think what has been called the continental system was really — I am not speaking from national pride — what might be called the French system, because it is the system of the Colbert Ordinance of 1681. It was taken by England and by all the other countries in that Ordinance of 1681. That was a logical system which started from the point of view that the shipowner as a venture sends his ship out to sea, and of course in those days they were sailing ships and there was no means of communicating with the ship, and sometimes one did not hear from the master for a year or more. Therefore the shipowner, contrary to what the man on land does, was entitled to say to the world « That is my venture, and I am liable for what the ship is going to do only to the extent of the ship, and not the freight ». That was quite reasonable and logical and so on. Then in the middle of the nineteenth century in this country, as our English friends are always trying to get practical short cuts, they said : « It is a bit difficult. Sometimes a ship is worth nothing, and sometimes it is worth a lot. It is much better to have a rough and ready method of dealing with it » — and they fixed it at £8 a ton. At that time it was a very good rough and ready method, and it worked very well for a great number of years. But that was in the days pre-1914 when all currencies were based on gold, and therefore when you had a gold currency. Now you have India-rubber currencies. Even the dollar is an india-rubber currency, because a fine ounce of gold is officially worth

35 dollars while the real value is at least 55 dollars. Therefore it strikes everyone that even from a practical point of view and not from a logical point of view, the very last and worst way of expressing the limitation of liability is a currency, whether sterling or dollar or anything ; and it would suggest to our British friends, that considering that, they might well think that the time has now come to drop the system of £8 per ton and go back to limiting the liability to the value of the ship. If that were adopted all the gold clause difficulties are solved at once. In respect of the Hague Rules a multiple of the freight could be adopted. It may be ten times the freight, or something which has no relation to the currency. But there appears not to be the slightest hope of our British friends coming to that view, and therefore here we are at a deadlock.

MR. MILLER : I should not say there is no hope.

MR. KIHLBOM : Why do we want to change this ? Because currencies are unstable at present, that is the reason. If you keep that in mind, and if in the crisis you revert to the value of the vessel, you have several other difficulties. If you value a vessel in a certain country you get quite a different value to what you get if you value it in another country. The problem is not so simple. If you have the case of a certain specially built vessel, built for a certain trade, she has a certain value in that trade but nowhere else. If you value a liner in South America you get a different value from what you get here in Europe. So that it is not so certain that this is the right way of doing it. That is why we think in Sweden that we shall have to to study these different matters a bit more, and wait and see whether we will eventually arrive at some stable method, because the world wants a stable method, and there are forces, as you know, working for it. If and when a stable measure is obtained, then the whole problem before us is much easier.

THE CHAIRMAN : May I tell you this. You refer to the difficulty of valuing a ship. The French system does not consist in limiting the liability to the value of the ship. The French system consists in limiting the liability of the shipowner. In other words you say « Here is my ship ; take her ». There is no question of value. You may then when you have said that, come to an agreement with the other side, but what you have to abandon is not the value of your ship ; what you have to abandon is your ship.

MR. ASSER : I would like to refer to what my colleague Baron van der Feltz has been saying, but I would like to add one point. In Holland, as you know, we have a limitation of liability to the extent of 50 guilders per cubic metre of the vessel roughly speaking. Our Parliament has voted a clause in the Act — it was already done before, but not yet put into force — by which this figure of 50 guilders may be increased or reduced for different classes of ships — not by an Act but by an Order in Council. To meet your objection against having one currency as the currency of limitation, it might perhaps be envisaged to insert into the Convention a similar provision. There is one example of this, and that is the Continental Convention signed in Rome in 1933. Article 60 of that Convention says this. I will read the text in French because I have not the English text. (The text was read in French). A similar provision might perhaps be envisaged in this limitation of liability of shipowners with regard to the figure of limitation per ton. That is the only remark I would like to make.

MR. MILLER : May I support what Mr. Kihlbom said. It is quite true as Maitre Dor has told us, that in what I called the continental system, and which he quite rightly points out originated in the ancient French law, that what you abandon really is the ship and not the value of the ship. But in practice an owner has to put up a fund, and I think that is what is in Mr. Kihlbom's mind. In order to put up that fund he has to know what the value of the ship is in the particular country in which the litigation in proceeding. We have just recently had a dispute in which the value of a British ship at a French port was assessed at three times or two-and-a-half times the value of a British ship as valued by British valuers. Why ? Because no British ship can be transferred from one ownership to another without the licence of the Ministry of Transport, which of course vitally affects the value of British ships anywhere in the world according to our contention. But, on the other hand, the French say — and there is a great deal of justification for it — « We do not care about your internal affairs. This ship if sold here in France would be worth three times what you say it is worth. » That is an illustration of what Mr. Kihlbom says. I hope it is not one which will frequently arise, but it shows the value of the same vessel differs enormously in different parts of the world where it may happen to be. I think the illustration of the different values of liners in South America and in Sweden is most apt.

MR. VAN DEN BOSCH : I fully realise that a limitation system based on the value of the ship is not an ideal one. But it may be a practical one. Why not therefore say that the value which will be the limitation of the responsibility of the shipowner will be the value at a certain point in the world, at the home port for instance. It will always be the same. You will not then meet the difficulties of differences in value between South America and, let us say, France. If a ship has her port of registry in London, the value will be fixed in London at a certain time. Furthermore, the valuation of the ship is a problem which arises in almost every case of general average, and I do not know that this difficulty has prevented the general average, adjusters from drawing up their adjustement. It is quite the same problem. My second point is in answer to what my friend and colleague Mr. Asser told us about the Rome Conference. The solution given in that matter would be, I think, a very good one from the international point of view, but it Belgium we have a national law which has been made on a level with the International Conventions. We might perhaps easily alter one point in an International Convention, but I fear we might not change as easily our particular law.

THE CHAIRMAN : Is Mr. Miller making and different proposition as to what we shall submit to the Amsterdam Conference ?

MR. MILLER : The only proposition that I am suggesting that we should submit to the Amsterdam Conference is that this topic should be referred to one of the national associations in the same way as the York/Antwerp Rules were. It seems to me that is the most expeditious method of studying the problem. As I say, the national association to which the topic is referred will have the duty of collecting the views of all the others, of attempting to obtain agreement where possible, of noting disagreement where agreement does not appear possible, and producing a report long before we meet in full conference in 1951. I cannot see any other method of approaching it.

MR. MARTIN HILL : Will Mr. Miller add to that proposition, what he mentioned before, that the United States should be the country to undertake the work ? I think that is very important for two reasons. In the first place any Convention that is going to be produced must be acceptable to the United States, and in the second

place we are all anxious to get the Americans to play a large part in the Comite Maritime. It looks as if they are coming to Amsterdam ; let us do everything we can to encourage them to go on.

MR. KIHLBOM : I would like to support the suggestion made by Mr. Miller. I think it is a wise one that it be left to the Americans. I think it would be a very good thing to do that.

MR. VAN DEN BOSCH : I would support very strongly the proposal made by Mr. Miller.

MR. ASSER : May I make a suggestion. Should we not all be doing much more profitable work if we could receive before the Amsterdam Conference a short report from the British Maritime Law Association on those points other than the gold clause on which they would like to see the Convention altered ?

MR. MILLER : We take the view — I can only speak for the B.M.L.A. who have considered it — that the International Convention has been as a whole unacceptable to two of the principal maritime nations, and it might be inadvisable even to work on it. May I take two examples. Take Article I (6). We do not see how there can be or should be any limitation for salvage remuneration. I think the law of every country is the same — Maitre Dor will correct me if I am wrong — that in salvage the salvors have a lien on the ship herself. They cannot get more by way of salvage remuneration than the value of the wreck or ship thay have saved. I am sure that salvors, who are after all powerful and necessary people, would strongly resist any proposal to have any other limitation than that which the general maritime law provides. The same applies to the contribution of the shipowner in general average. There ave been long and learned discussions about this, but I have always understood that the law of every country is that he cannot possibly contribute more than the value of his ship. With regard to I (8) « Obligations arising out of contracts entered into or transactions carried out by the master » etc., we do not see how that very wide topic can fit into any limitation of liability convention.

SIR LESLIE SCOTT : It is archaic.

MR. MILLER : It is archaic now. Then I(3) : « Obligations under bills of lading ». We should consider here that is far too wide as it stands. Obligations under bills of lading in the narrow sense,

loss or damage to cargo, are covered by the Hague Rules. They should not also be covered by the Statute. There are so many deletions and amendments that are required that we feel that to take this as a basis would be dangerous. Although we feel there is very great force in what Maitre Govare has said, that when we make a Convention and complain bitterly because the Parliaments do not ratify it, it gives them a very good weapon of defence if they can say « You wait another 20 years and you will want it torn up », yet we are convinced that to compromise in this between the British and French systems is inadvisable. We think to solve the problem by one or the other is advisable, but a mixture of the two would not find favour. If you are of that opinion you hit at the whole scheme of the Convention.

THE CHAIRMAN : I think the observation of Maitre Govare was specially directed to call attention to the Hague Rules Convention which is less important than the question of limitation of liability of shipowners. Also you can see at a glance by the example quoted by Mr. Miller how impossible it is to have a mixture of the two systems. He is quite right in saying the salvors would never admit the liability should be limited to £8 per ton. It was perfectly all right when you had the French or continental system because with the continental system the liability is limited to the ship — not to the value of te ship but to the ship itself. The salvors cannot get more than the ship. In general average the shipowner who has to pay more than 100 per cent can say « Take my ship ». Therefore it worked perfectly well when you were on the French system, but once you introduce as well the British system of £8 per ton it does not work, because the salvors who raise a ship which is worth £20 per ton or more say « We are not going to be paid on the basis of £8 per ton », and they are quite rigght. Therefore I strongly support your view that the Convention is rotten altogether, and that if something good is to be arrived at the whole Convention ought to be revised. We ought to have either the British system or the continental system.

MR. PINEUS : I just wanted to say as our Norwegians friends are not here I think it is only fair to point out that in the report they submitted to the Antwerp meeting in December they were also suggesting that the field of limitation should be made more narrow, and they even went so far as to submit a new text for the Convention. As they are not here we should not lose sight of that.

Me. GOVARE : Mr. Miller has suggested that if we meet in Amstedam the British branch will let us know which method they suggest for the whole Convention, but I think we must remember we are only on the gold clause.

THE CHAIRMAN : No. We are also a Limitation of Liability Commission. We are both. We are really a Committee or Commission on the Limitation of Liability, with special attention to the gold clause. It is in the proces-verbal.

Me. GOVARE : We are not limited to the gold clause ?

THE CHAIRMAN : No.

MR. PINEUS : I am sorry to take up your attention for one moment more, but I should like to underline that in the report. I handed in to Mr. Miller when we started this meeting there is a section which I think this Committee should note, namely : — « The Swedish Association is going to propose to the Swedish Government to follow the example of Norway which has, since 1939, a law stipulating that calculation in gold shall take place only in relation to creditors of such nations which apply corresponding calculation in favour of Swedish creditors. »

MR. TYBJERG : I would underline what is said in the Norwegian report. They have made a very excellent report, and I think attention should be drawn to that. I think it will be a great help in the work.

THE CHAIRMAN : Have we got it ?

MR. TYBJERG : Yes. I do not mean at this moment, but to have that report in mind.

Me. GOVARE : I would like to add a word on a quite different point, as we are not limited to the gold clause. Someone from the French branch has raised the question how are we to define what Article X means when they say this Convention covers every bill of lading issued in any one of the contracting States.

THE CHAIRMAN : That is the Hague Rules. We are not on that. Our Committee is on the limitation of liability on shipowners.

MR. VAN DEN BOSCH : I think we have competence, Mr. Chairman, in dealing with the limitation of liability on the point of the gold clause and other matters ; also with the Hague Rules regarding the limitation of £100 per unit.

THE CHAIRMAN : If I may read your own proces-verbal, Mr. van den Bosch, what it says is this. (The texte was read).

MR. VAN DEN BOSCH : But we may deal with the gold clause and any other point ?

THE CHAIRMAN : My point is that Maitre Govare wanted to introduce some question of midification of the Hague Rules Convention, and I stopped him to tell him we were not entitled to do that. We are entitled to discuss the gold clause of the two Conventions, and then any modification of the first Convention on the limitation of liability of shipowners, but we are not entitled to discuss modifications of the Hague Rules Convention, according to your report.

Me. GOVARE : When we met in Antwerp we discussed also the other one.

THE CHAIRMAN : I am sorry, Mr. Govare, but you see as Chairman I have to keep to this, which is really our charter.

MR. MILLER : Is it voted unanimously that we make this proposal to Amsterdam ?

THE CHAIRMAN : The only observation I make — but of course one can always alter procedure — is that it is not in conformity with the procedure of the Comite Maritime. It has never been done before. But in the York-Antwerp Rules, if I may say so, the British Maritime Law Association went ahead, and we are all very pleased they did go ahead, because they did most excellent work. But they were never interested to take charge of the question ; they just went ahead. You are asking us in this new question to start an absolutely new procedure, namely that instead of the Permanent Bureau being in charge of the question and asking all the national associations their views, and getting reports from the national associations and appointing a Committee and then circulating the report of the Committee to all the national associations, which is our system and which has worked very well for fifty years — you are asking us to inaugurate a different system in which it is one national association who is going to take charge of the matter and correspond with other associations and so on. I should say that if we have a vote on that question it would be better to put it in the way of expressing a wish that the Permanent Bureau should do that. That leaves the Permanent

Bureau to do it or not as they decide. But it is rather a momentous change you are asking for, because if we do that today for this question, tomorrow when another question comes up another national association which has taken special interest in it may say : « Oh, I want to be in charge of that question. » And you may have even conflict between two or three national associations who all want to be entrusted with it. I am not quite sure that it is advisible to transfer the responsibility and activities of the Permanent Bureau to a national association, but I have not the slightest objection to putting the matter to this meeting. I simply advise you, if you want to do it, to express it rather in the way of a wish. I think Sir Leslie's advice on this would be most helpful.

SIR LESLIE SCOTT : I think it is a very important question of procedure. If I may respectfully say so, I agree with everything you have said as to the practice in the past. But I feel there is great force in the piece of history that has been achieved in London yesterday over the question of the general average, and it is open quite obviously to the Permanent Bureau to suggest any particular procedure suitable in its opinion for any particular problem that it thinks fit. If, as you suggest, we expressed an avowal to that effect, I have little doubt the Permanent Bureau would accept it and act upon it. If it is done in that way it will not be a precedent for any different permanent change in procedure, but will merely show the Committee is elastic and able to deal with problems in the way most likely to produce a solution. If in the circumstances of the history of the Committee we find today, in 1949, it is extremely important to get the fullest possible cooperation from the United States, and we think this particular procedure which has succeeded in regard to general average might succeed if the United States would take the initiative on this question of limitation, I think if we make that suggestion it would be very valuable, and I see no objection to it.

THE CHAIRMAN : Thank you. The opinion of Sir Leslie Scott in this case is most valuable because he was Vice-President of the Comite Maritime for a very great number of yars, and was our temporary President after the death of Mr. Louis Franck for a great many years, and is now our President of Honour. Therefore his opinion is most valuable as representing one of the two heads of the Permanent Bureau.

MR. MILLER : There is one thing I should like to add. I entirely agree with Maitre Dor that in the past — though I have not had the experience he has had, it is quite obvious that in the past these questions have been studied under the direction of the Permanent Bureau. The Permanent Bureau has sent round questionnaires and the like to the various national associations and collected their views. But in these modern problems the amount of work entailed is very great, and the Permanent Bureau, which is a body composed of very hard-working people scattered over different countries of Europe and having also an American member, cannot be constantly in session in order to study a vast topic like the limitation of liability, or a not so vast but very difficult topic like general average. As Mr. Edmunds will tell you, you have to have the body which has control of that study almost permanently in session, and you have to get at them in the same country, and I would even say in the same town. None of us members of the Permanent Bureau have the leisure to devote to the question so continually as is necessary, and therefore a national association whose members are on the spot is an ideal body for studying a difficult topic of this kind. Mr. Van den Bosch and I have had a great deal of work to do as members of the Permanent Bureau (many others have, of course, had the same amount), but I think Mr. van den Bosch will support me in this, that if the Permament Bureau were to study this topic we should be in attendence week after week, and even though Antwerp is such a pleasant city and much as I should like to take up residence there, that would be impossible.

THE CHAIRMAN : I will ask Mr. Kihlbom to speak, and then I will read to you what I have just drafted to express the proposition of Mr. Miller.

Mr. KIHLBOM : I wanted to say that when I supported Mr. Miller's proposal I certainly understood that what was being proposed was not something concerning a principle of procedure but merely a temporary measure of expediency. I would like to add that if the work of the Comite Maritime is aimed at getting the widest possible international uniformity then such a method of procedure as leaving a certain matter to a certain national association would not be successful. We have got to do it the other way. I entirely agree with all Sir Leslie has said.

THE CHAIRMAN : Thank you, Mr. Kihlbom. This is what I have drafted. I will read it in French. (The French text was read.) The English translation is like this : — « The Committee proposes that the Amsterdam Conference should express the wish that the Permanent Bureau will entrust one of the National Associations, if possible the American Association of Maritime Law, with the task of revising the Convention on Limitation of Liability of the Shipowner, especially in respect of the Gold Clause, as well as the revision of the Gold Clause in the Conventions on Bills of Lading ». Do you all agree to that ?

MR. MILLER : I would rather have the word « reconsidering » than « revising ». We do not want to give them a mandate that they must work on the Convention because some of the associations, and we among them, are of opinion that the Convention ought not to form the basis of the study. On the other hand, they may think it should. So that they should be at liberty.

THE CHAIRMAN : « Revise » is stronger than « reconsider ». With the word « revise » you have an open field.

SIR LESLIE SCOTT : Is it not : To consider what changes, if any, in the Convention on Limitation of Liability are necessary in order to satisfy present needs ?

THE CHAIRMAN : Mr. Miller says he wants to go further, and that he wants to open the possibility that the whole Convention may be put in the waste paper basket and an absolutely new one drawn up. In that case you suggest the way of expressing it is to reconsider the question, so that you are not bound to take the Convention as your basis.

MR. MILLER : That is what I mean.

MR. ASSER : Is it clear that the Americans should consult the other national associations ?

THE CHAIRMAN : Well, I can put it in.

MR. VAN DEN BOSCH : Should we not keep the International Committee alive still ?

MR. MILLER : We need not put that in the resolution.

MR. VAN DEN BOSCH : The Conference appointed the International Committee.

THE CHAIRMAN : We can do this. We can say that they will make a report to the Permanent Bureau, who will refer it to the International Committee.

MR. CHARLES : In regard to bills of lading — we are suggesting they should consider the question of the gold clause ; is it not also the amount of the limit, as well as the gold clause ?

THE CHAIRMAN : That is included.

MR. CHARLES : I was not quite certain.

THE CHAIRMAN : Before I put 't to the vote, do you want me to read it again in French, or in English ? You do not want it read again, and you do not need it in English ? You have all understood it in French ? Very well. I put this to the meeting ? There is no opposition. Then this resolution is adopted unanimousl : —

> Le Commission propose à la Conférence d'Amsterdam d'exprimer le vœu que le Bureau Permanent charge une des Associations Nationales — si possible l'Association Américaine de Droit Maritime — d'étudier à nouveau toute la question de la limitation de la responsabilité des propriétaires de navires et spécialement celle de la clause-or, ainsi que la question de la clause-or dans la convention des clauses des connaissements, de consulter toutes les Associations Nationales sur ces questions et de présenter un rapport et, si nécessaire, un nouveau projet de convention, au Bureau Permanent dans un délai d'un an, le Bureau Permanent devait alors soumettre ce rapport et, s'il y a lieu, ce projet à la Commission Internationale de la Limitation de Responsabilité des Propriétaires de Navires.

The CHAIRMAN : I think in ending our labours we ought to express our thanks to Mr. Miller for the immense work he has done.

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COMMISSION CLAUSE - OR du Comité Maritime International

Propositions émises au cours de la réunion du 12 décembre 1948 à Anvers.

	LIMITATION DE RESPONSABILITÉ		CONNAISSEMENTS	Denmark	Norway
	PROPOSITION PRINCIPALE	PROPOSITION SUBSIDIAIRE			
BELGIQUE et Mr. le Secrétaire-général Fr. SOHR.	Suppression de la limite de £ 8-16 et de l'Art. 13. — Maintien des principes de la convention et de l'Art. I. sauf amendement a) à l'alinéa final, comme suit : „Toutefois, pour les créances prévues aux numéros 1, 2, 3, 4 et 5, la responsabilité visée par les dispositions qui précèdent ne dépassera pas la moitié de la valeur du navire au commencement du voyage" (ou : avant l'accident ou au départ du dernier port), augmentée du fret et des accessoires". b) à l'Art. 7 : „au delà de la limite fixée aux articles précédents, et quel que soit le sort du navire, une somme forfaitaire représentant la moitié de la valeur du navire au commencement du voyage (ou : avant l'accident ou au départ du dernier port.)		Suppression de la limite de 100 £ (Art. 4. al. 5 : Art. 9.) Nouvelle limite : dix fois le fret par colis ou par unité, appli marchandise sinistrée.	Adjust up in bear-cons-Rules I. » Approve British proposal.	Approve British proposal.
DANEMARK.	Suppression de la limite de £ 8-16 et de l'Art. 15. Nouvelle limite : Dommages matériels : la moitié de la valeur du navire avant l'accident ou au commencement du voyage, estimée sur base des prix pratiqués au port d'attache. Dommages corporels : la valeur pleine du navire avant l'accident ou au commencement du voyage, estimée sur base des prix pratiqués au port d'attache. Supprimer les accessoires (Art. 5).	Adoption de la proposition belge.	Suppression de la limite de 100 £. (Art. 4. al. 5 ; Art. 9). Nouvelle limite : dix fois le fret appliqué à la marchandise sinist		
FRANCE et Mr. le Secrétaire-général Léopold DOR.	Suppression de la limite de £ 8-16 et de l'Art. 15. Nouvelle limite : la moitié de la valeur du navire au commencement du voyage, à fixer selon la législation nationale ou la loi du port d'attache.	Adoption de la proposition belge.	Suppression de la limite de 100 £. (Art. 4. al. 5 ; Art. 9). Nouvelle limite : dix fois le fret appliqué à la marchandise sinistrée nant une définition précise et uniforme de l „unité".		
GRANDE-BRETAGNE.	Statu quo.	Adoption du principe de la proposition belge, sauf à revoir le taux de 50 %, en tenant compte des différents types de navires.	Proposition principale : „Statu quo". Proposition subsidiaire : dix fois le fret appliqué à la marchandise	No amendment.	No amendment.
ITALIE.	Suppression de la limite de £ 8-16 et de l'Art. 15. Nouvelle limite : Dommages matériels : une fraction de la valeur du navire au commencement du voyage pourrait être comprise entre un pourcentage minimum et un pourcentage maximum. (par ex. pas moins de 20 % et pas plus de 40 %). Dommages corporels : proposition à compléter.		A. Suppression de la limite de 100 £. (Art. 4. Al. 5 ; Art. 9). Nouvelle limite : 500 $ ou autre somme en $ par colis ou unité B. Amendement à l'Art. 10. Les dispositions de la présente Co s'appliqueront à tout connaissement créé dans un des Etats con chaque fois que les parties intéressées sont ressortissants d'Etats tants.		
NORVEGE.	Suppression de la limite de £ 8-16 et de l'Art. 15. Nouvelle limite : Dommages matériels : la moitié de la valeur du navire avant l'accident ou au départ du dernier port, sans déduction des avaries ni addition du fret. Dommages corporels : la valeur pleine du navire avant l'accident ou au départ du dernier port, sans déduction des avaries ni addition du fret. Champ d'application : l'actuel article I. 1°, 2°, 5°; suppression des numéros 3°, 4°, 6°, 7°, 8°.	Adoption de la proposition belge.	Suppression de la limite de 100 £. (Art. 4. Al. 5 ; Art. 9). Nouvelle limite : dix fois le fret appliqué à la marchandise sinist		
PAYS-BAS.	Suppression de la limite de £ 8-16 et de l'Art. 15. Nouvelle limite : à exprimer en $ U.S.A. sans référence à l'or et correspondant à la valeur actuelle des navires.	Adoption de la proposition belge. Proposition de Mr LOEFF : substitution de l'étalon-or, par un étalon-denrée, à savoir le prix sur le marché international d'une tonne d'acier pour la construction navale.	Suppression de la limite de 100 £. (Art. 4. Al. 5 ; Art. 9). Nouvelle limite : en $ U.S.A. ou bien : dix fois le fret appli marchandise sinistrée.	No amendment.	No amendment.
PORTUGAL.	Suppression de l'Art. 15. al. 2 de la Convention.		Suppression de l'Art. 9 Al. 2. de la Convention. »		
SUEDE.	Suppression de la limite de £ 8-16 et de l'Art. 15. Nouvelle limite : Dommages matériels : la moitié de la valeur saine du navire au moment de l'accident. Dommages corporels : la pleine valeur du navire au moment de l'accident.	Adoption de la proposition belge.			

BRITISH MARITIME LAW ASSOCIATION — Revision of York/Antwerp Rules 1924

(This comparative table has been compiled from reports received up to June 10th, 1949, from the Committees of the National Branches. If and when revised opinions are received it may be necessary to issue amending supplements).

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
		« Except as provided in the numbered Rules the adjustment shall be drawn up in accordance with the following lettered Rules. »	Approve British proposal.	Approve British proposal.	Approve British proposal.	The general principles of General Average are set forth in Rules A to G, and Rules I to XXIII govern special cases in which they are to be applied or which constitute exceptions thereto. They shall therefore be applied to the cases to which they refer in preference to Rules A to G, in the event of their conflicting or of doubt as to the applicability thereof. Consequently, adjustments shall be drawn up on the basis of Rules A to G except in the cases provided for by the numbered rules, with respect to which the numbered rules shall take precedence.	« General Average Adjustments shall be drawn up in accordance with the Rules bearing the Letters A to G, completed and defined by the Rules numbered from I to XXIII. »	Approve British proposal.	Approve British proposal.
Rule A. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.	(There was no corresponding rule).		No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.
Rule B. General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.	(There was no corresponding rule).	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule C. Only such damages, losses or expenses which are the direct consequence of the general average act shall be allowed as general average. Damage or loss sustained by the ship or cargo through delay on the voyage, and indirect loss from the same cause, such as demurrage and loss of market, shall not be admitted as general average.	(There was no corresponding rule).	« Only such damages, losses or expenses which are the direct consequence of the general average act shall be allowed as general average. Damage or loss sustained by the ship or cargo through delay, whether on the voyage or subsequently, and indirect loss from the same cause, such as demurrage and loss of market, shall not be admitted as general average. »	Approve British amendment.	Approve British amendment.	Approve British amendment.	1st Paragraph : Unchanged. 2nd Paragraph : Damage or loss sustained by the ship or cargo through prolongation of the voyage and indirect loss, in particular demurrage during the voyage or afterwards, as well as loss of market or interest, shall not be admitted as general average.	Approve British amendment.	Approve British amendment.	Approve British amendment.
Rule D. Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies which may be open against that party for such fault.	(There was no corresponding rule).	No amendment.	No amendment. The Committee agrees that it will be necessary to insert a proper Jason clause in all bills of lading.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.
Rule E. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.	(There was no corresponding rule).	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.
Rule F. Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed, but only up to the amount of the general average expense avoided.	(There was no corresponding rule).	« Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided. »	Approve British amendment.	« Any extra expense or loss incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided. »	No amendment.	Approve British amendment.	« Any extra expense incurred in place of another expense which would have been allowable as general average shall itself be deemed general average and so allowed, but only up to the amount of the general average expense thus saved. However, if this extra expense so allowed as general average has also benefited other parties to the adventure, it shall be borne by general average and by the several parties concerned in proportion to the amount of the expense saved by each one of them. »	Approve British amendment.	Approve British amendment. Disapprove Dutch proposal to add « or loss. »

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule G. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends. This rule shall not affect the determination of the place at which the average statement is to be made up.	(There was no corresponding rule).	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.
Rule I. — Jettison of Cargo. No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.	Rule I.—Jettison of Deck Cargo. No jettison of deck cargo shall be made good as general average. Every structure not built in with the frame of the vessel shall be considered to be a part of the deck of the vessel.	No amendment.	No amendment.	No amendment	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.
Rule II. — Damage by Jettison and Sacrifice for the Common Safety. Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.	Rule II. Same.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule III. — Extinguishing Fire on Shipboard. Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.	Rule III. — Same.	After discussion it is recommended that this Rule should remain unaltered.	No amendment.	« Extinguishing fire on shipboard. Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average. » (Latter part of Rule to be deleted).	No amendment.	No amendment.	No amendment.	Delete last part of Rule « except that no compensation . . . . . be on fire. »	No amendment.
Rule IV. — Cutting away Wreck. Loss or damage caused by cutting away the wreck or remains of spars, or of other things which have previously been carried away by sea-peril, shall not be made good as general average.	Rule IV. — Same.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.
Rule V. — Voluntary Stranding. When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average. But in all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.	Rule V. — Voluntary Stranding. When a ship is intentionally run on shore, and the circumstances such that if that course were not adopted, she would inevitably sink or drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight, or any of them by such intentional running on shore shall be made good as general average. But in all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.	No amendment.	No amendment.	No amendment.	No amendment.	The Sub-Committee expresses the opinion that there should be added at the end of the first paragraph, the words : — « Sacrifices made in refloating a ship so run on shore shall, however, be allowed in general average. »	No amendment.	No amendment.	No amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule VI. — Carrying Press of Sail—Damage to or Loss of Sails. Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.	Rule VI. — Same.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment, but suggest might be amalgamated with Rule VII.	No amendment.	No amendment.
Rule VII. — Damage to Engines in Refloating a Ship. Damage caused to machinery and boilers of a ship, which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the machinery and boilers shall be made good as general average.	Rule VII. — Damage to Engines in Refloating a Ship. Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average, when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage.	Damage to Machinery and Boilers. « Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the machinery and boilers shall in any circumstances be made good as general average. »	Approve British amendment.	**Approve new title but otherwise no amendment.**	Approve British amendment.	The Sub-Committee proposes that the words « in Refloating a Ship » should be removed from the title of the rule, making the title read « Damage to Engines and Boilers. » No amendment to the wording of the Rule.	Approve new title but otherwise no amendment.	**Approve British amendment.**	**Approve** British amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule VIII. — Expenses Lightening a Ship when Ashore, and Consequent Damage. When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and re-shipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.	Rule VIII. — Expenses Lightening a Ship when Ashore, and Consequent Damage. When a ship is ashore and, in order to float her, cargo, bunker coals and ship's stores, or any of them are discharged, the extra cost of lightening, lighter hire and re-shipping (if incurred) and the loss or damage sustained thereby, shall be admitted as general average.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	Approve British amendment.
Rule IX. — Ship's Materials and Stores Burnt for Fuel. Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.	Rule IX. — Cargo, Ship's Materials and Stores Burnt for Fuel. Cargo, ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of coals that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving shall be charged to the shipowner and credited to the general average.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	Add after « shall be credited to General Average » the words « and debited to the ship. »	No amendment.	No amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule X. (a) — Expenses at Port of Refuge, etc. When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.	Rule X. (a). — Same.	Rule X. — Expenses at Port of Refuge, Etc. (a) No amendment.	X. Approve lift heading. (a) No amendment.	X. Approve lift heading. (a) Add new second paragraph: « That, in practice, where a vessel is at any port or place in circumstances in which the wages and maintenance of crew during detention there for the purpose of repairs necessary for the safe prosecution of the voyage would be admissible in general average under Rule XI of the York/Antwerp Rules, 1924, and the vessel is necessarily removed thence to another port or place because such repairs cannot be effected at the first port or place, the provisions of Rule X (a) shall be applied to the second port or place as if it were a port or place of refuge within that Rule and the provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal. »	X. Approve lift heading. (a) No amendment.	X. Approve lift heading. (a) No amendment.	X. Approve lift heading. (a). No amendment.	X. Approve lift heading. (a). No amendment.	X. Approve lift heading. (a) No amendment.
Rule X. (b). — The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.	Rule X. (b). — The cost of discharging cargo from a ship, whether at a port or place of loading, call or refuge, shall be admitted as general average, when the discharge was necessary for the common safety or to enable damage to the ship, caused by sacrifice or accident during the voyage, to be repaired, if the repairs were necessary for the safe prosecution of the voyage.	(b) No amendment.	(b) No amendment.	No amendment.	(b) No amendment.	(b) No amendment.	(b) No amendment.	(b) No amendment.	(b) No amendment.
Rule X. (c). — Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all the storage charges (including fire insurance, if incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be	Rule X. (c). — Whenever the cost of discharging cargo from a ship is admissible as general average, the cost of reloading and storing such cargo on board the said ship, together with all storage charges on such cargo, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average.	(c) Approve U.S. amendment.	(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condem-	No amendment.	(c) Whenever the cost of handling or discharging cargo, fuel, or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel, or stores on board the ship, together with all storage charges (including insurance if reasonably incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's	(c) Approve Swedish amendment.	(c) Delete « including fire insurance if incurred » and insert « including any insurances if reasonably incurred. »	(c) No amendment.	(c) Approve Swedish amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.			nation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.		condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.				
Rule X. (d). — If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.	Rule X. (d). — Same.	(d) If a ship under average be in a port or place at which it is practicable to repair her so as to enable her to carry on the whole cargo, and if, in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them, shall be allowed in general average without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.	(d) Approve British amendment.	(d) Amendment as British	(d) No amendment.	(d) Delete « shall be payable in, etc. » and insert « shall be payable in accordance with Rule F.	(d) Propose last part shall read : — « The extra cost of such towage, transhipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be borne by general average and by the several parties to the adventure, as provided for by Rule F. »	(d) Approve British amendment.	(d) Approve British amendment.
Rule XI. — Wages and Maintenance of Crew in Port of Refuge, etc. When a ship shall have entered or been detained in any port or place under the circumstances, or for the purposes of repairs mentioned in Rule X, the wages payable to the master, officers and crew, together with the cost of maintenance of the same, during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted as general average. But when the ship is condemned or does not proceed on her original voyage, the	Rule XI. — Wages and Maintenance of Crew in Port of Refuge, Etc. When a ship shall have entered or been detained in any port or place under the circumstances, or for the purposes of the repairs, mentioned in Rule X., the wages payable to the master, officers and crew, together with the cost of maintenance of the same, during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted as general average. But when the ship is condemned or does not proceed on her original voyage, the wages and	Rule XI. — Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, Etc. (a) Wages and maintenance of master, officers and crew incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a). (b) When a ship shall have	Approve British amendment.	« Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc. (a) Wages and maintenance of master, officers and crew incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a). (b) When a ship shall have	Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc. (a) Wages and maintenance of master, officers and crew incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a). (b) When a ship shall have	During the prolongation of the voyage occasioned by the ship's putting into a port or place of refuge or by her return to the place of loading, the wages payable to the master, officers and crew, including additional allowances and social security charges properly borne by the shipowner, the cost of their maintenance, the fuel, lubricants, stores and OBJETS D'INVENTAIRE consumed, the port dues and charges incurred during the period of detention (réalé) until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted as general average, whenever such entry or return	When a ship shall have entered or been detained in any port or place under the circumstances, or for the purposes of repairs mentioned in Rule X, the wages and the cost of maintenance of the master, officers and crew and also the fuel and stores consumed during the prolongation of the voyage as from the commencement of the detention or of the deviation until the ship shall or should have been made ready to resume her normal operations or her voyage, shall be admitted as general average. But when the ship is condemned or does not proceed on her original voyage, the expenses incurred (in the	Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc. (a) Wages and maintenance of master, officers and crew incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a). (b) When a ship shall have	Wages and maintenance of Crew and other expenses bearing up for and in Port of Refuge, etc. (a) Wages and maintenance of master, officers and crew incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a). (b) When a ship shall have

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wages and maintenance of the master, officers and crew, incurred after the date of the abandonment of the voyage, shall not be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo wages and maintenance of crew, as above, shall be admitted as general average up to the date of completion of discharge.	maintenance of the master, officers and crew, incurred after the date of the ship's condemnation or of the abandonment of the voyage, shall not be admitted as general average.	entered or been detained in any port or place under the circumstances, or for the purpose of repairs mentioned in Rule X, the wages and maintenance of the master, officers and crew, fuel and stores consumed and port charges incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon the voyage, shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average and such port charges as are incurred during such repairs, unless payable solely as a result of the entering of such port or place. But when the ship is condemned or does not proceed on her original voyage, the expenses as above incurred after the date of the ship's condemnation or of the abandonment of the voyage shall not be admitted as general average. In the event of the condemnation of the ship or of the abandonment of the voyage before completion of discharge of cargo, the expenses incurred as above shall be admitted as general average up to the date of completion of discharge. (c) For the purposes of this Rule wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the articles of employment. (d) Overtime paid to the master, officers and crew for work or repairs, the cost of which is not allowed in general average, shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred. »		entered or been detained in any port or place under the circumstances, or for the purpose of repairs necessary for the common safety, or for the purpose of repairs mentioned in Rule X, the wages and maintenance of the master, officers and crew during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average unless these costs might reasonably have been avoided by discharging the master, officers and crew. When the ship is condemned or does not proceed on her original voyage, the period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge. Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in affecting repairs not allowable in general average. Port charges incurred during the extra period of detention shall likewise be admitted as general average, except that port charges incurred during repairs not allowable in general average only if they would have been payable in consequence of the detention, whether repairs were effected or not. (c) For the purposes of this Rule wages shall include all payments made to or for the benefit of the master, officers and crew,	takes place under the circumstances, or for the purpose of repairs mentioned in Rule X(1). But when the ship is condemned or does not proceed on her original voyage, the above allowances shall not be made after the date of the ship's condemnation or of the abandonment of the voyage, or of completion of discharge of the cargo when the abandonment of the voyage ship's condemnation or the abandonment of the voyage occurs before such completion (of discharge). However, the fuel, lubricants, stores and OBJETS D'INVENTAIRE consumed shall not be admitted as general average when they have been used for repairs not allowable in general average. No allowance of any kind shall be made in general average during the period employed exclusively in effecting work which is not necessary to enable the vessel to proceed upon her voyage.	circumstances stated above) after the date of the ship's condemnation or of the abandonment of the voyage, shall not be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, the expenses (incurred in the circumstances specified above) shall be admitted as general average up to date of completion of discharge. The wages allowable as general average shall include all sums paid to the master, officers and crew and also all expenses and additional charges in connection therewith payable by the shipowner by law in accordance with the terms of agreements. Overtime paid for work or repairs the cost of which is not allowable as general average shall only be admitted up to the amount of the sum saved as compared with the expenses which would have been incurred and admitted as general average if overtime work had not been done. No allowance shall be made for fuel and stores consumed in effecting repairs not allowable in general average.	entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or for the purpose of repairs necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge. Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average. Port charges incurred during the extra period of detention shall likewise be admitted as general average, except that port charges incurred during repairs not allowable in general average shall be admitted in general average only if they would have been payable in consequence of the detention, whether repairs were effected or not. (c) For the purposes of this Rule premiums of social insurance, contributions to pension funds, leave pay and similar payments for the benefit of the master, officers and crew shall be deemed to form part of their wages, whether such	entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or for the purpose of repairs necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, and shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge. Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average. Port charges incurred during the extra period of detention shall likewise be admitted as general average, except that Port charges incurred during repairs not allowable in general average shall be admitted in general average only if they would have been payable in consequence of the detention, whether repairs were effected or not. (c) For the purpose of this Rule wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the articles of employment, but

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					whether such payments be imposed by law upon the shipowners or be made under the articles of employment. Committee thinks British draft is not definite enough.			payments be imposed by law upon the shipowners or be made under the articles of employment of the crew.	overtime paid to the master, officers and crew for work or repairs, the cost of which is not allowed in general average, shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred.
Rule XII. — Damage to Cargo in Discharging, etc. Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.	Rule XII. — Damage to Cargo in Discharging, etc. Damage done to or loss of cargo necessarily caused in the act of discharging, storing, reloading and stowing, shall be made good as general average when and only when the cost of those measures respectively is admitted as general average.	No amendment.	No amendment.	No amendment.	No amendment.	Propose: « in consequence of handling, discharging, storing » instead of the words: « in the act of handling, etc. »	Amendment.	No amendment.	No amendment.
Rule XIII. — Deductions from cost of repairs.		The revision, if any, of this Rule is a matter for technical experts. The British Maritime Law Association, after consulting various experts, has submitted to the other branches a revised Rule. Whilst some branches have approved the British Revision other branches have decided in their turn to consult their own experts. This being the position no mention of the views of branches is included in this comparative table, but a supplement will be issued at a later date.							
Rule XIV. — Temporary Repairs. Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average; but where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the	Rule XIV. — Temporary Repairs. No deductions « new for old » shall be made from the cost of temporary repairs of damage allowable as general average.	Temporary Repairs. « Where temporary repairs are affected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average. Where temporary repairs of accidental damage are effected, the cost of such repairs shall be admitted as general average	Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average. Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average, without re-	Temporary Repairs. « Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average; but where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of	Temporary Repairs. « Where temporary repairs are effected to a ship at a port or place of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average. Where temporary repairs of accidental damage which are not necessary for the common safety are effected at a port or place of loading, call or refuge at which permanent re-	Propose replace the words: « are effected merely to enable the adventure to be completed » by the words: « but temporary repairs of accidental damage shall only be admitted as general average, inasfar as they are essential to enable the adventure to be completed and even in this case the cost of such repairs, etc... »	Delete second half of first paragraph « but where temporary repairs . . . . . not been effected there » and insert: — « but where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average, as provided for in Rule F, only up to the saving in expense which would have been incurred and allowed as general average, if permanent	Temporary Repairs. « Where temporary repairs are effected to a ship at a port or place of loading, call or refuge for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average. Where temporary repairs of accidental damage which are not necessary for the common safety are effected at a port or place of loading, call or refuge	Approve Danish amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
cost of such repairs shall be admitted as general average only up to the saving in expense which would have been incurred and allowed in general average had such repairs not been effected there. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average.		without regard to the saving (if any) to other interests but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there; but there shall be no allowance in general average for the cost of temporary repairs of accidental damage unless permanent repairs would have been practicable at the port of loading, call or refuge, and then only to the extent that such repairs were necessary to enable the adventure to be completed. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average. »	gard to the saving (if any) to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average.	such repairs shall be admitted as general average only up to the saving in expense which would have been incurred and allowed in general average had such repairs not been effected there without regard to the saving, if any, to other interests. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average. »	pairs would have been practicable, and general average expense is thereby saved, the cost of such temporary repairs shall be admitted as general average, but only up to the amount of general average expense avoided, and only if, and to the extent that, the temporary repairs were necessary to enable the adventure to be completed. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average. »		repairs had been effected there. However, if after the completion of the adventure the ship has resumed her navigation and her permanent repairs have not been effected within a period of six months, the amount of the temporary repairs allowable in general average, in accordance with the conditions expressed above, shall be reduced by 50 per cent. »	at which permanent repairs would have been practicable, and general average expense is thereby saved, the cost of such temporary repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the amount of general average expense avoided, and only if, and to the extent that, the temporary repairs were necessary to enable the adventure to be completed. No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average.	
Rule XV. — Loss of Freight. Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good. Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.	Rule XV. — Loss of Freight. Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.
Rule XVI. — Amount to be made good for Cargo Lost or Damaged by Sacrifice. The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the date of the arrival of the vessel or at the termination of the adventure where this ends at a place other than the original destination. Where goods so damaged are sold after arrival, the loss to be made good in general average shall be calculated by applying to the sound value on the date of arrival of the vessel the percentage of loss resulting from a comparison of the proceeds with the sound value on date of sale.	Rule XVI. — Amount to be made good for Cargo Lost or Damaged by Sacrifice. The amount to be made good as general average for damage or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the date of the arrival of the vessel or at the termination of the adventure.	Rule XVI. — Amount to be made good for Cargo Lost or Damaged by Sacrifice. « The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination. Where goods so damaged are sold the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.	Amount to be made good for Cargo Lost or Damaged by Sacrifice. The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination. When goods so damaged are sold after arrival and the amount of the damage has not been otherwise agreed, the loss to be made good shall be calculated by deducting from the net sound value on the last day of discharge the net proceeds realised at sale.	Approve British amendment.	Approve British amendment.	Approve British amendment, but delete second paragraph.	No amendment except replacing words « date of arrival » by last day of discharge. »	Approve British amendment.	Approve British amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule XVII. — Contributory Values. The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average. Passengers' luggage and personal effects not shipped under bill of lading shall not contribute in general average.	Rule XVII. — Contributory Values. The contribution to a general average shall be made upon the actual values of the property at the termination of the adventure, to which shall be added the amount made good as general average for property sacrificed; deduction being made from the shipowner's freight and passage-money at risk, of such port charges and crew's wages as would not have been incurred had the ship and cargo been totally lost at the date of the general average act or sacrifice, and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average. Passengers' luggage and personal effects, not shipped under bill of lading, shall not contribute to general average.	No amendment.	No amendment.	Add new second paragraph: — « Passengers' luggage and personal effects not shipped under bill of lading, mails and time-charterhire shall not contribute in general average. »	No amendment.	Propose add « and mails. »	No amendment.	Delete opening words and insert: « The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, such value, in the case of goods, to be based on the market selling value. To these values shall be added... »	No amendment.
No corresponding new Rule.	Rule XVIII. — Adjustment. Except as provided in the foregoing rules, the adjustment shall be drawn up in accordance with the law and practice that would have governed the adjustment had the contract of affreightment not contained a clause to pay general average according to these Rules.								

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule XVIII. — Damage to Ship. The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced cost of repairing or replacing such damage or loss, deductions being made as above (Rule XIII.) when old material is replaced by new. When not repaired, the reasonable depreciations shall be allowed, not exceeding the estimated cost of repairs. Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.	(There was no corresponding rule.)	No amendment.	No amendment.	No amendment.	Undecided, may approve Danish Amendment.	No amendment.	No amendment.	Add following at end of Rule: « provided that where it is estimated that greater proceeds of sale would have been realised but for the damage or loss caused by the general average act the allowance in general average for such damage or loss shall not be less than the difference between the estimated greater proceeds and the proceeds actually realised. »	No amendment.
Rule XIX. — Undeclared or Wrongfully Declared Cargo. Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved. Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.	(There was no corresponding rule.)	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.	No amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule XX. — Expenses Bearing up for Port, etc. Fuel and stores consumed, and wages and maintenance of master, officers and crew incurred, during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X. (a). Fuel and stores consumed during extra detention in a port or place of loading, call or refuge shall also be allowed in general average for the period during which wages and maintenance of master, officers and crew are allowed in terms Rule XI, except such fuel and stores as are consumed in effecting repairs not allowable in general average.	(There was no corresponding rule.)	Combined with Rule XI.	Combined with Rule XI.	Combined with Rule XI.	Combined with Rule XI.	Combined with Rule XI.	Combined with Rule XI.	Combined with Rule XI.	Combined with Rule XI.
Rule XXI. — Provision of Funds. A commission of 2 per cent. on general average disbusements shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average. The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.	(There was no corresponding rule.)	Approve U.S. amendment.	Provision of Funds. A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.	No amendment.	Reduce commission to 1 (one) per cent, otherwise no amendment.	Propose a new first paragraph. A commission of 2 per cent. on general average disbursements made before the discharge of the cargo or the termination of the adventure (Rule XVI), but with the exception of the wages and victuals and — in order to make it quite clear — of the consumption of fuel or stores on board at the time of the sacrifice, shall be allowed in general average.	Approve U.S. amendment.	Prefer U.S. amendment, but would approve Swedish amendment if necessary.	Approve Swedish amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
Rule XXII. — Interest on Losses made good in General Average. Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the legal rate per annum prevailing at the final port of destination at which the adventure ends, or where is no recognised legal rate, at the rate of 5 per cent. per annum, until the date of the General average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.	(There was no corresponding rule.)	Rule XXII. — Interest on Losses made good in general average. « Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund. » (Resolution of International Law Association, September, 1948.)	Approve British amendment.	Approve British amendment.	Interest on losses made good in general average. Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund. However, if a party unduly delays the settlement of general average no interest shall be made good to him for the time the settlement is thus delayed.	Approve British amendment.	Approve British amendment.	Approve Swedish amendment.	Approve British amendment.
Rule XXIII. — Treatment of Cash Deposits. Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid into a special account, earning interest where possible, in the joint names of two trustees (one to be nominated on behalf of the shipowner and the other on behalf of the depositors) in a bank to be approved by such trustees. The sum so deposited, together with accrued interest, if any, shall be held as security for and upon trust for payement to the parties entitled thereto of the general average, salvage or special charges payable by the cargo in respect of which the deposits have been collected. The trustees shall have power to make payments on accounts or refunds of deposits which may be certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.	(There was no corresponding rule.)	Approve U.S. amendment.	Treatment of Cash Deposits. Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges such deposits shall be paid into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors, in a bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.	No amendment.	Treatment of Cash Deposits. Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without delay into a special account in the joint names of a representative nominated on behalf of the Shipowner and a representative on behalf of the Depositors, in a Bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account of refunds of deposits may be made if certified to in writing by the Average Adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.	Rule XIII. — Treatment of Cash Deposits. Provisional Adjustments. The first two paragraphs to remain as they are. Third paragraph : However, the adjuster or adjusters appointed in accordance with legal procedure or by agreement of the parties expressed in the general average bond, shall have power to authorise the Trustees to make payments on account or refunds of deposits, after issuing to the parties an interim or provisional adjustment. For this purpose the parties must deliver promptly to the adjusters the documents for which they ask. The adjusters shall be obliged to state in their adjustment the reasons for any delay in the drawing up thereof or for any failure to issue interim or provisional adjustments. Fourth paragraph stands as it is.	Approve U.S. amendment.	Approve Swedish amendment.	Approve U.S. amendment.

York-Antwerp Rules, 1924	York-Antwerp Rules, 1890	Great Britain	United States	Holland	Sweden	Belgium	France	Denmark	Norway
New Lettered Rule (proposed by France).					Disagree with French proposal.		« No general average adjustment shall be drawn up unless the damage, losses and expenses allowable as general average in favour of the ship and of the cargo or of one of them amounts to at least £ 1,000 or the equivalent thereof in any other currency. »		Disagree with French proposal.
New Numbered Rule (proposed by Belgium).						Plurality of General Averages during one same voyage. Complex operations. One single general average adjustment shall be drawn up for the whole voyage in the event of there having occurred at distinct intervals, common perils each one of which has necessitated sacrifices admissible as general average. All the parties concerned in the sacrifice shall contribute to each one of them — on the basis of the values defined above — in respect of the property existing at the time of the occurrence of each one of these successive perils which necessitated such sacrifices. It is understood, however, that the value contributory to the sacrifice in respect of previous peril shall be reduced by the contribution necessitated by the sacrifice in respect of subsequent peril.			
New Numbered Rule (proposed by Denmark).									The Danish Committee suggests that consideration should be given to the allowance in general average of costs of furnishing security, loss of interest on cash deposits, etc.

LUNDI, 19 SEPTEMBRE 1949

MONDAY, 19th SEPTEMBER, 1949

SEANCE INAUGURALE

INAUGURAL SESSION

La Conférence est ouverte à 10 heures dans la grande salle de la « Kamer van Koophandel en Fabrieken voor Noord-Holland », à la Bourse d'Amsterdam.

The Conference opened at 10 A.M. in the assembly room of the « Kamer van Koophandel en Fabrieken voor Noord-Holland », at the Royal Exchange, Amsterdam.

M. A. Lilar, président du Comité Maritime International. — Je déclare ouverte la XXIe conférence internationale de droit maritime.

Je prie Monsieur le Ministre de la Justice des Pays-Bas de bien vouloir prendre la parole.

Son Exc. **M. Wyers,** Ministre de la Justice des Pays-Bas. — C'est avec un vif plaisir que j'ai accepté l'aimable invitation de l'Association Néerlandaise de Droit Maritime, chargée de l'organisation de votre Conférence, de vous adresser la parole à cette séance d'ouverture. J'ai accepté cette invitation avec joie d'autant plus qu'elle m'offre l'occasion de saluer un vieil ami. Dès sa naissance, il y a plus de cinquante ans, notre pays connaît votre Comité ; pendant toute son existence les Néerlandais ont pris une part très active à vos travaux. Nous sommes très heureux que votre Comité ait bien voulu pour la troisième fois choisir notre capitale comme lieu de réunion, nous témoignant ainsi son appréciation de l'estime que nous lui portons.

Il n'est guère étonnant que nous portions un grand intérêt à votre activité. Nous sommes une nation de navigateurs et quoique petite puissance nous avons toujours largement participé au commerce international. C'est

peut-être l'ensemble de ces circonstances qui nous a fait reconnaître au premier abord la nécessité de régler par la voie internationale les questions qui se posent dans le domaine du droit maritime.

Le but important que votre Comité poursuit ne saurait à lui seul justifier le vif intérêt que nous portons à votre travail. Cet intérêt se base également ou plutôt principalement sur l'efficacité de ce travail et sur les résultats que le Comité a obtenus. Au cours des années, votre Comité a traité et discuté un grand nombre de sujets et à maintes reprises vos Conférences ont été suivies par des conventions internationales. Je crois ne pas trop m'avancer quand je soutiens que sans votre activité ces conventions n'auraient pas été conclues.

Si l'on considère le caractère de votre activité il me semble qu'on peut distinguer deux aspects différents : activité d'une part positive, d'autre part négative.

La fonction positive a consisté à éveiller l'intérêt, à stimuler les idées, à prendre des initiatives.

Partout dans le monde les théoriciens sont convaincus de l'utilité d'une réglementation internationale dans le domaine du droit maritime ; pour en obtenir des résultats pratiques, il faut mettre les gouvernements sous haute pression. C'est vous qui vous êtes chargés de cette pression en stimulant la fondation d'associations de ceux qui s'occupent du droit maritime ou qui s'y intéressent, et en établissant le contact international entre les érudits et les experts en ce domaine. Dans votre milieu les meilleurs connaisseurs étudient et commentent certains sujets et problèmes. Ainsi se forme une opinion internationale, facteur d'intérêt primordial, qui, par son existence même, nous permet d'établir des conventions internationales.

Voilà, à mon avis, les facettes principales du côté positif de votre activité.

La branche négative, qui consiste principalement à prévenir des échecs, n'en est pas moins importante.

Vu la difficulté à surmonter certaines résistances, la conclusion de traités internationaux reste une affaire des plus épineuses. L'évolution du droit varie selon les différents pays, et il est difficile d'adapter le régime de droit national au règlement universel.

Mais il y a encore d'autres dangers qui menacent la réalisation du droit uniforme. Il arrive qu'une puissance craint que telle formule, tel règlement, nuise à ses propres intérêts. Puis, il y a toujours le fantôme du

malentendu, de la confusion d'idées, provenant de la différence des langues et de la manière de penser, qui risque de provoquer des accidents inattendus. Finalement les tentatives pour en venir aux accords internationaux échouent fréquemment du fait que l'on vise trop haut, que l'on veut trop atteindre.

Le travail de votre Comité tend à restreindre et même à supprimer ces causes possibles d'avortement. Les difficultés qui pourraient surgir vous sont bien connues et vous tâchez de les écarter. Prévoyant les conflits qui pourraient se produire entre un projet de convention et le droit national de certains pays, vous cherchez les formules aptes à créer l'harmonie.

Si l'on craint qu'un règlement en préparation ne porte préjudice aux intérêts nationaux, vous ne pouvez pas toujours écarter les dangers qui pourtant sont quelquefois imaginaires. En traitant vos matières, ces craintes peuvent être mises à l'épreuve. S'il paraît que les experts et les intéressés tiennent à persister, les gouvernements ne manqueront pas d'être impressionnés et de ce fait hésiteront à prononcer leur véto.

Puis, les études et les dispositions de votre Comité créent une base solide pour l'entente internationale et par cela contribuent à prévenir les malentendus.

Finalement une fonction très importante de votre association consiste à démontrer les limites du réalisable. Les discussions verbales et écrites signalent les zônes dangereuses, où les intérêts ne sont guère conciliables, le progrès du droit n'étant pas suffisamment avancé, alors que les difficultés techniques empêchent l'accord désiré. Ainsi vous prévenez les conflits et les échecs diplomatiques.

Les gouvernements, mais aussi tous ceux qui sont intéressés à la navigation maritime, vous sont reconnaissants du fait que votre Comité existe et travaille, et qu'un grand nombre de problèmes y sont étudiés et résolus.

Au nom du gouvernement néerlandais je vous souhaite de tout cœur la bienvenue dans notre pays. J'exprime les vœux les plus sincères pour la réussite de votre conférence. J'espère qu'elle contribuera, comme les précédentes, au développement et à l'unification du droit maritime si profondément désirés par votre Comité.

M. Albert Lilar, président du Comité Maritime International. — Mesdames, Messieurs, M. le Ministre de la Justice vient de consacrer l'importance de cette assemblée et du but en vue duquel elle s'est réunie en nous souhaitant la bienvenue dans ce pays ami et hospitalier, au nom du Gouvernement de S.M. la Reine des Pays-Bas. Il a non seulement pro-

noncé des paroles propres à stimuler notre foi dans les destinées de notre œuvre, mais il a eu la grâce de se servir, pour nous les communiquer, avec toutes les nuances et les parures dont elle peut s'orner, d'une des langues en usage dans nos conférences internationales. Vous me permettez, j'en suis sûr, de le remercier dans la langue du pays qui nous accueille et qui est la sienne. En cela, j'obéis à une tradition dont mon illustre prédécesseur, le président Louis Franck, a jeté les bases.

Excellentie en geëerde Collega,

Als voorzitter en tolk dezer vergadering, is mij het voorrecht gegeven U onzen dank te betuigen voor de diepdoordachte en verheven rede waarmede U de XXIe Conferentie van het Comité Maritime International heeft verwelkomd en haar zittingen heeft ingeleid.

Dat de Nederlandse Regering heeft gewild dat een harer leden onze openingszitting door zijn aanwezigheid zou opluisteren, stemt ons tot diepe erkentelijkheid en sterkt ons in de overtuiging dat onze werking aan dringende verzuchtingen beantwoordt en de internationale handelsbetrekkingen bevordert.

Welk land beter dan Holland, welke gezant bevoegder dan diens Minister van Justitie, kunnen hiervan getuigenis afleggen ? Holland, heerlijke vrucht van onversaagde strijd, met de zee, geboren uit ononderbroken overwinningen op dit element, dat ook wij zoeken te bedwingen ten bate van allen ; Holland, het land van Grotius, onze helderziende baanbreker !

En dat het Amsterdam weze die ons zijn alombekende gastvrijheid biedt, is ook een aanwijzing van betekenis.

« Die grote stad, die is gebouwd op palen », werd ook op de golven veroverd en prijkt thans in de noordelijke gewesten als één der fierste scheppingen van de mens. Zinnebeeld van wilskracht, arbeid, voorspoed, orde en smaak, geworden uit de zee en door haar gevoed, is zij wel de uitgelezen plek voor onze werkzaamheden. Moge het magistraat dezer heerlijke stad, alsook de Kamer van Koophandel en Fabrieken voor Noord-Holland, in wier vergaderzaal wij thans verenigd zijn, ook onze diepgevoelde dankbetuiging aanvaarden.

Excellences, Mesdames, Messieurs,

Que de souvenirs cette assemblée ne fait-elle pas revivre !

Septembre 1904 : Le Comité Maritime International, âgé de sept ans à peine, se réunit pour la première fois en cette ville. Autour des trois fondateurs belges : Auguste Beernaert, Charles Le Jeune, Louis Franck, aux

côtés de tant d'autres disparus illustres : Lyon-Caen, Autran, Paul Govare, Charles Mac Arthur, Miller, Phillimore, Francesco Berlingieri, Vivante, d'autres encore, et dont tant de noms se perpétuent en nos assemblées non seulement par le souvenir, mais par la présence réelle, amie et combien précieuse de leurs continuateurs, j'aperçois le grand juriste de droit international P. M. C. Asser, que la Reine, à ce moment, vient d'élever au rang de Ministre d'Etat. Je vois son fils, C.D. Asser Jr, secrétaire du Comité Néerlandais de Droit Maritime, père de celui en qui nous saluons ici même l'un des organisateurs les plus zélés de la présente Conférence. Près de ces glorieux ouvriers de la première heure, je remarque la présence d'un autre grand ami de notre œuvre : B.C.J. Loder, illustration du barreau, de la magistrature et du droit international, celui-là même qui fut président de la Cour Permanente de Justice Internationale et qui présida le 2e Conférence d'Amsterdam en août 1927. Autour d'eux se groupent le sénateur Rahusen, président de la Conférence de 1904, les professeurs Molengraaf et Visser, et tant d'autres personnalités éminentes du droit et des affaires dont le pays qui nous reçoit, peut justement s'enorgueillir.

Il me plaît de souligner ici la part que la Hollande a prise dans la grande œuvre d'unification du droit international et maritime, et j'éprouve, pour ma part, un vif plaisir à constater combien cette belle tradition est demeurée vivante dans ce pays.

Il n'est qu'à voir la participation brillante des Pays-Bas à notre assemblée ; il n'est qu'à se rappeler l'extraordinaire activité déployée par ses membres au cours des longs et difficiles travaux qui ont précédé cette Conférence ; il n'est qu'à constater l'intérêt et la sollicitude des milieux d'affaires néerlandais compétents à l'endroit de nos travaux ; il n'est, enfin, qu'à réaliser ce que représente de science, d'autorité et de dévouement à notre cause, la haute personnalité de M. le Professeur Offerhaus, qui préside aux destinées de l'Association Néerlandaise et que je vais avoir le grand plaisir de proposer à vos suffrages comme président de cette XXIe Conférence.

A voir la qualité et le nombre des délégations qui se trouvent réunies ici, je crois pouvoir affirmer que cette Conférence s'annonce comme l'une des plus importantes que le Comité Maritime International aura tenues tout au long de son existence plus que cinquantenaire. Aussi bien, l'ordre du jour justifie-t-il ces marques d'intérêt.

Avant d'évoquer le point principal de cet ordre du jour — le statut de

l'avarie commune — je salue les observateurs des pays qui ont exprimé le désir enthousiaste de collaborer à notre entreprise, mais qui n'ont pas disposé du temps nécessaire pour constituer, dans leur pays respectif, des associations groupant les représentants de toutes les branches du négoce maritime ; leur présence ici témoigne de la force croissante de notre institution et je forme le vœu que leurs efforts aboutissent rapidement.

Mon souhait de cordiale bienvenue s'adresse aussi au distingué représentant de l'International Chamber of Shipping que nous nous réjouissons de pouvoir compter parmi nos plus fidèles amis.

But may I be permitted to extend a particularly hearty welcome to the delegation of the United States at this Conference. We rejoice at the interest displayed in our labours by the competent circles of this great and friendly maritime nation. This interest manifested itself not only by the exceptional importance of the delegation, conspicuous alike by their number and their quality but also by the efficient, and I may say, decisive part our American friends have taken in the preparatory work for the revision of the York & Antwerp Rules. Without their cooperation and adhesion, the task we have undertaken could hardly be brought to a successful termination. My keen wish is that the confidence they put in us on this occasion may lead to a permanent and fruitful cooperation between our continents, across that ocean, « mare liberum » — the sea which joins the nations it divides —, which all of us want to be ruled by a single authority : that of a uniform law for the common good.

Citer en ce moment les noms et les mérites de tous ceux qui ont collaboré aux travaux que votre Conférence aura pour tâche d'étudier, m'exposerait au risque d'en oublier, tant les bonnes volontés et les dévouements pour en assurer le succès ont-ils été empressés et nombreux.

Je n'en nommerai donc que deux : celui sous l'égide duquel s'est accompli l'énorme effort de l'Association Britannique dans l'élaboration du statut nouveau de l'avarie commune : notre vénéré président d'honneur, Sir Leslie Scott. Le second, mon très estimé ami et collègue au Gouvernement, M. le Ministre Albert Devèze, président de l'International Law Association. Nous lui devons un tribut tout particulier.

Comme vous le savez, c'est, en quelque sorte, l'International Law Association qui a tenu notre Comité sur les fonts baptismaux. Depuis lors, les rapports n'ont cessés d'être étroits et cordiaux. Mais faut-il que le filleul ait mérité la confiance de sa marraine pour que celle-ci lui fît le lourd et périlleux honneur de lui confier la charge de réformer une insti-

tution qui était et demeure un de ses plus purs titres de gloire ! Aussi le Comité Maritime International espére-t-il pouvoir lui offrir en échange, à l'issue de cette conférence, un code de l'avarie commune remis à neuf et assuré d'une adhésion mondiale, que l'International Law Association, dans son Congrès prochain de Copenhague, pourra sceller de son sceau sous le titre de « Règles d'York et d'Anvers 1950 ».

La matière de l'avarie commune est nouvelle pour nous, en ce sens qu'à une exception de peu d'importance près, elle n'a jamais fait l'objet des travaux de notre Comité. Et quoiqu'il s'agisse d'un des sujets importants du droit maritime, cette particularité s'explique notamment par la considération que les Règles n'ont point eu besoin d'être sanctionnées par un traîté pour gagner un respect international ; le référence des parties y a suffi.

Il est donc d'autant plus remarquable de constater qu'il n'a pas fallu douze mois aux divers rouages du Comité Maritime International pour proposer à vos délibérations un texte complètement révisé, qui, d'ores et déjà, se trouve assuré de l'adhésion la plus large, grâce à la consultation préalable des diverses Associations affiliées.

Une fois de plus, nos méthodes de travail se sont révélées pleinement efficaces: et qu'une institution comme l'International Law Association ait eu la grâce d'en reconnaître la valeur, avec tout le prestige attaché à ce geste, leur vaut une éclatante consécration.

Disons même que cette expérience nouvelle nous a permis de les perfectionner, en concentrant aux mains d'une Association — celle de Grande-Bretagne, en l'occurrence — le dur travail de compilation, de distribution et de coordination qu'implique l'étude d'un sujet aussi vaste.

Mesdames, Messieurs, parmi tous les biens que nos prédécesseurs nous ont légués, le plus précieux consiste certes dans la pensée fondamentale, capitale, toujours actuelle, que le droit doit obéissance à la réalité.

C'est cette pensée qui soutient tout notre édifice, qui anime tout notre organisme, qui inspire toutes nos démarches. C'est d'elle qu'est issue la conception même de notre action et l'organisation de nos rouages, telles qu'elles furent imaginées, dès 1896, par l'esprit lucide et clairvoyant de Louis Franck. C'est d'elle que procèdent ces Associations Nationales — abeilles travailleuses de notre ruche — au sein desquelles les intéressés directs — armateurs, assureurs, expéditeurs, marchands, banquiers, dispacheurs, — jouent un rôle prépondérant, les juristes ne leur prêtant

assistance qu'afin de mettre le droit en concordance avec leurs besoins. Principe essentiel au succès de nos entreprises et que, sous peine de mourir, nous devons respecter. Pensez-vous que les Gouvernements eussent contresigné nos projets, que les Parlements les eussent ratifiés, s'ils n'avaient eu la certitude qu'ils répondaient à des besoins véritables ; or, qui, mieux que les intéressés eux-mêmes eussent pu prendre conscience de ces besoins ?

C'est encore le même esprit réaliste qui a inspiré cette organisation du travail par échelons — Association Nationale — Bureau Permanent — Conférence — et qui motive les incessants échanges entre eux.

Certes, cette méthode exige un effort, une vigilance de tous les instants. Elle ne s'accomode guère de longs discours ou de résolutions, plus ou moins exaltantes, votées dans l'euphorie des fins d'assemblée.

Ne l'avons-nous pas vu donner, au contraire, toute la mesure de son excellence, grâce à l'expérience que nous venons d'en faire en mettant à l'étude, entre deux conférences internationales et dans le silence des bureaux et des cabinets, un des problèmes les plus techniques et les plus ardus que puisse susciter l'aventure maritime ?

Une autre règle d'or nous a appris à avancer avec prudence, à ne jamais mettre les pieds — comme le disait le président Beernaert en ouvrant la première Conférence d'Amsterdam — sur un terrain dont la solidité n'ait été éprouvée au préalable. J'ai la profonde conviction que le succès du Comité Maritime International réside dans la mesure qu'il a su observer, dans la puissance du frein qu'il a su mettre à ses ambitions. A quoi bon légiférer dans le vide, à quoi bon proposer aux peuples des conventions dont ils ne reconnaissent point l'utilité ?

J'admets que le rôle d'information et de persuasion que nous pouvons remplir à cet égard n'est pas négligeable, pourvu qu'il demeure toujours subordonné à la mission qui nous vaut d'exister et qui est de tendre vers l'unification de la loi internationale, là et seulement dans la mesure où les besoins des échanges par mer le réclament. Voilà pourquoi j'aime la formule qui introduit tous nos textes et qui, chaque fois, restreint délibérément le champ de l'unification à « certaines règles » dans la matière envisagée.

Oh, je sais bien que le désir de perfection hante notre esprit toujours insatisfait, mais je sais aussi que la poursuite de cette chimère s'avère souvent fatale.

Soyons réalistes. Bornons-nous à l'essentiel et efforçons-nous d'apporter

l'ordre et l'unité, la stabilité et la sécurité, dont l'action est si bienfaisante, partout où c'est possible, même si les moyens proposés ne sont en soi point parfaits, même si notre nostalgie d'absolu n'y trouve pas à s'assouvir. Ce qui importe, c'est que tous ceux qui se trouvent engagés dans la branche devenue si essentielle de l'activité humaine — les échanges par delà les mers — sachent à quoi s'en tenir. Croyez-moi, ce sentiment de sécurité fait plus pour le bien-être et la paix dans le monde que la proclamation des plus beaux principes.

C'est dans cet esprit que je vous convie à aborder les problèmes dont votre Conférence aura à s'occuper. Je suis à cet égard d'autant plus rassuré que vous avez déjà donné maints témoignages de cette volonté réaliste de coopération internationale au cours des travaux préparatoires à la rédaction du nouveau code de l'avarie commune.

Déjà, le projet soumis à vos délibérations constitue un compromis ; déjà, pas mal d'intéressés ont sacrifié leurs préférences ; déjà, la Commission Internationale qui en a adopté le texte, a-t-elle fait taire les préjugés. Nous pouvons donc envisager avec confiance l'issue du débat qui va s'engager en nous disant que ce que le monde attend de nous, c'est que nous tombions d'accord sur un texte, même si, dans la rigueur des principes, il se trouvait qu'il n'est pas exempt de critiques.

Nous pouvons avoir confiance en nos méthodes. Nous les avons créées et nous les avons éprouvées. Et si nous y restons fidèles, ce n'est pas seulement parce qu'elles nous ont procuré des satisfactions substancielles dans le passé, c'est aussi parce que nous avons la conviction que, grâce à elles, nous pourrons contribuer, lentement, patiemment, mais avec la certitude du succès, à la sécurité et à la paix dans notre monde. Car cette sécurité et cette paix ne s'obtiennent que par la souveraineté du droit dans les relations entre les peuples.

Que ceux qui trouvent la progression pénible et le succès lent à venir, se disent que le salut n'est pas le fruit facile d'harmonieuses abstractions, mais qu'il ne se gagne que par la persistance et la multiplicité d'efforts opiniâtres, dont aucun, si modeste soit-il, n'est indigne de servir.

Mesdames, Messieurs, je reçois à l'instant un télégramme par lequel M. Spitzen, Ministre des Transport des Pays-Bas, prie l'assemblée d'excuser son absence en raison d'une conférence particulièrement importante qui le retient éloigné de nos travaux. Je prie son collègue, Monsieur le Ministre de la Justice, de vouloir bien exprimer nos regrets et de saluer

de la part de notre conférence M. le Ministre des Transports des Pays-Bas.

ELECTION DU PRESIDENT DE LA CONFERENCE
ELECTION OF THE PRESIDENT OF THE CONFERENCE

M. le président Lilar. — Nous devons maintenant procéder à l'élection du Président de la XXIe conférence.

J'ai l'honneur de proposer à vos suffrages M. le Professeur Offerhaus, Président de l'Association néerlandaise de droit maritime *(Applaudissements)*.

Mesdames, Messieurs, je ne puis que me joindre à vos acclamations pour exprimer la satisfaction avec laquelle nous accueillons l'élection de M. le Président Offerhaus.

Je le prie de vouloir bien prendre immédiatement la présidence de l'assemblée.

M. Offerhaus prend place au fauteuil présidentiel.

M. Offerhaus président de la Conférence. — Monsieur le Président du Comité Maritime International, Monsieur le Ministre, Mesdames, Messieurs, vous m'avez fait le très grand honneur de proposer à la XXIe conférence du Comité Maritime International de me nommer président, eu égard au fait que l'Association Néerlandaise a le plaisir d'accueillir la conférence dans sa capitale. Je suis extrêmement reconnaissant de la proposition que vous a faite Monsieur le Président et je remercie la conférence de son adhésion. Vous avez sans doute cru, Monsieur le Président, puisque vous avez voulu honorer notre pays et l'Association Néerlandaise, qu'il était impossible de charger un être moral de la présidence, qu'il n'y avait d'autre moyen, pour faire un geste correspondant à vos intentions, que de me charger de cette tâche. Dans cet esprit j'accepte la charge ; je la remplirai de mon mieux, en comptant sur vous pour m'assister autant qu'il est nécessaire *(Applaudissements)*.

ELECTION DU BUREAU DE LA CONFERENCE
ELECTION OF THE OFFICERS OF THE CONFERENCE

M. le Président Offerhaus. — Mesdames, Messieurs, nous devons maintenant procéder à l'élection du Bureau de la conférence. Je vous propose de nommer comme Vice-présidents les chefs de délégation dont les noms suivent :

M. Boeg, Danemark. M. Keating, Etats-Unis. M. Ripert, France. M. Berlingieri, Italie. M. Alten, Norvège. M. Bagge, Suède.

Comme secrétaires de la conférence, je propose :

MM. Carlo van den Bosch, J. T. Asser, Baron van der Feltz, M. Warot, O. Houston, H. L. Dor. *(Applaudissements unanimes).*

Puisque vous ratifiez ce choix, je considère le Bureau comme constitué.

Mesdames, Messieurs, au nom de l'Association néerlandaise de droit maritime, je veux, avant tout, me faire l'interprète de la joie et de la fierté qu'elle éprouve en accueillant la conférence. Nous espérons que cette conférence ne tardera pas à se manifester comme une réunion utile et sérieuse ainsi que comme une occasion excellente de faire la connaissance de ce pays et de ce peuple et de renouveler les liens établis auparavant.

Nous nous réjouissons, Monsieur le Ministre de la Justice, que le Gouvernement des Pays-Bas ait cru que la seconde réunion du Comité Maritime International d'après-guerre fut assez importante pour que vous participiez à la séance d'ouverture. Puisse votre présence magnifier les deux qualités de l'œuvre du C.M.I., à savoir celle de son fondement sur les intérêts du commerce, de la navigation et des assurances maritimes, et celle de la construction de l'édifice d'unification dont s'occupent les juristes.

Je vous remercie en particulier, Monsieur le Ministre, de votre discours important et instructif, qui me remémore notre première rencontre, il y a plus de 30 ans, dès laquelle vous m'avez maintes fois enrichi de votre érudition et de votre amitié.

Le Comité se laissera guider par vos idées sur l'unification et il ne tardera pas une seule heure, puis-je dire, à les appliquer.

Il y a longtemps que M. Louis Franck, qui fut l'un des fondateurs et président du Comité, a dit que c'était « l'homme de la pratique » qui devait dicter la solution » et le jurisconsulte « qui devait tenir la plume ». Il me semble qu'à travers le temps ces deux fonctions se sont entremêlées, que plus qu'autrefois les juristes en rédigeant et en interprétant les règles et en donnant les jugements s'occupent des nécessités du commerce et de la vie sociale, tandis que d'autre part les sociétés commerciales s'accoutûment à engager des collaborateurs juridiques. Il est donc inévitable que la loi et les conventions internationales constituent une synthèse de plus en plus idéale de ce qui est d'usage entre transporteurs, chargeurs, assureurs et de ce qu'exigent la morale et le droit.

A notre vif regret, MM. les bourgmestres d'Amsterdam et de Rotterdam se voient empêches par leurs devoirs administratifs d'être présents à cette séance. Pourtant, je veux remémorer les grands ports des Pays-Bas qui après avoir souffert de la fureur teutonique, se rétablissent peu à peu et qui démontrent pouvoir contribuer au « bonheur de ce monde » — selon la poétique expression de l'imprimeur anversois Plantin — et au commerce international qui est à la base des travaux du Comité.

Les deux villes travaillent sur un vaste terrain qui englobe beaucoup plus que le droit maritime international, droit que leurs fonctionnaires n'appliqueront jamais et sur lequel leurs Conseils municipaux n'auront pas à statuer. Toutefois nous avons cru que le droit privé qui gouverne la navigation est d'une telle importance pour le développement pacifique et efficace des ports qu'ils nous faudrait leur révéler ce que signifie l'œuvre d'unification. Nous sommes infiniment reconnaissants aux deux municipalités de la façon dont elles ont répondu à notre importunité par des invitations que la Conférence a acceptées avec gratitude.

J'y joins l'expression de notre reconnaissance à M. le Commissaire de la Reine de la Province de Noord-Holland qui a bien voulu se faire représenter à cette séance.

Je tiens à remercier M. le Président de la Chambre de Commerce qui a respecté une tradition en cédant la grande salle pour nos séances. Nous savons que vous, Monsieur van Eeghen avec M. le Secrétaire Greup, tous les deux versés dans le droit et les affaires commerciales, vous vous intéressez vivement à la codification du droit maritime.

Nous regrettons l'absence de votre ancien président, M. Heldring, membre permanent du Comité, qu'il a appuyé pendant presque cinquante ans, et dont il fut Pésident du Comité de réception lors de la XVIe Conférence.

Les fenêtres émaillées au-dessus de ma tête montrent à gauche les noms de la concorde, de la puissance, de la force, à droite ceux de la joie, de l'érudition et de la modération (toutes les trois indispensables pour les conférences) et au milieu le bon droit. Il est évident que le commerce apprécie la qualité du droit et qu'il ne se contente pas du droit sec. Ailleurs on voit le Commerce orné d'une balance mais il lui manque l'emblème d'impartialité du droit que porte Thémis ornée de la balance et du bandeau. Nous voilà donc toujours en concurrence.

L'association néerlandaise est fière de pouvoir accueillir la Conférence

mais elle se rend compte qu'il était un peu hardi de lancer l'invitation. Les Pays-Bas n'ont pas encore surmonté les sinistres de la guerre. Sa fortune a beaucoup souffert, l'ennemi a pillé les hommes et les biens et nous portons encore les traces de la lutte pour la liberté surtout celles des huit derniers mois de la guerre.

Depuis on a bien travaillé, et, de notre point de vue, il semble que nous jouissons d'une paix sociale satisfaisante. Vous en jugerez au cours de cette semaine. En tous cas, et à quelque Conférence internationale que ce soit, les visiteurs étrangers ne manqueront pas de méditer sur l'existence de nos relations mouvementées avec les pays qui « s'enroulent autour de l'équateur » et avec les territoires dans l'hémisphère occidental.

Les Pays-Bas, dont les experts en droit maritime ont participé dès le début aux travaux du C.M.I., espèrent pour leur part contribuer aux résultats de cette Conférence.

Le C.M.I. s'occupera en partie des mêmes matières que la XXme Conférence d'Anvers ; d'autre part, elle traitera de questions nouvelles.

La XXe Conférence fut encore un peu caractérisée par l'orientation nécessaire après la guerre, dix ans s'étant écoulés depuis la XIXe de l'année 1937.

Maintenant, il importe d'approfondir quelques matières, comme les Règles d'York et d'Anvers sur l'avarie commune destinées à être soumises à l'I.L.A. pour être arrêtées comme droit contractuel, tandis que d'autres seront préparées pour les Conférences diplomatiques comme d'ordinaire.

Pour toutes ces matières, il est évident que les règles uniformes, une fois établies, ne sont jamais destinées à l'éternité, que les situations se modifient toujours et que la loi doit donc s'y adapter. A côté de l'extension de notre champ d'activité reste toujours la tâche de labourer les terrains déjà cultivés qui risqueraient de subir la stérilité et le déclin.

Il y a des règles satisfaisantes comme celles sur l'Abordage et le Sauvetage qui valent toujours et qui justifient l'existence de notre organisation.

Il y a des règles très utiles comme celles sur l'avarie commune qui doivent être revisées de temps en temps.

Il y en a aussi comme celles sur la limitation de la responsabilité qui ont été acceptées courageusement par les uns ou avec hésitation par les autres et qu'un autre encore a rejeté, règles qui doivent être réexaminées, sans toutefois abandonner leur noyau précieux et la construction juridique qui gardent leur valeur.

Pour toutes ces règles l'opportunité d'une unification est admise dès l'abord, mais elles ne couvrent pas tout le droit maritime. Comment donc étendre le champ d'activité ?

Personnellement j'ai toujours idéalisé de pouvoir fixer pour ainsi dire mathématiquement la mesure, les formes et l'étendue territoriale dans lesquelles le droit doit être unifié, de fixer donc le juste équilibre du droit interne et du droit international codifiés.

Nous disposons de différentes méthodes d'unification.

Si les contrastes des lois nationales sont essentiels, il faudra se contenter de l'unification des règles de conflit de lois, en indiquant la loi interne applicable, avec ou sans exception pour les matières d'ordre public.

Si les contrastes des lois se rapprochent, on peut choisir le juste milieu, en unifiant les règles de droit, exception faite pour des réserves ou pour quelques règles de droit international privé pour les institutions nationales qui se contrastent.

Troisième méthode : Au cas où l'affinité des lois est considérable, on unifie les lois nationales.

Plus il y a d'affinité, plus les chances du droit unifié augmentent. Autant que le cercle des lois concordantes s'élargit, l'étendue des conventions sera bilatérale, régionale, mondiale.

Les lois maritimes ont toujours montré une telle ressemblance que l'application de la troisième méthode fut dès le début apparente.

Toutefois le droit maritime touche à des matières où les contrastes nationaux survivent. Ceci provient de la souveraineté des Etats (voir : immunité de navires), des règles internes sur la juridiction des tribunaux (voir : saisie de navires), les divergences monétaires (clause-or), les relations économiques (règles de transport, connaissement direct), institutions de crédit (hypothèques). Il faut dans les matières des transports reconnaître la réalité, la nécessité économique, les exigences de la restauration d'après guerre.

D'ailleurs, il y a les contrastes d'ordre purement juridiques ou historique, qui contiennent des éléments irrationnels « obstacles of a psychological character, of national « amour propre » (Gutteridge), ainsi que l'antithèse des systèmes juridiques ou même philosophiques et logiques du droit anglo-saxon et du droit continental qu'un juriste horticulteur a comparé au contraste du border anglais et du jardin Lenôtre du continent. J'admets que ce sont des éléments d'ordre traditionnel et psychologique qui ne se laissent pas fixer dans un système logique préfabriqué.

Les Conférences et les Comités comme les nôtres servent à trouver dans cette matière épineuse les limites raisonnables. En droit maritime, nous jouissons d'une liberté considérable qui nous permet d'aller loin dans les efforts d'unification, sans pourtant négliger l'importance des centres de gravité nationaux.

Il faut que notre Conférence sache voir le particularisme national dans son sens fondamental pour chacune des nations, mais aussi dans sa valeur relative en la confrontant toujours avec les intérêts du commerce mondial.

Les discussions et les conversations individuelles serviront à réduire les barrières nationales et régionales à des proportions réelles et d'établir le juste équilibre auquel nous aspirons. L'outillage que nous employons consiste en l'étude sérieuse des systèmes juridiques et des lois étrangères, y compris leur manière de penser et d'interpréter le droit, la sensibilité aux nécessités nationales et économiques, l'humilité même sans orgueil national, et enfin l'art de rédiger clairement en choisissant des textes sans ambiguïtés et pas trop subtils, qui garantissent l'interprétation uniforme dans tous les pays.

Dans cet esprit j'assume la tâche que vous m'avez confiée.

M. le Président. — La parole est à M. Devèze, président de l'Internanal Law Association.

M. A. Devèze (Bruxelles). — Monsieur le Président de la Conférence, Monsieur le Ministre, Monsieur le Président du Comité Maritime International, après les orateurs éminents que nous venons d'entendre et d'applaudir, je me rends compte qu'il serait présomptueux de ma part de me hasarder à parler de sujets qu'ils ont traités avec tant d'autorité. Je me bornerai donc à vous dire que j'ai tenu personnellement à vous apporter le témoignage de la sympathie et de la confiance que l'International Law Association porte au Comité Maritime International et très spécialement à dire à M. le Président Lilar combien ses paroles iront droit au cœur de la marraine.

M. le Président Lilar, qui a donné l'impulsion décisive à l'œuvre si importante que l'International Law Association attendait de vous, a souligné à juste titre qu'en moins d'un an, cette tâche si délicate a été menée à bien. Il importe de l'en féliciter ainsi que tous ceux qui lui ont apporté leur éminent concours.

C'est au Congrès de Copenhague, l'an prochain, que l'International Law Association consacrera ce magnifique résultat, obtenu grâce à tant

d'efforts. En ce moment, elle ne fait que suivre vos travaux avec le plus vif intérêt, en souhaitant qu'ils continuent d'être fructueux et couronnés de succès.

Aux remerciements que j'adresse au Comité Maritime International, s'ajoutent ceux que nous devons à l'hospitalité néerlandaise, qui nous est accordée avec autant de prévenance que de cordialité.

Ainsi donc, une fois de plus, dans le succès renouvelé des Règles d'York et d'Anvers, comme il advint jadis pour les Règles de La Haye, sont unies les noms de nos deux compagnies, collaborant étroitement et fraternellement au progrès de l'unification du droit maritime international.

M. le Président — La parole est à M. Boeg, président de l'Association danoise.

Mr. N. V. Boeg (Denmark). — Mr. President, Excellencies, Ladies and Gentlemen, as Chairman of the Danish delegation representing Danish shipowners, average adjusters, insurance companies and lawyers, it is my privilege and pleasure to express our sincere appreciation of the great hospitality offered by the courageous and vigorous people of the Netherlands, for whom we have the greatest admiration. We followed the destiny of this country for many years, even during the war, and if it could be possible, the feelings of mutual understanding which always existed between the Netherlands and Denmark have been strengthened by that long and cruel period.

We look forward with the greatest enthusiasm to the proceedings of this Conference ; and we feel assured that under the guidance of our distinguished President and the auspices of our esteemed hosts, the proceedings of this Conference will be conducted to the perfect satisfaction of all the interests concerned.

The President. — I will now call upon Mr. Keating, from the United States.

Mr. C. Keating (U.S.A.). — Mr. President, distinguished guests, ladies and gentlemen, the American delegation is very happy to be here in this charming and lovely city. We are particulary gratified to be playing what we hope will be an equal part in the deliberations of this great Conference. We hope that the accomplishments of the Conference will be substantial and constructive, and we hope that we will be asked to play our part in the future in deliberations of this character. The delegation is particularly flattered by the remarks of the distinguished President of the Inter-

national Maritime Committee upon our arrival. We hope that you will all feel the same about us when we depart !

M. le Président. — La parole est à M. Francis Sauvage, président de l'Association Française de Droit Maritime.

M. Francis Sauvage (Paris). — Monsieur le Ministre de la Justice, Monsieur le Président du Comité Maritime International, Monsieur le Président de la Conférence, Mesdames, Messieurs, pour la seconde fois depuis 1937, la conférence du Comité Maritime International se réunit au cours de l'une de ces périodes dont le plus grand historien de l'antiquité a pu dire qu'elles marquent plutôt la fin de la guerre que le commencement de la paix. Mais nous venons justement ici pour apporter notre contribution à l'édifice de la paix en resserrant encore s'il est possible, par l'unité de législation, cette communauté de pensée et de sentiment qui constitue notre civilisation occidentale.

La première parole qui sera prononcée au nom de la délégation française sera l'expression de nos remerciements à nos amis de l'Association Néerlandaise de Droit Maritime pour avoir voulu donner comme cadre à nos travaux leur magnifique capitale, Amsterdam, qui jouit du double privilège d'être une des grandes cités maritimes du monde et une ville d'art et d'histoire où le promeneur se rencontre à chaque pas avec les œuvres ou avec le souvenir de ses hommes illustres, artistes et penseurs, soldats et marins.

Il y a d'ailleurs un motif qui devait forcément nous rassembler ici : dans un monde où il existe encore des zones de silence et de servitude, nous ne pouvions choisir un lieu plus digne de nos délibérations, que le pays qui a toujours été l'asile de la liberté, depuis le jour où il a conquis son indépendance au prix du sang et de l'héroisme de ses enfants.

La liberté, vous autres Hollandais, vous ne l'avez pas seulement offerte, au cours des siècles passés, à tous ceux à qui elle était refusée dans leur propre patrie, mais vous en avez fait votre doctrine nationale, car le jour où votre compatriote Hugo de Groot (celui que nous appelons en France Grotius) a fondé le droit des gens, en écrivant le « De jure belli ac pacis » et le « Mare liberum », il a proclamé à sa base le principe de la liberté des mers, sans lequel le droit maritime lui-même ne serait plus qu'un mot vide de sens.

Vous excuserez maintenant un Français de ne pas pouvoir fouler le sol de la Hollande sans évoquer le souvenir de Descartes, le père de la

pensée moderne, qui a voulu passer trente années de son existence à Amsterdam et à La Haye et qui est venu y écrire son **Discours sur la Méthode** où il ouvrait des voies nouvelles à l'esprit humain.

Vous serez sans doute d'accord avec le grand philosophe, lorsqu'il disait ici même que nulle part on n'est plus à l'aise pour méditer qu'au milieu du tumulte d'un grand peuple.

M. le Président. — May I now call upon Mr. Justice Pilcher.

Sir Gonne Pilcher (Londres). — Mr. President, ladies and gentlemen, the British delegation, I may say on their behalf, is delighted to be once again in Amsterdam. I personally preserve most pleasant memories of 1927 when we were last here. That is twenty-two years ago, a generation in time, but a moment in the affairs of the International Maritime Committee.

We have had a number of meetings since then, and we have accomplished a great deal. We have had disappointments, but we hope that we shall have at this Conference a great success in that we shall be able to report to the International Law Association that we have reached unanimity on the new ground of the York-Antwerp Rules.

I have been examining with the greatest interest the programme which has been circulated to us ; I examined, of course, the programme of our Conference in the first place, but I also examined with interest the programme of our entertainments, and I must say that those members of the International Committee on the York-Antwerp Rules who were good enough to attend our meetings in London, must have viewed the second part of that programme with considerable satisfaction. The British delegates are delighted to be back again with you in Amsterdam, and I think the best thing I can do, Monsieur le President, is to thank you again on their behalf, and sit down.

M. le Président. — La parole est à M. Berlingieri.

M. Giorgio Berlingieri (Gênes). — Monsieur le Ministre, Monsieur le Président, Mesdames, Messieurs, j'ai l'honneur d'apporter à cette tribune les hommages de l'Association Italienne de Droit Maritime et de vous remercier pour l'accueil charmant qui nous a été réservé dans cette superbe ville d'Amsterdam qui ressemble d'une façon si étonnante à notre Venise et qui, depuis la fondation du C.M.I. nous invite pour la troisième fois à continuer ici l'œuvre du Comité. Au nom de l'Association Italienne de Droit Maritime et en mon nom personnel, je m'associe à

l'hommage qui a été rendu à la mémoire du grand juriste Loder, qui présida la dernière conférence d'Amsterdam en 1927.

Personne n'a été surpris si les résultats de la conférence d'Anvers ne furent pas éclatants. Mais je dois vous rappeler que les regards du monde maritime sont sur nous. J'espère que cette fois, à Amsterdam, nous pourrons arriver à des résultats concrets dans l'étude des questions portées à notre ordre du jour.

Permettez-moi d'ajouter une recommandation supplémentaire. A la conférence d'Amsterdam en 1927, Louis Franck avait proposé un commentaire aux conventions maritimes de Bruxelles. C'eût été un commentaire élaboré sans aucun caractère officiel, comme une interprétation très autorisée cependant de ces conventions. A la conférence de Paris encore, Louis Franck fit la même proposition et elle fut acceptée à l'unanimité. Il serait désirable que la présente conférence confirme le point de vue de celle de Paris, et je me permets d'ajouter qu'elle devrait dédier ce commentaire à Louis Franck (*Applaudissements*).

M. le Président. — La parole est à M. Alten, président de l'Association Norvégienne.

M. Edvin Alten (Oslo). — Excellence, Monsieur le Président, Mesdames, Messieurs, je n'essayerai pas de dépasser en éloquence les orateurs précédents, pour la raison bien simple que je ne m'exprime pas ici dans ma langue maternelle. Je me bornerai donc, au nom de la délégation de mon pays, à m'associer aux paroles qui ont déjà été prononcées en vous assurant, Monsieur le Président, que ma délégation est heureuse d'avoir accepté l'invitation de l'Association néerlandaise et d'avoir, à cette conférence, une nouvelle fois l'occasion de participer aux travaux du C.M.I. pour l'unification du droit maritime.

Nous reconnaissons les difficultés inévitables dans pareil travail ; elles résultent des divergences dont vous venez de parler dans votre discours d'ouverture. Au cours d'une collaboration de soixante-dix ans, entre les Etats scandinaves, nous nous sommes heurtés à pareilles difficultés. Celles-ci augmentent avec le nombre des Etats participants. Parodiant une thèse de Maltus, je pourrais dire que le nombre des Etats collaborant augmente dans une progression arithmétique alors que les difficultés de l'unification croissent selon une progression géométrique. Les difficultés peuvent cependant être vaincues mais il nous faut déployer une énergie inlassable, une grande patience et une forte dose d'optimisme.

Nous souhaitons que le travail du C.M.I. soit couronné de succès dans

l'avenir comme il le fut dans le passé et plus spécialement que le travail de cette conférénce constitue un véritable progrès.

M. le Président. — La parole est à M. Teles, délégué du Portugal.

M. Teles (Lisbonne). — Mesdames, Messieurs, je ne puis parler comme président de la délégation portugaise étant donné que je suis le seul membre de cette délégation. Si je prends la parole, c'est pour adresser mes compliments respectueux à Monsieur le Ministre de la Justice des Pays-Bas qui nous honore de sa présence, à Monsieur le Président de la conférence et à mes chers collègues ici présents.

J'appartiens à un petit pays de navigateurs pour lequel le droit maritime présente une très grande importance. Juriste passionné, je me suis toujours intéressé fortement au droit de la mer. Aussi je fais la promesse de donner à cette conférence tout ce que je puis, dans la limite de mes forces. Je souhaite qu'elle réussisse pleinement pour le progrès du droit maritime.

M. le Président. — La parole est à M. Bagge, président de l'Association Suédoise.

Mr. Algot Bagge, (Stockholm). — Mr. President, Excellencies, ladies and gentlemen ; we all feel, I am sure, that uniformity is a good thing in international trade, and that specially applies to the law of transport. If we did not feel that way we certainly would not be here to day, and if we cannot get uniform rules, we surely cannot work in a complete way ; we should have rules to tell us which law is to apply. We are holding this Conference in a country which has from early days done remarkable and great service to international law, and we are holding it in this city of Amsterdam, which is of international greatness. I think this international atmosphere will help us in performing our work in the right spirit. I beg to offer, on the part of the Swedish delegation, our heartfelt thanks to the Dutch authorities and the Maritime Law Association of the Netherlands for the splendid reception we have received. Thank you.

The President . — Our last speaker is Mr Hill, who will address the Conference for the International Chamber of Shipping.

M. Martin Hill (London). — Monsieur le Président, Mesdames, Messieurs, le président du Comité Maritime International a mentionné dans son discours la Chambre Internationale des Armateurs. En tant que secrétaire général de la conférence internationale des armateurs, je le remercie vivement. Je puis vous donner l'assurance que les armateurs suivent vos travaux avec le plus vif intérêt et je vous souhaite le succès

que la Chambre Internationale des Armateurs attend avec la plus grande confiance

M. le Président. — Mesdames, Messieurs, je remercie Monsieur le Ministre Devèze, M. Hill et les chefs des délégations qui se sont succédé d'avoir bien voulu adresser quelques mots à la conférence. Ma reconnaissance va également à M. le Ministre de la Justice qui a bien voulu honorer cette séance de sa présence. Ceci dit, je déclare close la séance d'ouverture.

La séance est suspendue à 11 heures 30 et reprise à midi.

The session is interrupted at 11.30 a. m. and resumed at 12 o'c.

ETAT DES RATIFICATIONS DES CONVENTIONS INTERNATIONALES DE BRUXELLES.

STATE OF THE RATIFICATIONS OF THE BRUSSELS INTERNATIONAL CONVENTIONS.

M. le Président. — Je donne la parole à M. le Président du Comité Maritime International, M. Lilar, qui nous donnera un résumé de l'état des ratifications des conventions.

M. A. Lilar. — Messieurs, je crois qu'il n'est pas inutile, au moment où nous reprenons nos travaux, de les introduire en vous rappelant quel est en ce moment l'état des ratifications par les gouvernements des différents pays intéressés à nos travaux.

Il est une observation générale que vous tous avez sans doute faite : c'est que lorsque les resultats des travaux de nos conférences sont adoptés par une conférence diplomatique, il s'écoule encore un temps fort long avant que chacun des pays auquels appartiennent nos délégations, ne se decide à les ratifier. Je crois qu'il est utile en ce moment d'introduire le sujet par une rapide revue de l'état de ces ratifications, afin que ceci nous incite, chacun dans notre pays respectif, à inviter nos gouvernements à un examen plus rapide et à une ratification plus accélérée des conclusions de nos travaux.

Si l'on passe en revue les résultats pratiques auxquels ont abouti les travaux de nos diverses conférences, on constate que les Conventions de 1910 sur l'Abordage et sur l'Assistance et le Sauvetage maritimes, sont actuellement ratifiées par trente-cinq pays. C'est un résultat.

La convention de 1924 sur la Limitation de la Responsabilité des propriétaires de Navires de mer lie douze pays. Leur liste est jointe à notre documentation. Je ne vous donne en ce moment qu'un aperçu schématique très général.

La convention de 1924 sur l'Unification de certaines Règles en matière de Connaissement régit les rapports de dix-neuf pays.

La convention de 1926 sur l'Immunité des Navires d'Etat a été ratifiée par quatorze pays et la convention sur les Privilèges et Hypothèques Maritimes a également été ratifiée par quatorze pays.

C'est vous dire qu'à mon sens notre effort doit être double. Il doit tendre d'abord à obtenir je dirai presque avant tout, la ratification par les gouvernements des pays qui envoient des délégations à nos conférences parce que notre travail, sans cette ratification, est stérile. Il doit tendre en second lieu à obtenir l'adhésion des pays qui ne sont pas représentés à nos conférences mais qui ont cependant des intérêts maritimes considérables.

Je me borne en ce moment à résumer la situation. Le Gouvernement belge qui s'est toujours occupé de réunir les Conférences diplomatiques et qui avait à proposer la ratification des Conventions, s'en est occupé très activement, à l'intervention de son département des affaires étrangères. Je suis heureux de saluer la présence parmi nous de M. Denoel, représentant le département des Affaires Etrangères de Belgique, qui a témoigné au cours de toute cette période d'une très grande activité, ce qui me permet de dire qu'il a collaboré puissamment à l'œuvre que nous poursuivons ici.

En ce moment le gouvernement belge a saisi tous les pays intéressés — il y en a soixante — des projets de convention non encore ratifiés et notamment des conventions approuvées à notre conférence de Paris. Tous ces pays ont été invités à faire connaître leurs observations et à donner éventuellement leur adhésion à la réunion, dans un certain délai, d'une conférence diplomatique.

Le gouvernement belge est disposé, si le matériel nécessaire est suffisant à ce moment, à réunir une conférence diplomatique en 1950, vers le mois de juin. De telle sorte qu'il se pourrait qu'à ce moment un pas considérable puisse être fait dans la double voie des ratifications et des adhésions des pays qui n'ont pas encore adhéré à ces conventions.

J'ai voulu vous donner ces indications et faire le point dans la question qui nous occupe en ce moment. Je crois que si nous arrivions à un résultat, nous aurions contribué une fois de plus à faire avancer l'œuvre que nous poursuivons *(Applaudissements)*.

M. le Président. — Je remercie Monsieur le Président Lilar de la communication très intéressante qu'il vient de nous faire et plus spécialement

pour l'annonce qu'une conférence diplomatique aura lieu l'année prochaine, ce qui est très important.

Quelqu'un désire-t-il prendre la parole sur l'état des ratifications dans dans son propre pays.

Mr. N. V. Boeg (Copenhagen). — I just want to state that, as far as Denmark is concerned, all the Conventions have been ratified with the exception of the Convention on Immunity of State-owned Vessels The Danish Government has, however, now prepared a draft which I have just been informed will permit the ratification of the Convention. This draft will be laid before the Danish Parliament, which is meeting in the beginning of October, and I hope and presume that it will be passed without difficulty. That means that next year, I feel certain, fifteen countries will have adopted it.

M. le Président. — La parole est à Mtre de Grandmaison.

M. J. de Grandmaison (Paris). — La situation en France est la même que celle qui vient de nous être exposée pour le Danemark. Toutes les conventions ont été ratifiées à l'exception cependant de celle du 10 avril 1926 concernant l'Unfication de certaines Règles relatives à l'Immunité des Navires d'Etat. En ce qui concerne cette dernière convention cependant, une loi de 21 août 1939 autorise le Président de la République à la ratifier. Nous espérons que cette ratification ne tardera pas. Par conséquent, à l'exception de cette unique convention, toutes les autres sont régulièrement ratifiées.

M. le Président. — La parole est à M. Bagge.

Mr. Algot Bagge (Stockholm). — I may repeat what I stated at the Antwerp Conference : in Sweden all the conventions have been ratified and are now in force.

M. le Président. — La parole est à M. Alten.

M. Edvin Alten (Oslo). — En ce qui concerne la Norvège, nous avons fait tout ce que le Comité Maritime nous a demandé. Toutes les conventions adoptées par nos conférences ont été ratifiées.

M. Giorgio Berlingieri (Gênes). — Pour l'Italie, on peut dire que toutes les Conventions de Bruxelles ont été ratifiées. J'ajoute que les principes des conventions ont été introduits dans nos lois nationales à l'exception toutefois de la Convention sur la Limitation de la Responsabilité des Propriétaires de navires, qui a été ratifiée mais qui n'a pas été introduite dans notre législation nationale, d'autres principes lui ayant été préférés.

M. le Président. — La parole est au Capitaine Anderson.

M. Herb. A. Anderson (Finland). — I would like, in the first place, to record the fact that Finland is for the first time officially represented at the Conference of the International Maritime Committee. At the same time I would like to say that we appreciate the good work done by this Committee, and to assure you that you can count on the good co-operation of the Finish legal profession.

In this connection, Mr. President, I would like to point out that in Finland we have now ratified and brought into force legislation for all the Conventions with the exception of the Convention relating to Immunity of State-owned ships. Further, it might interest you to know that Finland is the only country in the world, as far as I know, that has embodied the York-Antwerp Rules into its legal system. They are now a part of our legislation.

The President. — I call upon Mr. Prizer, who wishes to address the Conference, on behalf of the United States Maritime Law Association, in regard to the Convention on Maritime Liens and Mortgages.

Mr. J. C. Prizer (U.S.A.). — Honourable President of the Conference, President of the International Maritime Committee, learned Gentlemen ; the delegation from the United States has a question which we, in that delegation, regard as timely, serious and practical, and on which we wish to have a hearing which will require more time than is available at the moment. Your President has been so kind, therefore, as to say we will have more time for that subject after the consideration by the Conference of the York and Antwerp Rules. I would just say in passing that our delegation is in favour of the ratification by further countries, including our own, of the Brussels Convention of 1926, relating to Hypothecations.

The President. — As Mr. Prizer has told you, this subject of the communication of the United States delegation has a wider scope than a mere report on ratifications. I would propose, therefore, to refer this matter to the Conference after the discussions on the York-Antwerp Rules on Wednesday. Does Mr. Prizer agree ?

Mr. J.C. Prizer (U.S.A.). — Thank you, Mr. President.

The President. — Does the Conference agree ? (*Agreed*).

I thank Mr. Lilar for his instructive communications and the other delegates for what they have added on behalf of their own delegations, and I think if no one has anything further to say I will close this Session.

La séance est élevée à 12 heures 30.

The Conference adjourned at 12,30 p.m.

LUNDI, 19 SEPTEMBRE 1949

SEANCE DE L'APRES-MIDI

MONDAY, SEPTEMBER 19th 1949

AFTERNOON SESSION

La séance est ouverte à 14,30 heures, sous la présidence de Mr. Offerhaus.

The Conference resumed its labours at 2,30 p.m., Mr Offerhaus in the chair.

REVISION DES REGLES D'YORK ET D'ANVERS.

REVISION OF THE YORK AND ANTWERP RULES.

M. le Président. — Notre ordre du jour appelle la discussion de la revision des Règles d'York et d'Anvers. Nous avions pensé que M. Lilar introduirait le sujet, mais en raison du temps disponible, le Bureau permanent a décidé qu'il vaudrait mieux commencer par un aperçu historique de la part de M. Léopold Dor. Je lui donne la parole.

M. Leopold Dor (Paris). — Monsieur le Président, Messieurs, par suite de l'absence de M. Lilar, qui était retenu à ce moment à Bruxelles par la formation du gouvernement belge, j'ai eu l'honneur de présider en juillet à Londres la Commission internationale des Règles d'York et d'Anvers. C'est ce qui me vaut le nouvel honneur de vous présenter aujourd'hui le rapport de cette Commission internationale.

Avant de toucher à ce texte vénérable que sont les conventions d'York et d'Anvers, il n'est peut-être pas inutile de jeter un coup d'œil en arrière. Les Règles de 1890 constituaient seulement une collection de solutions particulières. On disait aux dispacheurs : « quand tels faits se sont produits, de telle façon, vous admettrez ceux-ci en avarie commune et vous rejeterez cela », en sorte qu'on a dû appeler les règles de 1890 — un peu

malicieusement, mais très justement — une liste de recettes de cuisine.

En 1924 les armateurs, assureurs et dispacheurs anglais se sont adressés à l'International Law Association pour lui demander la revision de ces règles. Dans leur esprit, il ne s'agissait pas d'établir un code d'avarie commune, mais seulement de reviser les anciennes règles et peut-être d'y ajouter un certain nombre de règles nouvelles. On voulait allonger la liste des recettes de cuisine. La jeune branche française de l'International Law Association qui venait d'être fondée, eut l'audace de rédiger une définition et un véritable code de l'avarie commune. A la séance du 16 juin 1924 — je la rappelle car c'est une date mémorable — eut lieu la réunion de la Commission de l'avarie commune de l'International Law Association, sous la présidence de Lord Phillimore. Le Président de la branche française fut assez heureux de faire accepter par la Commission qu'il y aurait une définition et des règles de principe de l'avarie commune. Le Président du Drafting Committee, avait eu pour instructions de prendre en considération, non seulement le projet de l'association des dispacheurs anglais qui contenait, lui, des solutions particulières, mais aussi le projet de la branche française. Ce petit Drafting Committee qui ne comportait que Sir Norman Hill, M. Rudolph, Président de l'Association des dispacheurs anglais, et le Vice-président de la branche française, travailla d'arrache-pied pendant la fin du mois de juin et tout le mois de juillet ; il put offrir à la conférence de Stockholm un texte unique. Je puis dire que pour la définition et les règles de principe, ce texte, sauf de légères modifications, n'était que la rédaction présentée par la branche française. A Stockholm, pendant toute une semaine, la Section de droit maritime de la conférence discuta, de façon approfondie, les Règles d'York et d'Anvers. Et je salue ici M. Bagge qui, aux côtés de Sir Norman Hill, présidait ces discussions.

On eut finalement la joie et la fierté d'abolir l'ancienne règle XVIII qui stipulait que dans tous les cas où le dispacheur ne trouvait pas la solution dans les règles de 1890, il devait appliquer la loi nationale. Les Règles de 1924 étant un code de l'avarie commune, il fut inutile de recourir à la loi nationale.

Voici donc ce code qui a régi l'avarie commune pendant vingt ans. Vous êtes actuellement invités, à l'initiative du British Maritime Law Committee, à le reviser. Si vous suivez la proposition de votre Commission, vous ne le ferez qu'avec prudence et cela, non pas parce que nous avons un respect exagéré pour ce texte vénérable, mais parce que les excellents

rapports que nous avions reçus de toutes les associations nationales ne demandaient qu'une revision très limitée.

En effet, les Règles de principe dans le nouveau texte que nous vous proposons, restent à peu près intactes. Vous trouvez une règle préliminaire introduite à la demande des Anglais. Elle énonce un principe d'interprétation qui, aux juristes français, paraissait aller de soi. Les Anglais, à la suite d'une décision assez bizarre qu'on appelle le « jugement Makis », ont dit : « Cela va sans le dire, mais cela ira encore bien mieux en le disant ». Ils ont demandé qu'on énonce ce principe d'interprétation. Soit, mais il n'apporte rien de nouveau et la règle fondamentale A subsiste intacte.

Dans la règle C. on a voulu dire une nouvelle fois, avec plus de force encore, que le chômage n'était pas une avarie commune. On avait, en 1924, tué la vipère d'un grand coup de bâton ; on tient aujourd'hui à lui écraser la tête sous le talon. Il reste à savoir si ce qu'on a pris pour une vipère n'était pas un animal bienfaisant. Mais je garderai mes doutes pour moi, car je ne veux pas me mettre en opposition avec la majorité ou la presque-unanimité sur ce point.

Enfin, la règle F. subit quelques modifications pour être mise en concordance avec ce qui était cité pour les dépenses substituées. Vous voyez donc que je puis dire que les règles de principe, qui sont la partie essentielle, restent intactes.

Quant aux règles numérotées, je ne veux pas entrer dans le détail des amendements qu'on vous propose, pour ne pas empiéter sur le rapport que va vous faire M. Reading, Président des dispacheurs britanniques et rapporteur de la Commission internationale. Il me suffira de remarquer que certaines de ces modifications, comme par exemple celles apportées aux règles V et VII, consistent simplement à dire, d'une façon plus claire et plus affirmative, ce qui a été dit avant. Il n'y a guère que pour les dépenses substituées et pour le règlement par différence que des changements un peu sérieux sont introduits. Je le répète, ne croyez pas que cette prudence vienne de votre Commission. Nous avons reçu des rapports excellents des principaux pays : la Belgique, le Danemark, les Etats-Unis, la France, la Grande-Bretagne, l'Italie, la Norvège, les Pays-Bas et la Suède. Ces rapports ont été étudiés avec le plus grand soin. Ils ne demandaient pas de modifications plus profondes, plus radicales que celles qui vous sont proposées.

Le British Maritime Law Committee qui est l'initiateur de cette revision

des Règles d'York et d'Anvers ne demandait pas plus lui-même ; il se déclare parfaitement satisfait des résultats qui ont été obtenus.

Qu'il me soit permis en terminant de rendre hommage au travail remarquable fait par le British Maritime Law Committee et aux méthodes extrêmement rapides et complètes grâce auxquelles tous les rapports ont été imprimés, à peine reçus, et grâce auxquelles, lorsque nous nous sommes réunis au mois de juillet à Londres, nous avions entre les mains non seulement tous les imprimés possibles et imaginables, mais de magnifiques tableaux synoptiques comme je n'en ai jamais vus et qui ont facilité notre travail d'une façon considérable.

Le British Maritime Law Committee, et spécialement M. Reading et M. Edmunds, ont fait preuve d'une activité infatigable, d'un dévouement inlassable. Qu'ils en soient ici publiquement remerciés.

(Verbal translation by Mr Cyril Miller).

Mr. Leopold Dor has just given a short résumé of the labours of the York-Antwerp Rules Sub-Committee. At the meeting of the Commission Internationale in July, as the President Mr. Lilar could not be present, Mr. Dor, in his capacity of vice-chairman, presided over that meeting.. to which were submitted the full reports of the British Maritime Law Committee and of the other national Associations. He now, in accordance with the custom of the I.M. C. presents his report to this Conference for consideration and approval.

Mtre Dor points out that these Rules date back to 1890 ; these were not in any sense a Code on General Average but merely a collection of rules devised to meet particular cases, imperfectly drafted and facetiously called sometimes « culinary recipes for Average Adjusters ». In the year 1924 English shipowners, underwriters and Average. Adjusters asked the International Law Association to undertake a revision of the 1890 Rules. The French branch of the I.L.A., which had just then been constituted, took the initiative to draft a real Code of General Average, and on the 16th of June 1924, the General Average Committee of the I.L.A. met under the chairmanship of Lord Phillimore, and at the suggestion of the President of the French Branch decided to consider the French draft of a Code. The result was the constitution of a drafting Committee, including Sir Norman Hill, Mr. Rudolph, chairman of the Average Adjusters Association and the vice-president of the French Branch. This Committee worked assiduously for several weeks and presented at the Stockholm conference a text which, with some minor modifications, was the reproduction of the French draft. There was one praticular point, which Mr Dor stressed : the delation of Rule XVIII of the 1890 Rules, providing that when a particular case was not covered by the 1890 Rules, the common law of the land would apply ; but the 1924 Rules being a Code there was no need to have recourse to national laws.

We are now invited to revise these 1924 Rules which have been in use practically for a quarter of a century. If this Conference follows the proposal of your Sub-Committee it will do so very cautiously, as all the excellent reports received from the various national associations only asked for a very limited revision. In fact, the Rules of principle in the new text remain almost unaltered ; there is only inserted a principle of interpretation, which French lawyers consider as being obvious, but was made necessary, as a consequence of a decision of the British Courts known as the « Makis » case.

In Rule C it is stated with more emphasis than before that strikes do not form a subject for general average. Rule F is slightly modified so as to make clear the question of substituted expense.

Mtre Dor pointed out that the reports received from Belgium, Denmark, the United-

States, Great-Britain, Italy, Norway, the Netherlands and Sweden have been studied very carefully ; they do not ask for more alterations than those proposed.

Finally, Mtre Dor particularly wishes to express his gratitude to the British Maritime Law Committee for the remarkable work yet accomplished and the celerity and thoroughness of its working methods, which enabled the members of the Commission Internationale, on their arrival in London in July to have at their disposal a full set of the reports in print and very complete synoptical tables which facilitated their work considerably. He concluded by expressing special appreciation of the indefatigable activity and the unceasing devotion of Mr. Reading and Mr. Edmunds.

M. le Président. — La parole est à M. Lilar.

Mr. Albert Lilar (Belgium). — Mr. President and Gentlemen, I apologize for saying a few words at this stage. I was unable to be present at the beginning of this discussion, the only valid reason being the extraordinary hospitality of our Dutch friends.

The study by this Committee of this important question is a momentous event in the history of the International Maritime Committee. The occasion to undertake it we owe to the courtesy of the International Law Association. Indeed shortly after the 1948 Conference of the I.L.A. in Brussels, Lord Porter, President of the Executive Council of that institution, requested the I.M.C. to undertake the task of revising the York & Antwerp Rules ; that letter was written less than a year ago.

We set to work diligently and are now in a position to lay before this assembly an amended wording embodying the views of the practitioners in the most important maritime countries. An enormous amount of work has been done, for which our thanks are due in the first place to the British Maritime Law Association and more particularly to the strenuous labours of Messrs. Miller, Reading and Edmunds, to whom I am pleased to express our deep gratitude.

I also have to emphasize the large part taken in this preliminary work by our American friends ; their delegates, equally conspicuous by their number and their quality, did not hesitate to cross the ocean in order to give us the benefit of their experience and the weight of their authority. I thank them and heartily wish that such direct contact may be repeated and extended.

I owe special thanks to Mr. Lépold Dor, one of the pioneers of the Rules on General Average, who presided over the labours of the International Sub-Committee and of the drafting committee with such science and authority as to force admiration.

Paying homage to this sub-committee, and under the powers conferred upon me by the Permanent Bureau, I have completed the number of its

members by adding the names of two delegates of the United States, Mr. Cletus Keating and Mr. O. Houston. It cannot be doubted that their contribution to the labours of our sub-committees will prove precious indeed.

And now, gentlemen. I would earnestly request you to meditate on this : the International Law Association has entrusted to this Committee the revision of the York & Antwerp Rules on one condition, but it is imperative, to wit that at the close of this Conference we shall be able to submit a complete and finished text of the Rules. Consequently we are in honour bound to finish this task in this assembly.

I therefore beseech all of you to propose as few amendments as possible and to confine the discussion to essentials. Now what really matters is that we shall come to an agreement, even if it should be necessary to sacrifice some particular view or preference. Let all of us bear in mind that nothing is absolutely perfect in this world and that it is far better to have one single law ruling all over the world, even if it be imperfect, than the uncertainly and instability resulting from the divergencies between the respective national laws and customs.

It must not be possible that the confidence which has been put in us would be deceived, but let us avail ourselves of the opportunity we are given to strengthen the authority attached in the world to our institution.

The President. — I thank M. Lilar for his most valuable contribution to the discussion. I suppose the Conference does not want any translation.

I will call upon Lord Justice Scott.

Sir Leslie Scott (Great-Britain). — I am not Lord Justice Scott because I retired a year ago, but I take as much interest as I ever did in this body. Indeed, I helped Louis Franck to start it in the last years of last century, and from the very beginning I have had an intense sense of conviction as to the right lines on which we ought to run. We are a business body ; lawyers may be useful, but they ought not to run it. It is a businessmen's job, and it is for them to decide what they want. If I may quote that happy inspiration of M. Lilar, the task of lawyers is only to guide the pen that puts into decent language the decisions of the business community. Now that is the principle upon which, as I see it, this Committee has proceeded from the very start ; and it is because it has followed that principle from the beginning that it has had so much influence. That influence has been shown in various ways by many nations

introducing legislation to carry out our decisions, which may have been revised at Diplomatic conferences.

It is that to which we owe the immensely valuable delegation of the United States today ; they have come here because they think business is going to be done. On that I would say this to you : it matters very much less, in a matter of in maritime contract, what the particular rules are which are put into any contract than it does to have unified rules applicable to all maritime business in all countries. It is the unification of maritime law and particularly maritime practice in that respect for which the Committee was invented ; consequently it follows that once we can get a reasonably satisfactory solution of a contactual matter, whether it may be Hague Rules, whether it be general average or any other set of rules, that go into contracts, it does not matter very much what they are as long as they are reasonably sensible. In this particular case, we have had a technical body of businessmen going into it on both sides of the Atlantic very, very carefully and they have come to their conclusion, Mr. President, I would invite the Conference to make quite certain that that particular result without any change, except perhaps one or two tiny points, is put into practice and adopted by this Conference in order that the American delegation may go back to the United States and report that this International Maritime Committee is a business-like body and say : « We are going to support them ».

The President. — I am certainly speaking in the name of the Conference when I thank Sir Leslie Scott for his important words on the discussion. Now I call upon Mr. Kihlbom, who wants to say a few words on the principle.

Mr. N. E. Kihlbom (Sweden). — This Conference surely may be considered as an assembly of representatives for private enterprise, who have come together, amongst other things, for the purpose of formulating a set of rules which could be used by shipowners and charterers and accepted by other interested parties, as the general international contractual regulative for General Average.

We, who believe in free enterprise, know and should not forget, that orther froms of organization are by many thought preferable. We must realize that the result of the labours and deliberations of this Conference may perhaps come to be regarded as a criterion of what private enterprise is able to achieve in the way of internationally acceptable regula-

tions for the economic complications incidental to national and international transport of goods by sea.

If we, at this Conference, by a majority vote arrive at rules which afterwards might be severely criticised, not only by the minority but also by interests and nations not represented here, no one can foresee to what consequences such decisions may lead.

Therefore, and not forgetting that the spirit of sound business contracts and of good legislation is equity and fairness, it seems incumbent upon us to try to formulate Rules which, because of the quality of equity and fairness inherent to all their provisions, cannot afterwards be subject to adverse and derogatory criticism.

The best evidence on the fairness and equity of each rule will be that it does not enable any of the parties in the venture to profit on the misfortune which caused the General Average. The Swedish Committee submit that the acceptance of the leading principle that no one should gain from an accident or average would, from a long term point of view, be in the true interest of all parties. The Swedish delegation proposes that this principle should be accepted by the Conference.

The Swedish Committee has divergent opinions on some points on which decisions were taken by majority vote. With reluctance we agreed on a compromise. This was done with the clear understanding that, as regards Rule XIII, deductions shall not be made from the cost of new material and parts only, but from the total cost of renewal including labour and all other costs directly connected therewith, but excluding the cost of opening up of machinery etc. for inspection. If this can be agreed, the Swedish delegation is prepared to support the compromise.

Traduction orale par M. Carlo Van den Bosch.

Cette Conference, a dit M. Kihlbom, peut sans doute être considerée comme une assemblée de représentants de l'entreprise privée, réunis, ent'autres choses, afin de formuler un ensemble de règles pouvant être appliquées par les armateurs et chargeurs et acceptées par les autres intéressés comme le Règlement international contractuel de l'Avarie commune, dans le commerce maritime mondial. M. Kihlbom pose la question de savoir ce qui adviendrait si une décision prise à cette Conférence par une majorité était critiquée sèverement dans la suite non seulement par une minorité mais aussi par des intéressés et des pays qui ne sont pas représentés ici. Il se demande quelles seraient les conséquences et il répond qu'avant tout il y a lieu de considérer que la base du droit en cette matière doit consister dans l'équilibre, dans l'égalité entre les divers interessés en cause. Il ne faut pas, dit-il, — c'est le point de vue fondamental de la délégation suédoise — que la masse puisse profiter de l'infortune d'un seul. A la lumière de ce principe, M. Kihlbom poursuit en disant que la délégation a des opinions divergentes sur certaines questions qui ont été l'objet d'un vote de majorité. Nous avons accepté, contre notre gré, une solution transactionnelle, étant nettement entendu qu'en ce qui concerne la Règle XIII, il ne sera pas opéré de deduction du coût de materiel neuf et des pièces de rechange neuves seulement, mais aussi du

coût total de remplacement, y compris la main-d'œuvre et toutes autres dépenses s'y rapportant directement, mais à l'exclusion du coût de l'ouverture des machines aux fins d'inspection. Si l'on peut accepter cela la délégation suédoise est prête à appuyer la transaction.

Mr. le Président. — The Permanent Bureau thinks that the general principle of the Rules is admitted. It might perhaps eventually be possible to adopt the report subject to the remark of Mr. Kihlbom if the meeting so decides ; otherwise the proposal of the Sub-Committee would stand as it is. So I would ask, Mr. Reading to give his views.

Mr. E. W. Reading (U.S.A.). — Gentlemen, as I am the last speaker, I do not propose to go into any details with regard to the draft before you. I suppose that you are all informed as to the discussions and that there have been in the report before you sufficient explanations of all the changes made. I just wish to say a few words about how a revision became necessary.

At the last revision of York-Antwerp Rules at the Stockholm Conference of the International Law Association 1924, there were added to the Rules lettered rules which set out the principles on which General Average should be adjusted. This was an important addition to the scope of the York-Antwerp Rules and a great tribute should be paid to the draftsmen of those Rules in that on the whole they have led to little difference of interpretation in various countries. It has been remarkable, in the discussions leading up to the present proposed revision, how little criticism there had been of these lettered rules.

In the course of time it has become apparent that there were differences in the way that some of the rules, both lettered and numbered, were being interpreted. Furthermore as the York-Antwerp Rules 1924 had not yet been adopted in their entirety in all the countries, it was clear that at some time a re-examination of the rules would have to be made if the treatment of General Average was to be uniform throughout the world.

In Great Britain an unfortunate situation had arisen as the result of the judgment in the case of « Vassopoulos » v. The British & Foreign Marine Insurance Co. Ltd. (known as the « Makis » case). It was held in that case that the numbered rules were not necessarily absolute in respect of the particular matters with which they dealt but were qualified by the lettered rules. This was contrary to the intention of those who had drafted the 1924 Rules and it put the British commercial and marine insurance circles in a quandary. In practice the difficulty was overcome by an agreement between the British Underwriters and Shipowners. But is was not satisfactory that the interpretation of the Rules should be dependent

upon a private agreement which would not be binding as between a British interest and a foreign interest. It was natural that in Great-Britain it should be wished that the difficulty should be removed at the earliest moment and that the first opportunity should be taken to consider this problem and any other revision which might be deemed necessary.

Ultimately the question of revision became urgent by reason of the high rates of interest allowed in certain countries and by reason of the delay in the completion of General Average Adjustments during the last war. You will remember that at the meeting at Antwerp, a resolution was passed asking the I.L.A. to consider Rule XXII, but even prior to the Conference it was obvious that there should be an examination of what amendments were desirable in the York-Antwerp Rules with a view to their more general adoption.

The British Maritime Law Association was honoured by being asked to take a lead in this matter ; that Association appointed a Sub-Committee representative of Shipowners, commercial interests, Underwriters and Average Adjusters to examine and report to the Association and to keep in touch with the Sub-Committees which had been set up by the National branches of the Comité Maritime International in other countries.

In order that the other branches might know what our Sub-Committee was doing, we circulated to all these Committees all our reports, memoranda and minutes. This entailed considerable work for our Sub-Committee. But the labour was worth while, for I am sure that in no other way could the proposed new York-Antwerp Rules have been ready for consideration at this Conference.

Mr. President, we are grateful for the great help which we received from other Committees and above all for the frank exchange of views which enabled us to grasp the points of difference and to set about finding the remedy.

We could not expect that there would be unanimity on what changes were necessary and how those changes were to be made. The British Committee gave much thought to suggestions sent from other Committees and to the arguments supporting those sugestions. We made a real effort to eliminate differences before drafting and submitting our own report and we know that other national Committees did the same. No doubt it will be found in the course of this present discussion that some differences remain, but I think that the exchange of views between the

countries and the attempts made to adjust national views should have made easier the task of this conference.

In the preliminary work we have been guided by three principles :

(1) That if international rules are to be of any use they be in a form which makes them accepted universally.

(2) That whilst the historic principle of General Average provides the most equitable way of sharing losses incurred in the common interest at a time of peril, we should avoid adding to the burden which General Average has become by reason of the complexity of modern commercial conditions.

(3) That because of the growth in the size of ships and in the quantity of cargo carried, the adjustment of General Average has become more complicated ; therefore revision should aim at simplification.

I would like to echo Sir Leslie Scott's advice that the business view should prevail. Evidently Average Adjusters are not lawyers, but nevertheless we are professional members and working out from one remove. Therefore, if there are inconsistencies which have been left in the draft-Rules before you, it is because we have thought that the business view should prevail and that if it was going to create greater confidence in business circles to leave one rule perhaps inconsistent with another, we should do so.

You have asked me to comment upon Captain Kihlbom's words to the Conference. I think everyone will support the view that no one should be allowed to profit from his neighbour because of some common peril that has fallen upon them ; but surely that is what General Average tries to do. We cannot pretend that the mere apportionment of General Average over arrived values will always make the sacrifice equal, but I very much doubt whether any fairer way will ever be found, at least without a good deal of unnecessarily complicated work. Nevertheless, in principle I do most heartily support what Captain Kihlbom has said.

With regard to Rule 13, on which he has touched, I think, Sir, I would like to keep any comments that we have to make until perhaps that rule comes up for discussion.

Traduction orale par M. Carlo Van den Bosch.

M. Reading, président de la Commission de Révision des Règles d'York et d'Anvers, a déclaré qu'étant le dernier orateur, il n'est pas dans ses intentions d'aborder le sujet de cette revision en détail. Il déclare que la Conférence est suffisamment préparée à la discussion par les rapports qui vous ont été communiqués et qui donnent aux membres de cette conférence tous les éclaircissements désirables. Pourquoi cette demande de révision a-t elle été portee

a l'ordre du jour et quelle méthode avons-nous suivie pour mener le travail à bien ? A cet égard, M. Reading rappelle qu'en 1924, à la conférence de Stockholm, une réforme considérable avait été apportée aux Règles existantes par l'adjonction des règles à littera à celles numerotées qui existaient déjà. M. Reading profite de l'occasion pour rendre hommage à ceux qui, dans ce travail, ont pris une part prépondérante. Il est remarquable de constater qu'au cours des présents travaux les règles à littera, comme telles, n'ont, pour ainsi dire, soulevé aucune critique. Seulement il ne faut pas se dissimuler qu'aussi bien en ce qui concerne les règles lettrées que les Règles numérotées, des différences d'interprétation se sont fait jour dans divers pays de telle sorte que l'application des Règles telle que leurs auteurs l'avaient voulue, s'est trouvée compromise.

En somme, la revision actuelle est le résultat d'une décision rendue par les tribunaux anglais dans l'affaire du « Makis », aux termes de laquelle les règles numérotées ne se suffiraient pas à elles-mêmes, mais prendraient au contraire, leur sens à la lumière des règles à littera. Cette décision a plongé les milieux interessés dans la confusion. Il est vrai — a rappelé M. Reading — que les armateurs et les intéressés sur cargaison en Grande-Bretagne, ont eu hâte de remédier à cette situation par des accords privés, mais cette méthode s'est révélée insuffisante pour les besoins du commerce international. D'autre part la situation créée par la guerre a rendu nécessaire une revision plus étendue des Règles telles qu'elles avaient été arrêtées à la Conférence de Stockholm en 1924. Une première expérience, celle que nous avons faite à la Conférence d'Anvers en 1947 à propos de la revision de la règle XXII, nous en a fourni l'occasion ; on s'est demandé s'il n'était pas utile de modifier en même temps d'autres dispositions des Règles existantes. C'est alors que, au sein de l'Association de Grande-Bretagne, il a été constituée une Sous-Commission composée d'armateurs, d'assureurs et de dispacheurs. Cette commission s'est mise au travail, établissant un contact constant avec les autres associations affiliées au Comité Maritime International. La reproduction des rapports confiée à la Commission britannique, a nécessité un travail considérable mais utile. Nous avons travaillé avec zèle, nous avons étudié soigneusement les suggestions et les arguments présentés par les autres associations ; nous nous sommes efforcés d'éliminer tous les points de friction. M. Reading ajoute que dans les travaux préliminaires, la Commission s'est laissée guider par trois principes : 1o que des règles internationales ne sont vraiment utiles, que si elles sont conçues de manière à pouvoir être acceptées par tous ; 2o si le principe historique de l'avarie commune fournit la base la plus équitable pour répartir les pertes encourues dans l'intérêt commun au moment du péril, il importe de ne pas augmenter la charge que constitue l'avarie commune à raison de la complexité des conditions du commerce moderne ; 3o par suite de l'augmentation constante des dimensions des navires, de la quantité des chargements transportés, les règlements d'avarie commune sont devenus de plus en plus compliqués ; c'est pourquoi en revisant il faut simplifier.

M. Reading se fait l'écho de la recommandation faite par le président d'honneur Sir Leslie Scott : que l'avis des hommes de la pratique doit prévaloir.

Il termine en disant que les vues britanniques coïncident parfaitement avec celles exprimées par M. Kihlbom, que personne ne peut profiter du malheur de son voisin.

Quant à la règle XIII, M. Reading réserve ses commentaires jusqu'au moment où cette règle viendra en discussion.

The President. — I thank Mr. Reading for his general introduction, and the principle being admitted, I propose now to submit the rules for your decision in succession. So, first of all, we have a proposal for a new interpretation rule. The Committee reports the following text : « In the adjustment of general average the following lettered and numbered rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules ». In the Makis case it was deci-

ded that a number of rules were not necessarily absolute in respect of the particular matters which were qualified.

In my opinion this point has amply been discussed. I hardly dare ask whether there is a Delegation or any member who wants to speak on this subject, but Professor Ripert wishes to adress the Conference ; so I will call upon him now.

M. G. Ripert (Paris). — Messieurs, il nous a été indiqué qu'un article liminaire devrait être inséré dans les Règles à cause d'une affaire qui, dans un certain pays, a soulevé des difficultés. Je ne connais pas cette cause. D'autre part on a exprimé la plus grande méfiance à l'égard des juristes. Je ne prends donc la parole qu'avec timidité, d'autant plus que ce texte n'est pas traduit en français, et que je craindrais de mal le traduire moi-même.

J'ai contre cet article liminaire deux objections que je considère comme essentielles. La première, c'est que la Conférence n'a pas le droit de dire que quand on a adopté ces règles elles doivent s'appliquer à l'exclusion de toutes lois et tous usages, pour cette excellente raison que les règles ne valent que par l'adoption volontaire des intéressés et que cette adoption volontaire se heurtera toujours dans certains pays à des lois d'ordre public qu'on ne pourra pas enfreindre. Nous répétons ici la même erreur que celle qui a été commise à La Haye losqu'on a voulu faire des Règles de La Haye un texte obligatoire, ce qui était impossible jusqu'au jour où une conférence diplomatique en a fait une convention.

Si les Règles d'York et d'Anvers restent des règles, c'est à la libre initiative des intéressés. Il faut dire qu'elles s'appliqueront lorsqu'elles auront été adoptées par eux, mais il ne faut pas leur donner ce caractère obligatoire, à l'exclusion de toutes lois et de tous usages. Comme il s'agira de la volonté des intéressés, un juge pourra toujours l'interpréter.

Ma deuxième observation c'est que pour une affaire particulière on veut dire désormais dans les règles que, sauf le cas prévu par les règles numérotées, les règles générales seront appliquées. Or, ceci est contraire à l'esprit dans lequel, à Stockholm, on a adopté les règles littérales. Celles-ci établissent les principes de l'avarie commune, mais si nous disons dans un texte qu'elles ne s'appliqueront pas dans tout les cas où il y aura une règle numérotée, nous risquons de voir plus tard un juge — par une interprétation que vous n'admettrez pas davantage — décider que dans les règles numérotées il ne peut pas être tenu compte des principes de l'avarie

commune. Je prends un exemple. Dans les règles littérales il est dit que la preuve incombe à celui qui réclame l'admission en avarie commune. Admettrez-vous que dans un cas d'application des règles numérotées, un juge dise qu'il n'y a plus à faire la preuve parce que la règle générale ne s'applique pas ? Evidemment non. Ce que l'on a voulu dans ce texte liminaire — mais je voudrais connaître l'affaire qui a donné lieu à la rédaction de ce texte — c'est que dans les cas prévus par les règles numérotées, elles s'appliquent en dehors des règles générales. Nous sommes tous d'accord sur ce point, mais est-il nécessaire de le dire ? Je crains qu'on ne crée beaucoup plus de difficultés dans ce texte nouveau qu'on n'en supprimera à l'occassion d'un cas particulier.

Je voudrais, sur ce point, entendre les explications de la Commission.

Traduction orale par M. Cyril Miller.

The difficulty in which Professor Ripert finds himself is owing to the fact that there is no French translation of the preliminary rule. Neither does he know the « Makis » case, which has been the cause of the revision of the Rules.

If he understands the English wording correctly, Prof. Ripert made two observations. The first is that, in his opinion, this Conference has no right to decide that « in the adjustment of General average, the lettered and numbered Rules shall apply to the exclusion of any Law- or Practice inconsistent therewith ». This conference has no power to exclude customary or common law of the various countries ; these Rules are voluntary, not compulsory ; they can only apply when parties concerned so decide by their own free will. He says this is a repetition of the error committed at the time of the adoption of the Hague Rules, which could not be made compulsory until a diplomatic Conference made them into a Convention on the carriage goods by sea.

Secundly, he said that on account of a judgment in a particular case, it is intended to provide that, except as provided by the numbered rules, general average shall henceforth be adjusted according to the lettered rules. This is contrary to the spirit and the intention of the Stockholm conference where the lettered Rules were adopted. The latter proclaimed the principles of general average but if we now should state in the new text that they shall not apply in all cases where there is a numbered rule, there is a serious risk that some day a judge might decide that in the numbered rules no account has been taken of the principles of general average. For exemple in the lettered rules it is stated (E) that « The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average ». Now, would you admit that in a case where numbered rules are applicable, a judge should decide that no proof is to be furnished seenig that the general rule does not apply ? You would not. The intention of those who drafted the preliminary rule was merely to say that in cases provided for by the numbered rules, the latter shall apply apart from the general rules. We all agree on this, but is it necessary to state it ? I fear it may cause much more difficulties in the new text than it will remove. Prof. Ripert would like to hear the explanation of the Sub-Committee on this point.

The President. — May I ask which of the members of the International Sub-Committee can reply to Prof. Ripert's remarks ?

M. L. Dor (Paris). — J'ai demandé à M. Reading s'il voulait répondre au professeur Ripert, mais il m'a dit que puisqu'il s'agissait d'une

question qui intéressait les juristes, il préférait que ce soit moi qui réponde.

Dans le premier paragraphe, on a eu surtout en vue d'éviter que le dispacheur ait à tenir compte des pratiques des dispacheurs au port de débarquement ; il y a des ports, notamment en Angleterre, où il y a une sorte de règles spéciales. Ce paragraphe nous dit que ces règles seront en quelque sorte supprimées.

Permettez-moi de vous faire observer, avec l'immense respect que j'ai pour votre science juridique, qu'il me semble qu'un contractant a le droit de faire cela, même en ce qui concerne une loi, toutes les fois qu'il ne s'agit pas d'une loi d'ordre public. Aucune des lois relatives aux règles et à l'avarie commune n'est d'ordre public. Si elles le deviennent, le paragraphe ne s'appliquera pas ; mais dans les cas, qui sont l'immense majorité, où l'ordre public n'intervient pas, je crois que le contrat entre les parties a le droit de stipuler des clauses différentes non seulement de la coutume, mais également différentes de la loi. La meilleure preuve d'ailleurs est ce qui s'est passé dans le cas du chômage. Les tribunaux français ont admis le chômage en avarie commune lorsqu'il s'agissait de réparations qui étaient elles-mêmes admissibles en avarie commune.

En 1924, étant donné le tollé qui s'était élevé contre ce principe dans les milieux d'assurance maritime, on a inscrit la règle C. qui proscrit le chômage de l'avarie commune. Lorsque la question est revenue devant les tribunaux en application de la règle 24, les tribunaux ont fait prévaloir l'accord des parties et non pas ce que la Cour de Cassation avait déclaré être la loi française sur ce point. Je crois par conséquent que votre objection pour le premier paragraphe peut tomber si l'on considère que dans le contrat, on a le droit de stipuler quelque chose qui soit différent si elle n'est pas contraire à l'ordre public.

Quant aux règles de La Haye, permettez-moi de dire que j'ai été mêlé à cette affaire. Je la connais un peu. Ce n'est pas parce que c'étaient des contrats particuliers et non des lois qu'elle n'a pas réussi. C'est simplement parce que l'International Law Association avait un Comité de droit maritime affligé d'un secrétaire manquant de tact et qui a amené à s'élever contre elle ceux au bénéfice de qui elles avaient été rédigées, c.à.d. les chargeurs. Successivement les grands négociants anglais, les syndicats des blés, des laines, etc. se sont tournés contre les Règles de La Haye. Il a fallu demander au Comité Maritime International d'en faire une convention.

En ce qui concerne votre deuxième objection, le paragraphe est destiné spécialement à dire ce qui peut, à nous Français, nous sembler inutile, mais ce qu'il est apparemment nécessaire de dire à la suite de ce jugement du « Makis » intervenu en Angleterre. Cela signifie simplement que lorsque vous avez une règle numérotée qui dans un cas particulier dit : « On fera telle chose », vous ne pouvez pas lui objecter qu'elle n'est pas conforme à telle règle de principe. Cela nous semble naturel ; on énonce d'abord les principes et ensuite une liste de cas particuliers. Si un de ces cas particuliers constitue une exception aux règles de principe, il s'applique quand même. Par conséquent, nous estimerions qu'il n'est pas besoin de le dire, mais les Anglais ont besoin de le dire parce que pour eux le jugement « Makis », assez tortueux d'ailleurs, a trouvé le moyen de dire le contraire.

M. Ripert (France). — Que s'est-il passé à propos du « Makis » ?

M. Dor. — Monsieur Miller qui connaît le Makis mieux que moi va vous l'expliquer.

Mr. Cyril Miller (London). — If I may add, with the permission of the President, a few words of my own, I would say in answer to Professor Ripert that we find in England no difficulty in contracting out, as we say, of our common or customary law. You can exclude rules of customary or common law by contract, provided that what you are contracting to do is not immoral or against public policy or is not contrary to some act of Parliament or statute which prohibits you from making such a contract. I should imagine, although I speak without any authority, that the same principle would apply in the United States.

Mr. Keating (U.S.). — That is quite so.

Mr. C. Miller. — I am very glad to hear it. To us there is no difficulty whatever in the exclusion of any practice in these principles set out in the new code. I can think of no particular instance in English law which is so striking as that which Maitre Dor has cited for decision in the French Courts, but I would point out this : Rule D is in every word of it completely contrary to English common law, and rule D has been applied now 25 years, and I have never heard it suggested by any Counsel, far less by any Court, that Rule D is not to be applied because it is contrary to English law. English law if the event which gave rise to the sacrifice or expenditure was due to the fault of one of the parties to the adventure, then in English common law it is most certain that not even one halfpenny could be recovered in general average, and it is because of that

strict rule of law that Rule D was passed, and it is now so well known that probably many of us forget that originally under our law the position was the precise opposite.

Secondly, I think that Professor Ripert need have no fear that, if a case falls within the natural wording of one of the numbered rules, a shipowner may recover general average, although there is no principle of general average which permits him to recover. I cannot myself imagine any of our Courts, so construing the Rules. The numbered rules are intended to define what we call border-line cases. There are cases in which, say, under Rule A or Rule C, — it does not matter which Rule you take, — it is doubtful whether on those particular facts there is a general average recovery or not. The numbered Rules provide whether there is or there is not in doubtful cases a general average recovery, and that is because it simplifies the task of those who are preparing general average adjustments. It is quite necessary, from the English point of view, to have this explanatory rule in the new code. Without it we are virtually unable to bring a large number of general average cases before an English Court at all, because if there was any question of the facts in that case involving the « Makis » decision, certainly a Judge would be bound to follow it. That is a great handicap ; we do sometimes want the Court to give us a guidance on questions of general average, but we cannot afford to do that if the Court is going to follow the « Makis » decision, which no one wants and no one intended. For that reason we press upon the Conference that this particular Rule should be inserted, since we have the authority from M. Dor that it would do no harm in France but it would do a very great harm in England if it were left out.

Je vais vous donner en français l'explication de cette affaire du « Makis , bien que j'éprouve la plus grande difficulté à m'exprimer en cette langue, en raison des termes techniques que je devrai employer.

L'histoire du « Makis » est un peu curieuse ; c'est un procès des plus simples ; les complications n'ont surgi qu'à cause des avocats. Le « Makis » avait subi deux accidents : l'un en pleine mer, au large de Brest — qui n'avait d'ailleurs guère d'importance — et l'autre dans le port de Bordeaux. Le mât est tombé sur le pont pendant le chargement de la cale. Le navire a donc dû être réparé. Les armateurs ont réclamé les gages de l'équipage, les provisions, le charbon, les frais de chargement, de déchargement de la cargaison et ils ont prétendu que l'accident tombait sous l'application de la règle X b et X c et de la règle XX.

Cet accident concerne évidemment la règle X b). Les avocats dirent que l'accident était admissible en avarie commune parce que le vaisseau était dans un port de refuge, ce qui pouvait se justifier à cause du premier accident — et il se réfugia à Bordeaux — mais il est vain de prétendre qu'il y a avarie commune lorsque le navire n'est pas en danger et qu'une réparation n'est pas nécessaire pour la sauvegarde commune. Le juge aurait très bien pu dire que c'était un cas d'application de la règle Xb), mais il ne s'est pas contenté de cela; il s'est engagé dans une discussion générale des règles et il a dit que la vraie interprétation des règles était que si un cas est prévu dans les règles numérotées, cela ne suffit pas ; qu'il faut également que ce cas tombe sous une règle littérale. Nous savons tous que l'intention à Stockholm était toujours d'expliquer les cas un peu difficiles au moyen des règles numérotées. Personne ne prétendra que s'il s'agit d'un sacrifice extraordinaire ou si les dépenses et frais ne sont pas faits en vue de la sauvegarde commune, il y a avarie commune. Mais le juge — avec le plûs grand respect que j'ai pour lui parce que c'est un très grand juge — a pris une décision dangereuse parce que il n'a pas respecté l'intention du congrès de Stockholm. C'est la raison pour laquelle nous désirons dire que lorsqu'un cas tombe dans le champ d'applicaton d'une règle numérotée on applique cette règle. Si le cas ne tombe pas dans une règle numérotée, c'est la règle littérale qui s'applique.

The President. — I call upon Sir Leslie Scott, who wants to comment on what Mr. Miller has said.

Sir Leslie Scott. — What Mr. Miller has said as to the right in English law, of the parties to a maritime contract to alter either the common law or the statute law as they will, is perfectly sound within the two limitations which he named : (1) that they must not agree to something contrary to public policy or (2) something that is forbidden by statute.

The President. — Gentlemen, we want to terminate our session of today by 5,0 p.m., and I think it would not be advisable to continue the discussion of this rule tomorrow ; so I would urge upon the gentlemen who have asked to speak to keep their remarks short. I have applications to speak from Professor Teles, Professor Berlingieri and M. Govare.

I call upon Professor Teles.

M. Teles (Lisbonne). — Je dois dire, au sujet des règles liminaires en discussion, que je suis tout-à-fait d'accord avec le juriste éminent qu'est le professeur Ripert, auquel je tiens à rendre hommage.

Il y a deux points auxquels il conviendrait de réfléchir sérieusement. Il serait bon de numéroter les divers alinéas qui composent une règle ; cela permettrait une citation plus facile. Il y a des règles très longues comportant des dispositions diverses.

Une autre remarque quant à la forme est la suivante : Lorsqu'on lit les règles d'York et d'Anvers on y rencontre une grande variété dans la terminologie sur un point fondamental. On lit parfois « dommages et pertes » ; une autre fois « dommages » seulement ; une autre fois encore « pertes et dépenses ». Il serait peut-être bon d'employer toujours le terme « dommages » seulement et d'expliquer dans une règle auxiliaire que les dommages comprennent aussi les pertes et les dépenses.

Je disais, il y a un moment, que j'étais d'accord avec M. le Prof. Ripert. En effet, le texte qui nous est proposé — si je l'ai bien compris, parce que je ne connais pas très bien l'anglais, — fait supposer que les règles de droit interne, règles légales ou coutumières, doivent être écartées et que la primauté est toujours attribuée aux Règles d'York et d'Anvers. A mon avis, cela n'est pas possible, parce que les Règles d'York et d'Anvers sont seulement des règles techniques ; elles ne s'imposent pas, dans ce sens qu'elles ne font pas l'objet d'une convention internationale. On peut émettre le vœu qu'elles deviennent des règles de droit international, mais cela suppose la convocation d'une conférence diplomatique qui n'en a pas encore eu à délibérer.

D'autre part, M. Ripert — et là je suis également d'accord avec lui — a dit que le texte, tel qu'il est rédigé, fait supposer que dans les cas où s'appliquent les règles numérotées, les règles précédées d'une lettre ne peuvent pas s'appliquer. Je crois que c'est là un grand inconvénient. Il est parfaitement possible qu'il y ait des cas où les deux espèces de règles puissent s'appliquer en même temps. En général, les règles lettrées s'appliqueront seulement dans la mesure où l'on ne peut appliquer les règles numérotées. Il est bon de penser que les règles d'York et d'Anvers, telles qu'elles existent déjà actuellement, contiennent aussi des règles liminaires. C'est la cas, je le pense, des règles A, B et D. Il me semble préférable de rassembler toutes ces règles et de former avec elles un ensemble de règles liminaires. C'est dans ce sens que j'ai l'honneur de proposer de modifier la rédaction et d'adopter deux règles liminaires· la première correspondent aux règles A et D :

1. Il y a avarie commune quand, et seulement quand. intentionnellement et raisonnablement des dommages extraordinaires sont subis

pour le salut commun dans le but de préserver d'un péril les propriétés engagées dans une aventure maritime commune.

2. Lorsque l'événement qui a donné lieu au dommage aura été la conséquence d'une faute commise par l'une des parties engagées dans l'aventure commune, il y aura tout de même avarie commune, mais sans préjudice des recours pouvant être ouverts contre ces parties en raison d'une telle faute.

3. On considère aussi comme dommages les pertes et les dépenses.

La deuxième règle liminaire serait conçue comme suit :

1. Les dommages résultant d'avarie commune seront supportés par les diverses personnes intéressées, d'après les règles suivantes.

2. Les règles précédées d'une lettre (règles générales) s'appliquent seulement aux matières qui ne font pas l'objet des règles numérotées (règles spéciales).

Je crois que de cette façon le texte gagnerait en précision et en clarté, mais c'est seulement une suggestion que je me permets de faire.

M. G. Berlingieri (Gênes). — Pour répondre au désir exprimé par M. le Président, je serai très bref. Je me rallie à l'opinion émise par Mtre Dor, à savoir que d'après notre mentalité continentale la règle « Makis » est tout à fait superflue puisque lorsqu'on a posé le principe et qu'on a fait suivre des exemples, ce sont les principes qui doivent prévaloir. Mais « quod abundat non viciat », et puisque nous estimons qu'il n'y a pas de mal à répondre au désir exprimé par les Anglais et puisque le cas du Makis a donné lieu à certaines difficultés, je pense qu'on peut accepter la règle.

Les doutes soulevés par M. Ripert doivent être sérieusement pris en considération et sa deuxième observation m'a fait une très forte impression. Dans le cas où l'on ne peut appliquer les règles numérotées, je me demande si le texte que j'ai proposé pour la règle liminaire ne serait pas à même d'apaiser les doutes de M. Ripert. Je répète que d'après nous c'est tout à fait inutile, mais puisque une règle Makis doit être posée, je me permets de suggérer la rédaction que voici :

> « dans le cas où une règle numérotée se trouverait, de quelque façon que ce soit, en contradiction avec une règle littérale, c'est cette dernière qui devra être appliquée de préférence ».

Je propose l'adoption de cette formule.

M. Ant. Franck (Anvers). — C'est le contraire !

M. le Président. — Voules-vous bien relire votre amendement, Monsieur Berlingieri.

M. G. Berlingieri. — Dans le cas où une règle numérotée se trouverait en contradiction avec une règle littérale, cette dernière doit avoir la préférence.

M. le Président. — C'est le contraire en effet.

M. Berlingieri. — C'est le principe qui doit être maintenu. Ce sont les règles numérotées qui doivent suivre le principe posé par les règles littérales.

M. Ant. Franck. — Permettez-moi de faire une observation. Les règles littérales consacrent des principes généraux. Elles sont suivies d'un certain nombre de règles numérotées qui consacrent des cas particuliers. Lorsqu'on se trouve dans un cas particulier, la règle particulière, c.à.d. la règle numérotée, prime la règle de principe. C'est une espèce d'exception, si vous voulez.

M. Berlingieri. — Alors on doit rendre hommage au cas du « Makis » parce qu'il a été rendu un jugement en Italie qui est à peu près pareil et qui soulève ces doutes. Nous disons que lorsqu'il y a un principe on doit toujours suivre le principe, mais s'il y a une contradiction entre la règle numérotée et la règle litérale, c'est toujours le principe qui doit prévaloir.

The President. — I would ask Mr. Berlingieri to hand in his amendment to the International Sub-Committee for examination. I suppose the Conference could refer that to the decision of the International Sub-Committee, and also the amendment of Professor Teles.

Mr. A. Bagge (Stockholm). — I have only one suggestion. Is the International Sub-Committee to act as a Drafting Committee during the Conference. Is that the intention ? If not, I would suggest that we, the Conference, ask the Permanent Bureau to nominate a drafting committee, because although it is very useful to have all these explanations, I am afraid we will never come to an end if we do not have a drafting committee to which we can refer these different questions of drafting. Therefore, I suggest that either the International Sub-Committee act as drafting committee to submit a definite proposition to us before the end of the Conference, or that you nominate, or ask the Permanent Bureau to nominate, a drafting committee to do the same work.

Mr. L. Dor. — If I may answer to Mr. Bagge, there is a drafting com-

mittee. The International Commission appointed some of their members. to form a small drafting committee.

Mr. A. Bagge. — All right then ; I hope that these drafting propositions will be referred to that committee as soon as possible, because a lot of these discussions can be carried on better in the drafting committee than here.

The President. — This is not a mere question of drafting ; it is a question of the meaning of the rules. Therefore, in my opinion, it ought to be referred to the International Sub-Committee ; and when there is some question of wording, then it is referred to the drafting committee.

Mr. A. Bagge. — All right.

M. James Paul Govare (Paris). — Mr. Chairman, I thank you for authorizing me to speak although I am a lawyer. I understood from this morning's discussions that we are most troublesome, and only the tradespeople are people who are interested.

When we were in London on the 4th and 5th July to discuss this matter, we had the great privilege of having two friends of ours who had been recently to the United States, and who had seen there our American colleagues. One of them had taken the trouble to see the most important people in the shipping business, and he has given us the advantage not only of their written reports, but also the results of the conversations he had had with them. All through our discussions we all paid great attention to what our American friends required, — not the lawyers, but the shipping people. We have made one or two concessions to enable us to obtain these rules which would be uniformly accepted. We have paid great attention not only to the way in which they had been construed in the different countries, but when we came to the « Makis » case, if I may call it that, the continental people said that this rule was quite useless for them because the principles are always construed on the continent in the same way as they desire them to be construed. If the British people want to have this rule, and to have it construed in the way it would be construed on the Continent, then let them have it.

When, like Professor Ripert, I came to see how the Rule was worded, I must say that the French branch had some criticism to raise against it. It has two paragraphs ; the first one states that the Rules shall apply to the exclusion of any law or practice inconsistent therewith. I cannot criticise the wording because I have before me the transcript of the shorthand note of all what was said in London when we discussed it, and I

see that this wording was proposed by myself. My impression is that when two parties agree that they will do such and such a thing, notwithstanding and to the exclusion of any law or practice which is inconsistent with what they have decided, it is obvious that what is of public order is excluded, because they cannot go against public order, and their agreement is binding insofar as it is legal. But if we take the second paragraph, « except as provided by the numbered rules general average shall be adjusted according to the lettered rules », here I think I disagree with the draft, and I am sorry to say that I take up again the objection which M. Gervais and I raised when we were in London. We have a very clear recollection that when the Committee met in 1944, the desire and intention of the International Law Association was that the lettered rules would be a complete code and that the numbered rules would be simply additional examples or definitions or sometimes exceptions. It is a pity that there are exceptions, but if we are to meet the desire and need of the commercial people, we must admit, even lawyers must admit, that principles must have exceptions. Unfortunately when we examine closely the wording, we think it goes too far. The French branch had suggested that we would put the words « completed and defined by the numbered Rules », and that the Preliminary Rule should begin in this way : « General average shall be adjusted according to the lettered Rules as completed and defined by the numbered Rules ». But as there are some exceptions, we cannot be satisfied with the words « completed and defined », and we may say « General average shall be adjusted according to the lettered Rules, except when otherwise provided for by the numbered Rules ». Then anyone will understand that when the numbered Rule is an exception to the lettered Rule, it is the numbered Rule which must prevail and apply.

Je viens de dire que dans la règle préliminaire proposée, il y a une première partie portant que les Règles d'York et d'Anvers s'appliqueront à l'exclusion de toute loi et coutume contraires. Il va sans dire que tout ce qui est contraire à l'ordre public est toujours exclu ; que par conséquent votre convention est valable pour autant qu'elle ne soit pas contraire à l'ordre public.

En ce qui concerne le deuxième paragraphe, nous avons, M. Gervais et moi — et sans doute M. Dor — le souvenir très net qu'à Stockholm on voulait que les règles lettrées posent les principes et que les règles chiffrées soient des explications, des compléments, et parfois même des dérogations. Malheureusement, de la manière dont le texte est rédigé, on

laisse entendre que toutes les règles chiffrées sont des exceptions et des dérogations aux règles lettrées et l'on dit que, sauf pour tout ce qui n'est pas prévu dans les règles numérotées, on appliquera les règles lettrées. Je demande qu'on intervertisse l'ordre et qu'on commence par dire que le règlement d'avarie commune sera établi conformément aux règles lettrées, sauf lorsqu'il y est dérogé par les règles chiffrées.

M. Berlingieri. — Je me permets, Monsieur le Président, de vous donner un deuxième texte qui est mieux rédigé que celui dont je viens de donner lecture.

M. le President. — Merci. — Nous nous trouvons devant une proposition de M. le professeur Télès. En a-t-il remis le texte à la Commission ?

M. Télès (Portugal). — Oui, Monsieur le Président.

M. le Président. — Il sera soumis à la Commission.

The President. — We have two objections of Professor Ripert : there is his objection against the first part of this prefatory Rule, the question of applicability by exclusion of any law or practice inconsistent therewith. Does any delegation support the proposal of changing the wording of the International Sub-Committee ?

J'ai demandé si une délégation appuyait votre proposition.

M. Ripert. — J'ai un amendement à proposer.

M. le Président. — Est-ce un amendement d'une délégation ?

M. Ripert. — Oui, de la délégation française.

M. le Président. — Il y a donc pour la première partie un amendement de la délégation française.

M. Ripert. — Ce que je reproche au paragraphe liminaire, c'est d'avoir divisé deux questions sur l'application des Règles d'York. Si on veut insérer un article liminaire dans ces règles, il faut tout d'abord expliquer que « les règles qui suivent s'appliqueront dans le cas où les parties se sont référées aux règles d'York et d'Anvers », parce que dans toutes les jurisprudences du monde on a admis que la simple référence à ces règles entraînait leur application ; mais encore serait-il bon de le dire.

On m'a répondu que le paragraphe était inutile et qu'il ne signifiait rien de plus que la force de la convention des parties. Je propose alors de le supprimer et de le fondre avec le deuxième paragraphe en rédigeant de la façon suivante l'article liminaire :

> « Dans les règlements d'avarie commune soumis aux Règles d'York et d'Anvers, les règles suivantes seront exclusivement appliquées

étant entendu que les règles numérotées prévalent contre les règles littérales pour les cas qu'elles prévoient. »

Je vous ai donné le texte français, mais je pense que la traduction anglaise sera très facile. Je crois que le mot « prévalent » signifie la préférence. Ce texte a l'avantage de ne pas mettre les règles en conflit avec la loi, de ne pas les comparer et de ne pas faire des règles numérotées de véritables exceptions. Faites attention ; vous n'avez plus la règle XVIII primitive d'York et d'Anvers et il faut bien indiquer que les règles générales s'appliquent dans les cas où les règles numérotées ne prévoient pas le cas de façon précise. Voilà pourquoi j'ai déposé cet amendement.

M. le Président. — L'amendement de la délégation française est renvoyé à la Commission Internationale.

Il y a également la deuxième proposition du Professeur Ripert, développée par l'intervention de M. Govare.

I think M. Govare has made the following proposal for the second part of this Rule. « General average shall be adjusted according to the lettered Rules as defined and completed by the numbered Rules, when a numbered Rule is an exception to the lettered Rules, this numbered rule will prevail. » There is the difficulty that when we study the amendment proposed by Professor Ripert, the wording of that must also be revised. Does the Conference agree with Profesor Ripert's proposal ?

M. Ripert. — Voudriez-vous faire traduire mon amendement en anglais, Monsieur le Président ?

M. le Président. — M. Ripert a proposé en français un texte portant à peu près :

« In General average adjusted under the York & Antwerp rules, the following rules are to be applied exclusively, it being understood that in the cases provided for by the numbered rules, these shall prevail over the lettered rules ».

Je pense que la proposition de M. Ripert est toute differente de celle de M. Govare relative à la seconde partie de la règle liminaire. La délégation française appuie-t-elle les deux textes contradictoires ?

M. F. Sauvage (Paris). — Elle n'en a pas délibéré.

M. le Président. — Il faut cependant en terminer. Nous nous trouvons en présence de deux textes émanent de la délégation française, qui ne se concilient pas.

Dans ces conditions, je vous propose de soumettre les observations de M. M. Berlingieri et Télès ainsi que les deux textes français, aux deux

Commissions réunies, c.à.d. à la Commission Internationale et à la Commission de rédaction, si cette dernière existe toujours. Si elle n'existait plus, l'ancienne Commission est maintenue jusqu'à demain, pour décider laquelle des deux Commissions doit étudier le projet. Puisque cela peut être une question de fond, comme cela peut être un projet de modification de la rédaction, il vaut mieux que les deux Commissions se réunissent ensemble pour décider quel rapport il convient de soumettre à la conférence de demain. Etes-vous d'accord ?

Mr. K. Pineus (Sweden). — We have been told this afternoon that there are now two representatives of the United States. May I ask who they are ?

The President. — I may answer that Mr. Lilar, in his address of this morning, announced that we have now in the Sub-Committee two representatives of the United States, Mr. Keating and Mr. Houston.

We will refer those matters to both Sub-Committees in order to report on them to morrow morning.

Je dois bien constater qu'il est impossible de terminer cette discussion aujourd'hui. Les amendements proposés sont renvoyés aux commissions qui les examineront demain matin.

Mr. A. Bagge. — Could the Sub-Committee not meet now ?

M. L. Dor. — Si tous les membres de la Commission veulent bien se réunir aujourd'hui, je ne demande pas mieux.

Au sujet de l'existence des deux Commissions, permettez-moi de vous dire que le petit Comité de rédaction n'est qu'une émanation de la Commission internationale. Ce sont quelques membres de celle-ci qui le composent. Par conséquent, lorsque vous avez la Commission internationale, vous avez tout le monde. Nous pourrions peut-être nous réunir ce soir à bord de l'« Oranje ».

M. le Président. — Il est donc entendu que nous reprendrons notre discussion demain à 10 heures.

— *La séance est levée à 17 heures 10.*

— *The Conference adjourned at 5,10 p. m.*

MARDI, 20 SEPTEMBRE 1949

TUESDAY, SEPTEMBER 20th 1949

SEANCE DU MATIN

MORNING SESSION

La séance est ouverte à 10 heures trente sous la présidence de M. Offerhaus.

The conference resumed its labours at 10.30 a.m., Mr. Offerhaus in the chair.

Revision des Règles d'York et d'Anvers.

Continuation de la discussion.

Revision of York and Antwerp Rules

Discussion continued.

The President. — Ladies and Gentlemen, the session is reopened to the subject of Rules of General Average. First of all I should like to call upon Sir Leslie Scott.

Sir Leslie Scott (Great-Britain). — Mr. President, I rise for this reason : the success of the International Maritime Committee in the past has been due to our curtailing discussion of the matters upon which there is real agreement. I would suggest to our President that we should follow the practice of the House of Commons in England, where I was a member for nineteen years. In report stage after a Bill has been considered in Committee in detail, nothing is in order, no speeches are in order, unless they are either to reject the whole proposal or to reject a particular clause of an amendment put down in the report stage. Discussion ought to be limited today, to perfectly definite points of disagreement with the Sub-Committee, which has produced an admirable report. If we carry on at the rate at which we went yesterday, we will never get through. In the

past the Comité has been a business body, carrying through business without delay.

I make an appeal, as the oldest member of the Comité present — at least as old as any, I think M. Ripert is the next oldest, Mr. Bagge perhaps — to limit discussions entirely to perfectly definite points of amendment. Otherwise we shall fail in our object, and I am quite certain we shall very much disappoint our business friends from the United States.

The President. — I may add that the Permanent Bureau has ruled that no translation shall be made of any speech in the conference unless any of the delegations asks for it. It is not the usual method of procedure, but in order to speed up matters, it will be useful. Do you agree ? *(Agreed)*

Now Ladies and Gentlemen, we are discussing the Rule of Interpretation, and I call upon Mtre Dor for the report of the International Sub-Committee.

M. Leopold Dor (Paris). — La Commission internationale s'est réunie hier à bord du superbe paquebot de la compagnie « Nederland ». et je dois dire que pas une seule voix ne s'est élevée en faveur d'aucun des amendements. Au contraire, tous les membres qui ont pris la parole ont demandé qu'on s'en tint au texte de la Commission internationale qui vous a été distribué. Certains d'entre eux et notamment mon éminent ami M. Keating, chef de la délégation américaine, ont été spécialement vigoureux dans l'expression de leur opinion, et ont fait remarquer qu'il fallait qu'ils soient rentrés à la Noël pour manger la dinde et que si nous allions au train dont nous avons été hier, ils risquaient de manger une dinde hollandaise.

Devant cette unanimité, je n'ai pu que mettre aux voix le maintien de l'article en question dans la rédaction proposée par la Commission. Cette proposition a été adoptée à l'unanimité.

Le point de vue des membres de la Commission, et notamment celui de MM. Reading et Keating, est que cette clause leur est absolument indispensable, que les assureurs et armateurs anglais et américains, étant donné la jurisprudence du « Makis », ont absolument besoin de cette clause et que les amendements consistent simplement à dire la même chose sous une autre forme. Même si cette autre forme est meilleure, ils préfèrent s'en tenir au texte adopté par la Commission, lequel a déjà reçu l'approbation en Angleterre et en Amérique. Ils font d'ailleurs remarquer qu'il a été envoyé à toutes les associations nationales et qu'aucune d'elles n'a fait d'objection, pas même la délégation française.

Je ne puis que vous faire part de l'unanimité de la Commission et vous inviter dans ces conditions à voter l'article figurant dans le texte de la Commission.

The President. — Ladies and Gentlemen, the Sub-Committee proposes to maintain the Rule. Personally, as a lawyer, I can imagine that everybody will not be satisfied from a juridical point of view, but there are very important and great interests concerned and I therefore propose now to put to the vote the proposal of the International Sub-Committee. I propose to take the vote of each delegation alphabetically. The answer « Yes » means in favour of the Rule.

M. Francis Sauvage (Paris). — La délégation francaise votera « oui » dans le but de raccourcir le débat.

The delegations of Belgium, Denmark, France, Great Britain, Italy, Norway, Netherlands, Sweden, the United States vote Yes. Portugal votes « No ».

M. Télès (Portugal). — J'ai voté contre parce que — je tiens à le déclarer, — l'Association portugaise n'a pas été invitée à fournir un rapport sur la revision des règles d'York et d'Anvers.

M. le Président. — Merci.

The President. — This Rule has been agreed upon by 9 votes against one vote.

Mr. H. A. Andesson (Finland). — May I not, as a delegate for Finland, vote ? I say yes too.

The President. — I dare not ask the opinion of Ireland.

Mr. Kirkpatrick. — The answer is Yes. *(Applause).*

The President. — Rule A. reads as follows :

« There is a general average act when, and only when, any extraordi-
» nary sacrifice or expenditure is intentionally and reasonably made or
» incurred for the common safety for the purpose of preserving from peril
» the property involved in a common maritime adventure. »

This is the old Rule unamended. Does anyone wish to say anything on this Rule ? *(No)*

Rule B. reads as follows :

« General average sacrifices and expenses shall be borne by the diffe-
» rent contributing interests on the basis hereinafter provided. »

This is the old rule unamended.

Rule C, as proposed by the International Sub-Committee, reads as follows :

« Only such losses, damages or expenses which are the direct conse-
» quence of the general Average act shall be allowed as general average. »

« Loss or damage sustained by the ship or cargo through delay, whet-
» her on the voyage or subsequently, such as demurrage, and any indirect
» loss whatsoever, such as loss of market, shall not be admitted as general
» average. »

The addition of the words « whether on the voyage or subsequently » is proposed by the international Sub-Committee. Does any delegation object to the proposal of the International Sub-Committee ?

M. Giorgio Berlingieri (Gênes). — Messieurs, la première partie de cette règle pose le principe que seuls les pertes, dommages et dépenses qui sont une conséquence directe de l'acte d'avarie commune, seront admis en avarie commune. Rien n'est plus juste.

La deuxième partie de la règle fait mention du chômage. J'estime comme Mtre Dor qu'il est inutile de remettre en discussion des choses qui ont été arrêtées en 1924. Donc, les dommages et les pertes subis par le navire et sa cargaison par suite de retard ne seront pas admis en avarie commune. Cela peut se comprendre puisque, si le retard dans le voyage est une conséquence directe de l'avarie commune, le dommage dérivant du retard n'est qu'une conséquence du retard et se trouve en relation indirecte avec l'avarie commune. Mais j'attire votre attention sur la deuxième partie du deuxième alinéa de la règle. Il y est dit que les surestaries sont une conséquence indirecte du retard. Cela n'est pas exact. Le chômage du navire est en relation étroite de cause à effet avec le retard. Il n'est donc pas une conséquence indirecte du retard dans le voyage. C'est pourquoi je propose de supprimer le mot « indirect » de façon à ce que le texte du deuxième alinéa soit conçu come suit :

« Damage or loss sustained by the ship or cargo through delay, whether on a voyage or subsequently, and the loss from the same cause, such as demurrage, and the loss of market shall not be admitted as general average ».

M. le Président. — Je donne la parole à M. Dor.

M. Léopold Dor (Paris). — Je crois que M. Berlingieri a mal lu notre texte. En effet dans les anciennes règles de 1924, on disait cette hérésie juridique que le chômage est une conséquence indirecte de l'acte de l'avarie commune. Voici l'ancienne règle : « Damage or loss sustained by the
» ship or cargo through delay on the voyage, and indirect loss from the

» same cause, such as demurrage and loss of market, shall not be admit-
» ted as general average ».

C'est une erreur absolue contre laquelle, en Commission, je me suis personnellement élevé, parce que, lorsque le capitaine décide d'échouer son navire volontairement pour le salut commun, il décide deux choses : la première, c'est qu'un réparateur sera obligé de réparer les avaries qu'il va faire à son navire ; la deuxième, que son navire sera immobilisé pendant un mois ou plusieurs mois, c.à.d. pendant tout le temps que dureront les réparations. Il est stupide d'affirmer qu'alors que le coût des réparations est une conséquence directe de l'acte posé par le capitaine, le chômage en est une conséquence indirecte. Mais, en 1924, on était tellement désireux de mettre fin à la jurisprudence française qui a admis logiquement et juridiquement que le chômage est une conséquence directe, qui doit être admise en avarie commune, on était tellement désireux de consacrer cette erreur juridique que le chômage n'est pas une avarie commune, et de proclamer que l'avarie commune n'a rien à voir avec le droit et la logique, qu'on a dit dans la règle C que le chômage était une conséquence indirecte. Si vous lisez bien notre nouvelle règle, vous verrez que nous avons précisément évité cela et que nous l'avons rédigée de telle façon qu'il n'est pas du tout dit que le chômage est une conséquence indirecte. Il est exclu par une sorte de veto de ceux qui s'occupent d'avarie commune et qui ont horreur de la logique ; mais il n'est pas indiqué du tout comme une conséquence indirecte.

The President. — Is there any delegation whishing to say anything further on this Rule. May I take it that Professor Belingieri is satisfied ?

M. Giorgio Berlingieri (Gênes). — Oui, Monsieur le Président.

The President. — Does everyone accept Rule C. ? (Yes). Then Rule C. is agreed.

RULE D. — « Rights to contribution in general average shall not be
» affected, though the event which gave rise to the sacrifice or expendi-
» ture may have been due to the fault of one of the parties to the adven-
» ture ; but this shall not prejudice any remedies which may be open
» against that party for such fault. »

This is the old rule, unamended.

RULE E. — « The onus of proof is upon the party claiming in general
» average to show that the loss or expense claimed is properly allowable
» as general average. »

This also is the old rule E unamended.

Rule F reads as follows :

RULE F. — « Any extra expense incurred in place of another expense » which would have been allowable as general average shall be deemed to » be general average and so allowed without regard to the saving, if any, » to other interests, but only up to the amount of the general average » expense avoided. »

Is there any delegation wishing to comment upon Rule F ?

Mr. H. Schadee (Netherlands). — Mr. Chairman, in my opinion the solution proposed by the International Sub-Committee is most unsatisfactory ; I think it is not a solution at all, because by accepting it the position, as it has been since 1924 and as it still stands, will not be changed. This solution means that some substituted expenses will be dealt with on a completely different basis from other ones. Mr. Chairman. I think this is illogical and undesirable. Maitre Dor has told me that, whether or not it is logical has nothing to do with general average ; but I opine it is undesirable and I think that undesirable things should be avoided.

One of the main purposes of general average is to give the Master a free hand in taking his decisions for the common safety. This purpose is seriously hampered by a difference like this. When a Master knows that cost of temporary repairs will be fully allowed in general average, but that the cost of towing f.i. will only partially be made good to his principal, the shipowner, he will naturally be prejudiced against towing and prefer temporary repairs. I therefore think that the decision of the International Sub-Committee is in direct conflict with the main purpose of general average.

Mr. Chairman, I consider that in these Rules, F, Xd and XIV, which are also taken as a whole by the International Sub-Committee, only one system ought to be followed.

The Netherlands delegation does not hesitate in the choice which has to be made. The complicated system for the towing expenses has been adopted to achieve more fairness, because it seems unfair that a shipowner would be reimbursed for all his towing expenses even when not only the general average has profited by this towing but also he himself derived some profit therefrom.

I think the fairness aimed at would not always be reached by the solution proposed.

Mr. Chairman, I shall not dwell upon these details, but it may suffice to mention to you all the taxations necessary for arriving at the possible

adoption of Rule X. There are quite a lot of things to be estimated; such as the cost of towing and all the expenses which would not have been if such and such a thing were not done. I have always thought that this is more philosophy than general average, but all this philosophy, all these estimations and all these taxations involve time and money ; all this time and all this work has to be paid for.

Naturally this applies more to small cases of general average, and in Northern Europe these small cases may be far more numerous than in other countries. In these small cases it is very difficult to obtain all the details the Adjuster should know. The differences in allowance which are reached are comparatively very small ; they may be a question of £ 10 or £ 20 in all. To reach this greater fairness adjustments are generally kept in suspense several months, or even more ; even then the Adjuster cannot get all the details required ; he just shuts his eyes and puts down some figures, and then he thinks the question has been settled !

Our task here is to simplify general average. I therefore strongly propose on behalf of the Netherlands delegation that in these substituted expenses only one system ought to be followed, and that system should be that of Rule F and Rule XIV, which means that all expenses for towing should be allowed in general average, as far as general average expenses have been saved, without regard to saving for any other purpose.

The President. — Have you any written amendment on Rule Xd ?

Mr. Schadee. — I have no written amendment, but it is a simple matter. Change the last words from « ...shall be payable by the several parties to the adventure in proportion to the extraordinary expenses saved », which is a complicated wording, to « ...shall be payable in general average up to the amount saved without regard to the saving, if any, to the other interests... » You can adopt the words which are in Rule F.

The President. — May I ask Mr. Reading whether he would like to reply now on behalf of the international Sub-Committee or whether he would like to wait until other delegations have spoken.

Mr. E. W Reading. (Great-Britain). — If some other delegations are going to speak, I could better reply afterwards.

The President. — Does any other delegation wish to speak on this Rule ? If there are no other delegates wishing to speak I will call on Mr. Reading to reply for the International Sub-Committee.

Mr. E. W. Reading. — Mr. President, I entirely agree with Mr. Schadee and the views of the Netherlands delegation. Obviously it would be the best of all worlds if, on substituted expenses, the same principle would apply to every Rule. What we should favour is what I myself think is right : the simpler solution that the substituted expenses should be allowed without regard to the saving to other interests. But as I said in my preliminary remarks, we have also to consider what some of our friends in the business world want ; and there has been quite a strong report from some quarters for the retention of Rule Xd, which seems to be part of the general principle, but which deals with a certain practical case. The view of those who want the old Xd. retained, which has been in these Rules for 50 or 60 years, is that where a shipowner has a vessel in difficulties and takes steps either to tow his vessel to another port of repair or to transship the cargo and forward it, it is not always possible for him to communicate or get into touch with, or obtain agreement of, those concerned with the cargo ; and that Rule Xd is a safeguard for cargo interests. It ensures that a shipowner should not abuse the situation by entering upon a course which is of greater benefit to him than to other interests, and then being able to recover the whole expenses in general average.

It is in essence, Sir, a compromise. In the Sub-Committee, the substituted expenses were discussed at great length. There are, after all, the two opposing views : (1) that it is simpler to allow the expense without regard to the saving to other interests ; and, (2) the opposing view in which we could have applied the principle of Rule Xd to Rule F., and therefore on every occasion try to enter into elaborate calculations as to what the saving is to other parties. What we have done in effect is to reach a compromise whereby, as a general principle, we have maintained what we think is right. But with regard to Rule Xd., which has really been there for 60 years, and shipowners are perfectly well aware as to its working, that has been retained for practical reasons.

I do not think a great deal of harm will be done in this matter when we do depart from principles now and again, if it is going to create confidence in some of the parties to general average.

Mr. C. Keating (U.S.A.). — Mr. President, I think this discussion ought to be postponed until we get to Rule Xd. I think we are all agreed on the present Rule. The only question is whether we shall go along with the compromise which was reached in the Sub-Committee, or whether we

should make the exception in Xd. I respectfully suggest, Mr. President, that we adopt this rule and then, when we get to Xd, we take up the question put forward by the learned gentleman of the Netherlands delegation. Personally I have a good deal of sympathy with his views, but I think the proper place to discuss this matter is when we get to Xd.

The President. — Thank you Mr. Keating. The other suggestion, which was made by me personally was to decide now on the whole principle for Rule F., Xd. and XIV., but we can follow the other way, which is proposed by Mr. Keating. Therefore, I suppose that we will do so on the understanding that the principle of saving will not be discussed any more. If you agree, we will accept Rule F, and we will come back to the matter of wording for Rule Xd. when we deal with that Rule. Do you agree ? *(Agreed)*.

I may take it, then, that Rule F. has been accepted. Thank you.

Rule G, no amendment.

Now, Gentlemen, we come to the numbered Rules.

On Rules I, II, III and IV there are no amendments.

The old Rule V is maintained with the addition of the words « but loss or damage incurred in refloating such a ship shall be allowed as general average ». In the second part we delete the word « But ». If no delegation wishes to speak on Rule V, it is accepted.

There is no amendment to Rule VI.

With regard to Rule VII, I shall first of all read it out. « Damage to Machinery and Boilers. Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage ; but where a ship is afloat no loss or damage caused by working the machinery and boilers including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average. »

The heading of this rule has been somewhat altered, and the words « including loss or damage due to compounding of engines or such measures », and « in any circumstances » have been added. Are there any objections to that amendment ? If not, Rule VII is agreed.

On Rules VIII and IX there are no amendments.

In Rule X the heading has been lifted and in subsection « c » the word

« fire » is deleted and the word « reasonably « added. I think there will be no comments upon the heading. I would propose to discuss « a », « b », « c » and « d » separately.

First of all on Rule X (a) in accordance with the proposals of the International Sub-Committee there is no amendment. Does anyone want to say anything on Rule X (a) ?

Mr. Schadee (Netherlands). — Mr. Chairman, as you will have seen in the report of the International Commission, a suggestion has been made to deal with the cost of wages etc. during the removal from a port of refuge were repairs cannot be effected to a port where repairs can be effected. I will give as an example the case of a vessel being disabled at sea, calling at some port as a port of refuge and then proceeding to another port where it is finally repaired. The amendment suggested was to apply the provisions of Rule X and XI to the second port as if this port was a port of refuge within these rules. For this amendment it was not necessary to make a completely new draft, because this principle is already embodied in a probationary rule of practice of the British Association of Average Adjusters.

Mr. Chairman, I would propose, on behalf of the Netherlands delegation, an amendment to Rule X (a) embodying this principle, because I think it is extremely sound.

The York/Antwerp Rules have accepted the system that when the common safety renders it necessary for a vessel to be repaired, the extra wages and maintainance incurred thereby shall be made good in general average. Now what difference does it make whether these repairs are made in one port or in two ports ? Why should allowance be made for the whole duration of the vessels repairs when the ship is so lucky as to be fully repaired at the first port and not when she is so unlucky as to have to proceed to another port ? I fail to see any theoretical reason for such a distinction. But, Mr. Chairman, once more, the theoretical distinction need not trouble us too much. But I do not see any practical solution to this, for what is one port and what are two ports. To take an instance of which I am completely sure, a vessel is repairing at Vlaardingen, a small port near Rotterdam ; when at Vlaardingen she proceeds three minutes up the Rive Maas to Schiedam. She is at a completely different place, a place which may be known to all. When she is at Schiedam, she can get repairs effected. Are Vlaardingen and Schiedam one port or two ports ?

Should an allowance for maintainance and wages be made because the Master is going to Schiedam for repairs for the vessel ? When a vessel is lying at Flushing and she is going to Rotterdam, are Flushing and Rotterdam one port or two ports ? To put another question which is even more delicate, when a vessel is lying at Rotterdam and she is proceeding to Amsterdam, are they one port ?

The President. — Not at all.

Mr. Schadee. — Not at all, I agree. When she is going to Rotterdam and London, are not Rotterdam and London one port ? Mr. Chairman, all these difficulties point out that it is practically impossible to make a distinction between one port and two ports. That two ports are treated as two ports may be the result of such a ridiculous conflict as between two burgomasters. I think it is quite unfair to allow these burgomasters any say in matters of general average. I have very great respect for burgomasters — the programme has given me that — but I do not think they should be allowed to have a say in these questions. How sound is the principle of treating these two ports as one port leaps to the eye if we consider the consequences when it is not applied. These consequences are not only unfair, they are a danger to shipping. It is unfair, when the prudent Master before trying to reach a bigger port where everything can be rapaired, has some temporary repairs made at the small port, and therefore has to forfeit his right to claim expenses at the final port.

When all these reasons point to the adoption of this amendment, how is it that it has not been adopted in London ? It has been said, Mr. Chairman, that general average should be illogical ; I think the reason for this amendment not having been accepted is highly illogical, therefore it may stand, but I hope not. The reason for which the amendment was not accepted was because everyone agreed to it !

May I cite what Mr. Reading said in May of this year ? « There was general agreement that the cost of removing a vessel from one port of refuge to a second port to do essentiel repairs, should be recoverable in general average ». And another eminent Average Adjuster said : « I understood that the purpose of the proposed new rule of practice was to bring the practice in this country into conformity with the practice followed in every continental country and I believe also in the United States.»

The only reason why the suggestion was not taken was because it was deemed to be superfluous. I think this is an extremely dangerous reason. The rule of practice of the Association of Average Adjusters is a very

important thing, I have no doubt about that, established practice in most countries is also very important ; but even then it does not make a part of the understanding between the shipowner and the cargo owner, they are not bound by it on the same footing as they are bound by the York/Antwerp Rules.

Mr. Chairman, when a cargo-owner takes a case to court, there is always some little chance that he will find a judge who thinks that logic has something to do with the distribution of rights ; and he may, therefore, disregard the fact that there has been a rule of practice of the Association of Average Adjusters and he just goes on in his own logical tracks. The judge may even be a very studious one, and he may look up the report of the International Sub-Committee and he may see that an amendment was proposed and that it was rejected. Then, when the judge is a logical one, and I may say especially when he is a continental one, he may say that this amendment was proposed and not adopted he might accept the argument a contrario and completely disregard the express wish of this Sub-Committee.

I would therefore repeat that if my amendment was not accepted, it was only because it was deemed superfluous and not because the rule is deemed to be wrong. I am not saying this to the Conference, but to the judge who may be so unhappy as to have a logical mind ! Therefore, Mr. Chairman, I formally move the following amendment, in support of which I have given all my reasons to the Sub-Committee : That there be added after the final paragraph of Rule (a) the words : « When a ship is at any » port or place of refuge and is necessarilly removed to another port or » place because repairs cannot be carried out in the first port or place, the » provisions of this Rule shall be applied to the second port or place as if » it were a port or place of refuge. The provisions of Rule XI shall be ap- » plied to the prolongation of the voyage occasioned by such removal. »

I may repeat that this is not a text of the Netherlands delegation but, for all practical purposes the text of the Association of Average Adjusters.

The President. — You do not intend that all the provisions of Rule XI should be applied, but only the provisions of Rule XI which are related to this subject ?

Mr. F. G. Hogg (Great-Britain). — May I ask one question ? Does the delegate mean to refer to wages in the provision at the second port, or does he mean the cost of towing from the first to the second port ? That is rather important.

The President. — I think Mr. Schadee means that this new second paragraph of Rule Xa will be applicable to the contents of the first paragraph.

May I call upon Mr. Reading ?

Mr. E. W. Reading. — Mr. President, I am sorry the remarks that I have made on other occasions with regard to matters which are not concerned with the York/Antwerp Rules should be introduced here. That quotation was in connection with a domestic matter of the British Association of Average Adjusters, which I think is not a concern of an International committee which is considering the York/Antwerp Rules.

In fact, I do not know that we could not accept Mr. Schadee's amendments. The reason why we did not do so was because at our meetings of the Sub-Committee, and from the reports which we have received from various countries and enquiries, we believed that what Mr. Schadee proposes here was already the practice everywhere except in the United Kingdom.

The reason why this was not the practice in the United Kingdom was I think brought out at a meeting of the British Average Adjusters a year ago ; there was a misunderstanding in the Association a few years previously. But for that misunderstanding I believe the British practice would be what Mr. Schadee has just mentioned. If there is any doubt in the matter, apart from one or two verbal alterations, I can see no objections to this being introduced. The reason for opposing it was just that we thought it unnecessary to add to a rule that is already over-long, a number of words which lay down what is already the practice in, I think, every maritime country.

May I suggest, if this meeting does think it worth while accepting this amendment, that there are just one or two words which might be altered. My preference, however, would be for not adding any more words to this very long rule.

The President. — Mr. Reading says that the practice in all maritime nations is not inconsistent with the Rule. I would like to ask Mr. Keating whether the American practice is the same.

Mr. Keating. — The American practice is not quite the same, but it is substantially the same. We see no objections to the adoption of these additional words, but I think perhaps we ought to accept in principle and ask the drafting committee to look at the actual words, in order to be sure that what we read in principle will work into the rest of the document.

Sir Leslie Scott. — I only want to add one word. I think the second half of the proposed amendment is on the borderline between practice and law. If there is no objection to the contents of that half, I think it would be just as well that it should be referred to the drafting committee to be sure of the language, and then incorporated.

The President. — We ought now to decide whether or not we shall accept Rule X(a) without amendment or with the amendment of the Netherlands delegation. We have heard that there is no objection in principle from the United Kingdom, although they say that the second paragraph of Rule X(a) would be unnecessary. Now I hear from Mr. Keating from the United States that he is in favour of the Netherlands amendment. I should like to ask whether you all agree that this amendment should be accepted on the understanding that it is referred to the Drafting Committee to see whether the wording is quite right.

Sir Leslie Scott. — May I make that a definite proposal ?

The President. — I will take it over and propose definitely that we accept the amendment. Do you agree ? There are no objections ; so the matter will be referred to the drafting committee.

I call on Mtre Dor to speak on the matter of the drafting committee.

M. Léopld Dor. — Je prie les membres de la Commission de rédaction de se réunir ici après la séance de cet après-midi.

Would the members of the Drafting Committee please stay here after the afternoon session and have a short meeting ?

Sir Leslie Scott. — That is very unkind to the Americans.

The President. — It will be a very short session — from one minute to five to one minute past five.

Now we come to rule X(b).

La délégation française préfère-t-elle que je lise toutes les règles, même celles qui n'ont pas été amendées ?

M. Francois Sauvage (France). — Non, Monsieur le Président. Je vous remercie.

There is no amendment to rule X (b).

As you see, on Rule X c, the word « fire » is deleted and the word « reasonably » is added. Does any delegation wish to make an objection against the proposal.

Mr. R. Nilsson (Denmark). — Mr. President,, Gentlemen, on behalf of the Danish delegation I can only say that we are not in favour of the deletion of the word « fire ».

As a shipowner I fear that it will impose on the shipowners the duty of effecting insurance of every extraneous risk imaginable. For instance, if goods are stored in a place where you may expect hurricanes or the like, you have to take out an insurance policy against this risk. You may have to insure against theft and pilferage, and if the goods are put in lighters you have to cover that also. I am afraid that, if they omit these insurances, they will be liable for any loss or damage in consequence thereof. Secondly, I think most of these insurance are already covered by the Marine Underwriters on cargo ; so it will constitute a double insurance. Thirdly, it will induce shipowners to effect such insurances.

The point which I most want to stress is that I am afraid of the liability which may fall upon a shipowner if he omits to cover these insurances.

The President. — This is a very delicate question because this amendment has been proposed by your friends from Sweden.

Mr. Nilsson (Denmark). — Yes, but it was not proposed by Denmark.

The President. — May I ask whether the International Sub-Committee has anything to say on this matter ?

Mr. Keating (U.S.A.). — The suggestion of leaving out the word « fire » was made by our delegation whereas one other delegation — I have forgotten which — added the word « reasonably », which is of course quite acceptable.

The practice in the United States is sometimes to make extensive use of lighters ; and in our practice we have always « where that was reasonably incurred », and allowed it as a general average charge. There are cases, of course, where the goods may be exposed to other risks, such as in a hurricane area, or an earthquake area and so on. In our view it is a permissive matter which should be left mainly to the adjuster or to the shipowner, and it seems to me that in the interests of the adventure, if it is reasonably incurred and is reasonably necessary, it should be allowed ; but to tie it down merely to one kind of insurance seems to me to be making an unnecessary restriction when it would be for the benefit of all concerned if the cargo was protected by appropriate insurance. I am of course very ignorant about the law of Denmark. I might say that my knowledge of that law is not very different from my knowledge of other laws ; but speaking only from the United States point of view, I do not think there is any possibility of incurring any liability if the insurance is not taken out. It is a matter of judgment as to whether it should

be taken out or not and whether it has been reasonably incurred. We will of course accept the will of the majority of the delegations, but from the standpoint of our own practice in America, we would like very much to have that word eliminated.

M. J. P. Govare (Paris). — Je parle au nom de la délégation française. Tout à l'heure, un de nos distingués collègues a fait remarquer qu'en supprimant le mot « fire » de cette clause, on risquait de faire peser sur les épaules des armateurs une lourde responsabilité, parce qu'ils seraient obligés de prévoir toutes les assurances indispensables ou possibles. La branche française pense que l'amendement proposé à Londres est excellent parce que l'assurance contre le feu ne se justifie pas dans certains cas, tandis qu'au contraire l'armateur peut avoir de très bonnes raisons d'assurer une marchandise d'une certaine valeur contre le vol par exemple. D'après l'ancienne règle, l'assurance contre le vol n'entrerait pas dans l'avarie commune, seule l'assurance contre le feu était admise. La Commission, après avoir longuement examiné cette question sous tous ses aspects, a établi avec raison qu'il ne fallait pas limiter l'assurance au feu mais l'étendre à toutes les assurances raisonnablement conclues. C'est la raison pour laquelle la branche française demande à la Conférence de voter en faveur de l'amendement proposé. Elle estime qu'elle est beaucoup plus logique, car elle tient compte des éléments de chaque cas particulier et il appartiendra au dispacheur de voir si les assurances portées en compte sont raisonnablement conclues.

The object of the remarks of the French branch is simply to urge you to vote for this amendment, because when our learned friend says that it puts a heavy burden on the shoulders of the shipowner, we would remark that the fire-insurance is not the only one which may be reasonably passed, and that in some cases the insurance against pilferage or theft may be more necessary even than that against fire. Therefore, we should leave it to the general average adjuster to see whether or not the insurance which has been passed has been reasonably incurred. Consequently I urge you to vote for the amendment which has been proposed.

Mr. Kihlbom (Sweden). — Mr. President, Gentlemen, I think there is one point raised by the Danish delegation, which should be made clear. I take it that those delegates who proposed this amendment in the International Sub-Committee did not have the intention of imposing upon the shipowner the duty of effecting insurance. I propose that we say in the minutes of this Conference that the intention is not to impose any duty

of effecting insurance upon the shipowner and that no such obligation shall rest upon him.

M. Le Président. — Je donne la parole à M. Dor.

M. Léopold Dor. — La Commission internationale vous propose de maintenir purement et simplement son texte initial, lequel prévoit l'exclusion du mot « fire ».

Vous avez entendu que les délégations des Etats-Unis et de la France, sont de cet avis. Il en est de même de la délégation anglaise auprès de laquelle je viens de m'en assurer. Par conséquent, étant donné que nous avons amplement discuté cette question en Commission, je vous demande de voter l'article X c) tel que vous l'avez, imprimé, sous vos yeux.

The International Sub-Committee invites you to vote for its text as it stands, which is to delete the word « fire » in Rule Xc and to add the word « reasonably ».

The President. — I think there are no written sub-amendments on the amendment of the international Sub-Committee, and so I shall put it to the vote. Is any delegation against this amendment ?

Mr. N.V. Boeg (Denmark). — The Danish delegation is against the amendment.

The President. — Does any other delegation oppose the amendment ? As there are no further objections the amendment has been accepted by the majority.

The text proposed for Rule Xd is the unamended text. Is there any opposition to the unamended text of Rule X (d).

Mr. Schadee (Netherlands). — I will only repeat what I have said : I move the amendment which I proposed a few minutes ago.

The President. — I shall read the text of the Dutch amendment :
« change the last words of the paragraph into : « shall be payable in general average up to the amount saved without regard to the saving, if any, to the other interests. »

Mr. J. P. Govare (France). — May we have the French text ?

The President. — I do not know whether the Dutch delegation has written out a French text ; the English text only is under discussion.

M. Carlo Van den Bosch (Anvers). — L'amendement tend à supprimer les derniers mots de l'alinéa et à les remplacer par : «sera admis en avarie commune à concurrence du montant des dépenses épargnées sans égard aux dépenses sauvées, s'il y en a, au profit de certaines parties.

The President. — I call now upon Mtr. Dor to comment upon this amendment on behalf of the International Sub-Committee.

M. Léopold Dor. — Gentlemen, I pray you, if it is possible, not to disturb the compromise at which the drafting committee arrived in respect of the substituted expenses. Believe me, it was a most difficult subject. We discussed it in the international Sub-Committee, and we could not arrive at an agreed text. We therefore appointed a small sub-committee, consisting of only three or four members, to try to arrive at a compromise. While the Drafting Committee was sitting in London I was fortunate enough to be able to bring together the three members who were present. Captain Kihlbom was a member of that committee, and we arrived at a compromise. It was then left to me to persuade M. Gervais, who was also a member of that small committee and who was not present in London, to accept our compromise. Captain Kihlbom and M. Gervais, again showing a spirit of conciliation, accepted that compromise. The Drafting Committee was able to announce finally that a compromise had been reached on the question of substituted expenses.

In such matters, and it is just the same as in diplomatic matters, when with great difficulty, you arrive at a compromise, if you touch it even slightly, the whole thing falls to pieces and you have to start all over again. I do not say that we should not discuss the matter, but I warn you that it is very advisable to let the compromise stand.

Je répéterai en deux mots la substance de ce que je viens de dire.

Il a été très difficile, à la Commission internationale d'arriver à un compromis sur cette question des dépenses substituées ; ce n'est que grâce à l'esprit de conciliation dont M. Kihlbom et M. Gervais ont fait preuve que nous y avons finalement réussi. Or, il suffit d'apporter la moindre atteinte à un compromis pour qu'il s'effondre comme un château de cartes et tout serait à recommencer. Je mets donc l'assemblée en garde contre ce danger.

Sir Leslie Scott. — Let sleeping dogs lie.

The President. — I put to the vote the amendment of the Netherlands delegation.

(The delegations of Belgium, Denmark, United States, France, Great Britain, Norway, Portugal, Sweden, Finland and Eyre vote against the amendment. The delegations of Italy and the Netherlands vote the amendment.)

The President. — The amendment on Rule Xd is not carried.

As no else wishes to speak on Rule Xd, we will pass to Rule XI.

« **Rule XI.** — Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc.

(a). Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X (a).

(b). When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the extra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(c). For the purpose of this and other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms or articles of employment.

(d). When overtime is paid to the master, officers or crew for maintenance or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred ».

Rule XI is an amalgamation of old rules XI and XX. Moreover, there are some amendments on the contents of both those Rules. There is a new rule on port-charges and sections c and d are new.

There are some written amendments from the British Maritime Law Association which I think are maintained. Because of the amalgamation I can not put section « a » into discussion.

The British Maritime Law Association's amendments have not yet been duplicated, so I will ask you to agree to discuss Rule XI again this afternoon in order that we may deal with the amendments of Great-Britain. With the exception of sub-sections **b** and **d,** we may discuss Rule XI.

Does any delegation wish to speak on Rule XI ?

Mr. Edmunds (Great-Britain). — The British delegation suggests that we leave the whole Rule until after lunch because it is one composite Rule.

The President. — The British delegation proposes to postpone the discussion of Rule XI as a whole until this afternoon. Do you agree ? (*Agreed*).

Rule XII. — Damage to Cargo in Discharging, etc.

« Damage to or loss of cargo, fuel or stores caused in the act of hand-
» ling, discharging, storing, reloading and stowing shall be made good as
» general average, when and only when the cost of those measures respec-
» tively is admitted as general average. »

Mr. Edmunds (Great-Britain). — On Rule XII the British, American and Belgian delegations are suggesting an amendment. We were going to meet last night to talk about it, but unfortunately the meeting here ran very late and then, as you know, some of us spent practically the whole of our time on that beautiful ship of yours, talking about other things. Would you mind, therefore, deferring Rule XII also until this afternoon.

Then, Sir, speaking as the Secretary of the International Sub-Committee, I would ask you if you would please defer Rule XIII until after lunch. It is not our fault ; we met last night as Mtre. Dor told you, and if you look at the explanatory report of the International Sub-Committee under Rule XIII you will see that we point out that after the sitting of the international Sub-Committee, various reports were received. As the Drafting Committee was bound by the International Sub-Committee, however, we had to do something about which we were not very keen. We said in that explanatory note that we thought Rule XIII should be discussed here. Last night the international Sub-Committee discussed that Rule, and a small sub-committee was set up to draft an amendment. We

have not yet had an occasion to do that because our time has been so much taken up with other things ; but I hope that the Drafting Committee will move an official amendment to Rule XIII after lunch. Therefore if you could finish this meeting at 12.30, — we are making very rapid progress now, — it would give a chance to some of us on the secretarial side to catch up with our arrears.

The President. — Does the Conference agree that discussion on Rules XI, XII and XIII should be postponed until this afternoon ?

Mr. Leopold Dor. — We shall not be ready to discuss Rule XIII this afternoon because yesterday at a meenting of the Drafting Committee, which took place after the meeting of the international Sub-Committee, Mr. Kihlbom proposed a most interesting amendment to the Commission's text of Rule XIII. A very interesting discussion then took place between Mr. Reading and Mr. Kihlbom which, had I not intervened, might still be going on at this time and we should have had to ask for cabins on board the « Oranje ». I suggest that a small sub-committee consisting of Mr. Kihlbom, Mr. Reading and a third member, should meet, agree upon a text and offer that text to the Drafting Committee.

I do not know whether the small committee has already agreed but the Drafting Committee, at any rate, cannot meet before 2.30 this afternoon. Therefore we will have to postpone Rule XIII at least until tomorrow morning.

Mr. Andersson (Finland). — Mr. President, if Rule XIII is going to be discussed by a sub-committee, I would ask permission to draw attention to the fact that in Rule XIII you say « where old material or parts are replaced by new ». If you look up Rule XVIII you will see that therein it is said : « deduction being made as above (Rule XIII) when old material is replaced by new ». Is it not the intention that there should be also a reference to parts in Rule XVIII ? I take the liberty of putting that before the meeting.

The President. — I did not ask for discussion on Rule XIII because we had intended to postpone the discussion of Rules XI, XII and XIII until this afternoon or perhaps later. But after all, since you have mentioned that fact, I will call upon the Drafting Committee to consider this observation of the Finnish delegation. We can continue with this subject this afternoon.

The only remaining point is whether we should discuss these three Rules this afternoon or whether we should discuss them later on. I still

hope we can do it this afternoon and that the Drafting Committee may have an opportunity to discuss all these questions as far as possible. If they are not ready there may perhaps be an opportunity to continue their labours to -night ; but I should very much regret it if we could not open the discussion this afternoon. Is that agreed ? (*Agreed*).

We will now pass to Rule XIV, reading as follows :

Rule XIV. — Temporary repairs.

« Where temporary repairs are effected to a ship at a port of loading, » call or refuge, for the common safety, or of damage caused by general » average sacrifice, the cost of such repairs shall be admitted as general » average.

« Where temporary repairs of accidental damage are effected merely to » enable the adventure to be completed, the cost of such repairs shall be » admitted as general average without regard to the saving, if any, to other » interests, but only up to the saving in expense which would have been » incurred and allowed in general average if such repairs had not been » effected there. »

« No deductions « new for old » shall be made from the cost of tem- » porary repairs allowable as general average. »

Rule XIV is the old text with the words « without regard to the saving, if any, to other interests » added. I may take it that, with regard to the proposal of the International Sub-Committee, everyone agrees as it is the same question. Does any delegation wish to speak on Rule XIV ? (No). Then it is agreed.

Rule XV. — Loss of Freight.

« Loss of freight arising from damage to or loss of cargo shall be made » good as general average, either when caused by a general average act, » or when the damage to or loss of cargo is so made good. »

« Deduction shall be made from the amount of gross freight lost, of the » charges which the owner thereof would have incurred to earn such » freight, but has, in consequence of the sacrifice, not incurred. »

The President. — There is no amendment on Rule XV.

Rule XVI. —

Amount to be made good for Cargo Lost or Damaged by Sacrifice.

« The amount to be made good as general average for damage to or loss » of goods sacrificed shall be the loss which the owner of the goods has » sustained thereby, based on the market values at the last day of dis-

» charge of the vessel or at the termination of the adventure where this » ends at a place other than the original destination.

« Where goods so damaged are sold, the loss to be made good in gene- » ral average shall be the difference between the net proceeds of sale and » the net sound value at the last day of discharge of the vessel or at the » termination of the adventure where this ends at a place other than the » original destination. »

The President. — Rule XVI is the old rule with an amendment in the first paragraph, viz the addition of the words « the last day of discharge ». A new second paragraph has been added.

Mr. Andersson (Finland). — Mr. Chairman, Gentlemen, in the second paragraph we say « the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge ». I think the net proceeds of sale will always be smaller than the net sound value. Therefore, I think that the net sound value should be placed first, and the net proceeds should come after.

The President. — What is the view of the International Sub-Committee about that ?

Mr. Keating (United States). — Mr. President, Gentlemen, the British Maritime Law Association and ourselves have a very short amendment which we should like to propose. We have it written out, but we have not had a chance to circulate it. It is very brief, and perhaps it will save us a little time if I tell you what it is.

Rule XVI in the second paragraph, which now reads « Where goods so damaged are sold the loss to be made good in general average shall be the difference... » and so forth. We would propose that the words « and the amount of damage has not been otherwise agreed » should be inserted after the word « sold » in the first sentence of the second paragraph. The text would then read « Where goods so damaged are sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference... » and so forth. That amendment is moved by the British and the American delegations. I might add that we would particularly like it because it is not compulsory. If it is not done the Rule stands, but the practice in the United States is sometimes to come to an agreement on values. We are fearful that when we have followed that practice and have come to an agreement, somebody may later attempt to repudiate it and say that the rights are fixed by the

Rule. All we want is to be certain that if we make this agreement on values we will have the right to maintain it under the Rule. I move that amendment, Mr. President.

M. Leopold Dor. — We put no pride in our wording, and I think the American delegation's amendment is better ; but perhaps it may be advisable to refer it to the Drafting committee. I would suggest that the Finnish amendment, which is a matter of drafting should also be referred to the Drafting committee.

Incidentally I would like to mention that we are making a big change as far as French law is concerned because the text of the whole 24 rules was the law as adopted by the French Supreme Court, and we are reversing that.

The President. I submit that the amendment of the British and American delegations should be agreed in principle.

Mr. Pineus (Sweden). — Mr. Chairman, Gentlemen, if you accept in principle the proposal made by the British and American delegations on this point, would it not mean to a lawyer — I am sorry, but I am speaking as a lawyer at this moment — that as we have in this paragraph a reference to « unless otherwise agreed » this might infer that you may not agree on anything else regarding the other Rules. I think you must say in this case — to my mind at any rate — that the parties are absolutely at liberty to agree on any percentage, or any other way of assessing the damage, should they think that fair and reasonable. To my mind there is a little danger in putting this in this rule because you will miss it in some of the others. Therefore I opine we should think it over a little more before we agree in principle, and I suggest that it should be left to the international Sub-Committee or the Drafting committee to consider this proposal and that of the Finnish delegation.

Mr. Leopold Dor. — This is merely a question of drafting. These are, of course, important questions and Mr. Pineus's point is an important one which would have to be referred to the international Sub-Committee. I think it would be better to reject the third amendment and to accept the American and Finnish amendments.

The President. — If you will excuse me, Mr. Dor, I think Mr. Pineus is against the American amendment not on account of drafting but because it prejudices other agreements being made by the parties concerned in General Average. You say that that should be a question for the international Sub-Committee, but I should like to avoid a meeting of the

international Sub-Committee for this afternoon. In my personal opinion it is of no importance, but I quite agree with Mr. Pineus. I would like to ask the American and British delegations whether they want to maintain their amendment. We have made all kinds of agreements ; yesterday we heard of such agreements that are usually made in general average, which are a kind of practice. I think it is unnecessary to accept the amendment of the United States and Great-Britain.

Mr. Keating (U.S.). — Mr. President, I hesitate to disagree with two such distinguished lawyers as your goodself and my learned friend from Sweden ; but I think the British delegation and my delegation would want to maintain the amendment. I call your attention to the fact that that particular paragraph is fixing a formula for arriving at a result, and you have to achieve in some way, whether it is flatly stated in the Rule or whether the amount may be fixed by agreement. The only thing which is agreed upon is the amount. You are not changing any other part of the Rule, but you are leaving the formula ; and I cannot see how fixing that formula can alter the result in other rules. That is my personal opinion, however, but if you entertain a different one I have very great respect for it.

The President. — We, as lawyers, should think about this point. Should judges or arbitrators say « well, we have allowed this special agreement on the amount of the damage » ; but there are so many agreements in the practice of general average that no one will say that those agreements are not allowed since this amendment has been proposed. What is the opinion of Mr. Keating ?

Mr. Kihlbom (Sweden). — Mr. Chairman, I hate to disagree with a compatriot, in fact I do not disagree with Mr. Pineus when he speaks as a lawyer ; but I would like to say that from a practical point of view, these words « when the amount of the damage has not been otherwise agreed » serve as a pointer to many people who are not lawyers. I agree with the American delegation that these words should stand.

Sir Gonne Pilcher. — Might I be permitted to say a few words on this subject. I was not a member of the international Sub-Committee, and here, of course, I do not speak as a judge ; but I have been given to understand that there are a great many matters which go to make an average adjustment where the parties are agreed on some topic and the shipowner, the underwriter or cargo-owner say : « Well, we are satisfied and we can agree that for a certain purpose a certain sum shall be fixed ». It

is true that in Rule XVI there is a provision as to how the sum shall be arrived at, namely, by the deduction of one sum from the other. I can hardly conceive, if any judge were told that the parties to the litigation have come to the conclusion that a fair result of the subtraction sum is £ x, that he would question that. Therefore although this proposal is put forward by the American and the British delegations, and I speak as an Englishman, — I am inclined to feel, that this is perhaps one of the occasions where, if there be a difference of view, it might well be dropped in the interest of general agreement rather than that the matter should be referred back to the international Sub-Committee which, as I understand, is already rather overburdened with work in the short intervals between the sessions.

I only venture to make these few remarks not, as I said, in my quality as a judge, but merely in my own personal view as to what I should feel if I were told that in the matter of a general average case, the parties had come to a conclusion that A minus B equals C.

Mr. Keating. — We have four or five thousand people involved in these matters, and there are always three of four who want to get something to which they are not entitled. It is all very well to say to them « take this case to Court » and so forth, but if we can point to some words in the Rules which simplify the matter as a practical business thing, then we will not have to go to Court at all.

We have people in America — I know you do not have them in England — who do not keep their agreements. Sometimes a man will find that perhaps he has not got what he would have been entitled to in some other way ; his lawyer argues that the Rule says the thing is so and so. Now this happens to be a very practical thing, and it would simplify the matter greatly. We are certainly not going to feel very badly, we are not going to act up, if our proposal is turned down ; we want to go along with the majority ; but it is our opinion, — and I think it is the opinion of the British delegation and also of Captain Kihlbom, — that from a practical standpoint, if we could point out to these people that they have to keep their agreement under the Rules, it would save expense and time and lawyers fees — and the last item I am not particularly interested in saving.

The President. — I propose to refer the Finnish amendment to the Drafting committee.

Then there is a proposal from the British and American delegation on

Rule XVI, to insert in the second paragraph the words « and the amount of the damage has not been otherwise agreed » after the words « where goods so damaged are sold ». I will put it to the vote.

The amendment of the British and American delegations is accepted by Belgium, France, Great-Britain, Italy, Netherlands, Norway, Portugal, Finland, Sweden, United States, Eyre.- Denmark voted "no".

The President. — The amendment has been accepted in principle. Does the Conference agree that it should be submitted to the Drafting committee on the question of drafting only ? I think it would be very useful to do so. (*Agreed*).

We shall continue until 12.30. This afternoon we will begin with Rules XI, XII and XIII and I hope that we shall have the report of the Drafting committee on the question Mr. Reading and Mr. Kihlbom were studying.

There is also the question of drafting Rule XVI. The amendment put forward by the Finnish delegation will be considered by the Drafting committee after our meeting this afternoon.

We will now pass to Rule XVII.

Rule XVII. — Contributory Values.

« The contribution to a general average shall be made upon the actual » net values of the property at the termination of the adventure, to which » values shall be added the amount made good as general average for pro- » perty sacrificed, if not already included, deduction being made from the » shipowner's freight and passage money at risk, of such charges and » crew's wages as would not have been incurred in earning the freight had » the ship and cargo been totally lost at the date of the general average » act and have not been allowed as general average ; deduction being also » made from the value of the property of all charges incurred in respect » thereof subsequently to the general average act, except such charges as » are allowed in general average. »

« Passenger's luggage and personal effects not shipped under bill of » lading shall not contribute in general average. »

Mr. Pineus (Sweden). — Chairman, gentlemen, I should just like to avail myself of this opportunity to put a question to Mr. Reading. It was pointed out to me yesterday that in the new Rule XI we are one way or another to put in a Rule about « for the purpose of this Rule wages shall

include... » and so forth ; and when it is stated in Rule XVII that we shall deduct from the freight crew's wages, we do not give the same explanation. Are we to draw any conclusion from the difference in language between wages as expressed in Rule XVII and Rule XI in the present draft ?

The President. — The answer of the Committee is « No ». I will call on Mr. Reading to speak for the International Sub-Committee.

Mr. E. H. Reading. — I think that is a reasonable criticism. In dealing with Rule XI, we have concentrated our minds on what should be treated as wages and as general average. I think we must admit that in Rule XVII we had not realized that there we have the words « such charges and crew's wages ». It seems to me quite obvious that we should have some definition that would apply equally to both, and as we are considering Rule XI in the Drafting Committee, may I suggest that the Drafting Committee take note of what Mr. Pineus has said.

The President. — Mr. Reading proposes on behalf of the international Sub-Committee that the question put by Mr. Pineus, whether « crews' wages » in Rule XVII has the same meaning as « crews' wages » in the sence of Rule XI, should be referred to the Drafting Committee. Does the Conference agree ? *(Agreed)*.

Sir Gonne Pilcher. — I understand that Mr. Dor would like to know exactly what is referred to the Drafting Committee in this connection, and I gather the point is — you will correct me if I am wrong — that the Drafting Committee should arrive at a form of words so that the same matters are included in Rule XI as are included in Rule XVII with regard to wages. That apparently has the consent of Mr. Reading.

The President. — It is not merely a question of drafting.

Mr. Leopold Dor. — I was asking the President to provide me with a list of all the articles which have been referred to the Drafting Committee. I want a complete list of what we are going to discuss this afternoon.

The President. — The Secretaries know what has been referred to the Drafting Committee. Here I think it is only a question between Mr. Kihlbom and Mr. Reading on Rule XIII, the drafting of Rule XVI and the Dutch amendment on Rule Xa, the second paragraph.

Mr. N. V. Kihlbom (Sweden). — On Rule XVIII I think there is an unfortunate omission.

The President. — We now are only discussing XVII.

The question is this : in Rule XVII mention has been made of crews'

wages. Now Mr. Pineus asked whether these words have the same meaning as in Rule XI. A proposal has been made to refer that question to the Drafting Committee. As a matter of fact that is not entirely a question of drafting, because the Conference might decide whether, in principle, crews' wages mean the same as wages and payments etc. in Rule XI. That is a question of principle. What is the opinion of the American and British delegations on this point ? Should the Conference decide in principle that the meaning of « crews' wages » in Rule XVII is the same as it is in Rule XI ? I should like to have the opinion of the international Sub-Committee on that.

Mr. E. W. Reading. — The wages should mean the same in both Rule XI and Rule XVII. I am sure that the intention of the Drafting Committee was that the definition of wages which we have put into Rule XI should apply throughout York-Antwerp Rules. We had no intention that in Rule XVII wages should be interpreted in a way different from that which we had set out in Rule XI. As you see, this Rule is unamended and I think that we have overlooked the fact that, unless there are more precise words making it clear that the definition in Rule XI will apply throughout the Rules there might be some misunderstanding. I do not think it was ever the intention of the international Sub-Committee that in the deductions to be made from freight, we should take a different basis of the wages from that which we used in making allowances in Rule XI. I think it can be put right simply by some alteration which we might consider. I do not wish to anticipate what the Drafting Committee may do ; I think that in Rule XI-c, where it is said : « for the purposes of this Rule », we might just say : « For the purposes of these Rules ». Alternatively, in Rule XVII we could say « of such charges and crews' wages as defined in Rule XI ». I think it can be dealt with quite easily.

Sir Leslie Scott. — May I ask Mr. Reading whether in Rule XI there is a definition of the word « wages » ? Is there any other Rule than Rule XVII to which that definition of wages would probably be applicable ? If so, it is desirable that the definition should be made general for the whole of the Rules.

Mr. E. W. Reading. — I do not think so. It is only in Rule XVII, and we now have it in Rule XX, because we have now altered Rule XX to disallow the condition of wages and maintenance of crews, etc. It does

seem to me that we shall have to make it clear when we use this definition in Rule XIc, that it applies throughout the Rules.

The President. — May I ask Mr. Keating whether he is entirely in agreement with Mr. Reading on this subject, whether he agrees that in principle « wages » in Rule XVII ought to mean the same as « wages » in the sense of Rule XI ?

Mr. Keating. — I think the word « wages » should mean the same throughout the whole of the Rules.

The President. — Can I take it that the Conference agrees to this principle, that « crews' wages » in XVII ought to be the same as « crews' wages » in Rule XI ? (*The Conference agreed unanimously*).

Then the question of wording is now referred to the Drafting Committee. Does the Conference agree ? (*Agreed*).

Now we come to Rule XVIII.

Rule XVIII. — Damage to Ship.

« The amount to be allowed as general average for damage or loss to the » ship, her machinery and/or gear when repaired or replaced shall be the » actual reasonable cost of repairing or replacing such damage or loss, sub- » ject to deduction in accordance with Rule XIII. When not repaired, the » reasonable depreciation shall be allowed, not exceeding the estimated » cost of repairs.

» Where there is an actual or constructive total loss of the ship the » amount to be allowed as general average for damage or loss to the ship » caused by a general average act shall be the estimated sound value of » the ship after deducting therefrom the estimated cost of repairing da- » mage which is not general average and the proceeds of sale, if any. »

The President. — This is the old Rule unamended.

Mr. Andersson (Finland). — I just want to refer to what I said previously. You might want to make a reference here not only to « old material » but also to « parts », as you do in Rule XIII.

The President. — I think, as a matter of fact, when that Rule XIII is being discussed we could also refer to XVIII. What is the opinion of the international Sub-Committee ?

Mr. E. W. Reading. — I think it would be clarified, but the words here have been used for many years without any difficulty.

The President. — I believe the International Sub-Committee is of the opinion that the question of deductions is in Rule XIII and that in XVIII

we merely say « the actual reasonable cost of reparing or replacing such damage or loss... » etc. « ...when old material is replaced by new. » So we could say in this Conference that we may decide upon XVIII and that it is a question in which way deductions are being made, which is only dealt with in Rule XIII. Do you agree with that ? Does Finland agree ?

Mr. Andersson (Finland). — Yes, I agree with the majority, of course, but then I ask myself why you should make reference to « old material », then you can say « replacing such damage or loss..., deductions being made as in Rule XIII » and leave out the whole thing : « When old material is replaced by new. » If, on the other hand, you make reference to old material, then in my opinion you should also make reference to parts.

The President. — You have heard the observation of Finland, Mr. Reading ; have you any remarks to make ?

Mr. E. W. Reading. — I think there is something in it. It is only a matter of using similar words; but perhaps it would be better to consider it when we have agreed upon the wording for Rule XIII. We have not yet agreed on the wording of Rule XIII, so I think if there is any amendment to make it is better to wait because part of the difference of opinion at the moment on XIII is as to what words should be used.

Mr. Andersson (Finland). — Mr. President, I do not know whether I made myself quite clear. What is said here in Rule XVIII is : « The amount to be allowed as general average for damage or loss to the ship...» etc. then « ...when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, deductions being made as above, (Rule XIII) when old material is replaced by new ». In Rule XIII you have added a clause saying : « Where old material or parts are replaced by new ». Then, in my humble opinion, I think that this same word « parts » should be added in Rule XVIII.

The President. — Some months ago we had a meeting of the Netherlands' Lawyers' Association, and the woman professor who presided over that Association said that she hoped that no one would repeat what had already been said, and especially that no one would say what had already been repeated. So I call upon the Conference in the same sense. I quite understand that the Finnish delegate wants to mention, in Rule XVIII, not only « material », but also « parts ». Now I think Mr. Reading suggests that that question be referred to the Drafting Committee to consider it in connection with Rule XIII.

Mr. E. W. Reading. — May I just make a suggestion which has been made to me. Perhaps the easiest way of dealing with this might be to leave out altogether the words « when old material is replaced by new ». Then, if Rule XIII is altered on some future occasion, we shall not have to alter XVIII again.

The President. — Can we accept that now ?

Mr. E. W. Reading. — Yes.

The President. — Then I propose to leave out the words « when old material is replaced by new ». Does everyone agree ? *(Agreed).*

Then Rule XVIII is accepted.

Rule XIX. — Undeclared or Wrongfully Declared Cargo.

« Damage or loss caused to goods loaded without the knowledge of the » shipowner or his agent or to goods wilfully misdescribed at time of ship- » ment shall not be allowed as general average, but such goods shall re- » main liable to contribute, if saved. »

« Damage or loss caused to goods which have been wrongfully declared » on shipment at a value which is lower than their real value shall be con- » tributed for at the declared value, but such goods shall contribute upon » their actual value. »

The President. — On Rule XIX there are no amendments.

I think we should now adjourn and continue this afternoon at 2.30.

There wil be a Seance Administrative of the Permanent Bureau on Wednesday at 5.0 p.m. or, if possible, earlier.

La séance est levée à midi et demi.

The meeting adjourned at 12.30 p. m.

MARDI, 20 SEPTEMBRE 1949
SEANCE DE L'APRES-MIDI

TUESDAY, SEPTEMBER 20th 1949
AFTERNOON SESSION.

La séance est ouverte à 15 heures, sous la présidence de M. Offerhaus.
The Conference re-assembled at 3 p.m. Mr. Offerhaus in the chair.

REGLES D'YORK ET D'ANVERS

Continuation de la discussion.

YORK-ANTWERP RULES.

Dicussion continued.

The President. — Gentlemen, we will now resume the discussion of Rule XI. I call upon Mr. Mitchell to give some comments upon.

Mr. P. H. Mitchell (Great-Britain). — Mr. President, Gentlemen, on behalf of the British delegation, I beg to move two amendments to Rule XI b. I shall, Mr. President, with your permission move these amendments one at a time.

The first amendment concerns the words to be found on page 6 of the Report, commencing in the 4th line. The words are : « for the purpose of repairs necessary for the safe prosecution of the voyage ». It is thought, Mr. President, that these words might allow the admission in general average of wages and maintenance during the repair of wear and tear damage whilst a vessel is in a port, i.e. other than a port of refuge.

I think everyone will agree that it would be quite wrong for instance, to allow wages and maintenance while a vessel, which has loaded cargo, is detained at her port of loading solely for the purpose of effecting maintenance repairs and I am equally confident that we should all feel it to be wrong if such allowances were made in similar circumstances when a vessel is detained at a port of call.

With a view to avoiding allowances in general average in circumstances such as these, I move that the words : « for the purpose of repairs

necessary for the safe prosecution of the voyage » be deleted and replaced by the words : « to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage ». The full sentence would then read : « When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place, until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted as general average ».

The President. — Would you please continue on your second amendment ?

Mr. P. H. Mitchell (U.K.). — My second amendment concerns words commencing in the second line of the last paragraph of Rule XI b on page 7. The words are : « Except that port charges incurred during repairs and allowable in general average shall be admitted in general average only if they would have been payable in consequence of the detention, whether repairs were effected or not ». The amendment which I shall suggest does not in any way affect principle, but is merely a shortening and, I submit, a clarification of the Rule. With these objects in view, I move that the words which I have just read be deleted and replaced by the words : « Except such charges as are incurred solely by reason of repairs not allowable in general average ». The full paragraph would then read : « Port charges incurred during the extra period of detention shall likewise be admitted as general average, except such charges as are incurred solely by reason of repairs not allowable in general average ».

I take it, Mr. President, that you would not wish me to move the third amendment yet.

The President. — I will leave it to you.

Mr. P. H. Mitchell (U.K.). — Then, Mr. President and Gentlemen, on behalf of the British delegation. I beg to move a third amendment to Rule XI, Section (d), which will be found on page 7. It is purely a question of re-wording that Rule so that it would read a little more smoothly and possibly more clearly.

I move that the whole of Rule XI d be deleted and replaced by the following : « When overtime is paid to the master, officers or crew for work or repairs, the cost of which is not allowed in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred. »

Mr. H. Schadee (Netherlands). — Mr. Chairman, Gentlemen, on behalf of the Netherland's delegation, I should like to say that we support the British amendments, especially the amendment under (a) because the new clause is in accordance with what has been said in Xd. There is one slight alteration I should like to make, however, and that is in the third amendment. It said : « When overtime is paid to the master, officers and crew for work or repairs... ». I would propose « maintenance or repairs », not « work or repairs ». It is possible that the crew has to attend to maintenance duties in overtime, and it is reasonable that such overtime be admitted as general average ; I think it is better not to speak of « work or repairs ».

The President. — What is the opinion of Mr. Mitchell on this suggestion ?

Mr. P. H. Mitchell (U.K.). — I see no objection to that.

The President. — Has any delegation anything to say against the addition proposed by the Netherland's delegation, that it should read : « maintenance or repairs » instead of « work or repairs » ?

Mr. N. Kihlbom (Sweden). — On behalf of Sweden, I beg to second the proposals of Mr. Mitchell in their entirety, and I would suggest that, with regard to the proposal of the Netherland's delegation, we should retain the words « work or repairs » because there may be other operations than maintenance. Maintenance would be rather limiting, while I take it that the word « work » would be wider. There may be cases which should be made good and which would fall under « work » but not under « maintenance ».

The President. — Can you give an instance ?

Mr. N. Kihlbom (Sweden). — Maintenance is upkeep, but there may be other work which is not upkeep ; there may be certain duties which are not connected with upkeep and maintenance. I think it would be safer on the whole to use the word « work ».

The President. — In your opinion « work » is wider than « mainte-

nance ». What is Mr. Mitchell's opinion with regard to Mr. Kihlbom's idea that work is wider than maintenance ?

Mr. Mitchell (Great-Britain). — Mr. President, Gentlemen, I have thought about that quickly, and it does seem to me that « maintenence » is wider than « work », but there must obviously be two opinions about that. Could the difficulty not be solved by saying « maintenance, work or repairs » ? I agree that there is a slight nuance of difference between maintenance and work, but I personally feel that maintenance is the wider.

The President. — You mean safety first ?

Mr. P. H. Mitchell (U.K.). — Yes, Sir. I personally would be quite happy with « maintenance, work or repairs ».

The President. — Thank you. I call upon Sir Gonne Pilcher.

Sir Gonne Pilcher. — What we are concerned with here is overtime paid to the master, officers and crew. May I venture to say, on this rather difficult topic, that you only pay overtime to the master, officers and crew, at any rate notionally, when they work. That is to say, when they are idle or when they are off duty you do not pay them overtime — at least, you hope not to. As a lawyer I should have thought, with great respect to Mr. Mitchell, that the generic term of « work » was more extensive than the word « maintenance », because what overtime is paid for is work. On that one point, without venturing to attempt to resolve it, I would say that my own opinion is that work is a more general term than maintenance.

Mr. E. W. Reading. — Mr. President, before saying something about relative values of the words « maintenance » and « work », I would like to take the opportunity of this amendment being moved to call the meeting's attention to page 3 of the Report of the international Sub-Committee, in which there is a reference to overtime in the last paragraph of Rule XI. I think that we should apologize to the Comité because it has become clear that that paragraph is not written as we had intended it to be. We had intended that overtime should be paid on all occasions when it had been earned by the crew, except under certain circumstances. It can be read to mean that in this Rule we are laying down positively when overtime should be allowed in general average. That was not our intention. We merely wanted to leave overtime as regards its allowance in general average to follow the allowance of wages, but to put in a limitation on that allowance which is now the subject of discussion.

With regard to Mr. Mitchell's amendment, it was our intention when we used the word « work », that overtime should not be paid when it had not been incurred on behalf of maintenance work in a ship while she had been detained at a port of refuge. A ship may be held at a port for very considerable repairs, necessary for the safe prosecution of the voyage. During that time, the shipowner who has a survey may take the opportunity to effect some considerable maintenance work and repairs, part of which may be carried out by the engineers on board, and in respect of which work he may pay that crew overtime. Quite clearly, such overtime should not be allowed in general average. That is what we were trying to describe.

I do agree, I think, that the word « work » is wider than the word « maintenance », and that by using it we have perhaps gone rather further than we intended. It can, I think, be construed to mean the ordinary work performed by a man on board in the course of his ordinary duties. That was not what we meant. We are thinking in terms of repairs. Overtime on general average repairs would be allowed in general average ; overtime on other repairs would only be allowed if they have effected a saving to general average, and we should disallow overtime on what we have called work, in contra-distinction to repair. There may be, shall I say, jobs to be done in the engine room which is work you cannot call repairs. We had thought to describe them by the word « work ». I do think it may be that the word « maintenance » is a better description and if we leave in the word « work » we may find that it is being interpreted to allow in general average overtime paid to men who have to go round looking after lights, watches and so on.

The President. — What is your opinion, Mr. Reading, on « maintenance, work or repairs » ?

Mr. E. W. Reading. — I think either we should use one word or the other, but I should prefer to use the word « maintenance » than the word « work ».

The President. — Not adding « work » to « maintenance », but to say just « maintenance » ?

Mr. E. W. Reading. — Yes, Sir.

The President. — Do you speak on behalf of the international Sub-Committee ?

Mr. E. W. Reading. — I had not consulted them ; I was trying to explain how our minds had worked in the Commission.

The President. — Would Mr. Mitchell like to leave it ?

Mr. P. H. Mitchell (U.K.). — I would be happy to leave it.

The President. — Is any delegation against the additon proposed by the Netherland's delegation, that it should read: «maintenance or repairs»? That has been supported by the International Sub-Committee. (Yes).

Then if the British amendment is accepted, we also accept the amendment of the delegation of the Netherlands.

We will now discuss whether or not we should accept the amendments (a), (b) and (c) of the British delegation, which are before you. First amendment (a). The British delegation proposes to delete, in Rule XI (b), page 6, the words : « for the purpose of repairs necessary for the safe prosecution of the voyage » and to insert instead the words « *to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage*». Does any delegation oppose that amendment ? *(No dissent)*. Then the amendment is agreed.

The second amendment is that the words in Rule XI (b) « Except that port charges incurred during repairs not allowable in general average...» be deleted and replaced by the words « *Except such charges as are incurred solely by reason of repairs not allowable in general average* ».

Is there any delegation opposing that amendment ? If there is not, I take it that the amendment has been agreed.

The third British amendment upon this Rule is in XI (d), on page 7. The amendment, inclusive of the Netherlands' additional amendment, is that the whole of XI(d) be deleted and replaced by the words: « *When overtime is paid to the master, officers or crew for maintenance or repairs, the cost of which is not allowed in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred* ».

Of course, it is possible that some delegation has amendsments to put forward on these articles, and this does not exclude discussion upon such other amendments, but the first amendment submitted to the Conference is this one. Is there anyone against the Britsh amendment, which has been sub-amended by the delegation of the Netherlands.

Mr. J. P. Govare (Paris). — The French delegation begs leave to express no opinion because my colleagues have had no time to translate into French and to discuss what has been given to them in English.

The President. — Would any member of the International Sub-Committee translate into French the amendment of the British delegation.

Mr. Govare. — I think it should be done by one of the Secretaries.

The President. — May I ask whether it is the desire of the French delegation to have (a), (b) and (c) translated or only (c) ?

Mr. J. P. Govare. — All the amendments which have been suggested and which my colleagues have been unable to understand.

M. Dor. — Je veux bien m'en charger au pied levé ; mais ce sera traduit en très mauvais français.

M. Boeg. — Cela me semble du mauvais anglais aussi.

M. Dor. — Il est proposé par l'Association britannique de modifier la règle XI (b), (page 6) ; il s'agit de biffer les mots « pour les besoins des réparations nécessaires pour la continuation du voyage » et d'insérer à leur place : « *pour permettre la réparation des dommages au navire causés par sacrifice ou accident, si ces réparations étaient nécessaires pour continuer le voyage en sécurité.*

A la Règle XI, b, les mots... les dépenses de port encourues pendant des réparations non admissibles en avarie commune sont à supprimer et à remplacer par les mots : « *A l'exception des frais encourus uniquement à raison de réparations non admissibles en avarie commune* ».

Enfin, l'amendement britannique, sous-amendé par la délégation néerlandaise tend à supprimer le littera **d** de la Règle XI et de le remplacer par le texte que voici : « *Lorsque des heures supplémentaires sont payées au capitaine, aux officiers ou à l'équipage à raison d'entretien ou de réparations dont le coût n'est pas admissible en avarie commune, ces heures supplémentaires ne seront admises en avarie commune qu'à concurrence des dépenses épargnées, mais qui eussent été admissibles comme dépenses d'avarie commune si ces heures supplémentaires n'avaient pas été payées.*

The President. — Before calling upon M. Govare, I submit that instead of « allowed » in the English text, we should say « allowable ». Do you agree ? That is the third line of the amendment (c). There is, you see, the cost of wages not allowed in general average ». At the end of the amendment we speak of « not allowable ». I am not quite sure whether you have the word « allowable » in the other Rules, but I think there is no certainty about the point. If we say « allowable » in one Rule, we must say it in the others. Moreover, if it is not my opinion it is that of Sir Gonne Pilcher.

Mr. Mitchell. — May I say that I agree. I did in fact want that wording, but it got missed out.

The President. — I will call upon Mr. Govare to say whether the French text is quite clear to the French delegation.

Now I can ask the Conference whether, having regard to the Netherlands' sub-amendment, it agrees to the British amendment (c) as it has been read by Mr. Mitchell and as it has been translated by Mtre Dor. What is the opinion of the French delegation ? Is there any objection ? Does any member of the Conference object to the British amendment (c)?

Mr. N. V. Boeg. — Would you read it once more, please.

The President — Yes, everthing must be clear. The British amendment is — with the word « allowable » instead of « allowed » — « When overtime is paid to the master, officers or crew for work or repairs, the cost of which is not allowed in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred ».

Is anyone against this proposal ? If not, the amendment of the British delegation is accepted.

Has any delegation any amendment to Rule XI ?

Mr. H. Schadee (Netherlands). — I am not going to propose an amendment ; I think everyone agrees with it. I have only one objection to make. The Dutch delegation regrets that the expression « Articles of employment » has been used. This is an excellent English term and no doubt will be perfectly clear to every English lawyer and every English businessman, but for others it may give rise to difficulties as it wil prove very hard to find an expression which fits exactly. To find such an expression in another language it is necessary first to study British law for the exact meaning of the words, and then to study the other law to render this meaning in a different system of law. Then if you have still any time of life left, you can apply this Rule.

The President. — May I interrupt you for a moment. Sir Gonne Pilcher wishes to know to what you are referring ?

Mr. Schadee. — I talk about (c). I may therefore say, Mr. Chairman, that this Rule is only acceptable to the Netherlands delegation, and I think to other delegations, when it reads : « when a shipowner may recover his wages when all payments to the benefit of his crew are legally payable ». It does not make any difference whether he is bound by com-

mon law, statute law or contract, or whatever it may be. So far as a shipowner is bound to pay, he must be reimbursed. What he pays by way of extras without being bound thereto should be left for his account ; only the things he is bound to pay and could be sued for should be the wages. We take it that this is what the proposal wants to say, and we fully agree to it. If this is not the case, Mr. Chairman, we shall be very glad if you will explain to us the exact meaning and we shall then have to reconsider the Rule.

The President. — I am bound to ask for the opinion of the International Sub-Committee as to that.

Mr. E. W. Reading. — Would it help Mr. Schadee if the word « terms » was used instead of the word « articles » ?

Mr. Schadee (Netherlands). — That would help very much. All difficulties will then be solved.

The President. — You have heard that Mr. Schadee, on behalf of the Netherlands' delegation, is not quite sure whether everyone who ought to be paid is included in the words « articles of employment ». Mr. Reading proposes to delete the word « articles » and replace it by the word « terms ».

Mr. Cyril Miller (London). — May I say a few words on that ? I can fully appreciate the difficulty of the Netherlands' delegation in translating into their system of law what is in effect the term « art. » in England, namely, « articles ». We should never say articles of employment, although that is the full and proper word. I think it is very important from our point of view that this word, which is a term of art and is used in our group of statutes in which the whole subject of employment of the crew is dealt with, be very carefully laid down. Therefore, in order to meet the difficulty of our Netherlands' friends, I would propose that we should say : « or be made under the terms or articles of employment ». I should be very much against leaving the word « articles » out of this Rule.

M. Marchegay (France). — Monsieur le Président, je me permets de vous demander qu'au moment où cette disposition sera traduite en français, on veuille bien veiller à ce que les termes employés soient bien choisis. Les paiements effectués aux marins résultent, soit de dispositions légales, soit de dispositions réglementaires, soit de dispositions contractuelles. Or, le mot « terms » vise plus les dispositions contractuelles que

les disposition légales ou réglementaires. Mais il s'agit là d'une question de forme ; il semble qu'on soit d'accord sur le fond.

The President. — I am personally of the opinion that this is a question of translation, and if our English friends are of the opinion that everything that ought to be paid is included in the words « terms or articles » it will not be very difficult to find a word in French to include all that is to be paid. I would suggest, therefore, unless the International Commission wish to say anything about the point, that we leave the amendment as « terms or articles ».

Mr. Leopold Dor. — We cannot translate in French what is not in the English text. M. Marchegay has pointed out that what you pay results not only from articles of employment, but from legal provisions, decrees &c. We cannot translate « terms or articles of employment » into « law decrees ».

The President. — Section (c) of Rule XI reads : Whether such payments be imposed by law upon the shipowners or be made under the articles of employment ». I submit that we decide upon a sub-amendment to say « under the *terms or articles* of employment ». Is there any objection to that suggestion ? If not, I may take it that Section (c) is accepted to read : « For the purposes of this Rule wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms or articles of employment ».

Mr. Keating (U.S.A.). — I think this affords an opportunity of correcting the question about wages. I suggest that the first sentence should read : « For the purpose of this *and other Rules*, wages shall include all payments... &c. » Then it will mean that wages will be defined in this way not only in this Rule but also in other Rules.

Sir Leslie Scott. — I should like to support that.

The President. — This morning we discussed Rule XVII which contains the words « crews' wages ».

Mr. Keating. — I suggest that the amendment would take care of XVII and also XX.

Mr. Govare. — Mr. Chairman, had it not been agreed this morning that the Drafting Committee would see that the words « crews' wages » were expressed in the same terms in XI (c), XVII and XX ?

The President. — Shall we take it that the proposal that this question should be dealt with by the Drafting Committee has now been over-ruled

by the amendment of Mr. Keating, under which wages are so defined ?

Mr. Keating. — « For the purpose of this and other Rules wages shall include » That definition of wages will carry through the whole of the Rules wherever wages are involved. I do not think we should have a meeting on that.

Sir Leslie Scott. — May I suggest that it should be left to the Drafting Committee to decide whether there should be a definition by itself at the end of the Rules or in XI (c). It is really a matter of drafting and nothing else.

The President. — I think Sir Leslie Scott is quite right. In Rule XVII also there is a question of wages. The Committee might examine the question from the aesthetic standpoint of drafting. Perhaps it would be better to have a separate Rule on the meaning of the word « wages » in the Rules. I think, therefore, that we should not accept now the amendment made by Mr. Keating ; we should stick to our idea of this morning to leave this matter to the Drafting Committee.

Mr. Leopold Dor. — May I draw your attention to the fact that so much work is put upon the Drafting Committee that it will need a whole morning or a whole afternoon for its task ?

Sir Leslie Scott. — I think it can be very quickly done in the Drafting Committee.

Sir Gonne Pilcher. — May I say that I entirely endorse the spirit of what Mr. Keating has said, and I sympathize very much with Mtre Dor and the Drafting Committee. Purely as a matter of drafting, it seems to me to be a little cumbersome to include a definition in a sub-clause two-thirds of the way through the Rules, and it seems, if I may say so, to be better to include your definition as a separte Rule, possibly the first numbered Rule, and to eliminate XI (c) altogether. Then you would start off with your first Rule « For the purpose of these Rules, wages means... ». That, of course, would entail renumbering all the Rules, but as a matter of drafting that would appeal to me and I think would not cause the Drafting Committee any very great difficulty.

The President. — Ladies and Gentlemen, you will remember that we agreed upon the principle of the meaning of wages in the broad sense which Mr. Keating proposed. I think Sir Leslie Scott and Sir Gonne Pilcher are quite right in proposing to refer the matter to the Drafting Committee.

M. Léopold Dor. — Très bien, pourvu que nous en ayons le temps.

The President. — I do not say, Maitre Dor, that you should have finished tonight, but that it should be referred to the Drafting Committee. If necessary you can take a whole week, though I should regret that a whole week should be required.

Mr. Keating will excuse me if I say that his proposal interrupted our discussions on the end of (c). We have not yet accepted definitely the proposal to read at the end of (c) « terms or articles of employment ». We have two proposals. The first is to accept these words and the second to refer the whole matter of wages to theDrafting Committee. I think there should be no further discussion on « terms or articles ». Does the Conference agree to those words ? *(Agreed nemine contra.)* Then this has been accepted. May I take it that the whole question of drafting the meaning of the word « wages » for the purpose of these Rules be referred to the Drafting Committee ? *(Agreed).*

I will now ask the Conference whether or not there is any other objection to the so amended Rule XI ? If there is not, Rule XI has been agreed.

Sir Gonne Pilcher. — May I just say a few words ? Although I am not a member of the Drafting Committee, I should be very sorry to see a definition in a sub-clause of Rule XI. Insofar as it is a matter of drafting, I hope that, without trespassing in any way on the work of the Drafting Committee, they will bear in mind, when considering this Rule, that it might be more appropriate to make it, let us say, one of the first, or perhaps the first Rule of all, and take it out of Rule XI. That is merely a suggestion.

Sir Leslie Scott. — Or at the end.

Mr. Keating. — I would like to point out that Rule XI is primarily concerned with wages, and if there is to be a definition of wages it should be in that Section. We all know that wages are important, but I do not think there ought to be a definition in Rule I. If you can make a simple amendment with a paragraph primarily concerned with wages, that is the place to put it. I am afraid I disagree with Sir Gonne Pilcher.

The President. — This point which has been raised by Mr. Keating can be considered by the Drafting Committee. We have accepted Rule XI.

We now come to Rule XII, which is the old Rule with a small amendment.

Rule XII. — Damage to cargo in discharging.

« *Damage to or loss of cargo, fuel or stores caused by handling, discharging, storing, reloading and stowing shall be made good as general average, wen and only when the cost of those measures respectively is admitted as general average.* »

I think there is a British and Belgian amendment on that, and I have heard that Dr. Voet would like to say a few words.

M. Henry Voet (Anvers). — Au nom de la délégation belge et en accord avec la délégation britannique, j'ai l'honneur de déposer le projet d'amendement suivant : « A la nouvelle règle XII, ajouter le mot « directly » devant les mots « caused by handling ». La règle XII ancienne était conçue comme suit : « Le dommage ou la perte subis dans les opérations de manutention, déchargement, emmagasinage, chargement et arrimage sera bonifié en avarie commune ».

On voit immédiatement que ce texte se réfère uniquement à une question de temps et d'espace. Dans les opérations de... dit-on. Le texte ignore complètement un aspect tout aussi grave de la question, à savoir les avaries, dues à la nature de la marchandise, qui peuvent se produire par suite de ces opérations. Je n'en donnerai qu'un exemple typique. Admettons que le capitaine soit dans l'obligation d'alléger une partie de cargaison congelée et que dans le port il ne se trouve pas de frigo. Il sait évidemment qu'en procédant ainsi il va endommager sa cargaison et que ce dommage sera important. Cependant, à prendre le texte de la règle tel qu'il existe, pareil dommage ne peut être alloué car il ne se produit pas dans les opérations de manutention etc... La situation est encore aggravée si nous prenons le texte anglais qui dit « in the act of handling ». C'est le motif pour lequel il a été proposé et agréé, au cours des travaux préparatoires à Londres, que les mots « in the act of » soient remplacés par les mots « caused by ».

Nous nous rendons parfaitement compte que des abus peuvent se produire à l'occasion de cette addition. Afin de bien marquer l'intention restrictive qui est la nôtre et afin d'éviter que des demandeurs se prévalent du texte pour essayer d'introduire des conséquences indirectes, nous proposons d'ajouter le mot « directly ».

The President. — Dr. Voet proposes that in Rule XII, line 1, the word « directly » should be inserted before « caused by handling ». It thus would read : « Damage to or loss of cargo, fuel or stores directly caused by handling... »

Mr. Kihlbom. — Mr. Chairman, Gentlemen, I propose that the wording proposed by the International Sub-Committee should be retained. I believe it is fair and to the point.

The President. — May I ask you whether that is a question of drafting or of principle, Mr. Kihlbom ?

Mr. Kihlbom. — Not drafting. In the discussion of the International Sub-Committee and of the Drafting Committee, the opinion that the Rule should cover damage not only caused in the very act of handling, discharging, storing, reloading and stowing, but also in consequence of these acts, because there may be damage which is not immediately apparent and which may be caused by discharging or loading, etc. — but which will arise during storage. It would be very difficult to use the word « directly ». I believe it would be better to leave it to the discretion of the average adjusters to ascertain in each particular case which damages should be allowed and which should not.

The President. — May I read the reasons of the International Sub-Committee on Rule XII ? « The International Commission has decided, after reading reports of the various branches to amend this rule by extending it to cover damage to cargo consequent on handling, discharging, etc., but in the further discussion in the meetings of the Drafting Committee, some doubt was felt as to the advisability of making such an amendment. The Committee therefore recommends that it would be advisable for the Conference at Amsterdam to discuss this question. The Rule has been amended by subtituting the word « by » for the words « in the act of ».

May I ask for the opinion of the Internatinoal Sub-Committee.

Mr. E. W. Reading. — Mr. Chairman, the Commission was in great doubt as to this proposed amendment, and it in fact came to no very definite conclusion. I think as far as the British members were concerned we would have been quite happy to have left the Rule in its original form, but I think it was some of our Continental friends who felt that the Rule did not allow them to go as far in adjusting claims as we in Great-Britain felt we could. The difficulty is to find words which will limit the allowance to claims for losses reasonably attributable to the putting into a port of refuge for the purposes of discharging and handling and storing and reloading, but not to extend the claims so that there can be admitted claims in respect of losses which would not have happened but for the discharge, but not necessarily the consequence of the discharge. I am

afraid the Sub-Committee came to no very clear opinion on the matter but left it for this gathering to discuss.

The President. — May I ask Mr. Kihlbom for the exact text of his amendment ?

Mr. Kihlbom. — Gentlemen, I have not drafted any amendment, I propose that the amendment suggested by the International Commission be carried without any alteration at all. This matter was taken up in the International Sub-Committee. You know that the 1924 text read ; « damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good... &c. » At the meeting of the International Sub-Committee it was thought that we should go further, that it would be right and fair to say : « caused by handling, discharging... » which would mean that the allowance in general average would not be restricted to the immediate, direct handling etc., but also as a consequence which might arise because the cargo had to be stored in a way which might cause damage to it. Therefore, it would be hardly sufficient to say « directly caused by handling ». I propose we better leave it as it stands. It is impossible to draw up a Rule which will be quite clear when applying to all cases which you may meet in practice ; therefore it should be left to the adjusters to use their good sense and to be directed by the words : « caused by handling... » etc.

The President. — I asked Mr. Kihlbom for an exact text of what he wants for two reasons. First, because there has been before the Sub-Committee an amendment reading : « In consequence of... » ; now I understand Mr. Kihlbom does not want that amendment ; he wants to stick to the text as it has been proposed. The second reason is that we are faced by a very difficult point, since we have no definite opinion of the international Sub-Committee and which must be made clear by the Conference. For the first time we have to decide all alone. Does anyone want to say a few words on this proposal ?

Baron F. van der Feltz (Amsterdam). — The Netherlands delegation is somewhat puzzled about the true construction of this Rule now under consideration. It is proposed that obscure passages of the York/Antwerp Rules should be re-drafted so they may be clarified in order to prevent different practices throughout the world. We think we ought to know what will be the consequence of the proposed amendment. It has been said by Dr. Voet that when frozen meat is discharged at a port where cold storage is not available, you could not make good the damage to the

meat because such damage did not arise in the act of handling, etc. At first sight it seems reasonable to allow such damage in general average ; it was felt that the present draft was too narrow and that it would be wise to make it wider, less restricted. Therefore it was necessary to amend Rule XII. But if you find it reasonable to allow such damages, why should you not allow the damage sustained by a cargo of tomatoes, fish or potatoes, for example, and all damage arising out of the fact that the storage facilities were lacking.

Another question arises. What is the cause of the damage sustained by perishable cargo discharged under the circumstances mentioned in this Rule ? Is it the fact of the handling or the storing, or is it decay or deterioration, and must the damage be attributed to the delay of the voyage ? I shall not waste your valuable time by trying to give you the right answer to this very difficult question, but I would draw your attention to the fact that the Rule contains, as a general principle, that only such loss or damage which are the direct consequence of the general average act, shall be allowable in general average. Damage through delay shall not be admitted as general average, so it might be that Rule XII is in conflict with the general principle of Rule C.

In our opinion, the principle of Rule C is the right one. Therefore, we want to make very clear whether or not it is the intention to lay down this principle in Rule XII. In our opinion you should not make good damage to perishable goods, for instance, because it is very difficult to find out whether such damage is solely due to the storing or to delay, or to both. Perhaps it would be advisable therefore to make a special exception for cargo carried in ships' refrigerating rooms and cool chambers, although I am afraid while doing so you open a door which cannot easily be shut again. In this respect I should like to quote a passage from the book of Rudolf & Lowndes, 7th Edition, page 393, where it says : « Damage to the cargo discharged may arise through the leakage of rain water » owing to the absence of sufficient accomodation in sheds, or there may be a certain amount of pilferage in warehouses or sheds. They are in fact the natural result of the act of sacrifice and allowance in general average is frequently made, although the damage is not actually sustained in the act of discharging and storing. So, according to Rudolf & Lowndes, you could allow such damage under the old Rules. Therefore we agree with what Mr. Reading has just said, that it is better to leave the Rule

as it was and not to have accepted the amendment which was suggested to the Conference by the international Sub-Committee.

Je viens de dire que nous ne sommes pas satisfaits de la rédaction de la règle XII telle qu'elle a été proposée par la Commission internationale et amendée par les délégations britanique et belge. La rédaction n'est pas claire et elle donnera lieu à des interprétations différentes. Que signifie exactement « caused » ou « directly caused by handling » ? Nous craignons que, si nous adoptons la nouvelle règlementation, des dommages causés par vice propre seront admis en avarie commune, ce qui est en contradiction avec la règle C.

Je me suis référé à l'ouvrage célèbre de Lowndes & Rudolf dans lequel on peut lire, à la page 393, que dans la pratique il n'y a pas de difficulté sur ce point. C'est la raison pour laquelle nous préférons ne pas modifier cette règle.

The President. — As you notice, a Dutch lawyer cannot help speaking without adequate cause. Personally, I am very apprehensive of the danger of translating into French.

Mr. Kihlbom has asked to speak on this subject and so has Mr. Andesson.

Mr. Andersson (Finland). — Mr. President, Gentlemen, I think I could have let Mr. Kihlbom speak for me because I think what I am going to say is his opinion too. My personal opinion on this matter is that damage to goods discharged for the common good should be paid in general average in the widest sense of this Rule, subject of course to the limitations in the lettered Rule. Take for instance pilferage of goods : I think that is not made good in general average ; then in many cases the loss of cargo will fall on the shipowners which, for my part, I do not want. I do not know which is the wider in the English wording, but in the wording as it now stands we have « damage to or loss of cargo, fuel or stores caused in the act of handling... » Now it is proposed to say « by handling ». My personal opinion is that perhaps the Rule as it stands is in the wider sence. In any case, for my part I would oppose the inclusion of the word « direct ».

Mr. Kihlbom. — Mr. Chairman, Gentlemen, at the meeting of the International Sub-Committee, there was a proposal from Belgium to make the following amendment : « Damage to or loss of cargo caused in consequence of handling ». That was adopted by the international Sub-Commitee. Later on, the matter was taken up in the Drafting Committee,

which agreed to recommend a change — not « in consequence of » of but « caused by ». Now the proposal is to further qualify that by saying « directly caused by ». I think that this is going a little too far. I submit that the proposal of the Drafting Committee is a fair way of expressing this Rule. I do think that in practice it would be the best wording.

Mr. Keating. — Mr. President, the American delegation realizes that an attempt to amend Rule XII is a very difficult thing. The choice of words is difficult and it is also difficult to figure out exactly what extent of change is intended. The opinion of the American delegation is that we should leave the present 1924 Rule as it stands. If and when we can all make up our minds as to how to amend it, then we could take up the amendment, but until we do, in the interests of uniformity and the stopping of unnecessary discussion, I suggest that we do not add another controversy to the meeting. Therefore, it is our recommendation that we go back to the text of the original Rule in the 1924 Rules.

Sir Gonne Pilcher. — This time I am in support of Mr. Keating. The practical proposition which seemed to present itself was this : where a ship goes into a port of refuge and has to discharge her cargo, one can envisage a number of things. If the cargo is a refrigerated cargo it will probably be damaged in the course of discharge before it is put in another refrigerated warehouse. If it is a perishable cargo of fruit, it will equally sustain damage owing to the inherent nature of the cargo. As I understand it, under Rule (C) that type of damage is excluded. If you leave the Rule as it is, that damage which is sustained and which is caused in the act of handling or storing the cargo means. I take it, the same as damage caused by the act of handling or by the act of storing. Personally — if I may say so with great respect to the International Sub-Committee — I can see no benefit introduced by the new form of words, and I should like to support Mr. Keating's suggestion that we stick to the old form, with all its potential difficulties, and leave the lawyers to work out the theory of causation.

Mr. E. W. Reading. — Mr. President, it should be realized that the difficulty of the Drafting Committee was that the Sub-Committee had accepted the Belgian amendment. The Drafting Committee had great doubts about it, but we were precluded by the decision of the Commission from making any other recommendation.

I do want to support the proposal that we go back to the old Rule XII. I think I should remind you that we now have a prefatory Rule as a

result of which, if we use words in Rule XII extending the losses that can be covered at a port of refuge, those words would over-ride Rule C. There could be, therefore, losses which were caused by delay being allowed under Rule XII unless we are very careful. It has never been the intention that such losses should be brought into general average. The old Rule XII : « Damage to or loss of cargo caused in the act of discharging » etc., was almost exactly the wording in the 1890 Rules. The comment of Mr. Rudolf, after the 1924 Rules were passed, was that this damage or loss must be caused in the act of handling, discharging, storing, that is ashore, reloading and stowing. This clearly limits the allowance in general average to loss or damage sustained to the actual processes detailed, such as breakages of packages, leakage of liquid from casks ; it does not mean damage in the warehouse in which it is being stored or by the sinking of a lighter conveying the goods ashore or by shifting of packages in heavy weather owing to indifferent storage in the hold. None of these losses can be said to have been caused in the act of handling, discharging and so on, and there is no justification under Rule XII for allowing them in general average, even though but for the act of handling or discharging the goods would not have been exposed to the risk of such loss. I am afraid if we use words other than those words which we know so well, the old 1890 Rules, we may find that using them in conjunction with what we call the « Makis » agreement, we may have opened the door to losses which, as Mr. Rudolf said, were not caused in the act of handling, but would not have occurred but for the act of handling. That, I think, is what we want to avoid.

The President. — Well, I think it is only fair to ask Mr. Voet of the Belgian delegation whether he objects in principle to the idea of maintaining the old rule.

Mr. Voet (Antwerp). — I think it would be well that we should. I would like the opinion of the British delegation, as this was also a British proposition.

Mr. Kihlbom. — After listening to the discussion, the Swedish delegation seconds the motion of the American delegate to retain the old wording.

Mr. Ameln (Norway). — The Norwegian delegation supports Mr. Keating. The damage is not caused by deterioration, it is not caused by delay in storing, it is caused by waiting for the ship to be repaired.

The President. — I take it that the international Sub-Committee agrees,

having proposed the words : « ...caused by handling... » and now reverting to the old text, and that the Belgian and British amendment has been dropped. It is decided that we shall retain the text of the existing Rule XII now that the International Sub-Committee has no amendment to make. Does any delegate wish to say anything with regard to the old text of the York/Antwerp Rules, 1924 ? *(No.)* Then Rule XII is maintained.

With regard to Rule XIII the Drafting Committee and the British delegation have asked that we do not discuss this matter today. I propose that we leave it until tomorrow.

We will proceed to old Rule XXI — new Rule XX.

Rule XX. Provision of funds :

« A commission of 2 per cent on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

« The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average ».

The Committee adds : « Old Rule renumbered and amended to limit the disbursements on which commission is to be allowed ».

Does any delegation object to this proposal ? If not Rule XX has been agreed. (Carried).

Rule XXI — **Interest on Losses made good in general average.**

« Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund. »

The Committee adds : « Old Rule (renumbered) as amended by Resolution of International Law Association, September, 1948.

Does any delegation object to this Rule ? If not Rule XXI is accepted.

Rule XXII — **Treatment of Cash Deposits :**

« Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without delay into a special account in the joint names of a repre-

sentative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties. »

The Committee adds : « Old Rule renumbered and redrafted ».

As you all know, this is a question of trustees. Does any delegation object to this proposal.

Mr. J. P. Govare (Paris). — Mr. Chairman, I have been asked by the Spanish General Average Adjusters, who are not members of this Association, to mention to our colleagues and to this Conference, that the Spanish shipowners have the custom of retaining the money for many months before making any deposits, and they therefore suggest, to enforce the Rule and to give them more power in this respect, that it might be possible to say « without any delay » instead of « without delay ».

The President. — Does any delegation support this motion ?

Mr. Kihlbom. — Gentlemen, we have understood that « without delay », which is « delay » without qualifications, really means « without any delay ». I would respectfully ask our English colleagues whether « without delay » really means « without any delay ». I would say, on behalf of the Swedish delegation, that we have accepted this wording and are prepared to support it, but out of respect to our Spanish colleagues, I do think we should consider whether it would be prudent to say « without any delay ». The underlying meaning is undoubtedly that deposits should be paid into a special account as quickly as possible. This is a practical matter which concerns shipowners as well as cargo owners and underwriters. They are agents to shipowners in distant countries which may retain the money paid for some time. It may happen that a certain agent may go bankrupt in the meantime. Therefore, I submit that it would not do any harm to say « without any delay ».

The President. — Do you make that proposal on behalf of your delegation ?

Mr. Kihlbom. — No, I cannot do that because the Swedish delegation

has accepted this wording, but I have promised the Spanish gentlemen to put this consideration before this Conference.

The President. — You also are in touch with the Spanish average Adjusters ?

Mr. Kihlbom. — Quite informally.

The President. — I should like to know the opinion of the International Sub-Committee.

Mr. O. B. Houston (U.S.A.). — Mr. President, I am speaking on behalf of the United States delegation. Personally we think that the words proposed by the International Sub-Committee are quite sufficient. « Without delay » seems to us to cover the matter, but Mr. Armeda, of Spain, who spoke to us all at San Remo, attaches great importance to the word « any ». He seems to think it would have a compulsory force which would be recognized by the Spanish shipowners and would expedite their paying of deposits.

I am sure no one wants to have funds held over unnecessarily by shipowners, therefore my delegation is in favour of accepting Mr. Armeda's request and putting in the word « any ».

Mr. Nielson (Denmark). — Mr. President, Gentlemen, as a shipowner I should like to say that I am not in favour of adding « any ». That is not because I like to keep the deposits, but for practical reasons. If you have a liner trading to various parts of the world, going from here to the Far East, calling at many ports, and you have to collect deposits at all those ports, it will take some time, and often a considerable time elapses before you get the money transferred from your agents in all those places. I should like to propose, instead of saying « without any delay », that we say « without undue delay ».

The President. — I will call upon Mr. Dor, for the International Sub-Committee.

Mr. Leopold Dor. — I think the great point is to have as little delay as possible. If you say without undue delay, you feel you can delay a little, therefore we do not want it. Now some members, the British or Americans, for example, may say they do not need to emphasize this, if they say « without delay » or « without undue delay » it is just as good as « without any delay ». But there are countries where emphasis is needed. In Italy and France, apart from Spain, there is sometimes more need for emphasis than there is in England. So I think we have no objection to

saying « without any delay ». It cannot do any harm, and in some countries it may do a lot of good.

The President. — Is that the opinion of the International Sub-Committee ?

Mr. Leopold Dor. — As far as I can guess, it is.

Mr. Edmunds. — I can see no objection.

The President. — If the International Sub-Committee has no objection, then this proposal is, if I may say so, put forward by the International Sub-Committee itself. Does any delegation object to the proposal to add the word « any » and say « without any delay » ?

M. Francis Sauvage (France). — La délégation française accepte : « without any delay ».

The President. — The words « without any delay » are then accepted.

If there is nothing further to be said in regard to Rule XXII it is accepted.

I may say, Ladies and Gentlemen, that we have done very good work this afternoon, but tomorrow we have still to look after the points to be reported upon by the Drafting Committee and Rule XIII. It has been suggested that it might be useful to read the points which have been submitted to the Committee, but I prefer to ask the Secretariat whether they are quite sure they know what the questions are.

Mr. C. Van den Bosch. — You may be assured that we know about it.

The President. — Tomorrow at 9.30 the Drafting Committee is meeting in this building. At 10.0 o'clock the Session will be re-opened for discussion on the question of mortgages, which has been proposed by the American delegation. At 11.0 o'clock we will continue to discuss the York/Antwerp Rules.

La séance est levée à 17 heures.
The meeting adjourned at 5 p. m.

MERCREDI, 21 SEPTEMBRE 1949

SEANCE DU MATIN

WEDNESDAY, 21st SEPTEMBER 1949

MORNING SESSION.

La séance est ouverte à 10,25 heures, sous la présidence de M. le Professeur J. Offerhaus.

The meeting opened at 10,25 A.M., Professor J. Offerhaus in the Chair.

RATIFICATION DES CONVENTIONS INTERNATIONALES. PRIVILEGES & HYPOTHEQUES MARITIMES.

RATIFICATION OF THE BRUSSELS INTERNATIONAL CONVENTIONS. — MARITIME LIENS & MORTGAGES.

M. le Président. — Nous reprenons maintenant la question de la ratification des Conventions de Bruxelles notamment de celle sur les Privilèges et Hypothèques maritimes, question entamée hier matin.

First of all, as I told you yesterday, we shall now deal with the question of mortgages, because the United States delegation has asked to contime the debate upon this subject today.

I call upon Mr. Prizer.

Mr. John C. Prizer (U.S.A.). — Mr. President, Honourable Gentlemen and Delegates, the delegation of the United States has the honour of presenting for your consideration a resolution relating to the enforcement of mortgages. I think all the delegates here are familiar with the Brussels Convention of 1926 which, as you all know, deals with the priorities of mortgages and liens in the contracting states. That Convention provides that each contracting nation will recognize and treat as valid the mortgages of the other contracting nations, but it does not cover the question of the practical enforcement in one nation of the mortgage on a ship of another nation. I have been informed by some of the de-

legates here present that both in Holland and Belgium the mortgages will be enforced on foreign vessels, but that unfortunately is not generally the case. I am told it is not at present the case in France and Denmark, and I know it is not so in Great-Britain or the United States unless there is a first jurisdiction taken on some other ground, in which case it is likely to follow that the mortgage will be considered and treated as valid, quite apart from the question of the Brussels Convention, a matter of general jurisprudence. It is even more important to the mortgagee to enforce his mortgages than it is to worry about the liens, because usually liens, the more important ones at any rate, are taken care of by insurance ; but if the mortgage is in default, the fundamental thing is that the mortgagee may proceed against the vessel.

It often happens that the vessel does not go even to her home port ; it has become a common practice in recent times to place a vessel under the Panamanian flag ; both American and European vessel owners have done that. Those vessels will probably never go to Panama. The same is true of Honduras ; Liberia is now coming into favour and it is very unlikely that Liberian vessels will ever go to Liberia. So if there is a default under these mortgages, — and they are given in perfectly good faith of course, — if circumstances turn out so that the borrower is unable to repay the loan, the lender must look to the security of the vessel somewhere other than Liberia or Panama or Honduras, or wherever it may be. Even more generally known commercial nations of longer standing, such as Greece, might have a vessel engaged in a trade and never take her back to Greece. Therefore, if the mortgagee is to have the real security of this pledge, he must be able to reach the vessel in another jurisdiction.

We think there is every reason in equity why a mortgagee should have as much right to reach his security as a salvor or a repairman or anyone else who has given credit of one kind or another on the security of the vessel. In fact, in one sense the mortgage on a ship is the modern successor of the old bottomry bond, and the maritime nations generally, if my recollection is correct, recognized and enforced the bottomry bond by which the Master, or even the owner if he was on board, of a ship in a foreign port and in distress was obliged to give an order to finance the vessel to complete her voyage.

The matter is of particular importance at the present time to the United States. Most of us know that the United States Government made availabe, for purchase by nationals of other nations a large number of vessels

that were built during the latter part of the war, or even completed after the termination of the hostilities. They were particularly made available to nations which had lost a large part of their tonnage during the war. In order to assist the nationals of those nations in acquiring the vessels which our Maritime Commission sold, the Maritime Commission offered to take back or to receive in the form of a mortgage a very large portion of the purchase price. In other cases, the purchaser preferred to make a private loan and to give a private mortgage to one of the New-York banks or insurance companies in order to obtain the dollars with which to purchase the vessel.

There seems to have grown up more confidence in ship mortgages ; they have become a more general practice, and in the United States at the present time it has been estimated that there are about a billion — a thousand millions ! — dollars in ship-mortgages which have been created since 1945. Roughly half of that is mortgages to the United States Government and about half to private banks and insurance companies. That is a very large sum of money, but the United States is not the only one, it is a principle of general application. The borrowers, I know, all borrowed in perfect good faith, they intended to give, and I am sure wanted to give, to the mortgagee a full realisable pledge and for the borrower there is an advantage in having a vessel available for giving good commercial security. There is no divergence between the interest of the shipowner and the lender ; both, I think, want to give the best kind of security that can be given in the form of a ship mortgage.

Our delegation has been fortunate in having the counsel and assistance of members of the Netherlands delegation and the British delegation in drafting the form of resolution which we are moving that this Conference adopt. The American Delegation moves the adoption of the Resolution before you.

(Traduction orale par M. Ant. Franck.)

Vous avez sous les yeux le project de résolution préparé par l'Association américaine, sur lequel vous aurez à vous prononcer. M. Prizer vient de nous indiquer quelles sont les raisons qui ont incité l'Association américaine à présenter cette résolution. Tout le monde, dit-il, connaît la convention de Bruxelles sur les Privilèges et Hypothèques maritimes. Cette convention prévoit que les hypothèques, régulièrement consenties dans les pays signataires, auront pleine valeur et effet dans les autres pays signataires. Cette même convention limite de plus le nombre des privilèges qui priment l'hypothèque ; mais cela ne suffit pas dit M. Prizer. La convention proclame des droits ; encore faut-il qu'on puisse les exercer et il est indispensable que le créancier hypothécaire puisse saisir conservatoirement le navire sur lequel il a consenti une hypothèque en cas de défaillance de la part de son débiteur, et cela dans n'importe quel pays.

M. Prizer voudrait d'abord connaitre la situation dans les divers pays. Il nous a dit que

d'après les renseignements qu'il avait reçus en Belgique et en Hollande un créancier américain ayant une hypothèque reconnue par la loi américaine, n'aura aucune peine à saisir conservatoirement le navire mais il pense que la situation n'est pas la même en France et au Danemark.

Je me permets de lui dire que je crois qu'il se trompe sur ce point. En France également, le créancier hypothécaire peut saisir conservatoirement le navire. Il en est de même, je pense, dans la plupart des pays scandinaves, sinon dans tous. Si je me trompe, les délégations scandinaves voudront bien rectifier.

I was just saying, Mr. Prizer, that under Belgian and Dutch law, as you very rightly said, the creditor on mortage would be in a position to arrest the vessel. The position is just the same in France, and I have every reason to believe that it is the same nearly all over the European Continent, and surely it is so if not in all, in nearly all the Scandinavian countries. But of course the delegates of the Associations of those countries will give you full information.

Cette situation, a dit M. Prizer, est différente dans certains pays. En Grande-Bretagne notamment, un créancier hypothécaire étranger ne peut, en vertu des lois anglaises, saisir un navire battant pavillon étranger. C'est à cette situation qu'il faudrait, selon M. Prizer, remédier. Il est beaucoup plus important, dit-il, d'affirmer le droit de saisir et éventuellement d'exécuter le gage, c.à.d. le navire hypothéqué, que de réglementer les privilèges primant l'hypothèque parce que, contre le danger de voir l'hypothèque primée par un privilège, le créancier peut toujours s'assurer. Il pense donc que cette question, extrêmement importante, n'est pas résolue par la Convention de Bruxelles.

M. Prizer attire l'attention sur le fait qu'actuellement beaucoup de navires battent le pavillon de pays, où ils ne se rendent jamais. Il cite comme exemple les nombreux navires qui aujourd'hui battent le pavillon du Panama, du Honduras ou de Liberia. Le créancier hypothécaire américain ne peut pas saisir ces navires en Grande-Bretagne et dans d'autres pays.

Cette question présente pour les Etats-Unis une très grande importance à l'heure actuelle. Le gouvernement américain, en effet, dispose depuis quelque temps déjà des navires qu'il a construits pendant la guerre pour les besoins de celle-ci. Il les a vendus et est prêt à vendre ce qui lui reste aux pays qui en ont le besoin le plus urgent, c.à.d. à ceux qui ont, au cours de la guerre, perdu une partie importante de leur flotte. Le gouvernement des Etats-Unis vend ses navires à crédit en conservant une hypothèque. Il arrive également que les navires soient achetés payables au comptant, mais que l'acheteur étranger recourt alors à une banque ou à une compagnie d'assurances américaine qui lui consent un prêt garanti par une hypothèque. Ces hypothèques consenties soit par les compagnies, soit par le gouvernement, soit par des établissements de crédit américains, s'élèvent depuis la fin de la guerre au chiffre considérable d'un milliard de dollars. Vous comprenez aisément les préoccupations de nos amis américains qui désirent que cette créance énorme soit effectivement protégée. Voilà Messieurs, ce que M. Prizer nous a dit. Et avec l'autorisation du Président, je voudrais y ajouter quelques mots.

Mr. Ant. Franck (Anvers). — Mr. Prizer, Gentlemen of the American delegation, we have to make a suggestion which we think would meet your requirements. In Paris in 1937 we agreed on a Draft-Convention on Arrest of Ships. By a unanimous vote of the Antwerp Conference in 1947, this draft-Convention was sent to the Belgian Government with

request that the Governement should convene a Diplomatic Conference to consider this Draft and eventually to approve and sign it. It is true that this draft-Convention is only applicable in cases of collision. My suggestion is that we should at the present meeting vote a resolution stating that the Conference thinks it desirable that the draft Convention of Paris should be extended to the case of mortgages. I think that would cover your requirements as far as possible at the present moment.

I feel however that I should draw your attention to the fact that it will be necessary, if our suggestion is accepted by this Conference and subsequently by the Diplomatic Conference, to have the Convention on Mortgages and Liens ratified, because first of all to arrest a vessel in a foreign country you will have to prove your claim or your mortgage. Proving a right under a foreign law is a rather difficult thing to do in Court, whereas if you have the Convention ratified the proof of your right as a mortgagee will be easier to supply. In addition, if the Convention on Maritime Liens and Mortgages is generally ratified, then you will also limit the number of liens. It is very nice to have the right to arrest a vessel in some European country or other for security of your mortgage, but if after that you try to enforce your mortgage by selling the vessel, you may find that you will be barred by lots of liens which the Brussels Convention has suppressed. Therefore, of course, it is advisable that countries which have not yet done so, should ratify the Convention on Mortgages and Liens, and I call your attention to the fact that already fourteen countries have ratified or adhered to this Convention. I think it is a very good occasion for the United States to follow suit and to ratify the Convention.

Je ne crois pas qu'il soit utile de traduire longuement ce que je viens de dire à M. Prizer. La solution des difficultés dont il nous a entretenus me paraît être la suivante : nous avons un projet de Convention, adopté unanimement à Paris, sur la saisie conservatoire des navires. La conférence d'Anvers, à l'unanimité, a envoyé ce projet de convention à la conférence diplomatique. Il est vrai que cette convention ne trouve son application que pour les créances nées d'un abordage. Rien, à mon avis, n'empêche la présente conférence de voter une résolution portant que la conférence estime qu'il est désirable que le projet de convention, arrêté à Paris et soumis à la conférence diplomatique, soit étendu aux cas d'hypothèque. C'est une question de rédaction évidemment. Je n'ai pas préparé un texte, d'autant plus qu'il devrait être rédigé en anglais et je ne me sens pas qualifié pour le faire. Je demanderai à mon excellent ami Cyril Mil-

ler, s'il est d'accord, de vouloir bien le faire à ma place. Ce serait une solution extrêmement simple. Nous enverrions alors cette résolution à la conférence diplomatique que le Gouvernement belge s'occupe déjà de convoquer en ce moment. Celle-ci pourra, conformément à cette résolution, compléter le texte qui lui est soumis (*Applaudissements*).

Mr. C. Miller (London). — Mr. President, Gentlemen, the British delegation, whom I have had an opportunity of consulting on this extremely important matter, view with the greatest possible sympathy the position of our friends from the United States. Of course, I can only speak for the law of my own country, but under that law it is perfectly correct to say that a mortgagee of a vessel of a foreign flag, any flag other than that of Great-Britain, has not the right of arrest according to our jurisprudence. It is true that if by an accident the ship is already under arrest, in a British port at the instance of another claimant, such as the owner of a vessel with which the ship as been in collision, or at the instance of a salvor, the foreign mortgagee, that is to say the mortgagee whose security depends upon a mortgagee which is not British, can come before the British Admiralty Court and ask that his mortgage, if properly proved, be taken into account. But that means that he has to rely, in order to enforce his security in our country, purely upon the hazard that the ship may be under arrest by some other claimant. That, of course, is commercially little or no security at all.

I understand from our friends of the Netherlands and Belgium that that is not the law of their countries and that in either of those countries a mortgagee of a vessel that is not flying the Belgian or the Netherlands flag, as the case may be, can arrest a ship in a Belgian or Dutch port and have his security enforced. I assume always, of course, that he is able to prove the mortgage and also that the mortgagor is in default.

We of the British Delegation would particularly wish to take this opportunity of paying tribute to the great generosity of the United States in this particular matter. We know that their generosity has been practically limitless, but in this particular matter they have by disposing of long term mortgages of their warbuilt Liberty ships revivified the European mercantile fleets, especially those which suffered most during the war. I would particularly stress that in order to enable the debtor, let us say the European shipowner, to take the ship on mortgage, in order to enable him to pay the interest on the capital, the mortgages have been granted on extremely long terms. Otherwise, in the unfortunate position in which

we all found ourselves in Europe after the war, we should not have been able to avail ourselves of the benefit of these ships.

Mtre Franck has proposed that, in order to rectify this defect in the laws of many European countries, the draft-Convention on the Arrest of Ships, which was presented to the Comité Maritime at the Paris Conference in 1937, should be adopted by the Diplomatic Conference and ratified. It is perfectly true that if in additon to the power of arrest for collision and salvage one were to add the power of arrest in respect of any mortgage, providing it were properly proved, that would undoubtedly cover the requirements of the United States and, of course, we of the British delegation must and do support the ratification by our Government of the Convention which has been passed by the Comité Maritime.

There is one matter which I think we ought to bear in mind, and that is that governments move slowly ; I know how slowly our Government moves and I think I am right in saying that other governments are not very much quicker ; so it might be some considerable time before this draft Convention is passed into the municipal laws of the various maritime countries. We feel that it may be necessary, we are not saying it is necessary, but we feel that it may be necessary to make some alteration, certainly in our own law, but before that full procedure of the Diplomatic Conference and subsequent pressure upon the Governments to ratify the Convention by passing it into our law can be fulfilled. So far as the British delegation is concerned, we are prepared to take immediate steps to request them either to adopt this Convention, which of course loyally we shall press upon them, or if they have any reason, good or bad, for not taking that step, we are prepared to ask them, which can be very simply done, to make an amendment of our Supreme Court of Judicature Act, which is a complete code of our High Court.

I would like just to add this : we know from our own experience that after the 1914/18 war, — and we appreciate from that experience the problem of the United States, — although we did not have so large a sum involved we had very considerable sums involved upon the mortgage of foreign ships and necessarily, owing to the depression in trade, without any fault or mala fides on the part of the mortgages, a large number of them were unable to carry out the terms of their mortgages and the English banks lost irrevocably a very considerable sum of money. Nevertheless, we have found it necessary in the period between the wars in the general interest of shipping to continue the practice of assisting

non-British shipowners by providing them with vessels on mortgages financed by British finance. I hasten to add that after this war, since there is no British finance, that particular problem will not arise, but our friends from the United States are now in that position, only more so, and it is for that reason that we feel the greatest sympathy with them and that we are prepared to urge our Government to take as soon as possible such action as may be necessary to effect the result which is obvious and right.

May I add one point upon the suggestion that has been made that it is necessary that the Convention on Mortgages and Liens be ratified at the same time. I would point out, — I think Mr. Prizer has already done so but I would like to add such emphasis as I can to his remark, that liens commercially are covered by insurance. If a mortgagee in order to enforce his security arrests a ship and finds that she is subject to a claim for salvage or collision, those claims are covered by the Hull Policy, and under the terms of his mortgage he does or certainly ought to see that those policies are kept up and properly paid, so that from the commercial point of view the priority of liens does not matter very much to the mortgagee. What does matter to him is that wherever he finds the ship, in whatever maritime jurisdiction, he shall be able, if the mortgage is in default, to seize that ship, have his mortgage proved in the local court and obtain an order for possession of the ship by the court.

With regard to the Draft Convention, — and also this remark applies to the Convention on Mortgages and Liens, — I must point out that there are countries which have no register, so that you are unable, in order to prove your mortgage, to produce the local register. It would perhaps be unfortunate to name those countries, but I assure you they exist ; we have had experience of that ourselves. So it is useless providing that a mortgage can be enforced by proof of a register when the register may not exist. In any court the mortgage would have to prove his mortgage, and in order to do that he would have to produce the document itself and prove it by the method of procedure which that court adopts.

There is also this to be remarked about the Convention on Mortgages and Liens : In English law, and I believe in many other laws, the priority of a mortgage dates back to the date on which the mortgage deed was signed, so the mortgagee has priority over any subsequent lienors who are not salvors, for collision or wages, such as repairers, which is a very important protection. In the Convention on Mortgages and Liens that is not so, and I for one should be very sorry to see that priority disturbed.

Thereforce, Gentlemen, while I support the proposition that has been so clearly put before us by Me. Franck, I must also add that we of Great-Britain are prepared to press upon our Government the necessity of rectifying this defect in our own law as soon as possible. I can see no reason in justice or equity why that should not be done immediately.

The President. — Ladies and Gentlemen, I should like to economize as much as possible on account of time. Professor Ripert, Mr. Boeg of Denmark and Mr. Bagge wish to speak. I should like to propose the following : The American delegation wish to know what is the position in each country with regard to the right of arrest by a foreign mortgagee. I shall begin with Professor Ripert for France, Mr. Boeg for Denmark, Mr. Bagge for Sweden ; I think we know the position in Belgium and Holland, but if the gentlemen from Belgium and Holland want to say something they are at liberty to do so ; after that I shall ask the other countries in alphabetical order.

La parole est à M. le Professeur Ripert.

M. G. Ripert (Paris). — Monsieur le Président, Messieurs, quelle a été, lors de la rédaction de la convention de 1926, la grande difficulté que nous avons rencontrée : j'en appelle au souvenir de Sir Leslie Scott. Ce fut la difficulté résultant de la différence entre la notion du « mortgage » avec la notion du droit latin de l'hypothèque. Le créancier hypothécaire dans notre droit n'a pas, au point de vue de la saisie, une situation différente de celle d'un créancier ordinaire. Nous n'avons pu sortir de cette difficulté qu'en inscrivant dans l'article premier de la convention que les hypothèques et « mortgages » régulièrement constitués dans un pays, seraient reconnus dans tous les autres pays contractants.

La première mesure qui doit être prise, par conséquent, est la ratification de la convention de 1926. Si cette ratification n'est pas faite, le tribunal d'un pays n'est jamais obligé de reconnaître l'hypothèque ou « mortgage » constitué dans un autre pays. La première recommandation que doit faire la conférence est donc en faveur de la ratification de la convention de 1926 par tous les pays qui ne l'ont pas encore fait. Quand cette convention aura été ratifiée, on ne sera pas au bout des difficultés. Nous comprenons très bien la demande formulée par la délégation américiane, mais je voudrais attirer son attention sur les objections assez graves qu'elle soulève. Il est une très vieille règle du droit maritime, admise dans presque tous les pays ; c'est qu'un navire en cours de voyage ne peut pas être arrêté par le créancier, à moins qu'il ne s'agisse d'une

créance se rapportant au voyage du navire. Cette règle a été écrite dans l'intérêt de la navigation maritime afin que, sous le prétexte d'une créance existant contre l'armateur, on ne porte atteinte aux intérêts du navire et de la cargaison. Supposez qu'il soit permis à un créancier qui a un « mortgage » de demander dans un port quelconque du monde l'arrêt du navire en vue de la réalisation de son gage. Songez à la situation du juge qui serait forcé d'accorder la saisie conservatoire. Il ne sait pas si le « mortgage » a été valablement constitué, ni si la créance a été remboursée, ni si les intérêts sont payés ou non. Sur la simple demande d'un créancier, parce que celui-ci est un « mortgagiste », le juge serait obligé de prononcer la saisie conservatoire du navire, jusqu'au moment où l'on aurait donné caution pour le montant de la créance mortgagiste. C'est un droit qui va directement à l'encontre de nos habitudes procédurales. Chez nous, un créancier hypothécaire n'a pas plus de droit qu'un créancier ordinaire.

Nous demandons par conséquent, si la conférence tient à faire quelque chose en faveur des créanciers mortgagistes, qu'il soit bien spécifié que le droit du créancier ne pourra pas s'exercer pendant le voyage du navire et qu'il faudra attendre, ou la fin du voyage, ou le désarmement du navire, pour que le créancier qui a un mortgage puisse le saisir. Même alors, j'appelle l'attention de la conférence sur la grande difficulté où se trouvera le juge du pays étranger pour statuer sur la validité du mortgage ou sur le rang qu'il peut donner au créancier.

Voilà, Monsieur le Président, la série de difficultés que je voulais exposer à la conférence. *(Applaudissements)*

(Verbal translation by Mr. Cyril Miller.)

Professor Ripert has expressed his opinion that the first step must be the ratification by all maritime countries of the 1926 Convention on Maritime Liens and Mortgages. He points out to the members of the Conference that the great difficulty experienced when that Convention was drafted was to harmonize the Anglo-saxon notion of mortgage with that of « hypothèque » in the law-system on the Continent. Failing such ratification, no Court is ever bound to recognize the validity of a mortgage or « hypothèque » granted in another country. But even if the Convention is ratified generally, that will not put an end to all difficulties. Under a very ancient provision of maritime law, a vessel cannot be arrested by a creditor or mortgagee during the course of the voyage unless it be in respect of a claim relating to that voyage such as a claim arising out of collision or ship's repairs in the course of that voyage. This provision was intended for the protection of maritime trade, so as to prevent that a creditor, alleging to have a claim against the shipowner, might cause prejudice to the ship and her cargo. If a mortgagee were allowed to request the arrest of a ship at any post whatsoever in the world, in order to enforce his security, imagine the difficulty of a Judge having to deal with such request : he does not know whether the mortgage is valid, or whether the mortgagee's claim, or interest thereon has been paid or not, and yet he would have to grant the arrest of the ship until bail is supplied for the

amount of the mortgage. In France a creditor on mortgage has no more rights than an ordinary creditor.

Therefore if this Conference wants to do something in favour of mortgagees, it should be clearly specified that such creditor may not enforce his rights in the course of a voyage, but has to wait until the end of voyage or until the ship is laid up. Even then, Mr. Ripert calls attention to the difficulty for a Judge in a foreign State to decide on the validity of a mortgage and the rank to be attributed to the claim.

The President. — I now call on Mr. Boeg.

Mr. N.V. Boeg (Denmark). — Mr. President, ladies and gentlemen, my learned friend Mr. Prizer said something about Denmark, but I am not quite sure whether or not he is mistaken.

Under Danish law an arrest may be made if so required provided a guarantee is furnished. The Danish delegation is under the impression that the proposition made by the American delegation would be covered by the Danish legislation ; however, we do not want to commit ourselves. We will study this very carefully when we return to Denmark and we can assure Mr. Prizer and the American delegation that the proposition before us will be studied with the greatest sympathy from our side and that we will do our utmost to make it possible in our country.

Je voudrais repéter en français les quelques mots que je viens de prononcer. J'ai l'impression que, pour le Danemark, la remarque faite par M. Prizer ne se justifie pas, en ce sens qu'on pourrait autoriser, à l'intervention d'un magistrat, la saisie conservatoire, à condition qu'une garantie soit donnée. La délégation danoise pense que la demande formulée par la délégation américaine est couverte par sa législation nationale, mais elle ne veut pas se prononcer définitivement à ce sujet, car nous devons examiner la chose de plus près à notre retour. Dans tous les cas, nous ferons tout notre possible pour faire adopter la proposition dans le sens souhaité par nos amis américains .

Mr. Algot Bagge (Sweden). — The situation in Sweden is about the same as that in Denmark.

The president. — As we have heard two representatives of Scandinavian countries giving their position, I will ask Mr. Alten of Norway what is the position there.

Mr. Edvin Alten (Oslo). — Mr. President, I take it that the Mortgages Convention is in conformity with the general rules of our law. I believe therefore that I can assure the American delegation that mortgages validly constituted and registered in the national State will be recognized in Norway, subject of course to maritime liens which we recognize. As to the possibility for the creditor to operate an arrest, the law of the place

will apply ; thus a creditor who has a mortgage to be assimilated to an « hypothèque » will be able to operate the arrest against guarantee for damage which may be caused to the ship if the mortgage should not be deemed valid. The arrest can be operated even if the ship should be ready to sail.

With respect to execution, it will take place by a judicial sale, it will therefore be necessary for a creditor to go to the court and have a judgment which recognizes his mortgage and authorizes him to have a legal sale effected.

Mr. Andersson (Finland). — Mr. President, the position in Finland is exactly the same as that of Sweden.

M. G. Berlingieri (Gênes). — Je ne vous cache pas, Monsieur le Président, que la question est un peu imprévue. Je ne me suis pas préparé à y répondre, et je ne le ferai qu'avec quelque réserve.

La loi italienne donne à n'importe quel créancier la faculté de saisir les biens de son débiteur dès l'instant où il peut prouver, tout au moins prima facie, l'existence de sa créance et s'il peut prouver qu'il court le risque de ne pas pouvoir exécuter sa créance s'il ne saisit pas les biens de son débiteur. Pour le navire, c'est la même chose lorsqu'il appartient à un débiteur.

D'autre part, la convention dispose dans son article 3 que les hypothèques et mortgages sur navires, prévus à l'article premier, prennent rang immédiatement après les créances privilégiées mentionnées à l'article précédent. La législation italienne contient une disposition identique. Il s'agit seulement alors de voir la préférence qu'on donnera au créancier hypothécaire. Celui-ci vient immédiatement après les créances privilégiées et, puisqu'il ne s'agit que d'une préférence, il ne peut subsister de doute que le créancier privilégié peut saisir, à n'importe quel moment, dès l'instant où sa créance est venue à échéance. On peut dire la même chose pour le créancier hypothécaire. Nous faisons une différence très marquée entre la saisie-arrêt et la saisie-exécution. On peut saisir conservatoirement aussitôt qu'on fournit la preuve prima facie, de l'existence de la créance. Je ne crois pas que le danger signalé par M. le Professeur Ripert existe, suivant lequel le juge ne sait pas si le créancier mortgagiste est encore créancier ou s'il a déjà été payé. En matière de saisie conservatoire, le créancier doit apporter la preuve qu'il est encore créancier.

Il y a une trentaine d'années, si mes souvenirs sont exacts, nous avons eu à Gênes un grand procès au sujet du navire « Bayadère ». La

question a été posée de savoir si le mortgage n'était pas contraire à une disposition d'ordre public parce que le « mortgage » n'est pas notre hypothèque ; d'après ce que je crois savoir, il participe un peu du droit de propriété sur le navire ; il donne au créancier mortgagiste presque un droit de possession, tandis qu'en Italie il n'en est pas de même pour l'hypothèque. On a déclaré alors que puisque cette matière était d'ordre public, il s'agissait de savoir si le mortgage était permis en Italie. La Cour d'appel de Gênes certainement, et peut-être aussi la Cour de Cassation, ont admis que le mortgage devait être reconnu en Italie. Mais il subsistait une difficulté. Il ne faut pas oublier qu'un article de notre code de la navigation dit que les privilèges et les droits de propriété, comme tous les droits réels sur le navire, sont réglés par la loi de l'Etat auquel le navire appartient. Il se pourrait qu'après trente années la jurisprudence ait changé. Il faut donc voir si le mortgage donné sur un navire battant pavillon italien, est un mortgage valablement consenti. Il est bien possible que chez nous, beaucoup plus qu'en Angleterre, la jurisprudence se soit modifiée. Je ne me rapelle plus la date de l'arrêt de la Cour de Cassation. Il date d'environ trente ans. Je suis certain qu'un arrêt a été rendu par la Cour d'appel à ce propos.

M. le President. — Je crois que vous entrez dans des questions de détail.

M. G. Berlingieri. — Vous m'avez demandé un avis au sujet du mortgage. Je crois que je suis encore dans le sujet.

M. le Président. — Je n'avais pas l'intention de vous interrompre.

M. G. Berlingieri. — La question est de savoir si le mortgage américain pouvait avoir exécution en Italie. Je suis resté dans le sujet, mais en tout cas, j'ai terminé.

M. le Président. — Quelle est la situation au Portugal ?

M. Tèles (Portugal). — Au Portugal, il n'est pas fait de distinction entre les créanciers nationaux et les créanciers étrangers au point de vue de la saise conservatoire d'un navire. Un créancier étranger qui a une hypothèque sur un navire portugais peut, tout comme un créancier portugais, faire saisir ou arrêter ce navire, mais il doit observer les règles de procédure portugaises. Il faut notamment qu'il apporte la preuve sommaire de l'existence de sa créance ainsi que la preuve du risque réel d'insolvabilité du débiteur.

Ceci est un résumé de la situation au Portugal et je suggère, — je pense que je puis le faire en ce moment, — d'introduire dans le texte français soumis à nos délibérations la modification suivante : Après les

mots : « à y saisir ou arrêter le navire », ajouter : « d'après les règles de procédure de ce pays et reprendre ensuite « jusqu'à ce qu'une garantie adéquate ait été fournie, etc ».

Je ne fais pas seulement cette proposition parce qu'elle est en accord avec la situation légale au Portugal, mais parce que je crois, ainsi que l'a très bien dit M. le Professeur Ripert, qu'on ne peut pas heurter le sentiment national de beaucoup de pays, le mien notamment, qui désirent voir respecter les règles de procédure qui imposent le respect d'un certain nombre de conditions.

Je crois qu'on n'accepterait pas au Portugal l'idée de pouvoir saisir un navire protégé par notre juridiction sans qu'on fasse d'abord la preuve sommaire de l'existence de la créance et aussi la preuve de l'existence du danger ou du risque provoqué par l'insolvabilité du bébiteur. La saisie conservatoire est une mesure un peu violente ; il faut que son application soit entourée d'un certain nombre de garanties.

M. le Président. — Donc avant d'exécuter le saisie conservatoire, il faut prouver le droit du créancier ?

M. Tèles (Portugal). — Il y a une procédure préparatoire à la saisie conservatoire, au cours de laquelle on doit apporter une preuve sommaire.

M. le Président. — Avant l'arrêt ?

M. Tèles. — Oui, avant que la procédure définitive soit entamée. A ce moment il faudra faire la preuve totale.

M. le Président. — Mais on peût commencer par arrêter ?

M. Tèles. — Oui, si le créancier a un titre exécutoire, il n'a pas besoin d'instituer une procédure compliquée. il peut instaurer en tout cas une procédure sommaire très simple en demande de saisie conservatoire où il devra faire la preuve de sa créance. Le navire sera arrêté par décision judiciaire et ensuite aura lieu la procédure exécutoire. Telle est la situation à ce sujet au Portugal.

The President. — Does Mr. Prizer want a translation ?

M. Prizer (U.S.A.). — If I understood correctly, as the position now stands, a prima facie proof is required for taking action. What we are proposing is not uniform procedure, that is why we do not think that a convention will give the desired end. Every country must have the procedure consistent with its own practice ; this seems quite reasonable. I imagine that the United States and any other nation will require a strong prima facie case showing there was a valid mortgage and the terms of

that mortgage are valid before any court, and then would grant a writ for other proceedings which would hold up a vessel from operating.

The President. — I would now like to ask what is the position of Ireland.

Mr. S. V. Kirkpatrick (Dublin). — The position under Irish law in this matter is precisely the same as under English law, which was outlined by Mr. Miller.

The President. — What is the position in Greece ?

M. Spiliopoulos (Grèce). — D'après la loi grecque de 1910, qui s'est inspirée des décisions prises à Venise par le Comité Maritime International, nous reconnaissons un nombre limité de privilèges. Il y en a de quatre espèces, au second rang desquelles se trouve l'hypothèque.

En ce qui concerne l'exécution des mortgages, la question s'est posée ces dernières années à propos d'un cas où un mortgagiste a saisi un navire et en a pris possession. Les cours ont eu à délibérer sur le point de savoir si cette prise de possession était conforme à la procédure grecque. Après plusieurs décisions assez contradictoires, la Cour s'est ralliée en dernier lieu à l'avis exprimé auparavant par le Professeur Marivakis et par moi-même, à savoir que la prise de possession était contraire à la procédure grecque, que pour exécuter en Grèce un mortgage américain ou anglais, il fallait suivre une certaine procédure qui permettait au créancier d'entrer en possession du navire.

M. le Président. — Il s'agit donc d'une question de procédure. Je vous demande si les hypothèques maritimes étrangères sont assimilées en Grèce aux hypothèques nationales, au point de vue de la saisie conservatoire des navires. Quelle est votre réponse ?

M. Spiliopoulos. — En droit grec, nous reconnaissons suivant la loi du pavillon, la validité des hypothèques qui existent sur le navire. S'il s'agit d'une hypothèque étrangère, elle suit le rang conformément à ce qui existe pour les hypothèques nationales. Si le créancier a un titre exécutoire, il peut exécuter son hypothèque ; s'il n'a pas de titre exécutoire il devra se prévaloir d'un titre d'après la procédure grecque.

M. le Président. — La question est exactement celle-ci. Quoiqu'il y ait reconnaissance de l'hypothèque étrangère, peut-on saisir conservatoirement un navire pour une telle créance ?

M. Spiliopoulos. — Sûrement. Mais pourquoi le faire puisqu'on a une hypothèque et un titre exécutoire. Quel sera le but de la saisie conservatoire du navire puisque l'hypothèque est le titre exécutoire. Vous pou-

vez saisir le navire pour exécution. Le navire est saisi jusqu'au moment où il sera mis aux enchères. Je ne comprends pas votre question.

M. le Président. — C'est la question même que les délégués Américains ont posée. Votre réponse est donc qu'en Grèce on peut arrêter les navires conservatoirement pour une telle créance.

M. Spiliopoulus. — Oui, on peut le faire, et c'est même une garantie supplémentaire ; si le créancier a une hypothèque sur le navire et qu'il a en main un titre exécutoire de l'hypothèque, il n'aura aucune raison de faire une saisie conservatoire.

M. Ant. Franck. — Le caractère exécutoire du titre dépend de la loi du pays où la saisie est pratiquée. En Belgique on ne reconnaîtra pas comme titre exécutoire un mortgage américain ou anglais. Il faudrait d'abord s'adresser au tribunal pour en demander un.

M. Spiliopoulos. — Si le titre est exécutoire et qu'il est émis par une Cour étrangère, il faudra qu'il soit exécuté en Grèce.

M. A. Franck. — Et en attendant ?

M. Spiliopoulos. — On peut saisier, bien entendu. La saisie conservatoire est toujours possible, dès l'instant où vous fournissez la preuve que vous avez une créance. Si la créance est une hypothèque, c'est une raison de plus pour saisir conservatoirement tout de suite.

M. le Président. — Votre réponse est donc affirmative.

M. Spiliopoulos. — Oui, Monsieur le Président.

M. le Président. — Merci.

Monsieur le professeur Ripert, vous avez entendu la question que je viens de poser au représentant de la Grèce. Nous vous serions très reconnaissants si vous pouviez répondre à la même question. Quelle est la position en France quant à la reconnaissance d'un mortgage et quant à la possibilité de saisir conservatoirement un navire pour une créance hypothécaire étrangère.

M. Ripert (France). — J'estime tout d'abord que la question est liée à la convention de 1926. Dans cette convention, nous nous sommes engagés à reconnaître la validité des hypothèques et mortgages régulièrement consentis à l'étranger, donc à l'égard des pays qui ont signé la convention. En France, nous reconnaîtrions certainement la validité de l'hypothéque et du mortgage à l'égard des pays signataires.

M. le Président. — Et pour les autres ?

M. Ripert. — Les tribunaux sont libres de ne pas les reconnaître. C'est le sens de la convention qui est applicable aux pays qui veulent bien y

adhérer. Je ne dis pas que pour les autres on ne les reconnaîtrait pas, mais le tribunal reste libre de ne pas les reconnaître. Ce qui n'a pas de sens dans la traduction française, c'est le texte qui dit qu'un « créancier qui a une hypothèque etc... » Il faudrait dire : « un mortgage ou une hypothèque », comme on l'a dit dans la convention de 1926. Il faudra employer les deux expressions à la fois ; mais vous dites « une hypothèque régulièrement consentie et exécutoire selon la loi de son pavillon ». « Hypothèque exécutoire » n'a aucun sens pour nous. Si le créancier hypothécaire n'a pas de titre exécutoire, il n'y a pas d'hypothèque exécutoire. Il ne peut donc s'agir que d'une saisie conservatoire. Or on ne voit pas très bien l'intérêt qu'un créancier hypothécaire peut avoir à pratiquer une saisie conservatoire sinon pour exécuter le navire dans un pays autre que celui dont il porte le pavillon. Il s'agit d'arriver à faire vendre le navire n'importe où. Nous voudrions bien que la délégation américaine s'explique sur ce point.

M. Carlo van den Bosch (Anvers). — Permettez-moi une interruption. J'assume la responsabilité de la traduction, hâtive, que j'ai faite hier du texte américain qui m'a été soumis. Je me suis efforcé de serrer autant que possible les termes dont le délégué américain s'est servi. Je reconnais que dans la conception du langage juridique français certains termes ne conviennent pas. Il s'agira donc de remettre sur le métier le texte français en l'adaptant aux formules que nous utilisons habituellement en France ou en Belgique.

M. Ripert (France). — Ce que nous voudrions savoir c'est si, dans la pensée de la délégation américaine, ce droit de saisie peut s'appliquer dans un port d'escale quelconque, c.à.d. si le créancier hypothécaire peut interrompre le voyage d'un navire dans un port d'escale, simplement parce qu'il y a un mortgage qui est arrivé à échéance à ce moment là. C'est ce qui nous paraît le plus grave.

(Verbal translation by M. Cyril Miller.)

Professor Ripert is of opinion that the question is primarily connected with the 1926 Convention, by which the contracting parties undertook to recognize the validity of mortgages and « hypotheques » regularly entered into in a foreign country. In France they would certainly recognize the validity of such hypothèque and mortgage as towards the signatories of that convention. Towards States not having signed or adhered to the Convention the Courts would be at liberty not to recognize such validity. The term « hypothèque exécutoire » has no meaning for a Frenchman ; if the mortgage has no executory document of title, he has no « hypothèque exécutoire » either. So that there could only be a question of provisional arrest. Now what would it avail the mortgagee to arrest the ship provisionally if it were not for the purpose of executing the ship in another country than that of which it is flying the flag ? What he wants really is to have the ship sold wherever he can get hold of it.

Sir Gonne Pilcher (London). — There is one thing which Professor Ripert particularly wants to know : Is it the intention of the American delegation that this right of arresting the ship should be enforceable in any port of call ; that is to say that a mortgagee may interrupt the voyage in a port of call, merely because his mortgage has come to maturity.

Mr. Prizer (U.S.A.). — As I understand it, Professor Ripert would like to know whether by a mere statement that a mortgagor is in default the mortgagee can take possession of the mortgaged vessel in any port in the world in the course of a voyage.

I think it is a little difficult to answer that directly because of the fact that he Anglo-saxon jurisprudence does not make the same distinction between the rights of the competitors during the voyage and after the termination of the voyage. What we want is a practical result. We realize as I think I said before, that we cannot have the same procedure in every country ; we are not asking for it. We should not be greatly shocked if the French were to say : « Well, under our procedure we cannot give you the right until the voyage is completed ». That would still be giving us something and it does not make a great deal of difference to the morgagee whether the court says : « We, the Court, will turn the possession of the vessel over to you », or « We, the Court, will decree the sale of the vessel with good title to the purchaser and make the mortgagee, along with any other creditors, look to the proceeds of the sale of the vessel.

In the United States, the usual course is to have the vessel sold and then the priorities are readily determined with respect to the proceeds of the sale. It is true that the mortgagor generally does say that the mortgagee may enter and take possession, but of course we cannot enter a private war ; he must have a judicial officer to give him the possession.

Usually it proves more satisfactory and the mortgagee would regard his own title as a better title if it went through a court sale than if it went through the simple process of taking possession. It is not a matter of very great importance to us as to how the details are effected. The law in the Scandinavian countries has been explained to us and it is a great relief because that is just what our resolution was intended to ask for, and if we have it then the resolution merely confirms that and recommends that any country which does not in substance give any such relief will now do so.

(Traduction orale par M. Aul. Franck.)

M. Prizer saisit assez difficilement le point de vue français parce que la loi américaine ne connaît pas de différence entre une saisie ou un arrêt pratiqué au cours du voyage ou à la

fin d'un voyage. Mais il sera déjà très satisfait si tout le monde reconnaît au créancier hypothécaire le droit de saisir le navire uniquement à la fin du voyage et non dans un port d'escale. De plus, la loi américaine autorise le créancier hypothécaire à entrer en possession du navire, mais là encore la délégation américaine ne demande pas que les autres pays fassent de même et du moment où on met le créancier dans la possibilité de saisir conservatoirement, sauf à faire suivre la saisie conservatoire d'une saisie-exécution, cela lui donne satisfaction. Elle ne demande pas que le créancier hypothécaire puisse se faire envoyer en possession, comme ce serait par exemple le cas sous l'empire de la loi belge, par la voie parée. M. Prizer ne demande pas du tout cela dès l'instant où les Américains peuvent saisir conservatoirement le navire, sauf à faire suivre la procédure de saisie conservatoire par une procédure de saisie-exécution.

Mr. G. Symmers (U.S.A.). — I think perhaps a word of explanation of this Resolution might be in order so that we do not wander too far off the track. Some mention has been made of the fact that in 1945 in the United States, either through the government or the banks and insurance companies, some mortgages were made in dollars. We are not here as Shylocks anticipating that everyone is going bankrupt and worrying about our security ; that is not the case at all. All those mortgages, to my knowledge, are secured either by the Government guarantees or demise-charters or other security that satisfies the banks. The banks look to mortgage on a foreign ship as a very poor risk. I do not think a week has gone by since 1945 when we have not had enquiries from some lawyer or shipowner in some part of the world wanting to buy a ship and asking why they cannot get dollars on the strength of the mortgage. The answer to that is that there is a lack of uniformity, a lack of ability to arrest a ship on default that makes it a very poor security.

Now this proposal originated from a resolution adopted by the American Maritime Law Association in 1947, drafted by lawyers representing banks and representing foreign shipowners, and I think that the members of the United States delegation are in the same capacity as lawyers representing foreign shipowners as well as American shipowners and American private lending institutions, but it is not in any sense a proposal of the United States Government, nor has it ever been suggested by the Government. Our thought is this : If the respective foreign maritime nations could implement their procedure so as to make enforcement and recognition of foreign mortgages possible in the most expeditionous manner, not through the Convention, with which I personally have the greatest sympathy and would like to see our country adopt, but by the simple expedient of municipal law in each country following its own procedure, but allowing the foreign country to have jurisdiction. No particular form of law is suggested ; all we ask is that the delegates of each

country try to persuade their own national legislature or law-making bodies to implement existing law in the most liberal manner possible to facilitate commerce, the exchange of funds for ships, and vice versa, in the quickest way possible.

Sir Gonne Pilcher (London). — May I just say a few words because I am afraid it is the English procedure which has disquieted our American friends. It seems to result from what we have heard from the representatives of the other delegations that in fact an American mortgage on a foreign ship is, in this sense, a good security wherever there exists the principle of « saisie conservatoire ». I shall be corrected, no doubt, if I am wrong, but as I understand it, where that principle exists, — and it exists practically all over the continent, — the creditor, and therefore the mortgagee, on giving prima facie evidence of his debt, in this case an important debt, the mortgage debt, and on giving evidence that his security is likely to be impaired, can then effect a « saisie conservatoire », which will have the effect of impounding the ship temporarily. No doubt, the mortgagee will have to give an appropriate guarantee to abide by any damage which the shipowner may suffer as a result of this provisional arrest and the mortgagee will, no doubt, then do his best to procure, with the maximum possible despatch, the necessary evidence for the foreign court to execute upon the mortgage document.

That, if I understand right, is what occurs broadly speaking amongst the maritime nations on the Continent. It may be that you would have to produce very special facts to justify arresting a ship in the course of her voyage if you were minded to do so ; it might be that you would never be allowed to effect a « saisie conservatoire », because you would never be able to produce facts sufficiently cogent to satisfy the court that if they let the ship go in the course of her voyage you might never be able to get her again. But that, as I understand from Mr. Prizer, is not a matter to which he attaches very great importance ; the trouble has arisen because in England you cannot arrest a foreign ship with a foreign mortgage, you can only arrest a British ship with a British registered mortgage. We do not recognize in our country the principle of « saisie conservatoire », although our Scottish friends do. So, I think that it is possibly the procedure we have in England which is disquieting our American friends, and if therefore it were possible to induce the British Government to make a small amendment to the appropriate Section of the Supreme Court of Judicature Act, permitting the arrest of a foreign ship on a

foreign mortgage with proper precautions, it seems to me that the American delegation's ideas would be met. I hope I am right in summarising the matter in that way.

The President. — There is a small correction proposed with regard to the French translation of the Resolution proposed by the American delegation. In the American/English text, in the first paragraph, at the end, the words are : « within the jurisdiction until proper security has been lodged or the matter has been adjudicated by the Court. » Adjudicate has a wider meaning than sanctioned ; I would ask whether the French Delegation would aprove, instead of « sanctionnée », the words « affirmé ou rejeté » ? « Sanctionner » peut signifier « reconnaître le droit du créancier » ; or le juge peut aussi rejeter la demande.

Now I would ask Mr. Prizer whether the American delegation would agree to the following Resolution being accepted by the Conference : « The Conference agrees in principle to the following Resolution proposed by the American Delegation... ». Here follows your text. Further the resolution will read : « The Conference declares that the rights of a mortgage will only be fully guaranteed if the Convention on Maritime Liens and Mortgages be universally ratified ».

It is quite clear to you that we propose that the wording of the American Resolution be maintained, but nevertheless reviewed by a drafting Committee.

Mr. Ant. Franck. — More especially the French translation of it.

The President. — What is Mr. Prizer's opinion on this proposal ?

Mr. Prizer. — Well perhaps we could consider it very briefly. As I understand your proposal, Mr. President, it is that the Conference approve in principle the Resolution, and it is said that it be recommended that the nations which have not already adhered to the 1926 Convention do so. I do not quite like to say that they could not have a right, because there is a difference of opinion, but it is recommended that they do so and that would be a very desirable way to do it.

The President. — Does the American delegation agree to this text for the second part of the proposal ? First of all the Conference agrees in principle tot he following resolution proposed by the American delegation, (then follows your text), and in order to facilitate the enforcement of the rights mortgages recommends that the Convention on Mortgages and Liens be universally ratified.

Mr. Prizer. — Yes.

M. le Président. — La conférence admet donc en principe la résolution américaine avec renvoi au Drafting Committee pour en revoir la rédaction. En second lieu, elle émet l'opinion que les droits des créanciers hypothécaires ne seront pleinement garantis que si la Convention sur les Privilèges et Hypothèques maritimes est ratifiée universellement.

Je donne la parole à M. Franck qui nous donnera la traduction de la seconde partie de la résolution.

M. Ant. Franck. — La deuxième partie de la proposition se traduit comme suit :

> « Elle recommande qu'en vue de faciliter l'exécution des droits des créanciers hypothécaires, la convention de Bruxelles sur les privilèges et hypothèques soit ratifiée universellement. »

C'est simplement un vœu en faveur de la ratification de la convention de Bruxelles.

M. Ripert (France). — Il est entendu que pour l'information du Comité de rédaction, la délégation américaine accepte de restreindre le droit de saisir à la fin du voyage. J'avais cru comprendre qu'elle acceptait cette restriction.

M. le Président. — Cela n'est pas une question de rédaction. J'ai précisément proposé d'insérer les mots « en principe » dans la résolution, puisqu'il y a des réserves à faire quant à la procédure. C'est le cas notamment pour le Portugal ; pour la France, la réserve porte sur l'arrêt pendant le voyage. Je crois qu'on peut admettre que les mots «en principe » veulent dire qu'il y a une sorte d'exception.

M. Ripert. — Il me semblait que sur la question de la fin du voyage, la délégation américaine était d'accord ?

M. A. Franck. — Elle ne peut se déclarer d'accord d'une manière générale, mais elle admet que les législations nationales règlent cette question.

M. Ripert. — Elle est capitale.

M. Tèles (Portugal). — On pourrait peut-être introduire dans la résolution les mots « d'après les règles de la loi nationale » ?

M. A. Franck. — Vous voudriez donc que l'on insère après les mots « y saisir ou arrêter le navire », les mots « d'après les règles de la loi nationale » ? C'est une question de rédaction.

M. Tèles. — Il me semble qu'il est bon d'observer les lois du pays.

The President. — As you heard, gentlemen, the acceptance of this Resolution is dependent upon a certain revision by a drafting committee. I therefore propose that we have a very small drafting committee consis-

ting of Mr. Prizer, a member of the French Delegation and Mr. Carlo van den Bosch. Does anyone want the proposal repeated once more in English ?

Mr. Prizer. — May I very humbly suggest that there be someone on the drafting committee who is fluent in both French and English ?

Mr. A. Franck. — Mr. van den Bosch is fluent in both.

The President. — Mr. van den Bosch is not only Secretary but also a member of the Drafting Committee.

The President. — Ladies and Gentlemen, there were some difficulties, as you will have understood, on account of the objection of the French and Portuguese side. With regard to Portugal I think that the question is quite easy because all questions of procedure are left out the Resolution, so every nation follows its own procedure. But as regards France, the difficulty is that arrest by the mortgagee during the voyage cannot be admitted. Now I have proposed that the Conference inserts at the beginning of the Resolution in the French text the words: «La conférence admet **en principe, réserve faite pour les lois nationales au sujet d'arrêt pendant le voyage,** la résolution américaine, avec renvoi au Drafting Committee pour en revoir la rédaction. La délégation française accepterait-elle ?

M. Ripert. — Oui, Monsieur le Président.

M. Tèles (Portugal). — — Au Portugal, la restriction dont parlait M. Ripert est applicable au cours de la procédure pendant laquelle sont également établies les autres restrictions. Le Code établit aussi les restrictions et garanties dont j'ai parlé. Si l'on fait allusion à l'une d'elles seulement, on peut en déduire que les autres sont écartées. Il serait peut-être préferable d'adopter la rédaction plus générale et de faire alusion à toutes les restrictions, conditions et garanties établies par la loi nationale.

The President. — I think the proposal made by the delegate of Portugal is too dangerous, so I propose to stick to this one exception on account of French law, but not to add others. I think the Portuguese position is quite well safe-guarded ; we need not have any difficulties with that. You have heard what Professor Tèles has said in favour of widening the scope of the exception. I cannot advise you to go so far as that, but I should like to ask you whether there is any delegation supporting the Portuguese proposal. If there is not, we will adopt the only exception on account of French law.

The English reads : « Reserving the provisions of municipal laws in regard to arrest during the voyage ».

En français : « Réserve faite de la loi nationale pour les arrêts pendant le voyage ».

Mr. Prizer (U.S.A.). — Could we put in the words « if any ». I have those words in mind, so that this reservation be not made for countries to which it does not apply.

M. le Président. — Comment traduisez-vous « If any » ?

M. Franck. — Par «éventuellement ».

Mr. Prizer (U.S.A.). — Reserving this law for those countries in which it exists, or something like that.

The President. — The Conference agrees in principle to the addition of « reserving the provisions of municipal laws regarding arrest in the course of the voyage, if any », to the resolution proposed by the American delegation, on the understanding that it be referred to the Drafting Committee for revision : « And in order to facilitate the enforcement of the rights of mortgages, it is recommended that the Convention on Liens and Mortgages be universally ratified ».

Nous avons donc la rédaction suivante :

« La conférence admet en principe, réserve faite éventuellement pour les lois nationales au sujet d'arrêts pendant le voyage, la résolution américaine avec renvoi au Comité de rédaction ».

Vient alors le texte de la résolution américaine dont M. Franck vous a donné la traduction française.

The members of the Drafting Committee are Mr. Prizer, Mr. Ripert and Mr. van den Bosch, the latter acting as secretary.

Je mets cette résolution aux voix.

I propose that this Conference accept this resolution.

— *Adopté.* — *Agreed.*

M. Tèles (Portugal). — J'accepte la résolution, mais à la condition qu'on mette l'adverbe « notamment » ou les mots « réserve qui concerne la nécessité d'établir le risque d'insolvabilité du débiteur ».

M. le Président — Monsieur Tèles, je regrette beaucoup, mais je crois que votre proposition actuelle ressemble un peu à la proposition que vous aviez faite il y a quelques minutes et qui a été rejetée par la conférence. En Hollande, nous avons un dicton, « qu'il est très difficile de contenter tout le monde et sa belle-mère ».

Sans continuer cette comparaison, je vous proposerais d'accepter la résolution de la conférence.

M. Tèles (Portugal). — Je ne puis l'accepter telle qu'elle est rédigée.

Elle est en contradiction avec le droit portugais sur un point essentiel et je ne puis l'accepter sans cette réserve.

M. le Président. — Vous acceptez ou vous rejetez ?

M. Telès. — J'accepte en principe, mais avec la restriction que j'ai indiquée.

M. Franck. — On pourrait vous donner acte de votre réserve. Le procès-verbal en fera mention.

M. Tèles. — Avec cette réserve, j'accepte.

M. le Président. — Il est donc donné acte à la délégation portugaise de cette réserve. C'est dommage, car toutes les autres délégations avaient accepté la résolution.

La séanc est levée à 13 heures.

The conference adjourned at 1 p.m.

MERCREDI, 21 SEPTEMBRE 1949

SEANCE DE L'APRES-MIDI.

WEDNESDAY, 21st SEPTEMBER, 1949

AFTERNOON SESSION.

La séance est ouverte à 14,30 heures, sous la présidence du Professeur Offerhaus.

The session opened at 2.30 p.m., Professor Offerhaus in the chair.

REVISION DES REGLES D'YORK ET D'ANVERS, 1924

Continuation de la discussion.

REVISION OF THE YORK-ANTWERP RULES 1924

Discussion continued.

M. le Président. — Je donne la parole à Me Léopold Dor qui parlera au nom de la Commission de rédaction.

M. Dor. — Monsieur le Président, Messieurs, la Commission de rédaction est arrivée à un accord unanime dans un temps record puisque je dois reconnaître que les prévisions optimistes de notre Président se sont réalisées et que nous avons terminé notre travail à 11 heures. En revanche, notre Président voudra bien reconnaître que nos prévisions pessimistes au sujet des « Mortgages » se sont également réalisées et lorsque nous sommes rentrés en séance très ponctuellement à 11 heures, nous n'avions pas pu vous faire part du résultat de nos travaux.

Pour ce qui est des Règles d'York et d'Anvers voici les textes qui tous ont été adoptés à l'unanimité.

The Drafting Committee have come to unanimous agreement as to the text, which I shall read. Add a second paragraph to Rule X a, reading :

« When a ship is at any port or place of refuge and is necessarily » removed to another port or place because repairs cannot be carried » out in the first port or place, the provisions of this Rule shall be » applied to the second port or place as if it were a port or place of

» refuge. The provisions of Rule XI shall be applied to the prolonga-
» tion of the voyage occasioned by such removal ».

I do not pretend that that is very light or elegant, but it is much lighter than the amendment with which we had to deal.

In respect of Rule XI c, in line 1, delete the word « rules » and all the words « and other rules », so that the first line will read : « For the purpose of this and other rules wages shall include all payments... » etc. That is a proposal of the American delegation, and it has the great advantage of defining what we actually do mean.

In Rule XVI, the Finnish amendment is rejected and the American is adopted. The American amendment consists of an insertion in the second paragraph. After the words « Where goods so damaged are sold », insert « and the amount of damage has not otherwise been agreed ».

Finally, there is Rule XVIII, page 10, line 4 of the Rule : delete the words « deduction being made as above Rule XIII when old material is replaced by new », and insert the words « subject to deduction in accordance with Rule XIII ».

Rule XIII was not solely a question of drafting, because it had not been discussed in this Conference and the whole matter was referred to us to discuss and to come to an agreement. I shall read the text, but after I have read it I shall leave it to Captain Kihlbom, whose special child that new text is, to propose it to the Conference and to Mr. Reading to second it. They will tell you all about it.

Rule XIII, page 8, delete lines one and two and insert the words : « The
» deduction shall be made from the cost of new material or parts, inclu-
» ding labour and establishment charges, but excluding cost of opening
» up. »

« Dry dock and slipway dues and cost of shifting the vessel shall be
» allowed in full ».

If, Mr. President, you will kindly call upon Captain Kihlbom, he will tell the Conference all about this special Rule.

The President. — I then call upon Mr. Kihlbom.

Mr. Kihlbom (Sweden). — Mr. Chairman, Gentlemen ; I will try to be very brief about this matter. In the report of the International Commission Rule XIII is laid out and proposed to this Conference. After the decision of the International Commission had been made, the Drafting Committee obtained technical advice from various sources, which led the Drafting Committee to say, in its second report, that the Drafting Com-

mittee was of the opinion that it would be advisable for a certain point, to which I shall refer, to be discussed at Amsterdam. This point was the question of wheter deductions should only be made from renewals of all material or parts, or from the total cost of repairs. The Swedish delegation proposed an amendment to that, as Me Dor has just said. We have discussed this in the Drafting Committee and have made certain modifications in the Swedish proposal. I have since discussed the modifications with the members of the Swedish delegation and they are willing to accept these amendments.

If you look at page 8 of the Report of the International Commission, you will see that lines 1 and 2 read : « deductions shall be made from the cost of new material or parts only ». I would move that these two lines be deleted and that we insert the words : « The deductions shall be made from the cost of new material or parts including labour and establishment charges, but excluding cost of opening up. Dry dock and slipways dues and the cost of shifting the vessel shall be allowed in full ».

That is the proposal I wish to move. I want to make it quite clear that the Drafting Committee unanimously agreed on this point.

Mr. E. W. Reading. — Mr. President, Gentlemen, I think, with regard to the deductions in Rule XIII, that we all know the principle which we wish to establish. It is that a shipowner shall not benefit at the expense of other interests from repairs for which general average has to pay. The difficulty is to arrive at words which will express that intention so that it will be understood by the surveyors, adjusters and shipowners all over the world, and to provide for the many circumstances that may arise in the course of repairs.

It is impossible, I think, to draft a Rule which will provide an equitable solution for every occasion. A ship may be repaired at her home port at expensive parts have to be sent from the builders of the ship may cost £ 1,500, and the same repairs effected at another port abroad, because expensive parts have to be sent from the builders of the ship may cost £ 3,000. What we should like to achieve is that the enhancement in value should be calculated in each case so that we arrive at the same answer. In practice it is impossible to do this without having a rule which would be nearly as long as the York/Antwerp Rules themselves. In the past we have found under the old Rules that there were differences in the way in which the deductions were made. In some cases the deduction was made from the cost of material only, in the strictest sense. In other cases it was

made from the cost of material and the cost of the labour incurred in making a particular part. Yet in other cases it was made from the cost of material and from the cost of the labour in making the part and from the cost of installing that part in the vessel.

In the amendment which Captain Kihlbom has proposed, and which the Drafting Committee has prepared, we have said that the deduction shall be made from the cost of the new material or parts, including the labour and establishment charges. By that we mean the cost of the labour in the builder's yard and the establishment and other charges which the repairer will add to the bill before he presents it to the shipowner. We go on to exclude the cost of opening up. What we mean by that is this: a shipowner may have to replace a bed-plate. To replace that bed-plate it may be necessary to lift out the whole of the machinery. It is clear that the value of that ship has not been increased £ 1 by any part of the cost of lifting out the machinery. The value of that ship has been increased by the cost of the bed-plate which can be represented by the repairer's bill to the shipowner for that bed-plate, which will include material, labour and his establishment charges.

For the purpose of record, if I may go on Sir, we have discussed in the Drafting Committee the difficulty that arises in connection with this Rule, particularly in the case of modern motor vessels, when heavy machinery parts have to be sent out from the builder to a vessel that has had an accident abroad. A new shaft may cost £ 1,500 to make ; it may cost a further £ 1,500 to send it to the port at which the ship is detained. The deduction, we have thought, should not be made from that cost of transportation. Quite obviously if one ship has had an accident in her home port the repair will have cost £ 1,500 ; but if a similar ship in the same fleet has the same accident 3,000 miles away, and the repair plus transportation has cost £ 3,000 the value is not increased by £ 3,000. The enhancement in value must in fact be the same in the case of both ships, but it is, I think, impossible to find words which would ensure that that deduction from the cost of transportation was made only when the transportation was exceptional.

There are further considerations : for example, what are extraordinary circumstances today may become ordinary circumstances in five or ten years time. Therefore, it would be most dangerous if we had adopted the suggestion that we should provide that there should be no deduction from the extraordinary cost of transport. In the past, although we have

found differences of practice, adjusters and surveyors have done their best to arrive at a proper solution remembering the principle that is behind this Rule. I do not see why we cannot, under the new amendment, arrive at a satisfactory answer in the future, and, Sir, I am not twitting the lawyers, if we remember that this Rule is the most practical rule in York/Antwerp Rules, and that we should treat it as the ordinary man in the street would view it ; in fact we should try to apply our common sense.

The President. — I would like to thank Mr. Me Dor and his Drafting Committee most heartily for the very valuable work they have done in such a short time, and also Mr. Kihlbom and Mr. Reading for commenting upon the work.

I propose that we continue and decide on these amended texts which you have before you. First of all, we have Rule X a, to which a second paragraph has been added, reading : « When a ship is at any port or place » of refuge and is necessarily moved to another port or place because » repairs cannot be carried out in the first port or place the provisions of » this Rule shall be applied to the second port or place as if it were a » port or place of refuge ; the provisions of Rule XI shall be applied to » the prolongation of the voyage occasioned by such removal ».

May I, for formal reasons, ask the Drafting Committee whether the last words are contained in the third paragraph or forming part of the second paragraph. I think it is a new proposal so it should be printed in such a way that the words : The provisions of Rule XI... » and so on should be in a separate paragraph.

I think there is no further discussion and I would like to ask whether there is any delegation opposed to the proposal. If not, the proposal is adopted.

Rule XI c : in line 1 delete the word « rules », and after the word « this » add « and other Rules ». It will read : « For the purpose of this and other Rules wages shall include... ».

Is any delegation opposed to that ?

Mr. Andersson (Finland). — I am not against it, but I beg to submit that it would be possible to say « only for the purpose of these Rules », If not, then I am prepared to accept the proposal of the Drafting Committee.

The President. — What is the difference ?

Mr. Andersson. — It is shorter. I do not like « this and other rules »

because you have « this » in the singular and « other rules » in the plural. It does not sound good for me, but perhaps I am wrong. I would rather say « only these rules ».

The President. — I think you might have some misunderstanding then on account of this question, whether these rules mean only the Rules contained in Rule XI or the whole of the York/Antwerp Rules. When you say « this and other rules » it is clear.

Mr. Andersson. — Then I accept the proposal of the Drafting Committee.

The President. — Does any delegation oppose this proposal ? Then it is adopted. *(Adopted).*

On Rule XVI there is the American amendment. First of all I must ask the Conference if any delegation wishes to maintain the Finnish amendment. If there is not, we have no further discussion on it. There is only the American amendment.

In the second paragraph, after the words « where goods so damaged are sold » insert « and the amount of damage has not been otherwise agreed ». *(Agreed).*

Rule XIII : on page 8 of the Report, delete lines 1 and 2 and insert « the deductions shall be made from the cost of new material or parts, including labour and establishment charges, but excluding the cost of opening up. Dry dock and slip-way dues shall be allowed in full. » *(Agreed).*

Rule XVIII : Delete the words : « ...deduction being made as above (Rule XIII) when old material is replaced by new. » Insert, « ...subject to deduction in accordance with Rule XIII.» Does any delegation oppose that ? (No). Then this amendment is adopted.

Mr. C. Keating. — Mr. Chairman, my recollection is that the Conference did not adopt Rule XVII formerly.

The President. — The Rules which were not adopted yesterday are Rule XIII and Rule XVII, because we only discussed the amendments of the Drafting Committee on Rule XIII this afternoon. With regard to XVII no other discussion can be allowed, but XIII may be discussed apart from the amendments accepted just now. Does the Conference agree that we ought to decide upon the whole Rule XIII as it lies here ? If there is no Delegation which wants to speak on Rule XIII the whole Rule as amended is adopted. Rule XVII is still to be adopted. I think there is no

further discussion. May I take it that there is no Delegation against Rule XVII ? *(Agreed)* Rule XVII is adopted.

Mr. Schadee. — Mr. Chairman, Rule XIX has not been adopted.

Mr. C. Keating. — May I ask leave to address the Conference for a moment at the request of the Belgian delegation with regard to Rule XII? I do not wish to make a proposal, but a statement with regard to interpretation.

The President. — Perhaps you would wait one moment while we dispose of Rule XIX. If no Delegation is against Rule XIX I submit that it is adopted *(Agreed)*.

I will now call upon Mr. Keating for his comments.

Mr. C. Keating. — Mr. President, my learned friends in the Belgian delegation have been a little disturbed about the adoption of the 1924 Rule number XII. Their particular difficulty is that they are afraid that the situation which I will now describe is not covered by the Rule. This situation is that a ship carrying refrigerated cargo is under repair and the cargo has to be removed either unto the deck or to the dock. Because it is on the deck or the dock where there are no refrigeration facilities the cargo is damaged. I have said that in my opinion there is no question under Rule XII but that the damage is entitled to be taken into account.

The Belgian Delegation asked me to state my opinion, and I am extremely flattered that they think it is of importance, and have been very happy to do so.

Sir Leslie Scott. — As a matter of law in England, I agree entirely with what Mr. Keating has said.

The President. — Ladies and Gentlemen, there is one point which ought to be decided. According to the law of the Netherlands, when a child is born its birth must be registered within three days, but this child must have a name within five minutes, so I propose that these new Rules be called the York-Antwerp Rules, 1950. I think it is for this reason that, first of all, we do not change the name according to the place where the revision has been made. Secondly, we should call them York-Antwerp Rules, 1950, because they should be confirmed by the International Law Association Conference in Copenhagen next year. *(Agreed)*.

With regard to the French translation, as you know the Stockholm Rules have two official texts, the English and the French. I therefore propose that the official French translation be left to the International Maritime Committee and not to the International Law Association or that

it should be drafted and decided upon by a special Committee appointed by the Permanent Bureau. Formally spoken, the proposal is that the French translation shall be settled by a special sub-committee appointed by the Permanent Bureau. Does everyone agrees to that proposal ?

(Agreed).

Of course, ladies and gentlemen, the Conference has not by any means come to an end, but we are alll conscious of the fact that after having terminated our discussions on the York-Antwerp Rules we have done some good and valuable work. I would, with just a few words, most heartily thank all those individual members and delegations who, during the period of the last year, made such large and valuable contribution to the work which has been accomplished today. Perhaps there have been a few difficulties in these discussions on account of our different languages, but I hope these difficulties will not have been too heavy to bear.

We have finished our discussions, and I congratulate all of you with all my heart. Mr. John Galsworthy, the famous British author, is reported to have said : « Idealism increases in direct proportion to one's distance from the problem ». I am happy to be able to say that you have repudiated these words. That quotation was taken from the last issue of the American Reader's Digest, and I must say that our American friends have proved that their idealism has been increased with their closer approach to the matter...

Having disposed of that matter, we will go on to the subject tabled on the Agenda for Wednesday afternoon.

LES « CLAUSES-OR » DANS LES CONVENTIONS INTERNATIONALES EN MATIERE DE LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER ET DE CONNAISSEMENTS.

« GOLD-CLAUSES » IN THE INTERNATIONAL CONVENTIONS ON LIMITATION OF SHIPOWNERS' LIABILITY AND ON BILLS-OF-LADING.

M. le Président. — Ainsi que vous le savez, un rapport a été établi par la Commission internationale de la Clause-or. Cette commission avait été désignée il y a deux ans à la conférence d'Anvers.

Je donne donc la parole à Me Léopold Dor pour nous dire quelques mots sur les conclusions de cette Commission.

M. Léopold Dor. — Monsieur le Président, Messieurs, c'est en qualité de Président de la Commission internationale sur le Limitation de la responsabilité des propriétaires de navires et la Clause-or que j'ai l'honneur de m'adresser à vous. Le titre que vous a lu M. le Président n'est plus tout à fait exact aujourd'hui, en ce sens que vous n'avez pas à vous occuper uniquement de la clause-or. Cela était vrai pour les Règles de la Haye, mais pour la Commission de la Limitation de la responsabilité des propriétaires de navires, c'est toute la question de cette convention que vous allez avoir en discussion, ainsi que vous le verrez par le bref exposé que je vais vous faire.

La clause-or est sans doute la première question qui a attiré l'attention. Nous avons tenu une réunion à Anvers en décembre 1947 et nous ne sommes arrivés à aucun résultat. A Londres ensuite, le Comité Britannique de Droit Maritime a demandé à deux experts financiers extrêmement éminents, — un grand professeur d'Oxford et un des représentants de la Midland Bank, — de voir s'ils pourraient nous dire ce qu'était une livre or. Ils ont fini par déclarer qu'ils en étaient complètement incapables. En même temps, le Comité britannique du Droit Maritime, sous l'impulsion vigoureuse, dynamique et jeune de mon excellent collègue et ami Cyril Miller, a mis en question toute la convention sur la Limitation de la Responsabilité des Propriétaires de Navires. Les difficultés rencontrées à l'occasion de la discussion de la clause-or n'ont fait que mettre en relief le caractère peu satisfaisant de cette convention. Celui-ci résulte d'un compromis entre deux systèmes : le système anglais, qui limite la responsabilité de l'armateur à autant de livres sterling par tonne, — en fait à 8 livres sterling, — et le système continental qui permet à l'armateur de se libérer par l'abandon du navire et du fret.

Ce système, qui a pour origine l'Ordonnance de Colbert sur la Marine Marchande de 1681, était d'ailleurs le système anglais jusqu'au milieu du XIXe siècle. Malheureusement, lorsqu'on fit cette convention, on n'est pas arrivé à choisir entre les deux systèmes et dès lors on les a admis tous les deux. Cela pouvait marcher tant que les monnaies étaient relativement stables, ce qui était le cas en 1924. Mais aujourd'hui où elles sont sujettes à des fluctuations considérables, cela ne marche plus du tout. On voit donc qu'il faudra arriver non seulement à reviser la convention, mais peut-être à en faire une nouvelle. M. Cyril Miller, dans le remarquable rapport qu'il nous a fait lors de la réunion de la Commission in-

ternationale à Londres en juillet, — rapport contenu dans le petit imprimé de couleur orange que vous avez sous les yeux, — fait remarquer que la convention n'a pas été ratifiée par la Grande-Bretagne ni les Etats-Unis et qu'elle n'a aucune chance de l'être. Pour les Etats-Unis, le Président n'a même pas envoyé la convention au Sénat, et pour l'Angleterre, le Parlement anglais n'est pas saisi de la question et personne ne veut se charger de la lui soumettre. Par conséquent, il ne s'agit pas seulement de la revision de cette convention, il s'agit de trouver de nouvelles bases pour élaborer une convention qui puisse être acceptée par tous les pays.

Je vais vous donner un petit exemple pour vous montrer combien cette convention est mal conçue lorsqu'on a à faire à des monnaies croulantes.

On applique la limitation de la responsabilité à des cas de sauvetage et d'avarie commune. Quel est le sauveteur qui accepterait que l'armateur puisse limiter sa responsabilité à 8 livres par tonne, même 8 livres d'avant-guerre, et à plus forte raison à 8 livres d'aujourd'hui ?

Il est certain que les navires valent aujourd'hui infiniment plus que 8 livres sterling par tonne brute et que le sauveteur est habitué à avoir comme garantie la totalité du navire. Sans doute il sait bien qu'il ne pourra pas réclamer à l'armateur du bateau qu'il sauvera plus que le navire ne vaut, mais le navire tout entier constitue la garantie de sa créance de sauvetage. D'après cette convention l'armateur a le droit de dire au sauveteur : « Voilà 8 livres par tonne et je limite ainsi ma responsabilité ». Il en va de même au point de vue de l'avarie commune. Aucun dispacheur n'admettra que l'armateur puisse dire : « je me libère de tout ce que je dois à titre d'avarie commune par le système des 8 livres par tonne ». Il y a des cas dans lesquels la contribution de l'armateur — M. Gervais ne me démentira pas — est bien supérieure à 8 livres par tonne. Ce sont là quelques exemples ; je pourrais en citer beaucoup d'autres pour démontrer que la convention, aujourd'hui que les monnaies sont fluides, ne peut plus tenir.

M. Cyril Miller a accompli un travail absolument considérable ; il a correspondu avec toutes les Associations nationales et a fourni un effort magnifique. Il a été secondé par M. Carlo van den Bosch auquel je rends hommage aussi, car il a dressé d'admirables tableaux synoptiques montrant les positions prises par les divers pays et la solution qu'ils adoptent en première ligne, puis en seconde ligne et ainsi de suite.

M. Miller avait proposé à notre réunion de juillet à Londres qu'une association, de préférence l'Association américaine, fût chargée de faire, pour cette question de la Limitation de la responsabilité, le même travail que l'Association Britannique du droit maritime pour les Règles d'York et d'Anvers. L'Association américaine a trouvé que ce serait une tâche un peu difficile pour elle étant donné l'éloignement et elle n'a pas désiré se charger de cette tâche. Par conséquent, nous ne vous soumettons pas la résolution qui termine nos travaux et qui a été votée à l'unanimité, par la Commission internationale. Cette résolution tombe purement et simplement. Elle est remplacée par une autre, que M. Miller vous présentera lorsqu'il aura fait son rapport, d'après laquelle le Bureau Permanent sera chargé de référer toute cette question à la Commission internationale, car il a été décidé à l'unanimité par la Commission internationale sur la limitation de la responsabilité des propriétaires de navires et la clause-or, que cette commission resterait en fonction après la conférence d'Amsterdam. La Commission sera donc toute prête pour remettre sur le chantier cette question de la convention nouvelle à rédiger. Je sais par avance que M. Miller est tout disposé à continuer le travail admirable qu'il a déjà accompli en cette matière.

Mr. Cyril Miller (London). — Mr. President, Ladies and Gentlemen, since this is such a complex subject, and one upon which the views of the various national associations differ on matters not only of detail but of substance, a number of people will want, no doubt, to express their views. I am therefore going to try, especially having regard to the very clear exposé that Me. Dor has just given us, to cut down my remarks to the smallest possible compass. Limitation of Liability is a subject upon which one can talk forever, in which event your audience goes to sleep, or it is a subject which you can endeavour to put succinctly and in a small compass, in which case you are told that you have omitted many relevant points. Of the two risks I am going to take the latter.

May I just remind the Conference how this question arose ? At the Conference at Antwerp, which was our last Conference, held in September, 1947, the Maritime Committee resolved to appoint a Sub-committee to study and report to the 1949 Conference upon the question which we are now discussing. The International Maritime Committee very wisely confined itself to stating a somewhat tepid belief in the value of gold as a basis for any form of limitation. By the events of the last two years that belief has been more than wholly justified.

The Sub-committee, after considerable correspondence, did meet in Antwerp in December last year. As result of the opinions which were exchanged at great length among the various delegates to that sub-committee at Antwerp, the report was made, which Me. Dor has been over kind about, to the International Sub-Committee which sat in July in London and whose point of view I am now endeavouring to expose to you.

The recommendation of the International Sub-Committee was one which seemed to us at that time to be the best way of dealing with this tonis but having regard to what has occurred during the past three months I think the International Sub-Committee will want to modify somewhat its proposals. I think I should read to you their resolution : « The Committee proposes that the Amsterdam Conference should express the wish that the Permanent Bureau will entrust one of the National Associations, if possible the American Association of Maritime Law, with the task of revising the Convention on Limitation of Liability of the Shipowner, especially in respect of the Gold Clause, as well as the revision of the Gold Clause in the Conventions on Bills of Lading ». I will go into more detail later, but the Commission Internationale has somewhat modified its views, and the proposals with regard to procedure will be a little different.

There are two distinct problems which we have to consider in this topic. One is of general interest, and of greater importance in the long run ; the other is really a domestic problem. We all know that in all maritime countries, shipowners are entitled in certain circumstances to limit their liability, both for breaches of contract and for torts, wrongs done by the shipowners or by their servants in charge of the ship. This privilege is given because of the great damage which a vessel can inflict not only upon another vessel but on objects on shore, by reason of the smallest acts of negligence or error of judgement on the part of those in charge of her. That is considered to be a liability which is instant ; it may be enormous and it is a liability to which others engaged in commerce, are not subject. It is for that reason that the maritime countries have encouraged shipowners by giving them that special privilege. That is the first and widest form of limitation which in practice, of course, in most cases is concerned with damage done by collision between two ships. We must not however ignore the cases which are becoming more and more frequent in practice now, of ships causing damage to some object on shore ; ships by slightly touching — or as we say, falling against — a wharf, may do an incredible amount of damage.

The second problem, as I have said, is mainly domestic, and I think it is peculiar to Great-Britain and her colonies and one dominion, Australia. All the principal maritime nations have now adopted the Hague Rules of 1922. We call them, and our American friends call them, the Carriage of Goods by Sea Act. I am not quite certain of the legislation title in the Latin and continental countries, but « the Hague Rules » have now been commonly accepted. Under all these statutes, all these local laws, the shipowners' liability for loss of or damage to cargo is limited to a stated sum, which is, of course, expressed in the national currency, because that is the unit of currency in which judgment would have to be given in a contested case. In the British Act the limit is £ 100 per package or unit ; in the American Act I think it is 500 dollars. The Hague Rules also, in those halcyon days when the danger of linking one's self to gold had not been discovered provided, in order to achieve uniformity, that all monetary units in the Rules should be deemed to be of gold value. If you take it literally, let us say that 500 dollars would be 500 dollars gold, and £ 100 would be £ 100 in gold. That was in those days considered to be a very excellent way of insuring the stability in the limitation of a shipowner's liability for loss of or damage to goods.

The only countries that were bold enough — or unwise enough, whichever way you care to put it — to adopt that part of the Hague Rules were Great-Britain and her colonies and Australia. The United States rejected that provision in the Hague Rules and provided that 500 dollars should be lawful currency of the United States. The dominions of New-Zealand and Canada did the same. South Africa, I think, has not adopted the Act. I understand that in most continental countries this so called Gold Clause has not been adopted. I am told that in France the limit is 50.000 frs. but that is not gold, it is lawful French currency. I shall be corrected if I am wrong on that point.

It is quite obvious that if you said £ 100 gold in these days, even before the events of the past weekend, that might well mean not £ 100 in currency, but £ 200. Taking gold at the present official price of 35 dollars to the ounce, that would be £ 202. It is obvious that such a measure of limitation is highly undesirable, and it will persist so long as you have in your Hague Rules, or have adopted in your municipal legislation for the Hague Rules, this Gold-Clause. Incidentally, it is to be noted that in the Warsaw Convention, which is, of course, the standard air carriers' convention, there is the same system of limitation. The liability of the air carriage

is limited by reference to the French gold franc. That is something which need not concern us, but it is still in the Convention and obviously the same problem must arise.

Me Dor has told you that in 1924 the Comité Maritime produced the International Convention for the Unification of certain rules relating to Limitation of liability, because even in those early days it was felt that it was most undesirable that there had been such wide divergency between the various systems of limiation, and the Convention attempted to compromise between the two main systems by adopting both. As you know, in our country, the limitation of shipowners liability for collision and kindred liabilities, is fixed by reference to so many pounds per gross registered ton of the vessel. It happens to be £ 8 with an addition of £ 7 for personal injury. In continental countries, and I understand in the United States, the limit is the value of the vessel immediately after the casualty or at the termination of the voyage — I forget precisely which — with the addition of, in the case of the United States, $ 60 per ton for loss of life. When the Convention tried to bind both those systems into one, and although it has been ratified by twelve countries, I fear that it has found no favour with our own Government, and as far I can ascertain, never will. Neither has it found favour, I understand, with the Government of the United States. In fact, I think the President has never even sent it to Congress. It has received the same rough, or ignoring, treatment in both countries. Therefore it does seem to the International Sub-Committee that it is not much use tinkering with that Convention in order to produce a uniform limit of liability, because two of the main maritime countries will have none of it.

I think most of the members of the International Sub-Committee feel — and I certainly feel, — that if uniformity is to be achieved, one has to adopt one system or the other. It may be impossible to obtain uniformity; in which case, both systems will prevail. It is no good trying to combine the two.

On this main subject we feel that there has not yet been a sufficient, or a sufficiently close, interchange of views amongst the Maritime nations to enable even a draft-convention to be produced for the consideration of this Committee at our next Conference. We feel that there is a very large bulk of preliminary work still to be done. What the International Sub-Committee proposes is that, remaining in session as it does, because the Commission Internationale having deliberated and produced its report to

you, thought it wise, and I think you will agree, not to dissolve itself, in case it should be wanted, the best step would be to refer this topic back to the Commission Internationale with the request that it makes a report within a limited time — our next meeting will be two years hence. One requires time,, considerable time, to study the report of a Sub-Committee on such a subject before the full meeting of the International Maritime Committee. Therefore if a period of a year or eighteen months were given, it might be possible to produce something.

I would mention this : we in Great-Britain have already in session a very small committee composed of representatives of shipowners, underwriters, merchants and all forms of underwriters and merchants, who have this topic under discussion. They will be able, and will if so desired by the Comité Maritime International, keep in touch with their commercial brethren in other countries and so will be able to produce to the Commission internationale the views which, after all, are the most important, namely, the views of those who are actually engaged in the industry. With that assistance we feel that the Commission may be able, within the time I have stated, to produce some convention or scheme which will either achieve or go a long way towards achieving uniformity in this particular matter, which is of great importance and which is to be considered by the Comité Maritime at the next meeting.

That is the procedure we suggest. We are very sorry we are unable to present you with anything cut and dried on paper, but the topic is obviously one of such complexity and difficulty that anything we could produce at this stage would, we thought be quite valueless and would invite criticism from all sides. So, upon the main topic of limitation of shipowners' liability in general, that is the procedure which the International Commission proposes to the Comité Maritime International.

I do not want to expound this question, I do not want to take up your time by discussing in any detail the great practical difficulties that do arise out of the fact that we, maritime nations, have different systems of limitation. Those of you who are engaged in commerce, as I am myself, will need no evidence of that fact because one comes across it frequently in the course of one's business. There is one illustration that I would, however, like to give you, and which is a matter of considerable concern to those who are engaged in the carriage side of the industry, shipowners. It is possible under the present conflict of laws between the maritime nations, for a vessel to be arrested in one jurisdiction in respect

of a particular collision, for her owner or rather her unfortunate underwriters to have to put up a large sum in bail in order to release her and for her then to proceed across the ocean for another jurisdiction, where she can be promptly arrested again for different payments and have to put up another large sum in bail, occasionally in hard currency which it is now increasingly difficult to procure. The draf-Convention on Limitation of Shipowners' Liability did provide for that by stating that if you put up bail in one country in effect that was available for all creditors and you could not be asked to put up bail in another country. But at the present moment that is not so, and for one and the same event a ship can be arrested twice, and frequently is, in my experience. There is no reason why she should not be arrested three times in three different jurisdictions. That is obviously the most undesirable thing and should be put right even if we cannot come to complete agreement upon the broad basis of limitation. There are many other smaller points of difference which should be capable of solution, and upon which I hope the InternationalSub-Committee may well be in a position to report to you in detail at our next meeting.

That is all I have to say about the broad subject of limitation of liability. With regard to what I venture to call the domestic difficulty, the obvious answer to the problem is : get your government to put a pen through the offending article, which says that the unit of value shall be gold. I can only speak for my own government, but it is not so easy to got one's government to pay attention to essential legislation or important legislation, one is always met with the objection that there is no parliamentary time. I fear that, if we were to press for this obvious way, we should be met with continual delays upon the most apparently reasonable excuses. We have already started to do something else ; in my country what we have started to do is this : quite informally, duly authorized representatives of underwriters — and by underwriters I mean underwriters on hull, on cargo and on third party risk — and representatives of shipowners are meeting and discussing the possibility by what we call « a gentlemen's agreement », of ignoring the provision in our own Act that the limitation of liability will be of gold value. That is in return, of course, for shipowners and those who support them by insurance, agreeing to increase the present limitation which is £ 100.

That is, of course, a very sensible and business-like solution, and can be achieved immediately agreement is reached without ever approaching

the precincts of Whitehall. With the authority of the industries I mentioned, those representatives are now engaged in those conversations which have only been instituted by our coming here. That might be said not to be an international solution, but the London insurance market is a very big one, and if it is adopted by that market we do feel there is a chance that other markets will fall into line, as it is obviously the most reasonable way of dealing with this problem which is due to the optimism of our ancestors in their view of gold twenty-five years ago.

That, gentlemen, is the practical solution which we in Great-Britain are following. We are reporting it to the International Maritime Committee because the last thing we desire is to act in any way uninternationally. We do think that if we achieve what I hope we shall achieve, as I say, other nations, realising the reason of justice and common sense of what we have done, may well fall into line. It does mean, of course, that our present limits of liability are too low. We shall have to increase them because they were assessed 25 years ago when money really meant something ; it means much less today. However, that is just a question of bargaining. In any event, we think that that is the only practical solution to that particular problem.

I will not take up any more your time, Gentlemen, because I know that there are many points of view that people desire to put forward. I will finish by expressing the regret of the Commission Internationale that we are unable to provide you, as we have with the York-Antwerp Rules, with a nice looking convention on paper. But for the reasons I have given, it would not only be a waste of the Commission's time, but also of the Comité Maritime's to do so. The time is not yet ripe for drafting, but we think that something valuable can be produced in 1950 and 1951. That sounds a long time, but as far as we are concerned the present limitation of liability has lasted for 100 years, and two years extra does not seem to me to be very much.

The President. — Mr. Miller, at the beginning of his speech, read a French and an English text of the Resolution, and if I recollect correctly, he said that the one was a translation of the other. I think they are different.

Mr. C. Miller. — The French is the final text.

The President. — Having consulted the American delegation, Me Dor has given a wording in French for a new resolution which I shall read.

«La conférence exprime le vœu que le Bureau permanent charge la Com-

mission internationale de la limitation de responsabilité des propriétaires de navires et de la clause-or d'étudier à nouveau toute la question de la limitation de responsabilité des propriétaires de navires et spécialement celle de la clause-or, ainsi que la question de la clause-or dans la convention sur les Connaissements, de consulter toutes les associations nationales sur ces questions, de présenter un rapport et, si nécessaire, un nouveau projet de convention à la prochaine conférence du Comité Maritime international.

Je crois, Monsieur Dor, que la différence provient du fait que vous avez remplacé le Bureau permanent par la Commission internationale et que vous avez laisser tomber les mots relatifs à l'association américaine.

M. Léopold Dor. — C'est la même résolution que celle que nous avons votée, sauf que j'ai substitué à une « association nationale » et si possible l'association américaine du droit maritime, la Commission internationale de la responsabilité etc.

Mr. le Président. — La parole est à M. Asser.

Mr. Asser (Pays-Bas). — Monsieur le Président, Mesdames, Messieurs, je voudrais, au nom des Pays-Bas présenter quelques brèves observations au sujet de la convention sur la Limitation sur les Connaissements. Je ne vais pas rappeler ce qui est arrivé dans le passé, mais je crois qu'il convient de rappeler en quelques mots que le projet de convention sur la limitation de la responsabilité, déjà voté par le Comité maritime international à sa conférence de Venise de 1907, a été envoyé immédiatement à la Conférence diplomatique. Depuis sa signature en 1924, cette convention fut ratifiée par treize pays. C'est un nombre assez impressionnant. Ce sont : la Belgique, la France, l'Espagne, le Portugal, le Danemark, la Norvège, la Suède, la Finlande, la Pologne, la Hongrie, l'Islande, le Brésil et, last but not least, la principauté de Monaco. La situation dans laquelle nous nous trouvons aujourd'hui est le résultat du vote émis par la Commission internationale dans sa réunion du 6 juillet dernier à Londres. C'est à cette réunion que mon ami et collègue M. Cyril Miller, dans un exposé admirablement complet et clair, nous a fait savoir que le Gouvernement britannique n'est pas disposé à procéder à la ratification de la convention dans sa forme actuelle.

M. Miller nous a signalé quatre raisons qui, — abstraction faite de la clause-or, — rendent la convention inacceptable pour la Grande-Bretagne. Je ne veux pas revenir sur ces différentes raisons qui ont déjà été très clairement exposées par Me Dor et M. Miller, mais vous me permet-

trez peut-être de dire quelques mots sur la principale et qui, suivant M. Miller, comme vous le savez, se rapporte au système alternatif de limitation, contenu dans l'article premier de la convention.

Si mes renseignements sont exacts, le choix donné par l'article premier de la convention n'a en réalité jamais joué dans les pays qui ont ratifié la Convention, vu que dans aucun cas la limite de £ 8, et même celle de £ 16 par tonneau, n'ont dépassé la valeur du navire. Pratiquement, c'est toujours la deuxième alternative qui est appliquée, c.à.d. le même système que celui en vigueur d'après la loi britannique et la loi hollandaise. Quoi qu'il en soit, il est évident que la fin de non-recevoir opposée par nos amis anglais est péremptoire. Elle l'est tellement que de l'avis de la délégation néerlandaise, il serait tout à fait prématuré et inopportun d'entamer au cours de cette conférence la discussion sur les grands principes de la convention, voire sur aucun des articles. Il en est de même en ce qui concerne les propositions française, belge et hollandaise, relatives à la clause-or. Dans ces conditions, la délégation néerlandaise a jugé que devant cette situation inéluctable il n'y avait qu'à s'incliner et à se rallier à la proposition anglaise, et à reprendre le travail qui fut commencé à Venise en 1907 et que nous avions cru terminé il y a vingt six ans à Bruxelles, au moment de la signature de la Convention.

Ce n'est pas sans regret que nous avons pris cette décision, mais nous nous sommes consolés en nous rappelant les paroles prononcées par notre regretté Président, Monsieur Louis Franck, à la Séance d'Ouverture de la Conférence d'Anvers de 1930, lorsqu'il a dit qu' « en matière internationale, où tant de conceptions et d'intérêts séparent les bonnes volontés, » le temps se venge de tout ce qui se fait sans lui ».

Cessons donc de regretter et disons-nous que les quelques 40 années qui ont été consacrées à cette partie de l'unification du droit maritime » n'ont pas été suffisantes et que « le temps s'est « vengé de nous » !

D'autre part, il ne faut pas que ces paroles nous amènent à ralentir nos efforts.

Au contraire, plus que jamais l'unification du droit maritime en matière de limitation de la responsabilité s'impose.

Il y a lieu de citer deux graves inconvénients qui se présentent dans l'état actuel des choses.

D'abord, l'incertitude en ce qui concerne les questions de conflits de loi. Dans les différents pays les Tribunaux se laissent guider, en l'absence d'une convention, par différentes règles de droit international privé, qu'il

s'agisse d'un quasi-délit, comme l'abordage, ou d'une action contractuelle. Il en résulte que, pour établir la limitation de la responsabilité, les Tribunaux d'un pays appliquent la « lex fori », ceux d'un deuxième la loi du pavillon, ceux d'un troisième la « lex delicti commissi » et ainsi de suite.

Voilà une situation intolérable tant pour l'armateur et son créancier que pour les assureurs de l'un et de l'autre.

D'autre part, il serait vain d'espérer que les jurisprudences nationales évoluent, en dehors d'une convention, vers une jurisprudence internationalement uniforme.

Je voudrais terminer, Monsieur le Président, par quelques brèves observations sur la question de la procédure:

La délégation néerlandaise se demande si le travail à faire comporte nécessairement « une étude à nouveau » de « toute la question de la responsabilité » tel que le dit la résolution de la Commission Internationale.

Au fond, il n'y a que trois questions importantes qui paraissent nécessiter un nouvel examen.

Ce sont :

1° le problème du système de la limitation ;

2° l'énumération des obligations de l'armateur à l'égard desquelles il sera permis d'invoquer la limitation ;

3° la clause-or, pour autant qu'il serait décidé d'adopter le système d'une limitation calculée sur la base d'un montant fixe par tonneau de jauge.

Dans ces conditions ne serait-il pas possible de commencer par limiter le travail à l'examen de ces trois problèmes, quitte à revoir les autres dispositions de la Convention, si cette révision paraissait s'imposer ?

Voilà notre première suggestion ; elle n'a d'autre but que d'accélerer le travail qui pourrait subir un ralentissement indésirable du fait que l'on voudrait supprimer le texte entier de la convention actuelle et établir un tout nouvel avant-projet.

Finalement, quelques mots au sujet de la procédure même.

A notre avis, le caractère même du présent sujet se prêterait moins bien à la procédure qui a été suivie pour les Règles d'York et d'Anvers avec un succès si retentissant.

Ce dernier sujet relevait surtout du domaine de la pratique et de la technique, alors que la limitation de la responsabilité pose certains problèmes fondamentaux de droit et touche à des intérêts économiques primordiaux, sans que des questions de technique pure y soient mêlées.

Finalement, Monsieur le Président, encore quelques mots sur la question de la clause-or dans la Convention sur les Connaissements.

Ici également, la nécessité de supprimer la clause-or a été reconnue par tout le monde.

Trois propositions ont été faites sur ce point, à savoir une proposition belgo-française; une proposition hollandaise et une proposition anglaise.

Suivant la proposition belgo-française, le montant de £ 100. — or par unité ou colis serait à remplacer par l'équivalent de dix fois le fret brut afférent à la marchandise perdue ou endommagée.

Dans notre rapport préliminaire nous avons cru devoir combattre cette proposition pour plusieurs motifs exposés dans ce rapport. Nous croyons devoir maintenir cette attitude. En effet, le système proposé par nos amis belges et français a le défaut d'être absolument arbitraire, car d'après ce système l'indemnité (qui serait proportionnelle au fret) se modifierait selon qu'il s'agisse d'un voyage court ou d'un long voyage, que le navire transporteur possède oui ou non des installations spéciales pour le transport, qu'il soit rapide ou lent, etc. etc.

D'autre part, il semble difficile de trouver un argument qui puisse vraiment justifier cet élément d'arbitraire.

En outre, il y a la question de savoir dans quelle monnaie l'indemnité sera payable. Vraisemblablement ce serait la même monnaie que celle du contrat de transport — car on ne voit pas très bien une autre solution. En d'autres mots, l'indemnité serait payable en florins, en francs belges, en livres, en pesetas ou en lires etc. etc.

Il est clair que l'instabilité des changes, qui est propre à leur nature même, pourrait facilement faire péricliter l'uniformité internationale.

Par contre, nos amis anglais suggèrent comme solution une entente (agreement) de caractère privé à conclure entre les armateurs et les assureurs, quelque chose dans le genre du « Makis agreement », en attendant la modification ultérieure de la Convention.

Or, il se peut que cette solution réponde aux besoins anglais, mais elle ne donnera pas satisfaction aux intéressés hollandais.

De son côté la délégation néerlandaise a proposé d'exprimer la limite par un montant fixe sans référence à l'or dans une seule monnaie, sans option pour les pays de convertir ce montant en leurs monnaies nationales, ce qui assurerait une véritable uniformité dans l'espace.

Afin d'assurer, dans la mesure du possible, l'uniformité dans le temps, il conviendrait de prendre comme monnaie de la Convention une monnaie

qui promet la plus grande stabilité, comme par exemple le dollar des Etats-Unis.

Il est évident qu'aucune monnaie ne garantit une stabilité absolue, mais les conséquences d'une dévaluation du dollar semblent toujours moins graves que l'inconvénient résultant de l'arbitraire qui est propre à la proposition belge.

M. le Président. — Nous nous trouvons donc devant une proposition de la délégation néerlandaise qui préconise de ne pas faire étudier à nouveau toute la question, mais seulement les trois points principaux. Je voudrais demander à M. Asser de réfléchir sur ce point et s'il lui conviendrait d'insérer dans la résolution proposée par la Commission internationale les mots : « prenant comme point de départ la convention existante ».

M. Asser. — Je suis d'accord, Monsieur le Président.

M. le Président. — Merci. La parole est à M. Alten.

M. Edvin Alten (Norway). — Mr. President, Gentlemen, when I came here this afternoon it was my intention to propose a resolution concerning the further procedure to be followed with regard to shipowners' liability as suggested by the Commission. After the proposed amended resolution I find I can be very brief as it corresponds with my own ideas.

I beg, however, shortly to draw your attention to this main feature of the provision of the preliminary draft convention, because I think that this presents the simplest solution of the problem hitherto proposed. I shall do it in a few sentences. First, our draft convention restricts the field of application to claims for compensation and claims for removal of wrecks. This, I believe, would satisfy the British Delegation.

Secondly, the liability for such claims is limited to one half of the value of the ship when damage is caused to property and to the full value insofar as compensation for loss of life or personal injury is concerned ; there will be no monetary limit.

Thirdly, by « value of the ship » is meant the value before the accident, and if the accident occurred at sea, the value at the time of leaving the last port. Thereby the rather obscure concept of « the voyage » is avoided.

Finally, in the case of successive accidents, the limitation should apply as in England to each group of claims separately.

I wish to stress that we do not feel in any way bound by our preliminary draft ; it is meant as a contribution to an international work, whose object should be the widest possible unification of laws in this matter, achieved in a reasonable and practical way and taking into account the

needs not only of shipowners but of all parties interested in navigation. For Norway such unification would be of extreme importance. Several members, but I hope not all, will be surprised when I tell you that our merchant fleet, with its 4,800,000 register tons, is at present the third in the world. What we earnestly hope is, in the first place, that it will be possible to arrive at a convention that can be accepted by the United States of America and the United Kingdom. It is therefore desirable also that the United States be respresented, and also the United Kingdom, in the existing international Sub-committee and it is very desirable to know not only what the American and British delegations cannot or will not accept, but it is still more important to know what they are willing to accept. I think that, unless clearly defined proposals are brought to the sub-committee by these delegations, no useful work can be done. I would stress that the matter is urgent. The present situation cannot continue. I need not say more at this stage. I will not enter into discussion upon proposals which are before the Conference ; I will leave it to the International Sub-Committee to consider them all.

With these words I wish to support the resolution proposed by the International Sub-Committee, and I would add that I consider it perfectly superfluous to have the addition proposed by Mr. Asser, where it is said : « et si nécessaire un nouveau projet de convention ». It is a question of secondary importance whether you call it a new Convention or a revised convention, but the substance must be completely altered.

Mr. C. D. Raynor (U.K.). — I address you as a representative of British Underwriters and as a delegate of the British Maritime Law Association. If in the development of my remarks I should repeat what has been said I ask your forgiveness.

British Underwriters are naturally interested in the twin subjects of the Gold Clause in the Hague Rules and in the wider topic of the Convention of 1924 relating to the limitation of liability of owners of sea-going vessels. That interest, of course, springs from the fact that, within the limits of insurance protection provided they, the underwriters, eventually have to foot the bill.

As the risk-bearing section of the community in these matters, we would obviously welcome international uniformity in the financial liabilities of shipowners under the Hague Rules and in a uniform basis of limitation together with a uniform basis of payment under the Convention of 1924.

Therein would lie a more reasonable certainty in the obligations which we are called upon to face.

I now refer specifically in the first place to the Convention of 1924 relating to the limitation of liability of owners of seagoing vessels. Quite apart from our dislike of the Gold Clause in Article 15 of the Convention and our concern at the very apparent difficulty in agreeing upon a uniform basis of limitation of liability there are certain matters which we do not understand. For example, to mention only two points, how can the proposed system of liability apply to the matters mentioned in Article (1), sub-sections 6 and 7 which are as follows : Art. 1 (6) Any remuneration for assistance and salvage ;

Art. 1 (7) Any contribution of the ship-owner in general average.

We are therefore of the opinion that the whole subject should be referred to the national Associations for further study because it may well be found necessary to draft an entirely new code. At the same time we express the hope that within the near future it may be found possible to reach international uniformity in this branch of maritime law, if only because that will serve to eliminate duality or even plurality of litigation which arises from the existence of varying bases of limitation.

I now turn to the Hague Rules. To those who drafted those Rules we owe a great debt of gratitude, for they built well. There is perhaps little need to emphasize that remark, but I must add that during the quarter of a century of their existence there have been very few cases fought in the British Courts arising out of disputes regarding the interpretation of the Carriage of Goods by Sea Act, 1924.

We have, however, more particularly in recent years, been troubled by the wide variations in monetary limit which exist in those countries which have adopted the Hague Rules in their municipal laws. Those variations have been accentuated by exchange fluctuations, in which connection it will not have escaped the notice of any of us here today that such exchange fluctuations do actually take place. The currencies of the maritime nations are no longer linked with gold and so gold as a measure of value is no longer applicable. It is consequently necessary to seek an acceptable formula, which would result in the monetary limit being the same whatever national law applies. The search for that formula has so far been unfruitful.

In Great Britain we have therefore come to the conclusion that as an interim arrangement and pending a solution of this difficulty, it is desi-

rable to agree upon a practical domestic alternative to the Gold Clause. No one is anxious to fight an action through to the highest Court of our country upon the proper interpretation of the Gold Clause. We are therefore endeavouring to arrange an agreement between shipowners and their P & I Clubs on the one hand and cargo interests and their underwriters on the other hand, whereby cargo interests would not insist upon the application of the Gold Clause, and Shipowners would raise the limit from £ 100 lawful currency to a figure to be agreed. This project has been approved in principle by the Shipowners and their clubs, and also by underwriters and organizations representing the merchants, so that in my opinion there is little doubt that it will come into effect in the near future. Whilst of course such an agreement could not properly be enforced in a court of law, being what we know as a gentlemen's agreement, I have no doubt as to its immense practical value.

I conclude by stating my sincere belief that the thoughts and energy of the National Associations must be given to seeking an international solution of this particular problem, and such a solution should not be beyond the collective wisdom and genius of those represented here today.

M. Giorgio Berlingieri (Gênes). — Mesdames, messieurs, je ferai tout mon possible pour ne plus encourir les reproches de M. le Président.

Je saisis cette occasion pour rectifier une déclaration que j'ai faite à la séance de lundi matin. Parlant de l'état de ratification des conventions de Bruxelles par l'Italie, j'ai déclaré que dès le début nous avions introduit dans notre législation intérieure la Convention sur la Limitation de la responsabilité des propriétaires de navire ; mais l'Italie a tardé à ratifier la Convention en attendant de voir ce que feraient les autres Etats, et spécialement l'Angleterre. Etant donné que ce dernier pays n'a pas ratifié la convention, l'Italie s'est abstenue également. Elle a cependant introduit la convention dans la législation intérieure, en faisant à peu près ce que l'Angleterre a fait pour les Règles de la Haye : je crois qu'elle a d'abord introduit la convention de La Haye dans la législation intérieure, avant de la ratifier. De son côté l'Italie a modifié complètement le système en adoptant la formule dont j'ai déjà parlé, c.à.d. de limiter la responsabilité à une fraction de la valeur du navire comprise entre un cinquième et les deux-cinquième, soit 20 et 40 %. Par conséquent, d'un point de vue strictement national, l'Italie pourrait se désintéresser de cette convention puisqu'elle ne l'a pas ratifiée. Toutefois, je me permets de rappeler, comme l'a fait avec beaucoup plus d'autorité M. le Ministre Devèze, que les

regards du monde maritime sont fixés sur nous. J'ajoute que ces regards ne sont pas toujours bienveillants. On dit de nos travaux, — vous le savez, — que nos efforts sont utopiques, parce que nous ne réussirons jamais à obtenir quelque chose de concret en dehors de la convention sur l'abordage et sur l'assistance et le sauvetage. Si maintenant, après les efforts que nous avons faits, et qui sont connus de tous, nous arrêtions les travaux déjà accomplis pour arriver à ce compromis qu'est la convention internationale sur la limitation de la responsabilité, laquelle a été ratifiée par douze Etats, si nous devions approuver la conclusion à laquelle est arrivée la Commission internationale, c.à.d. la jeter complètement par terre pour refaire une œuvre nouvelle, je me demande comment nous serions jugé par le monde maritime. Ceci ne signifie pas que je considère le Comité comme lié par le passé, et que nous ne puissions pas rectifier et améliorer la convention qui a déjà été approuvée ; loin de là. Nous ne pouvons pas nous limiter à chercher toujours des matières nouvelles pour en faire de nouvelles conventions, parce que notre tâche doit également être d'améliorer ce que nous avons déjà fait. C'est pour cette raison qu'à la Conférence d'Anvers nous avons changé cette Commission internationale chargée de repondre l'examen de cette convention, afin de la perfectionner et la moderniser, étant donné que depuis son elaboration deux guerres mondiales ont révolutionné le monde, spécialement pour ce qui a trait à la limite considérée en Livres-or ou en Livres sterling. Sur ce point je me permets d'émettre quelques doutes au sujet d'une déclaration faite par mon ami M. Dor. L'ordre du jour de la conférence d'Anvers mentionnait, de façon générale : « Révision de la convention internationale sur la Limitation de la responsabilité des Propriétaires de Navires », mais à l'issue de nos travaux on a adopté à l'unanimité cette résolution portant;

« La conférence, constatant que l'étalon or auquel se réfère l'alinéa » premier de l'article 15 de la convention sur la limitation de responsa- » bilité des propriétaires de navires de mer, ne peut être appliqué dans la » conjoncture actuelle, ce qui empêche un grand nombre de nations de » ratifier la convention ; constatant d'autre part les divergences qui se » sont produites dans la fixation de la limite dans la monnaie nationale des » différents pays ; charge le Bureau Permanent du Comité Maritime In- » ternational de nommer une Commission ayant pour mission d'étudier avec la diligence souhaitable ce problème » (— c.à.d. le problème de la clause-or et pas autre chose) — « à l'effet d'y trouver une solution pratique assurant l'uniformité internationale de la limitation de responsabilité».

C'est en ayant en vue cet objectif que nous nous sommes rendus à Anvers où eut lieu, en novembre, la première réunion de la Commission internationale. On est arrivé à un résultat souhaitable. Il allait peut-être plus loin que nos espoirs, parce que, par voie subsidiaire, tous les délégués ont adopté la proposition belge, c.à.d. la limitation à une certaine proportion de la valeur du navire. Si je ne me trompe, c'est le résultat de ce vote qui nous a été communiqué par le Bulletin. La solution adoptée est celle en vigueur d'après le Code du Danemark, de la France, du Royaume-Uni, de l'Italie. C'est le système en vigueur dans le Code de la navigation en Norvège, au Portugal et en Suède. Pourquoi alors, au cours d'une deuxième séance tenue à Londres, a-t-on fait marche-arrière, renversé tout ce qu'on a fait pour repartir à zéro ?

Pour toutes ces raisons que je viens de vous exposer, je me rallie à la proposition de M. Asser, modifiée par M. Alten, à savoir que cette Commission internationale aura pour tâche de réviser la convention et de rechercher une solution pour la clause-or et, pour les autres questions, de n'aborder le fond de la convention que si c'est vraiment nécessaire.

Je n'entre pas dans d'autres détails quant à la limitation de la responsabilité des transporteurs, si elle doit être de 500 dollars ou de 10. Cela prendrait trop de temps, et nous avons maintenant des questions de principe à résoudre, voilà la tâche à donner à la Commission internationale.

M. Alten. — M. Berlingieri semble m'avoir mal compris lorsqu'il affirme que j'ai dit qu'il ne fallait pas toucher à la convention de Bruxelles. C'est le contraire que j'ai dit. C'est la substance même de la convention qui doit être modifiée.

M. Berlingieri. — Si c'est nécessaire.

M. le Président. — La parole est à M. Sauvage.

M. Sauvage (France). — Je n'ai que quelques mots à dire puisque nous sommes tous d'accord pour soumettre la question qui nous occupe à une Commission. De quoi s'agit-il ? Nous sommes en présence de deux conventions : l'une concerne la responsabilité des armateurs en général, l'autre la responsabilité des transporteurs maritimes en vertu d'un connaissement. Ces deux conventions ont été ratifiées par la plupart des Etats. Il s'agit maintenant de les jeter par terre et de trouver quelque chose de nouveau. Ce n'est pas une chose que l'on fait en un jour et, appelons les choses par leur nom, pourquoi sommes-nous obligés de changer sur certains points ce qui a été décidé à Bruxelles. Si les conventions ont été ratifiées par presque tous les pays, c'est simplement parce

qu'elles comportaient une référence à une monnaie qui a subi, il faut bien le dire, cette avarie commune qui n'est pas régie par les règles d'York et d'Anvers et qui a frappé presque toutes les monnaies : la dévaluation.

La délégation française est daccord pour le renvoi à une Commission d'étude ; elle demande seulement deux présisions. Vu la tâche et l'importance des travaux de la Commission, je ne sais pas si nous avons très bien compris la manière dont elle sera composée. Il ne peut s'agir selon nous que d'une Commission internationale où chaque association nationale nommera un représentant, de manière à ce que tous les intérêts nationaux soient sauvegardés. De plus, il faudrait qu'en présence d'une législation internationale comme celle-ci, qui résulte d'une convention, changer le moins possible. Il ne faudrait pas remettre sur le tapis ce qui a été si laborieusement élaboré à Bruxelles en 1924 et en 1926.

Sur un autre point important, la délégation française demanderait qu'on étende la tâche de la Commission à une question qui nous a été soumise par la Commission internationale, sur laquelle toutes les délégations ont présenté un rapport et dont je ne vois pas mention dans la proposition finale qui nous est soumise. Il s'agit du domaine d'application de la convention sur les connaissements. Vous savez que dans beaucoup de pays, en France notamment, la question se pose du conflit entre la loi nationale et la loi internationale représentée par la convention. La convention a eu beau dire que tout connaissement créé dans un Etat contractant serait soumis à ses prescriptions. Il n'en reste pas moins que nous avons, en France, la loi nationale qui a adopté la plupart des...

M. le Président. — Excusez-moi, Monsieur Sauvage, vous parlez en ce moment de l'article X.

M. Sauvage. — Cette question est-elle soumise à la conférence Monsieur le Président ?

M. le Président. — Elle l'est, bien sûr, mais je voudrais proposer de terminer la discussion sur la limitation et la clause-or. Vendredi, ou même samedi, on peut encore discuter sur la question de l'article X qui, je crois, n'a rien à voir avec ce que nous discutons en ce moment. L'Italie a remis un rapport à ce propos. Je crains que si nous discutons la question en ce moment, d'autres pays aussi fassent des propositions sur l'article X.

Etez-vous d'accord pour que nous réservions cette question ?

M. Sauvage. — Si la question est réservée, oui, Monsieur le Président. Je crois cependant devoir vous faire remarquer qu'il y a un certain lien

entre l'article X et le fond de la question de la limitation de la responsabilité. Celle-ci ne sera pas la même dans la loi nationale et dans la loi internationale ; or selon que les divergences seront plus ou moins profondes et plus ou moins importantes, la question pourra se poser dans des termes différents. En tout cas, si la question est réservée, je ne crois pas que l'Association Française, au nom de laquelle je parle, fasse des objections quelconques à condition que cette question puisse venir en discussion en son temps.

M. le Président. — Il y aura peut-être une résolution supplémentaire sur l'article X, vendredi ou samedi.

La conférence est-elle d'accord sur la procédure *(assentiment)*. Il n'y a qu'une proposition que je vous ai lue tout à l'heure en français. Je voudrais en terminer avec cette question.

M. Bagge a demandé la parole. Croit-il opportun de parler en ce moment ?

M. Bagge. — I renounce. It's not necessary.

M. le Président. — La proposition est celle-ci : « La conférence exprime le vœu que le Bureau Permanent charge la Commission internationale de la Limitation de la responsabilité des propriétaires de navires et de la clause-or, d'étudier à nouveau toute la question de la limitation de la responsabilité des propriétaires de navires et spécialement celle de la clause-or, ainsi que la question de la clause-or dans la convention sur les Connaissements, de consulter toutes les associations nationales sur ces questions et de présenter un rapport et, si nécessaire, un nouveau projet de convention à la prochaine conférence du Comité maritime international. »

La délégation hollandaise propose d'insérer les mots : « En prenant comme point de départ la convention existante ». Quelqu'un désire-t-il prendre la parole au sujet de cet amendement ?

M. Sauvage (France). — Dans la Commission existante il n'y a aucun membre des Etats-Unis.

M. le Président. — Il y aura un ou deux représentants de ce pays.

M. Dor. — Je prierais la délégation néerlandaise de ne pas insister pour son amendement. M. Cyril Miller sera certainement de mon avis qu'il n'est pas nécessaire de prendre comme point de départ l'ancienne convention.

M. Sauvage. — Nous ne sommes pas d'accord.

M. Dor. — J'exprime l'avis de M. Miller et le mien.

M. Sauvage. — Ce n'est pas le nôtre.

M. Dor. — Je n'ai aucun mandat pour parler en votre nom.

M. Sauvage — Puisqu'il s'agit de trouver un nouveau système, la délégation française demande qu'on prenne comme base les anciennes conventions pour examiner dans quelle mesure elles seront modifiées ou maintenues.

M. le Président. — La proposition de la délégation hollandaise est donc la suivante : Après les mots « dans la première convention », ajouter « en prenant comme base ou point de départ la convention existante ». Cela veut dire que cette base de la convention existante est nécessaire, mais seulement pour la première convention, puisque lorsque la Commission internationale examinera la convention sur les Connaissements, elle aura seulement à discuter sur la clause-or. Il n'est donc pas nécessaire de dire : « sur la base de cette convention », puisque cela va de soi.

La délégation néerlandaise maintient-elle son amendement ?

M. J. T. Asser (Pays-Bas). — Oui, Monsieur le Président, et si nous le faisons, c'est principalement pour une raison d'ordre psychologique. De nombreux pays ont ratifié la convention. Ce serait non seulment un manque de tact, mais un manque de courtoisie que de vouloir écarter délibérement ce qui a été fait en 1924

M. Ant. Franck (Anvers). — J'apuie la manière de voir de M. Asser. Je considère qu'il serait extrêmement imprudent pour le Comité Maritime International de faire immédiatement table rase d'une convention qu'elle a elle-même proposée à la conférence diplomatique et dont elle a obtenu la ratification dans de nombreux pays.

Dire que nous jetons cette convention au panier, que rien n'est fait et que nous recommençons à zéro, diminuerait considérablement le crédit dont nous jouissons dans les différents pays.

M. Cyril Miller (London). — Gentlemen, I fully appreciate the force of what Mr. Asser has said and what I understand to be the views of the French and Belgian delegations. I am speaking from a personal point of view, but I think I express the point of view of the British delegation in saying that we do not mind starting to work on the 1924 convention as a basis, but with this reservation : we know that neither the British nor the United States Government like that Convention because it contains a dual system of limitation ; that is to say, it tries to combine limitation by value with limitation by tonnage. If we are bound by the authority of the Comité Maritime International to keep that basis in the Convention,

which we ultimately produce, then we are producing a document which the governments of two not unimportant maritime nations will reject. I am not expressing any opinion as to whether that compromise in the Convention was good or bad ; I am merely saying that we have not a hope of getting it through our own government, nor, I understand, from my American friends, through the United States Government. That is a principle of the very excellent 1924 Convention. If we are not allowed to recommend that that principle be altered, then our work is useless.

Sir Leslie Scott (London). — In my view, the resolution as drafted by the President leaves the question of the existing Conventions untouched. They are history ; they have been ratified by various nations ; no committee considering the subject can possibly consider it properly without having their eye on those Conventions. It leaves it completely open to the new Sub-Committee to say : We propose to adopt those Conventions ; we propose to leave them completely as they are. Or else to say, on the other hand : They have become inapplicable because of the change of circumstances in the world since then, and specific modification of them is necessary. But it is not necessary for them either to ratify the Conventions or to do anything with them except to treat them as a fact of history.

The President. — Je consulte l'assemblée au sujet de l'amendement néerlandais.

May I ask the opinions of the delegations on Netherlands' amendment. « Yes » means acceptance of the amendment. « No » means rejection.

Belgium, France, Italy, the Netherlands and Portugal, vote «Yes».

Denmark, the United States, Great-Britain, Norway and Sweden vote « no ».

Five have voted for acceptance ; five for rejection. What is the opinion of Finland ?

Mr. Andersson (Finland). — No.

The President. — Ireland ?

Mr. S. V. Kirkpatrick (Dublin). — Ireland abstains.

The President. — Greece ?

Mr. K. B. Spiliopoulos (Athens). — Yes.

The President. — The proposal of the Netherlands' delegation is not carried.

Je mets maintenant aux voix la résolution primitivement formulée, qui est conçue comme suit :

« La Conférence exprime le vœu que le Bureau Permanent charge la » Commission Internationale pour la Limitation de la Responsabilité des » Propriétaires de Navires et pour les Clauses-or d'étudier à nouveau tout » le problème de la limitation de la responsabilité des propriétaires de na- » vires et spécialement celui de la clause-or ainsi que le problème de la » clause-or dans la convention sur les connaissements, de consulter à ce » sujet toutes les Associations Nationales et de présenter un rapport com- » portant, le cas échéant, un nouveau projet de convention, à la prochaine » conférence du Comité Maritime International. »

Sir Gonne Pilcher (London). — These are the terms of the English translation :

« The Conference expresses the wish that the Bureau Permanent will » instruct the International Commission on the Limitation of Liability of » Shipowners and the gold clause to renew its consideration of the whole » question of limitation of the liability of shipowners, as well as the ques- » tion of the Gold Clause in the Convention on Bills-of-Lading, to consult » the national associations on these questions and to present a report em- » bodying, if necessary, a new draft convention at the next Conference of » the International Maritime Committee. »

Cette résolution est adoptée.

This resolution is carried.

M. le Président. — Il va de soi que le Bureau Permanent aura soin de faire désigner un délégué des Etats-Unis à la Commission internationale. Le Bureau Permanent a d'ailleurs, comme d'usage, la faculté de faire d'autres nominations.

M. Léopold Dor. — Tous les pays qui ne sont pas encore représentés peuvent en faire partie.

M. le Président. — Nous avons ainsi terminé nos travaux sur cet objet.

— *La séance est levée à 17 heures 20 minutes.*

— *The Conference adjourned at 5.20 p.m.*

JEUDI, 22 SEPTEMBRE 1949
THURSDAY, SEPTEMBER 22nd 1949

La séance est ouvert à 9.30 heures sous la présidence de M. Offerhaus.
The Conference opened at 9.30 a.m., Mr. Offerhaus in the chair.

ETUDE D'UN PROJET DE DOCUMENT UNIFORME REGISSANT LES TRANSPORTS COMBINES.

STUDY OF A DRAFT OF UNIFORM DOCUMENT GOVERNING COMBINED TRANSPORT.

The President. — I call upon Mr. Bagge to introduce the subject.

Mr. Algot Bagge (Stockholm). — Mr. President, the Bureau Permanent has asked me to present to you a report as to the progress achieved since the Antwerp Conference on a convention concerning a uniform document governing combined transport of goods and, more particularly, on the labours of the Users Sub-Committee of the International Chamber of Commerce.

This Committee of Users, of which I am President, at the beginning of this year made a preliminary draft of a convention concerning such a document of title in combined transport. I may add that I am giving this report not as a representative of the International Chamber of Commerce, which of course has as yet not had any opportunity of taking a standpoint on the proposals of their Sub-Committee. The proposals are only preliminary. When the Sub-Committee has put forward the materials provided by the different associations interested in this matter, it will continue its work and make a definite draft.

The Committee of the International Chamber of Commerce consists of experts from branches of business interested in international transport of goods, transport by sea, rail and road, insurance, transport agencies and trade.

We had no difficulties in agreeing upon a negotiable document of title of combined transport. We took the Maritime Rules of the Hague as a

model, and we made modifications to meet the conditions of sea, rail, road and air. Great difficulty was experienced, however, in determining carriers' responsibility as against the holders of the document of title.

There were two difficult problems to solve. The first was how the reasonable contention of the holder of the document to get damages in case of loss or damage to the goods should be met without encroaching upon the legitimate interests of the carriers. In the combined transports of goods it may happen that it sometimes becomes impossible to prove where, during the course of the voyage, the loss or damage of the goods occurred. But it does not seem right that the holder of the document of title should lose his right to damages, when it is clear that the loss or damage took place during the combined transport, because it cannot be stated when and where during the transport the loss or damage occurred. The Committee, however, did not think it proper that a holder of the document in this case should have a right to pick out, for the purpose of getting his damages, whoever he choses amongst the co-operating carriers. The Committee has limited a choice to the first or last of the carriers. If it is possible to prove where during the course of the transport loss or damage occured, then of course, the holder of the document ought to have the right to lodge a claim against the carrier who had the goods in his care when the loss or damage occurred. But in an international combined transport where carriers belonging to different countries take part, such a way of settling claims for damages did not seem always feasible. Instead of prescribing as the only expedient open to the holder of the document the not very practical way of suing perhaps one carrier after another in far away foreign countries, the Committee has found it more practical to follow the method already much in use, that the last carrier in a combined transport takes upon himself to arrange the matter. But instead of leaving this as a matter only for the last carrier, the Committee proposes that the last carrier shall be obliged in case the claim of the holder of the document is well founded, to make a pre-payment to him which is to be re-paid to the carrier by the responsible person. Such an arrangement, of course, involves a co-operation between the carriers based upon mutual knowledge and confidence as to the solvency of the carriers taking part in the combined transport, and also arragements between the carriers themselves providing, if necessary, financial security for the last carrier to be able to meet such demands.

Le Bureau Permanent m'a demandé de vous faire rapport sur les

progrès accomplis depuis la Conférence d'Anvers sur la redaction d'un document uniforme régissant les transports combinés de marchandises et plus particulièrement sur les travaux du Sous-Comité des Usagers de la Chambre de Commerce Internationale.

Le Comité des Usagers dont je suis le président a élaboré, au commencement de cette année, un avant-projet de convention concernant un tel titre de transport combiné.

Je dois dire que je vous fais ce rapport non pas comme representant de la Chambre de Commerce qui, jusqu'ici n'a pas eu l'occasion de prendre position au sujet des propositions du comité. Ces propositions, du reste, sont tout à fait préliminaires. C'est seulement quand le Comité aura eu connaissance de tous les matériaux rassemblés par ce comité des différentes Associations intéressées en cette matière, que le Comité continuera ses travaux et établira un projet définitif.

Le Comité a été composé d'experts dans les branches intéressées aux transports internationaux —, les transporteurs par mer, par chemin de fer et par route, les assureurs, expéditeurs et négociants.

Nous n'avons pas eu de difficulté à tomber d'accord sur le règlement d'un titre de transport combiné négociable. Nous avons pris comme modèle le connaissement maritime des Règles de la Haye en y apportant les modifications nécessaires afin de satisfaire aux exigences des différents moyens de transport — par mer, par chemin de fer, par air et par route. Mais la grande difficulté a été de régler la responsabilité des transporteurs envers le détenteur de ce titre de transport.

Il y a là surtout deux problèmes difficiles à résoudre.

La première question était comment satisfaire aux prétentions raisonnables du détenteur du titre de transport d'obtenir des dommages-intérêts en cas de perte ou de dommage de la marchandise, sans empiéter sur les intérêts légitimes des transporteurs.

Il se peut, dans un transport combiné, qu'il soit impossible de constater où, pendant le cours du voyage, la perte ou le dommage se sont produits. Mais il ne paraît pas justifié que le détenteur d'un titre de transport combiné perde son droit à des dommages-intérêts, même quand il est apparent que la perte ou le dommage a eu lieu pendant le cours du voyage combiné, par le seul motif qu'il ne peut pas être constaté pendant quelle partie du transport combiné la perte ou le dommage est survenu. Le Comité pourtant n'a pas cru opportun de permettre au détenteur du titre de transport de choisir, parmi tous les transporteurs participant à un trans-

port combiné, celui auquel il pourra réclamer l'indemnité pour perte ou dommage survenu ; le Comité a proposé que le détenteur du document ne pourra s'adresser qu'au premier ou au dernier transporteur.

Lorsqu'il est possible de prouver pendant quelle partie du voyage la perte ou le dommage est survenu, alors évidemment, le détenteur du document devrait avoir le droit de s'en prendre au transporteur qui détenait les marchandises au moment de la perte. Mais, dans le cas d'un transport international, où des transporteurs de pays différents prennent part au transport combiné, ce procédé n'est pas toujours praticable. Au lieu de s'en tenir à l'expédient parfois peu pratique que le détenteur du document s'adresse à l'un des transporteurs après l'autre dans des pays étrangers souvent assez lointains, le Comité a cru préférable de suivre le procédé déjà souvent pratiqué c.à.d. que le dernier transporteur dans un transport combiné prend sur lui le règlement de l'affaire. Mais, au lieu de considérer cela comme une sorte de prévenance, que ce transporteur peut faire ou omettre, à son gré, le Comité a proposé que le dernier transporteur sera obligé, au cas où la demande de dommages-intérêts est bien fondée, de payer l'indemnité au détenteur du document et de se faire rembourser ensuite par le co-transporteur responsable.

Un tel arrangement suppose évidemment une coopération entre les transporteurs, basée sur une connaissance et une confiance mutuelle quant à la solvabilité des transporteurs prenant part au transport combiné, et aussi un arrangement mutuel des transporteurs rendant possible économiquement, si nécessaire, pour le dernier transporteur d'effectuer ce paiement d'avance.

Le Comité a proposé, aussi, que le premier transporteur, qui a émis le document de transport, sera obligé, si le détenteur du document le demande, de faire cette avance de paiement.

Comme je l'ai dit, il est évident que ces arrangements, supposent, entre les transporteurs prenant part à un transport combiné, une coopération plus intime qu'il n'en existe à présent en général.

Le Comité pourtant est loin de l'idée de tâcher de forcer une telle coopération. La Convention ne doit que mettre à la disposition des transporteurs une réglementation internationalement valable s'ils veulent coopérer de cette façon. La Convention sera complètement facultative, non obligatoire, et son applicabilité sera parfaitement volontaire. Cela est très important. La Convention est là, créant un document négociable, qui est

internationalement valable, et donnant des règles de responsabilité des transporteurs combinées avec l'usage de ce document. Mais la Convention n'est applicable à aucun cas de transport à moins qu'il ne ressorte du titre de transport. Les parties sont complètement libres de soumettre le transport à la Convention ou de ne pas le faire. Si elles préfèrent ne pas employer la Convention, les règles gouvernant le transport combiné sont les mêmes qui s'appliqueraient sans la Convention, c'est-à-dire les lois nationales de responsabilité, aux différentes parties du transport et alors il n'y a pas de titre de transport combiné applicable qui est internationalement réglé. Le tout reste alors comme si la Convention n'existait pas.

Cette liberté totale des transporteurs de faire usage de la Convention ou non, a pour conséquence que si les transporteurs trouvent qu'il n'est pas opportun de l'employer pour un cas spécial de transport de marchandises auquel le document proposé ne s'adapte pas, ils se garderont, bien entendu, d'émettre dans ce cas un titre de transport qui tombe sous la Convention. Comme je l'ai dit il faut pour que la Convention soit applicable au cas spécial, que cette applicabilité soit indiquée dans le titre de transport.

Et si le dernier transporteur qui est nécessaire pour le transport des marchandises à destination est par ex. un transporteur par route ou un petit bateau de cabotage, trop modeste pour pouvoir règler l'aflaire de l'indemnité, rien n'empêche que le trajet de ce dernier transporteur soit exempt de l'application du droit de transport régi par la convention.

Comme je l'ai dit auparavant, la première des deux questions difficiles était de créer un système de paiement pratique des dommages-intérêts.

La seconde question difficile était de savoir quelles sont les règles de responsabilité à proposer. Si l'on pouvait introduire pour tous les moyens de transport, employés dans le transport combiné, des règles de responsabilité uniformes, cela permettrait évidemment de simplifier considérablement les choses pour le commerce international faisant usage du transport combiné. Mais est-il est possible d'arriver à une telle uniformité des règles de responsabilité, vu la diversité dans la manière d'exécution du transport dans les différentes branches engagées dans les transports combinés ?

En préparant les travaux du Comité, j'ai fait une étude de droit comparatif sur les différentes règles de responsabilité que nous avons dans les conventions internationales concernant les transports — les Règles de la

Haye pour le transport maritime, les Règles de Berne pour les chemins de fer et les Règles de Varsovie pour le transport par air. J'ai constaté, naturellement, qu'il n'était pas possible d'arriver à une uniformité complète, mais il m'a paru qu'il devrait être possible d'arriver à une uniformité assez large. J'ai cru que pour les cas où il n'était pas possible d'avoir des règles uniformes, on devrait se contenter d'appliquer les règles internationales déjà existantes pour les différents modes de transport. De cette façon on éviterait toutes les difficultés résultant de l'application, pour les différentes parties de transports, des lois nationales dont l'applicabilité et le contenu sont souvent assez onéreux et embarrassants à constater.

Le Comité, toutefois, trouvait qu'il serait trop difficile d'arriver à une telle uniformité, même limitée. Mais au Comité aussi naturellement il était évident qu'il était désirable d'éviter les difficultés causées par l'applicabilité des lois nationales quand il s'agit d'un transport combiné. Le Comité, en conséquence, propose qu'on appliquera pour les différentes branches de transport qui participent à un transport combiné, les règles de responsabilité internationales déjà existantes dans les Règles de la Haye pour les transports maritimes, les Règles de Berne pour les chemins de fer et les Règles de Varsovie pour les transports par air. Quant au transport par route il n'existe pas à présent, de règles internationales ; mais il semble bien qu'il ne durera longtemps avant qu'une convention internationale à cet égard soit établie.

Ces règles internationales, pourtant, ne sont pas applicables partout dans le monde. La Convention de Berne, p. ex., n'est applicable qu'en Europe et les Règles de la Haye et de Varsovie ne sont en vigueur que dans les pays qui ont ratifié ces conventions.

Le Comité a donc proposé que la responsabilité d'un transporteur prenant part au transport combiné, sera déterminée, pour chaque branche de transport, d'après les règles formulées pour ce mode de transport dans ces conventions internationales.

De cette façon, évidemment, il n'y aurait pas d'uniformité des règles de responsabilité pour tous les transporteurs prenant part à un transport combiné, mais au moins pour chaque mode de transport, dans tous les cas de transport combinés. Et les difficultés résultant de la diversité des droits nationaux et de l'incertitude de leur portée seront en tout cas évitées.

Il paraît, toutefois, qu'on doit poursuivre les études quant à la possi-

bilité d'arriver à une uniformité plus universelle. Peut-être les travaux entrepris par les différentes organisations internationales de commerce et de transport en ce qui concerne des règles internationales relatives au titre de transport combiné pourront-ils conduire à une solution de cette question épineuse.

Il y a une autre question importante qui se rattache à la responsabilité pour les marchandises. La perte ou le dommage peut être survenu au cours du transport lorsque la marchandise ne se trouve pas sous la garde des transporteurs mais entre les mains des commissionnaires de transport (transitaires ou dépositaires) ou des autorités de port ou de douane. Il ne parait pas justifiable que ces derniers ne soient pas responsables aussi bien que les transporteurs. A présent ils se libèrent généralement de cette responsabilité par des clauses d'exonération ou autrement. Le Comité a proposé des règles introduisant une telle responsabilité, qui deviennent obligatoires en cas de transport combiné soumis à la Convention proposée. De cette façon la chaîne des responsabilités sera complète à partir du moment où le transporteur a reçu la marchandise jusqu'à la délivrance de la marchandise au détenteur du titre de transport, ce qui évidemment est d'une grande importance surtout pour les propriétaires des marchandises et pour leurs assureurs.

Le Bureau Permanent du Comité Maritime International a déjà il y a quelque temps, en conformité avec la décision prise à la Conférence d'Anvers, désigné une Commission qui étudiera la matière d'un titre de transport combiné. Une telle étude, qui se fera, naturellement, surtout du point de vue maritime, deviendra de la plus grande valeur pour les travaux du comité de la Chambre de Commerce Internationale.

Une étude similaire se fait par un comité de l'Union Internationale des chemins de fer. Et, en ce qui concerne le transport par route, une commission désignée par l'Union internationale des transports par route, de l'Institut pour l'unification du droit privé et de la Chambre de Commerce Internationale a, en élaborant un projet de Convention concernant des règles internationales pour le contrat de transport par route, pris en considération aussi la matière du transport direct. Et, récémment, l'Union Internationale d'assurance maritime a nommé une commission qui doit étudier cette question d'un titre de transport combiné.

Vous voyez donc que ces études, entreprises de tous côtés, sont considérées, comme l'écrit le Secrétaire Général de la Chambre de Commerce

dans une lettre au Comité Maritime International, comme « fort importantes et soulèvent un grand intérêt dans les milieux internationaux ».

La contribution que fournira votre Commission, désignée par le Bureau Permanent, à ces études communes sera, j'en suis sûr, de la plus grande valeur pour une appréciation appropriée de ces problèmes.

The President. — I thank Mr. Bagge for his introduction of this matter.

You will find before you a paper showing the present position of the ratifications. This list has been prepared by the Netherlands delegation according to the information which has been furnished. We are very thankful for the work which has been done in this respect.

As to the combined Bills-of-Lading, I think Mr. Bagge's view on this subject is, that because the session of the special committee appointed for this subject could not be held in March of this year, this matter should be sent back to that Sub-Committee.

I would urge upon you all to shorten the debate as much as possible, because I should like to terminate this debate this morning. There are eight gentlemen who wish to speak : Mr. Sauvage, Mr. Hill, Colonel Beazly, Mr. Loeff, Mr. Andersson, Mr. Boeg, Mr. Sandiford and two others, I think.

Je donne la parole à M. Sauvage.

M. Sauvage. — Monsieur le Président, mon intervention au nom de la délégation française sera extrêmement brève, pour un motif facile à comprendre ; c'est que ma délégation est entièrement d'accord avec les suggestions de M. Bagge, que nous avons écouté avec infiniment d'intérêt. Nous estimons que la formule qu'il préconise est la véritable solution du problème.

Ceci dit, je voudrais présenter seulement deux observations. La première, c'est que la situation du destinataire, avec le système actuel des connaissements directs, des « through bills-of-lading », peut être qualifiée de lamentable. Vous savez que dans la pratique actuelle, chaque transporteur commence par écrire dans son connaissement qu'il n'est responsable que sur son propre parcours. Le premier transporteur, émetteur du connaissement direct, stipule que sa responsabilité cesse à partir du moment où il a tranmis la marchandise au transporteur subséquent. Il en va de même pour chacun des transporteurs, de sorte que le malheureux destinaire, lorsqu'il se trouve en présence d'une perte ou avarie assez considérable, trouvera devant lui un dernier transporteur qui prouvera facilement que le dommage a eu lieu sur un parcours antérieur. Dans ces

conditions, le destinataire qui a payé son fret d'après le mécanisme de la vente coût-fret-assurance, sera dans la nécessité d'aller plaider contre un premier transporteur qui se trouve à l'autre extrémité du monde. C'est pour cela qu'en matière de transport terrestre, la convention de Rome a décidé, très justement, que le réclamateur, quel qu'il soit, expéditeur ou destinataire, a toujours le choix entre les transporteurs pour exercer son action. C'est l'article 42 de la convention de Rome, disposant que le réclamateur peut plaider contre le premier transporteur responsable de la totalité du transport et il peut plaider contre le dernier transporteur, également responsable de la totalité du transport. Il peut plaider également contre un des transporteurs intermédiaires s'il réussit à démontrer que le dommage a eu lieu sur le parcours assuré par celui-ci.

Telle me semble être la solution normale et nécessaire pour sauvegarder les intérêts du commerce. Je sais bien, comme l'a dit en termes excellents M. Bagge, qu'on ne peut pas imposer par la force cette solution aux transporteurs maritimes, et qu'à la différence de ce qui a lieu en matière de transport terrestre, cette solution ne peut résulter que d'une entente.

Ce que je voulais vous signaler aussi, — et c'est là ma seconde observation , — c'est une construction assez intéressante de la jurisprudence française qui pourrait peut-être constituer l'amorce d'une solution. Aux termes de cette jurisprudence, et en vertu de toute une série d'arrêts de notre Cour de Cassation, toutes les fois qu'il y a des transports successifs, intervention d'un certain nombre de transporteurs pour un parcours total et toutes les fois que le transport a eu lieu en port dû, le dernier transporteur réclame la totalité de ce qui est dû à lui-même et aux transporteurs précédents. En pareil cas notre jurisprudence décide d'une manière constante que le dernier transporteur — c'est l'expression de la Cour de Cassation — est au droit des transporteurs précédents, qu'il prend leurs lieu et place et qu'il se substitue à leur responsabilité totale. Cette jurisprudence s'est affirmée surtout en matière de transport terrestre. Il y a cependant des jugements du Tribunal de Commerce du Havre qui l'ont appliquée également en matière maritime. Par conséquent, si nous nous trouvons en présence d'un transport en port dû et si l'affaire se plaide devant les tribunaux français, ceux-ci appliqueront incontestablement cette jurisprudence, de telle sorte que le reclamateur se trouvera garanti exactement comme il se trouverait garanti aussi efficacement que s'il y avait une convention générale, puisque le réclamateur n'a devant lui que le dernier transporteur. C'est là une suggestion intéres-

sante et peut-être pourrait-elle être adoptée dans les accords que nous suggère M. Bagge.

Voilà ce que j'avais à vous dire. Je crois cependant que cette solution de la jurisprudence française ne peut recevoir une application trop fréquente en matière maritime où la plupart du temps le fret est payé d'avance, en vertu du mécanisme de la vente C.A.F. (C.I.F. pour les Anglais). Dans ce genre de vente on paie le coût de la marchandise, le fret et l'assurance. C'est par conséquent un fret global et le tout est payé à l'avance. Il n'existe pas de transport en port dû et la jurisprudence que je vous signale est inapplicable. Vous verrez cependant s'il n'y aurait pas lieu que la Commission, au cours de ses travaux, examine cette solution que je viens de vous signaler.

Mr. Maurice Hill (Great-Britain). — Mr. President, in the first place I would like to make it clear that for the reasons given by Mr. Bagge, I speak as a member of the British delegation, not as a member of the International Chamber of Commerce.

Mr. Bagge has explained very clearly the principles underlying the draft Convention prepared by a Sub-Committee of the Chamber. I do not propose at this stage to comment on these principles or to criticise the draft, except to say that this proposal is an ideal for the future rather than a code of law and practice which can be accepted for immediate application. Moreover, so far as I am aware, none of the commercial interets concerned, whether shippers, underwriters or carriers, have actively pressed for the adoption of a through-bill-of-lading, nor do the commercial interests, at least in my country, feel any need to disturb the existing arrangements for the transport and insurance of goods.

Throughout this Conference and that of Antwerp two years ago, it has been repeatedly affirmed, and rightly, that the practical value of this Committee rests in the fact that it concentrates on practical problems and that it seeks to give legal expression to what the business interests want and not what the lawyers think is good for them.

In these circumstances, the most which this Conference can do would seem to be to continue the study of the problem — and I emphasize this point — but not to go further or faster than the commercial interests desire.

I would therefore support the proposal that the Chairman has already made, that the question be remitted to the Commission. But I would urge that in so remitting, the Commission should be charged with the express

duty of taking evidence from the commercial interests as to whether they want a combined document of this kind, and if so under what conditions it is practical.

The President. — Would you write out an amendment to that effect, Sir ?

Mr. A. Bagge (Sweden). — I would just say, Mr. President, that it cannot, of course, be the aim of the Sub-Committee which has been instituted for the purpose of studying this matter, that it should be cut short at the first stage of investigation as is suggested by Mr. Hill. The reason why this Sub-Committee has been nominated is to make from the maritime point of view, a study of the whole problem. Then the material collected should be made known to the Committee of the International Chamber of Commerce. I understand from the conversation I have had with Mr. Maurice Hill that it is not his intention to cut short in any way the study of the whole matter.

The President. — I now call upon Colonel Beazley.

Colonel E. Beazley (U.K.). — Mr. President, Gentlemen, I have for very many years past heard that the possibility of an international Convention to establish a standard form of through-bill-of-lading was under discussion in various quarters where lawyers congregate. I have, however, at no time learned of any desire on the part of the business world for such a Convention. My own view, — as one who has spent his working life in the shipping industry and with, I think I may say, full knowledge of the operation of the liner trade, — is that it is quite an impracticable proposition, and I think it very necessary that this Conference should be apprized of that view. In stating it, I am not speaking for myself alone. I have the authority to say on behalf of the British delegation as a whole, — the shipowners, the cargo interests and the underwriters, — that it is the view of them all that such a Convention is not practicable as a business proposition and is not desired by the business interests.

Since coming to Amsterdam, I have seen for the first time the draft-convention which is among the papers circulated to the Conference. That draft, far from altering my opinion, has confirmed it. I can assure those who drew it up that it will not work, and that any attempt to impose it on the business world would be productive of chaos. I do not think it necessary, nor does time permit, to go through the detailed articles of the Convention, but I will call attention to two or three of its paragraphs as bearing out what I have said.

Articles 1 and 2, as I understand them, make the Convention a matter of voluntary acceptance, but Article 6 states that the first carrier and the consignor can agree that the Convention applies, in which event all other carriers are bound by the Convention. Most through-carriage operations start inland. Take for example goods sent from Bradford by motor lorry to Liverpool, thence carried by ocean liner to Basra, then up the river Euphrates to Bagdad by river-steamer and thence by lorry to a destination in the interior of Persia. Under the Convention, the lorry owners who take the goods from Bradford to Liverpool control the terms of carriage throughout. Why ? And what right in law has he to bind all the other carriers about whose business he knows little or nothing ?

Article 3 makes every forwarding agent and warehouseman a carrier within the meaning of the Convention with surely quite incalculable business consequences.

Article 9 provides that the consignor can demand of the first carrier that he shall insert in the transport document the names of all subsequent carriers and their means of transport and the cost thereof, and other details. This is totally impossible of performance. How on earth can the lorry owner from Bradford to Liverpool in the case I have cited be expected to know the answers to the questions which Article 9 would compell him to answer ?

Article 15(2) states that the first and last carriers shall be liable to the cargo owner for the operation as a whole, but can avoid responsibility under paragraph 4 if they can prove a negative. In most cases the first and last carriers, or certainly one of them, will be land carriers over a short distance and for small reward. Why should they shoulder the burden of responsibility ? Will it suit the cargo interests to look to them as the primary responsible parties ?

Article 25 provides that, if one of the carriers becomes insolvent, the others shall share his responsibility. Why, if those others are entirely innocent of fault ?

There are other articles which I could easily criticize from the business, as distinct from the legal, point of view. I do not, however, wish to take up the time of the Conference to any greater extent.

I repeat, well-intentioned although these proposals may be, they are quite impracticable for business operation.

Mr. R. Sandiford (Italy). — Mr. President, ladies and gentlemen, the

little time we have does not allow a study of the proposed draft Convention concerning rules on combined carriage of goods. We have not the possibility of examining the draft in detail and making our remarks. It is evident, however, that it would be very useful to have uniform rules on the contract of combined carriage.

The draft is the consequence of a long study and work that we appreciate very much, and the Italian delegation is very happy to congratulate Mr. Bagge on his useful and important work and will give full support to the conclusion of such a Convention.

Mr. A. Loeff (Netherlands). — Mr. Chairman, ladies and gentlemen, on behalf of the Netherlands delegation, I should like to make a short statement. I think we quite agree with what has been said on behalf of the British delegation, that the difficulty connected with bills-of-lading is impracticability.

I think you have to look at the matter from quite a different angle. There are some points that may be very important, though as far as I know they have never given rise to a definite decision. One thing at which I always wonder is the position of the Through-Bill-of-Lading in a country where compulsory law has been made. I should like to draw attention to one very useful clause in these bills of lading, a clause which may give rise to considerable difficulties. In most of these bills of lading, it is stated that the carrier who signs the bill of lading binds himself to carry the goods, say from Stockholm to Rotterdam, and then a further clause is that in which it is stated that, as the further carriage is concerned, — let us say from Rotterdam to New-York, — he is acting only as forwarding agent.

On the face of it this looks all right, but I think it is not very just to consider such a carrier as bound only in respect of carriage from Stockholm to Rotterdam if he gets freight for whole of the carriage.

As far as I know, in this country at any rate, it has never been decided that such a clause is valid under compulsory law. I think even in England, although I am not very sure, it is still doubtful whether the Carriage of Goods by Sea Act applies to such a through bill-of-lading even as far as my example of transport from Rotterdam to New-York is concerned.

We think it would not serve any very useful purpose to make a very big convention about through bills of lading, about through carriage, also including carriage by rail and carriage even perhaps by air. But there are some points, — and I gave one instance, — that are really worth

considering. Therefore, the position of the Netherlands delegation is more or less an immediate one : we think it is worth studying this matter thoroughly and after that we can decide further.

The President. — I now call upon Mr. Boeg.

Mr. N. V. Boeg (Denmark). — Mr. President, Ladies and Gentlemen, my remarks will be very short. I should like to thank my learned friend Mr. Bagge for his very able work. The Sub-Committee which was appointed two years ago in Antwerp, I may say, has not been working in a very efficient way — there have been no meetings in two years ! I think we must take up all the different points of view and study them most carefully. I think we might, in that Sub-Committee, reach a solution which will be satisfactory to all interests concerned.

Mr. Andersson (Finland). — Mr. President, gentlemen, in 1939 there was a questionnaire put forward by the Permanent Bureau for opinions and replies to certain questions relating to combined carriage. On behalf of the Finnish Shipowners' Association, we then stated our answer in a very negative way. On having again thought the matter over, we have come to the conclusion that if you want to regulate combined carriage in a compulsory way, then it is impossible to do it. On the other hand, as we all know, combined carriage already exists to a very large extent. Goods are carried from inland points in one part of the world to other parts of the world, and transport by sea is included in the carriage. I am of the opinion that it works very badly.

It might interest you to know that for over a quarter of a century, in agreement with State railways, we have carried over Sweden, Finland and Norway goods to any part of Europe, excluding the British Isles, to or from any point in Scandinavia on the Through Carriage Document where there is a sea passage included. During these past 25 years we have never had any difficulty.

Therefore, something might be done, but I think it has to be founded on agreement between the parties. I think this part of the matter is well solved in Mr. Bagge's proposal.

Regarding Colonel Beazley's statement, I think he has not interpreted the contents of Mr. Bagge's proposal quite correctly. As far as I understand Mr. Bagge's proposal, it is not possible for a lorry owner in an inland point in England to bind the shipowner in Liverpool ; there has to be an agreement beforehand between the lorry-owner and the shipowner

to undertake such carriage. If I am correct in this matter, I think it is possible to agree in substance.

The time at our disposal for studying Mr. Bagge's proposal has been short, so the opinions I have placed before you are mainly my own ; I have not been able to acquaint the shipping community of Finland with it. I think, on the whole, however, that this proposal will find favour. When I say this, I am mainly thinking of the possibility of arriving at a solution, I am not yet able to state whether it is a practical solution — the way it is suggested in Mr. Bagge's proposal — to regulate combined transport, but an alteration might be found that would make it more acceptable to us all.

Mr. N. E. Kihlbom (Sweden). — Mr. President, Gentlemen, looking at the situation from some points of view, it may perhaps be said that the measures proposed by Mr. Bagge are not now necessary as things go along pretty well as they are. I would, however, submit that we should not stop developments if such developments contain improvements suggested by the ever increasing complexity and increasing speed of modern transport. We should not try to stop development if such development is thought advantageous by a large number of those engaged in international trade. And there I am sorry to say that I have to disagree with my British friends, because as far as I have been able to ascertain, these proposals have awakened wide interest. The proof of that is the fact that the International Organization of Underwriters has appointed a Sub-Committee to study these measures and to further them.

I would also like to remind this Conference of the appalling losses of goods in transit which are very detrimental to world recovery, and that these losses are probably in a large measure due to the possibility of the present regulations ridding the enforcing of any liability. Therefore, with this reasoning, I would like to suggest and move that this Conference gives support to Mr. Bagge's proposals.

Mr. James-Paul Govare (Paris). — Mr. President, Gentlemen, as a member of the Sub-Committee you have appointed to study this question I have, like all of you, listened with great interest to the remarks made by the different branches, and they were indeed most interesting. I must say that I quite agree with some of the members, Mr. Hill and others, when they say that the people concerned with these matters are not urgently pressing us to produce a document, for which fact I thank God. If we had to produce a complete document for tomorrow morning,

I am afraid it would be impossible. Look how long it took to come out with the first set of York/Antwerp Rules. But I believe that those who, apart from their daily work, look a little further and see the evolution of the worldwide transport, which more and more combines now the railways, shipping and air transport, we can foresee that in a future which may be near, — perhaps too near for us to have finished our work, — there shall be needed a document which will be required not only by shipowners, who seem to be most interested in the question, but also by the underwriters and by the bankers, and at that time we will be urged to produce as quickly as possible some such document. Therefore, I think that it is quite a useful thing that the work achieved up to now should not be dropped, but that we should proceed further with those studies.

I could not think that the commercial people are not interested in our studies and our work, because when meetings took place — and the last one was I believe in Paris in March last, — in the building of the International Chamber of Commerce, we saw there many members of many countries attending the Conference and taking a very keen and active part in the proceedings. The French Chamber of Shipping was represented by two members, and the International Underwriters' Union were present and many bodies of that sort took part in the discussion. Therefore, I urge this Conference to decide that the sub-committee will proceed with the work, not that it be urgently required to draw up a final report, but that the matter should not be dropped and should be studied further so that when such a document is needed, we will have it nearly ready.

I also urge upon the Conference not to make any amendment of any sort. Up to now the Comité Maritime International has had many sub-committees working on different questions, and we always have left a free hand to the sub-committee and especially to its president to see how the matter should be dealt with, who should conduct, what inquiries and what information should be required. This matter is now under the chairmanship of Mr. Bagge, and for my part I feel absolutely certain that he will be able to have near him all the assistance of all the most learned people he may require. With such a personality as Mr. Bagge, I am sure people will be only too glad to get in touch with him and give him all the information he may require. Therefore, my suggestion is that this Conference should decide that we proceed further with the study and that we see how it develops in the future, and that when such document

is needed, such document may be ready. Therefore, I ask you simply to decide that we repeat our hearty thanks to Mr. Bagge for all the valuable work he has done up to now, and that we beg his Sub-Committee to continue the study and to report when he thinks fit and when the Permanent Bureau feels that the work is really needed.

The President. — Ladies and Gentlemen, the discussion is now closed. The last proposal made by Mr. Govare, — and I know it is also in the name of Mr. Bagge himself, — is that the Sub-Committee, which has already been appointed for this subject, should proceed with its studies.

There is a strong feeling in some of the delegations that something should be added to this recommendation, Mr. Hill and Colonel Beazley especially, urged upon the Conference that some evidence should be taken. Taking evidence, on the other hand, ought not to be absolutely necessary ; so I propose a certain compromise, which I know has the approval of the British delegation, I propose amendment to the proposal of Mr. Govare to read as follows :

« That the Conference recommends that the question of a combined » transport document be referred to the Sub-Committee appointed for its » study ; that this Sub-Committee be invited to consider taking evidence » from the commercial interests concerned as to whether, and if so under » what conditions, such a document is practicable. »

I heave heard from Mr. Govare that they could not recommend this amendment, but nevertheless my own idea and, as I know, that of the Permanent Bureau, is that it is desirable to add this innocuous recommendation. I propose that you accept the resolution this way : that, of course, the Sub-Committee be maintained in existence, and that we decide, as I read it, that the question of a combined transport document be referred to the appointed Sub-Committee for study, and that this Sub-Committee be invited to take evidence as to whether, and if so why, such a document is practicable. Does any delegation object to that ?

Mr. Algot Bagge (Sweden). — Mr. President, may I say that I suppose this may be interpreted in this way : that it does not prevent the Committee from studying the matter in its whole extent ? Of course, it seems to me to be self-evident that we shall have to hear what the commercial men are saying. We cannot work without them and it never would enter into my mind that this would be a lawyer's business. I never had that idea at all. But as I said, when we have heard the evidence I think it should be interpreted in this way : that even if some representa-

tives of commercial interests say : « Oh, we do not like that », which we have heard already, that would not prevent us from going further on and studying the whole matter, because one of the objects of this Sub-Committee's work is to give advice to the Committee of the International Chamber of Commerce, and they want as much material as they can get to finish their work. I can understand that this Resolution is only a recommendation. I think it is quite natural and self-evident that we shall hear the commercial interests represented, but not bind ourselves in any way not to study the matter further. After we have heard what these people have to say so that we can get a very complete picture, the material, with all objections and all amendments and every suggestion which can be made, will be put at the disposal of the Committee of the International Chamber of Commerce, because they very much want to have the maritime point of view on this matter.

The President. — I think Mr. Bagge is quite right. We have not even the right to stop the work, because the Sub-Committee was appointed by the Comité Maritime International, and it ought to report on it not only to the International Chamber of Commerce, but also to us. I think we all can agree ; and I may take it that this resolution has been accepted.

As to the Sub-Committee itself, the members thereof are Mr. Bagge, as President ; Sir Leslie Scott, Mr. J. P. Govare, Mr. F. Sohr, Mr. Loeff, Mr. Boeg, Mr. Berlingieri ; and a representative of Norway who, up to now, has not been appointed. Can the delegation of Norway say who will be their representative ?

Mr. Edvin Alten (Oslo). — We wish to be represented by Mr. Braekhus.

Mr. Bagge. — Mr. President, may I suggest that the United States be represented by Mr. Houston and Mr. Prizer.

The Chairman. — Thank you, Mr. Bagge. I was just going to say that the Permanent Bureau also want to add a U.S. delegate. I was going to propose Mr. Houston and you propose Mr. Houston and Mr. Prizer. I think it would be useful to have Mr. Prizer if Mr. Houston is not able to attend.

Mr. Prizer (U.S.A.). — As an alternative.

The President. — I have just said that Mr. Houston will be a member for the United States and if he cannot take part in the work, Mr. Prizer will be appointed as the alternative. The same is the case of Great Bri-

tain, because if Sir Leslie Scott is not able to participate in the work, Mr. Maurice Hill will take his place. I think this is agreed.

There is one other point. As you see, Scandinavian countries are represented by Mr. Boeg and Mr. Braekhus. Of course we all know that Finland takes a very important part in the preparation of this work and is very much interested in this question. So if Mr. Andersson would like to participate in it, I should be happy to make that proposal.

Mr. H. Andersson (Finland). — I thank you very much, but I do not think I will ask for it.

The President. — The Conference is now adjourned. We shall meet here again at 10.0 a.m. tomorrow.

La séance est levée 11 heures.

The conference adjourned at 11 a.m.

VENDREDI, 23 SEPTEMBRE 1949

SEANCE DU MATIN

FRIDAY, SEPTEMBER 23d, 1950

MORNING SESSION.

La séance est ouverte à 10 heures 20 minutes, sous la présidence de M. le Professeur Offerhaus.

The session opened at 10,20 a.m., Professor Offerhaus in the chair.

The President. — Gentlemen, this morning we have to deal with the question of Arrest of Ships. First of all I have to tell you that you have before you the new text of the York/Antwerp Rules, 1950. You also have before you the text of the Resolution which has been passed on Mortgages. I propose that both those texts should be finalised this afternoon, so that all the members of this Conference will have the opportunity of reading them over before. If anyone has noticed any errors in the York/Antwerp Rules which ought to be corrected, it would simplify matters if they would tell us here. Also, if anyone has any recommendations to make on the text of the Resolution, although the Resolution as such remains as it was, please let us know.

We will discuss the Arrest of Ships this morning, and if we have any time left after terminating this discussion, I should like to continue by discussing the question of Article X of the Conventions on Bills of Lading. You know the amendment which has been proposed by the Italian and French delegations on this subject. If we cannot finish discussing it in this morning's session, we can continue this afternoon. At any rate, at 2.30 this afternoon we will begin by discussing the International Maritime Court and the proposal of Professor Cleveringa. The text of the York/Antwerp Rules and the Mortgages will not take very much time ; I think it is only a question of correcting possible minor misprints. This afternoon we can deal with the question of an International Maritime & Aerial

Court. Eventually, we will continue the discusion of this morning, or begin to discuss, the subject of article X.

Does the Conference agree ? *(Agreed)*,

Mr. J. S. Braekhus (Norway). — Mr. President, from your remarks, I take it that the York/Antwerp Rules cannot be revised now, although there were some discrepancies which ought to be set right. That remark applies to several rules. In Rule XI wages and maintenance are mentioned ; in the lettered Rule B, maintenance of the master, officers and crew is spoken of ; in Rule D maintenance of the ship is spoken of.

The President. — I am very sorry, Mr. Braekhus, but I must stop you. If what you want to say is limited to error, you can say it this afternoon when we discuss the text now before you.

We will now begin the discussion of the Arrest of Ships, and I call upon Mr. Asser to open the discussion.

REVISION DU PROJET DE CONVENTION POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE SAISIE CONSERVATOIRE DE NAVIRES.

REVISION OF THE DRAFT-CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO PROVISIONAL ARREST OF SHIPS.

Mr. J. T. Asser (Netherlands). — Ladies and Gentlemen, Mr. Cyril Miller suggests that I should be the first one to speak on this matter, and I think I should make it clear that I am speaking as one of the co-authors of the questionnaire which is before you, not as a member of the Netherlands delegation.

When considering the possibility of arriving at international uniformity in regard to the law of Arrest of Ships, we should bear in mind that this matter revolves around the following two questions, namely : firstly, the question in respect of what debts a ship may be arrested ; secondly, the question whether a ship may be arrested in respect of debts arising out of the operation of another ship belonging to the same owner.

Those are the two fundamental points which are at the bottom of this subject, and unless general agreement is reached on those two points, any efforts to arrive at an international convention will be wasted.

The International Maritime Committee has spent once before many years and devoted serious and painstaking efforts to the drafting of an

international convention on the arrest of ships. The decision to put this subject on the agenda of the International Maritime Committee was first taken at the Antwerp Conference of 1930. An international Sub-Committee was appointed and Maitre Dor undertook the duties of drafting the text of a convention and a report. All of us who were present at the Oslo and Paris Conferences and who served on this international Commission remember the great skill and the unfailing devotion which Maitre Dor gave to his task. The first draft of a convention was prepared by him and submitted to the Oslo Conference.

A curious thing happened in regard to that draft. Article 1 of the first draft provided that each creditor of the owner of a ship may arrest her. According to the report presented by Maitre Dor on that occasion, this article was intended to mean that any ship might be arrested in respect of any debt of her owner whether maritime or non-maritime. In other words, this first draft reproduced what is called the Continental system of the law of arrest.

This draft met with a great deal of opposition on the part of the British delegates, who stated that they were reluctant to abandon, in favour of the Continental system the British system of a very restricted possibility of arrest As a result of this opposition, article 1 was redrafted several times ; the article was gradually amputated more and more and the text finally adopted at the Paris Conference stated no more than that : « Any creditor of an owner of a ship, by reason of a collision, might operate the arrest of such ship ». Consequently, whilst the first draft had incorporated the continental notion of the widest scope of arrest, providing for the arrest in respect of all claims, the final draft was based on the English conception of the action in rem, dealing merely with collision claims, the question of arrest in respect of all other claims being left to the respective municipal laws. So what was intended to be international uniformity became merely a reproduction of the law of England. If I may be permitted to say so, this was a rather meagre result.

Anyhow, the Permanent Bureau felt that it was a result hardly worthy of the dignity of being put before the Diplomatic Conference, and it was therefore decided that a new effort should be made towards international uniformity in the whole field of the arrest of ships, whereupon Mr. Miller and I were entrusted by the Bureau Permanent with the task of drafting a questionnaire.

In view of what had happened in the past, Mr. Miller and I felt that if

any success were to be expected from this new attempt, it would be inexpedient to follow up the work which so far had been done, that is to say to start working on the basis of the draft convention of 1937. On the contrary, we believed that the problem should be made the subject matter of an entirely new study. In view thereof, we called upon friends in various countries to send us memoranda on their national legislation on the subject of arrest of ships. We have to thank Mr. Carlo van den Bosch, Mr. Govare, Mr. Rygh and Mr. Schonmeyer for their complete and clear reports on the Belgian, French, Norwegian and Swedish law. Mr. Miller contributed a brillant and very learned report on the law of arrest in England, Scotland and the United States, whilst I myself made a short memorandum on Dutch law ; all these reports are annexed to the questionnaire.

Further, Mr. Miller and I felt that we should not, at this stage, attempt to formulate any concrete proposals, much less prepare a draft convention, but that, before any proposals were made, all the national associations should have an opportunity of studying the matter and express an opinion on the principle, namely on the question whether or not unification is desirable and feasible. For that same reason, I think that I should equally abstain from submitting any resolution to the Conference. However, if you permit, I should like to state briefly certain questions which, in the opinion of Mr. Miller and myself, deserve special consideration. In the first place we would suggest that, at least for the present, unification be limited to the provisional arrest, « saisie conservatoire », of ships and that questions pertaining to attachment, « saisie-executoire », be left out.

The reasons for this suggestions are : firstly, that the divergences in the municipal laws on the subject of attachment are not so great as to be a real hindrance to international trade. If I am correctly informed, in all civilised countries a judgment obtained against the debtor (in Anglo-saxon countries, a judgment in an action « in personam ») may be enforced against all the defendant's property, including all his ships, whether the action be one in respect of a maritime or of a non-maritime claim. Secondly, that by tackling the subject of attachment we might find ourselves faced with a number of highly intricate questions of private international law, such as questions pertaining to the international recognition and enforcement of judments, questions of « litispendentia » and so on, all of which might tend to slow up the work unnecessarly.

The reports give a sufficiently clear picture of the actual situation with

regard to the possiblity of arresting ships ; they show the wide differences existing between English, Scottish and Continental law — not to mention American law — and consequently the varying risks run by the shipowner in the various countries and the security offered to the creditor. It can hardly be contested that this situation is from an international point of view, highly unsatisfactory. Should the Conference decide that this situation needs to be remedied by means of an international convention, then such convention could probably be attained only be means of a compromise between the continental, the American, the Scottish and the English systems.

In this connection, I may perhaps be permitted to point out that uniformity on the international plane would not require a change of the various municipal laws in so far as applicable in the national sphere. For instance, nations having the continental legal system, like Holland, whilst adhering to an international convention which would curtail the possibility of arrest, might yet wish to preserve in regard to internal relations the security which their own legal system gives to the creditor through the existing wide scope of arrest.

On the other hand, It think that any such compromise should always strike a happy medium between the interests of shipowners and those of their creditors. Should the latter interests not be sufficiently protected, like in the 1937 draft, then the chances of a convention reaching the Statute Books of the various States would probably be very slender.

With regard to the questionnaire, there is one further point to which I may perhaps draw your attention. The questionnaire refers to the International Convention on Maritime Mortgages and Liens and raises the question whether this Convention should not be examined in conjunction with the study of the Arrest of Ships. There does not seem at first any immediate connection between the two subjects, but, as the debate of last Wednesday on the subject of mortgages has shown, the two matters are nevertheless connected. Moreover, any convention on the arrest of ships must necessarily state in respect of what claims a ship may be arrested and it may well be that in this connection the question of maritime liens and mortgages will crop up.

I would venture, Mr. Chairman, to make one last recommendation. Mr. Miller and I feel that it would be wise if from the very beginning we should attempt to restrict our efforts to the laying down of broad, general rules. This has always been this Committee's traditional method of wor-

king and it is one which has proved its value. We especially should not try to deal with questions relating to procedure. In all countries the domestic law of procedure is highly technical, and consequently all questions pertaining thereto are better left to the respective national legislators.

It is not my intention to discuss in this initial stage the many further problems which surround this subject. These other problems have not even been mentioned in the questionnaire, because it was felt that they are of secondary importance compared with the two fundamental questions relating to the scope of arrest. The Conference should, in our opinion, begin by ruling on the question of the principle, namely, the question whether or not unification is desired and is possible.

I have already taken up too much of your time, but I hope you will forgive me if I make a few last remarks on the questions (a) and (b) contained in the questionnaire at the end. Those questions deal with the distinction shown in certain municipal laws, like, for instance, the Netherlands' law, between the legal Owner and the Operator of a ship, and with the liability attaching to each of them. So far, this distinction and the consequences resulting therefrom have been recognized in two international instruments, namely in article X of the Convention on the Limitation of Liability and in article XIII of the Convention on Mortgages and Maritime Liens, but neither the Convention on Salvage, nor the Paris draft-convention on Civil Jurisdiction in matters of Collision make the distinction or contain any provisions in respect thereof. I need not say that this omission might create complications. The same complications might arise in all other cases so far not governed by any international agreement, for instance, whenever there is a liability on the part of an operator non- owner of a ship in respect of claims arising out of torts other than collision — explosion and fire to houses and property on land.

Whenever this situation arises in the international field, the creditor who wishes to bring a suit might be at a loss as to whom he should sue, namely, the owner of the ship or the operator. Other similar difficulties arise whenever the creditor wishes to arrest a ship. It was therefore felt that this problem should be studied in conjunction with the arrest of ships and we should feel happy if the Conference would state whether it wishes in principle an international understanding on this point also.

The President. — I now call upon Mr. Cyril Miller.

Mr. Cyril Miller (London). — Mr. President, ladies and gentlemen, luckily you will not have to listen to me for any great length of time be-

cause my friend and colleague, Mr. Asser, has dealt so fully and clearly with this subject that I am able to say without any further reflection that I agree with every word that he has said.

There is very little addition I have to make, except with regard to certain difficulties that arise in English law, which I think the Conference should have clearly in mind when we come to decide what, if anything, we are going to do about this subject. I would also ask your permission, Mr. President, to speak only in English because although this question is one of great practical importance, it involves highly technical legal terms, and if one attempts to translate them into French, unless one is a civil lawyer, one will certainly sooner or later — and possibly sooner, — give an entirely wrong impression. There are so many of our French friends who are familiar with at least a part of our rather complicated law that I am sure they will understand better if I use the technical English or Anglo-saxon legal terms than if I attempt to translate into what I conceive to be the French equivalent and is possibly the exact opposite.

I particularly want to endorse what Mr. Asser has said : that whatever we do about this subject we should confine ourselves to recommendations and deliberations upon the unification of the law relating to what we in England call « arrest » and what in the continental system is called « saisie conservatoire ». We should not, I think, make any recommendations with regard to the other form of « saisie » (« saisie executoire »), which we in England call « attachment », because to do that would be to make recommendations upon a matter which is purely one of procedure, and it is quite impossible to attempt, and indeed undesirable, to unify the law of procedure. One has only to reflect that a procedure which is familiar and has been familiar to a French Court for centuries could not possibly be applied by a British Court, because it would be completely contrary to the procedure of that Court in which we British lawyers are all trained, whereas, with regard to substantive law, this can be changed, although I do not say it can be done easily. That is what the Comité Maritime is for. It can be changed without alteration in the procedure of the Court. That is why I endorse what Mr. Asser has said. We would confine ourselves to « saisie conservatoire ».

Having studied the very careful and informative reports that we have received from other countries, it looks as if English law is in the minority as regards the differences between the laws of the various maritime countries. That is due, I think, to the fact that in English law this question of

arrest is purely maritime ; it is not part of our general law as it is in other countries. We make a distinction between arrest in maritime law and arrest of any other form of property. As regards arrest of any other form of property, we have no such procedure at all. Property in England can only be arrested after judgment has been given, and that, of course, is « saisie-execution ». The only way in which an executor in England can obtain security before an action is brought is in a limited number of cases in which ships are involved. That is the first great difference.

The second difference, — and it is one upon which the Conference may well desire to make a recommendation, — is this : in England it is only possible to arrest by « saisie conservatoire » the particular ship with which the contemplated action is concerned. You cannot arrest, in the case of a collision, a vessel in the same ownership ; you must arrest that actual vessel which was in collision.

I think, — and I shall be corrected if I am wrong, — that in all other jurisdictions the question of arrest depends upon who is the owner of a ship, and if he is the owner of several ships, then any one of his vessels may be arrested in order to assure the creditor. It may be that the Conference will express the opinion that the laws of maritime countries should be unified in that important respect.

Another great difference between English law and Continental is our conception of what we call « maritime liens » and what I understand in the continental system is called « privilège ». I am not going into that highly technical and difficult subject for the very good reason that even though in the past twenty-five years I have had accasion to give it considerable study, I am not certain that I understand it myself. But there is no doubt that the English conception of a maritime lien, is — one can give a definition of that — a right in someone other than the shipowner which travels in a ship in whomsoever's ownership she may go. That conception in English law is confined to a very few cases, namely, collision, salvage, claims for wages and bottomry and respondentia bonds, — which are, of course, now out of date ; for all purposes the maritime liens exist for salvage and wages, but curiously enough, there are many cases in which there is no privilege on the ship on which you can arrest her, always bearing in mind that it is the ship herself, with which the proposed action is concerned, that can be arrested, and those cases are 13 in number. I will not enumerate them because they are already in our

reports and it would be occupying the time of the Conference unnecessarily.

We, Dr. Asser and I, are responsible for the questionnaire. We have brought this subject before the Conference without making any recommendation or without suggesting to the Permanent Bureau that the matter should go before a Commission Internationale. You may ask « why we are doing this ». The answer will be that before this subject is takled, before it is studied according to the usual procedure of the Comité Maritime, we must have the assistance and the views of the Conference on the general issues which Dr. Asser put forward. It is quite useless for us to attempt to draft a convention or to suggest the amendment of the existing conventions not ratified, as usual, by certain governments, until we know what the general views of the Conference are on this topic. For instance, does the Conference, as I have already suggested, feel that the law of arrest with regard to the particular ships that you can arrest, should be unified, or does it feel that such unification is not necessary ? In my own opinion, — and here I am not speaking for Dr. Asser as I have not had the opportunity of discussing this point with him, — it is necessary that the law should be unified. I would state from my experience in commerce that it is certainly a nuisance, to put it at its lowest, that there is a difference between the maritime laws in this respect. It causes great inconvenience.

We have felt, — and again I speak for Dr. Asser and myself, — that it may well be that the study of this topic, if it is going to produce anything fruitful such as a draft convention, may have to be linked with the consideration of the existing Convention on Maritime Mortgages and Liens. The Conference may think that the Permanent Bureau in appointing whatever Sub-Committee it may consider right for this purpose, should say to that Committee : « You must at the same time study and advise us upon the Convention on Maritime Mortgages and Liens, and not treat Arrest as a separate subject ». On the other hand, the Conference might think it should be studied in conjunction with Limitation of Liability. On that I desire to express no opinion whatever. I think it is a matter on which the Conference should make up its own mind. What we are asking for is the ruling of the Conference on matters of principle. When we have that, I think, ladies and gentlemen, we shall be able to do something for you.

The Conference may think it advisable that — I hope it will not think

it so because it will mean a great deal of work, but that is by the way — the whole question of this distinction of actions « in rem » and actions « in personam » which we Anglo-saxons have, should be considered. In which case, we will loyally carry out the task and make such recommendations as may be necessary.

The Conference may also think that we should study the question, — which is unknown to the Anglo-saxon lawyers, but it is a very clear distinction certainly in the law of the Netherlands, — of the cognate liabilities of the owners and the operators of the ship. With us it is the owner of the ship who is liable, or possibly the time charterer. With regard to the operator, we have no separate and distinct liability, but that is not so in the law of the Netherlands, and a very important distinction it is, as anyone reading Dr. Asser's, if I may say so, most brilliant report, will appreciate. Before I read it I did not realize its significance or importance. It may be that other continental countries have that distinction ; it may be that the Conference requires unification on that point, and the appointment of a Sub-Committee by the Permanent Bureau to study and report on it.

I have endeavoured, Gentlemen, to give you as shortly as possible the points upon which the Conference may desire this question to be studied. I do not wish to go into any further detail because this is a matter of technicality ; I think it is peculiarly a question on which, if the Conference is good enough to give its views on principles, the lawyers may be able to produce something which may be of practical benefit.

If I have covered in any particular the same ground as Mr. Asser, it is not because I have any difference of opinion on what he has paid, either about my own law or any other ; I am only competent to speak on my own law, of course, but it is simply because I desire to lay emphasis on the points upon which I think the Conference may desire to express a view. I will finish by saying again that I completely agree with everything that Mr. Asser has said.

M. le Président. — La parole est à Mr. Koelman.

M. Werner Koelman (Anvers). — Mesdames, Messieurs, le rapport de MM. Asser et Miller rappelle les difficultés que l'on éprouve à conclure une convention internationale en matière de saisie conservatoire. Ces diffacultés proviennent notamment des divergences entre les systèmes continentaux et anglo-américain en matière de saisie et en matière de dommages-intérêts en cas de saisie injustifiée. Il apparaît également que

cette question est liée ou peut l'être à celle des privilèges et hypothèques. Elle l'est certainement puisqu'il y a deux jours, M. Prizer, délégué américain, nous l'a démontré, si nous ne le savions déjà, et aussi avec celle de la limitation de responsabilité des propriétaires de navires.

J'avais cru comprendre de l'exposé de M. Asser que le rapport concluait à l'examen de la question par une Commission internationale. M. Miller nous a dit que les rapporteurs n'osaient même pas faire de proposition et demandaient à la Conférence de donner son avis, bien qu'ils suggèrent qu'en tous cas l'examen de la question soit limité à la saisie conservatoire. C'est l'avis de la délégation belge, qui est d'accord avec le rapporteur sauf sur un point, à savoir que la convention de Paris de 1937 ne devrait pas être soumise à une conférence diplomatique, et je dirai pourquoi.

M. Miller a exposé les principes généraux de la saisie conservatoire en droit anglais. Elle est tout-à-fait particulière. La Belgique s'est efforcée de répondre au questionnaire en ce qui concerne les lois existantes dans notre pays. Je ne m'étenderai pas sur ce sujet puisque vous avez eu le rapport rédigé par mon excellent confrère et ami Me Carlo van den Bosch. Je puis répondre par « yes » ou par « no » à toutes les questions posées.

Pour quelles créances un navire peut-il être arrêté ou saisi conservatoirement ? La réponse est : pour toutes.

D'autres propriétés ou d'autres biens appartenant à l'armateur ou au propriétaire peuvent-ils être saisis également ? Oui, mais seulement pour des créances commerciales. Ici, je fais une parenthèse. Dans la plupart des législations continentales, il n'y a pas de loi spéciale sur la saisie des navires. Nous avons en Belgique la loi de 1908 qui permet de saisir les navires même pour des créances que nous ne considérons pas comme étant des créances commerciales ; c'est le cas par exemple des indemnités dues à la suite d'accidents mortels de personnes. On ne peut saisir qu'un navire, car ce ne serait pas une créance commerciale, et on ne pourrait saisir d'autres propriétés.

A la troisième question : « D'autres navires appartenant au même propriétaire peuvent-ils être saisis » ? Je réponds également oui. On peut saisir tous navires.

Quatrième question : « En cas de jugement en faveur du demandeur, quelles sont les propriétés qui peuvent être saisies exécutoirement pour exécuter le jugement ? » Toutes, sous réserve du droit d'abandon en ce qui concerne les navires.

Cinquième question : « Quel est votre loi concernant les privilèges et hypothèques ? » Nous avons ratifié la convention de Bruxelles en 1926. La loi belge est conforme à cette convention.

Sixième question : « Etes-vous d'opinion qu'une unification internationale est utile et nécessaire ? » Evidemment, ce n'est pas la Belgique, qui a contribué au moins autant que tout autre pays à l'unification du droit maritime, qui répondrait négativement à cette question. Dans cette matière et surtout en ce qui concerne la saisie conservatoire, il est éminemment désirable qu'une unification intervienne.

Enfin, septième question : « Comment cette unification doit-elle se faire ? » Ici, la réponse est plus difficile. La question n'est pas aussi simple étant donné les divergences existant entre les systèmes que nous connaissons. Il faut faire une nouvelle étude approfondie ; une Commission internationale devrait en être chargée. La Belgique serait partisan de cette solution.

Malgré le pessimisme des rapporteurs, il me semble cependant qu'il y aurait une mesure pratique à prendre immédiatement, c'est de ratifier la convention de Paris visant les saisies conservatoires en matière d'abordage. Sans doute avons-nous eu un projet plus ambitieux à Oslo, mais devant les difficultés qu'il entraînerait, une convention plus modeste a été adoptée à Paris.

Je voudrais vous rappeler en deux mots en quoi elle consiste. Vous verrez que sur un point elle tend à réaliser ce compromis entre les systèmes continentaux et anglo-saxons, auxquels nous devons finalement arriver si nous voulons l'unification.

On a d'abord reconnu pour le créancier le droit de saisir-arrêter. Mais on a décidé que pour ce faire, il fallait une ordonnance de justice. Pareille obligation n'existe pas dans tous les pays. En second lieu on a donné une très grande liberté d'appréciation au tribunal saisi de la matière. Cela est également une garantie pour les parties. On a alors limité cette faculté de saisie aux créances résultant d'abordage. Vous savez que le premier projet, même celui de Paris en 1937, visait également les créances provenant de sauvetage ou d'accidents causés à des navires et qui peuvent être assimilés à l'abordage. Je me souviens avoir participé à cette discussion. Au dernier moment, pour rallier l'unanimité, on a laissé tomber ce point.

Le grand avantage de cette convention est de régler la question des dommages-intérêts en cas de saisie injustifiée mais de bonne foi. On a adopté le système anglo-saxon et le saisissant ne serait tenu qu'à rembour-

ser les frais de caution. Par contre, en cas de mauvaise foi, il devrait réparer le préjudice. C'est là certainement un compromis entre les conceptions anglo-américaine et continentale.

A la Conférence d'Anvers en 1947, j'ai, après MM. Dor et Govare, demandé que les trois conventions de Paris, celles concernant la compétence en matière d'abordage , en matière pénale et en matière civile et celle concernant la saisie conservatoire des navires, soient ratifiées sans délai. A cette époque, M. Offerhaus, notre Président, MM. Martin Hill, Alten en Berlingieri se sont déclarés d'accord pour recommander auprès de leur gouvernement le ratification de cette convention.

Sans doute ne sont-ce là que des préliminaires qui ne résolvent pas la question dans son ensemble. Mais n'est-ce pas par de patients efforts répétés que l'unification du droit maritime se poursuit depuis un demi siècle ?

Il me semble que mon idée n'a pas le vent en poupe à la conférence puisque les rapporteurs ne sont pas de cet avis. Ce premier pas devrait cependant être acquis et je ne vois pas quel inconvénient il y aurait à demander au gouvernement belge de réunir une conférence diplomatique pour faire ratifier la convention sur la saisie conservatoire en matière d'abordage.

Il faut faire plus. L'intervention de M. Prizer nous a démontré, s'il en était besoin, l'importance de la possibilité d'obtenir pour le créancier hypothécaire le droit de saisie-arrêt et aussi de saisie-exécution. Les rapporteurs proposent que la Commission examine la possibilité d'une revision de la convention de 1926 sur les privilèges et hypothèques. Cette convention peut sans doute être améliorée, mais je crois qu'un grand pas aurait été fait si tous les pays l'avaient ratifiée. Nous parlons beaucoup au C.M.I. des conventions que nous avons adoptées antérieurement. Ne serait-il pas préférable avant tout de consolider les résultats acquis ? Si tous les pays avaient ratifié cette convention, il ne serait pas difficile d'étendre aux créanciers hypothécaires le droit de saisir-arrêter, déjà reconnu par la convention de Paris, aux créanciers à la suite d'abordage.

Néanmoins une Commission internationale, dont je demande la création, pourrait examiner, en vue de la saisie-arrêt, la convention de Bruxelles sur les hypothèques et privilèges et proposer des amendements, si nécessaire, pour obtenir l'accord général.

La question de l'extension du droit de saisie conservatoire est aussi liée — les rapporteurs l'ont dit — à celle de la limitation de responsabilité. La loi belge prévoit que lorsqu'une garantie a été donnée par le propriétaire

pour sa pleine responsabilité, elle profitera à tous les créanciers. Mais tant que la limite n'est pas la même dans tous les pays, le danger subsiste de voir le navire saisi dans plusieurs pays. Ce danger existe actuellement, il est réel, les cas sont malheureusement assez nombreux.

La délégation belge propose tout d'abord la ratification, dans le plus bref délai, de la convention de Paris sur la saisie-conservatoire en matière d'abordage. En second lieu, elle demande la constitution d'une commission internationale chargée d'étudier la possibilité d'étendre le droit de saisie-arrêt à d'autres créances que celles provenant d'un abordage. Il est évident que la Conférence doit être édifiée et par conséquent je ne vois comment ce travail pourrait être entrepris si vous ne nommez pas une commission internationale spécialement chargée de ce travail.

Doit-on limiter le droit d'investigation de cette commission internationale ? Il serait dangereux pour la conférence de le faire aujourd'hui ; il serait préférable que vous demandiez au bureau de la nommer. Sa compétence serait générale pour rechercher les moyens d'unifier le droit de saisir conservatoirement un navire. Qu'on laisse au Bureau Permanent le soin de rester en contact avec cette commission et de désigner les sujets qu'elle peut étudier ; c'est une question de contact journalier, ou tout au moins de contact périodique. Au moment où les études avanceront le Bureau permanent pourra aviser au mieux.

Pour terminer, je voudrais répondre aux questions A et B de M. Asser qui intéressent spécialement nos collègues hollandais et norvégiens. La difficulté est la suivante : Quand aux Pays-Bas la saisie doit-elle pratiquée contre l'« Operator » ? Je traduirai ce mot par « armateur gérant ». En Belgique, nous ne rencontrons jamais cette difficulté, car nous assignons le capitaine qui est le mandataire du propriétaire. Celui-ci sachant que ce risque peut survenir, peut se faire couvrir par ses assureurs contre une faute de l'operator ».

Je vois que M. Asser n'est pas d'accord, mais il me semble que cela ne nécessite pas de législation spéciale.

M. le Président — Je voudrais dire à M. Koelman que le texte final de la Conférence de Paris se trouve à la page 340 du compte-rendu de cette conférence. C'est bien cela, n'est-ce pas ? L'article premier se lit bien : « Tout créancier du propriétaire d'un navire en raison d'un abordage, pourra opérer la saisie conservatoire de ce navire, alors même qu'il serait prêt à partir. »

Il y a une petite nuance. Vous dites que vous voudriez charger une

nouvelle commission d'étendre le domaine de la convention de 1937 à toutes les créances. Je crois que vous aviez défendu d'abord l'autre système, à savoir laisser cette convention intacte et faire continuer le travail de la conférence diplomatique mais que vous vouliez trouver un moyen de charger une nouvelle commission d'adapter la convention de 1937 aux nouvelles idées développées par la Commission internationale. Je voudrais trouver le moyen de charger cette commission d'aviser la conférence diplomatique à ce sujet afin que ce soit celle-ci qui demande l'opinion actuelle du Comité Maritime International.

M. W. Koelman. — Je ne pense pas qu'il y ait contradiction. Le système que je préconisais était le suivant : « Ratifions la convention de 1937 telle qu'elle est, puis étudions en l'extention à d'autres matières, éventuellement en l'amendant. Mais je vois que ce n'est pas l'opinion du Bureau ni celle des rapporteurs. Ils ont peut-être raison en ce sens qu'il peut être assez difficile de demander à une conférence diplomatique de ratifier une convention qui sera peut-être modifiée peu de temps par après. C'est possible. Si telle est l'opinion de la majorité de cette assemblée ou de son Bureau, ma proposition pourrait être modifiée et il suffirait que la commission internationale voie le texte de 1937 et étudie la question de savoir s'il peut être amendé ou étendu. Mais alors il faudra demander que la conférence diplomatique ne se réunisse pas l'année prochaine.

M. Ant Franck. — Cela n'est pas possible.

M. Koelman. — C'est bien mon avis.

M. Franck. — Ce serait une idée malheureuse que de demander aujourd'hui au gouvernement belge d'écrire aux divers pays, avec lesquels il s'est mis en rapport en vue d'une conférence diplomatique, que rien n'est fait, et que le projet arrêté par le C.M.I. doit être considéré comme non avenu.

Je comprends très bien l'idée des rapporteurs qui ne désirent pas être liés, même par la convention de Paris; mais je pense que dans l'état actuel de la procédure il est tout à fait inutile de parler de la conférence diplomatique ou d'une modification du projet de Paris de 1937. C'est la commission qui examinera s'il convient d'y apporter des modifications, mais nous nous trouvons devant un fait accompli : à l'unanimité nous avons décidé en 1937 de renvoyer les projets de convention de Paris au gouvernement belge en le priant de convoquer la conférence diplomatique. Nous ne pouvons pas revenir sur cette décision.

M. Koelman. — Nous avons renouvelé notre invitation en 1947.

M. Franck. — Nous n'avons pas intérêt à revenir là-dessus pour le crédit même dont jouit le C.M.I. Je crois qu'au point de vue de la politique à suivre il vaut mieux laisser les choses en état et ne pas faire contremander la conférence diplomatique.

The President. — Does the Conference wish a translation by Mr. Koelman himself ?

Mr. Keating (U.S.A.) — May we have just a brief summary ?

Mr. W. Koelman (Antwerp). — I thought that the conclusion of the report was that an international Sub-Committee should be appointed, but as I heard from Mr. Miller, they ask for the opinion of the Conference about such a Sub-Committee. They also ask that this Commission would only examine the question of « saisie conservatoire » and not attachment. This is also the opinion of the Belgian delegation, but we think that it is absolutely necessary, if we want to make any progress in this matter, that an intenational sub-committee be appointed.

I have seen briefly outlined the Belgian law on these matters in the report of Mr. Van den Bosch, and I have replied verbally to the questionnaire. On the question whether it is desirable to have unification, we do not hesitate. Belgium thinks it is not only desirable but urgent. On which basis, it is difficulty to say at present, owing to the divergency between the Anglo-saxon and Continental systems, but we thought this should be investigated by an international sub-committee. Nevertheless, I think there is no reason why the Convention adopted in Paris and unanimously approved again in Antwerp in 1947, should not be submitted immediately to the Diplomatic Conference and ratified. Of course, that Convention was not very ambitious, it granted the right of arrest only to creditors by reason of collision ; but still it is better than nothing, and I see in Article IV, in the beginning, a compromise between the Anglo-American and Continental systems, because there it reads : « Whereas in the Continental system an arrest can be made..... but on the other hand, if it is not justified you have to pay damages ». We say here, if the arrest was unjustified but bona fide, the damages would be limited to the cost of guarantee or security.

Mr. J. T. Asser. — That point was left to the respective national laws.

Mr. Koelman. — I am very sorry then. Nevertheless, that is a question which could be examined by the International Sub-Committee.

Mr. Miller. — Quite.

Mr. Koelman. — Whereas if the arrest is not justified, if it is made mala

fide, then all damages arising for the shipowner through the arrest are to be paid by the arrestor. Of course, this was only a preliminary step but, nevertheless, I think that is better than nothing. I quite agree that now we have to go further ; the very interesting speech of Mr. Prizer two days ago has shown, — if we did not know it already, — the importance of the mortgagee having the right also to make an arrest.

In conclusion, I proposed that the Convention of Paris, 1937, should be ratified as soon as possible and that this Conference should decide the constitution of an International Sub-Committee to study the extension of the right of arrest to other creditors than those for collision.

We would like this Conference to realize in principle that it is highly desirable that the law should be unified, and we do not want to limit in any way the scope of activity of that Sub-Committee. I do not think that it would be practical for this Conference to say to the Commission, « You go and investigate the way to extend the right of arrest, but do not touch the question of mortgages » or, « Do not touch the question of the limitation of liability ». I think the Sub-Committee should have the full powers of investigation, but will, of course, have to keep in touch with the Permanent Bureau who will give advice as to the most practical way of working and give directions where needed.

That is a summary of whet I said in French.

The President. — Ladies and Gentlemen, I should prefer not to discuss further this incidental point now ; Mr. Miller and Mr. Asser can think it over.

La parole est à M. de Grandmaison.

M. Jean de Grandmaison (Paris). — Messieurs, la question de la saisie conservatoire des navires est d'une grande importance pratique. Elle se pose chaque jour, dans tous les ports du monde, et se trouve résolue de façon différente suivant la loi en vigueur au port de la saisie. Il en résulte de nombreuses difficultés et, depuis longtemps déjà, tous les intéressés à l'aventure maritime ont éprouvé le besoin d'adopter une règle générale connue de tous, sanctionnée par une Convention Internationale, et qui puisse préciser de façon claire pour chacun ses droits et ses risques. Il existe malheureusement de profondes divergences sur cette matière entre les législations continentales et les législations anglo-saxonnes et jusqu'à présent, la question de la saisie conservatoire est restée ouverte et sans solution.

Cependant, fidèle à sa méthode empirique et à son expérience, le Co-

mité Maritime International a déjà fait un effort pratique, et sans pouvoir régler, « in globo », la question de la saisie conservatoire des navires, il a cependant discuté, mis au point et voté en 1937, à la Conférence de Paris, le texte d'une Convention sur la saisie conservatoire en cas d'abordage.

Vous vous rappelez que ce texte, voté en 1937, à Paris fut repris en 1947 à la Conférence d'Anvers, qui décida de l'envoyer, sans modifications, à la Conférence Diplomatique et de charger le Bureau Permanent de faire les démarches appropriées.

Il restait donc à traiter de la question générale de la saisie conservatoire des navires, pour tous autres cas que celui d'abordage.

L'intérêt de cette question n'échappe à personne, non plus du reste que les difficultés que soulève son règlement dans le cadre d'une convention internationale.

En effet, c'est une de ces questions sur lesquelles les nations maritimes du monde se divisent profondément, sans qu'à première vue il semble facile de trouver un terrain d'entente ou une formule heureuse qui rallie l'assentiment des uns et des autres.

L'Association Française présente cependant à la Conférence un rapport suggèrant une formule de compromis qui me semble excellente et propre à rallier tous les suffrages. Je vais vous l'exposer en quelques mots.

La formule législative française, et généralement la formule continentale est la suivante : la saisie conservatoire est celle qui peut être autorisée par le Juge, alors même que le créancier n'a pas de titre de créance résultant d'un jugement ou d'une reconnaissance de dette ou de responsabilité. Il suffit que la créance soit considérée par le Juge comme vraisemblable, pour qu'il puisse autoriser la saisie conservatoire sans qu'il soit besoin qu'il s'agisse d'une créance maritime ou non, ni surtout qu'il s'agisse d'une créance privilégiée.

Il faut, d'autre part, que le créancier vraisemblable ait un intérêt important à s'assurer un gage et à empêcher son débiteur de faire disparaître les éléments saisissables de son patrimoine.

En ce cas, et lorsque ces deux conditions se trouvent remplies, le Juge peut autoriser la saisie conservatoire, quelle que soit la nature de la créance civile ou commerciale, sans qu'il soit nécessaire qu'il s'agisse d'une créance maritime, ni a fortiori que ce soit une créance maritime trouvant

sa cause dans l'exploitation du navire à saisir. Voilà quel est notre droit sur ce point.

En face de ce système continental, les législations anglo-saxonnes ont limité de façon étroite l'exercice du droit de saisir conservatoirement les navires. En Ecosse et aux Etats-Unis, dit-on, la saisie n'est autorisée que pour garantir une créance de nature maritime ; en Angleterre, la saisie du navire n'est autorisée que pour garantir une dette maritime qui doit, en outre, trouver sa cause dans l'exploitation du navire saisi.

Nous sommes ici en présence de deux systèmes très différents, et il ne semble pas possible de trouver la formule d'entente nécessaire, à moins comme l'a souligné M. Cyril Miller dans son rapport, d'une réforme des lois continentales ou des lois anglo-saxonnes, les unes restreignant l'exercice du droit de saisie, les autres élargissant au contraire l'exercice de ce droit.

Ce que nous proposons comme compromis, c'est d'adopter comme règle générale la formule législative américaine et écossaise : le droit de saisir conservatoirement un navire ne pourrait être accordé par le Juge qu'au cas où il s'agirait d'une créance maritime vraisemblable, mais il ne serait pas nécessaire qu'il s'agisse d'une créance née de l'exploitation du navire saisi ; toute créance maritime vraisemblable permettrait de saisir conservatoirement un navire quelconque appartenant à l'armateur débiteur.

Cette formule de compromis entre les lois continentales et la loi anglaise apparaît heureuse, et il semble que l'accord devrait se faire pour l'adopter. En effet, le système continental est trop absolu : il considère le navire comme un élément mobilier quelconque du patrimoine du débiteur, sans attacher la moindre importance à son caractère si particulier qui en fait nécessairement l'un des éléments associés dans l'aventure maritime, solidaire de ses associés.

On ne voit pas quel inconvénient majeur il y aurait à prendre en considération ce caractère spécial du navire pour décider qu'en matière de saisie conservatoire, c'est-à-dire lorsque la créance n'est que vraisemblable, et non pas certaine, on ne pourra saisir conservatoirement que si la créance est maritime. Ainsi, les créanciers maritimes trouveraient comme gage tous les navires de leur débiteur — ce qui est juste. Quant à ceux qui représentent des intérêts associés dans l'aventure maritime et qui peuvent éventuellement souffrir de la saisie, ils ne peuvent s'étonner qu'un navire puisse être le gage de créances maritimes, et ils sont eux-

mêmes les bénéficiaires éventuels de ce droit de saisie conservatoire. C'est pourquoi l'Association Française a conclu qu'elle verrait sans inconvénient refuser aux créanciers non maritimes le droit de saisir conservatoirement le navire.

Les créanciers non maritimes pourront, bien évidemment, saisir un navire lorsqu'ils justifieront d'une créance certaine, soit par la voie de la saisie-arrêt, ou par celle de la saisie-exécution lorsqu'ils auront obtenu un jugement en leur faveur.

Mais ces créanciers non maritimes, dont la créance est sans rapport avec l'exploitation de la flotte de leur débiteur et dont la créance n'est que vraisemblable, devront se contenter d'exercer la saisie conservatoire sur les éléments du patrimoine terrestre de leur débiteur.

Mais si l'on demande aux législations continentales cette concession, et de s'aligner sur les lois américaine et écossaise, par contre il nous semble raisonnable de demander à nos amis anglais de consentir, de leur côté, une concession en admettant que le créancier maritime soit autorisé à pratiquer une saisie conservatoire sur tout navire de son débiteur, même si la créance n'a pas pour cause l'exploitation de ce même navire. Il faut rappeler en effet que la saisie conservatoire présente ce puissant intérêt pour le créancier de pouvoir obtenir un gage — ou une caution qui s'y substitue — d'un débiteur souvent étranger et dont les navires sont, en pratique, les seuls biens qui puissent être utilement saisis. Or il n'est pas toujours possible à un créancier maritime de saisir le navire dans l'exploitation duquel sa créance trouve sa cause ; ce navire a pu partir avant toute saisie, il peut avoir péri ; le créancier peut être domicilié très loin du port où touche le navire qu'il faudrait saisir.

Pour quelles raisons refuserait-on à ce créancier le droit de saisir conservatoirement un autre navire de son débiteur ? C'est peut-être pour lui l'unique moyen de se faire payer ultérieurement. Il est normal, au surplus, que tout le patrimoine maritime du débiteur soit affecté à la garantie de toutes ses dettes maritimes.

Enfin les chargeurs de marchandises sur un navire ne peuvent s'étonner que ce navire puisse être saisi conservatoirement pour toute dette maritime de l'armateur, même étrangère à l'exploitation de ce navire, puisque cette faculté de saisie constitue leur propre garantie et qu'ils en sont les bénéficiaires les plus fréquents.

Il restera à préciser ce qu'est exactement une créance maritime ; mais

nous pouvons provisoirement laisser de côté cette question et nous en tenir tout au moins pour l'instant à la question principale.

Nous pensons donc que c'est cette règle que le Comité Maritime International devrait adopter et que le texte d'une Convention internationale devrait être préparé par une Commission de rédaction, qui le présenterait au vote de notre prochaine Conférence.

Mr. President, I shall briefly translate my remarks in English.

I said this question of arrest of ships was a most important one, and that it is capital to achieve uniformity, in the laws and regulations on this matter throughout the world ; but the difficulty, as you know, lies in the great differences between the continental and Anglo-Saxon legislations. On the continent, the Judge has the power to authorize the arrest of ships for the guarantee of any debt of the shipowner. That may be a maritime or non-maritime debt. In the United States and Scotland, we are told, a ship cannot be arrested if the debt is not a maritime debt, but if the debt is a maritime one, any ship belonging to the same owner may be arrested. In England, the debt must be a maritime one, and in addition, the debt must find its cause in the operation of the ship arrested.

If we want to achieve uniformity on this question, it seems to me that a compromise must be found between the drastic legislation of the continent and that of England.

The French delegation is of opinion that such compromise can be arrived at by adopting the United States and Scottish formula. The French delegation is prepared to admit limiting the possibility of arrest to the only case where the debt is a maritime debt. It seems reasonable to do so in order to protect, as far as possible, the other joint interests engaged in the ship. On the other hand, we suggest that our English friends make a similar sacrifice in admitting that, in case of a maritime debt, every ship belonging to the debtor may be arrested, even if the debt does not find its cause in the operation of the ship arrested.

The ship in whose operation the debt has arisen, may be lost, she may have left the port and if you refuse to the creditor the right to arrest another ship of the debtor, he may lose all hope to get paid. Therefore, the compromise seems to me to be a very fair one. In consequence we move that continental and the British delegations should adopt the United States' and Scotch formula as a basis for the Convention contemplated, and we suggest that a Sub-Committee should be appointed to prepare

a draft convention which can be discussed at the next Conference of the International Maritime Committee.

The Chairman. — Now I call on Mr. Rygh.

Mr. Arne Rygh (Norway). — Mr. President, Ladies and Gentlemen, I have come to this Conference at the request of the Norwegian Shipowners Association, and I am speaking as a member of the Standing Legal Committee of that Association.

The Draft Convention prepared in Paris in 1937 has not met with much enthusiasm. I am glad of that. I did not oppose it myself at that time because I thought it harmless ; I regretted it afterwards, especially when I heard what Belgium had to say, namely to suggest that the Conference should ask the Permanant Bureau to appoint a sub-Committee with the task of extending the principles laid down in that Convention to other topics.

What I do not like in the Paris Draft Convention is the responsibility of the arrestor. I think that the English system restricting the right to arrest a ship for claims pertinent to the ship in question is sound in itself. I should not even wish any concessions from the British side with regard to that.

The concessions I should wish from the English side are of quite another nature, on the point where I think that English law is not as good as the continental one : that is with regard to the responsibility of an arrestor who makes an unjustified arrest. Some of the previous speakers have used a wrong word with regard to the arrestor. They have called him the creditor. At the stage where he makes the arrest it is not yet proved that he is the creditor, and very often the final judgment proves that he had nothing to claim at all ; he loses his case. In that event, the arrestor has trespassed upon the property of another man and ought to bear all the financial consequences of it ; the compensation due by him ought not to be restricted to the commission paid for bail when the ship is replaced by a guarantee. It must be kept in mind that arrest of a ship is, in itself, an evil thing : it immobilizes the ship and that injures not only the interests of the shipowner but it may injure the sender or the receiver of the cargo and perhaps more seriously, the cargo owner whose calculations are upset by the delay.

It may be true that in most cases, arrest is met with by a guarantee, so that the ship is released pretty soon ; but even so, there will always be a delay, and in these times where one has to ask for permission from

a National Bank or other authority to obtain foreign currency for being allowed to meet liabilities in foreign countries, that may mean the delay of the ship and may cost much money. But it has never been true that in all cases the underwriter will furnish the guarantee for the shipowner. There have always been cases where ships have been arrested for claims falling outside the scope of the underwriters and the number of such cases is increasing. Hitherto, they have possibly chiefly occurred in the fruit trade, but I have also met with them in the oil trade.

I agree entirely with the suggestion that this subject should be studied further by a new sub-Committee ; but I should wish that the compromise between continental and English law should be made by that Committee in the following way. From the British law we take the provision that arrest can only be sought for claims relating to the ship on which arrest is sought. From the continental law we shall take over the provision that the arrestor shall bear the full financial consequences of an unjustified arrest. That will be a Convention corresponding to the needs not only of shipping but also to the needs of commerce as a whole. If time should not yet be ripe for such a Convention, I would rather have no convention at all than a Convention built upon unsound and obsolete principles, and I feel convinced that the views I have expressed here will prevail sooner or later ; it will only be a question of time. A Convention built upon unsound principles may bar development in the right direction.

Mr. A. Loeff (Netherlands). — Mr. Chairman, Ladies and Gentlemen, if possible I should like to establish a record, namely that of making the shortest speech of the Conference, and I think I can do so. We fully agree with what Mr. de Grandmaison said ; we think if we want to come to a Convention, it certainly has to be a compromise and we think it is a compromise on the matters suggested by M. de Grandmaison, only in this way would it be possible to arrive at a solution in this matter. Therefore we fully agree, but there are several intricate matters in this question. I personally think that it will be very difficult to fit in the results of such a Convention to our national law. But that is a thing for national lawyers and I do not think the Comité Martime International ought to be concerned with that, but these things can be dealt with by the Sub-Committee to which it is proposed to refer this matter.

Sir Gonne Pilcher (London). — May I say a very few words of a general character ? May I also add that the observations I make are personal

to myself and I do not pretend to represent the British delegation in any way.

In the first instance I strongly support the view expresed by Mr. Ant. Franck, that it would be undesirable at this stage to make any alteration at all, or to withdraw from the Diplomatic Conference the draft convention which was submitted to them two years ago, in 1947.

Now the other thing that I want to say — and I say it in support of Maître de Grandmaison who took out of my mouth many of the words which I had intended to express to you — is that just as in the matter of arrest for foreign mortgages in the matter of the power to arrest a ship in the same ownership in respect of a maritime debt, Great-Britain now seems to be out of step with all the continental countries and with the Americans. I support, if I may, the proposal to remit the study of the whole of this question to an international Sub-Committee, and I venture also to say that it seems to me that a complete code of the matters in respect of which a ship may be arrested and the Maritime Mortgages and Liens Convention are very much allied.

The situation in fact is that in most maritime nations of the world it is possible to arrest a ship in respect of all the « privilèges » which are set out in the Mortgages and Liens Convention, and it seems to me, if I may humbly say so, that the International Commission might well consider the whole question of arrest in conjunction with the Maritime Mortgages and Liens Convention, because these two things seem to be pretty clear: whilst Great-Britain has had some difficulties with which we are all familiar over adopting and putting into force the Maritime Mortgages and Liens Convention, it has been I think largely due to one reason, namely that the Convention alters to some extent the priorities amongst creditors which at present exist in English law. In particular, under English law, a mortgage dates from the date of the mortgage, whereas for a necessaries man who arrests the ship or material applying to the ship, his claim dates fom the day when he arrests the ship, so that in practice a mortgage is always preferred to a claim for necessaries in our law. Under the Convention, as you know, a mortgage is deferred to such a claim. That is one of the difficulties we have to consider. But the essence of the unification of maritime law consists, as we all know, in compromise, and if I may say so as my own personal view, I should like most heartily to support what Mr. de Grandmaison said. It seems to me that Great-Britain at the moment, finding herself the only maritime nation in the world,

which does not permit the seizure of another ship in the same ownership in respect of a maritime debt, ought very seriously to consider whether she would not make a concession in that respect in return, in the manner which Maitre de Grandmaison mentioned, namely, that the right or arrest should be confined to maritime debts arising out of the particular maritime adventure, and should not be extended to debts which have nothing whatever to do with it.

Now these are my own personal views ; as Vice-President of the Committee I express them. I have not consulted the members of the British delegation, but they seem to me to be in harmony with the spirit which has prevailed in this Committee, and I hope that the International Sub-Committee, in considering this whole matter, may possibly come to the conclusion that some such compromise holds out hope for the future. If they found it possible to combine a consideration not only of the matters in respect of which it was proper to permit the arrest of a ship but also of the priorities amongst the different creditors when the vessel was arrested and when possibly released and a guarantee put up, then it seems to me that the Sub-Committee would achieve very valuable work. The two matters are so allied that it may well be that they might meet together.

Now if we can produce a document of that kind for consideration possibly at our next meeting, then I think we would really have accomplished something of value.

Mr. Edvin Alten (Oslo). — The Norwegian Association has not replied to the questionnaire or to the Secretaries in regard to arrest of ships, because we have not thought the Resolution taken by the Antwerp Conference in 1947 should be repeated. It was to submit the Paris draft to the Belgian Government with a request to submit it to the Diplomatic Conference. This draft was a compromise, but the result of long discussions at the Conference and after the Conference, and it was impossible to come to an agreement on a wider basis. I therefore perfectly agree with the Belgian delegation that it is desirable to have this Convention adopted by a Diplomatic Conference and signed as soon as possible. But I must admit that I will not advise the Norwegian Government to ratify it until we see whether it will be ratified by the United Kingdom and eventually the United States.

Then I believe that it would be premature now to appoint an International sub-Committee to study the question of a general convention on Arrest. There is, as has been pointed out by Maitre de Grandmaison and

by Sir Gonne Pilcher, a very close connection between the Draft-Convention on Arrest and the Convention on Mortgages and Liens. Therefore I should think it would be wise not to appoint a Sub-Committee until this Convention on Mortgages and Liens has been ratified by the United Kingdom. If so, this commission would have a basis for further discussion. If it begins now and makes proposals, one cannot know whether they have any chance whatever of being accepted, but when the Paris draft Convention and the Mortgages Convention has been ratified by the United Kingdom and eventually also by the United States, then the Sub-Committee would have to examine whether the continental system should be altered in this direction : that arrest of ships should only be admitted for maritime claims concerning the ship to be arrested and eventually also combined with claims secured by a mortgage or a maritime lien, or whether there should be a more general faculty of arresting other ships not concerned with the claim. I will not express an opinion on this question now ; I think it is, as I said, premature ; but as I see it, it would be a great advantage to shipping when ships in foreign countries were arrested only for maritime claims. The idea was expressed also by Mr. Rygh. It would be a great advantage if our ships in foreign harbours were protected against arrest for claims that are not connected with the ship and have no real security in the ship. Such a convention will not in any way interfere with the national laws as to its domestic ships ; we could retain whichever system we would like. I hope that the Diplomatic Conference will be convened.

The Chairman. — I call on Mr. Keating.

Mr. Cletus Keating (U.S.A.). — Mr. President, Gentlemen. I think the hour is pretty late for me to try and explain the law of the United States on the subject. I merely wish to say that quite naturally there has been no accurate statement made to the Conference on the subject and my learned friend, Mr. Miller's statement, while excellent, is not quite correct. The excellency consists in those parts which are correct.

From what has been said, however, I think it clear that there are many substantive differences in all the laws and a maze of possible difficulties. The position of the American delegation is that we regard the whole question as one of very great importance, of equal importance to the York/Antwerp Rules which we have just adopted. We think the matter should be studied by an international commission, where all the views can be collected in the same way as the British delegation collected the different

views on the York/Antwerp Rules. It is amazing sometimes when you really collect those differences on paper and have time to study them instead of listening to speeches, some of which you think you agree with and when you go home you think « well I wish I had thought of that ». We have a saying in America « do not try to decide anything in a Town Hall meeting ». So our suggestion, respectfully laid before the Conference, is that an International Sub-Committee be appointed with full powers to consider the whole subject unhampered by any instructions from the Conference.

Mr. W. Koelman (Antwerp). — Mr. Chairman, Gentlemen. I only want to add that in the name of the Belgian Delegation, we heartily support the spirit of compromise put forward by M. de Grandmaison for the French delegation. We do not think this should be embodied in a resolution but I think it should be said in Conference just as Sir Gonne Pilcher has said.

M. le Président. — La parole est à M. Berlingieri.

M. Giorgio Berlingieri (Gênes). — Mesdames, messieurs, alors qu'il pourrait paraître à première vue que la matière de la saisie conservatoire relève seulement de la procédure civile, j'ai cependant des doutes. A la lecture des rapports préliminaires et à la suite des interventions des orateurs qui m'ont précédé, il semble que c'est plutôt une question de droit substantiel que de droit de procédure. C'est pour cela que je crains qu'un compromis ne puisse se réaliser entre les différents systèmes. Je ne crois pas en effet que l'Italie puisse se rallier à l'idée de modifier un principe de droit civil qui est à la base même de la matière des obligations, à savoir que le débiteur répond sur tous ses biens pour l'accomplisement de ses obligations. En d'autres termes ; le navire peut-il être saisi en garantie d'une créance ? D'après notre loi nationale je réponds : oui ; tous les biens d'un débiteur sont le gage du créancier. On demande ensuite : « dans l'hypothèse d'un jugement obtenu en faveur d'un demandeur, quels biens peuvent être saisis dans le but d'exécuter le jugement ? » Nous répondons ; tous les biens du débiteur, même le navire. Mais si nous limitons la saisie d'un navire au créancier maritime, nous limitons avec cela le droit du créancier non maritime et je ne sais pas jusqu'à quel point la procédure se mêle avec le droit substantiel, parce qu'il est bien vrai que la droit de saisie relève de la procédure, mais il touche nécessairement au droit substantiel parce que si nous ne pouvons pas saisir le navire, nous le soustrayons au droit du créancier. Je crains

qu'on en vienne à diminuer la force du principe que tout le patrimoine du débiteur doit être affecté comme gage du créeancier. Je crains donc qu'un compromis en cette matière soit extrêment difficile à trouver.

Pour toutes les autres questions, je puis m'en remettre au rapport que j'ai fait sur la question. J'espère qu'il pourra vous être distribué avant la fin des travaux de la conférence. Je voudrais seulement souligner un point. D'après la loi italienne, les privilèges sont réglés comme dans la convention, avec cette seule différence qu'on a ajouté, après le n° 2, « la créance de l'Etat pour le retour et pour la nourriture de l'équipage ». De cette façon la numérotation est différente, mais cela ne nous a pas empêchés d'introduire dans notre Code de navigation tous les privilèges reconnus par la convention. En ce qui concerne l'ordre des privilèges maritimes et civils, question très importante, d'après la loi italienne les privilèges maritimes et hypothèques prennent rang avant n'importe quel autre privilège spécial ou général du Code civil, avec cette conséquence peut-être curieuse, que puisque le réparateur de navire est privilégié sur le navire, d'après le Code civil ce privilège vient après l'hypothèque et que pour nous on ne peut considérer une hypothèque que sous la forme contractuelle. Je crois cependant qu'il est très opportun de trouver un compromis malgré les difficultés. C'est la raison pour laquelle j'appuie la désignation d'une commission à laquelle sera déférée toute la question de la saisie conservatoire.

M. le Président. — M. Berlingieri croit-il que tous les pays vont admettre toutes les créances comme créances maritimes ?

Mr. Algot Bagge (Stockholm). — Well Gentlemen we are really in a dilemma. You know this subject was taken up earlier than 1925. After twelve years work we arrived at that Convention of 1937, and now it would appear that there is no one here who is really satisfied with that draft-Convention. But on the other hand this draft-Convention has been handed over to the Belgian Government with the request that it be put before a Diplomatic Conference. Now if we appoint a Sub-Committee it means that we are not really satisfied at all with the draft Convention. It is coming before the Diplomatic Conference and the people there, of course, know that we appointed a new Sub-Committee for the whole subject of arrest ; they must draw the conclusion that the International Maritime Committee is not satisfied with their former work. Will that not make our position at the Diplomatic Conference a little feeble ? I really cannot see how to get out of that dilemma, but I should like to ask Mr. Franck

if he can give us some advice on that point. On one side I quite appreciate that it is difficult to withdraw from the Belgian Government our Paris draft Convention ; on the other hand we do not want to have the Diplomatic Convention believing that we put before them a draft Convention with which we are not at all satisfied at the present moment. How are we to combine ? We are riding two horses and that is a little difficult.

Mr. Ant. Franck (Antwerp). — If I may answer, Mr. President, what we could do would be to let the Sub-Committee consider whether some modification should be made to the draft-Convention of 1937 ; there is no objection to that. But in the meantime, let matters stand as they are ; let the Convention as it is be submitted at the Diplomatic Conference. Do not forget the Diplomatic Conference is not bound to approve the Convention, it can modify or change the draftConvention if it deems it necessary, and if the Sub-Committee comes to the conclusion that on certain points the draft should be altered, these conclusions will be transmitted to the Diplomatic Conference. Also when the Diplomatic Conference considers the draft of 1937, they will see whether it is necessary to amend it or not. If we do anything else I can only repeat that we are ruining our repute.

Mr. Bagge (Stockholm). — Then I suppose it will be a good thing if this Sub-Committee — if it is going to be appointed — begin their work as soon as possible because, as M. Lilar has said, the Diplomatic Conference will be called for 1950. Then, of course, the questionnaire, which the Belgian Government is going to put out, can be drawn up in co-operation with the Committee and in this way perhaps the points of view of the Committee can be considered in this questionnaire. Also the alterations we wish here and especially the compromise proposed by Mtre de Grandmaison supported by Sir Gonne Pilcher might be considered by the Diplomatic Conference and perhaps become the result of their labours. Thank you.

The Chairman. — The last speaker is Colonel Beazley.

Colonel Beazley (London). — Mr. President, Ladies and Gentlemen. I am only going to detain you for one minute, but I want to examine a point. Whilst I am entirely in agreement with Mr. Keating that this question should be submitted to the International Sub-Committee without any direction as to how it is to carry out its task, I support it without prejudice to any view which British shipowners may wish to take in the matter.

The Chairman. — Ladies and Gentlemen. These who have reported on

this question have worded a resolution on this subject. You see that this resolution has a very wide scope. Although we all think that the Diplomatic Conference of 1950 ought to deal with the subject of arrest of ships in the matter of collision, nevertheless nothing about that Convention of 1937 of Paris should be said in the text of the resolution. Further, the resolution contains a recommendation on the subject of arrest. But because there are some countries who have urged that the matter of responsible owner or operator should be dealt with, it has been taken into account ; so the resolution is rather long, but I think that is no harm.

« The Conference resolves to request the Permanent Bureau to appoint » an International Commission and instruct this Commission to study all » problems directly or indirectly appertaining to, or connected with, the » international unification of the whole field of the law of arrest of ships. » To report thereon in good time before the next Conference of the Co- » mité Maritime International. And if possible to submit a draft Conven- » tion including » — and now follows something on the question of operating and ownership — « including, but without prejudice to the generality » of these terms of reference, an examination of the question whether a » distinction between the legal owner and the operator or the owner of » the ships as contained in the existing legislation of some countries, calls » for international agreement, and to report thereon to the next confe- » rence of the Comite Maritime International. The Committee having a » free hand to consider and make such recommendation as they think » proper ».

May I ask the Secretariat to translate that into French ?

M. Carlo van den Bosch. — Voici la traduction en français :

« La Conférence décide d'inviter le Bureau Permanent à instituer une » commission internationale, chargée de l'étude de tous les problèmes » intéressant directement ou indirectement l'unification internationale de » toute la matière des législations sur la saisie conservatoire des navires, » de faire un rapport en temps utile avant la prochaine Conférence du » Comité Maritime International. Et, si possible, de proposer un avant- » projet de convention comprenant — mais sans préjudice du caractère » général de ces instructions — un examen de la question de savoir s'il y a » lieu de règler par une convention internationale la distinction entre le » propriétaire légal du navire et l'armateur-exploitant, telle qu'elle est » faite par la législation de certains pays et de faire également rapport à » ce sujet à la prochaine Conférence du Comité Maritime International.

» Cette commission aura toute liberté d'examiner et de faire telles recom-
» mandations qu'elle jugera utiles. »

The Chairman. — Do you all understand this translation ? It is provisional.

C'est un texte provisoire ; mais les Français disent que c'est le provisoire qui dure.

I would ask now whether any delegation has to make any remarks or suggestions.

Ya-t-il encore d'autres observations à faire sur ce texte ?

Mr. Ant Franck (Antwerp). — The only suggestion I have to make is on a question of form. The resolution is rather long. As it gives very extensive powers to the Sub-Committee I consider it quite useless to make a special reference to the difficulty of deciding whether an action can be brought or an arrest can be made against the legal owner or against the managing owner.

The President. — Well, I think it is for that very reason that we inserted in the Resolution the words : « but without prejudice to the generality of the terms of reference. » However, I would especially ask the Dutch and the Norwegian members whether they desire to maintain the references to this question.

Mr. J. T. Asser (Amsterdam). — It seems to me that the questions are so closely connected that we say : « to study all problems directly or indirectly appartaining to or connected with the arrest of ships ». Therefore, if the Conference wishes that the international Sub-Committee consider the second question, I think it should be mentioned in the Resolution.

Sir Leslie Scott (Great-Britain). — I do not think it matters in the least whether it is mentioned or not ; the result will be exactly the same ; it is obviously the same. I was the person who suggested the additional words, « without prejudice... » etc. to « terms of reference », in order to prevent misunderstanding ; but in view of this discussion, it is quite obvious that the Chairman of the Sub-Committee would decide whether that subject was within the terms of reference.

The President. — Does the Netherlands delegation want a vote ?

Mr. Loeff. — I do not think so Mr. President.

The President. — I will read again the resolution : « The Conference resolves to request the Bureau Permanent to appoint an International Commission and instructs this Commission to study all problems directly

or indirectly appertaining to, or connected with, the international unification of the whole field of the law of arrest of ships ; to report thereon in good time before the next Conference of the International Maritime Committee and, if possible, to submit a draft convention ; the Commission having a free hand to consider and make such recommendations as it thinks proper.

Do you all agree ? (*Agreed unanimously*). Then this Resolution is adopted.

As to members of the Sub-Committee, I repeat that I submit that the Bureau Permenant appoint the members thereof and communicate the result this afternoon.

Now I only want to ask whether there is any delegation wishing to make a suggestion as to this ? *(No)*. Do you leave it to the Bureau Permanent ? *(Agreed)*.

Thank you.

Well, Gentlemen, we are ten minutes late, in fact, in our discussion on this subject, and there is no time left to begin with Article 10, so I shall see you all again at 2.30.

Mr. Alten (Oslo). — I do not oppose the resolution ; but is it understood that this does not alter in any way the opinions expressed as to submitting the draft-convention to the Diplomatic Conference ?

The President. — Yes.

La séance est levée à midi quarante.
The meeting adjourned at 12,40 p.m

VENDREDI, 23 SEPTEMBRE 1949

SEANCE DE L'APRES-MIDI

FRIDAY, SEPTEMBER 23rd, 1949

AFTERNOON SESSION.

La séance est ouverte à 14.30 heures, sous la présidence de M. Offerhaus.

The session opened at 2.30 p.m., Professor J. Offerhaus in the Chair.

SAISIE CONSERVATOIRE DES NAVIRES
(continuation de la discussion)

PROVISIONAL ARREST OF SHIPS
Discussion continued

The President. — Ladies and Gentlemen, I will now read the text of the Resolution which was adopted this morning on the question of Arrest of ships, because we have accepted the English text, and we had accepted provisionally the French text, but now the definite French version is before us :

« La Conférence décide d'inviter le Bureau Permanent à nommer une » Commission internationale et de donner mission à cette commission » d'étudier tous les problèmes directement ou indirectement relatifs ou liés » à l'unification internationale de toute la matière de la législation sur la » saisie conservatoire des navires ; de faire rapport en temps utile avant » la prochaine Conférence du Comité Maritime International et, si possi- » ble, de présenter un projet de convention. La Commission aura toute » liberté d'examiner et de présenter telles recommandations qu'elle esti- » mera opportunes. »

« The Conference resolves to request the Bureau Permanent to appoint an International Commission and instruct this Commission to study all problems directly or indirectly appertaining to, or connected with, the international unification of the whole field of the law on arrest of ships, to

report thereon in good time before the next Conference of the I.M.C. and, if possible, to submit a draft-convention.

The rest of the resolution has been made into a separate sentence ; it should read : « The Commission has a free hand to consider and make such recommandations as it thinks proper.

Mr. Ant. Franck. — Mr. President, should we not say « Sub-Committee » instead of « Commission » ? *(Agreed)*.

The President. — May I take it that the Resolution so worded is definitely accepted ? *(Agreed unanimously)*.

At this morning's session, the Permanent Bureau was requested to appoint the members of the Sub-Commitee on Arrest of Ships. The Bureau proposes that first of all be nominated as President of this Sub-Committee : **Mr. Antoine Franck,** first on account of his prominent qualities, which we all know, and secondly because he may be the permanent representative of the Bureau on that Sub-Committee. As you are aware, the Permanent Bureau, as such, participates in all Sub-committees and commissions.

2° **Mr. J. T. Asser,** as secretary.

3° As members of the Sub-Committee : **Mr. Cyril Miller** (Great-Britain) **Mr. J. de Grandmaison** (France), **Mr. Giorgio Berlingieri** (Italy) ; **Mr. Werner Koelman** (Belgium), **Mr. Lindahl** (Sweden), **Mr. Per Gram** (Norway), **Mr. N. V. Boeg** (Denmark), and last but not least, because I did not know the name until now, **Mr. George de Forest Lord** (United States).

Mr. Boeg has asked whether it would not be possible to have a substitute eventually ; I think that the proposal must have a wider scope so that all members of a Sub-committee, who are prevented, have the right to sent a delegate as substitute for them in the Sub-committee. Do you all agree ? *(Agreed)*. Then that has been adopted also.

I think I must now come back to the question of the Committee of the Arrest of ships ; I think the opinion of the Permanent Bureau is that **Mr. Asser** will be member and secretary, and I may add that if it appears to be useful for the whole state of things that the Permanent Bureau should add one or more other delegates as members , the Permanent Bureau has a right to do so. I think there would be no objection to that, but I formally second this as to the list of members.

Is there any objection on the side of the Netherlands' delegation that

Mr. Asser be member and secretary ? *(General assent)*. Thank you.

Well, we shall go on with the third item, that is the text of the Resolution on mortgages.

You all have before you the text of the Resolution which we adopted on Wednesday morning.

« Sous réserve des dispositions exceptionnelles des lois nationales qui interdiraient la saisie d'un navire pendant le cours d'un voyage, la Conférence adopte, en principe, la résolution suivante proposée par la délégation américaine :

« Il est décidé que la Conférence approuve le principe qu'un créancier ayant sur un navire un ,,mortgage'' ou une hypothèque valables selon la loi de son pavillon devrait pouvoir demander à toute juridiction dans le ressort de laquelle le navire se trouverait, la reconnaissance de son droit, et à cet effet, être autorisé à y saisir ou arrêter le navire jusqu'à ce qu'une garantie adéquate ait été fournie ou que la question ait été tranchée par la juridiction saisie.

« Afin de donner effet à la présente résolution, les Associations des Etats dont les lois n'accordent pas ces droits, sont priées de demander instamment à leurs Gouvernements respectifs, une modification des lois en vigueur pour atteindre ce but. »

« et afin d'assurer la protection la

«Under reservation of exceptional provisions of municipal laws prohibiting the arrest of a ship during the course of a voyage, the Conference agrees in principle to the following resolution proposed by the American Delegation :

« It is resolved that the Conference approves the principle that a mortgage or « hypothèque » valid by the law of her flag shall carry the right to enforce the security in any jurisdiction in which the vessel may be found and for that purpose to have the vessel arrested or otherwise detained within such jurisdiction until adequate security has been lodged or the Court has adjudicated on the matter.

« In order to implement this resolution, National Associations, whose municipal law does not provide the above remedies, are respectfully requested to urge upon their Governments that the necessary changes be effected in their law in order to achieve this purpose ».

« and, in order to ensure the most

plus efficace des créanciers qui ont ,,mortgage'' ou hypothèque sur les navires, recommande que tous les Etats intéressés donnent, le plus rapidement possible, leur ratification ou leur adhésion à la Convention de Bruxelles de 1926, pour l'unification de certaines règles en matière de privilèges et hypothèques maritimes.

efficient protection to mortgage and « hypothèque » creditors, the Conference recommends that all interested States should as soon as possible ratify, or adhere to, the Brussels Convention of 1926, for the unification of certain rules in the matter of liens and mortgages.

May I take it that you all agree to the text of this Resolution ?

(Adopted unanimously).

Nous abordons maintenant l'examen du nouveau texte des Règles d'York & d'Anvers.

The President. — I call on Mr. Edmunds to give the comments of the International Commission.

Mr. Edmunds. — Mr. President, Ladies and Gentlemen, I stand here as the Secretary of the International Commission and the Secretary of the Drafting Committee. You have before you the typescript of the rules. There are one or two minor alterations and I would like to suggest one or two very minor amendments to improve the drafting.

Before I do that, may I do something which is a little extraordinary ? I would like — and I am sure that you Gentlemen would also like — to extend our appreciation to the people working on the other side of that door, because they have done a magnificent job in turning this thing out so door, because they have done a magnificent job in turning this thing out so quickly with so very few mistakes. I know our British and American friends will appreciate that they are typing a language which they do not understand very well. I think the mistakes made are very, very, few and I look upon this as a magnificent job.

Now, Gentlemen, we are building up on this typescript the final Report, and if you approve the suggestions which I make, a new sheet will be published and it will be ready tomorrow, so that you can pin it on this and then you will have we hope is the final draft. So may we look at page 1, and the title, « York-Antwerp ». There should be a little dash between « York » and « Antwerp ».

Then we go to page 3, rule X (a), in line 8. « corresponding », not « correspinding ».

On page 4, line 3 ; the first word, of course, should be « of » and not « or reloading ».

Now, I do this with considerable diffidence. I want to suggest a minor alteration from the wording of York-Antwerp rules, 1924. It is in rule X (d). We would like — and I know Sir Leslie Scott would agree with me — we would like to turn the word « expenses » into the singular, « expense », it is more corect English ; it is a new proposal, but it is a minor pense », it is more correct English ; it is a new proposal, but is is a minor variation from the 1924 rules and it does not affect the position at all.

On page five we have XI (d), which is the new section of overtime. All through York-Antwerp rules we talk about maintenance of the crew, now we are using maintenance in another respect. I would like to suggest therefore, that after « maintenance » we add the words « of the ship », to make it quite clear it is different kind of maintenance, and that we are not talking about the crew ; it just makes it quite clear. With your permission I would like to suggest that we adopt those words. It is an amendment that has not been before the Conference hitherto. Would you like to put it from the Chair ?

The President. — I should prefer to take the next amendment also.

Mr. Keating. — Next to the last line of C. : somebody else may be paying the wages.

Mr. Edmunds. — Perhaps Mr. Reading might answer that : he is the technical man on this.

Mr. Reading. — Mr. President, we are not very happy about that on reconsideration, because I think as far as the British are concerned our Charter on the Merchant Shipping Act stands in the shoes of the ship owners, and those words would be quite clear as far as we are concerned, to allow demised Charters to cover wages and maintenance of the crew. We are a bit concerned that, if you take those words out, you lose all control over what payments made to the crew can be recovered in general average, unless you restrict those payments by some words, as being payments made by either the shipowner or someone who is in the position of a shipowner like a demised Charterer. I cannot give an example, but one does not know what legislation these days is going to come before various parliaments with regard to payments and how they may be made, and I feel it is safer to have those restrictive words.

Sir Leslie Scott. — That is in Rule XI (a).

Mr. Reading. — That is in Rule XI (c).

The President. — Is Mr. Keating satisfied ?

Mr. Keating. — I am not. I do not think that it would be a correct description of our situation, but if you said « imposed upon the shipowner or demised Charterer », that would cover it.

Mr. Cyril Miller. — As long as you do not use the word « Disponent Owner ». We have had a recent decision in our Courts which is worrying us more than a little.

Mr. Keating. — On a minor point.

Mr. Edmunds. — Then we will leave it as it is.

May we go to Rule XIII. We have tried to keep the 1950 Rules as much as possible in conformity with the 1924 Rules. In the 1924 Rules, rule XIII (a) deals with the actual deductions to be made, and therefore, we suggest to you that we take out the letter « A. » and « generally ». Take out the sub-paragraph heading, « A. — Generally ». With your permission I would like to delete « A. » and « Generally », that means the letters on six and seven will have to be altered, the top being A. and so on, that brings us in conformity with what Average Adjusters know as still on page five, which was « A. » in line thirteen, « dry-dock and slipway dues and cost of shifting the ship ».

Page 6 : In what was C. between « one and three years old... » in the third paragraph there is a minor spelling mistake, we spell « steering » S.T.E.E.

Then Rule XIV in the first line at the versy end : Rule XIV, page seven, before the very last word in the line « port », the word « a ».

Then I am sure there is an amendment that will appeal to our gallant Captain from Sweden. In Rule fourteen, of course « Old » would be spelt with a small « o ».

Mr. Chairman, that is all, and if I may do so from here, I will formally move that they all be adopted.

Mr. Reading. — There is just one other point, gentlemen. Owing to the fact that we have deleted « A. » and « generally », we have to make two other small alterations. On page six under what on your draft is C., between « one and three years old », second line, under Clause A. and the old clause D, between « three and six years », dissection as under Clause B. Then if you go to what was the old heading, e.g. between « six and ten years old » under Clause C., then we are all right.

Mr. Keating. — May I suggest in case any other minor things turn up in connection with this draft, that the Drafting Committee be allowed to

make the amendments because you have made a few changes and I do not know how carefully this has been read through. There may be some minor things like changing a number of letters and I think that should be corrected, we could leave that to the Drafting Committee.

The President. — Mr. Keating has asked whether eventually the corrections of some minor errors might be left to the drafting Committee. I think there are two points. First of all, whether this drafting Committee could look after such errors before tomorrow morning when we shall establish the rules definitely, and whether the work of the drafting Committee will allow time to do so before we establish the rules tomorrow morning. The Drafting Committee is in action and any errors that may be corrected by the Drafting Committee before that time will be carried out. Besides, any delegation who have to make any comment on the wording, especially regarding typing or spelling errors, have the right to put their observations before the Drafting Committee before tomorrow morning.

The proposal of the Permanent Bureau is that following the establishment of 1950 York-Antwerp Rules it be left to the Permanent Bureau still to correct typing or spelling errors. The Permanent Bureau might eventually ask delegates, as individuals to assist with this work. I do not think it will give any trouble because Mr. Edmunds has carefully corrected the Rules — I do not think there will be anything left to be corrected — but to make quite sure, we must have the advise of someone who might eventually correct the typing or spelling errors. Before tomorrow morning the Drafting Committee will meet and then you will have a right to submit these observations regarding such errors to the Drafting Committee. After tomorrow morning after the rules will have been established, it will be the Permanent Bureau, of course.

Do you agree Mr. Keating ? Then I will call upon Mr. Kihlbom.

Mr. Kihlbom. — Mr. Chairman, could we not possibly proceed in a more simple way ? We know that Messrs. Reading and Edmunds have been working very hard on these Rules throughout the whole period, and I do think the Conference could have the confidence in these two gentlemen to make any such purely editorial corrections over errors as may be necessary before these Rules are printed and sent out.

The President. — Mr. Kihlbom suggests that we leave this matter to Mr. Reading and Mr. Edmunds.

Mr. Antoine Franck. — It is possible, Sir, that the Rules, as far as the

Committee is concerned, will be printed under the supervision of the Secretariat, and in Antwerp we will have them printed as soon as we return to Belgium, then we will send the proof of the printing to Mr. Edmunds and they will take the responsibility of seeing if there is a mistake or not. If not, we can go on printing them.

Mr. Ameln. — Could you not send the prints to the national Associations who might then make some suggestions to Mr. Edmunds and the Permanent Bureau, if neccessary ?

The President. — No Mr. Ameln, it is only a question of clerical errors.

Mr. Keating. — If there is no change of language after tomorrow someone can correct the spelling.

The President. — I must ask you, about the comments Mr. Edmunds has made, whether any of the delegations have anything to say ? If not I propose to accept the following amendments to the text which you have before you, and I shall ask the Conference to decide upon these amendments in succession.

First on page 3, Rule X (a) « correspinding » shall be « corresponding ».

Page 4, C third line « of » instead of « or », and the first « or » in the line should be « of ».

Then as you heard from Mr. Edmunds there is in (D) an alteration which has been proposed by the International Sub-Committee : in the word « expenses » in line four, the « s » must be taken away and it must read « expenses ». This is the old text of 1924 :« expenses ». There has not been any legislation during 25 years on expenses ; nevertheless it is better to use the right word « expense ».

Then on rule XI (d) on page five, line 2, we say « maintenance of the ship ». I think it is what we mean to say, because in the rule we speak of « maintenance of the crew » ; it is better to say here « maintenance of the ship ».

In Rule XII, the same page, it is better that we delete « A. — Generally ».

On page 5 in paragraph 5, to dry dock and ship-way dues and cost of shifting » be added « the ship ».

Page 6. First of all, instead of (b), we read (a), and so instead of (c), (b), instead of (d), (c). Instead of (e), (d), instead of (f), (e) ; on page 7 instead of (g), (f).

Then under the new (b), first paragraph instead of (b), (a).

Under the new second paragraph, instead of (c), (b), and the new (d), instead of (d), (c). Then under (c), third paragraph, seventh line, « stearing » should be « steering ».

Rule XIV first line, « where temporary repairs are effected to a ship at port », adding the word « a » before « port ». In the fourth paragraph, instead of a large « O », a small « o ».

Does the Conference accept the rules ?

Mr. Edmunds. — Page 2, rule 6, «carrying of ».

The President. — Another point, a point Mr. Edmunds overlooked, was in rule VI, that, in the title of rule VI, we have carrying press of. What I overlooked was very important. In the first line of the York-Antwerp Rules, you should put a hyphen between « York » and « Antwerp ».

We all know our English members of the Permanent Bureau are very clever on language and spelling and so. You should not applaud now because you know, we will tomorrow morning have these Rules established very, very definitely. The only question is whether you accept the rules in the present form as amended today.

We will now deal with the subject which has been planned on the Agenda paper for this afternoon. Examination of a convention for the creation of an International Court for navigation on sea or by Air.

COUR INTERNATIONALE MARITIME ET AERIENNE.

M. le Président. — La parole est à M. Cleveringa.

M. Cleveringa (Pays-Bas). — Monsieur le President, Mesdames, Messieurs. Le point du programme devant lequel nous nous trouvons placés cet après-midi, introduit un problème de caractère spécial. Généralement, au sein du C.M.I., nous nous occupons de tentatives de rapprochement de divers systèmes nationaux de droit maritime, afin de formuler des règles directement applicables aux divers cas. Maintenant, il s'agit de la question de savoir s'il ne faut pas adopter, à côté de la méthode directe dont nous nous sommes servis jusqu'ici, une méthode indirecte en nous forgeant un instrument tendant vers le même but et qui soit de nature non seulement à promouvoir l'unification du droit, mais qui agirait aussi comme régulateur.

La question de savoir si la création d'un tel instrument est utile ou ne l'est pas n'est pas nouvelle. A maintes reprises, on a déjà tenté de former une cour internationale pour des affaires de droit privé, mais très souvent

également on s'est rendu compte qu'on allait trop loin dans cette manière en fixant la compétence de la cour pour les affaires civiles en général. On a donc dû limiter la compétence de la cour en éliminant des « objets de tradition », comme vous-même les avez nommés. Monsieur le Président, et en se limitant à des « objets d'affaires ». En outre on a dû limiter à des objets d'affaires où existe déjà une tendance plus ou moins naturelle vers l'uniformité. Je pense qu'en droit maritime nous avons affaire à une telle matière.

C'est ainsi que je me suis demandé s'il n'était pas utile de poser la question de la création d'une cour maritime internationale, ou si vous voulez en allant un peu plus loin, d'une cour maritime et aérienne.

Cette question est assez complexe. Le questionnaire distribué par les soins du Bureau permanent aux associations nationales a tenté de décomposer un peu le problème afin de le rendre plus apte à être examiné dans son ensemble et dans tous ses détails.

C'est l'association française qui, la première, a répondu au questionnaire et vous voudrez bien, Monsieur le Président, me permettre de rendre hommage à son activité et à la clarté avec laquelle elle s'est exprimée. Si nous parvenons à établir une telle Cour, je pense que son rapport sera un excellent argument en faveur de la thèse que l'Association Française a défendue, en ce qui concerne notamment la question 9 relative à l'emploi des langues.

Le rapport de l'Association Française a été suivi par un second document que nous avons reçu ce matin, qui émane de la section italienne, et que M. Sandiford m'a donné à la fin de notre réunion de ce matin.
Quant au rapport de l'Association Française, je n'ai rien à ajouter. Ses conclusions sont de nature à encourager ceux qui, comme moi, sont d'avis qu'il s'agit ici d'un objet qu'il nous faut prendre ultérieurement en considération et étudier plus profondément.

Si vous le permettez, Monsieur le Président, je voudrais citer la conclusion du rapport français : L'Association Française est d'opinion qu'il faut mettre ce problème à l'étude et par « un vote unanime » elle a adopté cette solution. Elle ajoute qu'elle « a adopté avec le plus grand enthousiasme la prise en considération d'un projet si conforme aux idées et aux traditions de la France ». (p. 26 du document vert).

Il me paraît inutile de commenter ces conclusions. La France se prononce « avec le plus grand enthousiasme ; je ne puis trouver d'expression plus forte.

L'association belge est, elle aussi, en faveur d'une étude plus approfondie. Elle estime que l'idée de créer une cour internationale est excellente et qu'elle doit se réaliser un jour. C'est pour cela qu'elle est d'avis que cette idée nécessite une étude approfondie pour laquelle le temps a, jusqu'à présent, fait défaut.

L'association italienne est moins formelle. Elle est d'avis qu'une telle cour pourrait avoir une utilité pratique, mais à la condition seulement qu'elle l'estime en ce moment impraticable. Elle ne voit cette utilité qu'au cas où cette cour pourrait se charger de tous les différends d'ordre international. Elle croit que cette solution ne pourra être adoptée dans la situation actuelle et en raison de la situation politique, et en raison également du fait que la codification internationale du droit maritime est loin d'être réalisée.

L'objection de l'association italienne touche à une observation que l'association française et l'association belge ont faite et qui concerne la compétence de la cour projetée. Je ne vais pas m'étendre sur ces questions, étant donné que pour le moment nous devons nous borner à décider s'il convient ou pas de prendre cet objet en considération et de l'étudier d'une manière plus approfondie. Pour ce même motif, je ne vais pas entrer d'une manière plus approfondie dans la réponse que les associations française et italienne ont bien voulu donner aux questions posées.

Il faut néanmoins faire une petite observation. Je lis dans le rapport de l'association française que certains membres de cette association avaient estimé qu'il y avait lieu d'aller plus loin et de limiter aux seuls litiges résultant des conventions internationales ou des règles telles que celles d'York et d'Anvers, la compétence du nouvel organisme, en l'absence de textes plus généraux sur lesquels la cour internationale pourrait baser ses décisions.

L'association belge est d'avis que la cour ne doit connaître que de l'interprétation et de l'application des normes maritimes et aériennes qui ont été publiées antérieurement et acceptées dans les conventions internationales. C'est dans ces matières seules qu'à son avis on peut espérer, pour le moment du moins, une uniformité. Dans les autres, le caractère national domine trop pour créer une jurisprudence interétatique.

Je connais cette théorie. Je ne répèterai pas les contre-arguments que j'ai présentés à une autre occasion, et qui sont incorporés dans l'annexe au questionnaire distribué. Je ne veux pas non plus méconnaître l'importance de la théorie qui, à mon très humble avis, est à la base de ces ob-

jections : La théorie de la conception interne du droit international privé. Je sais que c'est là une théorie pratiquée par un très grand nombre de juristes de très grand talent. Vous-même, Monsieur le Président, lors du dîner à l'Amstel Hôtel, vous avez cité quelques paroles d'un jugement de notre Président d'Honneur. J'ai vu que lui aussi appartient à cette majorité, et cela me fait regretter d'autant plus d'être de la minorité, car en cette matière je me range parmi l'opposition. Je m'en consolerai cependant en pensant à la parole de Renan : « Les grandes choses se font toujours par la minorité ».

Je n'entrerai donc pas dans le fond de cette question, mais en raison du fait que les associations française et belge soutiennent la thèse qu'on ne peut aller plus loin, je fais un avertissement, non pas pour avoir raison malgré tout, mais parce que j'espère que si jamais nous arrivons à faire l'étude approfondie de ce sujet, nous examinerons tout de même la possibilité d'étendre la compétence de la cour à quelques autres sujets que l'association française a formulés.

On peut naturellement limiter la compétence et on peut l'étendre.

Ce que je préconise pour le moment, c'est que le Comité Maritime exprime le voeu d'examiner ce sujet d'une manière plus approfondie et qu'il mette ce point à l'ordre du jour de ces travaux ou qu'il dise ce qu'il pense de la question s'il est possible ou non de réaliser cette cour. Je ne peux pas aller plus loin pour le moment. J'ai maintes fois entendu dire ces jours-ci que ce sont les hommes d'affaires qui, au sein de ce comité, ont un rôle prédominant et que les juristes n'ont qu'un rôle secondaire. Je ne suis pas un homme d'affaires et si je préconisais mon idée par un appel à la pratique, on ne me croirait peut-être pas parce que les professeurs ont la réputation de manquer de sens pratique. Quoi qu'il en soit, je pense que la pratique et la théorie alliées à l'idéalisme auquel vous, Monsieur le Président, avez fait allusion à la fin de votre discours sur les règles d'York et d'Anvers, se donnent la main en cette matière.

I raised the question of the Maritime International Court because the question of an International Maritime Court for all Civil Affairs has already been broached several times.

We saw from the deliberations which followed that the scope was a little too wide and we had to restrict ourselves to a subject on a more limited scale, and to an object which in itself had already a kind of tendency to uniformity, and it seemed to me and others that Maritime Law has such a tendency, and that we could start without being afraid from

the very moment that we gave our word to a very impractical object, with further considerations of an International Court for Maritime Affairs or for Maritime and Aeronautic Affairs. On this subject, on which you got a questionnaire with an annexe on which I developed my ideas further, there have been presented three reports ; one French, one Belgian, and one Italian.

The Italian one shows that they think that such a Court can only be realized, if you give this Court a competence which cannot be realised at this present moment.

The French and Belgian delegations on the other hand are of the opinion that it can be realised but that you ought to restrict the competence just to the limites of which the Italian Delegation say that they are impracticable. That is a question that can be discussed further.

The French delegation gave a report in favour of the idea in the warmest terms. They said, that they were of the opinion that they accepted « avec la plus grande enthousiasme » — with the greatest enthusiasm the proposal to study the matter further, and the Belgian delegation said, that although they had some remarks to make, they were of the opinion that studying this matter was excellent. It is on these grounds that I submit this question of further study of this matter to the Conference and I hope that I may terminate this summary with these few words.

The President. — I now call on Mr. Loeff.

Mr. Loeff. — Mr. Chairman, Ladies and Gentlemen, the Netherlands delegation is proud of the broad reception and the broad review that one of its members, Professor Cleveringa has been given in a lecture in London. I think it was in the winter of 1947-1948 on Maritime Law Court composed of judes of international repute, sitting to decide on questions of Maritime Law and perhaps at the same time on questions of Aeronautical Law.

We quite realise that the difficulties are very great, but they are mainly of a formal nature. On the other hand, all of us are aware that there are a number of cases in which we would dislike our opponents to take action against us in the Courts of a foreign country and perhaps in the Courts of a third country, because the shipowner who is sending his property all over the world is always exposed to the risk that action is taken against him in a Court in a foreign country. It would be a great help if, in such cases, there existed an international court that would have gained the confidence of shipping people and merchants all over the world, and to

which Court would be entrusted the disposal of such matters. I think it is quite within the aim of C.M.I. that such a Court will, by its creation, contribute to the uniformity, if not of law, at least the uniformity of jurisprudence.

Therefore, Mr. President, the Netherlands Delegation recommends that this subject be studied and that it will again appear on the programme of our Conference and, if necessary, appear until it will materialise.

M. Vincentelli (Belgique). — Mesdames, Messieurs, l'association belge m'a chargé de commenter brièvement pour vous le rapport qu'elle a établi et qui vous a été distribué.

Parlant après M. le Professeur Cleveringa, dont nous connaissons la grande autorité, j'ai l'impression d'être un peu impertinent et je m'en excuse.

Tout d'abord, contrairement à ce qu'estiment nos amis de l'association française, il semble que la juridiction à créer doive connaître des litiges d'ordre maritime et aérien. Pourquoi ? C'est que les transports maritimes et aériens, limités ainsi que je l'énoncerai tout à l'heure sont des conventions si pas siamoises, tout au moins voisines et parallèles.

Il s'agit en effet dans le début tout au moins, de soumettre à cette juridiction internationale l'appréciation de contrats de transport, de transports joignant des relais situés dans des pays divers et souvent fort éloignés, de tranports régis par des conventions internationales. Si nous faisons confiance à un juge pour apprécier pareil transport quand il est maritime, nous pouvons également nous en remettre à lui pour juger des transports aériens, d'autant plus que l'on peut imaginer sur certains points une jurisprudence commune.

Tout le monde, je pense, s'accordera à reconnaître l'utilité de pareille juridiction. Pour réussir à la créer, il faut procéder par étapes, et dans le commencement s'imposer des limites. Il est toujours plus facile d'obtenir l'agrément d'un grand nombre de participants si l'engagement qu'ils souscrivent est restreint. C'est un premier pas qui doit nécessairement en amener d'autres s'il démontre que l'on a pris la bonne route.

La restriction que je voudrais voir imposer au début, c'est que le recours à la juridiction devrait être facultatif ; les parties en conviendraient soit lors de la conclusion du contrat, soit lors de la naissance du litige.

La seconde restriction serait que la juridiction ne pourra connaître que de l'interprétation et de l'application des normes maritimes et aériennes,

établies et acceptées par des conventions internationales et incorporées dans les lois nationales.

Dans les autres matières, le caractère national domine trop pour créer une jurisprudence commune à tous. Vous ne pourriez par exemple pas imaginer une cour internationale statuant en matière de divorce.

Comment faire un premier pas ? On peut envisager, mais ceci n'est pas la création d'une cour de justice, d'instituer dans chaque association une ou plusieurs chambres arbitrales. Puisqu'il existe des traités internationaux, sur l'exéquatur des sentences arbitrales, il est simple d'appliquer ces conventions à des arbitrages qui porteraient sur la matière envisagée.

Je me borne à ajouter que je ne cite ce procédé que pour mémoire et pour démontrer aussi que l'on pourrait, dès demain matin, faire quelque chose.

J'ajoute aussi que l'arbitrage ne me donne pas satisfaction complète, car d'une part rien n'assure que l'on créera aussi une jurisprudence uniforme et d'autre part les Etats ne pouvant généralement pas compromettre, toute une série de litiges surgiraient.

Je pense donc qu'il faut concentrer nos efforts en vue de la création d'une véritable cour de justice.

On peut objecter à bon droit que cette cour pourrait être rapidement surchargée et dans ce cas on se trouverait devant le dilemme : ou bien il faudra patienter de longs mois pour pouvoir plaider et obtenir jugement, ce qui est détestable, ou bien il faudra multiplier le nombre des chambres, ce qui est fort coûteux. Aussi pourrait-on s'inspirer de la procédure suivie devant la commission centrale pour la navigation sur le Rhin, qui date de plus d'un siècle. Cette Commission connaît, en degré d'appel, des contestations relatives à l'exercice de la navigation. Ces contestations sont jugées en premier ressort par le Tribunal local et l'appel est prévu, si les parties en conviennent, devant la Commission. On pourrait adopter le même procédé. Il a l'avantage, tout en étant un filtre, de créer une jurisprudence uniforme au degré supérieur devant laquelle les juridictions de première instance finiraient bien par s'incliner.

Certes le problème n'est pas mûr. Aussi, je ne crois pas qu'il convienne d'étudier déjà la réponse au questionnaire de M. le professeur Cleveringa. Nous n'en avons pas maintenant la possibilité, il faudrait de très nombreuses séances. Mais l'on pourrait poser les principes et je me permets de suggérer d'interroger l'assemblée sur le point de savoir si tout le

monde s'accorde sur l'utilité ou même la nécessité de la création d'une juridiction internationale en matière maritime et aérienne.

Dans l'affirmative, je suggérerais de constituer une commission chargée d'étudier le problème et de répondre à ce questionnaire si bien établi. Enfin, et très subsidiairement, peut-on recommander aux différentes sections nationales d'instituer dans leur sein des chambres arbitrales dont les décisions seront une première indication quant à l'interprétation des problèmes juridiques qui naissent de la matière des transports international aérien et maritime.

Je vous remercie de l'attention que vous avez bien voulu me prêter.

M. Sandiford (Italie). — Monsieur le Président, Mesdames, Messieurs, la délégation italienne, tout en émettant des doutes sur la possibilité d'arriver à l'heure actuelle à la création d'une Cour internationale maritime et aérienne mais reconnaissant son utilité éventuelle, donne son appui à la proposition de mettre à l'étude l'établissement de cette Cour. La délégation italienne a déjà fait connaître son point de vue dans le rapport qui vous a été distribué, et dans lequel elle répond aux questions posées et donne son adhésion à un examen préliminaire de la question.

M. Coulet (France). — Mesdames, Messieurs, la question très intéressante que M. le Professeur Cleveringa a porté à l'ordre du jour de cette conférence est une question dont on peut dire d'une manière générale qu'elle se situe après des débats qui avaient trait à des questions essentiellement actuelles et pratiques sur un plan plus particulièrement théorique et futur ;

Ceci dit, je suis chargé d'exprimer l'opinion de la délégation française qui, ainsi qu'il a été dit dans le rapport que vous avez sous les yeux, est entièrement favorable à la proposition de l'éminent professeur de Leyden. Un vote unanime de notre association française de droit maritime nous a conduits à cette solution qui au demeurant tient avant tout à rendre hommage à une proposition généreuse, ce qui au surplus n'est pas fait pour nous surprendre, venant de la part d'un membre de cette Faculté de Leyden et d'un ressortissant du gouvernement de ces Pays-Bas qui ont déjà réalisé cette idée généreuse et tant d'initiatives dans la voie qui nous est ouverte aujourd'hui. Les seuls tribunaux internationaux sont des tribunaux qui siégent à La Haye. Souhaitons, Messieurs, qu'un nouveau venu vienne, sous l'égide des premiers, se ranger parmi les juridictions internationales que l'avenir verra peut-être se créer lorsque les Etats et

les souverainetés auront bien voulu accepter de devenir non plus égoïstes nationalement mais simplement humaines.

C'est sous le bénéfice de cette observation très générale que je vais rapidement vous préciser les points sur lesquels la délégation francaise tient à attirer votre attention. Je tiens à vous dire tout de suite que, se séparant de l'opinion émise par les délégations belge et italienne, la délégation française estime que la cour devrait limiter sa compétence aux seuls conflits d'ordre maritime. Pourquoi ? En France tout au moins, et aussi ailleurs je crois, la soudure du droit aérien et du droit maritime n'est pas encore actuelle. Elle peut être souhaitable mais il est certain qu'aujourd'hui venir recommander la création d'une cour internationale et étendre sa compétence à des conflits ressortissant d'une juridiction, d'une jurisprudence et d'une législation particulières, serait peut-être aller au devant de nombreux obstacles. Un dernier argument, de circonstance celui-ci, c'est qu'on pourrait peut-être trouver abusif que dans une conférence du C.M.I. nous cherchions à étendre au droit aérien des principes qui ne sont pas les principes de droit maritime strictement.

On a voulu d'autre part dans notre association, — c'est un état d'esprit que je tiens à souligner, — à aller plus loin, et vouloir même restreindre, du moins au début, la compétence du nouvel organisme, à l'application des seules règles nationales pratiques, à part celles résultant des conventions, telles que l'application des règles d'York et d'Anvers dont nous venons de donner, si j'ose dire, une nouvelle et très complète édition.

D'après l'association française, les pouvoirs de la cour internationale devraient être définis d'une manière particulièrement précise, mais il est surtout un deuxième point pour nous essentiel, et en cela je me rallie à l'opinion émise par nos amis belges, c'est que au début tout au moins la compétence de cette cour devrait être facultative. On ne peut, dans l'état actuel des choses, concevoir comment cette souveraineté des Etats pourrait accepter d'être, excusez le néologisme ou l'impropriété du terme, « supervisée » par un pouvoir exceptionel. Je crois que si sur ce point nous gardons une opinion contraire, ce serait aller à l'encontre du projet qui nous est soumis. Un autre point est celui de savoir s'il s'agit de faire former par les divers gouvernements qui alors agiraient volontairement, et lui soumettraient eux-mêmes des questions les intéressant, une juridiction supérieure dominant leurs propres tribunaux. Ces gouvernements soumettraient ces questions par l'effet d'un pourvoi dans l'intérêt du droit contre des jugements nationaux. Cette question nous a paru pré-

senter un intérêt pratique considérable. Ce serait le moyen pratique le plus efficace pour arriver à la création de l'organisme international. Au demeurant, nous avons en France une procédure, que peut-être certains d'entre vous connaissent ; elle existe d'après une loi fort ancienne qui date du 27 Ventose an VIII, elle est plus que centenaire, et je dois dire qu'elle est appliquée rarement en France. Son intérêt pratique est tout à fait remarquable ; elle porte sur ce que nous appelons le « pourvoi dans l'intérêt de la loi ». Elle permet au Ministère public en toutes matières, de déférer à notre Cour de Cassation des décisions devenues définitives dans lesquelles les parties elles-mêmes ont jugé que leurs intérêts étaient satisfaits, si la loi a été violée. C'est plus fréquent qu'on s'imagine, j'en appelle à votre expérience. Les gouvernements ont donc pensé qu'il fallait que dans le cas d'inertie de la part des parties, une tierce partie pouvant être lésée par suite de la mauvaise application de la loi, pouvait faire réformer cette décision, même si elle est devenue définitive. Cette tierce partie, c'est l'Etat lui-même. Je rappelle que cette loi remonte à l'époque où était rédigé notre Code civil. Nous avons des juristes remarquables, théoriciens et praticiens qui n'avaient pas manqué d'asseoir l'Etat de la manière la plus stable, et, je ne dirai pas la plus autoritaire, mais la plus énergique. Lors de la création de notre cour internationale, ce pourvoi dans l'intérêt de la loi devrait être calqué sur le pourvoi dans l'intérêt de la loi contenu dans l'article 88 de la loi française du 27 Ventose an VIII.

Il est une autre question, la cinquième, qui nous demande de décider s'il faut que les arrêts de la cour soient rendus exécutoires. C'est une question bien délicate Nous ne pourrions d'ailleurs la discuter ici si, comme nous le pensons, vous considérez que la cour doit toujours avoir un caractère facultatif.

En réalité et pour nous résumer, la cour n'aurait pas, quant à présent, des procès à juger et des solutions impératives à faire exécuter par la voie parée, mais elle aurait avec l'autorité morale qui s'attacherait à ses décisions, à les faire accepter étant donné le caractère facultatif qui ne serait pas du tout le compromis d'arbitrage. Ce ne serait donc pas une cour d'arbitrage, ce serait un tribunal ; je crois que c'est la distinction essentielle qu'il y a lieu de marquer dans la définition du nouvel organisme.

Il est alors que question accessoire. Où le tribunal devrait-il se réunir ? Nous verrons plus tard. Nous avons émis l'opinion que peut-être la Suisse serait indiquée, en raison de sa situation géographique et de sa neutra-

lité constante, à recevoir la cour nouvelle qui sera, je l'espère, réalisée dans un très proche avenir.

Enfin, il est une question que la délégation française a tenu à préciser dans son rapport. Nous pensons, croyez bien que ce n'est pas un acte de chauvisnisme ou d'amour propre excessif que, s'agissant non plus de rapports commerciaux mais s'agissant de créer un organisme qui soit une juridiction, il était nécessaire que les débats et les décision surtout soient rédigés dans une langue unique. Laquelle ?

Du temps de Grotius, le latin se serait imposé.

Le français est-il son successeur ? Voilà pourquoi nous avons pensé pouvoir demander que les textes officiels seraient rédigés dans notre langue, étant naturellement entendu qu'un texte équivalent serait établi en anglais, mais le texte français serait le seul qui, en cas de contestation sur l'interprétation des textes, serait appelé à faire foi.

Messieurs, nous sommes avocats et quand nous plaidons nous invoquons des décisions de jurisprudence. Il en est une. La convention diplomatique du droit d'auteur de Bruxelles, en juin 1948, a pris, sur l'initiative de mon excellent ami et confrère Marcel Plaisant, membre de l'Institut et actuellement président de la commission des Affaires étrangères du Conseil de la République en France, la décision conforme à l'opinion que je viens d'émettre.

Mesdames, Messieurs, j'en ai terminé. Il me reste à vous remercier de votre bienveillante audience et à vous dire que de tout cœur, et je reprends le mot, avec enthousiasme, la délégation française votera la proposition généreuse de M. le Professeur Cleveringa.

The President. — Now no more speakers have asked to address the Conference, so I should like to know whether there are any proposals to be made. There are as yet no proposals before me.

M. Loeff. — La délégation néerlandaise propose la résolution suivante:

« La conférence décide d'inviter le Bureau permanent à nommer une commission internationale et à donner mission à cette commission d'étudier le problème de la création d'une Cour internationale maritime et aérienne et de présenter un rapport à la prochaine conférence. »

The Netherlands delegation proposes resolution reading as follows :

« The Conference resolves to request the Bureau Permanent to appoint an international Sub-Committee and to instruct this Sub-Committee to study the problem of the creation of an International Maritime or Mari-

time and Aeronautical Court of Justice and to report thereon to the next Conference.

The President. — If I understand Mr. Loeff, the subject to be treated by such a court would be either for only maritime matters or for maritime and aeronautics. Is there any delegation or individual member who wants to say some few words on this proposal ?

Gentlemen, I have before me the proposal of the Netherland's delegation for a resolution, which reads as follows :

« The Conference resolves to request the Bureau Permanent to appoint an international commission, and to instruct this commission to study the problem of the creation of an International Maritime Law Court, and to report thereon to the next Conference. »

Now, there has been some objection from the side of those who thought that we should limit the power of the Sub-Committee to the question of practicability, but if I am right, I think that those who have wanted such a limited Resolution will make a statement of their reasons, and on the understanding that this statement is inserted in the Minutes of the proceedings. Perhaps the Resolution of the Netherlands delegation is the only one to be submitted to the Conference.

Now, I call upon Sir Leslie Scott.

Sir Leslie Scott (Great-Britain). — Mr. President, I feel very strongly, and I believe that my view is that of the British delegation, that the time is not ripe for dealing with the question at all. But, on the other hand the Netherlands' delegation is anxious that the matter should be inquired into. If that is the case I am sure that my delegation would agree that an inquiry should be allowed, if there is a reasonable possibility of something useful resulting. From the mere fact that the Netherlands' delegation proposes it I assume that that possibility is there, but I feel, myself, that the Commission, in going into it, will, of course, of necessity, consider whether the solution, if they find one, would be practicable or not, and that is a question which they must consider before they make their report. For I feel certain that they would not wish to put forward a report for public discussion at the Conference which was obviously impracticable.

That being so I, on behalf of my delegation, assent to the wording of the terms of the inquiry which we are ordering. I have no doubt that the Commission will, as in the case of the York-Antwerp rules, take the opinion of the interests affected upon the matter very carefully, and I hope

that what I say will commend itself to the American delegation also. I shall be glad to hear from Mr. Keating what his view is.

Mr. Keating. — I agree that we should support this resolution, and, knowing how practical the Dutch are themselves, I am sure that any resolution they propose will certainly be carried out with the idea that the report of results will state whether the matter is practicable.

The President. — The statement in the Minutes of the proceedings interpretes the opinion of perhaps a large part of this Conference. The Commission can take this statement into account. I am very happy that we have come to a common Resolution on this difficult question. For myself, I hope you have had enough impartiality. I ask the Conference whether the Conference agrees to the proposal of the Dutch delegation ? *(Agreed)*

Does any delegation oppose it ? *(Agreed)*.

Then the proposal is adopted.

Now, there is one thing to be said, that is the nomination of the members of the Committee. I propose that the appointment of the members of this Committee, just as in the case of the other Sub-Committees, be left to the Permanent Bureau. That is always so, so Mr. Dor says.

Mr. Leopold Dor. — It is the usual procedure.

The President. — The only thing I wanted to ask the Conference, — because there might be some suggestions or views from the side of one or more delegations, — whether they want it to be as we call it in our Dominion affairs, a « heavy » or a « light commission », a large one or a small one ? Is there onyone who would made any suggestions ? No ? So I take it that you leave that question also to the Permanent Bureau ? *(Agreed)*

La parole est à M. Bagge, qui, devant partir demain, a demandé de pouvoir prendre la parole maintenant.

M. Algot Bagge (Stockholm). — Je voudrais rappeler à la conférence une décision prise en 1937 sur la proposition de M. Louis Franck. Celui-ci a proposé que les conventions soient réunies dans une collection éditée par les soins du Bureau Permanent. Il disait notamment : « Il est peut-être utile de préciser, tout au moins dans les grandes lignes, la portée et le sens des divers articles de ces conventions. » C'est pourquoi je vous proposerais que le Bureau reçoive mandat de réunir les éléments de ces commentaires et de les publier. Nous ferions donc, article par article, convention par convention, un travail qui comprendrait les éléments suivants : Nous extrairions de nos travaux préparatoires et des délibéra-

tions de la conférence diplomatique les passages essentiels que nous publierions à la suite des articles, etc... ».

J'ai appuyé la proposition de M. Franck et j'ai demandé s'il ne serait pas possible de comprendre dans ce travail les jugements rendus dans les différents pays. M. Louis Franck a répondu : « Parfaitement ». La décision a alors été prise et mandat a été donné au Bureau permanent de poursuivre l'œuvre à laquelle M. Franck avait pensé. C'est une œuvre très utile parce qu'il y a beaucoup de gens qui me demandent des renseignements au sujet de l'activité de notre Comité, quelles sont les conventions qui ont été ratifiées, quels Etats les ont ratifiées et le sens des conventions. Il serait extrêmement utile de posséder une telle collection qui comprendrait également les cas jugés.

Naturellement c'est là une œuvre de très longue haleine et il est évident que le Bureau permanent et le Secrétariat, tels qu'ils sont constitués, ne peuvent la réaliser. Je voudrais alors que la conférence confirme la proposition de M. Louis Franck, et demande au Bureau permanent de prendre les mesures adéquates pour assurer son exécution. Je crois que pour la réputation du Comité Maritime International et pour l'uniformité d'application dans les différents pays des conventions ratifiées, ce serait une œuvre très utile.

Je propose donc que la Conférence confirme ce mandat — et j'ajoute — que le Bureau permanent prenne des mesures appropriées pour le faire exécuter.

M. Léopold Dor. — Je me permets de demander à M. Bagge qui payera. Car indépendamment du fait qu'il faut trouver des gens disposant du temps nécessaire pour faire ce travail considérable, je me demande qui paiera les frais de publication, car publier aujourd'hui un volume de 4 ou de 500 pages, coûte une fortune. Exprimé en francs français, cela représente des millions de francs. On renonce à imprimer des thèses de doctorat, parce que c'est vraiment ruineux.

M. A. Bagge. — Ne croyez-vous pas que si le Bureau permanent faisait un appel aux organisations intéressées à l'œuvre de notre Comité, — je ne parle pas des associations nationales, mais des organisations commerciales d'asurance, de navigation etc. — on pourra réunir les fonds nécessaires.

M. Dor. — J'en doute fort.

M. Bagge. — Si ces organisations croient qu'il s'agit là d'une œuvre pratique, elles ne manqueront pas de la subsidier. J'ai entendu des gens

appartenant aux milieux maritimes qui, très souvent, ont regretté l'absence d'une telle publication.

M. Dor. — Demandez à ceux qui vous disent cela, s'ils sont prêts à souscrire chacun 100.000 francs.

M. Antoine Franck. — Je crois que pour répondre à la proposition de Mr. Bagge, il faudrait d'abord bien préciser quelle a été l'idée de mon frère quand il a fait cette proposition en 1937. Son intention était de commencer par faire pour chacune des conventions séparément une espèce de commentaire législatif, en puisant dans les travaux préparatoires, dans les rapports et les discussions des diverses conférences, tous les éléments utiles à l'interprétation des textes. Ce travail aurait été confié à des personnes déléguées ou désignées par le Bureau Parmanent. Ce premier travail étant fait, on aurait alors consulté les diverses associations sur les jurisprudences en vigueur dans les pays respectifs et l'on aurait fait suivre l'exposé, les études et les commentaires législatifs d'un résumé de la jurisprudence dans les divers pays. Le travail a été commencé pour la première convention, celle sur le sauvetage et l'assistance. Si on doit faire ce travail pour une ou deux conventions, ce n'est évidemment pas le bout du monde, mais le jour où on devra le faire pour les Règles sur les Connaissements, ce sera un tout autre travail. Je me demande qui pourra s'y atteler. Je ne crois pas en tout cas que ce sont les membres du Bureau permanent qui pourront le faire.

M. G. Ripert (Paris). — Nous serions tout à fait favorables à une proposition consistant à recueillir les documents de jurisprudence sur l'interprétation des conventions dans les différents pays et à les envoyer au Bureau Permanent. Mais je ne crois pas qu'il ait une compétence particulière pour faire le commentaire officiel de conventions diplomatiques qui ont été votées par les différents gouvernements. Il y aurait même un véritable danger pour le Comité Maritime International à engager son crédit dans ce commentaire. C'est une œuvre purement doctrinale. Au contraire, la publication de jurisprudence pourrait être intéressante et peut-être même que, sans les imprimer, si chaque pays envoyait au Bureau permanent les documents, il suffirait à celui-ci de les faire reproduire à raison d'un document par association, et nous aurions ainsi connaissance des décisions rendues. C'est un moyen que je suggère.

M. le Président. — J'avais précisément l'idée qu'il serait important que toutes les délégations envoient au Bureau permanent toutes les publications de leur pays sur les conventions. Je suggèrerais qu'on fonde une

petite bibliothèque et que le Bureau permanent puisse informer ceux qui s'intéressent à la question du nom des pays qui ont adhéré à l'une ou l'autre convention.

Y a-t-il d'autres pays qui appuient la proposition de Mr. Bagge ?

M. A. Bagge. — J'admets qu'il y a beaucoup de difficultés pour réaliser l'œuvre proposée par Louis Franck. Mais il me semble qu'il serait possible d'avoir une publication mentionnant les pays qui ont adhéré à la convention car il est extrêmement difficile pour un profane, et même pour un spécialiste, d'avoir une idée précise sur cette question. Serait-il impossible que le Bureau permanent assure pareille publication ? Cela ne coûterait pas tellement cher.

M. Denoel (Bruxelles). — Monsieur le Président, Messieurs, je voudrais rappeler que le gouvernement belge est détenteur des actes diplomatiques. Ces documents ont été reproduits en des milliers d'exemplaires et ont été transmis à tous les gouvernements. Cette année encore, à plusieurs reprises, en mars et en avril, j'ai envoyé à soixante gouvernements différents dix exemplaires de chacune des six conventions et de chacune des listes. Si les gouvernements n'en donnent pas connaissance, soit à leurs administrés, soit à leur administration ou à des institutions privées, le gouvernement belge n'y est pour rien. Dès l'instant d'ailleurs où de simples particuliers écrivent au gouvernement belge pour recevoir des textes, des informations, des précisions sur les ratifications et sur les adhésions, je leur adresse personnellement la réponse et les textes immédiatement.

J'ajoute que j'ai constitué à Bruxelles, en vue de pouvoir répondre à certaines demandes d'information, une collection de documents officiels constituée par tous les documents parlementaires des différents pays qui ont soumis les six conventions de Bruxelles à leur gouvernement. Evidemment, lorsque certains pays ont ratifié ou ont adhéré, sans devoir en référer à leur pouvoir législatif, il n'y a aucun document sauf les instruments de ratification ou la lettre d'adhésion du gouvernement intéressé. Mais je crois que dans aucun pays on n'a pu approuver une de nos conventions de droit maritime sans la soumettre d'abord au parlement. Tous ces documents parlementaires sont à Bruxelles. Par conséquent on peut les consulter et avoir des références. Si le Bureau permanent veut par exemple publier une liste ou une table de matière, je suis tout prêt à collaborer à ce travail.

M. le Président. — Monsieur Bagge, je pense que ceci vous donne satisfaction.

M. A. Bagge. — Pas tout à fait. Du point de vue pratique, je ne vous pas très bien un avocat ou un armateur ou un simple particulier, qui désire avoir connaissance de ces questions, s'adresser au gouvernement belge ou à son Ministère des Affaires étrangères ou à un organisme analogue. Sa réaction sera : « Je n'ai pas le temps de faire ces démarches et il laissera tomber l'affaire. Ne puis-je trouver quelque part une collection de ces conventions qui serait en vente en librairie ou qu'on pourrait se procurer à l'association maritime. Ce serait beaucoup plus commode. Mais dire à quelqu'un de s'adresser à une autorité administrative je crois que vraiment ce n'est pas pratique.

M. le Président. — M. Berlingieri a demandé la parole. Puis-je vous demander d'être très bref.

M. Giorgio Berlingieri (Gênes). — Je remercie Monsieur Bagge d'avoir repris, avec l'appui de son autorité, la proposition que j'ai faite moi-même au cours de cette conférence.

Si mes souvenirs sont exacts, Me Louis Franck avait proposé ce commentaire qui devrait plutôt être un recueil de tout ce qui avait été dit, spécialement au cours des séances de la conférence diplomatique qui ont préparé les diverses conventions. Puisque ces discussions constituent un élément très intéressant pour l'interprétation des différentes règles et conventions, je crois qu'il serait utile de pouvoir les receuillir. Il ne s'agit évidemment pas d'interpréter les conventions ni de découvrir la couronne du Comité Maritime et du Bureau Permanent ; il s'agit seulement de faire une œuvre de collection et sur ce point je me rallie entièrement à la proposition de M. Bagge.

M. le Président. — Je propose que MM. Bagge et Berlingieri s'adressent par écrit au Bureau Permanent pour lui soumettre leurs désiderata au sujet de cette publication. Le Bureau Permanent se mettra ensuite en rapport avec M. Denoël et le gouvernement belge et ensemble ils verront ce qui peut être fait. Sommes-nous d'accord ? *(Assentiment)*

La séance est levée à 17 heures 50.

The conference adjourned at 5,50 p.m.

SAMEDI, 24 SEPTEMBRE 1949

SEANCE DE CLOTURE

SATURDAY, SEPTEMBER 24 th, 1949

CLOSING SESSION.

La séance est ouverte à 10 heures 50 minutes, sous la présidence de M. le Professeur Offerhaus.

The session opened at 10,50 a.m., Professor Offerhaus in the chair.

REGLES D'YORK ET D'ANVERS

YORK-ANTWERP RULES

M. le Président. — Je propose à la conférence de confirmer définitiment le texte des Règles d'York et d'Anvers 1950 tel qu'il se trouve dans le document que vous avez sous les yeux.

RULE OF INTERPRETATION.

In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

RULE A. There is ageneral average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made peril the property involved in a common maritime adventure.
or incurred for the common safety for the purpose of presserving from

RULE B. General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

RULE C. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

RULE D. Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure ; but this shall not prejudice any remedies which may be open against that party for such fault.

RULE E. The onus of proof is upon the party claiming is general average to show that the loss or expense claimed is properly allowable as general average.

RULE F. Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

RULE G. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

RULE I. **Jettison of Cargo.**

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

RULE II. **Damage by Jettison and Sacrifice for the Common Safety.**

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

RULE III. **Extinguishing Fire on Shipboard.**

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average ; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

RULE IV. **Cutting away Wreck.**

Loss or damage caused by cutting away the wreck or remains of spars or other things which have previously been carried away by sea-peril, shall not be made good as general average.

RULE V. **Voluntary Stranding.**

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average, but loss or damage incurred in refloating such a ship shall be allowed as general average.

In all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

RULE VI. **Carrying Press of Sail — Damage to or Loss of Sails.**

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average ; but where a ship is afloat, no loss or dammage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.

RULE VII. **Damage to Machinery and Boilers.**

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage ; but where a ship is afloat no loss or damage caused by working the machinery and boilers, including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average.

RULE VIII. **Expenses Lightening a Ship when Ashore, and Consequent Damage.**

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

RULE IX. **Ship's Materials and Stores Burnt for Fuel.**

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided ; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

RULE X. **Expences at Port of Refuge, etc.**

(a). When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average ; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b). The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(c). Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if reasonably incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to date of completion of discharge.

(d). If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expense, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment and forwarding, or any of them (up to the

amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extroardinary expense saved.

RULE XI. **Wages and Maintenance of Crew and other Expenses bearing up for and in a Port of Refuge, etc.**

(a.) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general in accordance with Rule X (a).

(b.) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary hort he common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the xetra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(c). For the purpose of this and other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms or articles of employment.

(d). When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the

saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred.

RULE XII. **Damage to Cargo in Discharging, etc.**

Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

RULE XIII. **Deductions from Cost of Repairs.**

In adjusting claims for general average, repairs to be allowed in general average shall be subject to deductions in respect of « new for old » according to the following rules, where old material or parts are replaced by new.

A. **Generally.**

The deductionse to be regulated by the age of the ship from date of original register to the date of accident, except for provisions and stores, insulation, life- and similar boats, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

No deduction to be made in respect of provisions, stores and gear which have not been in use.

The deductions shall be made from the cost of new material or parts, including labour and establishment charges, but excluding cost of opening up.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

No cleaning and painting of bottom to be allowed, if the bottom has not been painted within six months previous to the date of the accident.

A. — **Up to 1 year old.**

All repairs to be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted.

B. — **Between 1 and 3 years old.**

Deduction off scaling, cleaning and painting bottom as above under Clause A.

One-third to be deducted off sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers, provisions and stores and painting. One-sixth to be deducted off woodwork of hull, including hold ceiling wooden masts, spars and boats, furniture, upholstery, crockery,

metal- and glass-ware, wire rigging, wire ropes and wire hawsers, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, chain cables and chains, insulation, auxiliary machinery, steering gear and connections, winches and cranes and connections and electrical machinery and cranes and connections other than electric propelling machinery ; other repairs to be allowed in full.

Metal sheathing for wooden or composite ships shall be dealt with by allowing full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt and labour metalling are subject to a deduction of one-third.

C. — **Between 3 and 6 years.**

Deductions as above under Clause B, except that one third be deducted off wood work of hull including hold ceiling, wooden masts, spars and boats, furniture, upholstery, and one-sixth be deducted off iron work of masts and spars and all machinery (inclusive of boilers and their mountings).

D. — **Between 6 and 10 years.**

Deductions as above under Clause C, except that onethird be deducted off all rigging, ropes, sheets, and hawsers, iron work of masts and spars, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, insulation, auxiliary machinery, steering gear, winches, cranes and connections and all other machinery (inclusive of boilers and their mountings).

E. — **Between 10 and 15 years.**

One-third to be deducted offff all renewals, except iron work of hull and cementing and chain cables, from which one sixth to be deducted, and anchors, which are allowed in full.

F. — **Over 15 years.**

One-third to be deducted of all renewals, except chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

RULE XIV. **Temporary repairs.**

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other

interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions « new for old » shall be made from the cost of temporary repairs allowable as general average.

RULE XV. **Loss of Freight.**

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. **Amount to be made good for Cargo Lost or Damaged by Sacrifice.**

The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

Where goods so damaged are sold, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

RULE XVII. **Contributory Values.**

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not bein allowed as general average ; deductions being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passenger's luggage and personnal effects not shipped under bill of lading shall not contribute in general average.

RULE XVIII. **Damage to Ship.**

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, subject to deduction in accordance with Rule XIII. When not repaired, the reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

RULE XIX. **Undeclared or Wrongfully Declared Cargo.**

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such good shall contribute upon their actual value.

RULE XX. **Provision of Funds.**

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring money advanced to pay for general average disbursements shall also be allowed in general average.

RULE XXI. **Interest on Losses made good in general average.**

Interest shall be allowed on expenditure, sacrifices and allowances charged to general average at the rate of 5 per cent. per annum, until the date of the general average statement, due allowance being made for any interim reimbursement from the contributory interests or from the general average deposit fund.

RULE XXII. **Treatment of Cash Deposits.**

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment tot he parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

The President. — We have specially on the Agenda the final acceptance of the York-Antwerp Rules, and after that, discussion on Article 10 of the Bills-of-Lading Convention.

First of all I should like to ask the Conference whether they approve that, in the National Sub-Committee on Shipowners' Liability, there should also be appointed a member from Finland namely Mr. Anderson. (*Agreed*). Then Mr. Anderson is appointed.

Now, as you all know we have this week discussed the York-Antwerp Rules, 1950, you have all before you the stencilled text of these Rules as it was prepared on Thursday and laid before the Conference yesterday.

Yesterday you discussed some minor errors, small corrections of the Rules, and the text of these amendments of errors and corrections is also before you all.

It is the text you had before you on Friday, you have no new paper since Friday on the York-Antwerp Rules, but you have only before you the text which we all got from the Secretariat on Friday in which you have changed several small points in ink, and this morning you got one paper reading « Amendments in text, 1950 ». The title should read : « York-Antwerp Rules 1950 » and so on.

Does any delegation consider it to be necessary to read the text of these Amendments ? I think you have studied it, I am sure you will have seen those amendments and seen the text as amended. Thus it is not necessary to have these amendments of the text re-read, and we can, I think, accept it.

I have considered whether it would be necessary to have this text con-

firmed by each delegation in succession ; I have considered the possibility of introducing a formal proposal to have this text so accepted, but I think we can do this very important work in a simple way, and I therefore now propose that the Conference shall finally accept the text of the York-Antwerp Rules, 1950, as you have it before you.

May I take it that the Conference accepts these York-Antwerp Rules, 1950 ? (*General assent*).

Then the text has been adopted.

I now call on Mr. Dowlen, Chairman of the Institute of London Underwriters, who has asked to speak.

Mr. E. H. N. Dowlen (London). — Mr. President, Gentlemen, as an Underwriter in the London market for twenty years, and the Chairman of the Institute of the London Underwriters, you can understand very naturally I am extremely interested in all maritime affairs, of which, general average, which is embodied in the York-Antwerp Rules, constitutes no small part. Therefore when the British Law Association approached the Underwriters and asked if we would appoint representatives to sit on a Committee to consider the revision of these Rules, knowing the difficulties of the divergencies of practice there have been during the last fifteen, twenty or twenty-five years, we were very pleased indeed to appoint our representatives.

Now that the Rules have been revised and adopted by this Conference we, the Maritime Company Underwriters in London, are very pleased indeed. The only thing now that we have to do is to go back and see that they are brought into operation without delay. Or would it be better if I said without undue or any delay ? Although I have not received any authority from my members in London, I feel that I am on safe ground in saying that I feel certain on behalf of my members that this is the course that will be adopted.

If our friends throughout the world, as I feel quite certain they will, want to use these new Rules, they need not worry in any way about their hull policies, because I am sure they can consider they will be amended as soon as we are notified. The same thing can apply to the cargo interest, when Bills of Lading are concerned containing the 1950 Rules, their policies naturally will be under the new regulations without there having to be any notification to London.

It will be part of my responsibility when I return to London to see that an official statement is issued by the Institute of London Underwriters, in

conjunction with my friends belonging to the Corporation of Lloyds, and I will see that that is done, just as it was in 1924.

I think there is only one thing more necessary for me to say. That is to conclude on the hope that all our friends belonging to the maritime nations of the world will adopt the same attitude and bring these new Rules into operation without delay any delay or undue delay.

Traduction orale par M. Ant. Franck.

M. Dowlen, président de l'Institute of London Underwriters, se déclare très heureux de l'adoption du texte nouveau des Règles d'York et d'Anvers 1950. M. Dowlen ajoute qu'il ne reste plus qu'une chose à faire : c'est de retourner dans son pays et d'obtenir sans retard la mise en pratique des règles nouvelles. Sans pouvoir engager formellement l'Institut des Assureurs de Londres, M. Dowlen croit cependant que les assureurs adopteront ces Règles et que dès a présent les armateurs peuvent être assurés que les assureurs appliqueront ces Règles et que si dans les connaissements il y a une référence aux Règles d'York et d'Anvers, les chargeurs ne doivent avoir aucune inquiétude ; que leurs assureurs ne verront aucune objection à appliquer les Règles nouvelles.

The President. — I call on Mr. Raynor as representative of Lloyd's Underwriters.

Mr. C. D. Raynor (London). — Mr. President, Gentlemen, it is appropriate that at this stage I should on behalf of Lloyds Underwriters Association make a short statement. We believe on the one hand that the greatest stability afforded by the new Rules will give satisfaction to the commercial community at large. We hope, on the other hand, that they will result in speedier production of those large volumes, incomprehensible to a simple underwriter, which are known as General Average Statements, since thereby we shall be enabled to dispose of our General Average liabilities, or may be in an odd case or two, receive our general average refunds with the least possible delay.

We Lloyds Underwriters wish therefore to make the following statement : — It is quite possible that at the time when shipowners decide to insert the new Rules in their contracts of affreightment there will exist policies of insurance the terms of which make no reference to such new Rules by reason of the difficulty of re-printing and distributing amended insurance clauses throughout the world. In consequence, we wish it to be clearly understood that where contracts of affreightment provide for general average to be adjusted according to York-Antwerp Rules 1950, then we shall be content to accept liability on the basis of those Rules, notwithstanding any clause or clauses to the contrary in the policies of insurance, whether the policies insure the interest of the merchants or the interest of the shipowners.

Now, may I add what I have tried to stress elsewhere. It is a simple,

or perhaps a comparatively simple, matter to draw up an agreed international set of rules, but it is harder to attain the international uniformity of interpretation of those rules, it is perhaps even more difficult to obtain their international adoption. I say therefore that unless we can by our joint efforts obtain international adoption of York-Antwerp Rules, then to that extent we shall be failing in our purpose, and we shall merely be paying lip-service to the principle of creating one common maritime law. To underwriters it matters not so much that there should be this or that set of rules as that there should be a common law and practice of general average applicable to maritime trade. It is our earnest wish to see shipowners of all nationalities adopt the York-Antwerp Rules 1950, and that without any options or reservations whatsoever. We also feel that all Delegations present at this Conference should devote their efforts to securing that very desirable end.

Traduction orale par M. Carlo Van den Bosch.

M. Raynor, délégue de Lloyds Underwriters Association. — l'Association des Assureurs de Lloyds, — tient à faire une déclaration. Il se rejouit de constater que les Règles nouvelles sont de nature à renforcer la stabilité et l'uniformité dans le domaine du commerce maritime, stabilité et uniformité qui sont profitables à toute la communauté commerciale. Les nouvelles Règles ont aussi le mérite d'apporter plus de clarté et de permettre aux assureurs de mieux se rendre compte des responsabilités qui pèsent sur eux en matière d'avarie commune. Elles permettront également de recueillir les fonds et de les distribuer sans délais préjudiciables. Il est possible, dit M. Raynor, qu'au moment où les armateurs décideront d'insérer la référence aux nouvelles règles dans leurs documents, il puisse se produire que les polices d'assurance soient encore rédigées selon les anciennes formules. M. Raynor fait la déclaration que les assureurs seront disposés à accepter, dans ce cas, que l'avarie commune soit régie par les Règles d'York et d'Anvers 1950, sans égard à toute disposition contraire, du moment que la charte-partie ou le connaissement porte la référence à ces Règles.

Il est relativement facile de parvenir à l'uniformité des textes ; mais il est bien plus difficile de parvenir à une uniformité d'interprétation. Ce qui est plus difficile encore, c'est d'obtenir l'adoption internationale de ces règles. Aussi, tous les intéressés auront-ils pour tâche d'unir leurs éfforts afin d'obtenir que les règles nouvelles soient adoptées sans réserves dans le monde entier.

The President. — I call on Mr. Souter for the British Shipowners.

Mr. Donald Souter (Great-Britain). — Mr. President, Gentlemen. I was sent over as one of the delegates for the British shipowners to discuss the York-Antwerp new Rules, and I should like to say that they will certainly accept them and will be grateful to this Committee for a piece of work efficiently and quickly done.

Mr. Keating. — Mr. President, Gentlemen. I think that the Conference can take it that the American interests will adopt the new Rules with enthusiasm. The American delegation is particularly grateful to Mr. Reading and to Mr. Edmunds for what we know was a very constructive job. We have watched their work with gratitude and admiration, and we

do not want to leave this Conference without telling them what a grand job they did.

As this is my last appearance before this great Conference, I want to thank our distinguished president, Mr. Offerhaus, for a really great job in presiding over this Convention. We have no better presiding officers abroad in America !

Now I close with this remark. We are also filled with admiration for that very distinguished Judge and Statesman, Sir Leslie Scott, who has played a vital part in this Convention, and in a great many that have preceded it. I hope he will always be here when we come back.

(Applause).

Sir Leslie Scott. — Thank you.

Mr. N. Kihlbom (Sweden). — Mr. President, Gentlemen, I want to support and second what Mr. Dowlen and Mr. Raynor have said. We are in each country schooled in our own way of thinking and thus we naturally hold different opinions on some points. We therefore, each of us, have had to give away a little and to come to a compromise in order to reach international agreement. The compromise has the faults of compromise, and the Rules are perhaps not things of great beauty, but that, Gentlemen, is a small matter compared with the importance of having reached this voluntary practical agreement. Therefore, let us all, even though we have not had some views accepted, give our unrestricted support to the general universal adoption of these Rules.

I make this plea, Gentlemen, not as a national delegate, but as a business man and as an underwriter. In that capacity have I asked the Scandinavian delegations about their attitude and I am happy to say that they have promised their unreserved support in a general world wide endeavour to get the 1950 York-Antwerp Rules universally adopted.

Mr. Ameln. — As Chairman of the International Association of Average-adjusters, I congratulate this Committee for the great and good results obtained here. No one more than an adjuster is interested in all the assistance we get from the practical men.

General average is a practical instrument. It is necessary in a crisis to be observant of this. I will suggest to the Adjusters, fifteen Adjusters from nine countries, that we try not only to obtain uniform rules but we also have sucess in obtaining uniform practice of the rules.

I should like to suggest that the Associations of Average Adjusters in

Great-Britain and the United States sometimes not only nationally but together, will think on rules of practice if necessary.

I will finish by saying we have to consider the principle of common safety and the principle of common benefit, and we should always remember in the shipping world the great principle of common sense.

The President. — That is the last speaker on the York-Antwerp Rules but for myself, and I only wish to express the gratitude of the Conference to all those who have contributed to this very important, very good work before the Conference and those who by their contributions to the discussions and their hearty support have participated in this valuable result.

There is one subject on the Agenda, that is the proposal by the the French and Italian delegations on the Scope of the application of the articles of the Convention on Bills of Lading, especially the Article 10.

First of all, although Mr. Berlingieri has asked to speak, I should like to know whether the French delegate, who was the first to move the discussion on Article 10. wishes to address the Conference.

M. Dubosc (France). — Monsieur le Président, au nom de la délégation française, j'ai l'honneur de faire à la conférence une brève communication sur le sujet mis à l'ordre du jour.

La Convention sur les Connaissements a, comme il est de règle, fixé elle-même la portée de son application. Elle l'a fait par son article 10, ainsi conçu :

« Les dispositions de la présente convention s'appliqueront à tout con-
» naissement créé dans un des Etats signataires ».

La formule ainsi employée a été presque unanimement critiquée par les commentateurs. Par ailleurs, certains Etats, profitant de la faculté qui leur était ouverte par la convention, en ont restreint l'application en excluant soit leurs colonies, soit leur cabotage national. Il en est résulté une situation assez confuse. Dans certains cas, il est difficile de déterminer si un contrat de transport maritime est ou non soumis à la convention.

A la vérité, pour déterminer la portée d'application de la convention, trois systèmes sont possibles.

En premier lieu, on pourrait s'attacher à la nationalité des parties et dire que la convention est applicable quand les parties au contrat de transport appartiennent l'une et l'autre à des Etats signataires. Ce système se heurte, à mon avis, au caractère négociable du connaissement. En effet,

dans la pratique, le conflit ne nait pas entre le chargeur et le transporteur; il existe, après le débarquement, entre le transporteur et le destinataire, ou plus souvent encore un endossataire du connaissement. Peut-on imposer à celui-ci la loi qui a régi les rapports du chargeur avec le navire lors de la conclusion du contrat ? Nous ne le pensons pas.

Le second système consiste à prendre en considération la loi du pavillon. Il est simple et, comme tel, séduisant. La délégation française ne pense pas cependant qu'il doive être retenu. En effet, si on l'admettait, il y aurait lieu d'appliquer la convention à un transport dès lors que ce transport est effectué sous le pavillon d'un Etat contractant entre deux ports d'un même pays. Par contre, la convention ne s'appliquerait pas si le navire ne porte pas le pavillon d'un Etat signataire, alors que les deux parties au contrat de transport appartiennent toutes deux à des Etats signataires.

Enfin, le troisième système est celui de la « lex loci contractus » et c'est à ce système en définitive que se rallie la délégation française. Cependant, celle-ci serait d'avis de compléter la disposition de l'article 10. En effet, ce texte en le prenant à la lettre s'applique aussi bien à des transports dans le cadre d'un même Etat qu'à des transports internationaux.

Il nous a paru également souhaitable de préciser dans le texte que l'application de la convention n'est liée en aucune façon à la nationalité des parties. C'est pourquoi j'ai l'honneur de soumettre à la conférence un projet de modification de l'article 10, qui pourrait dès lors être ainsi conçu :

« Les dispositions de la présente convention s'appliqueront à tout con-
» naissement créé dans un des Etats contractants, à condition qu'il s'a-
» gisse d'un transport pour un autre Etat, et ce sans tenir aucun compte
» de la nationalité des parties. »

M. Giorgio Berlingieri (Gênes). — Monsieur le Président, Messieurs, je crois que nous sommes tous d'accord sur la nécessité qu'il y a de modifier en vue de son éclaircissement la signification de l'article 10 de la convention sur les connaissements. D'après le texte de cet article, la seule circonstance tout à fait matérielle du chargement d'une partie de marchandises dans un port appartenant à un des Etats contractants dans l'opération des transports, suffit pour soumettre l'opération aux dispositions de la convention.

J'ai donné un exemple dans le rapport que j'ai eu l'honneur de vous présenter. Supposons qu'un navire panaméen charge des marchandises

dans un port d'un état contractant, Gênes, Marseille, Anvers ou Londres. Cela ne suffirait pas si le navire n'appartient pas à un armateur d'un des états contractants pour que la convention soit d'application. Si ce navire est panaméen et s'il charge à Londres, pourquoi devrions-nous permettre à l'armateur de demander l'application de la convention ? Mais il y a pire.

L'interprétation que l'on a donné à la clause fausse évidemment la nature aussi bien que la portée telles qu'elles sont universellement reconnues d'une convention internationale qui doit s'appliquer. Dans le cas d'un conflit par exemple, entre deux personnes, celles-ci doivent appartenir à des états contractants. Il est très facile d'identifier le transporteur par le pavillon sous lequel le navire effectue le transport. Pour l'autre contractant c'est plus difficile. Parce que le contrat n'est pas entre le chargeur et le transporteur, mais pour faciliter la circulation du connaissement, il interviendra dans le contrat quelqu'un qui est différent du chargeur, c.à.d. le réceptionnaire. Il est dès lors plus difficile d'identifier l'autre partie du contrat.

Doit-on tenir compte du chargeur ou du réceptionnaire ? A mon avis, c'est plutôt du réceptionnaire qu'il faudrait tenir compte. Je ne vois aucune difficulté à ce qu'il soit obligé de reconnaître comme valables, vis-à-vis de lui, les clauses que le chargeur a mises en signant le connaissement, parce que toutes les clauses du connaissement circulent avec lui et obligent tous ceux qui prennent part à la circulation du titre.

Je propose donc à la conférence de dire que les dispositions de la convention s'appliqueront à tous transporteurs, c.àd. armateurs ou réceptionnaires ressortissant des états contractants.

Mr. Cyril Miller (London). — The proposition Mr. Berlingieri makes to the Conference is as follows : The provision of the present Convention shall apply to all contracts of carriage when either the ship-owner or the consignee are nationals of contracting states.

Mr. Braekhus. — I have with great interest, Mr. Chairman, studied the French and Italian proposals on the provision of that article in the Bills of Lading Convention. I agree with the Italian delegate that this article should be revised but I am not sure that the Italian proposal gives the best solution of the problem. I think we should try to give the Convention the widest possible application, not only because it is the work of this Committee, but because I think it gives a fair and reasonable compromise between the interests of the carrier and the Bill-of-Lading

holder. If you want to give the Convention the widest possible field of application you should not ask : « Does article ten limit it to cases where the Bills of Lading are issued to contracting states ». I do not know why this rule was written like this. Whether it is possibly the lex loci contractus or whether a consequence of the English conception that the rules are a part of the Bills of Lading. You remember the English Bills of Lading Act has a special provision, that every Bill of Lading insured in the United Kingdom should contain an express statement that the rules shall apply. It seems that they look at it as purely a contractual matter.

This article ten is, in my opinion, rather unpractical. I suppose that most damaging of goods and shortage takes place in the port of discharge. The port of discharge is normally the domicile of the Bill of Lading holder, and that is the place where you can most easily produce the evidence for damage. But you do not know if the Courts in the ports of discharge will respect the Convention. It may be that a discharge takes place in a country where the Convention is not adopted, and then the principle in article ten may become totally ineffective. On the other hand, if a Bill of Lading is issued in a non-contracting state such as the Argentine, and discharge takes place in the contracting state, let us say in Norway, I see no reason why the Convention should not be applied. The Bill of Lading holder in Norway will also in this case need the protection of the Convention, and the litigation will most probably take place in Norway. The most simple solution in my opinion would therefore be to apply the Convention in all cases where the discharge takes place in a contracting State. I suppose there will be several objections to this proposal, specially where the carrier has the option between different ports of discharge, some of which lie within a contracting State and some not. Untill the Bill of Lading holder has nominated the port of discharge there will be uncertainty as to whether the rules will or will not apply. I do not think this objection is of any importance. There are other cases where the carrier does not know beforehand whether the rules will apply or not, specially where the Bill will apply to deck cargo. I refer to article one, sub-section three of the Rules.

On the other hand I cannot see any reason why the nationality of the parties should be taken into account. The Hague Rules represent no privilege which would only be on ship-owners of contracting states, — and the nationality of the other party is a special difficulty — to determine whether the other party should be the consignor or the consignee, and

this difficulty would be totally avoided if you took the law of the place of discharge.

I think the rule to use the Convention in all cases gives a very simple and a very practical solution. Litigation will take place in that state and the Municipal Law of that country will contain a Hague Rule Amendment. In this connection, Mr. Chairman, there is another interesting point which is closely associated with the one with which I have dealt, and I would ask permission to say a few words about it. It is also connected with the question of the gold clause in the Bills of Lading Conven- and I would ask permission to say a few words about is. It is also connected with the question of rule clause in the Bills of Lading Convention. It is not enough to consider in which cases the Convention should be applied, you must also know which of the different Hague Rule amendments should be applied in this special case. It is now a very important question because of the difference of the £100 limit in the various countries. Take a Bill of Lading for the U.K. in Norway. If the American Carriage of Goods by Sea Act is applied the limit of liability will be $500. If you used the corresponding Norwegian enactment it would be Kroner 1800. Now, $500 used to be Kroner 2,500, but after devaluation it is about Kr. 3.500, it is double of Norwegian. It is a very important question whether you should use American or Norwegian rules. I think it would be very practical, with a revision of Article 10, if you would give a rule as to which nation's enactment should be used.

With the present Article 10, I think the law of the issue should be used, but if you change Article 10 in the way I propose, it would be the natural thing to use the enactment in the port of discharge, as the litigation takes place there. That means that the court applies its own municipal law, and that is, of course, the most convenient thing to do. If you revise Article 10 on these lines, it might also be possible to introduce uniform paramount clause which then must be obligatory, something like this : if discharge takes place in a port of a country which is not a contracting state, then the Hague rule enactment for the carriage should apply. It if is obligatory for the contracting state, then you will give the rule the widest possible application. Mr. President, these are merely suggestions for further study. It is impossible to take any decision here until the matter has been discussed further.

M. Léopold Dor (Paris). — Si je me permets de donner un avis sur les propositions qui sont faites, c'est que je suis peut-être le seul membre de

cette assemblée qui ait effectivement pris part aux délibérations de La Haye en 1921, quand nous avons établi les règles de La Haye.

Je me permets de vous mettre en garde contre les dangers qu'il y a de toucher aux règles de La Haye, car elles sont devenues une convention internationale, la convention de 1924. On ne peut par conséquent y toucher qu'à la condition de faire voter par chaque Parlement une loi modifiant la convention de 1924. En France, pour prendre un exemple, il a fallu douze ans à notre très regretté Président M. Louis Franck et à moi-même pour faire adopter la convention de 1924 par le gouvernement français. Les députés algériens qui sont très anti-armateurs ne voulaient pas en entendre parler et faisaient de l'opposition. S'il nous faut aujourd'hui retourner devant le gouvernement français et proposer une modification à cette convention, les députés algériens en profiteront pour demander une demi douzaine d'autres modifications. Voyez le travail que cela représente de faire voter des lois dans tous les grands pays maritimes qui ont adhéré à cette convention. Si encore il s'agissait d'un point d'une importance capitale. Si dans les règles de La Haye on avait mis un article qui à l'usage se serait révélé complètement inapplicable, on dirait que quels que soient les inconvénients qu'il y a à remettre le travail sur le métier, il faudrait le faire. Ici il s'agit tout au plus d'une amélioration sur un point de détail car l'article que nous avons adopté à La Haye a le mérite de la simplicité et de la clarté. Il dit que la convention sera applicable toutes les fois que le connaissement sera créé dans un pays qui a signé et ratifié la convention. C'est simple et c'est clair. Vous savez tout de suite où vous êtes. Lorsque vous avez un litige, vous regardez le connaissement, vous voyez le port où il a été créé, vous voyez dans votre documentation si ce pays a ratifié la convention et vous savez immédiatiement si on applique les règles de 1924 ou non. On pourrait sans doute trouver des systèmes meilleurs, mais ce n'est ici qu'un petit point de détail qui ne me paraît pas valoir la peine de mettre en branle l'énorme procédure parlementaire. Par ailleurs, notre conférence n'a pas reçu mandat de modifier quoi que ce soit aux règles de La Haye. Faites bien attention car avant de toucher à ces règles, il faut que tous les intéressés, c.à.d. les gens qui s'en servent quotidiennement, soient consultés. Or ni les armateurs ni les assureurs n'ont été approchés à ce sujet. Je suis persuadé que les armateurs britanniques, si on retournait en Angleterre en leur disant qu'on a voté une modification aux règles de La Haye, demanderaient à leurs délégués de quoi ils se sont mêlés.

Pour toutes ces raisons, je vous conseille la plus grande prudence.

May I give a short summery in English of what I said? I think I am the only member of this assembly who took part in the discussions at the Hague in 1921, that is why I venture to give my opinion. I think we ought to be extremely careful about interfering with the Hague Rules. It was extremely difficult to pass them through many Parliaments. In France it took our President, Mr. Louis Franck and myself 12 years to get the French Parliament's consent to the 1924 Convention which embodies the Hague Rules. To ask now the parliaments of 20 — 25 countries to pass Acts of Parliament for altering the Hague rules is a very difficult proposition. It would be necessary if in the Hague Rules there had been an important Article which proved by practice to be entirely wrong. If we were on something of really great importance it would be different, but I suggest that we are now here simply on a small point of detail. After all, the Rules of the Hague have the advantage of being simple and clear. They provide that if the Bill of Lading has been created in a country which has ratified a Convention, the convention applies. Well, that is so simple. You have to look merely at your Bill of Lading, and you know where you are. We are told that it would be much better to look at the nationality of the parties and see whether the shipper and consignees and so on belong to countries which have ratified the Convention. It is quite possible that a better system, from an absolute standpoint of justice, could be devised, but the system which we adopted at the Hague is simple and clear and whatever the advantages of altering them, I do not think the advantages are justified by the enormous disadvantages of forcing 20 — 25 Acts through 25 reluctant Parliaments.

The President. — Gentlemen, I think you will all agree that we cannot decide on these intricate questions this morning, especially not after this week, but there are still five speakers on my list and I should like to urge upon them to be short. First of all, I call on Mr. J. T. Asser.

Mr. J. T. Asser (Amsterdam). — Mr. President, Gentlemen, although I am sorry to say this country has not yet ratified the 1924 Convention, and therefore the special diffculty referred to by Mtre Dor as to the question of enacting new legislation on this special point does not occur ; yet the Netherlands delegation feels that this subject should not be treated by the Comité Maritime International, for the following reasons : As far as we know, — and if I am wrong I beg to be corrected, — this Article 10, the application of the convention, has given rise to no difficulties in

any country except France and Italy. In France and Italy there is a difficulty, that of the carriage of goods between French ports, or French ports and the Port of Algiers, and other ports of territories belonging to the French Empire. Well, Gentlemen, I think that this is a question of domestic French and domestic Italian law and I feel that the Gentlemen who are proposing the modification of Article 10 should go to their own Governments and ask that their domestic law should be changed.

We in the Netherlands do not feel that this article 10 which was so fully discussed first by the International Law Association, then by the Comité Maritime International, and finally by this Conference should be gone into again.

Sir Leslie Scott (Great-Britain). — The British delegation has no mandate at all to support any alteration in The Hague Rules today. I believe the American Delegation is in a similar position. That being so, I venture to ask the Conference not to come to any conclusion on the lines of the proposal.

Mr. Cyril Miller (London). — If I may add a few words to what Sir Leslie Scott has just said, it is quite true that we have no mandate whatever to support any alteration of the Hague Rules, which with all the difficulties, in their 25 years of life, have proved extremely effective. I say that, although we in England have had difficulty over the application of these Rules when it has been a question of a vessel coming from a foreign country, a country foreign to England, which is a contracting member, yet the Bill of Lading does not contain, as it ought to do, a clause paramount stating that it is subject to the Hague Rules. That difficulty has been so great that two of our highest courts, the Court of Appeal and the Privy Council, have come to diametrically opposite decisions on the question. Even so, we in England feel that it would be a grave error to start, if I may use the expression, playing about with these Rules, which took so long to be agreed and were the subject sometimes of very bitter and acrid dispute between the two opposing factions in the shipping industry; and we feel that, since we have had 25 years experience of them, they have not been a bad experience, it would be very wrong to make an alteration.

M. Spiliopoulos (Grèce). — Monsieur le Président, Messieurs, je crois qu'il ne subsiste aucun doute : la clause 10 du point de vue juridique est une clause arbitraire. Les rapports des délégations française et italienne l'ont démontré à suffisance. Reste à apprécier l'argument invoqué

par Me Dor, à savoir la difficulté qu'il y aurait à demander aux parlements des différents pays signataires de modifier le texte de la convention. C'est un argument très sérieux, mais alors on se demande pourquoi nous avons décidé de modifier la convention sur la limitation de responsabilité des propriétaires de navires. L'argument ne vaut-il pas aussi pour cette convention ? C'est pour ces raisons que je crois pouvoir proposer de renvoyer la question à une Commission d'étude pour examiner tout d'abord si on ne pourrait trouver une solution qui se rapprocherait davantage de ce que nous désirons et que nous croyons justifié et qui d'ailleurs ne changerait rien à la validité de la convention de La Haye. Notre comité maritime a également le droit d'étudier les questions qui ont trouvé une solution dans le passé en vue de leur trouver une solution meilleure. Il ne reste ensuite qu'à estimer si la solution qui sera trouvée par la Commission est tellement grave pour qu'on doive ou non conseiller aux gouvernements de modifier la convention.

Quant à l'autre argument invoqué par Me Dor, à savoir qu'il s'agit d'une question tout à fait secondaire, malgré toute l'estime que j'ai pour lui, il me permettra sans doute de ne pas être d'accord. Le champ d'application d'une convention est primordial. Ce n'est pas une question secondaire ni une petite chose de savoir quand une convention sera ou ne sera pas appliquée. C'est pour cette raison que je fais la proposition de renvoyer la question à une Commission qui délibérera sur le bien-fondé des propositions faites par l'Italie et la France et la possibilité de trouver une solution meilleure. Je suis d'avis qu'il ne sera pas facile de la trouver mais il faut d'abord en discuter et en délibérer ensuite.

M. le Président. — La parole est au professeur Ripert.

M. G. Ripert (Paris). — Monsieur le Président, Messieurs, l'association française n'a jamais demandé que la conférence trouve une solution immédiate à la difficulté qu'elle a signalée, mais cette difficulté est telle que nous devons tous y réfléchir. Me Dor a évoqué ses souvenirs de la conférence de La Haye de 1921. Mais il n'était pas à la conférence diplomatique de 1924 et, juridiquement, les règles de La Haye n'existent plus. Ce qui existe, c'est une convention internationale qui impose comme règle obligatoire dans tous les transports, l'observation de certaines règles que les parties aient voulu ou non les adopter.

Ceux qui ont assité à la conférence diplomatique de 1924, et j'avais l'honneur à ce moment de représenter le gouvernement français, savent très bien que la conférence n'a pas discuté à fond la portée d'application

de la convention. En effet, en déclarant que la convention est applicable quand le connaissement est créé dans un état contractant, on prenait la formule des règles de La Haye, mais sans s'apercevoir qu'elle ne pouvait plus jouer puisqu'il ne s'agissait plus de l'adoption volontaire de règles par les intéressés.

A l'heure actuelle, on se trouve en présence de difficultés considérables qui doivent intéresser tous les étrangers comme nous-mêmes, nous ne savons pas dans quels cas la convention internationale est applicable et dans quels cas c'est la loi nationale ou étrangère qui est applicable. A cette difficulté, nous n'y pouvons rien. Nous n'arriverons pas à la résoudre puisqu'il y a des pays non contractants qui font des expéditions maritimes. Nous demandons par conséquent au C.M.I. de vouloir bien considérer cette difficulté d'application de la convention internationale pour faire un rapport et suggérer à la prochaine conférence de quelle manière, soit par interprétation officieuse, soit par une modification de la convention, on pourrait envisager la détermination du champ d'application.

Mr. Keating. — We have no mandate on this subject from our Association ; so that we are unable to express any official view, but my own personal opinion is, that it would be an impossible task in America.

Mr. Martin Hill (London). — The British delegation agrees with every word that Mtre Dor has said. They regard it as thoroughly good sense. They propose that no action should be taken.

The President. — I would first ask who is in favour of the idea of the Greek delegate to appoint a special committee for this subject. We might refer this question to the International Commission which has been appointed for the subject of the Gold clause.

Now, first of all we have two proposals. The proposal to have a special committee for this point ; and the second proposal to refer to the International Sub-Committee.

Je voudrais dire à Monsieur Spiliopoulos qu'il n'est pas besoin d'un comité spécial. N'importe quel comité peut avoir le pouvoir d'examiner la question à fond et d'estimer si elle doit être déférée à la prochaine conférence, étant donné qu'elle a un sens pratique très grand. La Grèce n'étant pas parmi les pays qui ont signé la convention de La Haye, nous avons souvent des difficultés qui naissent sur la question de son application.

M. Spiliopoulos. — Je suis d'accord, pourvu qu'il soit fait rapport à la prochaine conférence.

M. Ripert. — Ne pourrait-on recommander aux associations nationales d'étudier la question ?

M. le Président. — C'est la proposition française ?

M. Ripert. — Oui ; nous voudrions qu'il soit recommandé aux associations nationales d'étudier la question du champ d'application de la convention.

M. le Président. — Y a-t-il d'autres délégations qui désirent voir confier cette matière à la commission internationale qui déjà étudie la clause-or.

Mr. Edvin Alten (Oslo). — My opinion is that it should be referred to the Sub-Committee already existing.

The President. — Yes, that is what I understood ; so I believe is the opinion of Italy, and Norway. It is not quite clear to me what France accepts. There are two views, whether the possibility is that the matter is to be referred to the International Commission which exists. That is what Italy and Norway wish to do.

The other possibility is that the matter shall not be referred to the International Commission, but that every national association should think about the matter and make such recommendations as they desire.

Now, what is the opinion of the French delegation ?

Quelle est l'opinion de la délégation française quant à l'idée de ne pas renvoyer à la commission internationale qui existe déjà, mais de soumettre cette affaire aux associations nationales.

M. Ripert. — Si on préfère renvoyer à la commission internationale, nous sommes d'accord.

M. le Président. — Cela doit être fait par le Bureau permanent et je ne crois pas qu'il le fera car M. Franck ne désire pas lui renvoyer cette matière.

M. Ripert. — Alors, nous demandons l'étude par les associations nationales.

M. le Président. — La proposition de la France est donc maintenant de renvoyer l'étude aux associations nationales.

Je voudrais récapituler la situation. Trois délégations, l'Italie, la Norvège et la Suède désirent que cette matière soit renvoyé à la commission internationale. Mais il y a onze voix au sein de cette assemblée et dès lors cette proposition n'est pas adoptée.

Reste alors l'idée de la délégation française, qui recommande l'étude

par les associations nationales. Je crois devoir mettre la question aux voix. *(Protestations de divers côtés)*

Je croyais que la proposition française était très simple puisque personne ne peut empêcher les associations nationales de réfléchir. Y a-t-il des gens qui veulent défendre aux associations nationales de réfléchir ?

M. Léopold Dor. — Défendre de réfléchir est une chose, mais inviter à réfléchir en est une autre. Si nous invitons les associations nationales à réfléchir, nous donnons l'impression au monde maritime que nous nous intéressons à une modification éventuelle des règles de La Haye.

If we invite the national associations to think the matter over, we will give to the maritime world the impression that we are on the road towards a modification of the Hague rules. Therefore I want a vote to be taken on the point.

M. le Président. — Je voudrais demander à la délégation française quels sont les termes exacts de sa proposition.

M. Ripert. — Il faut, soit interprêter cette phrase, soit la compléter de manière à dire que la convention s'applique dans les transports internationaux ou d'après la nationalité des parties ou d'après le pavillon du navire, que sais-je ? Je ne vois pas de solution. Il y en a quatre ou cinq possibles, il faut les examiner.

M. le Président. — Mais quelle est exactement la conclusion de M. Ripert ?

M. Ripert. — La procédure, c'est qu'après examen par les associations nationales des difficultés soulevées, le Comite Maritime International examine s'il faut pour la prochaine conférence diplomatique modifier ou non le texte.

The President. — The proposal is that this Article 10 should be examined and studied by the national associations and after that the associations will send in their opinions to the Permanent Bureau, eventually to refer it to the next conference. That is quite different from the English delegation's proposal to do nothing at all.

Mr. Keating. — That is our view.

M. le Président. — La proposition française est donc que la question soit examinée par les associations nationales qui enverront le résultat de leurs travaux au Bureau permanent qui avisera pour la prochaine conférence. L'autre idée émise dans cette conférence est qu'on ne fasse rien.

M. Ripert. — Il ne faut pas s'imaginer qu'en ne faisant rien on fait disparaître la difficulté.

M. le Président. — Je pense que le moment est venu de voter.

The proposal of the French delegation, as you heard, was to have article 10 of the Bills-of-Lading Convention examined by the national associations. Those who are in favour of this proposal will answer « yes ».

The delegations of Belgium, Denmark, United States, Great-Britain, the Netherlands vote « No ». France. Italy, Norway and Sweden vote « yes ».

Consequently the proposal of the French delegation is not carried.

Ireland has no vote, but we all appreciate that he Irish delegate expresses his negative view.

I think we can close the discussion on this subject.

The President. — Ladies and Gentlemen, we have come to a happy end of our Conference.

If one should ask me whether the C.M.I. has in Amsterdam accomplished the drafting of one or more conventions to be submitted to a Diplomatic Conference the answer should be : no, and if we consider the other subjects, we must come to the conclusion that referring a matter to a Committee cannot be such a very difficult thing which in fact means postponing the decision to a later moment. For these reasons one could say that our Conference has not obtained spectacular results. Nevertheless I think we all feel that useful work has been done. As to the York-Antwerp Rules the agreement of the parties concerned takes the place of statute law and international conventions. Reviewing these Rules to make them up to date is a very important matter, and the universal acceptance just depends on Rules which meet the requirements of modern commerce, notwithstanding the fact that the general principles which had been laid down by our grandfathers and fathers were maintained.

This result is, I may say so, due to the exceedingly valuable preparatory work which has been done. I express my sincere gratitude to all those, who have participated in it, especially to our friends from Landsend to Manhattan, who have cooperated so intensely, whom at this moment I will call the unknown soldiers of this struggle, as well as to our able President of the C.M.I. who regretted so much to have to leave the Conference for personal reasons. No international Conference on law will ever have any use unless the organization between the Conferences and the studious devotion of the members and national associations during that time can be relied upon. I trust and I may say I am sure that the organization of the C.M.I. will in the future prove to be adequate to

this entirely new development of events. We shall all of us on the day after to morrow have to turn our thoughts to absolutely other interests which have been waiting for being dealt with, not only this week but much longer than that. However there comes a moment, on receiving the text of our proceedings — which we hope will not be long — at which we will remember this Conference and from that moment on I recommend that you should again devote the scarce hours of your leizure, first of all to the C.M.I. It is the spirit of mutual understanding cultivated by this Conference and (without speaking of myself) stimulated by the « pick-me-up »'s from the side of the Dutch association that you may take up the further unification of maritime law, — which of course to-day you should like to forget. I express the warmest thanks to the Netherlands' association for the magnificent reception of the Conference. May we hope that the difficult and sometimes frightful circumstances in the world will not disturb this work and may the earnest devotion of you all contribute to the reinforcement of those mental powers in our part of that world by which we will first of all be able to diminish the chances of the devil.

M. Ripert (Paris). — Monsieur le Président, les associations étrangères présentes à cette conférence sont parfois divisées sur la solution des questions qui leur sont posées. Elles sont cependant unanimes pour vous remercier, et avec vous l'Association Néerlandaise de Droit Maritime, de l'accueil qui leur a été fait à Amsterdam. Nous avons trouvé en arrivant dans votre ville un travail admirablement préparé et une abondante documentation mise à notre disposition. Nous avons pendant toute cette semaine, reçu de vous et de votre Association les plus grands bienfaits. Nous savons avec quels soins et avec quel travail vous avez dû préparer tout cela. Nous n'en avons eu que le plaisir, mais nous songeons à toute la peine que nous vous avons donnée ainsi qu'à celle du secrétariat. Nous voudrions vous dire toute notre reconnaissance pour cela. Nous garderons avec une grande fierté le souvenir de cette conférence que vous avez bien voulu présider avec une autorité souriante qui se faisait parfois un peu sévère, mais nous acceptions volontiers cette sévérité.

Cette conférence nous laissera d'autant plus de souvenirs, que dans l'avenir les règles qui ont été votées ici vont s'appliquer dans toutes les parties du monde. Elles pourront bien conserver leur nom de règles d'York et d'Anvers, mais pour nous elles seront datées d'Amsterdam et nous nous souviendrons, Monsieur le Président, que c'est vous qui avez présidé à leur élaboration (*Applaudissements*).

M. le Président. — Mesdames, Messieurs, je remercie M. le Prof. Ripert de tout cœur pour les paroles bienveillantes qu'il a dites au nom de la Conférence. Je sais trop bien que ce n'est pas le Président à qui les résultats sont dûs. Avec une Conférence comme la nôtre on sait bien comment on commence, mais on ne sait pas où on en finit. C'est la Conférence elle-même qui doit être fière d'avoir réussi. M. Ripert voudra bien m'excuser, si je continue avec quelques paroles en anglais.

I have already told you in which spirit I am looking back at our Conference. It is not by the presidential machinery that you have surmounted your difficulties but by the hearty and sincere cooperation of all present. It is very valuable that your association consist of men whose heart is open for the feelings and the interests of others and who may be called civilized in the right sense of the word.

About fourty-five years ago, at a Hague Conference of private international law, there was a discussion upon the question whether « any State » should be allowed to refuse the mariage of foreign nationals for reasons of public policy. It was the German delegate who observed that such a wide rule was superfluous because one was « en bonne société ». That is how we are earnestly feeling here. The spirit of common understanding makes sharp articles unnecessary.

I thank you all for your very kind and very appreciative words which I will keep to heart. If I have been able to accomplish this week's work, it is due to the care of my wife whom you all know and to such higher forces by which you and I feel we must have been guided. I thank you most heartily for your support. *(Applause).*

La conférence est cloturée à midi et demi.
The conference closed at 12,30 p.m.

SEANCE ADMINISTRATIVE.

A l'issue de la séance du matin du jeudi, 21 septembre, le Bureau Permanent s'est réuni sous la présidence de Mr. Justice Pilcher, vice-président du Comité Maritime International.

Il a procédé à la nomination de membres titulaires, en remplacement de membres décédés. Sont élus à l'unanimité :

Pour la Belgique :

M. Henri Voet, docteur en droit, dispacheur, à Anvers.

M. Augustin Ficq, docteur en droit, Directeur de la Compagnie Maritime Belge (Lloyd Royal), à Anvers.

Pour le Danemark :

M. Niels Tybjerg, dispacheur, Copenhague.

M. Peter Leth, assureur, Copenhague.

Pour les Etats Unis :

M. George de Forest Lord, avocat, New-York.

M. John C. Prizer, avocat, New-York.

M. Hawley T. Chester, assureur, New-York.

M. Oscar R. Houston, avocat, New-York.

M. Cletus Keating, avocat, New-York.

M. Joshua P. Nelson, avocat, New-York.

Pour la Finlande :

M. Herb. Andersson, armateur, Helsingfors.

Pour la Grande Bretagne :

M. E. W. Reading, dispacheur, Londres.

M. H. B. Edmunds, dispacheur, Londres.

Pour l'Italie :

Dr. Francesco Manzitti, dispacheur, président de la Chambre de Commerce de Gênes et du Conseil supérieur de la Marine Marchande, Gênes.

Prof. Roberto Sandiford, Conseiller d'Etat, Secrétaire-Général de l'Association Italienne de Droit Maritime, Rome.

Pour la Norvège :

Dr. Per Gram, avocat, Nordisk Skibsrederforening, Oslo.

M. Sverre Holt, capitaine de Wilhelmsen et C°., Oslo.

Pour les Pays-Bas :

Dr. A. Delprat, Administrateur-directeur de la Stoomboot Maatschappij « Nederland », Amsterdam.

Dr. C. C. Gischler, Président du Cons. d'Administration de l'Armement Phs Van Ommeren, Rotterdam.

Dr. J. A. L. Loeff, avocat à Rotterdam.

Pour la Suède :

M. Em. Högberg, Directeur Général de Rederieaktiebolaget Svea, Stockholm.

Amiral E. Wetter, Directeur Général de Svenska Orientlinjen, Gothembourg.

L'assemblée décide d'adjoindre comme membres de la Commission Transports M. Maurice Hill (Angleterre) et M. Braekhus (Norvège).

Il est décidé en principe que la prochaine Conférence se tiendra en 1951 dans une ville italienne.

Les pouvoirs du Bureau Permanent expirent en 1950 (article 4 des Statuts). L'assemblée décide de les prolonger pour une nouvelle période de trois ans, c.à.d. jusqu'en 1953, avec siège à Anvers.

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