INTERNATIONAL
MARITIME COMMITTEE

MADRID CONFERENCE

PRELIMINARY REPORTS
MINUTES
DRAFT-CONVENTIONS

1955

Will the Spanish Association of Maritime Law please find by this the expression of the gratitude of all members of the International Maritime Committee for the magnificent hospitality kindly offered to them.

I.

CONSTITUTION

MEMBERS

RATIFICATIONS

CONSTITUTION
1955

Article 1.

The Object of the Comité Maritime International is to promote, by the establishment of National Associations, by Conferences, by publications and by any other activities or means, the unification of international maritime and commercial Law and practice, whether by Treaty or Convention or by establishing uniformity of domestic laws, usages, customs or practices.

Article 2.

The domicile of the Comité Maritime International is established in Antwerp, Belgium.

Article 3.

The Comité Maritime International shall consist of :

I. *National Associations.*

The number of National Associations is unlimited.

The National Associations are formed in accordance with their respective domestic laws, but their main object must be in accord with that recited in Article I. Nevertheless, they may pursue objects of national interest provided that these do not conflict with the main object.

The National Associations shall use their utmost endeavour to enlist the recognized specialists in commerce and in law in their respective Countries, and should be in a position to maintain relations with their governmental authorities, so that they shall truly represent all commercial and maritime interests in their countries and shall perform their function with the maximum efficiency.

They shall elect their own Members, appoint their own Delegates and be responsible for their own administration, and for planning their own work in accordance with the programs and general directives laid down from time to time by the central administration of the Comité Maritime International.

At least once a year they must report to the Administrative Council upon their activities and upon the progress made by them in their Countries.

2. *Titulary Members.*

Titulary Members are appointed for life by the Bureau Permanent, upon the proposal of the National Associations concerned to the number of twelve per Association, exclusive of Members of the Bureau Permanent, who are Titulary Members as of right.

The Bureau Permanent shall in appointing Titulary Members have regard to the services rendered by the candidates to the Comité Maritime International and to the position which they have achieved in legal or maritime affairs.

Article 4.

The central authorities of the Comité Maritime International are : the Bureau Permanent and the Administrative Council.

The present Members of the Bureau Permanent are appointed by this Constitution : in the event of a vacancy, it shall be filled by an absolute majority of the votes of the Bureau Permanent.

A. The Bureau Permanent shall consist of :

1. (a) a President;
   (b) one or more Vice-Presidents;
   (c) one or more Secretaries General and Secretaries;
   (d) a Treasurer;
   (e) an Administrative Secretary, whose functions may be performed by a firm or body corporate.

These Officers shall be chosen amongst the members of the Bureau Permanent, by an absolute majority of the votes of the Members of that body.

2. One Member for each National Association appointed upon the proposal of that Association.

B. The Administrative Council shall consist of the President the Secretaries-General and the Secretaries, the Treasurer and the Administrative Secretary.

C. The present Members of the Bureau Permanent are those mentioned under Article 9 appointed for life but a Member may determine his membership by voluntary retirement, or be dismissed by the unanimous decision upon stated grounds of all the other Members, or, with the exception of the Members of the Administrative Council or the Vice-Presidents, by the decision in writing of the National Association which that Member represents upon the Bureau Permanent.

The Members of the Bureau Permanent shall perform their duties without emolument; the expenses of the Administrative Secretary shall be passed annually by the Bureau Permanent.

The Bureau Permanent may delegate its powers wholly or in part within defined limits to its President or to the Administrative Council.

Article 5.

The functions of the Bureau Permanent are to conduct the general business of the Comité Maritime International; to ensure that regular communication and co-ordinated action is maintained amongst the National Associations; to decide, after consultation by the Administrative Council with the National Associations, the topics to be studied; to fix the date, the place and the agenda of the International Conferences; to take all the necessary steps to achieve this object and to determine the constitution and composition of the International Commissions entrusted with the preparatory work; to ensure that the decisions of the International Conferences are carried into effect; to decide all questions concerning the affiliation of National Associations to and their relations with the Comité Maritime International; to determine the subscriptions payable by the National Associations and by the Titulary Members; and to pass balance sheets and accounts.

The Bureau Permanent shall meet at least once a year as convened by the President or upon the request of the majority of the Members.

The decisions of the Bureau Permanent shall be final and binding within the limits of its authority; they shall be made upon a majority of the votes of Members present or validly represented. In case of

equality of votes the President shall have a casting vote. Each Member shall have one vote. In case of inability to attend a Meeting, a Member may, with the consent of the Administrative Council, appoint as his substitute a Titulary Member, provided that he shall not be entitled to delegate his voting right to a Member of a National Association other than that which he himself represents.

Article 6.

The functions of the Administrative Council are to conduct the day to day business of the Comité Maritime International; to assist the Bureau Permanent in carrying out the duties which fall upon it; to prepare in the right time the matters that will be submitted to the Bureau Permanent, especially the choice of the subjects to be examined, the National Associations being consulted previously; to carry into effect the decisions of the Bureau Permanent and of the International Conferences; to effect the coordination of work and the transmission of information and of documents; to ensure that it is regularly kept informed by the National Association of every matter of interest to the Comité Maritime International and to take all necessary steps to achieve this result; to supervise the work of the International Commissions whose duty it is to report progress from time to time to the Administrative Council and to transmit to the Administrative Council their commentaries and drafts with prompt dispatch, so that these can be studied by the National Associations well in advance of the International Conferences; to prepare the balance sheet and present the account not later than the 31st December in each year; to edit and publish the reports of the International Conferences and to take care of all other publications of interest; and to represent the Comité Maritime International in government circles prior to and upon the actual convening of Diplomatic Conferences.

Article 7.

The Comité Maritime International shall meet periodically in International Conference, upon the initiative of the Bureau Permanent, or upon the demand of not less than two thirds of the National Associations, for the purpose of discussing the topics upon an agenda drawn up by the Bureau Permanent.

Each National Association may be represented at an International Conference by fourteen delegates, exclusive of Members of the Bureau Permanent and the Titulary Members.

Each Association shall have one vote, but the delegates shall not have individual votes. The right to vote cannot be delegated. The decisions of the International Conferences shall be made upon the majority vote of the National Associations present provided the case of art. 8.

The President of the Bureau Permanent shall preside at the International Conferences or, in his absence, one of the Vice-Presidents in order of seniority.

The Committee of each International Conference shall consist of the Administrative Council, the Vice-Presidents of the Bureau Permanent, and the President of the National Association which has organised the Conference together with such other persons as he may consider should be attached to him.

Each International Conference shall decide the means by which its decisions can best be brought into effect; in default of such decision the Bureau Permanent or the Administrative Council will undertake this task.

Article 8.

This Constitution can be amended only by an International Conference and then provided always that the main object is not changed.

The Conference shall not consider any amendment which is not upon the agenda, and a decision to amend must be supported by at least three quarters of the National Associations present.

Article 9.

The Members of the Bureau Permanent at the date of this Constitution are :

His Exc. Albert Lilar. Hon. President;
Sir Gonne St. Clair Pilcher, Hon. Vice-President;
Messrs. Frédéric Sohr, Hon. Vice-President;
Léopold Dor, Hon. Vice-President;
Antoine Franck, Hon. Vice-President;
Cyril Miller, Hon. Secretary-General.

Carlo Van den Bosch, Hon. Secretary-General;
Léon Gyselynck, Hon. Treasurer;
Firm Henry Voet-Genicot, Administrative Secretary;
Edvin Alten (Norway);
Algot Bagge (Sweden);
Charles C. Burlingham (U.S.A.);
Georges Ripert (France);
Horace Edmunds (Great-Britain);
Giorgio Berlingieri (Italy);
J. Offerhaus (Netherlands);
N. V. Boeg (Denmark);
Herbert Andersson (Finland);
Vladislav Brajkovic (Yougoslavia);
Kyriakos Spiliopoulos (Greece);
Carlos Theodoro da Costa (Portugal);
Pelegrin de Benito Serres (Spain);
Rolf Stödter (Western Germany);
Walter Müller (Switzerland);
Atilio Malvagni (Argentine);
Teruhisa Ishii (Japan);
C. J. Burchell (Canada);
Joseph Bonan (Morocco).

NATIONAL ASSOCIATIONS

ARGENTINE

Argentine Maritime Law Association

President :

Messrs. Atilio MALVAGNI, Advocate, Professor at the Escuela Nacional de Nautica Manuel Belgrano, Buenos-Aires.

Vice-President :

José BARES, former Manager of the Flota Mercanté del Estado, former national Manager of the Merchant Marine, Buenos-Aires.

Secretary :

Eduardo Basualdo MOINE, Professor at the University, Buenos-Aires.

Treasurer :

Alberto CAPPAGLI, Advocate, Buenos-Aires.

BELGIUM

Belgian Maritime Law Association

President :

Messrs. Albert LILAR, Advocate, Senator, Minister of Justice, Professor at the Brussels University, President of the International Maritime Committee, Antwerp.

Vice-Presidents :

Frédéric SOHR, Hon. president of the Union Professionnelle des Entreprises d'Assurances, Hon. Proffessor at the University, Hon. Vice-President of the International Maritime Committee.

Constant SMEESTERS, Advocate, Member of the Conseil Supérieur de la Marine, Antwerp.

Secretaries-General :
Ant. FRANCK, Advocate, Vice-President of the International Maritime Committee, Antwerp.
Jean VAN RYN, Advocate at the Cour de Cassation, Professor at the Brussels University, Brussels.

Treasurer :
Léon GYSELYNCK, Treasurer of the International Maritime Committee, Professor at the Brussels' University, Antwerp.

Secretary :
Carlo VAN DEN BOSCH, Advocate, Secretary General of the International Maritime Committee, Antwerp.

Administrative Secretary :
Firm Henry VOET-GENICOT, Antwerp.

CANADA

Canadian Maritime Law Association

Hon. President :
Hon. C.J. BURCHELL, Q.C., Halifax, Nova Scotia.

President :
Hon. Arthur I. SMITH, Montreal.

Vice-Presidents :
Hon. J.V. CLYNE, Vancouver.
Messrs. A.L. LAWES, Montreal.
Peter WRIGHT, Q.C., Toronto.

Treasurer :
F.S. SYMONS, Montreal.

Secretary :
Leon LALANDE, Q.C., Montreal.

Assistant-Secretary :
C.T. MEARNS, Montreal.

DENMARK

Danish Maritime Law Association

President :

Messrs. N.V. BOEG, Judge at the High Court, President of the International Law Association, Copenhagen.

Treasurer :

Jacob E. GELTING, Advocate at the Supreme Court, Copenhagen.

Secretary :

Kjeld RÖRDAM, Counsel at the Supreme Court, Copenhagen.

FINLAND

Finnish Maritime Law Association

President :

Messrs. Dr. Jur. Rudolf BECKMAN, Judge at the Administrative Supreme Court, Helsingfors.

Secretary General :

Herb. ANDERSSON, Shipowner, Helsingfors.

FRANCE

French Maritime Law Association

President :

Messrs. Jean de GRANDMAISON, Advocate at the Court of Appeal, Paris.

Vice-Presidents :

E. FOURNIER, General Manager of the Compagnie des Chargeurs Réunis, Paris.

Paul DESPREZ, Maritime Underwriter, Paris.

Secretary General :

Marcel PITOIS, General Managing Director of the Société Navale de l'Ouest, Paris.

Treasurer :
M. PRODROMIDES, Dr. Jur., Juridical Councillor of the Comité Central des Assureurs Maritimes de France, Paris.

GERMANY

German Maritime Law Association

President :
Messrs. Rolf STÖDTER, President of the German Shipowners' Association, Hamburg.

Secretary :
Hans Georg RÖHREKE, Manager of the German Shipowners' Association, Hamburg.

GREAT-BRITAIN

British Maritime Law Association

President :
Messrs. Sir Gonne St CLAIR PILCHER, Judge at the High Court of Justice, London.

Vice-President :
Sir Patrick DEVLIN, Judge at the High Court of Justice, London.

Secretary General :
Cyril MILLER, Underwriter, London.

GREECE

Hellenic Maritime Law Association

President :
Messrs. Alexandre TSIRINTANIS, Professor at the University, Athens.

Vice-Presidents :
Stelios MAVROMICHALIS, Judge at the Cour de Cassation Athens.

Nicos TRIANTAPHYLIDES, Underwriter, Athens.

Secretary General :
Kyriakos SPILIOPOULOS, Professor at the University, Athens.

Secretary :
Phocion POTAMIANOS, Advocate, Athens.

Treasurer :
Panagis YANNOULATOS, Shipowner, Athens.

ISRAEL

Israel Maritime Law Association
(constituted in 1955)

President :
Messrs. Jacob CASPI, Haifa.

Vice-President :
R. GOTTSCHALK, Advocate, Haifa.

Treasurer :
Karl KIESLER, Haifa.

Secretary :
E. LOWI, Manager of J.V. Delbourgo & Son, Haifa.

ITALY

Italian Maritime Law Association

President :
Messrs. Amedeo GIANNINI, Plenipotentiary Minister ad honorem, Rome.

Vice-Presidents :
Giorgio BERLINGIERI, Advocate, Genoa.
Biagio BORRIELLO, President of the Regional Committee, Naples.
Antonio COSULICH, President of the Societa Triestina di Navigazione « Cosulich », Trieste.

Secretary General :
Roberto SANDIFORD, Councillor of State, Rome.

JAPAN

Japanese Maritime Law Association

Trustee :
Messrs. Kosabruo MATSUNAMI, Tokyo.

Permanent Secretary :
Teruhisa ISHII, Tokyo.

MOROCCO

Moroccan Maritime Law Association
(constituted in 1955)

Hon. Presidents :
Messrs. Henri CROZE, Maritime Underwriter.
Léopold DOR, Advocate, Paris.

President :
Joseph BONAN, Advocate, Casablanca.

Vice-Presidents :
Jean MACHWITZ, Advocate.
Si Mehdi EL MOKRI, Manager of Societies.
André GOIRAND, Manager of the Company Paquet.
Robert RANQUE, Maritime Underwriter.

Secretary General :
Max CAILLE, Secretary of the Comité Marocain de Tarification de l'Assurance Maritime et Transports, Secretary General of the Office Central des Assureurs Maritimes du Maroc, Casablanca.

Assistant Secretaries General :
Pierre WALCH, Advocate.
Maurice BOUCHET, Forwarding Agent.

Treasurer :

Auguste BUTEL, Manager of Societies.

Assistant Treasurer :

Louis BOUYSSIE, Manager of Societies.

NETHERLANDS

Maritime Law Association of the Netherlands

President :

Messrs. J. OFFERHAUS, Professor of Commercial and Maritime Law and of International Private Law, Amsterdam.

Secretary General and Treasurer :

J.T. ASSER, Advocate, Amsterdam.

NORWAY

Norwegian Maritime Law Association

President :

Messrs. Edvin ALTEN, Judge at the Supreme Court, Oslo.

Secretary :

Per GRAM, Advocate, Oslo.

PORTUGAL

Portuguese Maritime Law Association

President :

Messrs. Antonio BALTAZAR FEREIRA, Judge at the Supreme Court, Lisbon.

Vice-President :

Admiral Arthur Leonel BARBOSA CARMONA, Lisbon.

Secretary General :

Commodore Carlos Theodoro da COSTA, Lisbon.

SPAIN

Spanish Maritime Law Association

President :

Messrs. Ernesto ANASTASIO, Advocate, Captain of the Merchant Navy, President of the Compania Trasmediterranea and of the company La Union y el Fénix Espanol, Madrid.

Secretary General :

Pelegrin de BENITO SERRES, Auditor at the State Council, Auditor of the Marine, Madrid.

SWEDEN

Swedish Maritime Law Association

President :

Messrs. Algot BAGGE, Judge at the Supreme Court of Sweden, President of the French-German Arbitration Court, Stockholm.

Secretary :

Claës PALME, Advocate, Stockholm.

SWITZERLAND

Swiss Maritime Law Association

President :

Messrs. Walter MÜLLER, Dr. Jur., Advocate and Notary, Professor at the University of Zürich, Basle.

Vice-President :

Rolf RINGIER, Manager of the Société Alpina Transports Internationaux, S.A., Basle.

Secretary :

Rudolf SARASIN, Dr. Jur., Advocate, Basle.

UNITED STATES OF AMERICA

Maritime Law Association of the United States

President :

Messrs. Charles S. HAIGHT, New York.

Vice-Presidents :

Joseph J. GEARY, San Francisco.

John W. CRANDALL, New York.

Treasurer :

George F. TINKER, New York.

Secretary :

Wilbur H. HECHT, New York.

URUGUAY

Uruguayan Maritime Law Association

President :

Messrs. Dr. Rodolfo MEZZERA ALVAREZ, Professor at the University of Montevideo.

Vice-Presidents :

Dr. Miguel U. ROCCA, Professor at the University of Montevideo.

Dr. Sagunto F. PEREZ FONTANA, Professor at the University of Montevideo.

Secretaries :

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Dr. Alfredo CAMBON, Lecturer at the University of Montevideo.

Dr. Jorge RACHETTI PIRIZ, Lecturer at the University of Montevideo.

Treasurer :

Dr. Jorge PEREZ PRINS, Assistant-Lecturer at the State Insurance Bank.

YUGO-SLAVIA

Yougoslavian Maritime Law Association

President :

Messrs. Vladislav BRAJKOVIC, Professor at the University, Zagreb.

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Secretaries :

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Cyril T. MILLER, Manager of the United Kingdom Mutual Steamship Assurance Cy Limited and of the Standard Steamship Owners' Protection & Indemnity Association Limited, Hon. Secretary General of the International Maritime Committee, Hon. Secretary of the British Maritime Law Association, 14-20, St. Mary Axe, London E.C.3.

Sir William McNAIR, Vice-President of the British Maritime Law Association, Judge of the Queen's Bench Division, English High Courts of Justice, Royal Courts of Justice, Strand, London W.C.2.

Walter MÜLLER, Dr. Jur., Advocate, Hon. President of the Swiss Maritime Law Association, Professor at the Zürich University, St. Albangraben, 8, Basle.

J. OFFERHAUS, Professor at the University, President of the Netherlands' Maritime Law Association, 16, Prinses Margrietlaan, Amstelveen.

Emilio PASANISI, Councillor of the Italian Underwriters, 16, Via Tibullo, Rome.

The Hon. Mr. Justice PILCHER, M.C., Judge of the Queen's Bench Division, English High Courts of Justice, Hon. Vice-President of the International Maritime Committee, Hon. President of the British Maritime Law Association, The Royal Courts of Justice, Strand, London W.C.2.

Alan PHILIP, Grunninghe, 15, Copenhagen.

Kaj PINEUS, Average Adjuster, Skeppsbrohuset, Gothemburg.

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Phocion POTAMIANOS, Advocate, Shipowner, Hon. Secretary of the Hellenic Maritime Law Association, 19, rue Lycabette, Athens.

John C. PRIZER, Advocate, Partner in the firm of Thacker, Proffitt, Prizer, Crawley & Wood, 72, Wall Street, New York 5.

PRODROMIDES, Dr. Jur., Juridical Councillor of the Comité Central des Assureurs Maritimes de France, Advocate, rue St. Marc, 24, Paris II.

C.D. RAYNOR, Underwriter, Lloyd's, London E.C.3.

E.W. READING, Average Adjuster, Partner in the firm of Hogg, Lindley & C°, Palmerston House, Bishopsgate, London E.C.2.

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Hans Georg RÖHREKE, Hon. Secretary of the German Maritime Law Association, Neuer Wall, 86, Hamburg 36.

Arne RYGH, Advocate at the Supreme Court, Hon. Secretary of the « Oslo Rederforening », 524, Sjofartsbygningen, Oslo.

Georges RIPERT, former Doyen of the Faculty of Law of Paris, Hon. President of the French Maritime Law Association, Member of the Institut de France, 2, rue Récamier, Paris VII.

Nils ROGBERG, 101, Karlavägen, Stockholm.

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RATIFICATIONS AND ADHESIONS

I.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW WITH RESPECT TO

COLLISIONS BETWEEN VESSELS

SIGNED AT BRUSSELS, ON THE 23rd SEPTEMBER 1910.

Argentine,
adhesion 28th February 1922.
notification 15th March 1922.

Austria,
ratification 1st February 1913.

Belgium,
ratification 1st February 1913.
This Convention is not applicable to the territories of the BELGIAN CONGO and RUANDA URUNDI.

Brazil,
ratification 31st December 1913.

Danzig,
adhesion 2nd June 1922.
notification 15th June 1922.

Denmark,
ratification 18th June 1913.

Egypt,
adhesion 29th November 1943.
notification 29th November 1943.

Esthonia,
adhesion 15th May 1929.
notification 20th January 1930.

Finland,
adhesion 17th July 1923.
notification 28th July 1923.

France,
ratification 1st February 1913.

Germany,
ratification 1st February 1913(1).

Great-Britain,
ratification 1st February 1913.

East-Africa,
adhesion 1st February 1913.
notification 3rd February 1913.

Australia,
adhesion 9th September 1930.
notification 24th September 1930.

Bahamas, Barbados, Bermudas,
adhesion 1st February 1913.
notification 3rd February 1913.

Canada,
adhesion 25th September 1914.
notification 28th September 1914.

(1) See Appendix.

Ceylon, Cyprus, Gold-Coast, Falkland, Fiji, Gambia, Gibraltar, Gilbert and Ellice Isl., British Guiana, British Honduras, Hongkong,
adhesion 1st February 1913.
notification 3rd February 1913.

India,
adhesion 1st February 1913.
notification 3rd February 1913.

Jamaica, (Caimans, Caicos and Turk's Isl.), Labuan, Leeward Isl. (Antigoa, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands),
adhesion 1st February 1913.
notification 3rd February 1913.

Federated Malay States,
adhesion 1st February 1913.
notification 3rd February 1913.

Malta, Mauritius, Southern Nigeria, Norfolk,
adhesion 1st February 1913.
notification 3rd February 1913.

New-Zealand,
adhesion 19th May 1913.
notification 26th May 1913.

Papua, St. Helena, Salomons, Seychelles, Sierra-Leone, Somaliland, Straits Settlements,
adhesion 1st February 1913.
notification 3rd February 1913.

New-Foundland,
adhesion 11th March 1914.
notification 20th March 1914.

Tobago, Trinidad, Wei - Hai - Wei, Windward Isles, (Grenada, St. Lucia, St. Vincent),
adhesion 1st February 1913.
notification 3rd February 1913.

Greece,
ratification 29th September 1913.

Haiti,
adhesion 18th August 1951.
notification 1st October 1951.

Hungary,
ratification 1st February 1913.

Ireland,
ratification 1st February 1913.

Italy,
ratification 2nd June 1913.

Italian Colonies,
adhesion 9th November 1934.
notification 5th December 1934.

Japan,
ratification 12th January 1914.

Latvia,
adhesion 2nd August 1932.
notification 16th August 1932.

Mexico,
ratification 1st February 1913.

Netherlands,
ratification 1st February 1913.

Nicaragua,
ratification 18th July 1913.

Norway,
ratification 12th November 1913.

Poland,
adhesion 2nd June 1922.
notification 15th June 1922.

Portugal,
ratification 25th July 1913.

Portug. Colonies,
adhesion 20th July 1914.
notification 30th July 1914.

Rumania,
ratification 1st February 1913.

Russia,
ratification 1st February 1913.

Spain,
adhesion 17th November 1923.
notification 30th November 1923.

Sweden,
ratification 12th November 1913.

Switzerland,
adhesion 28th May 1954.
notification 15th July 1955.

Turkey,
adhesion 4th July 1955.
notification 16th August 1955.

U.R.S.S.,
adhesion 10th July 1936.
notification 27th July 1936.

Uruguay,
adhesion 21st July 1915.
notification 24th July 1915.

Yugo-Slavia,
adhesion 31st December 1931.
notification 12th January 1932.

APPENDIX

International Convention for the Unification of certain Rules of Law with respect to Collisions between Vessels, signed at Brussels, on the 23rd September 1910.

This Convention has ceased to be in force between the belligerent States as a consequence of the state of war (1939-1945).

A. It has been put again into force since the 1st November 1953 between the German Federal Republic on the one hand and the Allied Powers on the other hand, except Hungary, Poland and Uruguay, who have replied no, and New-Zealand, Rumania and the Union of Socialist Soviet Republics who have not replied.

However, it should be noted that this putting into force does not prejudge to no extent to the provisions of the peace treaty with Germany that may intervene in the future.

B. On the 22nd May 1953 the Legation of Belgium at Warsaw received a letter from Mr. Grotewohl, President of the German Democratic Republic, asking to put the Convention into force between the German Democratic Republic and the countries bound by this Convention.

On the 19th October 1953 Belgium, in its capacity of depositary of this International Deed, has communicated a copy of this request to all the interested countries with the express reservation that that communication can, in no case, be interpreted as a recognition of the Authorities of Eastern Germany.

II.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RESPECTING

ASSISTANCE AND SALVAGE AT SEA

SIGNED AT BRUSSELS, ON THE 23rd SEPTEMBER 1910.

Argentine,
adhesion 28th February 1922.
notification 15th March 1922.

Austria,
ratification 1st February 1913.

Belgium,
ratification 1st February 1913.
This Convention is not applicable to the territories of the BELGIAN CONGO and RUANDA URUNDI.

Brazil,
ratification 31st December 1913.

Danzig,
adhesion 15th October 1921.
notification 17th October/14th December 1921.

Denmark,
ratification 18th June 1913.

Egypt,
adhesion 19th November 1943.
notification 1st December 1943.

Esthonia,
adhesion 15th May 1929.
notification 20th January 1930.

Finland,
adhesion 17th July 1923.
notification 28th July 1923.

France,
ratification 1st February 1913.

Germany,
ratification 1st February 1913(1).

Great-Britain,
ratification 1st February 1913.
East-Africa,
adhesion 1st February 1913.
notification 3rd February 1913.
Australia,
adhesion 9th September 1930.
notification 24th September 1930.
Bahamas, Barbados, Bermudas,
adhesion 1st February 1913.
notification 3rd February 1913.
Canada,
adhesion 25th September 1914.
notification 28th September 1914.

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(1) See Appendix.

Ceylon, Cyprus, Gold Coast, Falkland, Fiji, Gambia, Gibraltar, Gilbert and Ellice, British Guyana, British Honduras, Hong-Kong,
adhesion 1st February 1913.
notification 3rd February 1913.
India,
adhesion 1st February 1913.
notification 3rd February 1913.
Jamaica (Caimans, Caicos and Turk's Isl.), Labuan, Leeward Isles (Antigoa, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands),
adhesion 1st February 1913.
notification 3rd February 1913.
Federated Malay States,
adhesion 1st February 1913.
notification 3rd February 1913.
Malta, Mauritius, Southern Nigeria, Norfolk,
adhesion 1st February 1913.
notification 3rd February 1913.
New-Zealand,
adhesion 19th May 1913.
notification 26th May 1913.
Papua, St-Helena, Salomon, Seychelles, Sierra-Leone, Somaliland, Straits Settlements,
adhesion 1st February 1913.
notification 3rd February 1913.
New-Foundland,
adhesion 11th March 1914.
notification 20th March 1914.
Tobago, Trinidad, Wei-Hai-Wei, Windward (Grenada, St. Lucia, St. Vincent),
adhesion 1st February 1913.
notification 3rd February 1913.

Greece,
ratification 15th October 1913.

Haiti,
adhesion 18th August 1951.
notification 1st October 1951.

Hungary,
ratification 1st February 1913.

Ireland,
ratification 1st February 1913.

Italy,
ratification 2nd June 1913.
Erythrea, Ital. Somali,
adhesion 2nd June 1913.
notification 11th June 1913.
Italian Colonies,
adhesion 9th November 1934.
notification 5th December 1934.

Japan,
ratification 12th January 1914.

Latvia,
adhesion 2nd August 1932.
notification 16th August 1932.

Mexico,
ratification 1st February 1913.

Netherlands,
ratification 1st February 1913.

Norway,
ratification 12th November 1913.

Poland,
adhesion 15th October 1921.
notification 17th October/14th December 1921.

Portugal,
ratification 25th July 1913.
Portug. Colonies,
adhesion 20th July 1914.
notification 30th July 1914.

Rumania,
ratification 1st February 1913.

Russia,
ratification 1st February 1913.

Spain,
adhesion 17th November 1923.
notification 30th November 1923.

Sweden,
ratification 12th November 1913.

Switzerland,
adhesion 28th May 1954.
notification 15th July 1954.

Turkey,
adhesion 4th July 1955.
notification 16th August 1955.

United States America,
ratification 1st February 1913.

U.R.S.S.,
adhesion 10th July 1936.
notification 27th July 1936.

Uruguay,
adhesion 21st July 1915.
notification 24th July 1915.

Yugo-Slavia,
adhesion 31st December 1931.
notification 12th January 1932.

APPENDIX

International Convention for the Unification of certain Rules of Law respecting Assistance and Salvage at Sea, signed at Brussels, on the 23rd September 1910.

This Convention has ceased to be in force between the belligerent States as a consequence of the state of war (1939-1945).

A. It has been put again into force since the 1st November 1953 between the German Federal Republic on the one hand and the Allied Powers on the other hand, except Hungary, Poland and Uruguay, who have replied no, and New-Zealand, Rumania and the Union of Socialist Soviet Republics who have not replied.

However, it should be noted that this putting into force does not prejudge to no extent to the provisions of the peace treaty with Germany that may intervene in the future.

B. On the 22nd May 1953 the Legation of Belgium at Warsaw received a letter from Mr. Grotewohl, President of the German Democratic Republic, asking to put the Convention into force between the German Democratic Republic and the countries bound by this Convention.

On the 19th October 1953 Belgium, in its capacity of depositary of this International Deed, has communicated a copy of this request to all the interested countries with the express reservation that that communication can, in no case, be interpreted as a recognition of the Authorities of Eastern Germany.

III.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEAGOING VESSELS

AND PROTOCOL OF SIGNATURE
SIGNED AT BRUSSELS, ON THE 25th AUGUST 1924.

Belgium,
ratification 2nd June 1930.
These Deeds are not applicable to the territories of the BELGIAN CONGO and RUANDA URUNDI.

Brazil,
ratification 28th April 1931.

Denmark,
ratification 2nd June 1930.

Finland,
adhesion 12th July 1934.

France,
ratification 23rd August 1935.

Hungary,
ratification 2nd June 1930.

Monaco,
adhesion 15th May 1931.

Norway,
ratification 10th October 1933.

Poland,
ratification 26th October 1936.

Portugal,
ratification 2nd June 1930.

Spain,
ratification 2nd June 1930.

Sweden,
ratification 1st July 1938.

Turkey,
adhesion 4th July 1955.

IV.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES OF LAW RELATING TO

BILLS OF LADING

AND PROTOCOL OF SIGNATURE SIGNED AT BRUSSELS, ON THE 25th AUGUST 1924.

Australia,
adhesion 4th July 1955.

Belgium,
ratification 2nd June 1930.
These Deeds are not applicable to the territories of the BELGIAN CONGO and RUANDA URUNDI.

Denmark,
adhesion 1st July 1938.

Egypt,
adhesion 29th November 1943.

Finland,
adhesion 1st July 1939.

France,
ratification 4th January 1937.

Germany,
ratification 1st July 1939(1).

Great-Britain and Northern Ireland,
ratification 2nd June 1930.

Ascension,
adhesion 3rd November 1931.
Bahamas, Barbados, Bermudas, Northern Borneo, Cameroons, Ceylon, Cyprus, Gold-Coast, Falkland, Fiji, Gambia, Gibraltar, Gilbert and Ellice, British Guiana, British Honduras, Hong-Kong, Jamaica, (Caiman, Caicos and Turk's Isl.), Kenya, Leeward (Antigoa, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands),
adhesion 2nd December 1930.
Federated Malay States,
adhesion 2nd December 1930.
Unfederated Malay States,
adhesion 2nd December 1930.
Mauritius, Nigeria,
adhesion 2nd December 1930.
Papua and Norfolk,
adhesion 4th July 1955.
Nauru and New Guinea,
adhesion 4th July 1955.

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(1) See Appendix.

Palestine,
adhesion 2nd December 1930.
St.-Helena,
adhesion 3rd November 1931.
Salomon,
adhesion 2nd December 1930.
Sarawak,
adhesion 3rd November 1931.
Seychelles, Sierra-Leone, Somaliland, Straits Settlements, Tanganyika, Tobago, Tonga, Trinidad, Windward (Grenada, St. Lucia, St. Vincent),
adhesion 2nd December 1930.
Zanzibar,
adhesion 2nd December 1930.

Hungary,
ratification 2nd June 1930.

Italy,
ratification 7th October 1938.

Monaco,
adhesion 15th May 1931.

Norway,
adhesion 1st July 1938.

Poland,
ratification 26th October 1936.

Portugal,
adhesion 24th December 1931.
Overseas Territories,
adhesion 2nd February 1952.

Rumania,
ratification 4th August 1937.

Spain,
ratification 2nd June 1930.

Sweden,
adhesion 1st July 1938.

Switzerland,
adhesion 28th May 1954.

Turkey,
adhesion 4th July 1955.

United States America,
ratification 29th June 1937.

APPENDIX

International Convention for the Unification of certain Rules of Law relating to Bills of Lading and Protocol of Signature, signed at Brussels, on the 25th August 1924.

These International Deeds have ceased to be in force between the belligerent States as a consequence of the state of war (1939-1945).

They have been put again into force since the 1st November 1953 between the General Federal Republic on the one hand and the Allied Powers on the other hand, except Hungary, Poland and Rumania.

However it should be noted that this putting into force does not prejudge to no extent to the provisions of the peace treaty with Germany that may intervene in the future.

This putting into force has been extended to Berlin.

V.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO

MARITIME LIENS AND MORTGAGES

AND PROTOCOL OF SIGNATURE
SIGNED AT BRUSSELS, ON THE 10th APRIL 1926.

Belgium,
ratification 2nd June 1930.
These Deeds are not applicable to the territories of the BELGIAN CONGO and RUANDA URUNDI.

Brazil,
ratification 28th April 1931.

Denmark,
ratification 2nd June 1930.

Esthonia,
ratification 2nd June 1930.

Finland,
adhesion 12th July 1934.

France,
ratification 23rd August 1935.

Hungary,
ratification 2nd June 1930.

Italy,
ratification 7th December 1949.

Monaco,
adhesion 15th May 1931.

Norway,
ratification 10th October 1933.

Poland,
ratification 26th October 1936

Portugal,
adhesion 24th December 1931.

Rumania,
ratification 4th August 1937.

Spain,
ratification 2nd June 1930.

Sweden,
ratification 1st July 1938.

Switzerland,
adhesion 28th May 1954.

Syrie,
adhesion 14th February 1951.

Turkey,
adhesion 4th July 1955.

VI.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES CONCERNING THE

IMMUNITIES OF STATE-OWNED SHIPS

SIGNED AT BRUSSELS, ON THE 10th APRIL 1926.

Belgium,
ratification 8th January 1936.
This Convention is not applicable to the territories of the BELGIAN CONGO and RUANDA URUNDI.

Brazil,
ratification 8th January 1936.

Chile,
ratification 8th January 1936.

Denmark,
ratification 16th November 1950.

Esthonia,
ratification 8th January 1936.

France,
ratification 27th July 1955.

Germany,
ratification 27th June 1936(1).

Greece,
adhesion 19th May 1951.

Hungary,
ratification 8th January 1936.

Italy,
ratification 27th January 1937.
Ital. Colonies,
ratification 27th January 1937.

Netherlands,
ratification 8th July 1936.
Curaçao, Netherlands Indies, Surinam,
ratification 8th July 1936.

Norway,
ratification 25th April 1939.

Poland,
ratification 8th January 1936.
denonciation 17th March 1952.

Portugal,
ratification 27th June 1938.

Rumania,
ratification 4th August 1937.

Sweden,
ratification 1st July 1938.

Switzerland,
adhesion 28th May 1954.

Turkey,
adhesion 4th July 1955.

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(1) See Appendix.

Supplementary Protocol to this Convention signed at Brussels, on the 24th May 1934.

Belgium,
ratification 8th January 1936.
This Convention is not applicable to the territories of the BELGIAN CONGO and RUANDA URUNDI.

Brazil,
ratification 8th January 1936.

Chile,
ratification 8th January 1936.

Denmark,
ratification 16th November 1950.

Esthonia,
ratification 8th January 1936.

France,
ratification 27th July 1955.

Germany,
ratification 27th June 1936.

Greece,
adhesion 29th May 1951.

Hungary,
ratification 8th January 1936.

Italy,
ratification 27th January 1937.

Ital. Colonies,
ratification 27th January 1937.

Netherlands,
ratification 8th July 1936.

Curaçao, Netherlands Indies, Surinam,
ratification 8th July 1936.

Norway,
ratification 25th April 1939.

Poland,
ratification 8th January 1936.

Portugal,
ratification 27th June 1938.

Rumania,
ratification 4th August 1937.

Sweden,
ratification 1st July 1938.

Switzerland,
adhesion 28th May 1954.

Turkey,
adhesion 4th July 1955.

APPENDIX

International Convention for the Unification of certain Rules concerning the Immunity of State-Owned Ships, signed at Brussels, 10th April 1926 and Supplementary Protocol to this Convention, signed at Brussels, 24th May 1934.

These International Deeds have ceased to be in force between the belligerent States as a consequence of the state of war (1939-1945).

They have been put again into force since the 1st November 1953 between the General Federal Republic on the one hand and the Allied Powers on the other hand, except Hungary, Poland and Rumania.

However it should be noted that this putting into force does not prejudge to no extent to the provisions of the peace treaty with Germany that may intervene in the future.

VII.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO

CIVIL JURISDICTION IN MATTERS OF COLLISION

SIGNED AT BRUSSELS, ON THE 10th MAY 1952.

Costa-Rica,
adhesion 13th July 1955.
(reserves art. 1, § 1 b & c).

Egypt,
ratification 24th August 1955.

Spain,
ratification 8th December 1953.

Switzerland,
adhesion 28th May 1954.

Yugo-Slavia,
ratification 14th March 1955.

VIII.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO

PENAL JURISDICTION IN MATTERS OF COLLISION AND OTHER INCIDENTS OF NAVIGATION

SIGNED AT BRUSSELS, ON THE 10th MAY 1952.

Birman Union,
adhesion 8th July 1953.

Costa-Rica,
adhesion 13th July 1955.
(reserves art. 1, 2).

Egypt,
ratification 24th August 1955.
(reserves art. 4 al. 2).

France,
ratification 20th May 1955.

Haiti,
adhesion 17th September 1954.

Spain,
ratification 8th December 1953.

Switzerland,
adhesion 28th May 1954.

Viet-Nam,
adhesion (R. art. 4) 26th November 1955.

IX.

INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO THE

ARREST OF SEAGOING SHIPS

SIGNED AT BRUSSELS, ON THE 10th MAY 1952.

Costa-Rica,
adhesion 13th July 1955.
(reserves art. 3 § 1 - art. 7 § 1 a), b), c), d), e) and f).

Egypt,
ratification 24th August 1955.
(reserves art. 10 a) and b).

Haiti,
adhesion 4th November 1954.

Spain,
ratification 8th December 1953.

Switzerland,
adhesion 28th May 1954.

II.

PRELIMINARY REPORTS

LIMITATION

OF

SHIPOWNERS' LIABILITY

BRITISH MARITIME LAW ASSOCIATION

INTRODUCTORY REPORT

1. This subject, which was among the first of the problems to be considered by the C.M.I., has been revived at a number of Meetings since the last War. On each of these occasions the British Delegates have expressed their regret that in the light of modern conditions they cannot recommend their Government to ratify the Brussels Convention of 15th August, 1924, in its existing form and have also felt bound to state that the Convention would not in any event be acceptable in such form to the British commercial interests or to their Governement. On the other hand, the British Maritime Law Association, on which all branches of Maritime Commerce in the United Kingdom are represented, has long been deeply conscious of the necessity of achieving unification of the various laws of Limitation of Shipowners' Liability in force in the principal maritime countries upon a basis more in harmony with the modern ideas and conditions than are those at present existing. The B.M.L.A. accordingly appointed a special Sub-Committee to study and report upon this problem, on which Committee were represented Marine Underwriters, the Shipowners' Associations, the Protection and Indemnity Associations, the Average Adjusters and the Admiralty Bar. The Sub-Committee also had the great advantage of the attendance at its deliberations of a Governement observer; it will be appreciated however, that he assisted in a purely consultative capacity and that the views expressed in this Report, while representing the unanimous views of those engaged in the maritime commerce in the United Kingdom, have still to be considered officially by H.M. Government. It is, however, with this unanimous support that the

Association is able to issue this Report based upon the recommendations of the Sub-Commitee.

2. The first question considered was whether the basis of limitation should be value of the ship, either before or after the casualty, with or without the value of the freight at risk, or should be assessed at a fixed rate per ton or other unit of measurement of the ship, or should be a combination of the two systems as is provided by the 1924 Convention. The Association is of the view that assessment of limitation by reference to the value of the ship after the casualty, even with the addition of the freight at risk, cannot be supported for the following main reasons:—

(*a*) It is ethically indefensible in modern times that the amount recoverable by the injured party, whether in respect of property, life or personal injury, should vary according to the amount of damage sustained by the wrongdoing ship as a result of the casualty by which the injury was inflicted and could even be reduced to nil if that ship were thereby sunk or were so damaged as to be of no value. The origine of limitation was certainly the encouragement of maritime trade in earlier days when the whole fortune of the shipowner and sometimes also of his co-adventurers, the owners of the cargo, was frequently hazarded in the adventure : this ground of support has lost much, if not all, of its significance under modern conditions of shipowning and marine insurance. If value of ship is to be adopted as a measure of limitation at all, then the value of the ship in her sound condition prior to the casualty, but excluding the freight, would provide a more equitable standard. The Association has carefully considered this alternative, but finds that even it does not meet the two following objections.

(*b*) Any system of limitation based on value of ship favours the owner of an old or ill-maintained vessel against the owner of a new or well-found ship of the same class. Indeed this was one of the main considerations which impelled British Shipowners to press Parliament to stabilise the measure of limitation of liability by reference to a fixed sum per ton in the Merchant Shipping Amendment Act of 1862.

(*c*) The value of a vessel fluctuates widely, especially in modern

times, according to the particular locality in which her value is assessed. This is an objection of the greatest weight to a Mercantile Marine such as the British, whose trade is world wide and whose vessels in the event of a casualty may have to be valued in any part of the world. The difficulty and expense incurred in valuing vessels for limitation purposes were acutely experienced by British Shipowners during the first half of the nineteenth century when the English law of limitation was based upon value of ship and freight. This was the second main consideration which prompted the passing of the Merchant Shipping Amendment Act, 1862.

3. The Association is, therefore, of opinion that the more desirable method is that of a fixed sum per unit of measurement of the ship, of which the ton is the unit to which the least objection attaches. It is, however, abundantly clear that the present British limits of £8 per ton for loss of or damage to property and £15 per ton if loss of life or personal injury are involved are wholly unrealistic in modern conditions. These limits were fixed by the same Act of 1862 by calculating the then average value per ton of the British Mercantile Marine. In 1924 when the Convention adopted the limits of £8 per ton for loss of or damage to property and a further £8 per ton for loss of life or personal injury (both being expressed to be gold value) those limits were not perhaps out of alignment with the then existing conditions. But in view of the inflation which has since occurred throughout the world the present British limits cannot in the view of the Association be supported. It is, therefore, the unanimous view of the Association that, if the principle of limitation of shipowners' liability is to be preserved, the limits must be substantially increased and it is proposed that they should be increased as follows:—

for loss of or damage to property the limitation should be fixed at £24 per ton;

if loss of life or personal injury is concerned, the limitation fund should be increased by a further £50 per ton. The increase should be available only to the life or personal injury claimants : but should this be insufficient to meet their assessed claims these claimants should share *pari passu* with the property claimants in the fund established by the £24 per ton.

4. British Shipowners regard this matter as one of great importance and indeed urgency. Having regard to the recent heavy increase in the sums awarded by the Tribunals in all countries to loss of life and personal injury claimants and to the steady increase in commodity values, they consider that it would be unwise as well as inequitable to attempt to hold to the existing limits under English law. They urge that the problem should be dealt with on an international basis, but if this is not achieved, the possibility of national legislation cannot be disregarded. Towards the solution upon an international basis, the Association is prepared to support a Convention in which the above limits of liability are expressed in terms of a stable monetary unit, such as the French Gold Franc which has been utilised with succes over many years in the Warsaw Convention.

By means of the adoption of a Convention on this basis the value of the limitation fund would be standardised, as far as it is possible so to do, in whatever currency it had to be established.

5. The Association has also considered the 1924 Convention principle which combines the systems of value and of a fixed sum per gross register ton. As stated in the Convention this principle allows the shipowner the choice (as regards property claims) of limitation by value of ship or of limitation by a fixed sum per gross register ton whichever is the less. Life and personal injury claimants are, it is true given £8 per ton irrespective of the value of the ship. Nevertheless the Association feels compelled to reject this principle as being unfair to cargo interests and owners of other property lost or damaged in a marine casualty.

6. The Association is therefore authorised by its Constituent Members to take part in the drafting of an International Convention in which the main principles of limitation are as already defined. At the same time there are, in the view of the Association, certain other defects in the existing Convention which should be considered and rectified. These are as follows:—

Article 1

This includes certain subjects of maritime claims, namely, salvage and general average which ought not to be within the scope of a

Convention on Limitation of Liability. It is understood that under the general maritime law of all countries the amount of salvage remuneration recoverable by a salvor is limited to the value of the property saved, and similarly contribution in general average can only be based upon the value of the property preserved at the termination of the adventure.

The reason for the inclusion under Article 1(3) of « Obligations under Bills of Lading » is also not appreciated : insofar as this phrase is intended to cover liability for loss of or damage to cargo the matter is already dealt with definitively by the Hague Rules. If it is intended to deal with other forms of breach of a contract of carriage such as an unjustified refusal to complete the contractual voyage, the necessity for limitation of the shipowners' liability for damages in such cases has ever been experienced in practice. The same observations apply to Article 1 (4) and (8).

Article 1 (5) — « Obligations or liabilities connected with the removal of the wreck of a sunken vessel » — it is to be observed that this was the subject of a Protocol of Signature to the 1924 Convention.

Far more important, however, are certain lacunae in Article 1 in its existing form:—

In the first place Article 1 (1) provides for « Compensation due to any person by reason of damage caused, whether on land or on water, by the act or default of the master, crew, pilot, or any other person in the service of the vessel ».

It is not clear whether this adequately covers loss of life and personal injury as well as damage to property. But in any event the right to limit for this most important type of claim is dependent upon the act or default of some person « in the service of the vessel ». The subsection does not cover for example the negligence of a shipowner's servants or agents ashore but not in the service of the vessel : nor is it clear that it covers the various forms of absolute liability independent of any negligence cast upon shipowners by modern legal developments, such as an owner's absolute liability under certain circumstances in English Law for damage done by his ship to the property or works of Dock Authorities, or their absolute liability for loss of life under the French « Lamoriciere » decision.

There have since the War been a number of cases of vessels carrying inflammable or explosive cargoes blowing up in port and causing considerable loss of life and injury to persons and wide-spread destruction of and damage to property ashore at distances relatively remote from the ship. Hitherto in all such cases insofar as the Association is aware, the shipowner has in fact been exonerated from blame, but a case might well arise in which he is held liable on grounds unconnected with the negligence of any person « in the service of the ship ».

Article 2

Under this Article it is vitally important to achieve uniformity upon the practical application of « actual fault and privity » : indeed this is one of the most important points in the whole Convention. In practice there has been little to complain of in the application of this forfeiture of the right to limit by Continental Courts : but the readiness of the United States Courts to deprive a shipower of the right of limitation upon this ground, has greatly detracted from the protection afforded by the American Limitation Acts. In particular the « Sirovitch » Amendment, consequent upon the « Morro Castle » disaster, has the effect of depriving a shipowner of the right to limit for loss of life or personal injury in the United States unless he can establish that the Master was free from any privity to or knowledge of any unseaworthiness of the vessel before sailing. Further in the United States the so-called « Doctrine of Personal Contract », which has evolved purely out of judicial decisions, is a deep encroachment upon the right to limit which Congress undoubtedly intended to confer upon shipowners.

Article 2 (2) (3)

Both these are too widely drawn.

Article 2 (2) — might operate to deprive an owner of the right to limit his liability for loss of or damage to cargo carried under a Bill of Lading signed by the master with the authority of or subsequent ratification by the owner.

Article 2 (3) — might operate to deprive an owner of the right to limit his liability for loss of life of or personal injury to any member of the crew.

Article 6

This deals, somewhat obscurely, with a very important point.

The existing English law is not in doubt. A shipowner is liable for loss, injury or damage arising on *distinct occasions* to the extent of his Statutory liability in each case. Whether two losses which are not simultaneous do arise « on distinct occasions » depends upon whether they arise from one act of negligence or breach of contract or from separate and distinct acts or breaches. The rule is clear although it may be difficult to apply to the facts of a particular case.

The test laid down by the Convention is whether the claims arise « out of the same accident » and it is even obscure whether Article 6, which deals primarily with the order of priority of liens, is aptly worded to cover this problem at all. Even if the Article can be construed to cover this point it is still doubtful whether it is intended that the shipowner is to be entitled to assert a single limit against all claims on the same voyage, or whether he is only to be entitled to one limit for each set of claims arising on a single occasion.

Allied with this problem is the question, with which the Convention does not appear to deal at all, namely, the tonnage upon which limitation is to be assessed if the damage is inflicted by a tug in charge of a tow or tows, or by a tow only or by both vessels. The existing English rule is not free from doubt as the decisions are not easy to reconcile but it appears to depend upon whether tug or tow or both inflicted the damage and whether tug and tow are in the same ownership.

Article 8

This Article is intended to deal with the problems, which arise not infrequently in practice of double arrest of a vessel for the same cause of action and of demands for bail in two jurisdictions.

Under existing English law bail, given to secure the release of an arrested ship, takes the place of the ship if the bail be sufficient, and the ship is then free. But she can be re-arrested to satisfy the damages or costs, if the bail given proves to be insufficient for this purpose; but such re-arrest can only be made in a case in which judgment has not yet been given. On the other hand it has been held in the English Admiralty Court that a demand for bail in two separate

jurisdictions by *the same Claimant* is vexatious and oppressive, and in that case the later proceedings (in the English Court) were set aside in spite of the fact that before the English judgment the foreign proceedings had been discontinued.

These rules are not entirely satisfactory and the scheme of Article 8 is perhaps an improvement upon them. It will be borne in mind that this matter is dealt with in the Diplomatic Convention on Arrest of Ships signed at Brussels in May, 1952. It is important that Article 8 should not conflict with the Arrest Convention.

The main difficulty in practice however arises when *different* claimants arrest a ship in two or more jurisdictions upon claims arising out of the same casualty or occurrence. As a result of a collision for example between ships A and B, the owner of ship A may arrest ship B in England, but there is no rule of English law — or insofar as is known of any other maritime law — to prevent the owners of cargo in ship A arresting ship B in any other jurisdiction in which they can find and arrest her.

In this event the owner of ship A will have to furnish bail in two countries and in two currencies. In a recent case of this nature a vessel was arrested or threatened with arrest by different claimants upon claims arising out of the same casualty in England and in two separate States of Australia, so that owners were faced with the prospect of establishing three limitation funds. This was avoided through the good offices of British Underwriters partly concerned in cargo, but in principle it should not be necessary to invoke their aid. The problem is however one of some difficulty since it might not be fair to force all claimants to pursue their remedy in the jurisdiction in which the ship was first arrested.

The Convention attempts to deal with this question by Article 8, paragraph 4:—

> « If different creditors take proceedings in the Courts of different States, the Owner may, before each Court, require account to be taken of the whole of the claims and debts, so as to ensure that the limit of liability be not exceeded ».

It may be that this provision is on the right lines, although the wording is capable of clarification. The existing rules of English law

relating to the administration of limitation funds should also be considered; these are not entirely clear and it may be thought that they should be modified by the Convention.

It is clear that when, in an English limitation action, the shipowner who is petitioning for limitation has settled some of the claims out of Court, he is entitled to have these taken into account in the administration of the fund so that the other claimants are not entitled to receive out of the fund more than they would have received if none of the claims had previously been settled. This principle has been extended to cases in which the shipowner, who is petitioning for limitation before the English Court, has actually paid under judgment of a foreign Court a claimant who might have pursued his claim against the English limitation fund. The difficulty arises however when at the time of the English limitation proceedings, a claim is either being threatened against the shipowner or even actually in process of litigation against him in a foreign jurisdiction, but no judgment has been yet given against him by the foreign Court. Doubt has been expressed by high authority whether in such a case the English Court has any power to extend the time for the distribution of the English limitation fund in order that the shipowner may await the decision of the foreign Court, satisfy the foreign judgment by payment and then apply to the English Court to be credited in the English limitation action with the sum so paid. In any event, in the only reported case in which this precise issue seems to have arisen, the Court refused to exercise its power, if such power existed, to extend the time for distribution of the English limitation fund. It would appear that, with proper safeguards of the rights of the actual claimants to the fund, the rigour of this rule should be modified.

Article 10

This confers the same rights of limitation upon Time Charterers as are conferred upon registered Owners and Demise Charterers. In modern times there would appear to be little justification for excluding Time Charterers from the benefits already enjoyed by Demise Charterers.

London, 22nd July, 1954.

ITALIAN MARITIME LAW ASSOCIATION

REPORT

I

The Report of the British Law Association, as was to be expected, had our full attention and it is very discouraging to observe that the question of limitation of shipowners' liability which, after 25 years of discussion, appeared as far back as 1924 to have been solved on the basis of the adherence to the compromise form adopted by the Brussels Convention, has to-day, after more than another quarter of a century, receded to the same point which marked its place more than fifty years ago.

However, if we contend that this question is relegated to its original stage, we have in fact been too optimistic for, when the talks were opened, those who has displayed their intelligence, their enthusiasm and their faith entertained the hope that a goal might possibly be reached after all, whereas to-day with great disappointment we feel compelled to admit that, since the publication of the Report of the British Maritime Law Association, the hope of finding a way out may possibly prove fallacious.

As a matter of fact, except as regards the adoption of the currency which might possibly be substituted to the Pound Sterling — the sole item which our English friends appear to consider liable to discussion — the Report, with respect to the real substance of limitation, only suggest adherence to the English basis, that is to say the adoption of a fixed value for all ships (without allowance for market fluctuations) up to the maximum amount of which the shipowners should be liable for all casualties sustained during the same voyage.

As already stated, this means reverting altogether to the old method, except for the postponement of the 7 and 15 Pounds Sterling, which to-day constitute an anachronism.

And, what seems the more disturbing to us now is the fact that the Report not only reflects the opinion of the British Association but also, as has already been emphasized, that of the Shipowners' Associations, of the Protection and Indemnity Associations, of the Association of Average Adjusters and of the Admiralty Bar and perhaps the opinion of the Government, although the representative of the Government only attended the meetings as an observer.

Consequently, on account of the structure of the British Delegation in our subcommittee both as regards their numbers and the great authority of their members, we have few illusions left as to the eventuality of the revival of the old state of things.

However if, in the depth of our souls, we had not retained a tiny ray of hope, our task would be over and we venture to state that the English themselves should not entertain too many illusions about the other Nations being prepared to abandon their traditional system for the adoption without more ado of a system to which they have always shown aversion : in this respect we would recall that, on the occasion of the Amsterdam Conference, when a vote was taken on the amendment of the Dutch Delegation to the motion of the International Sub Committee tending to retain the existing Convention as a basis for the revision, the amendment was defeated, but this was rendered possible because the amendment was not approved by more than six Delegations out of the twelve votes present and, consequently, did not secure the majority.

Furthermore, we are in the dark as to whether the English system will be easily approved by the U.S.A. Delegation, for the American law is closer to the continental system of Europe than to the English. As a matter of fact, if we are correct, the U.S.A. shipowner is liable up to *the value of the ship after the adventure.*

Finally, our English friends have always and in any circumstance proclaimed that they take a considerable interest in the promotion of an International convention and for this reason we should make one more effort — most certainly the last one — to reach this goal.

II

We all know the pro's and con's of both systems, which continue to look at each other with a challenging eye and of which we do not need to re-state their respective positions.

We will confine our task to emphasizing the essential discrepancies which may approximately be summarized as follows :

a) whether the value of the ship should be calculated on a fixed basis or on the basis of an assessment to be made in each individual instance;

b) if the latter alternative is retained — and only then — whether the value should be the sound value of the ship; i.e. at the inception of the voyage or the moment after the adventure;

c) whether the debt should be calculated per casualty or once only during the course of one voyage.

As set out above, the questions raised under a) and b) should be examined together, for the solution of the second question, to the effect that the value of the ship should be calculated the moment after the casualty cannot even be raised if a fixed sum is adopted as a basis of valuation for the ship.

III

What we have read in the British Association's Report on page 2 paragr. a) cannot but leave a strong impression : and if one cannot but concur with the view that it is ethically indefensible to make the compensation for property damaged or persons injured by a wrong-doing ship dependable from the amount of damage sustained by the same ship, as a consequence of its wrongful act, for this might possibly lead to a ship becoming almost valueless after the casualty.

This consequence, which might be brought about by the Mediterranean system or by the execution-system of the German Law, should nowadays be repudiated. We are of opinion that on this point an all-round agreement will most certainly be reached.

After all, articles 274 to 276 of the « Codice della Navigazione » the new law promulgated after abrogation of the law of 25th May 1939 n. 868 (under the terms of this law the Convention had been introduced in our internal legislation) which confirms in principle the liability of the shipowner on account of the acts of the crew and the obligations of the captain and confirms the right to limit his debt to the value

of the ship, the freight and the other appurtenances to the voyage (1) — also provides

(1) Art. 275 as quoted on page 8 of the Report on the Amsterdam Conference is incorrect : after the words « to an equivalent amount » should be added « to the value of the ship and ».

that if the value of the ship before the end of the voyage is less than one-fifth (20 %) of the value at the commencement of voyage this one-fifth should be retained as a basis of limitation and, if this value were more than two fifths (40 %), these two fifths should be taken as a limit.

The solution of this problem was thus found in a clear and plain form, although it is still liable to some finishing touch.

In a report submitted to the Amsterdam Conference by our delegate, Prof. Berlingieri, it was moved that the same solution (except the setting up of various percentages and a reasonable increase for personal injuries) be adopted in the new Convention.

This motion met with no success at all, but it may be observed on the basis of the very attractive schedule which had been prepared by Mr. C. Van den Bosch that an identical solution had been proposed by a number of Associations, viz. the Belgian, the Danish, the French, the Norwegian and the Swedish, which took into consideration as the basic limit of the debt half the value of the ship at the commencement of the voyage or after the casualty.

After all, our English friends appear to be convinced that the liability should not equal the full value of the ship but be considerably lower (at least as regards the liability for material damages), for they suggest to increase to £ 24 (paper) the £ 7 (gold) adopted in 1862, amount which, as everybody knows, does not even by far represent the average value of present-day ships.

We are not able to determine what proportion to the average real value of ships these £ 24 per ton do represent (amongst the ships we should also reckon the gigantic passenger-liners) and for the time being, it does not appear necessary to determine this proportion.

At present it may be sufficient to observe that the English themselves propose to deal with the average fixed value of ships on the basis of a figure which is considerably lower than the real value (it might be mentioned that, although the value of present-day ships is far in excess of the average value of the ships in 1862, the £ 24, paper,

are not even equal to the £ 7, gold, for, at any rate, the proportion would be 1 to 4).

Bearing this in mind we appear to be stil very far away from our final goal, but we must appreciate with some complacency that we have reached a second stage on this difficult road, without having ever asked the assistance of our English friends. And is is precisely at this stage that we would ask them to make in the first place one small sacrifice in abandoning the principle of a fixed valuation and to associate themselves with the concept of a specific valuation for each ship.

The British Association has always shown its oppisition to a limitation based on the value of a ship and this is confirmed in their present Report. But our English friends will agree that all their arguments on this subject have been met during the discussions which were held in the preceding years.

On this subject, we would refer to the Reports of the Belgian and Norwegian Associations which were submitted at the Amsterdam Conference (1949).

We quote from the Report of the Belgian Association :

« Others will object that it will be difficult to estimate the value of a ship. These difficulties, however, are more theoretical than actual. They may be raised in cases of general average where, we gather, they have never prevented the average adjusters from assessing the contributory values of ships. After all, it remains a fact that the value of a ship is being based upon her age, the prices quoted on the London market etc. and that the expert-valuers rather seldom inspect the ships. »

The report of the Norwegian Association, in its turn after reaffirming that the difficulties of calculating the value of a ship before or after termination of the voyage should not be exaggerated and that the value of the ship also represents a well-known factor in other chapters of Maritime Law — for example in the matter of salvage and general average — adds that the limitation to the value of the ship has the advantage that « the value of ships and as consequence the liability of shipowners will follow the tendency of the world market » (we also insist upon this latter point).

After all, the adoption of a same standard for the valuation of each gross Register ton of any ship and therefore either of the splendid

new Italian liner « Cristoforo Colombo » which has just returned from its maiden trip to New York, or of the most simple wooden tramp ship is evidently absurd — if our English friends allow us to say so.

We are satisfied — if the information which we have gathered rather hastily is correct — that, whereas the value on the international market of a passenger liner of the « Andrea Doria » or « Cristoforo Colombo » class may be calculated between 400 and 450 thousand lire (approximately £ 240) per gross registered ton on the international market, the value of a tanker of apparently 25.000 D.W. may be calculated between 130 and 150 thousand lire (apparently £ 75/80) and the value of a liberty ship between 40 and 45 thousand lire (nearly £ 25).

As can be seen at once, the figure which represent an average value, would instead only correspond to the value of the most common type of ship : with this consequence (subject to what will be said hereafter regarding the practice to be adopted for the liability) that the suggested limitation would in fact only apply with regard to ships of a special type, whereas the remainder of ships of an average type would find no protection at all.

In view of the serious and undeniable inconvenience brought about by the adoption of the same standard for the preliminary calculation of the value of ships (the real value of which may be thoroughly different, such as to vary up to 9/10 from one type to the other) we would beseech our English friends to reconsider their position.

In the comparative schedule prepared by Mr. Van den Bosch, which we have already mentioned, we read that the British Association, although on a basis of a subsidiary move, appeared to be agreeable to join the Belgian motion, subject to re-consideration of the rate of 50 % and taking account also of the different types of ships.

And now we would ask them to make at least this sacrifice on the altar of unification, that is to say not to deny in 1954 what they were prepared and inclined to accept in 1949.

If they did not, we should with great disappointment have to proclaim that any effort towards unification would be useless and thoroughly utopian.

It is our sincere desire either to find any possible means of simplification of the question of valuation of ships or to adopt various percentages as a limit of the debt, for example as much as 60 % for

the small ships and less than 40 % for the larger vessels, especially for the most modern passenger liners, subject, of course, to fixing higher percentages for personal injuries.

With this differentiation between two, three or more groups of ships, the inconvenience which has been denounced either in the present report of the British Association or in the report delivered by the Dutch Association at the Amsterdam Conference would be avoided, namely that on the basis of ships' valuation the owners of old and ill-maintained ships would be privileged.

IV

We will now have to face the third obstacle, which may possibly be the gravest, i.e. whether the liability (or, better, once for all, the debt) should be limited to each casualty or else should be met only once during the course of the voyage.

On this point we ask our English Friends to make *the real sacrifice*, that is to say is abandon the liability for each casualty.

We are perfectly aware that this constitutes an important sacrifice and therefore the line or argument will necessarily have to be lengthened.

We are accustomed to the much reiterated idea that maritime problems — like any other problems in whatever sphere they may be raised — should be considered as a whole, being careful to treat only one or a few aspects and neglecting the others. This is a fundamental principle.

In particular, our present problem of the limitation of liability (debt) of the shipowners should be examined either from the aspect of the offending ship or from the aspect of the creditors, who should not be prejudiced too much by the principle of limitation.

However, it should not be overlooked that in other fields of maritime law an agreement was made on the basis that the shipowner's liability shall be protected each time this liability has been brought about by the act or default of the master or the crew, in such a manner that, according to the Hague Rules and the Brussels Convention, whilst the principle of *limitation* of the shipowner's liability for commercial acts or defaults of the master, crew or agents was adopted, the owner has been exonerated by law from liability attaching to nautical errors.

This finds its application in the field of transport in other words in the field of contractual law.

Well then, we should agree that it is not easy to find an *entirely* satisfactory reason, from the pure legal aspect, for not adopting the same basis in the field of the extra-contractual acts or defaults. One might debate endlessly on the absurdity of a ship that foundered after a collision not being able to recover any damages on the ground that the master of the colliding vessel committed only a technical error. But, we insist, it would equally be difficult to justify, from a legal point of view, this reversal of positions in both the contractual and the extra-contractual fields. (We are of opnion that the theory of participation of risks in the contract of transport does not afford a suitable justification).

Bearing this in mind we do not, however, intend to create disorder.

These are basic principles, which nobody would dare touch. But we would insist upon the fact that in the matter of liability in maritime law the situation of the debtor has always been the subject of great sympathy, as opposed to the creditors.

This consideration should be borne in mind when we discuss the present problem, in order to avoid that the acknowledgement of a state of desequilibrium between debtors and creditors might not be regarded as an illegality or an injustice.

An excessive protection of the shipowner by means of an immoderate limitation of his debt will only deserve the wellfounded criticism of the British Report. This protection, it is said, could only be conceived in the past, when the voyage of a ship was a real adventure and the shipowner was risking his fortune, but not to-day « .... *under modern conditions of shipowning and marine insurance* .... ».

All this is quite true and it can be said that the problem of shipowner's liability cannot be examined in the same way as it was a century ago. This is substantiated by the fact, as already recalled, that the « Codice della Navigazione » has cast off the ancient system of abandonment.

But, if we consider the influence of modern insurance on the question at stake we should be very careful, for we might run the risk not only to distort the terms but also to get in a position when we shall have to negate its existence.

Since, in fact, nearly all ships are to-day insured against collision both for their own damages and for those inflicted to others, the shipowner runs practically no risks, also because the rate of freight is partly based on the amount of the insurance premium which is to be spent. The risk, therefore, is transferred from the shipowner to his Underwriters.

There is however a counter-part. Not only are the colliding ships covered by insurance but also the ships with which they have collided together with their cargo.

As a consequence, the whole problem would reduce itself to a question in which only Underwriters would be interested, and Underwriters interest is also very difficult to locate, as in many instances the same Insurance Company may be interested in the colliding vessel as well as in the other ship and its cargo.

The argument cannot, however, be fully met without shifting all the terms of the problem up to consequence that the necessity of limiting the shipowner's liability should be kept as a pure historical reminiscence, since it would not be the shipowner's but the Underwriters' liability that would be limited and the Underwriters, in their turn, might possibly be prejudiced, if, at the same time, they have insured the vessel damaged in a collision or her cargo.

This is why the concept of insurance should be treated with the traditional « granum salis », also because, as a matter of fact, there are still uninsured ships and underinsured ships, some policies only cover part of the insurable value and, last but not least, some policies are being disputed at the right time (and there is still the trouble of the liability per occurence).

We should therefore proceed with the examination of the problem, if not in the same terms, at least in *similar* terms as before, for, if we confine ourselves to research within the scope of insurance, it ceases to exist and then we had better stop weary ourselves out on this.

Consequently, if the shipowner's liability (debt) should continue to be maintained within some limits, we should also provide the shipowner with the opportunity of covering himself by way of insurance.

Well then, we are aware that the customary insurance covers the ship for its value (when this is covered) and the liability towards third-parties is covered at the same time.

If a casualty occurs during the course of the voyage, the owner is insured either against the risks of his own ship or against the liability which the ship may have incurred (except, in the case of a ship of the common type, when the liability applies to personal injuries). But if the ship, whilst *proceeding on the* same voyage, is involved in a later adventure, the owner will still be covered for the damages incurred by his ship, although the same cannot be said for the new liability incurred of the liability involded if the first casualty has exhausted the insured amount.

In practice, this occurence would almost never be met by the large passenger liners, in view of the fact that even the £ 74 (24 + 50) only represent less than one-third of their value, but for the common cargo ship the position is quite different. It may possibly occur that the insured amount is hardly sufficient to pay for the material damages and that the owner has been called upon to pay over and above for the personal injuries.

It might be objected that a prudent shipowner will not fail to cover himself for those odd £ 50 over and above the value of his ship, with the precise object of meeting this risk. But, in acting like this the owner has done everything that can normally be accomplished in the field of insurance.

It is not anything serious to ask a shipowner to cover himself twice, three times or even more for his liability towards third-parties, in view of all that could possibly happen during an extremely unfortunate voyage. Such an excessive premium would be charged that he would most certainly prefer to run the risk himself, since, in time of acute crisis the premium would absorb any amount of profit. And it seems useless to add that the owner might not even be blamed for not having taken a new insurance cover immediately after the first adventure, because the difficulties of a new insurance in such circumstances — with the ship being in course of voyage and all information still uncertain and confused — are well known and, in any case, the next adventure might occur before the new insurance is concluded.

We must confess that we do not see for what reason the owner of « any » ship who could be blamed for nothing except for not having made a good choice of his master, should run such considerable risks, which, on the other hand, are not even conceivable for the larger ships

of which the owners are compelled to insure for considerable amounts which cover them almost against any risk.

We have been dealing above with the influence of Insurance on the problem of limitation of liability.

We would just once more revert to this problem and express the humble opinion that in these very unfortunate cases of « two or more » adventures during the course of the same voyage it seems more righteous that the consequences should be born by the Underwriters who stand committed by the successive accidents rather than by the unfortunate owner.

Two more words regarding the modern ship industry.

We would like to point out in the first place that quite evidently the limitation of the liability of the shipowner protects the Merchant Marine and in doing so favours its development. The U.K., with its powerful Merchant Marine, may as well leave aside this economical problem but the other Nations, always engaged in a very close fight against the « flag distinction » are most certainly not in the same position and it is with great concern that they anticipate the birth of the new Convention which will place them in a position that will affect them adversely against the other Nations, which traditionally remain outside.

But the present organization of the shipowning industry in Great Britain does not, like foreign shipping industry, call for legislation along the lines which we have in mind, because the establishment of « Limited's » is very frequent for the management of each ship and — if we are not mistaken — there is no such man in the U.K. like « Achille Lauro », who is the owner of a personal fleet of 27 ships totalling 193.465 Gross Tons. These are circumstances which cease to constitute separate instances and which deserve some regards.

V.

This is what the Italian Association requests from the British Association as a sacrifice (indeed the only true sacrifice) to obtain the desired unification of this grave problem. At the same time the Italian Association wishes to make it clear that on the questions which might be called accessory she will prove extremely indulgent.

Genoa, 22nd August 1954.

The reporter,
G. Berlingieri.

MINUTES OF THE BRIGHTON MEETING 1954

Session of Monday 20th September.

His Hexcellency A. Lilar was in the Chair.

1. The Chairman opened the session and suggested to start with a discussion on the report of the British Maritime Law Association on the question of the limitation of shipowners' liability.

He asked the British delegate to speak in the first place.

Mr. Martin Hill (Great Britain). — The British proposal regarding limitation of liability is quite a simple one and can be shortly stated. It is that there should be a limit of £ 24 per ton to the ship's tonnage for property claims, with a further £ 50 a ton for life and personal injury claims. If the £ 50 is insufficient to meet the life or the personal injury claims those claimants should be entitled to rank *pari passu* with the £ 24. So that it follows that under our proposal if you have a case involving property and life and personal injury the maximum comes out at £ 74 a ton.

We state those figures in terms of sterling, because they are more readily understood in that way, but our further proposal is that those figures, for the purpose of the Convention, should be translated into the French gold francs of the Warsaw Convention, which would thus provide the uniform monetary unit of the new Convention.

2. These proposals clearly give rise to a number of problems and questions. In the first place, we shall be asked why we have appeared to disregard the existence of the 1924 Convention. Secondly, why have we thrown value overboard as a basis of limitation? Thirdly, why, having said since the end of the war that nothing was practicable, are we now coming forward with proposals of quite a drastic kind for immediate action?

First, why have we gone away from the 1924 Convention? Well, that involves going to some extent into past history. I do not propose to do so at any length, because the British very clear view is that this is a question of what can be done and what ought to be done today. The 1924 Convention dates back thirty years as regards its signature, but as regards its inception it dates back to the early years of this century. So much has changed, particularly as a result of the last war and particularly in the conception of rights and liabilities in relation to life and injury, that a fresh start is needed. We really regard the prewar past as dead and we do not think any useful purpose is to be served by holding any prolonged post mortem on it. Even if this is disputed, it is perfectly clear that the 1924 Convention stands no chance whatever of acceptance in anything like its present form by this or any other British Government. In point of fact it was not for want of trying on the part of the British shipowners that the 1924 Convention was not enacted in Great Britain in the prewar period. We did try on quite a number of occasions, with which I was concerned, to persuade various British Governments to ratify the Convention, and for various reasons, partly merit and partly of parliamentary time and that sort of thing, we consistently failed. That failure in prewar years makes quite certain of the failure of any new attempt today, and in fact none of the British interests represented on the British Maritime Law Association would consider it right or just, apart from tactics, to make the attempt.

In saying that I am thinking of the Fondamental features of the 1924 Convention, namely a limit related to the value of the ship after the casualty, a gold clause shown by experience of the corresponding clause in The Hague Rules Convention to be fraught with trouble and ambiguity and monetary limits which, with the gold clause removed, are patently inadequate. So much for that question of the prewar Convention.

3. Secondly, why have we chosen a tonnage and not a value basis of limitation? The reasons are set out in a good deal of detail in our report. I do not want to delay the meeting by going into them at length, but the value of the ship after the casualty is untenable on grounds of merit and that it cannot be defended in present circumstances. The old conception of the owner of a single ship who has

hazarded his all in it and therefore should be allowed to limit his liability to what remains of it has entirely disappeared under modern conditions. There is no ground today in equity for saying that if the ship is totally lost those who have suffered by its wrongdoing shall get nothing. Even if we thought there were, we should not have the slightest chance of convincing the British Parliament and the British public that such a thing was justified.

We have thought very carefully about the value of the ship before the casualty, but once you get away from the idea of what is left to the shipowner after the casualty there is no merit or logic or anything in the value before the casualty, and it has all sorts of disadvantages, to our minds, both of merit and of practicability. In merit it is wrong that the owner of an old and ill-maintained ship should be favoured in comparison with the owner of a new or well kept up one in the same class. In practice the valuation would be subject to all kinds of fluctuations according to time and place, the country where you are valuing at the time, what the conditions are at the moment in the open market for ships' sales. It was for these reasons that as long ago as 1862 the British Parliament abandoned value and came down in favour of tonnage limit, to which we have stuck ever since.

I know we value for salvage and general average purposes, but that is a much more approximate piece of shooting; it does not demand the exactitude which you must have when you are dealing with life claims, and you have got to divide the fund among a large number of passengers, all of whom are concerned to make it as substantial as they can in their own interests.

As we see it a valuation on the footing of a fixed sum per ton gives certainty. A basis on value gives uncertainty, dispute and leads to limitation.

4. Thirdly, how do we reconcile our present proposals with our previous insistence, particularly at the Antwerp and Amsterdam conferences, that nothing could be done? Well, I suppose I was as anybody for saying that at those conferences, so it is quite fair that I should be shot at over it. But what we said on those occasions was that nothing could be done on the sole ground that the gold clause of the Convention would not work, and there was nothing in the then prevailing circumstances to put in its place. We in Great Britain took the best advice we

could; we went to the financial pundits and asked them whether they could give us anything. I remember they offered us Bretton Woods, which we did not find very attractive, but nothing emerged that we could put in the place of the gold clause and five years ago, I think, we were right in saying that nothing could be done and that was generally accepted at that time by the comité. We may have been a bit slow in appreciating the possibilities of the Warsaw Air Convention to which our proposals are now directed, but at that time that Convention had been in force for some years prewar and had not stood much of a test of post-war conditions and uncertainties in the currency world. It has now nine post-war years of working and the advice given to us is that it has worked well. It has done what it was intended to do under prewar and post-war conditions and we therefore feel it can be put forward as a basis which shipping could and should adopt as one capable of giving that uniformity of monetary measurement which the Comité has been seeking since the end of the war.

5. Now for our figures, the £ 24 and the £ 50. Baron van der Feltz has given us a very interesting and thoughtful paper, as is anything that comes from him. I picked up the phrase in it : « To reserve the right of the shipowner to limit his liability at all in these days the rules must be such as to satisfy the sense of justice ». That is really the foundation of our own proposals, and it applies most strongly in the sphere of life and personal injury.

There is a very plausible case that could be made out today that under modern methods of shipowning and modern facilities of insurance the whole conception of limitation of the liability of shipowners is misconceived.

I am here primarily as a representative of the British shipowners, and as such I am not at all concerned to make out a case against my own side, but that does not mean burying one's head in the sand and believing the Parliaments today are going to approve of some basis of limitation which will pay life claimants the dividend of a few shillings in the pound. What we feel, and we feel it very strongly, is that in the case of life and personal injury claims not merely tactics but justice demands that we should go as far as we possibly can towards what is effectively no limit at all, and that it is only in respect of the really catastrophic risk that protection by way of right of limi-

tation of liability should be sought, and hence our high figure — admittedly high figure — of £ 50, which incidentally comes quite voluntarily from the British shipowners. It is their figure. It is not, and it does not pretend to compare, with any prewar figure. It does not, as a matter of fact, compare badly with the American prewar figure of $ 60, but it is designed as a figure which is high enough to remove limitation from the scene of the great majority of cases involving death and injury, while at the same time not being unbearable to the shipping industry or beyond the bounds of insurance at reasonable cost.

6. The £ 24 stands rather differently. In the case of property claims it really comes down in the end to a question of which set of underwriters pays. There seems no reason why, given a reasonable kind of figure, Parliament should take exception to something that the business interests concerned are ready to agree is fair. £ 24 is three times the prewar rate; that is one way we might look at it, and it represents a fair figure on that footing. But the summing up of this is that the reasoning which has so long given a right of limitation to shipping seems to us still to hold good, provided that the limit itself is such as will not offend present-day sense of justice, and it is in that sense that our figures are submitted.

In one respect they require our further consideration, as we have realized since our report was prepared. We have got to cover the case of the very small ship. Even at £ 74 per ton a ship of 100 tons would only provide a fund of £7,400, which is little if any more than the equivalent in damages today of one human life.

Such a result clearly would not satisfy the sense of justice to which I referred, nor would it be acceptable to public opinion, and we have got to find some solution to that. The solution we think could best be a provision in the Convention, that for this purpose of limitation no ship should be treated as being less than a certain tonnage figure, perhaps 500 tons; in other words, the Convention would say : « No ship shall be deemed to be less than 500 tons ».

7. I have only one other point. We say in our report that if this problem cannot be the subject of international agreement the possibility of national legislation cannot be disregarded. We would be most sorry if that statement was made as any sort of threat to the Comité for the purposes of this meeting. It is not anything of the kind. It is merely

a statement of fact, of what we know of the situation in Great Britain. At the Brussels Diplomatic Conference the British Government promised to re-examine the question of Shipowners' Liability. We know that it is under quite a deal of pressure from different quarters in Great Britain to do so; we have had one or two occasions when if they had not gone a certain way — « Princess Victoria » was one — it would have led to a public outcry that would have forced the British Government to take action even if they had not wanted to, and there is no doubt at all in our country, I think, that something will surely happen, whether the British Maritime Law Association likes it or not.

The British Maritime Law Association urgently wants an international agreement about this. The dangers of unilateral action, either in Great Britain or in any other country, enhance the importance of getting that agreement. Therefore, the British Delegation hope most earnestly that the proposals which they are submitting to this meeting can form the basis for a draft Convention to be submitted to the full conference next year, and the British Maritime Law Association would undertake most willingly the task of preparing such a draft.

8. His Honour Judge ALTEN (NORWAY) made following statement at the President's request :

His Honour Judge Alten (Norway). — Mr. President and Gentlemen, at the Conferences of the Comité Maritime which have been held after the war the Norwegian Association has, as many of you will remember, repeatedly recommended a complete revision of the Brussels Convention. We have never been happy with the ratification of that Convention, because its system is too complicated, and because the Article with the Gold Clause has not been loyally respected by all states party to the Convention. We therefore very much appreciate the progressive report made by the British Association. We agree to it in principle, and we will do our best to collaborate with our British friends in order to obtain a Convention based on the principles of their report.

I shall not, at this stage, go into details, I will only mention the main points. We agree to the surrender of the ship's value as an alternative basis for limitation on liability with respect to the first claims mentioned in Article I of the Convention. Consequently we also agree that the numbers of that Article which refer to cases where,

according to other laws, the liability is limited to the value of the ship may be deleted in this Convention, and also that number 8 may go out, on the obligations contracted by the captain, andperhaps also number 3 and 4. We further agree the money limits should be raised and expressed in Poincaré francs, round sums of Poincaré francs, to which we will come back under special discussion.

9. We also find, as Mr. Hill mentioned, that there ought to be a minimum limit for small ships. As far as I heard, Mr. Hill mentioned 500 gross tons. The discussion which is not mentioned in the British report is whether the tonnage shall be determined in conformity with Article 11 of the Brussels Convention, which is conformed with the British Merchant Shipping Act. At Brussels in 1922 it was proposed by the Scandinavian states, with the support of the United States of America — who however did not ratify that Convention — that the tonnage should be the gross tonnage of the ship, because one would then obtain full uniformity in all countries. The net tonnage is determined in different ways in the various countries. But the objection, and it was raised also, I believe, by the British delegates in 1922, is that if one took the gross tonnage as the basis, the shipowners would be tempted to reduce the room in the ship reserved for accommodation of the crew. I think this objection is of no value, because in all states there are public regulations which secure the crew all the space which they need. As for the British Merchant Shipping Act, it should not be impossible, I feel, even to alter an English Act!

I am happy that the Norwegian Association will have this opportunity to collaborate with our British friends.

10. **Mr. G. Ripert.** — « We have here three signatories of the 1924 Convention. One of them, Mr. Alten, has renounced his work. I also intend to renounce the 1924 Convention. But I should like to explain why.

That Convention thought to be able to solve the problem of limiting liability by granting a choice and, at that time, we agreed completely with the British delegation. It was indeed, a reasonable solution.

As the Convention was signed, France did ratify it but France has not incorporated it in its municipal law, being aware of the fact that

the other countries did not ratify the Convention. The 1924 Convention meant already an important sacrifice for the shipowners. We should keep in mind indeed, that, when we speak there of the value of the vessel this concerns the value after the accident i.e. that in case of total loss the owner is not liable and this is still the situation.

We can criticize that solution which is the traditional solution of the maritime law. In practice there is no liability based on the capital. As a consequence, we presently ask the shipowners a real sacrifice because they will accept a lump sum liability.

11. I quite admit that circumstances changed such as said by Mr. Hill. But, circumstances should change reasonably. We can accept a lump sum limitation provided the shipowners are properly protected i.e. that in no case whatever, the interpretation of the judges may allow the liability exceeds the limitation fund.

Presently there is a tendency in the laws of several countries to admit liability not only for faults but even in connection with the possession (la garde) of things that are considered to be dangerous and even of things that are not dangerous in fact. In these cases the Courts decide that a fault should be presumed or that a danger has been created by the owner. Recently the French owners have had to bear the consequences of the floods you know of.

If you do not state clearly in the Convention that the liability of the shipowners will not exceed the payment of a limitation fund, we make possible a number of claims based on the personal liability of the shipowner. In other words, the 1924 Convention concerned only the fault of the master and that is the reason why the Article I gave cases of liability. This enumeration cannot be completely deleted. It should be modified and it should provide for all cases other than contractual obligations where there will be limited liability.

12. On the other hand, the substitution of the value of the ship by a lump sum will not solve all the difficulties.

As I have heard, the British delegation presented the Poincaré franc as something new. For us, French, this is rather an old thing. The question is to find a value that can be easely determined and that is not subject to discussions. We should not imagine that in finding that value, we have abolished all injustice. Indeed, when the shipowner kills one single person or when there is only one person hurt,

indemnifying will be completely satisfactory. If there are however hundreds of people, the indemnification will be infinitesimal. We should not believe that we succeed in re-establishing more justice. There is a more simple solution. If we make an exception for little crafts for opportunity's sake — which I cannot understand very well — we will not give an equitable solution. There are ships that carry a great number of passengers in the mouth of the rivers and in the harbours. Passengers will have no claim in that case. The national Parliaments will hardly accept such a rule. As a consequence it is necessary, if we agree upon the British suggestion, to do that with confidence. Even if we do not adopt a better solution, we should adopt a simpler one.

Therefore, I believe that the French Association can accept the solution suggested, provided that it enumerates very clearly the cases where the liability is limited and provided that it tries to organize the payment of the claims and the distribution of the fund. »

13. **Mr. Haight** (United States) pointed out that the American Association gave no definite instructions to its delegates who merely intend to inform the American circles about the work of the Conference.

Mr. Burchell (Canada) gave an historical survey of the Canadian law on limitation and pointed out that the principal aim of the Canadian Association is to obtain international uniformity. He was of the opinion that the C. M. I. could realize that object.

Baron Van der Feltz declared that, although the Netherlands Association has not had the opportunity to examine the British proposal thoroughly, the interested circles in his country are willing to accept its broad outlines.

14. **Mr. Berlingieri** (Italy) declared that he could not agree upon the British proposal. He added that he shared the opinion according to which the principles of liberating the owner by the abandonment of the ship after the accident should be deleted. He preferred however that the liability should be based on the real value of the ship. « There are great passengers ships each ton of which costs more than 50.000 lires. The « Liberty's », on the other hand, costs only 25.000 à 30.000 lires per ton. How can we get an equitable limit based on the tonnage? Some people have objected that evaluations of ships are expensive. There is however in London an international market which makes

it easy to assess the value of the ships. It is not necessary, on the other hand, to have a precise evaluation. »

The Italian representative added that his Association agrees upon accepting the value of the ship before the accident. But he was wondering whether that evaluation should be made for each accident or for each voyage. « Indeed, the shipowner takes only one insurance per voyage. If an accident occurs involving the total liability of the owner and if before entering the port, a new accident occurs, the two limitation funds might exceed the insured amount. It could happen that the shipowner has not the opportunity to contract a new insurance policy after the first accident and before the second one. Anyway, this obligation requires additional insurance premiums that the owner hardly can suffer. As a consequence the Italian Association suggested to adopt a limit per voyage.

15. **Mtre Dor,** Vice-President of the C.M.I., pointed out that in 1949 the American Maritime Law Association informed him that it would be extremely dangerous to submit a draft on limitation because there will always be a risk that a member of the Congress in a demagogic mind suggested in one of the Houses to delete all limitation completely in that case. We should be forced to generalize the American system.

Mtre Dor added that shortly after he submitted the American point of view to Mr. Cyril Miller, drawing his attention upon the fact that the continental system is very similar to the American one.

Mr. Miller asked the British Maritime circles to accept the continental system. The reply was that there is not the slightest chance to have the continental system adopted in Great Britain.

The 1924 Convention, as a consequence, can no longer be defended. Mtre Dor pointed out that at the time, when the master, even in the 19th century, left with his sailer for India, he was absent for 2 or 3 years. When he came home, after having done all kinds of business, he submitted to his shipowner the balance of his assets and liabilities. The owner had no claims against the master. In these circumstances we do understand the possibility of limiting his liability to the value of the ship.

With the wireless and the other sorts of technical progress the owner follows his ship not only day for day but hour for hour. As

a consequence, we can reasonably admit that every limitation should be abolished. »

Therefore, Mr. Dor was of the opinion that — unless discussions on points of details — it was advisable to adopt the English suggestion, which is simple, clear and which puts an end to the discussions.

16. **Mr. Brajkovic** (Yougoslavia) gave a survey of the Yougoslav law on limitation and drew the attention upon the fact that his association insisted upon limiting the liability per ship and not per shipowning company.

Mr. Spiliopoulos (Greece) pointed out that in Greece the owners are in certain cases allowed to pay a derisive limitation fund.

The Hellenic Parliament presently prepares a new law based upon the Italian one, which allows the owner to limit his liability to the value of the ship.

Mr. Spiliopoulos is anxious to know the American point of view, for the United States are, with Great Britain, the most important shipowning country. He added that Greece controls about 6.500.000 tons, and consequently occupies the third place amongst the maritime nations.

Mr. Spiliopoulos added furthermore, that he was quite willing to accept the British system, which has the great advantage of being simple.

The Commission adjourned at 18,15 hours.

Session of Wednesday, 22nd September

17. **Mr. Kaj Pineus** (Sweden) : « You all know that Sweden has ratified the Brussels Convention and has amended its Maritime Law accordingly. We did that in the hope that we would find similar laws in all the leading maritime countries, and we were greatly disappointed when our hopes failed.

We in Sweden do not regard the question of limitation of liability as a question of abstract justice, but as a practical solution of a difficult problem. What seems essential to us in the British draft, is the abolishing of the alternative rule and an efficient gold clause that bars any escape from paying liability in gold.

I think it would be advisable to state from the beginning, that the draft should try to keep the smaller tonnage outside the Convention. I think, that would make things easier.

The Swedish shipowners feel that the figures suggested are excessive and that they are likely to increase the costs and the premium for the P and I insurance at the most unwelcome period. On the other hand, other circles in Sweden are strongly in favour of the draft as it stands, and Captain Kihlbom will explain that later on.

In order to overcome Swedish apprehensions, I should therefore like to insist on two conditions : that we get a very efficient gold clause and a very wide acceptance of the draft.

18. **Mr. N. E. Kihlbom** (Sweden) declared that the Swedish Underwriters' Association has had the opportunity to examine the British report and that it has approved it, except for certain details.

« In our opinion, it is much more important today than ever before for a shipping community that an international agreement is reached amongst all nations. Further delay caused by theoritical discusssions, where each country follows its own school of legal thought, should be avoided.

In these days, we consider that the principle of limitation is an economic problem and not a legal one.

As an underwriter, I would venture the personal opinion that the changes in economic results, brought about through the realisation of the British suggestions, would probably be small enough to be considered negligible when compared to the advantages of international uniformity in this field.

In this connection I think that I shall have to express an opinion which is different from that put forward by Professor Berlingieri when it comes to the assertion that a shipowner could not be protected by insurance for liability arising out of a second accident occuring on the same voyage. According to the Scandinavian and, I believe, also to the British and American insurance policies, the shipowners are protected up to the insured amount for each or any number of accidents occurring during the voyage.

I have mentioned that underwriters are interested in these problems on two accounts. The first one applies to damage to property, where the liability should be large enough to give the shipowner an

effective incentive to exercise proper care. The limitation of £ 24 per ton seems suitable and reasonable when coupled to a gold basis, as suggested. The second account applies to the liability for loss of life and personal injury. In this respect we have come to the conclusion that it would be a good thing to work for universal acceptance of the increase suggested in the British proposal. That is, if one would not be prepared to meet demands for unlimited liability from quarters with little understanding of shipping. »

19. **Mr. F. Norrmen** (Finland) was of the opinion that the British proposal has the benefit of being very simple and clear but that the limit for loss of life and personal injury was too high. He pointed out that the position in Finland in connection with the acceptance of increased liability is very much the same as in Sweden.

Mr. T. Ishii (Japan) declared that the British report had been examined in Japan by a special Sub-Committee, which however has not come to conclusions.

He added that he generally shared the suggestions of the British Association, especially those concerning the choice between the two methods of limitation.

Mr. Pelegrin de Benito Serres (Spain) declared that the Spanish Association agreed upon the general principles, put forward by the British Association. He was of the opinion that it was absolutely necessary to invite the States of Latin America to join the Sub-Committee.

Dr. Otto Dettmers (Germany) gave survey of the German law and pointed out that the German Maritime Law Association was not yet able to give a definite advice.

20. **Sir. G. St. C. Pilcher** (Great Britain): « If I may say this, the British suggestion came not from the lawyers but from the commercial and shipping interests concerned, and the lawyers of the British Maritime Law Association have only done their best to assist the interests involved in formulating the views which were expressed in our original memorandum.

It is clear, I think, and this meeting has served to endorse the view, that the old idea of a shipowner limiting his liability on his fortune de mer has gone. With the passing of that idea, so it seemed to the British delegation, there ought to pass also the idea of basing the limitation fund on value of the ship after the accident.

Our idea, which I think has also found some support, is that, in substance, the liability of a shipowner for loss of life and personal injury should be unlimited except in the case of the great catastrophe. That was why we put forward the sum of £ 50. We felt in England, after close consultation between shipowners, underwriters mutual protection and indemnity clubs, that the raising of the limit to £ 50 in the case of loss of life, or some similar sum, in the case of loss of life or personal injury, and the raising of the limit to some sum of about £ 24 per ton, would not in practice have the effect of subjecting shipowners to any large extra expense. That seems to have been endorsed by Mr. Kihlbom, and I cannot help feeling that when such of the delegations as take the view that shipowners may be subjected to an unreasonable charge by the figure which we have suggested consult with their underwriters, with their mutual protection and indemnity clubs, they may come to the same conclusion as the British shipowners have come to, namely that the increase in cost, increase in premium, will be infinitesimal. »

21. **Mtre de Grandmaison** (France): « This Convention must succeed in limiting the shipowner's liability. We are of the opinion that in business and especially in maritime matters all liability must have the possibility of being covered by insurance. But, we think that it is an absolute necessity, from the point of view of the underwriters, that the risk to be covered can be estimated. Therefore, we cannot admit that people think that all can be arranged and that it is a matter of insurance premium. Indeed, it is not reasonable that the underwriters cover risks, the limit of which they don't know. As you know, we reach unlimited risks. Look at the great catastrophes, such as the Great Camp at Texas City, the Ocean Liberty at Brest where not only the ship and its cargo were destroyed but where a lot of human lifes were lost and where half a city was blown down. As a consequence, it is necessary to have a limit of liability. I think that we agree on that point. And, I believe that we agree too upon the fact that the old continental system should be deleted and that a new clear and simple financial limit should be adopted. We were a little troubled when we heard Sir Gone saying that the British Association considered favourably an unlimited liability for loss of life. Fortunately he, immediately added that this corresponded to a limit of £ 50. In that case we agree completely. As a consequence, all this does not rise difficulties but

the French delegation has a great preoccupation. We are of the opinion that a new Convention cannot be based on the old 1924 Convention. The latter was in the frame of the historical ratification. Indeed, it intended to limit shipowners' liability for the results of the faults of the master, the crew and those in service of the vessel. In France, we had a strange evolution in our case-law and presently the important liabilities come no longer from the fault of the master and the crew but from the damages caused by the vessel, as the Courts in France have incorporated, as civil rule in our maritime law. The consequence of which is, that the shipowner is presumed in any case and without actual prove, to have committed a fault. He is presumed to have committed a personal fault in case of damage caused by the vessel under any form, by fire, explosion or other.

As a consequence, we are of the opinion that a completely new Convention should be made, that is based upon the limitation of the shipowner's liability for all damages, even those caused by the personal fault of the master or the crew, even those caused by the vessel for an unknown cause, as according to our statute law and our case law, that unkown cause implies a presumed personal fault of the shipowner.

22. **Professor Braekhus** (Norway): « The present Convention on limitation was ratified by Norway in 1933, and since then it has been part of our domestic maritime law. We have been practising the rules of the Convention for more than 20 years, and we have, during that time, discovered quite a number of points where the rules are not clear and are unsatisfactory, or where they left important practical questions unsolved. When a new convention is drafted, as suggested by the British Maritime Law Association, many of these problems will disappear. A number of doubtful problems will, however, survive, and I think it would be a great advantage if at least some of them, could be solved in the new Convention. In many cases the most important thing is that there is a solution and not what the solution is.

If I am permitted I should like to mention quite briefly five of these questions all concerning Article I. The first one is the question of cross or single liability. The most practical case of limitation is the case of collision. If there is a both-to-blame collision, which results

in both ships A and B, sustaining damage, you could either say there are two liabilities, A's liability towards B and B's liability toward A, which can both be limited, or you could say there is only one liability, namely a liability for a proportionate part of the difference between the two vessels damaged, only this net liability to be limited.

The first solution, that of cross liability, gives, of course, the lowest liability. There can be quite a substantial difference between the two solutions. The second, that of single liability, was, as far as I know, adopted by the British Courts as early as 1882, in the case put forward of the Voorwaarts-Khedive, and by the Supreme Court of the United States in the same year in the case of the North Star.

In Scandinavia, as far as I know, and on the continent, the question has been disputed; many seem to prefer the system of cross liability. I think it is impossible to solve the question by way of logical reasoning; there must be a deliberate choice between the two solutions. Personally I should prefer the British and American rule of single liability, but the main point is that the Convention gives the solution.

Secondly I should like to say a few words about the question of the tug's liability towards the tow. This is clearly a case where limitation should be granted, but under the present Convention the question is not clear. Article I, number (1), seems to cover only extra contractual liability. Article I, number (2), is not applicable. You could not say that the tug was delivered to the master to be transported. A possible solution however is to grant the tug owner limitation under Article I (4), damages for breach of contract by reasons of negligence in the navigation or management of the vessel, although this number was probably drafted to meet other cases of liability. If Article 1 (4) is deleted, the case of the tug's liability towards the tow must be dealt with under another number.

Thirdly, I should like to mention the case of absolute or strict liability. It has been mentioned by several speakers especially by Mtre de Grandmaison. Even Norwegian Courts have made shipowners liable in cases where there has been no fault on the part of the ship or her owner, for instance where the reversion mechanism has had a break-down at a critical moment. But the supreme Court of Norway has granted limitation in the case of this category on the basis of a similar application of the rules of the Convention. It would cer-

tainly be preferable that the right to limit in these cases should be given expressly in the Convention.

Fourthly I would mention the case of limitation where the owner has more than one vessel involved in the same accident. The question here is whether the limitation should be assessed upon the tonnage of all vessels concerned, or only upon the tonnage of one or some of the vessels. In the British report this question is mentioned under Article 6, but as far as I see it, this is a question of construction of paragraph 2 Article I. The British report mentions the case of tug and tow or tows, but the same problem may arise in other cases. In Scandinavian practice, we have had a case where a company of salvors was operating a number of salving vessels, pontoons, etc., and wanted to limit their liability. I think it will be extremely difficult to draft a rule to meet these complicated cases, but if it can be done we shall welcome it.

Lastly I should like to mention one question in connection with Article I (8). On the whole, we agree that this number is unnecessary and can be deleted, but in one case it seemed to be useful. It was a Norwegian vessel in distress asking for assitance over the radio. Another vessel in the vicinity, as far as I remember it was a French vessel, was willing to help, but on the condition that the Norwegian ship should compensate for its damage and pay its costs even if the attempted salvage became a failure. The Norwegian master had to accept this condition, and I think it was within his authority to accept it. Now the salvage was not a success, the Norwegian vessel became a total loss and the French vessel sustained heavy damage. Here the Norwegian owner could limit his liability under Article I (8) but not under the rules concerning salvage. I think a future convention ought to grant limitation in a case of this kind.

23. **Mr. J.T. Asser** (Netherlands) pointed out that the interested circles in Holland have to meet other difficulties owing to the fact that the laws of Holland provide that the limitation can only be invoked in four cases :

1° Cargo claims arising out of a contract of carriage.
2° Loss of life and personal injury claims arising out of a contract of carriage.
3° Collision claims.
4° Salvage claims.

« We therefore feel in Holland that Article I of the Convention, as it will be revised, should provide that a limitation should in the first place apply to all actions instituted against a shipowner, arising out of damages to property or out of loss of life and personal injury claims caused by or in connection with the operation of the ship whether afloat or on shore, both out of contracts and in tort. »

The Commission adjourned at 12,35 hours.

Session of Friday 24th September

24. The Chairman suggested to examine following question put by Mr. Ripert « In which case can the owner limit his liability ? »

Mr. Ripert : « I understood that the British Association intends not to lay on the shipowner the liability for events which may occur during transits. This is quite logical because modern damages are much more important than those which could occur formerly and because the capital of the strongest companies can be compromised by a real maritime catastrophe. Moreover, we see that in all fields, where liabilities against third persons are growing more and more important, limitation is granted by law. If I am right the wording of the 1924 Convention does not suit anymore. Indeed, there are two sorts of liability:

1° Liability against third persons for damages caused by the sea transport.

2° Liability against the cargo owners and perhaps against passengers.

In our opinion, the most important point is to avoid that the Courts of the different countries find the way to overcome the rules on shipowners' limited liability.

Presently, the French shipowners have the benefit of an absolute limitation system. They are willing, I am sure of it, to abandon this system provided the Convention will give necessary guarantees concerning the limitation of liability.

Therefore, I think that we better not mention facts or faults of the captain and even not of the other agents of the shipowner. We should speak of damages caused during the voyage without mentioning who caused the damages and excepting probable cases of

willful misconduct. We should cover all vices of exploitation, all catastrophes resulting from liabilities for third persons. As a consequence, the wording must be less restrictive than that of the 1924 Convention, that admits liability for damages caused by facts and faults of the master, the crew and the pilot. In the new conception you should incorporate liabilities against third persons for damages from any origin occurred during the voyage. In that way you will cover all damages resulting from a vice of the ship provided that it will not be a lack caused by the fault of the shipowner. In other words, we intend to avoid that actions should be based upon personal faults — which frustrates the owners from invoking limitation — alleging that the owner is always liable for his ship.

We should ask you to examine the possibility of drafting a large formular stating that, in all cases and in all proceedings on liability, the shipowner will be freed by the constitution of the fund, created by the Convention.

25. **Mtre Dor** (France): « I agree entirely upon Mr. Ripert's statement. I should like to add just two minor observations :

1° that, according to the 1924 Convention, the owner is allowed to limit his liability for salvage and assistance. In my opinion, there is no doubt that a new Convention, based only upon a monetary unit, cannot incorporate this. Indeed, in many cases of salvage the arbitrator grants awards, amounting to almost 50 % of the value of the saved ship, which is probably higher than £ 24 per ton. There is a limitation for salvage in the 1910 Convention on salvage and assistance. It is the value of the saved ship. In my opinion, it is completely impossible to state that the salvor will never obtain more than £ 24 per ton. Moreover, it is a contractual question that completely escapes limitation of liability. If you sustained limitation, you will make a lot of contracts of salvage impossible.

2° Mr. Ripert has mentioned case law. I should like to point out that it is necessary to incorporate in the new Convention a few words clearly excluding liability for the vessel. »

Mr. Berlingieri (Italy) added that there is a contradiction between the rule that allowed to prove the due diligence in the case of a vice of the ship and the rule that covered the personal liability of the owner.

26. **Mr. Breakhus** (Norway): « Mr. Dor has proposed that our convention should contain a rule excluding the absolute liability of the shipowner from the field of maritime law. We cannot agree on this point. This is a convention on limitation of liability, not a convention on liability. The question of absolute liability is not exclusively a French one, and we think it is far too difficult to be dealt with here. What we can do is to provide that if there is absolute liability, according to the municipal law, then this liability can be limited. The main rule about limitation must be something like this : you can limit your liability for damage to persons or property on land or at sea whether by acts or omissions of master, crew, pilot or any other person in the service of the ship, or by accidents in the operation of the vessel which entails absolute liability. Beside that rule I think you would only need a rule dealing with the case of liability for the cost of removal of wreck. The other numbers of the old Article I should be deleted, also the number dealing with salvage and general average. »

27. The Chairman submitted following question to the Sub-Committee : « Does the Sub-Committee accept a liability based on French gold francs and not on the value of the ship? »

Mr. Van der Feltz (Netherlands): « It is the general feeling of the Netherlands delegation that if limitation should be based on a fixed sum per ton, this sum should be expressed in French gold francs, provided it is reasonably certain that no new gold clause difficulties will arise. However, I doubt this very much, especially when we take into consideration the draft Convention of Rome of October, 1952 on damage caused by foreign aircraft to third parties on the ground.

Although the value of the ship is in principle not to be taken as a basis for limitation, this does not mean that the fixed sum per ton should not vary according to the different categories to which the ships belong, such as passengers' vessels, tankers, cargos with or without passengers accommodation, tugs, salvage vessels and so on.

There is another point to which I should like to draw your attention : that is the position of the little coasters. As far as Holland is concerned the greater part of them are owned by private persons, normally the master and his family, who really entrust to the sea their whole fortune. Therefore, the minimum liability should not be

put so high that the cost of covering this liability by insurance would affect their economic position. »

28. **Mr. Boeg** (Denmark) asked for some details about the words French gold francs.

Mr. Knauth (United States) pointed out that two systems can be adopted. « In the first one the Convention allows the Parliament of the contracting States to convert the figures of the Convention into national currency. In the second one, the courts convert the figures for each case. The latter system is the most usual. It has been used for many years in Great Britain and the result is that a case, which originally in 1929 would have been £ 1.000, would a few years later be £ 1.680 and recently £ 2.900. In the United States, the figure was originally aproximately $ 5.000; when we changed our dollar in 1933, it became $ 8.291 and some cent and our decrees in our country have given $ 8.291. »

Mtre Dor : « Mr. Boeg and many other speakers have used the words French gold francs. Mr. Van den Bosch said Poincaré francs. Indeed, there are several gold francs. The Poincaré franc is the only one for which the devaluation law mentions the weight of metal gold it contains. I suppose, as a consequence, that when we adopt the Poincaré franc, it means that we adopt a definite quantity of gold, which seems to be a good basis. »

29. **Mr. Raynor** (Great-Britain): « From the point of view of a practical marine underwriter I should say that we would oppose a sliding scale such as Baron Van der Feltz has suggested. We think it would be impracticable and would introduce unnecessary difficulties. Facilities already exist for the insurance of almost small vessels and they are widely covered, vessels such as yachts, both private and commercial, ferries and other similar small craft, on an insured value but with the addition of insurance protection against liabilities much in excess of those values. That works in practice and works in a very wide way. »

30. The Chairman submitted to the Sub-Committee following question : « Should the limitation be calculated per voyage or per accident? »

All delegations, excepted those from Germany, Greece and Italy, accepted the limitation per accident.

This debate is followed by a discussion concerning the difficulties in giving a proper definition for the conception « voyage » and « accident ».

The majority of the assembly admitted finally that the difficulty to find a proper definition must not determine the choice between accident and voyage.

Mr. Grenander (Sweden) pointed out that from about 1880 to 1939 only three or four cases of real economic importance occured, in which several accidents took place during the same voyage.

Mr. Kihlbom declared on the other hand that the difference of premiums between the two risks is very small.

31. **Mtre de Grandmaison :** « I should like to draw your attention upon this very important question of limiting liability per accident or per voyage. The French delegation has not taken a special decision on this point because the French policy provides clearly that reconstitution is made automatically after each accident without payment of a new premium.

But in the case a formal decision should be taken, I believe that the French delegation will prefer a limitation per accident. There are two reasons indeed :

1° On a legal point of view the origin of the liability of the shipowner is not the voyage but the accident. As a consequence, the same system should be applied to each fact that involves the owner's liability.

2° In practice there is another argument in favour of a limitation per accident. Indeed, important casualties can occur at a moment when the ship is not making a voyage. Why should we in that case not accept limitation?

As a consequence, we are of the opinion that the only practical and judicial solution is to grant limitation of shipowners' liability per accident. »

32. **Mr. Raynor** (Great-Britain): « We feel that the limitation should be in respect of each accident, each distinct occasion. I think it is very fallacious to argue for any system of limitation based upon any particular form of insurance. I think it would be a sorry day if in this particular matter of the degree of the shipowner's liability we

were to measure it by the extention of protection which the underwriters were prepared to give.

It is interesting to know that the number of limitation actions in the British ports over a period of 27 years from 1925 to 1952, amounted to only 140 cases, and the limitation funds involved aggregate something less than £ 2 3/4 million.

I think the really important thing, the paramount consideration, is to see that the injured parties are adequately compensated. This is ethically sound. Personally I think if we approach the problem in any partisan spirit and seek to establish limitation of shipowners' liability to the detriment of those claimants, then we run the risk of being regarded as a shipowners' protection society, and the influence of the C. M. I. would be seriously undermined. If sacrifices have to be made who should make them, the wrongdoer or the injured party?

If I may sum up, I think on the point of limitation per voyage it would be totally wrong to add up a number of disconnected incidents and pay the claimants only a proportion of the their claims. I think the British Maritime Law Association's proposals give the carrier the necessary protection against catastrophic liabilities; against liabilities so high that insurance protection would not be available at anything like a reasonable cost. They do in fact temper justice with mercy. From the underwriters' point of view they are welcome in that they would provide a welcome uniformity of monetary limitation whereby we should know the amount of a vessel's limited liability no matter where jurisdiction were founded. »

DRAFT CONVENTION

10 dec., 1954

Note.

In accordance with the instructions of the Bureau Permanent, announced by the President on the last day of the Brighton Conference (Friday, 24th September) we are now circulating to the National Associations the draft Convention prepared by the British Maritime Law Association. By the courtesy of the French Maritime Law Association, who have very kindly undertaken the translation, we are able to enclose in the same document both the French and English texts.

In preparing the draft Convention the British Maritime Law Association have endeavoured to express the views of the majority of the National Associations insofar as these are ascertainable from the Verbatim Reports of the Brighton Conference and from the comments since received from some of the Associations. We feel that at this stage the only point which it is necessary to call to the attention of the Association arises under Article 2. The figures in that Article have been left in blank since these are obviously a matter for final decision at the Madrid Conference. Assuming, however, that the limits suggested in the British Maritime Law Association Report of the 22nd July, 1954 were adopted viz.: £24 and £50 per ton, the figure to be inserted in Article 2 (1) (*a*) would be the equivalent of £50 (which is at the present time 2097.32 French gold francs) and in Article 2 (1) (*b*) the equivalent of £24 (which is 1006.71 French gold francs). These conversions have been calculated on the gold values current on the London Market on the 2nd December last : no doubt the franc equivalents will ultimately be expressed in round figures as in the Warsaw Convention, for exemple Frs. 2,100 and Frs. 1,000 respectively. The effect of Article 2 and 4 would then be as follows:—

(*a*) in the highly unlikely event of a casualty involving only loss of life and personal injury to such an extent that the limit of liability was reached, the Shipowner would have to establish a limitation fund of Frs. 2,100 per ton.

(*b*) in the event of a casualty involving property damage (or liability for removal of wreck only) the limit would be Frs. 1,000 per ton.

(*c*) in the event of a casualty involving both loss of life and personal injury and property damage (or wreck liability) the limits of liability would be Frs. 2,100 per ton for the life and injury claims and Frs. 1,000 per ton for the property (or wreck) claims : but if the fund of Frs. 2,100 per ton was not sufficient to satisfy the life and injury claims, these would participate for the balance in the fund of Frs. 1,000 per ton.

No attempt has been made in the draft Convention to define the ton upon which limitation is to be calculated as this was left open at Brighton for further discussion at the Madrid Conference.

Carlo Van den Bosch. Cyril Miller.

Antwerp and London, 10 Dec., 1954.

The High Contracting Parties,

Having recognized the desirability of determining by agreement certain uniform rules of law relating to the limitation of the liability of owners of ships, have decided to conclude a convention for this purpose, and thereto have agreed as follows :

Article 1.

The owner of a ship shall not be liable beyond the amounts specified in Article 2 of this Convention in respect of any of the following claims where the occurrence giving rise to the claim has taken place without his actual fault or privity. The said claims are claims made by any person whatsoever in respect of

(*a*) Loss of or damage to any property on board the ship or delivered to the master or any servant or agent of the owner for transportation by the ship.

(*b*) Loss of or damage to any property or rights of any kind, or loss of life or personal injury caused to any person, whether on land or water, by any act, neglect, or default of the mas-

Les Hautes Parties Contractantes,

Ayant reconnu l'utilité de fixer d'un commun accord certaines règles uniformes de droit concernant la responsabilité des propriétaires de navires.

Ont décidé de conclure une Convention à cet effet, et en conséquence ont convenu ce qui suit :

Article 1.

Le propriétaire d'un navire n'est responsable que jusqu'à concurrence du montant déterminé dans l'article 2 de la présente Convention pour les créances suivantes, lorsque le fait donnant naissance à la créance n'aura pas été causé par la faute personnelle du propriétaire ou commis avec son consentement.

Ces créances de toutes personnes quelconques sont celles qui ont leur source dans l'une des causes suivantes :

a) perte ou dommage de biens, que le bien soit à bord du navire ou pris en charge par le capitaine ou par tout préposé ou agent du propriétaire, pour être transporté par le navire;

b) perte ou dommage de tous biens ou droits de toute nature, ou pertes de vies ou dommages corporels causés à toute personne, soit à terre, soit sur l'eau, par tout fait, négligence ou fau-

ter or the pilot or any member of the crew or any servant or agent of the owner or any other person for whose act, neglect or default the owner is responsible, whether on board the ship or not; performing any duty or doing any act on or in connection with the ship or the persons, cargo or other property on board the ship or to be carried therein.

(*c*) Any obligation or liability, imposed by any law relating to the removal of wreck, arising from or in connection with the raising, removal or destruction of any ship (including anything on board the ship) which is sunk, stranded or abandoned, which said obligation or liability is hereinafter referred to as « wreck liability ».

(*d*) Loss of or damage to any property or rights of any kind, or loss of life or personal injury caused to any person, whether on land or water (not being any loss, damage or injury to which the preceding provisions of this Article apply), for which the owner is liable by reason only of his ownership, possession, custody or control of the ship.

te du capitaine, du pilote ou d'un membre de l'équipage ou de tout préposé ou agent du propriétaire ou de toute autre personne dont le propriétaire est responsable, à bord du navire ou non, accomplissant tout devoir de sa fonction, ou agissant à bord en exécutant tout acte se rapportant au navire, aux personnes, à la cargaison ou toute propriété à bord du navire ou destinée à être transportée sur le navire;

c) toute obligation ou responsabilité légale provenant de l'enlèvement des épaves, née ou occasionnée par le renflouement, l'enlèvement ou la destruction de tout navire (y compris tout ce qui est à bord du navire) coulé, échoué ou abandonné. Ces obligation et responsabilité seront dans la suite de ce texte dites par abréviation : « responsabilité pour épaves »;

d) perte et dommage de biens, droits de toute nature, ou pertes de vies ou dommages corporels à toute personne, soit à terre, soit sur l'eau, qui ne seraient pas visés par les paragraphes précédents, pour lesquels le propriétaire est responsable à raison seulement du fait de la propriété, de la possession, de la garde ou du contrôle du navire.

Article 2.

(1) The amounts beyond which the owner of a ship, in the cases specified in Article 1 of this Convention, shall not be liable are—

(*a*) In respect of loss of life or personal injury caused to any person, an aggregate amount not exceeding francs for each ton of the ship's tonnage.

(*b*) In respect of loss of or damage to property or rights of wreck liability, an aggrgegate amount not exceeding francs for each ton of the ship's tonnage.

(2) For the purpose of ascertaining the limit of an owner's liability in accordance with the preceding provisions of this Article the tonnage of a ship of less than 500 tons shall be deemed to be of 500 tons.

(3) The amount mentioned in this Article shall be deemed to refer to French francs, each such franc consisting of 65 ½ milligrams gold of millesimal fineness 900. Where the owner of a ship limits his liability in accordance with the provisions of this Convention in any Contracting State, then for the purposes of any proceedings in that State with respect to that liability those amounts may be converted into the national currency of that

Article 2.

1) Les montants au-delà desquels le propriétaire du navire ne sera pas responsable dans les cas spécifiés dans l'article 1er de cette Convention sont :

a) pour perte de vies ou dommages corporels à toute personne, une somme totale qui ne pourra dépasser francs par chaque tonneau de jauge du navire;

b) pour perte ou dommage de biens ou droits ou responsabilité pour épave, une somme totale qui ne pourra dépasser francs par chaque tonneau de jauge du navire;

2) Pour déterminer la limite de la responsabilité d'un propriétaire, conformément aux dispositions précédentes de cet article, tout navire de moins de 500 tonneaux de jauge sera considéré comme étant un navire de 500 tonneaux.

3) Les montants mentionnés dans cet article sont considérés comme se rapportant au franc français, chaque franc consistant en 65 ½ milligrammes d'or au titre de 900 millièmes de fin.

Lorsqu'un propriétaire usera dans un Etat Contractant du droit de limiter sa responsabilité par application des dispositions de la présente Convention, ces sommes, pour les besoins de toute procédure dans cet Etat, pourront être converties

State in round figures at the rate of exchange prevailing at the date of the occurrence giving rise to the liability.

dans la monnaie nationale de cet Etat, en chiffres ronds, au cours du change en vigueur au jour de l'événement générateur de la responsabilité.

Article 3.

(1) The limits of liability prescribed by Article 2 of this Convention shall apply to the aggregate of all claims in respect of loss of life, personal injury, loss of or damage to property or rights and wreck liability, which arise on any distinct occasion without regard to any claims in respect of such loss, injury, damage or wreck liability which may have arisen or may arise on any other distinct occasion.

Article 3.

1) Les limitations de responsabilité prescrites par l'art. 2 de cette Convention s'appliqueront à l'ensemble de toutes les créances pour perte de vies dommages corporels perte ou dommage de tout bien, atteinte à tout droit, responsabilité pour épave, nées d'un même événement, sans avoir égard aux créances pour de tels pertes, dommages corporels, dommages matériels, responsabilité pour épave, nées ou à naître d'un autre événement.

(2) Where the owner of a ship limits his liability in accordance with the provisions of this Convention, in respect of any such loss, injury, damage or wreck liability, the aggregate amount of his limited liability in respect of that loss, injury, damage or wreck liability shall constitute one fund, hereinafter referred to as a « limitation fund ».

2) Lorsque le propriétaire d'un navire limite sa responsabilité par application des dispositions de cette Convention, pour de tels pertes, dommages corporels, dommages matériels ou responsabilité pour épave, le montant total de ces limitations de responsabilité pour ces diverses causes, constituera un fonds, qui sera appelé ci-après « fonds de limitation ».

Article 4.

Where the owner of a ship limits his liability, in accordance with the

Article 4.

Lorsque le propriétaire du navire limite sa responsabilité par appli-

provisions or this Convention, and there is in addition to loss of life or personal injury caused to any person, loss of or damage to property or rights or wreck liability, and that part of the limitation fund which represents the limit of the owner's liability in respect of loss of life or personal injury is insufficient for the satisfaction of the established claims in respect of loss of life or personal injury, the persons having such claims shall, as respects the unsatisfied balance of those claims, and subject to the provisions of Article 5 (1) of this Convention, rank equally with the persons having claims against the remainder of that limitation fund representing the limit of the owner's liability in respect of loss of or damage to property or rights or wreck liability.

cation des dispositions de cette Convention, et s'il y a tout à la fois perte de vies ou dommages corporels, et aussi perte de ou dommage aux biens, atteinte à des droits ou responsabilité pour épave, et au cas où la partie du fonds de limitation affectée à la réparation des pertes de vies ou dommages corporels seraient insuffisante pour régler intégralement les créances dûment établies pour ces dernières causes, ces créanciers produiront pour le solde impayé de leur créance et sous réserve des dispositions de l'article 5, paragraphe 1, de cette Convention, en concurrence et à égalité avec les créanciers pour perte de ou dommages aux biens, atteinte à un droit ou responsabilité pour épave, sur la seconde partie du fonds de limitation représentant la limite de responsabilité prévue pour ces cas.

Article 5.

(1) Where the owner of a ship limits his liability, in accordance with the provisions of this Convention, and more than one claim is made against a limitation fund, the order in which the claimants shall rank against the fund or either part thereof shall be determined in accordance with the domestic laws of the Contracting State in which the limitation fund is constituted.

Article 5.

1) Lorsque le propriétaire du navire limite sa responsabilité par application des dispositions de la présente Convention, et lorsqu'il y a pluralité de créances à satisfaire par le fonds de limitation, l'ordre de règlement des créanciers sera déterminé par la loi interne de l'Etat Contractant dans lequel le fonds aura été constitué.

(2) In any proceedings relating to the distribution of a limitation fund constituted in any Contracting State, any judgment or order of any competent court of any other Contracting State shall be admissable as evidence of the amount at which any claim against the fund should be assessed.

2) Dans toute procédure de distribution d'un fonds de limitation constitué dans un Etat Contractant, tout jugement ou décision de tout Tribunal compétent de tout autre Etat Contractant sera considéré comme la preuve régulière du montant pour lequel la créance sera admise dans la distribution.

Article 6.

(1) Where in respect of any claim for which the owner of a ship may limit his liability under this Convention the ship is arrested and bail or other security is given for an amount equal to the full limit of the owner's liability in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon the owner limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund, the bail or other security so given shall, subject to the provisions of Article 5 (1) of this Convention, be available for the benefit of all persons making such claims.

(2) Where in respect of any such claim a ship is arrested within the jurisdiction of any of the Contracting States in circumstances in which the arrest is permitted under or not contrary to the Internatio-

Article 6.

1) Dans tous les cas où un propriétaire est autorisé à limiter sa responsabilité, aux termes de cette Convention, et lorsque le navire aura été saisi et qu'une caution ou autre garantie aura été fournie pour un montant égal à la pleine limite de responsabilité du propriétaire pour perte de vies, dommages corporels, pertes ou dommages matériels, responsabilité pour épave et pour toutes autres demandes qui, en accord avec les termes de cette Convention, entraîneraient la constitution d'un fonds de limitation, la garantie ou autre sécurité fournie sous réserve des dispositions de l'article 5, paragraphe 1, de cette Convention profitera à tous les créanciers.

2) Lorsqu'un navire aura été saisi dans le ressort d'un Etat Contractant, pour sûreté de l'une de ces créances, dans les cas où la saisie est autorisée par ou non contraire aux dispositions de la Con-

nal Convention Relating To The Arrest Of Seagoing Ships signed at Brussels on 10th May, 1952, the Court or other appropriate judicial authority of that State may order the release of the ship

(*a*) if satisfied that

(i) the owner has already given satisfactory bail or other security for an amount equal to the full limit of his liability in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon his limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund, and

(ii) the bail or other security is available for the benefit of the claimant in accordance with his rights; or

(*b*) if satisfied that

(i) the owner has already given satisfactory bail or other security for an amount which is less than the full

vention Internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, le Tribunal ou toute autre autorité judiciaire compétente de cet Etat peut ordonner la mainlevée de la saisie du navire, à condition qu'il soit justifié :

a) (i) que le propriétaire a déjà fourni une caution satisfaisante ou toute autre garantie pour un montant égal à la pleine limite de sa responsabilité pour perte de vies, dommages corporels, dommages ou responsabilité pour épave, selon la cause de sa responsabilité, et pour toutes autres demandes qui entraîneraient la constitution d'un fonds de limitation si le propriétaire entendait se prévaloir des limites de responsabilité prévues par la présente Convention; et

(ii) à condition que la caution ou autre garantie soit disponible au profit du demandeur, conformément à ses droits; ou

b) à condition qu'il soit justifié que :

(i) le propriétaire a déjà donné caution satisfaisante ou autre garantie pour un montant inférieur à la pleine li-

limit of his liability in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon his limiting liability in accordance with the provisions of this Convention, would constitute one limitation fund, and

(ii) the bail or other security is available for the benefit of the claimant in accordance with his rights.

Provided that the owner shall give such further bail or other security as would when added to the bail or other security already given equal the amount of the full limit of his said liability.

(3) In every case in which a ship has been arrested in respect of any such claim and in such circumstances as are referred to in paragraph 2 of this Article, the Court or other appropriate judicial authority of the Contracting State within whose jurisdiction the ship is arrested shall, in the exercise of its jurisdiction in accordance with the provisions of the said paragraph, take all steps within its power to ensure

mite de sa responsabilité pour perte de vies, dommages corporels, pertes et dommages, et responsabilité pour épave, selon la cause de sa responsabilité et pour toutes autres demandes qui entraîneraient la constitution d'un fonds de limitation si le propriétaire entendait se prévaloir des limites de responsabilité prévues par la présente Convention; et

(ii) à condition que la caution ou autre sécurité soit disponible au profit du demandeur, conformément à ses droits,

Pourvu que le propriétaire fournisse une seconde caution ou autre garantie qui, ajoutée à la première déjà fournie, couvrirait intégralement le montant total de sa responbilité limitée.

3) Dans tous les cas où un navire aura été saisi pour une des causes et dans les conditions prévues au paragraphe 2 du présent article, le Tribunal ou toute autre autorité judiciaire compétente de l'Etat Contractant dans le ressort duquel le navire est saisi prendra, dans l'exercice de son pouvoir juridictionnel, conformément aux dispositions du dit paragraphe, toutes mesures dans la limite de ses pou-

that in all the Contracting States taken as a whole, the aggregate bail or other security required does not exceed the amount of the full limit of the owner's liability in respect of that claim and all other claims which, upon his limiting in accordance with the provisions of this Convention, would constitute one limitation fund.

(4) All questions of procedure relating to proceedings in pursuance of this Article and questions relating to the limitation of time within which such proceedings may be brought shall be determined by domestic laws of the Contracting State in which the proceedings are brought.

Article 7.

Where any proceedings are brought against the owner of a ship in respect of any of the claims mentioned in Article 1 of this Convention the Court or other appropriate judicial authority in the Contracting State in which such proceedings are brought, may order that execution of any judgment or order obtained against the owner in respect of any such claim shall not be levied on any property of the owner other than the ship, her freight and accessories, until the expiration

voirs pour s'assurer que, dans tous les Etats Contractants pris en bloc, la caution globale ou autre sécurité requise ne dépasse pas le montant de la pleine limitation de responsabilité du propriétaire pour la dite demande d'indemnité et pour toutes autres demandes d'indemnité qui entraîneraient la constitution d'un fonds de limitation, si le propriétaire décidait de se prévaloir des dispositions de la présente Convention.

4) Toutes questions de procédure relatives aux actions engagées par application des dispositions du présent article et toutes questions relatives aux délais dans lequels ces actions doivent être exercées seront réglées par la loi interne de l'Etat Contractant dans lequel le procès aura lieu.

Article 7.

Lorsqu'une action est engagée contre le propriétaire d'un navire pour l'une des causes énumérées à l'article 1er de cette Convention, le Tribunal ou l'autorité judiciaire compétente de l'Etat Contractant dans lequel la procédure est suivie, pourra ordonner que le jugement ou la décision rendu contre le propriétaire ne pourra être exécuté sur aucun bien appartenant au propriétaire, autre que le navire, son fret et accessoires, jusqu'à l'expiration d'un délai raisonnable imparti au

of a reasonable time sufficient to allow the owner to sell or otherwise dispose of the ship and to distribute the proceeds of sale or disposal amongst the persons claiming in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon the owner limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund.

Article 8.

(1) In this Convention, any reference to the liability of the owner of a ship, however worded, shall be taken to include a reference to any liability of the ship.

(2) Subject to the provisions of paragraph (3) of this Article, the preceeding provisions of this Convention shall apply to any of the following persons, namely:—

(*a*) masters and members of the crews of ships,

(*b*) charterers, managers and operators of ships and their servants and agents, and

(*c*) any servants and agents of the owners of ships,

as they apply to the owners of ships, provided that the aggregate

propriétaire pour lui permettre de vendre le navire ou d'en autrement disposer et de distribuer son prix ou le répartir entre les créanciers pour pertes de vies, dommages corporels, pertes et dommages ou responsabilité pour épave, ayant donné naissance à l'action engagée, ou toutes autres créances qui auraient entraîné la constitution d'un fonds de limitation, si le propriétaire décidait de se prévaloir des dispositions de la présente Convention pour limiter sa responsabilité.

Article 8.

1) Dans la présente Convention, toute référence à la responsabilité du propriétaire du navire, quels que soient les termes employés, comporte référence à toute responsabilité du navire.

2) Sous réserve des dispositions du paragraphe 3 du présent article, les dispositions précédentes de la présente Convention s'appliquent à toutes les personnes suivantes, et nommément aux :

a) capitaine et membres de l'équipage du navire;

b) affréteurs, tous gérants (« managers and operators ») de navires et leurs préposés et agents, et

c) tous préposés et agents des propriétaires de navires,

tout comme elles s'appliquent aux propriétaires eux-mêmes, étant sti-

amount of the limited liability of the owner and all such persons in respect of any loss, injury, damage or wreck liability arising on the same occasion shall not together exceed the amounts specified in Article 2 of this Convention and shall constitute one limitation fund.

(3) Where an occurrence giving rise to any of the claims mentioned in Article 1 of this Convention is due to the fault of the master or any member of the crew (whether or not he be at the same time solely or partly owner, charterer, manager or operator of the ship) the occurrence shall not be deemed to have taken place with his actual fault or privity, whether as master or member of the crew, as the case may be, or, if he be at the same time solely or partly owner, charterer, manager or operator of the ship, as sole or part owner, charterer, manager or operator, as the case may be, if his fault were only a fault of navigation of the ship.

pulé que le montant global de la responsabilité limitée du propriétaire et de toutes ces autres personnes pour perte de vies, dommages corporels, pertes et dommages et responsabilité pour épave, encourus pour le même événement, ne pourra excéder les montants fixés par l'article 2 de la présente Conventoin et constituera un fonds de limitation.

3) Lorsque le fait donnant naissance à l'une des créances visées à l'article premier de cette Convention a pour cause la faute du capitaine ou d'un membre de l'équipage, qu'il soit ou non à ce moment le seul propriétaire, ou un copropriétaire du navire, affréteur ou gérant (« manager or operator ») du navire, ce fait ne sera pas considéré avoir été causé par sa faute ou commis avec son consentement, soit en sa qualité de capitaine ou membre de l'équipage, selon le cas, soit en sa qualité de seul propriétaire ou copropriétaire ou affréteur ou agent du navire, s'il l'était au moment de l'événement générateur de responsabilité, lorsqu'il s'agira d'une faute nautique.

SWISS MARITIME LAW ASSOCIATION

REMARKS

(Answers to the Questionnaire elaborated at the Brighton Meeting)

1. — The limitation of liability must be based on a lump sum per registered ton (British system) which should be calculated in French Gold Francs (Poincaré Francs).

2. — The liability should be limited per accident or casualty. The notion « voyage » can only be taken into consideration in second order either if, without the cause being known, a second accident happens before the ship arrives, or if only contractual claims are concerned. Following wording could be submitted for this notion :

« Any claims against the shipowner, contractual or not, arising from » one single accident (casualty), are collocated for the same limited » amount of liability and their share is fixed according to their respec- » tive rank. If a new casualty (accident) occurs before the ship arrives » in or calls on a port, this casualty (accident) is supposed to be fused » with the first one.

» If there are only contractual claims, the limited amount of » liability covers all claims that did arise before the ship arrives at the » port of destination or at the place where the voyage ends. »

3. — Before summing up the cases in which the shipowner can rely on limitation of his responsibility, it is necessary that the basis of his civil responsibility is properly established.

As far as contractual liability is concerned, no difficulty arises and it will merely be necessary to state in which cases the liability shall be limited.

Concerning « extra contractual » liability, it seems useful to point out that a « causal » or objective liability arising from the management of the ship lies upon the carrier. Not the appointment of the master and the crew but the management of the ship fixes the civil liability.

Such a special responsibility of the shipowner, excludes the possibility of relying on any other text of the civil law in order to fix the ground of liability ensuing impossibility of limitation. The following wording could be adopted :

« The Owner of the ship is liable for all damages to a third » person resulting from the management of the ship, unless it is proved » that the damage is due either to « force majeure » or to the fact » of the victim or to the fault of a third person (the servants of the » shipowner not being considered as third persons). »

When the liability « ex delicto » is admitted, the number of claims subject to limitation offers no difficulties. For the damages sustained by third persons owing to the management of the vessel (and also for damages to passengers or goods on board of the ship) the liability is limited in accordance with numbers 1 to 4 of art. 1 of the 1924 Convention.

It is doubtful whether N° 5 of article 1 of the 1924 Convention is included in the cases of damages resulting from the management of the ship. This ought to be ascertained.

As to the remuneration for assistance and salvage and the contribution in general average, such claims do not generally exceed the value of the ship. If there are no other claims, the limitation up to the value of the ship could be sufficient. But why should such claims not be limited in the same way, when they are concurrent with others for collisions or other grounds.

As far as the contribution of the ship in general average is concerned, it seems to be difficult to refuse limitations; the shipowners are entitled to limitation even when the master and the crew commit a fault involving a loss of cargo on board. Why should they pay more when the goods are sacrificed in general average, only in order to preserve the goods engaged in the common adventure ?

The goods are lost, the ship is saved. The ship must contribute to defund the sacrifice undergone by the goods. If damage is caused by a fault, the liability is limited. If on the other hand, there is no fault but general average, the liability covers the value of the ship.

This is a question of balance to be solved.

N° 8 of art. 1 of the 1924 Convention seems to be superfluous.

4. — In the cases of personal fault of the shipowner, the limitation of liability can not be involved. It would be possible to make reserves in the case of nautical faults of the owner-master.

5. — The burden of the proof in the case of the shipowner's personal fault, lies on the victim who claims beyond the limited amount. However, one can wonder whether this rule is always equitable. The best example of the shipowner's personal fault is the unseaworthiness of the ship before the voyage. Is it right to lay on the victim the burden of the proof of the unseaworthiness or can we not imagine a rule, according to which the shipowners relying on legal limitation should positively prove that their ship was seaworthy when leaving?

6. — If the damage is caused by a vice of the ship, it should be determined whether the vice is inherent or apparent. In the case of apparent vice before the beginning of the voyage there is a personal fault of the owner. In the case of inherent vice the question is whether the shipowner has or could have discovered the vice when using due diligence.

7. — The servants of the ship in the meaning of the convention on the limitation of liability, can only be those serving under the master; shipowners' servants as here, who are not serving under the master, are the shipowners' agents and their faults are considered as faults of the shipowner himself. Otherwise we would admit that the naval engineer of the company, liable for the seaworthiness, is an agent serving the ship and if he commits a fault, limitation would be admitted, although this would be a fault of the company.

If we include the agents ashore, we drive away from the only possibility of justifying legal limitation; the fact that the shipowner must trust his ship to the master who totally rules her.

8. — Concerning deaths or personal injuries of members of the crew, a limitation seems impossible. As to the pilot, the problem is a difficult one. If there is question of a pilot provided by the Regulations, in most cases the pilots are insured even in a compulsory way and one can wonder whether the action of the underwriter should not be submitted to the legal limitation.

9. — This question is not quite clear. Is it a question about the technical calculation of the tonnage on which the limitation fund is based? Then it will be appreciated that a uniform calculation should be adopted in every country. Or is it a question as to which tonnage shall be implied in the case of more responsible ships? If there is a solidary liability of the ships, the tonnage of each of them is calculated individually because the victim can introduce his claims against each of them. If there is no solidary liability of the ships concerned, but each of them is responsible for a quota of the whole damage, we can hardly imagine that the tonnage of each of the ships should be added in order to give the victim a larger base upon which the limited amount be calculated.

10. — It would be possible to limit the application of the convention,to ships as from 300 tons.

11. — It is absolutely necessary that the shipowners be guaranteed that no other procedure can be instituted in other countries. Every contracting state must agree that in such case any further action must be refused. Also the effects of the « chose jugée » must be admitted in every country.

Article 8 of the 1924 Convention is not sufficient to exclude the risks that a shipowner be compelled to pay several times.

An adequate solution can be found by determining the court where the dispute on limitation must be settled. It should be either the court of the place of seizure or the place where the lump sum has been deposited.

Once a seizure takes place, no other seizure is to be allowed. To make such a rule effective, it would be useful to decide that the Contracting States allow unlimited transfer of the moneys to the creditors. Then it will be useless to seize the ship twice only to obtain security of actual payment.

Although in principle the rules of procedure are fixed by the National Law, they whould be also governed by the Convention because there will always be duality between the apportionment of the credits on the lump sum and the privileges and liens of the creditors on the ship. It should therefore be provided that by effecting the deposit of the lump sum, the liens on the ship will be replaced by a lien on

that lump sum. But what to do when the value of the ship exceeds the lump sum and the creditors claim the unlimited liability? We do not see any other solution than to take advantage of the Convention on Mortgages and Liens of 1926 for the new convention. As soon as the notion of sea adventure is abolished, the liens which are a corollary of those notions cannot stand as they are presently. The basis of the liens must be changed.

Basel, January 1955.

NETHERLANDS MARITIME LAW ASSOCIATION

REPORT

The draft-Convention which has been circulated to the National Associations is presented both in an English and a French text. Nevertheless, the English text being the original text, the Netherlands Association thought it advisable to base their observations on the English text rather than on the French translation.

In view of the very short time within which the National Associations may submit their observations on the draft-Convention, the Netherlands Association has only been able to resume hereunder the most important comments to which this draft gives rise on its side; the Netherlands Association, however, reserves to discuss further points at the Madrid Conference of the Comité Maritime International or at a further Meeting of the International Commission, supposing that such Meeting should take place either before or after the Madrid Conference.

In the following report the Netherlands Association will deal with the draft-Convention in the order in which it has been written.

Preamble

It is proposed to replace the word : « ship » in the Preamble by the words : « sea-going ship » as has been done in the 1952 Brussels Convention on Arrests.

For clarity's sake the same alteration should be made in the beginning of Article 1.

Article 1.

a) According to the beginning of this Article, the Shipowner is barred from limiting his liability when it arises from his actual fault or privity.

This condition seems too rigid. Under the Dutch Commercial Code the shipowner is only barred from limiting his liability in case of malicious intent (wilful act) or gross negligence (« faute lourde ») on his part. It may well be that the words « actual fault » (« faute personnelle ») will be construed as including for instance the case when there has been « culpa in eligendo » on the part of the Shipowners when appointing a Master who proves to be incompetent, or perhaps even instances of « culpa levis ».

The Dutch Shipowners have expressed the view that a convention which would bar the Shipowner from limiting his liability in case the occurrence giving rise to the liability took place with his actual fault or privity would make it impossible for them to recommend the ratification by the Netherlands. For this reason the Netherlands Association strongly urges that the International Convention should contain on this point a provision similar to that of the Dutch Code.

This last paragraph of Article 8 would have to be changed accordingly.

b) The system, whereby the claims referred to in Article 1 have been divided into the four categories (a), (b), (c) and (d), is not quite clear. The category (a) apparently deals with claims arising out of a breach of contract for the transportation of goods.

Category (b) seems to include both claims arising out of breach of contract and claims in tort; on the other hand, it is not clear why loss of life and personal injury claims arising out of a breach of contract with regard to the transportation of persons are mentioned in category (b) and *not* in category (a). Moreover, in case it was intended to make a distinction between claims arising out of breach of contract on the one hand and tort claims on the other hand, it might perhaps be useful to say so in so many words.

c) It may be asked whether Article 1 is sufficiently wide so as to cover those cases in which, in accordance with the applicable law, the owner of a towed sea-going ship is liable in respect of loss or damage caused by the negligence of the tug-boat.

d) Another point which may be of interest, is whether the definition of sub-section (b) includes claims in respect of loss of life and personal injury to members of the crew, the pilot and other persons in the service of the vessel concerned.

e) The Netherlands Association assumes that Article 1 is so worded as to put the onus of proof of the actual fault or privity of the Owner on the party relying thereon.

f) There seems to be a certain discrepancy between the English text of sub-section (b) of Article 1 and the French translation thereof; the French translation contains the words : « à bord » after the word : « agissant », whilst in the English text the corresponding words « on board » are failing after the words : « doing any act ».

g) Finally, as regards sub-section (b) and subsection (d), both sub-sections contain the word « rights » next to « property ». The Netherlands Association supposes that this word is meant to imply that the limitation of liability is also allowed with respect to claims for so-called « immaterial damage » (for instance : demurrage).

Article 2.

In general the Netherlands Association is entirely in accord with the provisions of this article, subject however to the following.

a) According to the third paragraph the rate of conversion of the amounts expressed in goldfrancs, is the rate of exchange prevailing at the date of the occurrence giving rise to the liability. The provision should however also cover the case in which the date of the occurrence giving rise to the liability is unkown; in that case the conversion should have to be effected at the rate of exchange of a date which must be established on the basis of another objective criterium.

b) As regards the second paragraph of this article, the Netherlands Association must reserve its point of view until it will have received certain further information as to the question wether or not this provision would constitute an unwarrantable charge on the Owners of small ships.

c) Finally, does this article make it clear that, whenever the Owner of a ship towed is held liable with respect to damage or loss caused by the tugboat — and *not* by the ship towed — the Owner may limit his liability on the basis of the tonnage of the tug-boat ?

Article 3.

Why does the first paragraph of this article use the word « occasion », whilst the third paragraph of article 2 uses the word « occur-

rence » ? In the French translation the word « événement » is used for both words.

Article 5.

a) Should not the first paragraph of this article also refer to the Brussels Convention on Maritime Liens and Mortgages ?

b) The Netherlands Association assumes the second paragraph to mean that only the amount and *not* the existence of the claim will be proved by a judgment or order of a competent Court of Jurisdiction of another Contracting State.

c) It is further asked what is the exact meaning of the words : « shall be admissable as evidence ».

Does this paragraph mean that the judgment or order referred to therein shall constitute prima facie evidence or conclusive evidence ? In the latter case it would probably be necessary to state that the judgment or order in question must be *final.*

Article 6.

a) The first paragraph of this article does not seem to take into account the case in which the Owner has given bail, *not after* the arrest of the ship, but in order to *avoid* such arrest.

b) The second paragraph, sub-section (a), (i) mentions the Owner's liability « in respect of the loss, injury, damage or wreck liability giving rise to that claim and all « other claims ». It is assumed that the word « loss » refers both to « loss of property » and « loss of life ».

c) At the end of the second paragraph, sub-section (b), reference is made to « further bail or other security » to be given by the Owner, but this sub-paragraph does not say *where*, namely in what country, such further bail or other security shall be given.

d) Article 6 does not provide for the case in which bail has been furnished in two Contracting States, the respective domestic laws of which differ as regards the order in which the claimants shall rank against the two funds. Neither is this problem solved by any other article of the draft-Convention.

e) The Netherlands Association is somewhat doubtful whether the third paragraph of Article 6 is sufficiently widely worded and whether this paragraph which supposedly would necessitate special legislation

to be enacted in all the Contracting States in order to give effect to that paragraph, should not apply to any one Court of any one of the Contracting States in which any proceedings in connection with claims arising out of the occurrence in respect of which the ship was seized in the same or another Contracting State, had been brought.

Article 7.

The Netherlands Association regrets that she is unable to support this article. In fact, it is contrary to every concept of Dutch Law that a creditor having obtained a judgment against his debtor, could be restrained from at once enforcing that judgment against all the property of his debtor. The Netherlands Association feels sure that a provision of this kind would probably wreck the whole Convention.

Article 8.

The only question which arises in connection with this article is why in the last line the words : « or of the management » have not been inserted after the word « navigation ».

Final Remarks

I. — In the circular letter which was joined to the draft-Convention it is said that no attempt has been made in the draft-Convention to define the tons upon which the limitation is to be calculated, as this was left open at Brighton for further discussion at the Madrid Conference. The Netherlands Association submits that this problem may be solved in the same manner as was done in the 1924 Convention.

II. — Referring once more to Article 6 of the draft-Convention, the Netherlands Association points out that neither this article nor any other article deals with the situation in which prior to the ship being arrested in the jurisdiction of one of the Contracting States, she had already been arrested in the jurisdiction of a non-Contracting State and bail had been given by her Owner in that non-Contracting State. Evidently, no provisions as those contained in Article 6 could be made to provide for that situation. However, it might perhaps be possible to insert a new article according to which the Shipowner who as a

result of having had to put up bail once in a Contracting State and once in a non-Contracting State, has been forced to pay twice, may recover within the jurisdiction of anyone of the Contracting States the amounts thus paid out of the bail put up in the non-Contracting State, in so far as, as a result of those payments, he has been forced to pay more than the limit of his liability.

III. — Finally the Netherlands Association wishes to express its admiration both for the splendid work done by the British Association and for the excellent French translation prepared by the French Association.

Amsterdam, February 1955.

MARITIME LAW ASSOCIATION OF GREECE

OBSERVATIONS

I

The Greek Association has discussed the draft submitted by the British Association and makes following observations.

The examination of the draft reveals the important effort made by the British Association in order to fulfil the task entrusted by the C.M.I. and we are eager to pay a tribute.

Our Association regrets however that the possibility of limitation by abandonment of the ship has disappeared. The origin and the history of this provision prove that the abandonment is directly bound to the limitation of liability. Both for theoretical and practical reasons we are very sceptical on the rightfulness of the arguments put forward against the old method of limiting the shipowners' liability. Guided by the idea that the unification of maritime law is much more profitable than the attachment to an old conception, we do not hesitate in accepting the principle of the draft provided it is adopted by the majority of the Associations.

II

Provided for the former remarks, we should like to make following particular observations on the draft :

Article 1.

The draft gives a limitative list of the cases in which limitation applies. We should have preferred to express a general principle of

liability first, and afterwards a list of cases to which limitation applies.

An other remark concerns the claims of the crew for loss of life or personal injuries resulting from an accident. We are of the opinion that these claims should in no case be reduced, although this seems not to be put in the draft.

Article 2.

The limit of £50 for claims under paragraph (a) as suggested in the introductory note to the draft, seems to be to high. As the present limit for claims under paragraph (b) is increased from £7 to £24 i.e. almost three times, it seems fair to adopt a similar increase for claims under (a) i.e. £27.

We would however point out that the Greek Association is of the opinion that anyway the limit should be based on the net tonnage of the guilty ship.

Article 5 - par 2.

We are of the opinion that the admission for distribution without possibility of control of any judgment or decision by the Court entrusted with the distribution and the execution might favour under certain conditions a presumed creditor to obtain judicial titles with the owner's consent. In order to avoid such practice, we suggest to allow the Court entrusted with the distribution, to examine briefly according to the lex fori the judgments submitted. This procedure is in conformity with the principles of international private law concerning the execution of judgments by foreign Courts.

On the other hand, in certain cases, before the constitution of a limitation fund, or under certain kinds of pressure, the owner might prefer an amicable settlement. We are of the opinion that these settlements should be admitted in the distribution. A special provision should be incorporated on that subject.

Article 6 - par. 2.

We are of the opinion that the judicial authority **must** withdraw the arrest of a ship when the conditions provided for are satisfied.

We suggest also to delete the paragraph that refers to the Brussels Convention of Ships because it might imply an erroneous interpretation of the text.

Other questions.

1) The draft does not solve the case of a ship belonging to several owners. Can we allow certain owners to invoke limitation whereas the others prefer to pay in full ? The absence of a provision in this convention might cause difficulties. We are of the opinion that it should be advisable to exclude partial limitation.

2) The draft does not solve the difficulty that occurs in the case when on the one hand, certain creditors have a judgment and claim for the distribution of the fund, and on the other hand, other proceedings pending before foreign Courts have not yet been closed. In that case, should we wait for the end of all procedures or should we put a time limit ? All problems on which we venture to draw the attention of the drawing committee of the Convention.

Athens, 14th Feb. 1955.

Secretary General,
Prof. Kyriakos Spiliopoulos.

FRENCH MARITIME LAW ASSOCIATION

REPORT

The Subcommittee appointed by the French Maritime Law Association to examine the International Draft Convention on the Limitation of Shipowner's Liability elaborated by the British Maritime Law Association has met and studied the draft and the note of Mr. Cyril Miller and Mr. C. Van den Bosch.

***

First the Sub-Committee examined the opportunity of thoroughly modifying the French system i.e. abandonment of ship and freight, and of preparing a new draft mainly based on limitation of liability to a lump sum calculated according to the tonnage of the ship.

The traditional system of abandonment was not supported; it is antiquated and often unfair as, in some cases, it allows an almost total exoneration when the ship sinks or, in other cases, it suppresses any limitation when a valuable vessel does not suffer any loss or damage.

Further, the Sub-Committee appreciates the advantage of providing a simple system by limiting to a lump sum which affords the possibility of calculating exactly the liabilities and of insuring same correctly.

The Sub-Committee has been largely guided by the wise and experienced advices of Monsieur le Doyen Ripert, in his Essay on Shipowners' Liability and International Unification of Maritime Law. (Droit maritime français, décembre 1954. 703).

Consequently the Sub-Committee is of the opinion that the system as explained in the Draft of the British Association should be adopted.

The French shipowners do agree and it may be presumed that the French Authorities, who are empowered to decide, do agree as well.

***

Thereupon, the Sub-Committee examined the draft itself.

The wording of the 11 questions discussed at the Brighton Meeting of 24th September 1954 was consulted by the members who, for simplicity's sake, examined each question in the frame of the draft of the British Association, as each of same concerned especially a corresponding article of the draft.

Article 1.

This first article puts down both the principle of limiting shipowners' liability in the cases under a) to d), and the exception to the general rule i.e. the fault of the shipowner.

The Sub-Committee is of the opinion that it should be of great interest to act as was done for the 1924 Convention i.e. to make two separate articles.

— the first laying down the general rule concerning the limitation of liability in the mentioned cases.

— then, a second article, establishing the exceptions i.e. the necessary condition for not applying the general rule.

This would allow to emphasize in the second article the main point concerning the burden of the proof.

On the other hand, the French language does not allow a clear and easy incorporation, in one sentence, of different conceptions.

From all points of view, the Sub-Committee consequently is of the opinion that this article 1 should be divided into two different articles.

Article 1 should be worded as follows :

« The shipowner is only liable up to the lump sum fixed in article 2 of this convention, for any claims by any person and based on any of the following causes : ... » the rest of the article remains unchanged except however the following very slight modification of punctuation in paragraph a) : to put a comma after the words : « on board of the vessel » and further to suppress the comma in the present reading after the words : « or agents of the owners ».

The new article 2 should contain the exception to the general rule or article 1.

Before suggesting a reading, the Sub-Committee thoroughly discussed the words : « without his actual fault or privity » and found the difficulty of adequately translating these words so that both the French and the English reading should meet with the same interpretation everywhere.

One could apparently refer to the 1924 Convention on Limitation of Shipowners' Liability in which the French text reads (article 2) « faits ou fautes du navire » which reads in English « acts or faults of the owner ».

In the text of the 1924 Convention on Bills of Lading the French text reads : article 4, paragraph 2, q : « du fait ou de la faute du transporteur ». That text has been translated into English as follows : « actual fault or privity of the carrier ».

In the present case, the English text reading « actual fault or privity » must be translated into French, and the words : « fait ou faute » apparently do not afford an entirely satisfactory translation.

The translation as in the draft : « faute personnelle du propriétaire ou commise avec son consentement » is perhaps not satisfactory either. « Actual fault » is of course « faute personnelle » but what about « privity »? To be « privy » means to know. In English, « privity » seems to be equivalent to « knowledge » and as a consequence there would be « privity » when there is knowledge of a fact.

But it seems reasonable that the mere knowledge of a fact would be insufficient to frustrate the owner from the advantage of limitation unless he has his power to avoid the accomplishment of the fact he knows.

« Privity » implies a kind of silent adhering or a faulty abstention. Therefore the wording was : « or committed with his agreement ».

Following the suggestion of Monsieur le Doyen Ripert, the Sub-Committee concluded that the best reading should be probably :

« ...lorsque le fait... causé par la faute du propriétaire ou qu'il n'aurait pu prévenir... ». These last words point out that the mere knowledge of a fact going to cause a damage is not sufficient if the owner cannot, by acting, prevent it, i.e. avoid its accomplishment.

Consequently, the Sub-Committee suggested to adopt the text as above.

A second consideration was formulated : it seemed to be advisable in order to avoid any ambiguity, to insert in article 2 a clear provision that the limitation of liability is the general rule; consequently, the burden of the proof lies on whom pretends that the shipowner has lost his right to limitation.

The Sub-Committee agreed upon that point and suggested following reading for article 2 :

Article 2 (new).

« The limitation of liability established in article 1 does not apply if it is proved that the fact upon which the claim is based has been caused by the personal fault of the owners or that this owner could prevent it ».

As far as paragraph b) of article 1 is concerned :

A. — It should be necessary to put a comma after the words : « ou agissant à bord » (8th. line, paragraph b).

B. — On the other hand, it seemed to be necessary to draw the attention on paragraph b) and to suggest that further precision on that point should be given at the Madrid Conference.

In fact that wording of paragraph b) speaks of the facts or the faults... of any servant or agent of the owner... whether on board or not... etc., etc.

This wording is very wide and covers the facts and faults of the shipowner's agents ashore.

The Sub-Committee approved this solution and consequently answered question 7 of the Brighton questionnaire (24th. September 1954) affirmatively.

However, it should be desirable to adopt a reading emphasizing that the Limitation does not apply to the facts or faults of these Shipowner's servants ashore, who are not directly connected with the management of the ship.

Should, for instance, a Shipowner organize a road transport service to bring passengers from Paris to Le Havre, as occurs in case of railway strike, it does not appear reasonable to apply the Convention

and to limit shipowners' liability when a bus accident is caused by the driver.

In connection with c).

During the Brighton debates, it appeared that the majority of the members present were of the opinion that the indemnities for salvage and the contributions in general average did not benefit of the limitation of liability.

If such is the decision of the Plenary Conference, it should be useful to state it clearly.

In the present reading of c) it might be said that the indemnity for salvage is included in the claims subject to limitation : Indemnity for salvage is without doubt an obligation either originating from or caused by the refloating of the ship.

Consequently, it appears necessary to add in fine to article 1 a paragraph saying definitely that claims for indemnities for salvage and for contributions of the ship in general average are excluded.

The Sub-Committee further examined the question whether, in the present reading of the British Draft, the obligation of the Shipowners resulting from the appointment of the crew or from claims for loss of life or personal injuries of the crew fall under the limitation ?

The answer is yes. It appears indeed that those claims fall under paragraph a, b, c and d of article 1.

The Sub-Committee further examined whether these claims should be excluded by a special text.

After discussion, the majority of the members admitted that the present reading of the draft should be maintained, i.e. that the shipowners' obligations resulting from the appointment of the crew and of the other servants of the ship and to those resulting from loss of life or personal injuries to members of the crew and to servants of the ship, should benefit from the limitation of liability.

In that connection it was suggested to add at the end of article 1 a new paragraph reading as follows :

« are excluded from the claims concerned by this article :
» 1. the remuneration for assistance and salvage;
» 2. the contribution of the vessel in general average ».

Article 2 of the British Draft.

The Sub-Committee has examined several questions :

A. — Application field of the double limitation fixed for injury claims and for property claims.

The present reading, if completed with the figures proposed by Mr. Miller and Mr. Van den Bosch, stipulates that shipowners' liability will not exceed

1. in case of injury claims : Poincaré Francs 2.100;
2. in case of material claims : Poincaré Francs 1.000.

Consequently, if the casualty involved injuries only, the owner will only have to constitute a limitation fund of Fr. 2.100; and if the casualty involved only material damage, the limitation fund will only be Fr. 1.000. If, on the contrary, the casualty caused injuries as well as material damage the limitation fund would be Fr. 2.100 + Fr. 1.000 it being understood that according to article 4, if the fund of Fr. 2.100 per ton was insufficient to satisfy the life and injury claims these would participate with the property claims for the balance in the fund of Fr. 1.000 per ton.

It clearly results from these provisions that it is not correct to say that the shipowners liability in respect of personal injuries is limited to Fr. 2.100, for, when both personal injuries and damages to property occur, and where there are consequently two limitation funds, the claimants for personal injuries absorb the first fund and participate in the second one.

It appears consequently that, in fact, the limitation of liability for loss of life is not Fr. 2.100 but Fr. 2.100 + Fr. 1.000 = Fr. 3.100,—.

It could not be admitted that the claimants for personal injuries should be in a worse position, in the case where only personal injuries have occurred than when both injuries and damages have occurred.

It is clear, as Mr. Miller and Mr. Van den Bosch have declared, that the case of a casualty involving injuries only, is extremely unlikely.

That case is however possible in theory and may therefore not be disregarded. But the present reading leads to this strange situation that, in the case that both injuries and damages occurred, the rigths of the claimants for injuries are higher than those they would have if there were only injuries.

Is it not advisable consequently to modify the reading of article 2 as follows ?

I. « The amounts beyond which the owner of a ship in the cases, » specified in article 1 of this convention, shall not be liable are :

» a) in the case of claims merely in respect of loss of or damage » to property or rights of wreck liability, an aggregate amount not » exceeding Fr. 1.000 for each ton of the ship's tonnage.

» b) in the case of only claims merely in respect of loss of life or » personal injuries caused to any person, an aggregate amount not » exceeding Fr. 3.100 for each ton of the ship's tonnage.

» c) in the case of claims qualified both under the above para- » graphs a) and b), an aggregate amount not exceeding Fr. 3.100 for » each ton of the ship's tonnage, whereof a first fund of Fr. 2.100 » for each ton of the ship's tonnage is intended to satisfy only the » claims under § b), the remaining fund of Fr. 1.000 for each ton of » the ship's tonnage to satisfy all claims under § a) and b) according » to article 4 of this Convention ».

B. — The Sub-Committee suggested further to modify the first part of the 3rd. paragraph of article 2 of the British Draft. Presently it reads as follows :

« The amounts mentioned in this article shall be deemed to refer » to French Francs each consisting of 65,5 miligrams gold of millesimal » fineness 900 ».

It seems to be advisable to simplify that reading as follows :

« ...shall be deemed to refer to French Francs of 65,5 milligrams gold of millesimal fineness 900 ».

C. — The last part of the third paragraph of article 2 of the British Draft reads :

« When an owner of a ship limits his liability... in any contracting » State, then for the purposes of any proceedings in that State, ...those » amounts... »

The Sub-Committee was of the opinion that it is not necessary to limit that possibility of converting to the only case of a Contracting State. One can imagine that as a consequence of a maritime incident between subjects of two Contracting States the ship of the debtor is arrested in a non-contracting State. It seemed reasonable to accept the possibility of converting, established by article 2 in fine, even in that

non-contracting State. The Court of that State can, without being compelled, allow this conversion. There is no reason for dissuading it therefrom by limiting that possibility to procedures in a Contracting State.

As a consequence the Sub-Committee was of the opinion that following words should be dropped : « in a contracting state » and further « in that state ».

D. — Remains the very important question concerning the same third paragraph of article 2 of the British Draft.

The last provisions of that paragraph concern the date on which the amount of the limitation fund (Fr. 1.000 or Fr. 2.100 or Fr. 3.100) has to be converted into the national currency of the State where the fund is deposited or where payment is made. The text adopts the rate of the day of the incident causing the liability.

The Sub-Committee could not agree on that proposal.

The main object of the proposed Convention is to defend the creditors against devaluations and to warrant them payment of a lump sum (limited possibly) but which is calculated in a hard currency based on gold.

If that gold-limitation be converted in a weak currency at the rate of the day of the incident, the risk of devaluation is for the creditors, which seems unfair. For instance, in a case of collision, the creditors do not succeed either in obtaining payment or in arresting the colliding vessel at the time being. But they are succesful 2 years later in arresting, in a State, the currency of which has devaluated to 50 % since the date of the collision.

The present reading will permit the debtor to convert his limitation fund of 3.100 Gold Francs, for instance, at the rate of the day of the collision, without taking the devaluation into account.

This cannot be accepted.

One could admit that the converting rate should be that of the day of the payment of the creditors. That would be the most equitable solution.

But this solution gives way to difficulties, as all creditors will not be paid at the same time.

One could also admit that the owner of the ship can escape the risk of devaluation by depositing his limitation fund.

The Sub-Committee consequently suggested following modifications to § 3 in fine of article 2 :

« When the owner of the ship limits his liability in accordance » with the provisions of this Convention, then for the purposes of any » proceedings with respect to that liability those amounts may be con- » verted into the national currency of that State where the limitation » fund is made or the payment effected and that at the rate of exchange » prevailing at the date of the deposit or, if no deposit has been made, » at the rate of exchange prevailing at the date of the payment ».

Article 3 of the British Draft.

This article has been adopted.

At the Brighton Meeting already, the French delegation supported the idea that the limits of liability should apply to all claims arising out of the same event, cause of liability, and not to all claims concerning a voyage.

This solution is maintained.

Article 4 of the British Draft.

This article has been adopted, provided that — in accordance with the modifications of § a) and b) of article 2 of the British Draft, as proposed above — its reading be rectified as follows :

« Where the owner of a ship limits his liability, in accordance » with the provisions of this Convention, and there is in addition to » loss of life or personal injury caused to any person, loss of or damage » to property or rights of wreck liability, and that part of the limitation » fund which represents the limit of the owner's liability in respect of » loss of life or personal injury is insufficient for the satisfaction of » the established claims in respect of loss of life or personal injury, » the persons having such claims shall, as respects the unsatisfied » balance of those claims and subject to the provisions of article 5 (1) » of this Convention, rank equally with the persons having claims » against the part of the limitation fund representing the limit of the » owner's liability in respect of loss of or damage to property or rights » or wreck liability. »

Article 5 of the British Draft.

The Sub-Committee was of the opinion that it seemed reasonable to complete § 1. This article only provides for the possibility of depositing a limitation fund in a Contracting State. The Sub-Committee was of the opinion (see article 2 last paragraph) that it would be possible to deposit such a fund in a non contracting State.

If a limitation fund has been deposited in a non contracting State, the order in which the claimants rank might be fixed — in the case that the Court of that State adopts it — by the Brussels International Convention on mortgages and liens dated 10th. April 1926, and if the Court does not admit it, by the domestic law of the State in which the fund has been deposited.

The Sub-Committee consequently suggested following modificated reading :

« The order in which the claimants shall rank... shall be determined » in accordance with the International Convention applicable and if » there is no such International Convention, by the domestic law of » the State where the limitation fund is constituted ».

The present reading of article 5 of the British Draft contains two paragraphs.

The first concerns the order in which the claimants shall rank.

The second provides that in case of proceedings relating to the distribution of the limitation fund constituted in a Contracting State, any judgment or decision of any competent Court of any Contracting State shall be admissible as regular proof of the amount at which any claim against the fund should be assessed.

The Sub-Committee is of the opinion that the text should be completed to solve the question of the procedure to be applied in connection with the distribution of the fund.

It is necessary to regularize the important problem of fixing the time limit for introducing claims, etc.

The logic solution seems to be to adopt the domestic law of the State where distribution takes place.

Consequently it should be necessary to add to article 5 a second paragraph reading as follows :

« Proceedings relating to the distribution of a limitation fund will » be governed by the domestic law of the State in which that distribu- » tion will take place. »

The present second paragraph of the draft would consequently read as follows :

« 1) Where the owner of a ship limits his liability, in accordance » with the provisions of this Convention, and more than one claim is » made against a limitation fund, the order in which the claimants shall » rank against the fund shall be determined in accordance with the » International Convention applicable and, if there is no International » Convention, by the domestic law of the State in which the fund has » been constituted.

» 2) The proceedings relating to the distribution of the fund will » be governed by the domestic law of the State where that distribution » will take place.

» 3) In any proceedings relating to the distribution of a limitation » fund constituted in any contracting State, any judgment or decision » of any competent Court of any other Contracting State shall be » admissible as regular proof of the amount at which any claim against » the fund should be assessed. »

Article 6.

Adopted.

Article 7.

This article puts down that where proceedings are brought against the shipowner in respect of any of the claims mentioned in article 1, the court in the Contracting State in which such proceedings are brought, may order that execution of the judgment shall not be levied on any property of the owner other than the ship, her freight and accessories, until a reasonable time sufficient to allow the owner to sell the ship, to distribute the proceeds of sale amongst all his creditors for all their claims that have involved the constitution of a limitation fund etc... has expired.

The Sub-Committee cannot find any reason for this provision.

The mentioning of the ship, her freight and accessories seems to be a reminiscence of the 1924 Convention on limitation of shipowner's

liability as this was the limit of liability provided by article 1 of the 1924 Convention. That conception has however disappeared from the present draft.

On the other hand if the convicted owner intends to limit his liability, according to the present Convention, he has either to pay either to constitute the limitation fund, and, if that fund is constituted no oher procedure than that for distribution of the fund is possible.

Consequently the Commission was of the opinion to drop article 7.

Article 8.

The Sub-Committee was of the opinion, that in article 3 the words : « ou commis avec son consentement », as suggested in the next article 2, should be modified.

As a consequence we should read as follows :

« Il ne sera pas considéré que ce fait a été causé par sa faute personnelle ou qu'il aurait pu être prévenu par lui ... »

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After the Sub-Committee has examined and discussed the draft, it made two further observations :

1) it would be advisable that the National Associations exchange their views before the Madrid Conference about the definition to give to tonnage.

2) It would be equally advisable that the draft Convention includes some provisions concerning the application of the Convention.

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Provided these observations are taken into account and that the wording of some articles are made more concise, the Sub-Committee approves the British Draft.

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The French Maritime Law Association, after discussing the report of its Sub-Committee, approved it and adopted the conclusions which will be sent to Antwerp and London before the 15th. February.

Jean de GRANDMAISON,
President of the French Maritime
Law Association.

SWEDISH MARITIME LAW ASSOCIATION

REMARKS

The Swedish Association of International Maritime Law has examined the Draft Convention on Limitation of Shipowners' Liability prepared by the British Maritime Law Association dated 10.12.1954 and now submits its report.

General remarks.

The principle of calculating the limitation on a tonnage basis only, is accepted.

The Draft Convention however extends the field of limitation too far, as will be explained below. This widening of the scope of limitation is not called for by practical experience and is not acceptable to the Swedish Association. Collisions have in the past formed the most important section where a limitation of liability is called for. They still do and they probably will continue to do so.

Before going into the details of the Draft Convention, the Swedish Association wants to express the view that Articles 11 and 12 from the 1924 Convention should be maintained in a new Convention on limitation. So far as this Association is aware, these Articles have worked well in practice. Also Article 13 in the 1924 Convention should be inserted in the Convention. The Swedish Association does not find that there is any reason why the principle enunciated in the said Article 13 should be abandoned in a new Convention.

Article 1.

It is not quite clear whether the Draft Convention is intended to confer the right of limitation to all types and kinds of vessels and

crafts. The 1924 Convention uses the expression « navire de mer » whereas the Draft Convention says « navire » without any qualification. This word, « navire » has no clear international definition : dropping the qualification « de mer » might be interpreted as if also ships using only inland waterways should benefit from the Convention. This would probably make it hard to obtain an international acceptance of a new Convention as the inland waterway traffic is subject to special rules. For this and other reasons, the Swedish Association would prefer that the wording « navire de mer » in the 1924 Convention be maintained. (Cfr. remarks under Article 2 sec. 2 below).

As already pointed out, the Draft Convention has, according to the view of the Swedish Association, extended the field of limitation too far. The cases where limitation of liability should be allowed, are in the opinion of the Swedish Association, those enumerated in the 1924 Convention, Article 1 sec. 1-5, to which should be added some equivalent of the Draft Convention Article 1 sec. d.

Section a.

The Draft proposes that the Shipowner shall have the right to limit his liability for damage to goods delivered for shipment not only as in the 1924 Convention, to the Master, but also to « any servant or agent of the Owner ». This extension cannot be accepted.

Section b.

This section further widens the field of limitation to cover also those acting ashore. The words « .... performing any duty or doing any act on or in connection with the ship .... » give a very wide definition indeed. It is hard to see but that practically everybody, even if only remotely connected with the ship, is covered by these terms and limited liability for their actions be called for.

The 1924 Convention uses the wording in Article 1 sec. 1 « au service du navire ». This expression does not as the present Draft suggests cover office employees. If it is felt that the words « au service du navire » are not quite clear, efforts should be made to obtain a clear definition of them without extending their meaning.

Sec. b as it stands cannot be accepted.

Section c.

This section is accepted.

Section d.

This section is intended to meet the practice in certain countries of denying limitation in case of liability by reason only of ownership etc. But in so doing, the drafters have gone too far. See remarks above as regards sec. b.

Article 2.

Section 1.

There are different opinions in Sweden as to the appropriate limitation figures. Some maintain that £ 20 per ton for loss of or damage to property and £ 40 per ton in respect of loss of life and personal injury are appropriate figures whereas other think that the amount should be £ 24 and £ 50 respectively.

Section 2.

The Draft Convention proposes that a minimum figure of 500 tons should be laid down which, according to the figures discussed, (£ 24 and £ 50 respectively) would mean that in no case a Shipowner should be entitled to limit his liability to less than £ 12.000 and £ 25.000 respectively. These figures are not acceptable to Swedish opinion. The Swedish Association proposes that the minimum tonnage should be fixed at 300 instead of 500 tons.

Section 3.

Article 15 in the 1924 Convention entitles the states to « convertir en chiffres ronds, d'après leur système monétaire, les sommes indiquées en livres sterling dans la présente Convention ». This is probably the reason why the expression « in round figures » has crept into the Draft Convention here. This expression should, however, be left out. The meaning of sec. 3 is not to lay down a general rule according to which a state shall insert in its own law the converted amount. Sec. 3 merely gives a ruling for cases, when the party claiming limitation according to the Convention, has himself to convert the limitation figures of the Convention, into the currency of the country where he claims limitation. There is then no need for « round figures ». On the contrary the figures should be the exact ones.

The Draft Convention counts the limitation of liability in gold francs of a prescribed fineness and weight. Such gold francs form

not a part of the french currency which is in paper money. It is presumed, that this time such a fact shall not be taken as a pretext for not calculating the sum of limitation in gold.

Article 3.

Section 1.

It seems somewhat doubtful if the French translation exactly reproduces the English text. Thus the attribute « distinct » is not found in the French version. This is not only a question of drafting, but probably of positive importance as the English text indicates that the « distinct occasions » can be separated from each other.

Article 4.

This article calls for no comment.

Article 5.

Section 1.

The order in which the claimants shall rank against the limitation fund shall, according to the Draft Convention, be determined in accordance with the domestic law of the State where the limitation fund is constituted. Such a rule might perhaps lead a creditor to try to enforce his claim in a State where he happens to obtain an especially high priority. The Swedish Association has therefore some misgivings about this section but offers at this stage no counter proposal.

Article 6.

Section 2.

The words « in circumstances in which the arrest is permitted under or not contrary to the International Convention Relating To The Arrest Of Seagoing Ships signed at Brussels on the 10th of May 1952 » should be left out. According to Swedish opinion, the proposed words are not necessary and a reference to the Arrest Convention may lead to difficulties in countries, who are not going to ratify the Convention on Arrest.

a) - b). It is stipulated under a), that the Court shall release the ship if satisfactory bail is given, and under b) that the Court

shall release it also where satisfactory bail has not been given, provided the Owner gives further bail or other security. The Swedish Association feels that it should be possible to formulate this rule in a more simple way, both cases being covered in one and the same rule.

Section 3.

The Draft Convention presumes that the Court or other judicial authority who has ordered the arrest shall, when trying the matter of satisfactory security for an amount equal to the full limit of the shipowners' liability, ensure that in all the contracting states the aggregate security required does not exceed the amount of the full limit of the shipowners' liability in respect of all claims which constitute one limitation fund.

The Swedish Association does not see how such a charge can be carried out by the authorities. The Association supposes that the shipowner must take care himself of his interest in this respect in accordance with the system accepted by 1924 Convention Article 8 paragraph 4.

Article 7.

It does not seem clear, that this article is substantially better than Article 9 in the 1924 Convention only because it is twice as long.

Article 8.

Section 1.

This section calls for no comment.

Section 2 a).

There is no objection to this point.

Section 2 b) - c).

If the intention is, that all persons under this section should be allowed to limit their liability — and there is nothing to prevent such an understanding of the text — it must be pointed out, that, according to Swedish opinion, this is an extension of the right to limit the liability, which is going much too far. This extension cannot be accepted.

According to Swedish opinion Article 8 sec. 2 b) - c) in the Draft Convention should be replaced by Article 10 in 1924 Convention.

Section 3.

This section should be replaced by the last paragraph in Article 2 of the 1924 Convention.

Additionnal Observations.

During the preparatory work leading to this Draft Convention, the Swedish delegates suggested, that it would be of great advantage, if the new Convention contained a rule as to whether the cross or single liability principle should be used in connection with limitation of Shipowners' liability and also that the Convention ought to settle the question whether, in cases of towing, the tug and the tow should be counted together or as different objects when the tonnage for limitation purpose is fixed. The Draft Convention does not contain any rules in these respects. Mr. Kaj Pineus and Mr. Nils Grenander, Swedish members of the C.M.I. committee, have made drafts to such rules. A translation of these drafts reads as follows.

Single liability.

In case of collision between ships the respective claims of the parties shall be set off against each other; the rules of this Convention tend to apply to the liability for the balance.

Cross liability.

In case of collision between ships, the rules of this Convention shall apply to each of the claims and these, after the reduction which may be due to the limitation of liability, shall then be set off against each other.

The Swedish Association favours the single liability system.

Towing, convoy, salvage, etc.

In case of towing or other co-operation between ships, which thereby or in connection therewith enter into collision with ships outside such co-operation, each ship shall for limitation purposes be regarded as one unit and one limitation fund be calculated for each ship separately. The same shall apply when liability owing to a collision is incumbent on a ship owing to orders from another ship from which the direction of the towing or the activity has been effected.

In case of collision between ships which both or all take part in towing or other co-operation the rules in this Convention may be invoked by the ship against the other ships taking part in the towing or other co-operation and against their cargoes, each ship for limitation purposes to be calculated as one unit.

With regard to the procedure to be adopted in respect of the preparation of the new Convention on Liability, the Swedish Association is of the opinion that the present Draft Convention should, on the basis of the comments obtained from the different national associations, be redrafted by the Commission on Limitation of Shipowners' liability , and then be put before the Comité Maritime International for being examined. The Draft of the C.M.I. should then be committed to the Belgian Government to be dealt with in the usual manner at a Diplomatic Conference in Brussels. The Draft should not be transmitted to the Judicial Committee of the United Nations.

Stockholm, 25th February 1955.

DANISH MARITIME LAW ASSOCIATION

REMARKS

The Danish delegates to the Brighton Conference in September 1954, without in any way prejudicing the attitude of the Danish Association, beg to make the following remarks to the questionnaire put before the Conference on the 24th. September :

1. We do not see the advantage of using the French gold franc (Poincaré franc) rather than, for instance, gold Sterling. The difficulty does not lie in fixing the limitation in gold; it lies in the conversion of the gold amount into the national paper currency to be used in practice when a case of limitation arises. We would refer to Mr. Cyril Miller's remarks concerning a similar question under the Hague Rules, in the meeting of the international Sub-Committee on the 6th. July, 1949 (see Report of that meeting, pages 10-11).

The Report now presented by the British Maritime Law Association states (on page 3) that the French gold franc has been utilised with success over many years in the Warsaw Convention », while in a Report from the same Association, from 1949, it was said :

> « It is to be noted that the Warsaw Convention limits the liability of Air Carriers by reference to the Gold French Franc; the same difficulty arises, by what gold value is this franc to be measured ? Is it by the official American price or by the much higher value in the substantial free markets of the world such as India or Egypt ? »

In the session of the 24th. September Judge Boeg therefore asked for more detailed information as to how the Warsaw Convention has worked in this respect, and this request we would like to repeat.

If it is the official American gold price which has been adopted in practice under the Warsaw Convention, and if it is the intention that the same practice should be followed under a Convention on the Limitation of Shipowners' Liability, we submit that a clause to that effect should be inserted in the proposed Convention.

2. We would prefer limitation per accident, but do not consider the question very important. There is also the possibility of pooling, for the purpose of limitation, accidents occurred respectively (1) during the time from the departure from one port or place to the arrival at the next port or place and (2) during the stay at a port or place (disregarding in either case such ports or places as have been entered as ports of refuge). Thus the difficulties of defining a voyage or of deciding whether consecutive happenings constitute one or more accidents, would, to a great extent, be avoided.

3. The liability should be limited in respect of compensation due by reason of any loss or damage caused, whether on land or on water, to persons or property, by any accident in which the vessel is involved. The proposed limitation should not apply to General Average and Salvage.

4. No, except as regards faults of navigation and management, where the owner or partowner is at the same time master (Art. 2, last paragraph, in 1924 Convention).

5. On the claimant.

6. Yes.

7. It should be made clear that the liability of the shipowner shall be limited with respect to acts and privity (negligence) of the shipowner's Agents on shore.

8. The 1924 Convention, Art. 7, refers the question to the national law of the vessel. So should the proposed Convention.

9. The question presumably must be left to the Courts.

10. Yes, a reasonable minimum liability should be established.

11. Art. 8 of the 1924 Convention should be included in the proposed Convention.

Copenhagen, 11th. October, 1954.

(signed)

N.V. Boeg. Andre Sørensen. Niels Tybjerg.

BRITISH MARITIME LAW ASSOCIATION

COMMENTS

The British Maritime Law Association realised that the draft before them did not in any case give the life and personal injury claimants a fund of £74 per ton, and, further that, where there were not, in addition, any property claims or even property claims which did not total the equivalent of £24 per ton then the life and personal injury claimants would receive no more than £50 per ton. This Association felt that it had always been intended that life and personal injury claimants should be entitled to share the £74 per ton irrespective of whether there were or were not property claims though the Association, of course, appreciated that such instances would be infrequent.

In addition the Association feels that life and personal injury claimants whose claims in the aggregate exceeded £50 per ton should be entitled, as respects the unsatisfied balance of those claims to rank pari passu with the property claimants against the £24 per ton and that domestic laws should be invoked only in respect of priorities as between life and personal injury claimants among themselves on the one hand and property claimants among themselves on the other hand. In fact they felt that there should be no possibility of either the personal claimants or the property claimants being denied by the application of domestic laws on priorities any right to share at all in the remainder of the fund when it came to distributing that remainder (i.e. the part based on £24 per ton) between the unsatisfied balance of personal claimants and the property claimants.

It was, therefore, felt that the provisions of article 5 (1) in the draft before the Association should be altered.

It was also thought necessary to make certain alterations in and re-arrangements of the draft convention in order to effect the intentions expressed above. The principal alterations and re-arrangements suggested are these :

1. That the old article 3 should now become article 2 and the wording of paragraph (2) thereof should be altered and simplified to avoid possible ambiguity.

From this draft would follow the necessity to re-arrange the position of this article in the convention because of the reference to the limitation funds in the new proviso to paragraph (1) so.

2. The old article 2 becomes article 3 and a proviso added to paragraph (1) thereof to deal with the cases where life and personal injury claims exceed the £50 per ton.

Article 4 would then no longer be appropriate and would be deleted.

3. The old article 5 would then become article 4 and paragraph (1) thereof deals with the question of priorities.

As has been stated above, this paragraph is intended to limit the power of the domestic laws of the country in which the limitation fund is administered to determining questions of priority between (a) life and personal injury claimants amongst themselves and (b) property claimants amongst themselves. It does not affect the proportion in which the life and personal injury claimants as a whole and the property claimants as a whole will share the distribution of the £24 per ton fund in cases where life and personal injury claims exceed £50 per ton.

4. The old articles 6, 7 and 8 would, as a result, become articles 5, 6 and 7.

3rd. March, 1955.

NORWEGIAN ASSOCIATION OF MARITIME LAW

OBSERVATIONS

I. General Observations

The Norwegian Association agrees to the draft in all points of fundamental importance. The draft gives a more just and much simpler solution of the problems of limitation than the existing convention and thus represents a considerable progress.

A final appreciation of the draft is, however, not possible until the *amounts of limitation per ton* have been fixed. In this respect we observe that we are willing to accept £ 24 per ton, but consider the additional amount of £ 50 per ton for personal damage to be too high. One must not loose sight of the connection between this convention and that on liability to passengers. In our opinion nothing is won by a high limit for personal damage if at the same time another convention be adopted which in almost all cases would free the carrier from liability to this passengers. From the point of view of social policy, the result would be better if moderation is shown in both respect by fixing a lower limit for personal damage, for instance £ 24 per ton, but on the other hand extending the field of the carrier's liability to passengers. Otherwise it will be very difficult to obtain a more general acceptance of' a convention relating to carriage of passengers.

The new convention should as the convention of 1924 art. II define the terme *tonnage* but instead of that definition we propose simply to take the gross register tonnage, cfr. judge Alten's remarks in Draft Verbatim Report, First Session of the Commission on Limitation of Shipowners' Liability, page 6.

Art. 2 (2) of the draft provides for a *minimum limit of liability*. We agree in principle, but find that the limit should not be put higher than 300 tons. A great number of fishing vessels and seal catchers would be hit by the provision, and the financial strength as well as the insurance facilities within this group are insufficient.

II. Special Observations

Article 1 : « Actual fault or privity ».

We suggest that these words be replaced by « actual fault », « actual negligence » or something like that, because it is difficult for continental lawyers to understand the term « privity » as used in English and American jurisprudence. We presume that the convention will be adopted in English as well as in French text, both of equal authenticity, which we should much appreciate. But when international conventions are drafted in English, one ought to avoid as far as possible the use of words which express particular English concepts of law and cannot be understood without a thorough knowledge of English jurisprudence and legal tradition.

Article 1 (a).

As far as we can see, the liability under (a) for damage to property based on contracts of carriage will fall also under (b) or (d). If so, letter (a) should be deleted or redrafted in order to avoid the antithetic conclusion that liability for damage to property based on other kinds of contracts, for instance relating to towage, should be unlimited.

Article 1 (b).

« Loss of or damage to property *or rights of any kind* ».

According to our concepts the term « *rights* » includes contractual rights (personal claims), and as drafted, this letter (b) will then apply also to compensation by reason of delay or nonfulfilment of contracts relating to the operation of the ship. That is, however, obviously not intended, as the English report to the Brighton conference expressly excluded such claims from limitation. The word « rights » seems to have been picked up from a British proposal to the diplomatic Brussels

conference 1909 : « dommages ou pertes causés à des biens ou à des droits de toute nature ». But at the conference of 1910 this locution was without comment replaced by that used in the existing convention art. 1 N° 1, viz. « dommages causés » (procès-verbaux p. 174). Neither in the British proposal 1909 nor later any explanation of the term « rights » was given, but when in the present draft it shall not include contractual claims as above mentioned, it must mean « *droits réels* », corresponding, we presume, approximately to the expression « property interests » in English.

In order to clarify the text we propose that the words « rights of any kind » be deleted in this paragraph as well as at other places where it is used, viz. Art. 1 (d), art. 2 par. (1) (b), art. 3 (1) and art. 4 par. (2).

Article 2 (1) cfr. art. 4.

We agree to the observations of the French Association, but suggest that a simpler drafting should be found, for instance on this line :

« (1) In the cases specified in article 1 the owner of the ship shall not be liable in excess of an aggregate amount of ..... francs per ton of the ship's tonnage with addition of an amount of ..... francs per ton for the satisfaction exclusively of claims for loss of life or personal injury. If the claims for loss of life or personal injury are not fully compensated out of the additional fund, their unsatisfied balance shall rank with other claims against the common fund, subject to the provisions of article 5. »

Another way might be to insert the common fund limit in the intimation of article 1 and add a new paragraph or article concerning the additional fund; cfr. the existing convention articles 1 and 7.

Article 2 (2).

See final passage of our general observations.

Article 2 (3).

It is suggested to replace the words « French francs, each such franc » by « a monetary unit ».

The French proposal to replace « any contracting State » by « any State » is agreed to.

With respect to the conversion of the limits of liability into national currency we agree to the draft. That this conversion shall be based on the rate of exchange of national currency at the date of the occurrence giving rise to the claims seems not only logically founded, but also recommendable for practical reasons. The particular claims will always be fixed directly in national currency, but until all disputes are settled, several years may pass, and it would create difficulties with respect to arrest or guarantee if, during that time, the limits should be subject to currency fluctuations.

Article 4.

Wil disappear if Article 2 par. (1) is redrafted as above suggested.

Article 5 (1).

We agree to the French amendment.

Article 6 (2) and (3).

The reference in these paragraphs to the convention on arrest should be deleted. States who will not ratify that convention should not by the present convention be bound to pay attention to its provisions on the conditions of making arrest. What art. 6 (2) deals with, is the *release* of an arrested ship, and these provisions as well as par. (3) seem equally applicable irrespective of the law under which the arrest has been made.

Article 8 (3).

The drafting is extremely complicated and ought to be simplified.

III. Single or cross liability ?

We refer to the remarks made by profossor Braekhus, Draft Verbatim Report, Second Session of the Commission on Limitation of Shipowners' Liability, p. 9, 3rd paragraph. So long as the question is open whether the limitation shall apply to the liability for each claim separately, or to the balance between the claims, the unification of collision liability will remain incomplete. It seems rather unimportant whether one or the other solution is chosen, but for the important purpose of unification, a choice should be made.

Logically the system of limiting each claim (cross liability) may seem preferable, but we think there is a far better chance of reaching agreement as to the system of limiting the net balance (single liability).

Accordingly, we propose that a final paragraph be added to Article 1, as follows :

« If the owner of a ship is entitled as against a claimant to compensation for damage arising from the same occurrence, the provisions of limitation shall apply only to such part of his liability as exceeds his counterclaim. »

Oslo, March 15th 1955.

E. ALTEN.

FINNISH MARITIME LAW ASSOCIATION

OBSERVATIONS

The Finnish Association of Maritime Law herewith submits its observations on the above draft Convention. In doing so the Association begs to stress the fact that it has had the privilege of being acquainted with the observations on the same subject already made by the Swedish and Norwegian Associations.

I. - General Observations

Until the coming into force of the Brussels Convention of 1924 a shipowner here was personally and with the whole of his property liable for all damages and losses caused by him or arising out of contractual engagements made by him personally. On the other hand, his liability was limited to the « fortune de mer » in cases where damages and losses were caused by those in the service of the vessel.

The Brussels Convention brought in the possibility to choose (in most cases) between liability based on the « fortune de mer » or liability represented by a monetary amount computed on the basis of the vessel's tonnage. This Convention restricted the limitation of liability to certain well defined cases, for which those in the service of the vessel were accountable. The principle of unlimited liability was upheld as regards acts or faults on the part of the shipowner himself.

The draft Convention (like the Brussels Convention) enumerates in Article I under headings (a), (b), (c) and (d) those cases, in which it is intended to give the shipowner the right to limit his liability. It would seem that the cases, in which it is possible to limit the liability, cover a much wider scope than the corresponding regulations

in the Brussels Convention. It is unfortunate — and this should be stressed on behalf of all those, who in their daily work have to apply international maritime conventions — that within a space of time of less than 30 years it should be necessary to alter the rules governing the shipowner's liability, from the simple Continental rule to the case-Law like enumeration in the 1924 Convention and from there to the draft Convention, which seems to allow limitation also in cases, where under the old Continental system the shipowner was personally liable. However, as the monetary limit now proposed is very high and as, on the other hand, the contingencies where the draft Convention goes further than the Brussels Convention, are such as never to involve a very high liability, it seems permissible to assume that full cover will be provided even with a limited liability.

There are, of course, cases where shipowner's liability still has to be limited to the « fortune de mer ». But we understand that the reason why these cases are not mentioned in the draft Convention is that they are regulated by other international legislation, such as the Convention on Salvage (limiting the compensation for salvage to the value of property salved) and the York/Antwerp rules limiting the contribution in General Average to the property saved.

II. - Special Observations

Article 1.

In the Brussels Convention the words « seagoing vessel » — « navire de mer » are used. Does the proposed wording leaving out « seagoing » imply an extension of vessels to be covered by the Convention ?

Article 1 (a).

We are also of the opinion that what is stipulated under this heading is to be found repeated under (b).

Article 1 (b).

The Norwegian observations under this heading seem to be very much to the point.

Articles 2, 3 and 4.

We would support what is submitted in the Swedish observations.

Article 5 par. (1).

No objection.

Article 5 par. (2).

As Courts in different countries assess claims accordingly to widely different scales, we do not think it would be possible to enforce in practice the principle set forth in Article 5 (2).

Article 6 and 7.

We agree with the submission put forward in the Swedish memorandum.

Article 8 par. (1).

No objection.

Article 8 par (2).

(b) and (c) of course go much farther than seems reasonable to those, who have been accustomed to apply the Brussels Convention. However, this is a consequence of the wording of Article 1, to which we have referred under General Observations.

Article 8 par. (3).

Also we think that this stipulation could be simplified.

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In the question of *Single or Cross Liability* we have not decided what standpoint we take, as no mention is made of this problem in the draft Convention and as we do not know if it will be included in the final Convention.

Helsinki/Helsingfors, 28th March 1955.

Rudolf BECKMAN Herb. ANDERSSON.

ARGENTINE MARITIME LAW ASSOCIATION

REPORT

The Argentine Maritime Law Association has met in various sessions to consider the draft of Convention on Limitation of Shipowners' Liability as prepard by the British Maritime Law Association and presents the following study respect to the same.

1. The present report covers such observations as have arisen spontaneously from a study of the draft.

2. **Limitation in money.**

The advantages and disadvantages of each of the systems of limitation of shipowners' liability considered, given the failure of the Brussels Convention of 1924 in relation to this subject due to the hybrid system it established and the general tendency to arrive at a simple and expeditious system of limitation, the Argentine Association agrees to the adoption of the system of limitation of liability.

3. **Technique in the drafting of the project.**

The project comes drafted in a casuistic vein of anglo-saxon style, the interpretation of which among the latin jurists and courts of law will give rise to great difficulties. The French translation itself which accompanies the English version is proof of this for, when compared with the English copy, at some points does not exactly corespond to the idea it is wished to convey.

Our opinion is that the Convention should be drafted giving it the form adopted for that, annulled in 1924.

4. **Terrestrial personnel of the ownership.**

Art. 1, b) of the draft includes in the limitation of shipowners' liability the action of any person for whom he is responsible, even when this refers to a worker on shore. It is evident that this marks an extraordinary enlargement of the limitation which disagrees with the antecedents of the institution which has hitherto been applied solely to the master of the ship and personnel embarked which are interpreted as acts of the first named. The fundamentals of this enlargement appear to be given by Prof. Georges Ripert, in his work published in « Le Droit Maritime Français », when he says that the modern notion of the limitation of shipowners' liability resides no longer in the condition of the exploitation of the merchant service, nor in the abandonment to creditors in a ship-adventure with liabilities of its own, but in a simple limitation of the proprietor's liability, who instead of answering with all his personal property conformable to the old adage « qui s'oblige oblige le sien » — the fundamental principle of civil responsability — does so up to a certain amount only. » Viewed from this angle the institution appears as an extraordinary privilege in favour of the shipowner, within the great principle of civil responsibility and we cannot explain therefore why this benefit is not extended to all classes of exploitation, especially when modern conditions of security in respect to navigation are far greater than in the era when this institution was born, and from this point of view, the numbers of hazards attendant on a ship are every day fewer.

The tendency to detract from civil responsibility, both contractual and extracontractual, and especially when negotiating its discharge in an insurance contract, as it would be in the case studied, constitutes a social and moral danger, for, as R. Savatier says « one must fear the moral decadence of a society in which responsibility is independent of blame » (Traité de la Responsabilité Civile, t. 2, p. 327).

It should be especially borne in mind that if the shipowner can limit his responsibility for whatever act of his terrestrial employees, in the case of limited liability companies, (the structure adopted by the large enterprises) it would be difficult to make the proprietor whose ship had caused a catastrophe due to unseaworthiness, responsible without limitation for it is well known that this is a matter that concerns the manager or person in charge of equipment, a terrestrial subordinate

of the owner. And the fundamental importance given to seaworthiness of ships, in every institution of maritime law, is well known.

In consequence, this Association considers that acts of a shipowners' terrestrial employees should not be included in the motives for the limitation of his liability.

5. **Remuneration for assistance or for salvage or contributions in general average.**

The Association agrees in that the obligations which arise from remuneration for assistance or for salvage, and of contributions in general average be eliminated from the limitation of the Convention. But it would be convenient to leave this expressly established in the same.

6. **Contractual obligations incurred by the master away from the vessel's home port.**

These obligations enjoyed the benefit of limitation in Art. 1 clause 8 of the agreement annulled. Although in the pamphlet of British Association containing the impugnments to that Convention, it states that in practice a shipowner has never needed to resort to such limitation, we do not see that is a sufficient basis for its non-inclusion in the limitation of liability. In a collective proceeding for limitation of liability arising from acts of the master we cannot understand for what reason the creditors mentioned should remain in better conditions than the rest. The Argentine Association considers that this type of obligation should be included in the limitation of liabilities.

7. **Cargo carried under a bill of lading.**

The pamplet issued by the British Association (p. 4) afore mentioned, criticises the agreement annulled in 1924, for having included in limitation of liability obligations arising from transport under bill of lading, on the grounds that they already have a proper limitation in the Brussel's Convention of 1924 relating to bill of lading clauses, consisting of £100 per package. Notwithstanding Art. 1 clause a) of the British project seems to include the said obligations also when it states « Loss of or damage to any property on board the ship or delivered to the master... ».

The Argentine Association is of the opinion that these obligations should be included in the limitation of this Convention which is of a

general and exceptional character and is applied in practice in the case of grave disasters while the £100 limit of the Brussels Convention, relating to bills of lading is of singular application in each contract the ship makes in its normal transport capacity.

If this is the concept of the British project it would be advisable to clarify Art. 1 clause a) in order that it will remain clearly understood that obligations arising from transport under bills of lading are included, and thus avoid any erroneous interpretation arising from the contradiction pointed out above.

8. **Ratification of the shipowner.**

The British project in excluding from the limitation the contractual obligations incurred by the master of the ship away from the vessel's home port would, logically, also exclude any of these obligations even when ratified by the shipowner.

But as in paragraph 6 this Association has advised that said obligations be included in the limitation, it should now advise that once these are ratified by the shipowner they become excluded, for in such case they are transformed into personal obligations of the last named.

Our Association therefore sustains that when the master has incurred liability without the knowledge or consent of the shipowner and the latter ratifies it later, this should remain out of the limitation. This explanation is all more necessary inasmuch as the term « privity » in the English text of the project has given rise to doubts as to its real translation.

9. **Obligations originated in the hiring of seamen.**

The Convention includes in the limitation obligations originated in the engagement of seamen. Given the manner in which crews are contracted nowadays, this refers generally to acts of the shipowner. It is difficult to understand how he can limit his liability in this respect, and much less under present social conditions in which patronal obligations have risen to the highest level of importance in the industrial organizations in all parts of the world. For some time now the member of a ship's crew has ceased to participate in the hazards of the shipowner, as he did in the old codes which include rules by which the seaman lost his entire remuneration when his ship was lost in a wreck. The maritime workers law is now embodied in the law for workers in

general and no longer forms part of maritime law. Consequently, though figuring in the first categories of privileged credits as the respective remunerations do, the member of a ship's crew has no reason to feel dependant upon a limitation fund established in a distant State to collect his credit.

We are of the opinion that if the inclusion of obligations arising out of this contract in the limitation of liability is insisted on, many countries will abstain from approving or ratifying the Convention. Art. 2, clause 3 of the annulled Convention expressly excluded them, and this Association advises an identical ruling.

10. **Orders of privileges.**

In art. 5 clause 1, the British project disposes that the order of credits to be met from the limitation fund shall be established by the laws of country where it is constituted. As it is to be supposed that the said fund will be constituted at the place where the shipowner is to be sued in the first place (art. 6 clause 1), it will often happen that it will be left to the will of the creditor to select the country under whose legislation his credit is shown preferential treatment. Naturally, that will mean a condition of insecurity as regards the order in which the privileged creditors are to be paid, and therefore we propose that it be established that, regardless of the location of the limitation fund, the order of credits remain as established by the Brussel's Convention of 1926 relating to mortgages and privileges or, failing this, by the national law of the vessel. The latter rule is, we think, the most logical since the privileges, in a certain manner partake of the character of right in rem since they enjoy a « droit de suite » even after their sale, and everything relating to this right is governed by the national law of the vessel.

11. **Limitation by accident or by voyage.**

The Argentine Association deems that the limitation should be established by voyage embodying the different accidents which may occur thereon, responding thus to the traditional abandonment of the ship which includes all the obligations incurred by the master during the voyage on which the act originating abandonment occurred. Moreover, in the maritime business the « voyage » is the unit taken as basis for the calculation of profit earned by the vessel and it is logical

therefore to relate the limitation of liability of the shipowner to the sum of the obligations originated during that period of time. Nevertheless it would also be convenient to include in the Convention a concept of a « voyage » that embraces all the obligations subject to limitation.

12. **Onus probandi.**

When a creditor disputes the right of a shipowner to resort to the benefit of limitation of liability, as, for example, alleging blame for the origin of the point at issue, the Argentine Association is of the opinion that the proof should rest with the owner, the limitation being an exception to the responsibility in general. This criterion is in keeping with that foreseen in art. 4 of the 1924 Brussels Agreement in regard to bill of lading clauses which hold the carrier liable for the proof of « due diligence », (clause 1) and of the exception of liability (clause 2).

13. **Limitation of liability of ships of less than 500 Tons.**

Art. 2, clause 2 of the British project establishes that as regards ships of less than 500 tons the liability limitation shall be based on 500 ton value.

On the great rivers in our country a number of ships navigating locally are included in this rule, a fact that aggravates notably their owners' liability. It is worthy of note in this connection that the convention annulled in 1924 referred exclusively to seagoing vessels, while the project under study here embraces every kind of vessels.

The Argentine Association is of the opinion that the said limit should be reduced to 300 tons, so that limitation would thus be more equitable to the owners of small vessels. Moreover, and by virtue of the reasons given above and complying with the purpose of protecting the internal merchant service of each nation, a right pursued and respected by all, the Association suggests the incorporation in the Convention of a reserve clause, by virtue of which the contracting countries shall be able to exclude from its application ships flying their respective flags which navigate exclusively in home rivers.

Eduardo Basualdo Moine,
Secretary.

Atilio Malvagni,
President.

BELGIAN MARITIME LAW ASSOCIATION

REPORT

The Sub-Committee entrusted by the Belgian Maritime Law Association with the examination of the problems concerning the unification of certain rules in connection with the limitation of shipowners' liability, has examined the draft Convention prepared by the British Law Association.

It has taken into consideration, during that examination, the observations made in the reports of the National Associations of the different countries (1) and especially the modifications suggested by the British Association.

General Observations :

1°) The International Convention is intended to be applied only to seagoing ships. It would be convenient, thence, to replace in the text the word « ship » by the words «-seagoing vessel » as in the 1924 Convention.

The Sub-Committee found out that it is hardly possible to give a definition of « seagoing ship » which can be accepted by all contracting states. It seems consequently reasonable to refer, on that point, to the law of the flag.

On the other hand, the Convention should exclude « expressis verbis » all ships of war and State owned ships not ruled on a com-

(1) Canada, France, Germany, Great-Britain, Greece, Italy, Netherlands, Norway, Sweden.

mercial basis (cfr. art. 13 of the 1924 Convention and of the Convention of 10 April 1926 on the Immunities of State Owned Ships).

2°)The members of the Sub-Committee agreed almost unanimously to fix the amount of liability of the Shipowner at a lump sum based on the tonnage of the ship.

The system which makes the amount vary in proportion with the value of the ship is difficult and oftentimes unfair. It is better therefore to abandon that system and to adopt an intermediate solution according to which the ships are classified in categories.

The system suggested by the British Draft risks, however, to cause some difficulties of application if the system of maritime liens and mortages is not unified too, at least on certain points. Indeed, the International Convention of 1926, introduced by several States in their domestic law, concerns liens on ship, freight and accessories of the ship; on the other hand, it grants privileges as well for claims subject to limitation of liability as for those that are not.

But, if the value of abandonment is calculated on a lump sum and on the tonnage, the basis of the privileges will be completely changed as far as the claims under art. 1 of the Draft Convention are concerned : the privilege warranting these claims will no longer be executed on the value of the vessel, the freight and accessories but only on the limitation fund constitued consequently to the occurence that caused the claims.

What are, on the other hand, the rights on the limitation fund granted to the privileged creditors against whom the limitation cannot be invoked. The refusal of any rights on the fund would make their privilege vain in each case where the only asset of the shipowner is the fund; the paradoxal result would be in that case that e.g. the creditors of a contract of employment would be in a less favourable situation in case of loss of the ship, than those against whom limitation can be invoked. But, on the other hand, it will not be fair to allow the creditors who have a claim for complete recovering against all the estate of the debtor, to share in the fund, whereas they could be paid out of the other assets.

A lot of other problems have further to be solved in this matter. The present remarks only intended to stress the fact that the unification

of shipowners' liability cannot be separated from the unification of maritime liens.

3°) Many provisions of the draft seem to admit that limitation of liability depends on an uttered will of the owner (Articles 2 (3); 3 (2); 4; 5; 6 (1) and 7). On the contrary, art. 1 par. 1 seems to imply, for all claims under a & b, a limitation of owners' liability « de plein droit ».

This solution should be put down without ambiguity. If the owner is willing to pay all his claimants and if he can do it, nobody will be able to forbid him. But the creditors must be able, when their interest is at stake, to demand the constitution of the limitation fund even when the owner is not willing to do so. This will be the case when a same accident has caused both personal injuries and damages to goods. Indeed, if the application of the Convention depended on the will of the owner, the latter could deprive the victims of personal injuries from the advantages of the Convention by not constituting the fund; in that case, all the creditors would share the assets of the debtor (according to the rank of their claims or when the claimants are of the same rank, pari passu) without possibilities of taking into account the two great categories of debts constituted by the Convention.

All the articles where limitation of liability is subject to the will of the owner, should be amended in that way.

Article 1.

1°) The Sub-Committee accepts the suggestion of the French report; the cases where the shipowner should be held liable without burden of the limits, should be enumerated in a special article pointing out that the proof lays on the creditor. The wording of that report could be adopted under one single reservations : it makes the shipowner liable without limitation « for the facts he could prevent ». Unlimited liability depends in that way on due diligence which can be interpreted by the Courts of the different countries in very different manners. The terms of the French translation of the British Draft is more restrictive (« fait commis avec son consentement ») and seems to allow less differences of interpretation.

Furthermore, it should be admitted that, if the conditions are present, liability is unlimited as well in the case of contractual fault

as in the case of delictual or quasi delictual fault. (Breach of contract and liability in tort).

On the other hand, the Sub-Committee is of the opinion that it is convenient to add to these cases of unlimited liability, the obligations resulting from the contract of employment of the crew (cfr. art. 2, 3° of the 1924 Convention). Should the claims of the crew for loss of life or personal injuries also be added ? (cfr. art. 7, 3° of the 1924 Convention). This is a delicate matter but the Sub-Committee is of the opinion that it will be difficult to deprive the crew from advantages obtained more than 30 years ago; the annulment of the advantages, without justifying it with arguments which could already have been invoked in 1924, risks to raise vivid discussions in the Parliaments which will have to ratify this Draft Convention. Furthermore, this unlimited liability applies only to the claims of the crew of the faulty ship. If a crewmember of ship A is injured by a faulty manœuvre of ship B, there is no reason to grant an unlimited claim against the owner of B; art. 7, par. 3 of the 1924 Convention does apparently not aim at that case (cfr. English reading).

2°) Are awards due as a consequence of breach of contract concerning bills of lading, included in the article 1 ? The general wording of par. a and b seems to say so. Indeed, breach of contract under bills of lading can cause two kinds of damages : 1° loss and damages to cargo (par. a seems to aim at this ground for claims); 2° damages to immaterial rights of the consignee (this is e.g. the case when the last arrival of the ship obliges the consignee to abandon a favourable market; this is the loss of rights, ground for claims provided for in par. b).

The British Association, on that point, seems consequently to have changed its opinion given at the Brighton Conference (p. 4). At that time that Association accepted to exclude these claims from the application field of the Convention, alleging that these matters are settled by the Hague Rules.

The limit of these Rules is however rather high (£100 per package as unity) and arbitrary, as the conception « unity » is subject to controversy.

If the Hague Rules are applied only to the consignees, the latters will often be paid completely, whereas the victims of personal injuries

will obtain only a partial indemnifying according to the Convention on shipowners' liability. Such a difference is hardly possible.

The wording of the Convention should state clearly that the claims for breach of contract under Bills of Lading are included in the list of article 1.

3°) Article 1 b of the Draft Convention admits limitation of liability for loss and damages ashore or at sea caused by « a servant of the shipowner whether on board or not, performing any duty or doing any act on or in connection with the ship or the persons, cargo or other property on board of the ship or to be carried therein ». The Sub-Committee is of the opinion that this wording implies an extension of the application field of the limitation of liability, which can hardly be justified. In that connection, the reply of the Swiss Association to the 7th question of the Brighton questionnaire must be approved. Why should not the shipowner, such as all other businessmen or manufacturers, be liable with all his estate for the faults of his servants ashore ? Limitation can only be admitted for faults of persons at the service of the ship (cfr. art. 1, 1° of 1924 Convention).

If, however, an agreement was reached to extend limitation to faults of servants ashore, the Convention should clearly state that such an extension applies only to acts aiming essentielly and directly at the service of the ship.

4°) The wording of art. 1, par. b should in any case be simplified and clarified.

Article 2 (Art. 3 of the British Draft).

1°) The Sub-Committee accepts the figures suggested by the French and British Reports concerning the amounts awarded to claims for personal loss and claims for loss of goods; it cannot accept that victims of personal injuries should have a worse treatment when there are no damages to goods than in the other case.

The wording suggested by the French report formulates this system clearly and precisely.

2°) The 500 tons basis upon which the minimum liability is calculated, seems to be too high to many Associations, that suggested 300 tons. This figure should better suit the rightful interest of the coasters and trawlers.

3°) The conversion into the currency of the State where the owner has a right to limitation should be made at rate of exchange at the date of the constitution of the fund and not at the rate of the date of the occurence from which the liability resulted. Indeed, the latter system risks to deprive the creditors from the advantages of the lump sum system by submitting the claims to the variations of exchange rates.

Article 3 (Art. 2 of the British Draft).

It is more advisable to constitute a fund per accident rather than per voyage; the conception « voyage » is indeed not clear.

The constitution of the fund per accident might however put some difficulties that the Convention should solve.

1. When two accidents occur within a very short time.

A. it may be impossible to determine by which accident the damage has been caused; such can be the case where damages to cargo are only examined at destination.

B. if the shipowner has no assets enough to constitute two limitation funds, should these assets be shared between the two funds or should the creditors of one of the accidents be preferred ?

2. When, during one single voyage, cargo suffers damages both by collision and lack of diligence (e.g. bad ventilation) should two funds be constituted? The Sub-Committee is of that opinion.

Article 4.

The new reading suggested by the British report replaces this article by the provision examined under art. 2 and which will be art. 3 (1).

Article 5 (Art. 4 of the New British Draft).

The first paragraph of this article puts the delicate questions concerning liens, referred to in the « General Observations ». Furthermore, it could be convenient to determine the place where the fund should be constituted; in that way, the owner will not be able to favour arbitrarily some creditors, by constituting the fund in a State where the latters enjoy privileges granted to them in no other State.

The solution should be to leave to the owner the choice between

a. the place of the accident;

b. the first port of call after the accident or, when the cargo claim results from a breach of contract without accident, the port of destination;

c. the port where a ship of the owner is arrested in order to obtain payment of a claim which has to share in the fund.

d. the owner's principal place of business.

The second paragraph risks to allow to take judgments, the mere aim of which is to make, with the owner's consent, fictive liabilities.

Article 6.

Paragraph 1. It seems to be reasonable to grant to all the creditors, the benefit of the guarantee (a) even if the latter is inferior to the liability of the owner resulting from the accident and of the guarantee (b) even if the guarantee has been given in order to avoid an arrest.

Paragraph 2. The reference to the 10th May 1952 Convention should be dropped, as this Convention might not have been ratified by countries that are going to sign the present Convention.

On the other hand, if the conditions requested are satisfied, the Court must withdraw the arrest.

Paragraph 3. This provision entrusts the Court with a task which can practically not be executed. It is up to the owner who asks for the withdrawal of an arrest, to prove the constitution in other States of guarantees covering all his liabilities resulting from the accident which justified the arrest.

Article 7.

This provision should be deleted for the reasons given in the French Report.

Article 8.

Paragraph 1. This provision seems to have no use in practice. According to Belgian Law « liability of the ship » covers no definite conception.

Paragraph 2. This provision extends the limitation of liability as established by the Draft Convention, to the master, the crew, the charterers, the managers and operators and to the agents and servants.

Following remarks should be made :

1. the terms « manager » and « operator » should be defined;

2. the application of the Convention to the Master-owner and to the time-charterer seems to be justified;

3. the extension of limitation of liability to the other persons mentioned under art. 8 (2) is hardly admissible. One could wonder whether there are cases in which such limitation can be invoked. Indeed, according to art. 1, the master and his servants are always liable for their personal faults. As a consequence, article 8 (2) will only be applicable in cases where the master, the crew or other servants of the owner are held liable for faults or acts of a third person; such cases cannot occur according to Belgian Law because the master cannot be held personnally liable for faults committed by the members of the crew.

In any way such extension of the limitation to such a hypothesis cannot be justified at first sight.

Paragraph 3. This provision seems to put the principle that a nautical fault implies only limited liability whatever the liable person may be.

This provision has no use as far as the owner, who is not the master of his ship, and the time charterer are concerned. For them, the nautical fault is apparently not a personal fault.

On the other hand, this provision cannot be approved as far as a master who is not the owner and the crew are concerned. The nautical fault is their personal fault; why should these faults only imply limited liability ? Finally, this provision should state only that the nautical fault of the master-owner is submitted to the limited liability of the Convention.

SPANISH MARITIME LAW ASSOCIATION

REPORT

General Notes

These notes are in principle strictly limited to the Draft drawn up by the British Association as of December 10, 1954. Nevertheless, we consider it of interest to add a few general remarks as a result of comparing the text of the draft with that of the 1924 Convention, inasmuch as the former, as was plainly stated in the course of the debates held at Brighton, is not particularly intended to serve as a more or less general revision of the Brussels Convention, but rather as the basis for the preparation of a new Convention, with which to replace that of 1924.

Contents of the 1954 Draft

The eight articles of which the Draft is made up correspond in « grosso modo » to articles 1 to 9 of the 1924 Convention and to some of the regulations contained in arts. 14 and 15.

Bearing in mind that there are 24 articles, plus an additional one besides the two Protocol of Signature Clauses, one cannot fail to notice that the 1954 Draft only refers to the fundamental points of the problem.

The last paragraph of the introduction to the Draft is sufficiently self-explanatory as to the silence observed regarding the determination of the tonnage that is to serve as a basis for calculating the limitation (art. 11 of the 1924 Convention). But inasmuch as no reference whatsoever is made to the other points regulated in the 1924 Convention, we wonder whether these matters are to be examined during the

Madrid Conference, or if they are to be definitely left out of the new Convention.

In the first case, the Spanish Association is of the opinion that, in view of the importance and complexity of the items excluded from the Draft, and which were better or worse regulated in the 1924 Convention, the regulations covering same should be studied and prepared from this very moment, in order to avoid the difficulties and inconveniences of a sudden and unexpected discussion during the general meeting.

In the second hypothesis, we consider that these questions are far too important to be entirely overlooked, however difficult they may be to solve, if the New Convention is really to be of any use.

These points specifically refer to the sphere of application of the Convention, as also to the nationals of the Contracting and Non-Contracting States, and to vessels of war and State-owned ships; to the jurisdiction of the Courts, rules of procedure and methods of execution established by national legislation, apart from the so called formal clauses relating to date and form of ratification and accession by the Governments concerned, optional reserve about Protectorates, Colonies, Possessions, etc.; date of application of the Convention, denouncing of same and co-ordination of the provisions thereof with those of former Conventions, such as those relating to collisions of 1910 (1924 Convention, Additional Article), to which we could nowadays add the one of 1926 referring to mortgages and liens, and that of 1952 on Arrest of seagoing ships.

In short, and without in any way wishing to go into details regarding these problems, the Spanish Association begs to suggest that it would be extremely convenient that the British Association should complete the Draft of the Convention, so that all these points may be fully analysed before the full meetings are held in Madrid.

Article 1

Paragraphe 1.

Exception of actual fault or privity on the part of the shipowner.

This exception is fully justified, but in view of the opinions exposed by the British Association in its Report of July 22, 1954 on Art. 2 of the 1924 Convention, the present wording of the Draft might turn out

to be insufficient, and it might therefore be advisable that the terminology of Art. 8 should contain another paragraph in which the exception were clearly explained and defined, so as to prevent, above all, any possibility of false interpretations on the part of the Courts which, as in the United States or France, might in practice go against the fundamental aim of the legal system of the limitation of liability.

Paragraph d).

The last part of the text, when referring to cases in which the owner is liable « only because the vessel belongs to him, is in his possession, custody, or control », might give rise to misunderstanding precisely in so far as salvage and general average (traditionally excluded from limitation) are concerned, on account of the « propter rem » nature that in some countries is attributed to such obligations. Do you not think it better to add « excepting liabilities relating to salvage awards and general average contributions », to the end of paragraph d) of the Draft ?

Article 2.

Paragraph 1. a) and b).

The justification of the system from the British point of view is sufficiently detailed in the report of July 1924. The Spanish Association would be willing to accept the proposal if its acceptance were to serve for the attainment of the desired unanimity on a very necessary and urgent problem. But if it were impossible to achieve this unanimous opinion, and on the contrary the Delegations of some important maritime countries prefer the system of the value of the vessel, then the Spanish Association reserves its final decision on this point, bearing in mind the sacrifices that the adoption of the British system would cause to Spanish shipowners above all from the financial point of view, if we but stop to consider the special characteristics of our Merchant Navy, in so far as the average age long service and present value of the ships are concerned.

Paragraph 2.

We have but one objection to raise to the text of paragraph 2, the question of vessels of less than 500 tons.

At first sight, the minimum tonnage to be adopted as the basis for the right of limitation and on which to calculate the amount thereof may seem an unimportant detail. But if we bear in mind the great transformation that has occurred in the financial and technical conditions of modern industry of shipping in relation to the historical justification for the right of limitation, it does not seem fair that while we are trying to preserve a real legal privilege of the shipowners themselves, though adapting it to present circumstances, it should be precisely the small shipowners who should be prejudiced when applying same, inasmuch as the latter are those who still are in greater need of legal protection, since the nature and volume of their business most faithfully reflect the circumstances which originally justified that liability should be limited.

In Spain we have a large fleet of small craft devoted to fishing and coastal trade, the average tonnage of which scarcely exceeds 200 tons. The expedient laid down in paragraph 2 of Art. 2 of the Draft will make it necessary to triplicate or quadruplate the basis, as also the amount of the limited liability of the shipowners, who will not always be able either to bear the foreseeable increase in their insurance premiums in view of the said assimilation.

Besides, this provision is an arbitrary one as there is no justification for limiting the minimum tonnage to 500 tons and not fixing it at 400, 300 or 200 tons, inasmuch as if, in law, the tonnage of the vessels is only important in order to determine the legal system which shall rule the operation of same one does not see why it is necessary to establish a different tonnage to calculate the limitation of liability inherent to the said operation. That is to say, that if crafts exceeding the minimum tonnage acquired of registry are subject to the rules of the commercial and administrative maritime law, the same minimum tonnage should automatically entitle them to the privilege of limited liability, conceded by the said law to those who habitually engage in sea-going trade.

In short, we consider that in the case of ships of less than 500 tons, it would be fairer to apply the Convention without any discriminations or also exclude them from the terms of same, either in a general manner or by granting the respective Governements the faculty of specifically excluding such vessels on the ratification of the Convention.

Article 3

Paragraph 1.

Simultaneous claims. Events giving rise to same. The 1924 Convention discussed the point of when the valuation of the vessel liable for the accident was to be effected, so as to fix whether same should be carried out before or after the accident, clearly defining the cases that were to be treated as a sole accident or a series of successive accidents.

This point is not dealt with in the Draft, of course inasmuch as the latter specifies as the sole system of limitation that of a fixed amount per ton, without taking into consideration the actual state of the ship or even whether the ship was or was not lost following upon the accident.

Nevertheless, though the definition « accident » has been omitted in the new text, it is implicitly included in the reference contained in Art. 3, paragraph 1 to the claims « arising from one same event », that give rise to assets and liabilities « independent of the claims due to another event, either past or future.

Before, the question was to define the accident or leave it to the courts to decide whether it was an accident or not. Nowadays, the same rule is applied to the event that originates liability on the part of someone.

The matter is of practical importance even in the new system because in spite of the fact that all the problems relating to the valuation of the vessel have been carefully avoided either in relation to each accident or with reference to the whole voyage, it is of vital importance to prove the existence of each event that gives rise to a claim, precisely because as each of these events calls for the constitution of a new liability fund, the shipowner is naturally interested in proving that all the claims presented against him come from one and the same accident, so as to include them all in one whole sum and constitute only one fund; while on the other hand, the creditors will try to prove the existence of different accidents in order to press for the constitution of new funds, to which the claims filed in relation to a previous event cannot be attached.

Article 5 - paragraph 1.
Article 6 - paragraph 1. in fine.

Both texts, substantially the same as that of Art. 8, paragraph 1) of the 1924 Convention, lay down that the guarantee given by a sum equal to the total limit of the liability will benefit all the creditors affected by the limitation, irrespective of the order or precedence of their claims, which will be established according to the « lex fori ».

The Draft shows the lack of a publicity system that would assure the application of the principle, which is barely outlined in a general formula.

We also note that there is no special regulation laying down the specific attachment to the guarantee of the creditors who present their claims against the fund, to the exclusion of the other creditors. Finally, we consider that something should be stipulated that in the case of a complementary guarantee, the claimant should not obtain any preferential rights because of his priority in obtaining the arrest or the corresponding bail.

Article 6 - paragraphe 2.

Sub-heading a) (i), to b) (i). — We see that the term « satisfactory » guarantee is still included. It seems that this merely refers to a personal guarantee or bail, but if we bear in mind that such guarantees are not generally constituted without a financial backing, we are of the opinion that it might be preferable to use the terms « sufficient » instead of « satisfactory », so as to limit the judge's decision to compare the amount of the guarantee with that of the claim.

Nothing is stated regarding the concurrence of creditors belonging to non-signatory States, to whom the provisions of the Convention or of the « lex fori » might not be applicable.

Paragraph 2, Sub-heading b) (ii) lays down that, when only a partial guarantee has been effected, the complementary guarantee should be « to the benefit of the claimant ». It might be convenient to clear this point up, so as to avoid that it be interpreted in the sense that the partial guarantee given to a creditor grants him a preferential right to same which goes against the general principle that the guarantee is to benefit all the creditors.

It goes without saying that the wording of paragraph 2, Art. 6, is a great improvement on the corresponding text of the 1924 Convention.

Nevertheless it would be convenient to say something about the nature of the guarantee, striving to attain uniformity, at least in those cases in which the only point of discussion is the amount of claim and not the grounds or basis of same.

Article 7

Sale of Ships.

The draft does not define whether such a sale is to be by order of the Courts or voluntary and logically, in the latter case, does nothing to protect the interests of the creditors.

Article 8

This article might well include abbreviated expressions relating respectively to loss of life and personal injury or loss or forfeiture of property and/or rights, as, for example, « life and personal injury » and « property claims », used by Mr. Martin Hill in his report at Brighton. The use of such expressions in the wording of the Convention would render it easier to read and avoid the tiresome repetition of the same words.

Final Notes.

We beg to stress the importance of the general remarks included at the beginning of this paper, and we consider that if the Convention is to be of any practical use it should contain the regulations governing a procedure similar to that of Bankruptcy and inspired, for example, in the one included in the Belgian legislation (Law of November 28, 1928), which be subject to one single law and the final aim of which be one sole distribution among all the creditors.

The necessary complements to such a procedure must naturally be an adequate publicity system and an international centralization of guarantees.

Finally, it might be convenient to establish a preventive recording of claims in the ship's documents and registers, which, once it were internationnally recognized (as already established in the 1926 Convention on privileges and liens or mortgages), would considerably improve the practice of the arrest of ships.

Madrid, 1st May 1955.

GERMAN MARITIME LAW ASSOCIATION

OBSERVATIONS

The German Maritime Law Association has examined the Draft Convention submitted by the British Maritime Law Association to the C.M.I. in December 1954 and makes following observations :

Article 1.

1) The German Maritime Law Association agrees upon the principle of basing the shipowners' liability not on the value of the ship but on a fixed amount per unit of measure of the ship.

2) Under the above mentioned condition it accepts the details of the claims upon which the limitation should be applied.

3) The rewards for salvage and the contribution of general average, as far as they are not involved in collision claims, should not fall under the application field of the Convention. It has been said that the Convention should be understood in that way but it is not clearly stated and therefore doubtful. As a consequence we suggest to put clearly in the Convention that salvage awards and general average claims are excluded.

4) The Association is of the opinion that the Convention should not apply to crew claims for loss of life or personal injuries. This rule should be put clearly in the Convention. If a general agreement can not be obtained at this point, we suggest to incorporate in the Convention a rule allowing each State to adopt this rule or not.

Article 2.

1) The Association has expressed no special opinion upon the following points :

a) the figures upon which the limitation fund for loss of life and personal injuries and not for damages to property is based;
b) the tonnage upon which the limitation should be calculated.

Indeed these questions are not mentioned in the Draft Convention and are reserved for later discussion at the Plenary Conference.

2) The Association cannot agree upon the provisions of the second paragraph. It is of the opinion that 500 T. is not the right figure. It recommends to delete that limit of 500 T. or to replace it eventually by a limit of 150 T.

3) If the third paragraph claims at the conversion of the French currency into the national currency, we cannot plainly approve it. The Association is of the opinion that the figures should be converted into the national currency. If that principle cannot be admitted as a general rule, we suggest to make a reservation similar to article 15 of the Brussels Convention 1924 according to which each State can adopt the system of conversion it prefers.

Article 3.

1) The Association is of the opinion that the term « occasion » used in paragraph 1 risks to be misunderstood when it is compared with the term « événement » of the French text. Indeed the two terms are apparently not completely identical. Therefore the Association is of the opinion that this matter should be settled clearly in order to obtain a uniform application.

2) We wonder whether paragraph 2 is only a mere declaration or whether it involved material consequences and eventually which consequences. We suppose that this provision comes from the English legal system and that it refers particularly to English rules of procedure. Therefore it should be advisable to give some explanation about the meaning of that provision and especially about the relation between this provision and article 7.

Article 5.

The Association is of the opinion that the distribution of the limitation fund can only be admitted when all the claims resulting from the accident are known. Therefore the claims should be introduced within a certain delay. This delay should not be fixed by the national

law which can vary. Therefore it seems to be advisable to fix a time-limit before which all claims that should share in the limitation fund should be submitted to the court or to the authorities who administrate the fund. We suggest a limit of 2 years from the accident. We understand that this time-limit concerns only the introduction of claims against the shipowner and not the distribution of the fund which can only take place when all submitted claims have been examined by the court or by the administrating authority.

Article 6.

The Association has carefully examined this article but it has found no solution up till now. As a consequence all remarks on this point are reserved.

In addition to these observations the Association submits following remarks :

a) In its present reading the Convention contains no provision concerning the application of the rules of limitation to the interest and the charges concerning the claims against the limitation fund. We suppose that these claims will share in the limitation fund and we think it is advisable to put this clearly in the Convention.

b) A provision seems to be necessary concerning the interest by which the limitation fund will be increased before distribution. We suggest that these interests should belong to the shipowner.

c) Such as in the other international conventions the Contracting States should have the right to ratify the Convention either by incorporating the wording of the Convention in their national law or by adopting the rules of this convention to the particularities of their own legislation.

YUGOSLAV MARITIME LAW ASSOCIATION

REPORT

The Yugoslav Maritime Law Association is grateful to the British Maritime Law Association for the remarquable draft of an International Convention on limitation of shipowners' liability. Before examining the draft, our Association already disposed of the reports of the National Associations of the United States, France, Greece, Italy, Netherland, Canada, Finland, Great Britain and Germany. The reports of the Norwegian and Belgian Associations arrived after the closing session of our Sub-Committee, entrusted with the examination of the British draft.

The Yugoslav Association accepts the British draft as a basis for discussions and agrees upon the ideas it contends, provided following reservations and modifications, especially concerning the maximum value of the ship (Art. 2 of the Draft).

Article 1.

Art. 1 (a).

Our Association admits that limitation of shipowner's liability applies to all sea transports, covered by bills of lading or not, such as provided by Art. 1 of the 1924 Convention. As we thought that, according to Art. 1 a) of the Draft Convention, the shipowners' liability under bills of lading was limited, we are of the opinion that, as a consequence of the interpretation given in the report of the British Association to the Brighton Conference, the present reading should be modified. We suggest to add to the reading following words : « whether or not under bill of lading ».

Art. 1 (b).

In our opinion liability for loss of life or personal injury to members of the crew or to the pilot, if he is not obligatory, should not be limited for humanitarian reasons and because of the fact that contracts of employment are concerned.

Art. 1 (c).

We are of the opinion that this provision covers also liability for damages of all kinds caused by a sunken, stranded or abandoned ship or even by an unsuccessful rise of a wreck. If there are doubts about such interpretation, the text should be amended.

Art. 1 (c) - (g).

We are of the opinion that it is necessary to add to art. 1 a provision allowing the owner to limit his liability for following claims :

e) awards for assistance and salvage;

f) owners' contribution in general average;

g) liabilities contracted by the master out of the home port according to his legal authority, for the benefit of the ship or in order to proceed with the voyage, provided these liabilities result neither from a lack nor from a vice of the equipment or of the supplies at the beginning of the voyage.

The fact that the owners' liability in the cases under f) to g) does not exceed the value of the saved vessel, cannot justify that these liabilities should not be limited by the New Convention.

We cannot deprive the creditors of the right to arrest other ships of the same owner in order to get payment, although this would be a danger for the creditors interested on the other ships. By excluding these liabilities from limitation, the owner would be obliged to pay not only the amount fixed by the draft as many times as there is an accident but he should also pay the value of the ship for the other liabilities, which do not fall under limitation. In that way not only the principles of liability, attached to the ship and further all practical results of maritime liens are destroyed, but also the essential aim of limiting shipowners' liability, which is to protect efficiently owners against great maritime risk. This protection is the principal stimulator for free enterprise and therefore the main condition for development of maritime business. Furthermore, it is not right to say that the present development of maritime enterprises has been accompanied by

a similar development of the financial ressources, necessary to meet the increased limits of liability. Indeed, the increase of tonnage involves an increase of liability. Finally, the modern possibilities of maritime insurance do not change the old system of liability because these possibilities are available for all parties concerned in maritime business. Therefore, the claims on the ship should be limited to the value of the ship if they are subject to limitation. For the same reason, we should not abandon the limited liability for the obligations of the master.

On the other hand, it should be stated clearly that the present provision does not change the rules of the International Convention for the unification of certain rules on assistance and salvage signed on the 23th of September 1910.

Article 2.

Art. 2 (1).

We suggest that the first paragraph of this Art. should limit the shipowners' liability to £50 per ton for loss of life and personal injury and to £24 per ton for loss or damages to property. However, the total amount should not exceed the value of the vessel and the freight at the beginning of the voyage. If the value of the vessel at the beginning of the voyage does not reach the maximum liability, the fund should be constituted by 50 % of the figures of the draft and by 50 % of the value of the ship.

If we fix without special conditions the limit at £24 and £50 per ton, without taking the real value of the vessel into account, the limit would in practice be extended to the other property of the owner even to other vessels. That means that we abandon the principles according to which the vessel is considered as a special estate, exclusively liable in connection with her exploitation. In that way, it will be impossible to reach the very object of the Convention. This concerns especially Art. 7 of the Draft Convention, that grants the owner the possibility of supplying the necessary capital for the constitution of the fund by selling the vessel.

Art. 2 (2).

We are of the opinion that the limit should be based upon the real tonnage. For certain categories of ships we might exclude the application of liability according to the American system.

Article 5.

Art. 5 (1).

In order to avoid all doubts about the rank of the creditors, we should state clearly that this question is submitted to the law of the flag. Indeed, this is the only law known in advance.

Art. 5 (2).

We suppose that this provision allows to give evidence against judgment or other decisions.

Article 6.

Art. 6 (2).

This provision should not be reasonable if it allowed the courts to withdraw the arrest arbitrarily. Therefore, we suggest a new reading of the provision in order to avoid any doubts about the withdrawal of the arrest as soon as the conditions under (a) and (b) are satisfied.

Art. 6 (4).

The Convention itself should indicate the courts before which the claims for limitation of liability can be introduced by adopting the principle of prevention. Competence should be given to the courts, that were first requested by the owner or by a creditor to apply limitation except if the amount of the limitation fund has been reached formerly by a guarantee given before another court.

We should examine the problems concerning the addition and the distribution of the guarantees given in different countries.

Article 8.

Art. 8 (1).

We wonder whether the first paragraph applies limitation to privileges. The present wording of the Draft seems to imply that privileged claims are submitted to limited liability but that these privileges do not lose their rights on the estate specially qualified.

Art. 8 (2).

This paragraph concerns some questions but does not solve them. First, it is not clear whether the owner is also liable without limit or whether there is a relation between the owner's personal liability and the liability for the ship. Further, this paragraph mentions that provi-

sions of this Convention apply to the master, the crew, the servants and agents of the owner. According to Art. 1, par. 1 of the Draft, the liability of the owners should only be limited if their liabilities do not result from a personal fault or privity. It is difficult to imagine a claim against the master or the members of the crew or the servants or agents of the master which does not result from their actual fault or privity. Therefore, we wonder what sorts of liabilities are aimed at in this paragraph. If the intention is to protect the master, the crew, the servants and the agents of the master by limited liability, this should be clearly stated, provided of course that willful misconduct is not covered.

Art. 8 (3).

This paragraph should be put in Art. 1, because it contends a case of limitation for a personal fault of the owner.

We limit our remarks to above mentioned observations, but we intend to reserve the rigth to give a definite advise later on.

MINUTES OF THE MEETING OF THE RESTRICTED INTERNATIONAL SUB-COMMITTEE ANTWERP, 7th MAY 1955

Mr. Lilar opened the session at 9.45 a.m.
Were present :

His Ex. A. Lilar, President,
MM. C. Van Den Bosch, Hon. Secretary,
Sohr (Belgium),
J. Van Rijn (Belgium),
Heenen (Belgium),
J. de Grandmaison (France),
Warot (France),
Martin Hill (Great-Britain),
John Miller (Great-Britain),
Röhreke (Germany),
Sandiford (Italy),
J. Asser (Netherlands),
Baron Van der Feltz (Netherlands),
Loeff (Netherlands),
P. de Benito Serres (Spain),
Kihlbom (Sweden),
Pineus (Sweden),
H. Voet, Hon. administratif Secretary,
L. Van Varenbergh.

1. The Chairman suggested to examine only the principles upon which the Convention is based and presently not to prepare the wording which must materialize these principles.

He suggested to put forward the points upon which an agreement has been obtained and to delimit the points upon which such agreement cannot be realized.

At the Chairman's request all the delegates declare that their Associations accept to replace the present systems on limitation by the system suggested by the British Association and taken down in the Draft Convention dated 10th Dec. 1954.

2. Mtre J. de Grandmaison asked why the Draft did not adopt the term « seagoing vessel » as in the 1924 Convention.

He asked the British delegate whether the authors of the Draft intended to apply the Convention either to all ships or only to seagoing ships.

Mr. Hill pointed out that the British Association intended to apply the Convention to all ships i.e. to seagoing vessels and to ships operating on the great lakes such as Lake Victoria and the Canadian Lakes.

After discussion, the Sub-Committee accepted to replace the words « ships » and « navire » by « seagoing vessels » and « navires de mer », leaving to the domestic laws to define the conception « navire de mer ».

3. At the Chairman's request, Mr. Van den Bosch, Honourable Secretary, read Art. 1 amended by the British Association. The Chairman asked the delegates of the different Associations to give the point of view of their different Associations.

Mr. K. Pineus was of the opinion that it is dangerous to apply the limitation to longshoremen and to agents ashore.

Indeed, Art. 1, b makes the Convention applicable even to goods which have to be carried on board of the ship.

Mr. Hill pointed out that this article aims mainly at explosives stored on quay for shipment by a specified vessel.

He reminded of the cases of the accidents of Bombay and Halifax.

Mr. A. Vaes drew the attention upon the fact that it would be difficult to make a difference between persons at the service of the ship and those who are not.

He pointed out that in industry, operations similar to embarkment and disembarkment are carried out daily. In this case no limitation is applied.

Consequently, he asked how we could justify a limitation in favour of the shipowners' servants ashore.

The Chairman shared this opinion and pointed out that it should be avoided to sink the Convention by extending its field of application too far.

Mtre Asser suggested to follow the definition of the 1952 Convention : « in connection with the operations of the vessel ».

Mtre Van den Bosch pointed out that the dockers in charge of the loading and unloading of the vessel are considered to be at the service of the vessel.

Mtre Loeff opposed this point of view by putting forward that, in the case of a Charter Party or of F.I.O. Bill of Lading, the loading and unloading are carried out by the cargo owners or on their account.

Mtre J. de Grandmaison shared the opinion of the Chairman and that of Mtre Vaes and admitted that the Conference might not succeed if it limited the liability in respect of servants ashore.

He pointed out that the 1952 Convention on Arrest of Ships also makes a difference between purely land operations and those which are the beginning or the end of a maritime carriage.

Answering Mtre C. Van den Bosch, Mtre de Grandmaison pointed out that dockers are not at the service of the vessel; they are the servants of stowing and loading contractors who are contractually bound to the ship.

The Chairman pointed out that these remarks brought us back to the conception of the 1924 Convention « service of the ship ».

Mr. Hill could not accept this amendment.

The Chairman on his side stressed that the suggested wording goes too far and risks to compromise the final result.

Mtre de Grandmaison pointed out that the English wording applies limitation to actions such as the carriage of passengers by coaches from Paris to Cherbourg in case of Railway Strike, the storing of goods in warehouses owned by the shipowner when no vessel is at quay.

Are these serious reasons to submit those operations to limitation ?

Prof. Sandiford drew the attention upon the fact that we could not go further than the 1924 Convention which was adopted by several countries.

The Chairman suggested to think the question over and to try to find a satisfactory definition. Mtre Loeff drew the attention of delegates upon the fact that he is not sure to obtain the agreement of the Dutch Association in connection with such an important modification.

4. Mtre Van den Bosch pointed out that the Belgian Association can hardly accept the principle according to which the wages and claims

for personal injuries of the crew are subject to limitation, such a rule being contrary to the Belgian Laws.

M. Hill pointed out that only crew claims are subject to the Convention, wages escaping limitation.

Mtre J. de Grandmaison stressed that art. 7 of the 1924 Convention submits these questions to the law of the flag.

Mr. Miller pointed out that, by excluding crew claims, there will be different limits according to the countries where these are applied.

5. Mtre A. Vaes wanted to know whether the creditors, against whom the limitation cannot be invoked, can obtain a share of the limitation fund in the case where the said fund is the only estate of the shipowner, their creditor.

He asked the Countries, that have already adopted the said system, to give some explications on its application.

Mtre Loeff pointed out that, when a limitation fund has been constituted, and when, before sharing the fund, the ship gets bankrupt, the fund does not go into the estate of brankrupt, provided it has been constituted before the doubtful period; as a consequence, privileged creditors are not paid where as the « limited » creditors get a share.

Mtre J. de Grandmaison asked which solution should be adopted in the case where the Treasury, a privileged creditor above all, can exercise his rights on the fund before its distribution.

Mtre Loeff answered that the constitution of the fund equals payment.

Mtre Van Rijn suggested following solution :

The fund implies a shipowner « in bonis »; when the shipowner is not « in bonis », the laws on bankrupcy or similar laws must be applied.

The Chairman accepted Mtre Van Rijn's solution and stated that this should be considered as the answer to Mtre Vaes' request.

Mtre J. de Grandmaison agreed with this and pointed out that the fund will follow the lot of a guarantee.

Mtre Sohr added that all privileges remain unchanged for the Convention contains no new rule which modifies them.

6. Mtre J. de Grandmaison pointed out that the translators of the English Draft had some difficulties in translating the words « actual fault or privity ».

Is it « culpa lata » or « culpa levis » ?

The present French laws refuse to apply limitation as often as a personal fault is made by the shipowner, without limiting that conception to « culpa lata » or « dolus ».

Mtre Loeff pointed out that, in Holland, the shipowner only loses the benefit of limitation in the case of « culpa lata ».

At the request of the delegates, Mtre J. de Grandmaison gave a few examples of personal fault of the owner : unseaworthiness, not licensed master.

He pointed out even cases of « culpa levis », such as bad state of rear or bad instructions to the crew which deprive the owner from limitation provided the latter knew the bad situation and provided he did not take the necessary measures.

At the request of the members of the Sub-Committee, Mr. Hill pointed out that « privity » means « he knew all about ».

He gave the example of the car-ferry « Princess Victoria »; the owner knew that the doors of the car deck shut badly and nevertheless had taken no necessary measures.

Mtre J. de Grandmaison pointed out that in these cases, the French conception « fait et faute », covers very well the two elements : knowledge of the danger and absence of measure to prevent the danger.

At the request of the members, Mtre de Grandmaison pointed out that personal fault means a fault of a member of the board.

All the members shared this opinion.

7. Mtre Van den Bosch asked whether the liabilities of the owner unders bills of lading (Hague Rules) are subject to limitation.

Mr. Hill declared that these liabilities are covered by the Convention.

Mtre J. de Grandmaison asked whether salvage awards and contribution in General Average are to be excluded.

As all delegates agreed upon this, he suggested to amend the draft accordingly.

Mtre Asser asked whether limitation applies to the ship when damages result from the fault of its tug.

The Chairman pointed out that the shipowner can invoke limitation when the liability of the towed ship results from a legal provision.

At Mtre Asser's request the Sub-Committee stated that the personal fault of the shipowner has to be proved by the party who claims for the rejection of limitation on that ground.

The Chairman closed the session at 12.30 p.m.

The Chairman opened the session at 14.50 p.m.

8. Mtre J. de Grandmaison asked for permission to speak and continued the discussion on the claims of the crew. He asked M. Martin Hill whether the British Association maintains the point of view according to which the claims of the crew have to be subjected to limitation provided the Convention can state that domestic laws may exclude these claims from limitation.

Mtre J. de Grandmaison was of the opinion that it is more advisable to adopt a wording excluding the claims of the crew but permitting each State to submit them to limitation.

Mr. N. Kihlbom suggested to leave to the domestic laws to settle the question of crew claims. He added that it will not be possible to have the British suggestions accepted as in several States there are laws that do not accept limitation for that kind of claims.

Mr. Martin Hill pointed out that he would ask the British Association to agree upon leaving to the domestic laws to settle this question.

Mtre J. de Grandmaison pointed out that the problem of the crew has been solved in most countries by laws very similar to those governing work accidents ashore. These laws grant lump awards to the members of the crew or their assigns; they are generally of public order. These awards are paid by government services which act as insurers of that risk. Beside this lump award, the interested parties are generally allowed to take legal proceeding against the shipowners provided the latter has committed a fault.

Presently these actions are not submitted to limitation and the national governments will not accept any limitation in case of fault of the shipowner.

The Chairman pointed out that, in many countries, it will not be possible in theory to submit crew claims to limitation.

Mr. J. Van Rijn suggested to prepare a text satisfying the different wishes. A final paragraph worded as follows : « However, no provision of the present article will frustrate the crew from all or part, of the

awards the crew are entitled to, according to their national law ». Could be added to the provision of art. 1. In that way there is no risk on either side. We accept implicitly that the crew claims are in principle submitted to limitation but we reserve the numerous cases where domestic laws of public order fix the awards. However, if there is no domestic legislation, the Convention will apply.

The Chairman suggested not to accept a text and asked Mtre J. Van Rijn to submit his draft to Mr. Martin Hill.

9. At the Chairman's request, Mtre Van den Bosch reads article 2 and 3.

Mtre Van der Feltz suggested to devote a special article to the definitions of the conceptions used in the Convention.

The Chairman accepted this suggestion but pointed out that this was only a matter of drafting.

Mr. K. Pinens suggested to replace the minimum of 500 tons by 300 tons.

Mtre J. de Grandmaison was of the opinion that the figure of 500 tons should be maintained. He pointed out that there is practically no difference of insurance premium between risks of 500 tons and 300 tons and that a reasonable figure should be maintained.

Mtre J. de Grandmaison added that in all countries over the world, unlimited liability has been accepted for car accidents and that it will be very difficult in France to maintain limitation in favour of shipowners; there are ships of 400 tons that cost 50 millions and carry a cargo of 100 millions. Moreover, the problem should be examined from the point of view of the liability against third parties; in this case the tonnage of the ships is of very little importance, a small unit being able to cause very important damage.

The Sub-Committee accepted to maintain the figure of 500 tons.

10. Mtre Asser drew the attention upon the fact that there is a great difference between the rates of gold according to the market where they are rated. Consequently, he suggested to insert a rule on that point in the Convention.

Prof. Sandiford pointed out that the Italian Association preferred a limitation per voyage.

Mtre J. de Grandmaison stated that this question had been examined at Brighton and that the majority of the delegates had accepted the limitation per accident.

Mtre J. Van Rijn drew the attention of the Sub-Committee upon the fact that the Convention on Mortgages is based on the conception of voyage and that as a consequence the possible differences between both limitations should be examined.

The Chairman replied that in fact this problem had to be solved but that it is difficult to do so now as the matter was not prepared sufficiently.

Mr. Röhreke asked whether either the Courts or the Parliaments should convert the figures fixed by the Convention.

Mtre Van den Bosch was of the opinion that this matter should not be solved by the domestic law but by the Courts.

11. Mtre J. de Grandmaison pointed out that Art. 2 adopts the rate of the day of the accident. The French Association suggested the rate of the date of the constitution of the fund or this missing, the day of payment.

Mr. N. Kihlbom accepted the suggestion of Mtre J. de Grandmaison.

Mr. Martin Hill pointed out that the date of the accident was the only certain date.

Mtre J. de Grandmaison put forward that the Courts lay on the debtor the risks of devaluation. On the other hand, it is not possible to make payment before the debt is certain. In maritime matters and especially in case of collision, the price of repairs is only known a long time after the accident.

The Sub-Committee accepted the suggestion of Mtre J. de Grandmaison.

12. Mtre de Grandmaison pointed out that a difference should be made between the bail which is a mere guarantee and the constitution of fund which equals payment.

Mtre J. Asser declared that he was not sure that all legislations accept the principle that the fund does not belong to the debtor.

Mtre J. de Grandmaison asked if it was possible to constitute a fund without accepting liability..

Mtre J. Loeff pointed out that the fund can only be constituted after an amical acceptance of the debt by the shipowner.

Mtre Van der Feltz drew the attention upon the fact that the American conception was slightly different : indeed, the American Courts demand the payment of the fund before all proceedings.

Mtre J. de Grandmaison pointed out that this was not a constitution of a fund but only a guarantee.

Mtre Asser asked if, in these circonstances, it was not more advisable to state that the fund constitutes a legal guarantee especially affected to the execution of the liabilities issued from the Convention; in this way the constitution of the fund implies no acceptance of liability.

13. At the Chairman's request, Mtre C. Van den Bosch read the new Art. 4.

Mtre C. Van den Bosch submitted the Belgian suggestion limiting the number of places where the fund can be constituted. The object of this amendment is to avoid that the shipowner constitutes the fund in the resort of a Court which might favour some creditors. The Belgian Association suggested following places :

1) the place of the accident;
2) the first port of call;
3) the port where the ship is arrested;
4) the place where the shipowner has his principle place of business.

The shipowner has the choice between those 4 ports.

Mtre C. Van den Bosch declared that the Belgian Sub-Committee has hesitated to add the 4th point; it was however of the opinion that the conception of principle place of business will avoid all danger resulting from the fact that several navigation companies have a fictive domicile.

Mtre J. de Grandmaison shared the opinion that the number of places, where the fund can be constituted, should be limited.

Mtre Loeff asked why the place, where the proceedings take place, should be excluded.

After discussing the matter, Mtre C. Van den Bosch agreed to insert a clause allowing to constitute the fund at the place of the Court dealing with the matter.

The Chairman put an end to the discussion by declaring that there is a clear tendency to limit the number of places where the fund can be constituted.

14. Mtre J. de Grandmaison suggested to delete Art. 4 par. 2.

Mtre Van der Feltz and Mtre Loeff proved with examples that it should be advisable that the Court dealing with the distribution of the fund should accept the judgments pronounced in the Contracting States as evidence for the liability and for the debt of the shipowners.

The Chairman declared that it will not be possible to insert in the Convention rules concerning foreign judgments. He suggested to examine the matter and to postpone the decision concerning the dropping of Art. 4, par. 2.

At the Chairman's request, Mtre C. Van den Bosch read Art. 6.

Mtre J. de Grandmaison pointed out that Art. 6 deals only with guarantees and withdrawal of arrests; he was of the opinion that these problems should not be dealt with in this Convention and he suggested to drop this article.

15. Mtre de Grandmaison drew however the attention on following provision of the first paragraph of Art. 6 : « .... the bail or other security so given shall...., be available for the benefit of all persons limiting such claims ».

Guarantees supplied by bankers are generally in favour of only one person; will the banker accept to cover all interested parties ?

Mr. Martin Hill pointed out that this article intended to avoid that the shipowners should be obliged to constitute guarantees higher than the limitation fund.

Mtre Loeff pointed out that in Holland, guarantees covering a limitation fund are generally established in favour of all creditors on the fund.

Mtre de Grandmaison accepted to maintain art. 6.

The Chairman shared that opinion provided its wording is changed.

16. Mr. Heenen asked whether it is necessary to state clearly that this article covers both arrest of goods ashore and of ship.

Mtre Van Rijn added that it is necessary to put the Convention in accordance with the 1952 Convention on Arrests.

The Chairman approved the remarks of the two Belgian delegates.

17. At the Chairman's request Mtre C. Van den Bosch read art. 7. Mtre de Grandmaison suggested to drop this article. This suggestion is adopted by the Sub Committee.

18. At the Chairman's request, Mtre Van den Bosch read art. 8.

Mtre Loeff asked if no liability lays on the master when the shipowner is held liable.

The Chairman pointed out that the cases under par. 2 a) and b) did not cover the same problems and consequently that it was necessary to change the reading of this article. Paragraph a) intends to allow the master to rely on limitation and to devote to his liabilities the fund constituted by the owner. Paragraph b) intends to allow the charterers etc. to rely on the Convention.

19. Mr. Heenen was of the opinion that the present reading of paragraph 2a allowed the master and the crew to benefit from limitation in the cases where these made a personal fault.

Mr. Martin Hill pointed out that the authors of the Draft Convention wanted to avoid that the master and the crew should personally be held liable for facts for which the shipowner can invoke limitation. The master and the crew will only benefit from limitation in the case of fault of navigation.

20. Mr. Pineus suggested to apply the system of « single liability » in case of collision i.e. to apply limitation to the balance of the claims introduced by both parties.

Mtre Van den Eosch suggested to adopt the system of « cross liability » and pointed out that this problem is connected with that of the limitation « de plein droit ».

The Sub-Committee declared unanimously that the Convention intended to make a limitation « de plein droit ».

Mtre Van den Bosch pointed out that, in that case, each ship can separately rely on limitation and that, as a consequence, only the system of « cross liability » can be accepted provided « single liability », is of « cross liability » can be accepted provided « single liability », is not preferred for practical reasons. In that case the text should state it clearly.

21. As a conclusion the Sub-Committee declared unanimously that a new reading should be prepared according to the ideas put forward at the meeting.

The Chairman closed the session at 18.25 P.M.

CANADIAN MARITIME LAW ASSOCIATION

REPORT

The Canadian Maritime Law Association appointed a committee to consider the Draft Convention and to report on it. A number of meetings of the committee and of others interested were held in Halifax, Montreal, Toronto and Vancouver. The committee then reported to the Association at the annual meeting at Montreal on 31st May, 1955. There the following report was adopted :

1. The law of Canada on this subject is the Canada Shipping Act, a federal statute enacted in 1934, now chapter 29 of the Revised Statutes of Canada, 1952, sections 657 to 663.

2. These provisions are from the Merchant Shipping Acts of the United Kingdom and broadly it can be taken that the law of Canada is the same as the law of England, except that in Canada any charterer may seek to limit his liability, while in the United Kingdom only charterers by demise are so entitled.

3. The limitation amounts in Canada are $72.97 and $38.92 per ton, depending on whether the claims are for personal or property damage. They represent the conversion of the 15 pounds and 8 pounds of the Merchant Shipping Act, at the rate of $4.86 ½ (Canadian) per pound. The present value of Canadian currency produces a relatively large limitation fund in Canada.

4. The Canadian Maritime Law Association approves the principle of the proposed draft dated December 10, 1954, and particularly it agrees :

(a) that the limitation amounts be those proposed by the British Maritime Law Association, namely 50 pounds and 24 pounds expressed

in French francs consisting of 65 ½ milligrams gold of millesimal fineness 900;

(b) that limitation of liability be extended to masters and crew.

5. The Canadian Association submits these general comments on the Draft Convention :

(a) The Draft Convention extends the operation of limitation under it to a number of liabilities which have not previously been covered. Insofar as these extensions are substantial they may create issues which could have a disturbing effect on the retention of limitation.

(b) The Draft Convention does not provide for the difficult problem of the small vessel.

(c) The Draft Convention does not seem effectively to provide for one limitation fund and one limitation forum.

6. It is now proposed to develop these comments in considering specific Articles of the Draft Convention.

7. **Article 1 (a).** The Canadian Association notes that this Article extends the present operation of limitation to goods delivered to the shipowner for transportation by the ship and, with some dissent, questions whether this extension is necessary or desirable.

8. **Article 1 (b).** The Canadian Association is concerned about the broad character of the liabilities included in this clause. This could lead to the criticism that shipowners with regard to liabilities not directly arising from the ship or its operation, would be in a preferred position as against other citizens.

In this Article as in Article 1 (a) the Canadian Association, with some dissent, feels that there should not be such a broad extension of the ambit of limitation.

If the Draft Convention is to particularize losses on sea or land consideration should be given to persons and property in the sea or in the air. A collision with an air liner or under-water or underground damage could arise and the argument should not be open to anyone suffering such damage that their claims were not subject to limitation. This last comment also applies to Article 1 (d).

9. **Article 2 (2).** The Canadian Association has been greatly concerned about this Article. On the one hand there should be a substantial fund available for those cases where small commercial towing

vessels do heavy damage, but on the other hand, fishermen and non-commercial small boat operators should not be placed under liabilities out of all proportion to their operations. It is felt that the contracting states should be free to deal with this particular problem. It may be that consideration should be given to the definition of « ship » under the Convention.

After long consideration, the Canadian Association has come to the conclusion that the figure of 500 tons in this Article is satisfactory but that any contracting state should be entitled to enact special provisions with respect to fishing vessels and noncommercial private vessels under 500 tons.

10. **Article 4.** The Canadian Association agrees with the comments of the British Maritime Law Association, dated March 3, 1955 and agrees that in the light of those comments present Article 4 may be left out.

11. **Article 6.** The Canadian Association feels that the procedural provisions of this Article do not deal with the whole situation as it might arise in Canada and some other countries. They appear to be based only on arrest and bail or other security being given, but in Canada an owner may take limitation proceedings even though the ship has not been arrested. It is suggested that changes may be required in this Article to make it clear that there will be only one limitation forum and one limitation fund.

12. **Article 7.** The Canadian Association feels that this Article might be left out of the Convention.

13. **Article 8 (2).** The Canadian Association, with some dissent, considers that the extension of the right of limitation to servants and agents of owners, charterers, managers and operators is too great an extension and one that is not required by any present situation.

The situation of masters and members of crew of ships is different in the majority opinion of the Canadian Association, and it supports the extension of limitation to masters and members of the crews of ships and also to charterers, managers and operators.

14. **Article 8 (3).** The Canadian Association is in favour of the extension of limitation of liability to masters and members of the crew as provided for in this article.

The Canadian Association suggests that consideration be given to an amendment to the last line of Article 8 (3) by inserting the words « or management » so that the last line would read

« if his fault were only a fault of navigation or management of the ship. »

15. This report and the position of the Canadian Association is based on the maintenance of the present system of tonnage measurement in Canada for the purposes of limitation of liability.

Montreal, May 31st, 1955.

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

REPORT OF THE AMERICAN SUB-COMMITTEE

(Extracts)

10. In view of our opinion against support of the Draft Convention, your Committee does not in this Report comment on all features of the same, but limits itself to major items. This is not in any sense to discount the concept of uniformity as between the maritime nations in respect of shipowners' limited liability, provided it should become practical to achieve the same. Your Committee believes that this Draft Convention does not so qualify.

12. Your Committee is not aware of any special dissatisfaction with our Limited Liability Law as it now stands. Neither would your Committee deem it prudent that proposals be made to Congress on this subject unless reasonably necessary. This does not suggest that our U. S. law is in all respects perfect; or that it may not later become desirable to seek improvements directed to correction of certain burdensome features.

15. Although the Draft Convention does not specify a proposed limitation figure, the suggestion of the British Association is understood to be £50 per ton of the ship to be applied to loss of life and personal injury; and £24 to be applied to damage to property, etc. The total for U. S. ships in our present U. S. currency would thus be about $205 per (deadweight) ton, of which about $140 per ton would apply to loss of life and personal injury. This is in contrast with the present $60 (at least) per ton to apply to loss of life and personal injury, presently

provided in our U. S. Code, but not as the top limit, unless the ship after the casualty shall not be of greater value.

Our Limitation Law makes no specification concerning coverage for property damage. The limitations in the Canadian Law are presently about $72 in respect of loss of life, etc. (in contrast with our $60 low limit), and about $38 in respect of property.

16. This suggested increase in limit appears to your Committee to be unrealistic — so much so as to indicate undue enlargement of liability rather than limitation : in that the proposed new figure is far in excess of the sound value (present and likely) of by far the greater volume of all commercial long-ranging craft — *not including* passenger liners and other very large ships.

17. The current market for such tonnage, both in this country and abroad, although not very active, appears from current ship sales reports to range anywhere between about $50 upwards to around $100 (occasionally better) per deadweight ton, according to the type, character and quality of the ship in classification standards. Foreignflag ships bring rather more than those under the American flag, because of their lower crew and other operating costs.

18. That is to say (contemplating 15-17) the $205 (above) total limitation figure suggested for application under the proposed Convention is probably at least double in many instances the sound value of most of the commercial ships of those maritime nations to which the Convention is tendered. Even as concerns passenger liners and other large vessels the fund proposed as necessary to be established (say for any vessel of from 25.000 to 75.000 tons) appears to your Committee to be unreasonably excessive.

Whether adoption of such a limitation measure might not promptly lead to increase of single-ship strategy for protection, and resulting automatic limitation of liability in many cases, may be an open question, but should not be overlooked.

The objections can hardly be displaced by saying that insurance (more than normal in respect of customary business operations) could readily be secured by the shipowner. The cost of so doing, in the opinion of your Committee, might well be considerable. As a commercial matter it ought not to be necessary or expected. This obser-

vation does not imply any disrespect of our highly efficient and co-operative underwriting industry.

19. The Warsaw Convention relating to aircraft liability does not appear to your Committee to present any appropriate or true analogy for adoption or adaptation in respect of water-borne commerce. The liability limits under that Convention are rather modest, with passenger patrons commonly availing themselves of separate insurance protection at modest cost. Comparable practice apparently has not been developed in relation to transport by sea.

20. No sound reason is seen by your Committee for figuratively raising the tonnage of small commercial vessels up to 500 tons for purposes of application of the Draft Convention. The Committee is of the opinion that all vessels not exceeding 1.000 tons, and all other small craft operating in or between nearby harbors, also all fishing vessels and pleasure craft, should not be taken into coverage by an International Convention. Preferably they should be left to be dealt with under respective applicable local laws as concerns limitation of liability.

21. Your Committee believes the coverage proposed in Article 1 of the Convention, (a), (b) and (d), to be unduly broad. It is unlikely that our shipping public or Congress would accept limited liability of shipowners in respect of goods only (a) « delivered to the master or any servant or agent of the owner for transportation by the ship » but not yet loaded on board — in addition to the liability restrictions provided by customary bills-of-lading, dock receipts or other preliminary shipping documents.

22. Comment to like effect is made as concerns (b), namely « loss of life or personal injury caused to any person, whether on land or water, by any act, neglect or default of, etc. * * * or any other person for whose act, neglect or default the owner is responsible, whether on board the ship or not », etc. The broad supplementary provision under (d) to include loss or damage of any kind « whether on land or water » * * * (not covered by the other provisions of Article 1) « for which the owner is liable by reason only of his ownership, possession, custody or control of the ship » would also appear not acceptable, being indefinite in the sense of risking undue spread of application.

23. Your Committee doubts the advisability of extending the provisions of the Convention to masters and crewmembers and to « any servants and agents » of the shipowner, as proposed by Article 8 (2) (a) and (c). Objection might be put on the ground that the firmness and constancy of the sense of responsibility imposed on the calling of those respective persons might thereby somehow (unlikely ?) become softened.

24. Your Committee notes that Subdiv. (3) of Article 8 purports to limit « actual fault or privity » of « master or member of the crew » (possibly having also some proprietary interest) to situations other than where « his fault were only a fault of navigation of the ship ». Our comparable item is « faults or errors in navigation or in the management of said vessel, » according to our Harter Act of February 13, 1893, Sec. 3. This would appear not to have been substantially modified by our Carriage of Goods by Sea Act of April 16, 1936. The exemption from liability there applied (in case due diligence for seaworthiness, etc. has been exercised) is in favour of the owner, agent or charterer, without mention of the master, crew members or others. Sec. 187 of our Limited Liability Act (p. 3854) reserves full responsibility of the master or seaman, notwithstanding that he « may be an owner or part owner of the vessel ».

25. Limited liability might well be extended to time charterers, as now applied under Sec. 186 of our Limited Liability Act (p. 3853) to demise charterers as well as owners, as proposed in Article 8 (2) (b) of the Convention. The ship venture is often in major substance that of the time charterer only. Since he may protect himself by assuming the « victual and man » status of the demise charterer, no valid objection is seen to direct protection. The further extension broadly proposed in (b) of Article 8 (2) is not believed by your Committee to be desirable as concerns the other persons, « managers and operators of ships and their servants and agents ».

27. Your Committee fails to see any need for a single Forum, as seems to be suggested in some of the comments perhaps to be desirable. That would imply exclusive forum selection at perhaps The Hague or Geneva, for instance, probably with some special judical and administrative Organization. Such an arrangement would scarcely be

convenient or practical. Most ship casualties which give rise to limitation proceedings have a locale which makes recourse of the owner to his national courts (occasionally others) not inconvenient or prejudicial to those persons and interests having claims to assert. No reason is seen by your Committe why that *concursus* of all claimants which is the sure and equitable basis of all genuine limitation proceedings, should not be had in whatever country the owner may now lawfully initiate his proceeding. Under present day quick communication and transport conditions there should be no difficulty about appropriate notice being received by all genuine claimants everywhere, or about their due representation. Such final decree as might be reached by the adjudicating court ought to be regarded throughout the world as *res judicata* — which indeed is probably substantially so at the present time.

28. Your Committee adds that its study of the subject matter, with conclusions thereon above expressed, leads it to comment in passing, but in no sense as a proposal, that our U. S. Limited Liability Law, perhaps with certain appropriate amendments not now necessary to suggest, might well ultimately become a fit pattern for international agreement on this important subject, both as concerns its substantive provisions and the general facility and effectiveness of adjudicating procedures thereunder.

JAPANESE MARITIME LAW ASSOCIATION

COMMENTS.

The Japanese Maritime Law Association agrees, as a general principle, with the system proposed by the draft Convention relating to the limitation of shipowners' liability. It has been confirmed, however, that, in order to give effect to this system in Japan, there must be a substantial improvement of the existing state of things, for instance, it would be necessary to develop the present system of liability insurance.

The Japanese Maritime Law Association considers, after a minute examination of the draft Convention, that it should be modified in the following respects :

1. Wherever a term « ship » appears in this Convention, a term « seagoing ship » should be substituted therefore.

2. **Article 1.**

(i) It would be necessary to revise the expression « actual fault or privity » as used in Articles 1 and 8, because this expression has no equivalent in the languages of many countries including Japan and is therefore inappropriate to be used in a international Convention.

We would suggest, for your consideration, the following expression :

« Wilful act or fault implying the prevision of the damage and the reckless acceptation of it ».

(ii) The meaning of, and the relationship between paragraph (a) and (b) of Article 1 are not sufficiently clear. These paragraphs should, therefore, be amended as follows :

(a) Loss of or damage or injury to a third party on land or water caused by a wilful act or negligence of the master, any member of

the crew, the pilot, the shipowner's servant or any other person or persons for whose wilful act or negligence the shipowner shall be responsible (Tort liability).

(b) Loss of or damage or injury to goods delivered to the master or any servant or agent of the shipowner for transportation, or to passengers or their baggages not delivered to the master but on board the ship, caused in the course of that transportation (contractual liability).

It goes without saying that the liability of shipowners arising out of a contract effected by the master within his statutory authority for the need of navigation shall not be limited by this Convention.

(iii) The phrase « loss of life or personal injury caused to any person » appearing in this Article should be understood to exclude loss of life or personal injury caused to any member of the crew. An express provision to this effect should be inserted in the Convention.

3. **Article 2.**

(a) A provision similar to paragraph 2, Article 9, of the Uniform Bill of Lading Convention should be incorporated in this Article, because, in giving effect to this Convention as a national law, it would be necessary to clearly indicate the limit of liability in the national currency converting the amounts laid down in the Convention into round figures in accordance with the currency system of that State.

(b) It should be expressly provided that the rate of exchange to be used for the conversion of the Convention limits into national currencies is that, prevailing at the place where the action has been brought.

(c) The minimum basic tonnage for the purpose of this Convention provided for in paragraph 2 of Article 2, should be set at 300 tons.

4. **Articles 3 and 4.**

(a) Independent and separate limitation funds should be established in respect of personal injury claims and property damage claims respectively, while suitably amending the limit of liability per ton for personal injury claims and that for property damage claims. It would be unreasonable to have different limits of liability for personal

injury depending on whether or not it was accompanied by any property damage claim. Also, it will not be fair that indemnity for property damage should be greatly diminished in the event of personal injury claims attaining an enormous figure.

5. **Article 5.**

a) It should be made clear that the State where the limitation fund is to be formed in accordance with Article 5 is the State « where the action for damage has been brought and the shipowner has asserted the limitation of his liability ». It should also be provided that the shipowner may deposit with that Court the whole amount of the limitation fund.

6. **Article 6.**

(a) The circumstances in which a ship may be arrested, as referred to in paragraph 2 of Article 6, should be especifically set forth in this Article, since the International Convention Relating to the Arrest of Seagoing Ships signed at Brussels on 10th May, 1952, has not yet come into force and therefore cannot properly be made a part of this Convention by reference.

7. **Article 7.**

(a) It should be provided, if this Article is to be maintained at all, that the order of the Court not to levy the execution of judgment or order on any property of the owner other than the ship, freight and accessories shall be issued only when the court considers the value of the ship, freight and accessories to be adequate to cover the limit of the shipowner's liability provided for in the Convention, since in modern theories of law no reasonable ground can be found for confining the execution of judgment or order to certain specified maritime properties (fortune de mer) even if such confining be only temporal.

FRENCH MARITIME LAW ASSOCIATION

REPORT ON THE TONNAGE UPON WHICH THE LIMITATION OF SHIPOWNERS' LIABILITY HAS TO BE CALCULATED

The International Draft Convention, that will be submitted to the Madrid Conference next September, stipulates (Art. 2) that the shipowner's liability in the cases specified in Art. 1 will not exceed .... francs for each ton of the ships tonnage.

This tonnage should be defined. The *tonnage-volume* is expressed in unities of 2,83 m3 (100 english cubic feet) called « tonneau de jauge ».

There are three categories of tonnage-volume.

a) **Total gross tonnage.**

This is not used in practice.

It is the volume of the ship limited by the exterior platings (hull and superstructures).

b) **Gross tonnage.**

Most regulations and maritime statistics are based upon these figures. This tonnage is mentioned in the classification registers.

This tonnage corresponds to the total gross tonnage less the double bottoms, the water ballast tanks and deep tanks, as well as certain parts of the upper deck (spaces for accessory engines, principal engines, kitchen for crew and passengers, skylights, domes).

c) **Net tonnage.**

Several taxes are based upon these figures. They are mentioned in the classification registers.

The net tonnage corresponds to the gross tonnage less the space occupied by the main engines, situated under the main deck, the spaces reserved to the headquarters and to the crew, the navigation rooms, the spaces reserved to the auxiliary engines and the peaks.

The regulations on tonnage and their interpretation vary from one country to another. As a consequence, the same ship has a different tonnage according to the nation or the administration (Suez - Panama) that made the calculation.

In these conditions, the question is to know which system should be adopted by the Convention ?

There is a precedent : the Brussels Convention of 25th August 1924.

Article 11 of that Convention reads as follows :

For the purpose of the provisions of the present Convention « tonnage » is calculated as follows :

In the case of steamships and other mechanically propelled vessels, net tonnage, with the addition of the amount deducted from the gross tonnage on account of engine-room space for the purpose of ascertaining net tonnage.

In the case of sailing vessels, net tonnage. »

The arguments against or in favour of that definition can be summarized as follows :

Against the adoption.

a) *General critics.*

As a consequence of the diversity of the regulations of the tonnage and of the application by the different nations, the New Convention will not bring equal treatment for all shipowners belonging to the Contracting States.

For instance, the victims of an American ship (as the American tonnage is generally only 66 % of the British and the French tonnage) will obtain less than the victims of a similar vessel flying the British or the French flag.

As a consequence, the calculation of tonnage for the purpose of limitation of liability should be the same in all countries.

This puts the question of the system of tonnage.

Several draft reformations that formerly intended to simplify and to uniform the methods of calculation of tonnage, have never been successful because of certain particularisms and especially of certain « situations acquises », many of which are based on a « legal fraud ».

As a consequence, it would be useless (and anyway very arbitrary) to try to change technical regulations that satisfy the interested parties, failing a better solution, in a Convention intended to define an international judicial system on liability.

b) *Special critics.*

The system of the Brussels Convention is complicated.

It creates an average between the gross tonnage and the net tonnage. In underwriters' circles, it is called the tonnage of the Brussels Convention.

Its disadvantage it that it is published nowhere and that it is impossible for third parties to calculate it by the elements (gross tonnage and net tonnage) supplied by the classification registers and yearbooks.

It would certainly be more easy to adopt a simple conception known by everybody. This would be : either gross tonnage or net tonnage.

The net tonnage is however not acceptable because it expresses the commercial cargo capacity (gross tonnage less crew accomodation, storeroom, engines, bunkers).

Big and fast passenger's ships (Queen - United States) and certain very powerful vessels in relation to their size (Cross-Channel passengers' vessels) have a low net tonnage because of the importance of their engines and crew accomodations.

As a consequence, the limits of the liability of their owners, should be considered lower than those of the classical cargo, the construction of which aims at increasing as far as possible the cargo capacity by reducing the space reserved to engines and bunkers.

As a consequence, the big ships that can cause big maritime catastrophes, should have a lower liability.

The result is that the criterion of the net tonnage cannot be accepted.

The criterion of the gross tonnage would also give rise to some minor inconsistances.

Between two freighters with similar characteristics (size and deadweight) the one with shelter deck will have a lower gross tonnage than the one that has no shelter deck.

Between two hulls with the same characteristics and the same engine, the one, organized as a mixed passengers' vessel (with superstructure) will have a gross tonnage higher that the one equipped as an ordinary cargo transporter.

As a consequence, the limit of liability will be different for shipowners of whom the financial situation is similar.

As a consequence, no system is satisfactory.

A better reference could be the displacement of the ship (i.e. light equipped weight) and the power of the engines.

Indeed, we can admit the principle according to which there is a direct relation between the size and the speed of the vessel on the one hand and on the other hand, the sea occurences (collision, shipwreck) this vessel might cause and the financial standing of the owner. In that way, the limits of liability will increase in proportion with those two conceptions.

It is a pity however, that displacement and power of ship are not official characteristics. They are not controlled by the Classification Organizations. These details are given by the shipbuilder, when the ship is delivered to the owner. They can vary owing to later transformations. In the case of an old ship, that has been sold several times, it might be impossible to find out these characteristics.

As a consequence, it is apparently not possible — on a practical point of view — to adopt the basis of weight-power.

In favour of the adoption.

As a consequence, we come back to the present system in spite of its disadvantages and in spite of the arbitrary difference between ships, which is admitted.

Theses inconveniences are however limited.

The method of calculation is not complicate. It is a mere addition of two figures.

If these figures are not mentioned in the classification registers they are mentioned on the official certificates of tonnage.

The official character of these documents warrants the accuracy of the « Convention tonnage ».

So, this inconvenience results to a lack of publicity of that tonnage.

As far as the difference between ships of similar characteristics is concerned, it has been attenuated as much as possible by combining the gross and net tonnages.

By incorporating in the net tonnage the spaces of the engine, the 1924 Convention has avoided to favour fast and powerful ships, in comparison with standard ships. Certain anomalies are maintained (cfr. comments on gross tonnage) but the most shocking ones are avoided and an average solution has been realized in matters where a perfect solution is not possible.

Finally, the Brussels Convention tonnage has the great advantage of being applied and of being known and having worked without creating, as far as we know, important difficulties.

Better than to adopt a new system on this point — as the new Convention contains innovations of even more importance on which the acceptance of the nations should be obtained — the present definition should be maintained, for practical reasons.

July 1955

J. Potier.

DRAFT CONVENTION

July 1955

The High Contracting Parties,

Having recognised the diserability of determining by agreement certain uniform rules of law relating to the limitation of the liability of owners of sea-going ships, have decided to conclude a convention for this purpose, and thereto have agreed as follows :

Article 1.

The owners of a sea-going ship shall not be liable beyond the amount specified in Article 3 of this Convention in respect of any of the following claims where the occurrence giving rise to the claim has taken place without his actual fault or privity. The said claims are claims made by any person whatsoever in respect of

(a) loss of or damage to any property on board the ship or received by the master or any

Les Hautes Parties Contractantes,

Ayant reconnu l'utilité de fixer d'un commun accord certaines règles uniformes de droit concernant la responsabilité des propriétaires de navires de mer.

Ont décidé de conclure une Convention à cet effet, et en conséquence ont convenu ce qui suit :

Article 1er.

Le propriétaire d'un navire de mer n'est responsable que jusqu'à concurrence du montant déterminé dans l'article 3 de la présente Convention pour les créances suivantes, lorsque le fait donnant naissance à la créance n'aura pas été causé par la faute personnelle du propriétaire ou commis avec son consentement.

Ces créances de toutes personnes quelconques sont celles qui ont leur source dans l'une des causes suivantes :

a) perte ou dommage de tous biens à bord du navire ou de ceux pris en charge par le capitaine ou par

member of the crew for transportation by the ship, or by any other servant or agent of the owner at any quay, wharf or other like place, or on any raft, craft, lighter or like receptacle, for such transportation.

tout membre de l'équipage, ou par toute personne ou agent au service du propriétaire pour être transportés par le navire, à n'importe quel quai, appontement ou endroit du même genre, ou sur n'importe quels radeaux, embarcations, allèges ou autres réceptacles analogues, aux fins dudit transport.

(b) loss of or damage to any property or rights of any kind, or loss of life or personal injury caused to any person, whether on land or water, by any act, neglect, or default of the master or the pilot or any member of the crew or any servant or agent of the owner or any other person for whose act, neglect or default the owner is responsible, whether on board the ship or not, performing any duty or doing any act on or in connection with the navigation or management of the ship, or with persons, cargo or other property on board the ship, or in process of boarding or being put on board the ship or at any quay, wharf or other like place, or any raft, craft, lighter or like receptacle, for carriage by the ship or after disembarkation or discharge therefrom.

b) pertes ou dommages de tous biens ou tous droits de toutes sortes, ou pertes de vie ou dommages corporels causés à toute personne quelconque, soit à terre ou sur l'eau, par tout acte de négligence ou toute faute de la part du capitaine ou du pilote ou de tout membre de l'équipage ou de tout préposé et agent au service du propriétaire ou de toute autre personne dont le propriétaire ait la responsabilité des fautes ou actes de négligence, soit ou non à bord du navire, et dans l'accomplissement de tout devoir de sa fonction, ou de tout acte se rapportant à la navigation ou à l'administration du navire, ou aux personnes, à la cargaison ou aux autres biens à bord du navire, ou en cours d'embarquement ou de chargement à bord du navire, à n'importe quel quai, appontement ou endroit semblable, ou sur n'importe quels radeaux, embarcations, allèges ou autres récepta-

cles analogues, aux fins de transport par le navire ou après débarquement ou déchargement dudit navire.

(c) any obligation or liability, imposed by any law relating to the removal of wreck, arising from or in connection with the raising, removal or destruction of any ship (including anything on board the ship) which is sunk, stranded or abandoned, which said obligation or liability is hereinafter referred to as « wreck liability ».

c) toute obligation ou responsabilité légale provenant de l'enlèvement des épaves, née ou occasionnée par le renflouement, l'enlèvement ou la destruction de tout navire (y compris tout ce qui est à bord du navire (coulé échoué ou abandonné. Ces obligation et responsabilité seront dans la suite de ce texte dites par abréviation : « responsabilité pour épaves ».

(d) loss of or damage to any property or rights of any kind, or loss of life or personal injury caused to any person, whether on land or water (not being any loss, damage or injury to which the preceding provisions of this Article apply), for which the owner is liable by reason only of his ownership, possession, custody or control of the ship.

d) perte et dommages de biens, droits de toute nature ou pertes de vies ou dommages corporels à toutes personnes, soit à terre, soit sur l'eau, qui ne seraient pas visés par les paragraphes précédents, pour lesquels le propriétaire est responsable à raison seulement du fait de la propriété, de la possession, de la garde ou du contrôle du navire.

Provided that nothing in this Article shall be taken to apply to :

(i) Claims for salvage or for general average contributions :

(ii) Claims against the owner of a ship made by any master,

Le présent article ne s'applique pas :

(i) aux créances du chef d'assistance, de sauvetage ou de contribution en avarie commune;

(ii) aux créances du capitaine, des membres de l'équipage ou de

member of the crew or other servant in the employment of the owner under any form of compensation or insurance which is compulsory under the law governing such employment.

(iii) Claims against the owner of a ship in excess of those defined in sub-paragraph (ii) made by any master, member of the crew or other servant in the employment of the owner, if under the law governing such employment such claims are in any event recoverable in full against the owner.

tout autre préposé du propriétaire de navire à charge de ce dernier au titre d'indemnité ou d'assurance obligatoire prévue par la loi régissant le contrat d'engagement;

(iii) aux créances du capitaine, des membres de l'équipage ou de tout autre préposé du propriétaire de navire à charge de ce dernier, issues du contrat d'engagement mais excédant celles visées par l'alinéa (ii), lorsque la loi régissant le contrat d'engagement en autorise, quel que soit le cas, la pleine exécution à charge du propriétaire employeur.

Article 2.

(1) The limits of liability prescribed by Article 3 of this Convention shall apply to the aggregate of all claims in respect of loss of life, personal injury, loss of or damage to property or rights and wreck liability, which arise on any distinct occasion without regard to any claims in respect of such loss, injury, damage or wreck liability which may have arisen or may arise on any other distinct occasion.

Article 2.

(1) Les limitations de responsabilité prescrites par l'article 3 de cette Convention s'appliqueront à l'ensemble de toutes les créances pour perte de vies, dommages corporels, perte ou dommage de tous biens, atteinte à tous droits, responsabilité pour épave, nées d'un même événement, sans avoir égard aux créances pour de tels pertes, dommages corporels, dommages matériels, responsabilité pour épave, nées ou à naître d'un autre événement.

(2) Where the owner of a ship limits his liability in accordance

(2) Lorsque le propriétaire d'un navire limite sa responsabilité par

with the provisions of this Convention for claims in respect of such loss, injury, damage or wreck liability arising on a distinct occasion, the aggregate amount of his limited liability for those claims shall constitute one limitation fund.

application des dispositions de cette Convention, aux créances du chef des susdits pertes, dommages corporels ou matériels, responsabilités pour épave, provenant d'un événement distinct, le montant global de cette responsabilité limitée du chef de ces diverses causes, constituera un fonds dit « fonds de limitation ».

Article 3.

(1) The amounts beyond which the owner of a ship, in the cases specified in Article 1 of this Convention, shall not be liable are :

(a) for claims in respect of loss of or damage to property or rights or wreck liability (such claims being referred to in this and the next following Article as « property claims »), an aggregate amount not exceeding.... francs (1) for each ton of the ships tonnage;

(b) for claims in respect of loss of life or personal injury caused to any person (such claims being referred to in this and the next following Article as « personal claims ») an aggregate amount not exceeding.....

Article 3.

(1) Les montants au-delà desquels le propriétaire du navire ne sera pas responsable dans les cas spécifiés dans l'article 1[er] de cette Convention sont :

a) ceux des créances du chef de pertes ou dommages de biens ou de responsabilité pour épave (celles-ci étant dénommées : « dommages matériels » dans le présent article et l'article suivant) d'un montant global ne dépassant pas .... francs (1) par chaque tonneau de jauge du navire.

b) ceux des créances du chef de pertes de vie ou de dommages corporels subis par toute personne quelconque (celles-ci étant dénommées : « dommages corporels » dans le présent article et le suivant), d'un montant global ne dépassant pas .... francs

(1) £ 24

francs (2) for each ton of the ship's tonnage.

Provided that, where the established personal claims in aggregate exceed .... francs (2) for each ton of the ship's tonnage then

(i) if there are also persons having property claims, there shall be ascertained the sum of the established property claims and the sum of the unsatisfied balances of the established personal claims, and that part of the limitation fund which represents the limit of the owner's liability for property claims shall, without prejudice to the provisions of Article 4 of this Convention, be divided between the persons having established property claims and the persons having unsatisfied balances of established personal claims in the ratio of the sum of the established property claims to the sum of the unsatisfied balances of the established personal claims; and

(ii) if there are no persons having property claims, the limit of liability prescribed for personal claims shall be increased

(2) £ 50

(2) par chaque tonneau de jauge du navire.

Pourvu que, lorsque le total reconnu des dommages corporels dépasse .... francs (2) par chaque tonneau de jauge du navire, il soit dans ce cas entendu que :

(i) s'il y a aussi des personnes ayant des dommages matériels, le montant reconnu des dommages corporels soit bien établi ainsi que celui des soldes restant dus sur ces dommages corporels, et que la partie du fonds de limitation qui représente la limite de la responsabilité du propriétaire quant aux dommages matériels, soit, sans préjudice des dispositions de l'article 4 de la présente Convention, divisé entre les personnes ayant des dommages matériels reconnus et les personnes ayant des soldes impayés sur leurs dommages corporels, et ce, dans la proportion du montant des dommages matériels reconnus par rapport au montant des soldes impayés des dommages corporels reconnus; et que

(ii) s'il n'y a personne qui ait des dommages matériels, la limite de la responsabilité prescrite pour les dommages corporels soit augmentée d'un nouveau

by a further .... francs (1) for each ton of the ship's tonnage.

(2) For the purpose of ascertaining the limit of an owner's liability in accordance with the preceding provisions of this Article the tonnage of a ship of less than 500 tons shall be deemed to be of 500 tons.

(3) The amounts mentioned in this article shall be deemed to refer to French francs, each such franc consisting of 65½ milligrams gold of millesimal fineness 900. Where the owner of a ship limits his liability in accordance with the provisions of this Convention, then for the purposes of any proceedings in any state with respect to that liability those amounts may be converted into the national currency of that state at the rate of exchange prevailing at the date when the owner's claim so to limit his liability is allowed by the competent court, or if before that date the owner has made payment into court in respect of that liability or has established a limitation fund or has provided bail or other security in accordance with Article 5 of this Convention, at the date of such payment, establishment or provision, as the case may be.

(1) £ 24

montant de .... francs (1) par chaque tonneau de jauge du navire.

(2) Pour déterminer la limite de la responsabilité d'un propriétaire, conformément aux dispositions précédentes de cet article, tout navire de moins de 500 tonneaux de jauge sera considéré comme étant un navire de 500 tonneaux.

(3) Les montants mentionnés dans cet article sont considérés comme se rapportant au franc français, chaque franc consistant en 65 1/2 milligrammes d'or au titre de 900 millièmes de fin.

Lorsqu'un propriétaire usera du droit de limiter sa responsabilité par application des dispositions de la présente Convention, ces sommes, pour les besoins de toutes procédures, pourront être converties dans la monnaie nationale de l'Etat dont relève le tribunal saisi, au cours du change en vigueur à la date où le tribunal compétent aura reconnu au propriétaire le droit de limiter sa responsabilité, ou si, avant cette date, le propriétaire a effectué un paiement au tribunal en raison de cette responsabilité, ou a constitué un fonds de limitation ou fourni une caution ou toute autre forme de garantie par application de l'article 5 de la présente Convention, à la date dudit paiement ou à

celle de la constitution du fonds, ou encore à celle de la fourniture de la caution ou de toute autre garantie, selon le cas.

Article 4.

Where the owner of a ship limits his liability in accordance with the provisions of this Convention, the order in which the persons having personal claims shall rank among themselves against the limitation fund and the order in which the persons having property claims shal rank among themselves against the limitation fund shall be determined in accordance with the domestic laws of the state in which the fund is constituted.

Note : The question of the localities in which the limitation fund may be established has been reserved for further discussion.

Article 5.

(1) Where in respect of any claim for which the owner of a ship may limit his liability under this Convention the ship is arrested and bail or other security is given for an amount equal to the full limit of the owner's liability in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon the

Article 4.

Lorsque le propriétaire d'un navire limite sa responsabilité par application des dispositions de la présente Convention, l'ordre dans lequel doivent être effectués les règlements parmi les personnes ayant des créances personnelles vis-à-vis du fonds de limitation, ainsi que l'ordre des règlements parmi les personnes ayant recours contre le fonds de limitation du fait de leurs créances de biens, devront être déterminés par les lois intérieures de l'Etat où le fonds aura été constitué.

Note : La limitation du nombre de lieux où le fonds pourra être constitué sera réservée pour être examinée et discutée ultérieurement.

Article 5.

(1) Dans tous les cas où un propriétaire est autorisé à limiter sa responsabilité, aux termes de cette Convention, et lorsque le navire aura été saisi et qu'une caution ou autre garantie aura été fournie pour un montant égal à la pleine limite de responsabilité du propriétaire pour perte de vies, dommages corporels, pertes ou dommages maté-

owner limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund, the bail or other security so given shall, subject to the provisions of Article 4 of this Convention, be available for the benefit of all persons making such claims.

(2) Where in respect of any such claim a ship is arrested within the jurisdiction of any of the contracting states in circumstances in which the arrest is permitted under or not contrary to the International Convention Relating to the Arrest of Seagoing Ships signed at Brussels on 10th May 1952, the court or other appropriate judical authority of that state may order the release of the ship.

(a) if satisfied that

(i) the owner has already given satisfactory bail or other security for an amount equal to the full limit of his liability in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon his limiting his liability in accordance with the provisions of this Convention, would constiriels, responsabilité pour épave et toutes autres demandes qui, en accord avec les termes de cette Convention, entraîneraient la constitution d'un fonds de limitation, la garantie ou autre sécurité fournie sous réserve des dispositions de l'article 5, paragraphe (1), de cette Convention profitera à tous les créanciers.

(2) Lorsqu'un navire aura été saisi dans le ressort d'un Etat contractant, pour sûreté de l'une de ces créances, dans les cas où la saisie est autorisée par ou non contraire aux dispositions de la Convention Internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, le tribunal ou toute autre autorité judiciaire compétente de cet Etat peut ordonner la mainlevée de la saisie du navire, à condition qu'il soit justifié :

(a) (i) que le propriétaire a déjà fourni une caution satisfaisante ou toute autre garantie pour un montant égal à la pleine limite de sa responsabilité pour perte de vies, dommages corporels, dommages ou responsabilité pour épave, selon la cause de sa responsabilité, et pour toutes autres demandes qui entraîneraient la constitution d'un fonds de limitation

tute one limitation fund, and

(ii) the bail or other security is available for the benefit of the claimant in accordance with his rights; or

(b) is satisfied that

(i) the owner has already given satisfactory bail or other security for an amount which is less than the full limit of his liability in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon his limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund, and

(ii) the bail or other security is available for the benefit of the claimant in accordance with his rights,

Provided that the owner shall give such further bail or other security as would when added

si le propriétaire entendait se prévaloir des limites de responsabilité prévues par la présente Convention; et

(ii) à condition que la caution ou autre garantie soit disponible au profit du demandeur, conformément à ses droits; ou

(b) à condition qu'il soit justifié que :

(i) le propriétaire a déjà donné caution satisfaisante ou autre garantie pour un montant inférieur à la pleine limite de sa responsabilité pour perte de vies, dommages corporels, pertes et dommages, et responsabilité pour épave, selon la cause de sa responsabilité, et pour toutes autres demandes qui entraîneraient la constitution d'un fonds de limitation si le propriétaire entendait se prévaloir des limites de responsabilité prévues par la présente Convention; et

(ii) à condition que la caution ou autre sécurité soit disponible au profit du demandeur, conformément à ses droits.

Pourvu que le propriétaire fournisse une seconde caution ou autre garantie qui, ajoutée à la première

to the bail or other security already given equal the amount of the full limit of his said liability.

(3) In every case in which a ship has been arrested in respect of any such claim and in such circumstances as are referred to in paragraph (2) of this Article, the court or other appropriate judicial authority of the contracting state within whose jurisdiction the ship is arrested shall, in the exercise of its jurisdiction in accordance with the provisions of the said paragraph, take all steps within its power to ensure that in all the contracting states taken as a whole, the aggregate bail or other security required does not exceed the amount of the full limit of the owner's liability in respect of that claim and all other claims which, upon his limiting in accordance with the provision of this Convention, would constitute one limitation fund.

(4) All questions of procedure relating to proceedings in pursuance of this Article and questions relating to the limitation of time within which such proceedings may be brought shall be determined by the domestic laws of the contracting state in which the proceedings are brought.

déjà fournie, couvrirait intégralement le montant total de sa responsabilité limitée.

(3) Dans tous les cas où un navire aura été saisi pour une des causes et dans les conditions prévues au paragraphe (2) du présent article, le tribunal ou tout autre autorité judiciaire compétente de l'Etat contractant dans le ressort duquel le navire est saisi prendra, dans l'exercice de son pouvoir juridictionnel, conformément aux dispositions dudit paragraphe, toutes mesures dans la limite de ses pouvoirs pour s'assurer que, dans tous les Etats contractants pris en bloc, la caution globale ou autre sécurité requise ne dépasse pas le montant de la pleine limitation de responsabilité du propriétaire pour ladite demande d'indemnité et pour toutes autres demandes d'indemnité qui entraîneraient la constitution d'un fonds de limitation, si le propriétaire décidait de se prévaloir des dispositions de la présente Convention.

(4) Toutes questions de procédure relative aux actions engagées par application des dispositions du présent article et toutes questions relatives aux délais dans lesquels ces actions doivent être exercées seront réglées par la loi interne de l'Etat contractant dans lequel le procès aura lieu.

Article 6.

(1) In this Convention, any reference to the liability of the owner of a ship, however worded, shall be taken to include a reference to any liability of the ship.

(2) Subject to the provisions of paragraph (3) of this Article, the preceding provisions of this Convention shall apply to any of the following persons, namely :

(a) masters and members of the crews of ships,

(b) charterers, managers and operators of ships and their agents, and

(c) any agents of the owners of ships,

as they apply to the owners of ships, provided that the aggregate amount of the limited liability of the owner and all such persons in respect of any loss, injury, damage or wreck liability arising on the same occasion shall not together exceed the amounts specified in Article 3 of this Convention and shall constitute one limitation fund.

(3) Where an occurrence giving rise to any of the claims mentioned

Article 6.

(1) Dans la présente Convention, toute référence à la responsabilité du propriétaire du navire, quels que soient les termes employés, comporte référence à toute responsabilité du navire.

(2) Sous réserve des dispositions du paragraphe (3) du présent article, les dispositions précédentes de la présente Convention s'appliquent à toutes les personnes suivantes, et nommément aux :

(a) capitaine et membres de l'équipage du navire;

(b) affréteurs, tous gérants de navires et leurs agents, et

(c) tous agents des propriétaires de navires,

tout comme elles s'appliquent aux propriétaires eux-mêmes, étant stipulé que le montant global de la responsabilité limitée du propriétaire et de toutes ces autres personnes pour perte de vies, dommages corporels, pertes et dommages et responsabilité pour épave, encourus pour le même événement, ne pourra excéder les montants fixés par l'article 3 de la présente Convention et constituera un fonds de limitation.

(3) Lorsque le fait donnant naissance à l'une des créances visées à

in Article 1 of this Convention is due to the fault of the master or any member of the crew (whether or not he be at the same time solely or partly owner, charterer, manager or operator of the ship) the occurrence shall not be deemed to have taken place with his actual fault or privity, whether as master or member of the crew, as the case may be, or, if he be at the same time solely or partly owner, charterer, manager or operator of the ship, as sole or part owner, charterer, manager or operator, as the case may be, if his fault were only a fault of navigation or management of the ship.

l'article 1er de cette Convention a pour cause la faute du capitaine ou d'un membre de l'équipage qu'il soit ou non à ce moment le seul propriétaire, ou un copropriétaire du navire affréteur ou gérant du navire, ce fait ne sera pas considéré avoir été causé par sa faute ou commis avec son consentement, soit en sa qualité de capitaine ou membre de l'équipage, selon le cas, soit en sa qualité de seul propriétaire ou copropriétaire ou affréteur ou agent du navire, s'il l'était au moment de l'événement générateur de responsabilité, lorsqu'il s'agira d'une faute de navigation ou d'administration du navire.

MARGINAL CLAUSES

AND

LETTERS OF INDEMNITY

THE BRITISH MARITIME LAW ASSOCIATION

INTRODUCTORY REPORT

I. — Preface.

This is a Report made by the British Maritime Law Association to the Comité Maritime International upon a problem which has long caused difficulty in practice between Shippers of goods for transport overseas to their Buyers, and the Banks through whom the finance of the sale is negotiated on the one hand, and the Shipowners in whose vessels the goods are carried on the other hand. Since the War the problem has become more acute owing mainly to the great increase in the value of commodities in general, but partly also to the world shortage of adequate containers and other forms of packing materials for goods which are perishable or otherwise liable to sustain damage unless adequately protected during carriage by sea. The problem has in recent years been the subject of investigation and discussion in Great Britain between organisations representing the Merchants and Manufacturers who are particularly concerned in the export trade and those representing British Shipowners. Arising out of this investigation, action has, as hereinafter explained, been taken by British Shipowners which in the view of the Association has considerably advanced a fair and practical solution domestically, and one which it is confidently expected will be justified by longer experience. But it is to be emphasized that the problem is not one peculiar to the United Kingdom and arises more or less frequently in most ports of the World from which goods are commonly exported, particularly in those from which perishable foodstuffs are dispatched to consumer Countries; in any event this is the experience of the British Protecting & Indemnity

Associations in which a substantial foreign tonnage is entered. It is felt that Continental Shipowners, even though they may not encounter the same difficulties with Shippers from their own Countries, must often be faced with these questions in the course of their trade from foreign ports. It is in the hope of making some contribution to the solution that the British Maritime Law Association offers this Report to the Comité.

II. — The difficulties which arise in relation to the clausing of Bills of Lading for the condition of the goods.

It is necessary briefly to allude to certain English legal principles which give rise to these difficulties insofar as contracts of carriage governed by English law are concerned, because, although it is understood that very much the same result is achieved under most Continental systems, the legal theories by which that result is arrived at may be somewhat different.

The basis of the English legal theory which affects the subject of this Report is the doctrine of « estoppel ». « Estoppel » is a term derived from the Norman-French law, which was brought into England at the time of the Norman Conquest. It comes from the old French word « Estoupe », from which the modern French « stopper » and the English « stop » are descended. It is a rule of evidence of great antiquity whereby one party in legal proceedings is « stopped » from proving the true facts in certain circumstances, because it would be unjust to allow him to do so. In its modern form in English law the principle can be thus stated :

(a) When a person makes a clear and unambiguous statement of fact whether orally or in writing;

(b) with the intention that another person or class of persons shall act upon that statement as being true : and

(c) that other person or class of persons does so act and thereby suffers loss or damage :

then the person who made the statement is not permitted in any legal proceedings to bring evidence to prove that the statement was untrue. All the above elements must be present to found an « estoppel » but it is not necessary that the person making the statement

knew at the time he made it that it was untrue, or even that he ought to have known that it was untrue. It is sufficient that the statement was untrue even though made innocently and without negligence.

The classic example of the application of this ancient doctrine to commercial or maritime law is the statement which occurs at the beginning of nearly every Bill of Lading that the goods were :

« shipped in good order and condition. »

This is a statement not of the inherent qualities or defects of the goods, but of their condition as apparent upon an external examination at the time of shipment. It has been long established in the English Courts that the phrase means :

« that apparently, and so far as met the eye » (at the time of shipment) « and externally the goods were placed in good order on board the ship ».

And indeed under the Hague Rules (Article 3 Rule 3 (c)) the Master or Agent of the Shipowner is bound on demand of the Shipper to issue to the Shipper a Bill of Lading shewing, among other things, « the apparent order and condition of the goods ». Again the English Courts have held that « apparent order and condition of the goods » means the order and condition which is visible upon a reasonable external examination : if a defect ought to have been apparent upon such an examination it is no excuse to the Shipowner that in fact his local Agent of the ship's Officers did not in fact perceive the defect.

Now the person who signs such a Bill of Lading (who is the agent of the Shipowner so to do) does so with the intention that a Consignee or Endorsee shall act upon that statement, i.e. by paying the full price for the goods in exchange for the Bill of Lading which he (or in usual commercial practice his Bank) would not do if the Bill stated that the goods were not in apparent good order and condition upon shipment. Therefore, in such circumstances, if the goods were not in fact in apparent good order and condition upon shipment, and the Consignee or Endorsee suffers damage thereby (as he almost invariably does) and he brings legal proceedings against the Shipowner for failure to deliver the goods in the like good order and condition as the Shipowner contracted to do under the Bill of Lading, the Shipowner is not allowed, under the English rule of « estoppel », to plead as a defence the true facts, viz : that the goods were in fact damaged before shipment.

The Shipowner is not of course prevented from presenting the true facts as a defence to a claim made by the Shipper, because the latter knew or ought to have known them and certainly did not act upon any statement in the Bill of Lading relating to the order and condition of the goods.

This rule is obviously just and is easy of application to cases in which the goods bear external signs of defect or deterioration upon shipment. A common example is that of foodstuffs usually shipped in sacks, such as potatoes or groundnuts, which will not withstand the ordinary perils of an ocean voyage, however well stowed, if they retain too much of their natural moisture upon shipment, or, on the other hand, are moist because they are shipped in the early stages of decomposition. If such commodities are shipped in too wet a state so that the sacks are visibly wet or damp, and the contents, therefore, deteriorate by heating or rotting during the voyage, and the Bill of Lading contains no qualification of the statement that the goods were « shipped in good order and condition », then the Shipowner cannot plead as a defence to legal proceedings by the Consignees or Endorsees for delivering the goods in a damaged condition, the true facts, viz : that the damage was caused by their having been shipped either without having been sufficiently dried or in a state of decomposition, i.e. he cannot rely upon the defence of « inherent vice » (Hague Rules Articles 4 Rule 2 (m)). Many other instances of this type could be given, which are very familiar to Shipowners and cover a wide range of commodities : but the question remains the same in all — was the defect which in fact caused the damage or deterioration during the ocean carriage, visible upon a reasonable examination at the time of shipment ? In this type of case there is only one right and proper solution, namely that the Bill of Lading *must* be claused by a suitable marginal clause, which states the true *facts* as to the apparent condition of the goods : no clause in the body of the Bill intended to cover such cases in general will suffice, because the need is to call attention to some deficiency in the case of the particular goods concerned and that cannot be done validly under the Hague Rules by a general printed clause.

Nearly all the contracts of Sale, whereby goods requiring ocean transportation are bought and sold throughout the world, require either expressly or by implication that the Bill of Lading, which is the document of title to the goods against which the purchase price is paid,

should be « clean », i.e. that it should contain no qualification of the statement that the goods were « shipped in apparent good order and condition » : and certainly most Letters of Credit, by which the Buyer gives his authority to a Bank to pay the price against the tender of the usual shipping documents, expressly stipulate that the Bill of Lading must be « clean ». In the type of case so far discussed, namely that, in which there is an apparent defect in the goods upon shipment, the Shipowner or more commonly his local Agent is often faced with a demand by the Shipper that a « clean » Bill of Lading shall nevertheless be issued, upon the plea that, if a claused Bill is given, the Shipper will not be able to negotiate it through the Banks. This demand is sometimes reinforced by the threat that, if the particular Owner refuses to issue a « clean » Bill in these circumstances, the Shipper will in future patronise his less scrupulous competitors, who will be prepared to do so. And the practice has lately increased in such circumstances of the Shipowner yielding to these entreaties on condition that the Shipper gives him a socalled « Letter of Indemnity », whereby the Shipper agrees to indemnify the Shipowner in the event of the Consignee recovering damages from the Shipowner by reason of the goods being delivered damaged. This practice is to be deplored in the view of the Association. Not infrequently the security afforded by such an Indemnity proves in practice to be of no value, because the Shipper is unable to meet his obligations under it — and this has occurred in some cases even when the Letter of Indemnity has been countersigned by a local Bank. The Association is indebted also to the Belgian Maritime Law Association for the information that the Belgian Courts have upon a number of occasions held that a Letter of Indemnity given by a Shipper to a Shipowner in consideration of the latter issuing a Bill of Lading containing a deliberately false statement as to the condition of goods upon shipment (as opposed to a statement of weight or quantity which is genuinely in dispute) is unenforceable by the Shipowner against even the Shipper, upon the ground that the Letter of Indemnity was given in consideration of the Shipowner issuing a document deliberately intended to deceive an innocent third party, namely the Consignee or Endorsee. The English Courts have never had to decide this point, but it is not improbable that in a similar case they would come to the same conclusion.

But the real difficulty arises in one of the three following cases :

(a) Where goods are shipped in a slightly impaired condition, i.e. with some apparent blemish which may or may not be the natural condition in which such goods are shipped for ocean carriage according to the custom of the particular trade. A common example of this is raw or semi-manufactured metal, such as steel wire or sheets, which are often tendered for shipment with a superficial coating of rust if they have not been « factory cleaned ». Another, which has given rise to considerable dispute in practice, is the shipment of such commodities as oil or asphalt in metal drums, which can be returned and refilled on a number of occasions for the same purpose, so that after a period of use they become dented though still capable of holding their contents without leakage. Is it necessary in the first case that the Bill of Lading should describe the goods as « rusty » or in the second should describe the drums as « second-hand » or « dented » ?

(b) Where goods, which are of such a nature as to be particularly susceptible to damage during the operations of loading and discharging or by contact with other goods during the voyage, are shipped without any protection at all. An example of this class, which has given rise to a large number of disputed claims, is the shipment of motor vehicles without any form of protective covering. The crating of each individual vehicle entails substantial expense and Exporters of motor vehicles not unnaturally do not desire to add to the cost of their vehicles in the highly competitive markets overseas.

(c) Where goods are shipped in some form of packing or container, but in the opinion of the carrier or that of his agents or servants concerned the package or container is not sufficiently strong or is otherwise inadequate to protect the goods from damage during a normal ocean voyage, even though they are properly stowed. Common examples of this are the use of fibre or cardboard in various forms in place of wood, which would have been used before the War, when timber was not so costly or in such short supply, or of old or second-hand sacks which would not before the War have been used more than once. It cannot be too strongly emphasized that the adequacy of a modern packing material or container is, until proved or disproved by actual experience over the requisite period of time, in many cases a matter of opinion; the Shippers of a particular commodity may genuinely believe that in their search for an alternative to the more costly or unprocurable pre-War material they have found an adequate substi-

tute which will enable the goods safely to travel by sea, even though it may require a little more care in handling and stowage : the Shipowners engaged in the carriage of commodities so packed may equally be persuaded that the packing material or type of container is so weak or otherwise inadequate to protect the goods that it demands an impracticable standard of care on the part of those for whom they are responsible if damage in transit is to be avoided, or even that with the greatest possible care it is impossible to prevent damage resulting.

It is in respect of the last two types of cases and especially of the last the greatest difficulty has arisen in practice : and it has arisen because the principle of English Law that if the Bill of Lading contains an unqualified Statement that the goods were shipped in apparent good order and condition the Shipowner is « estopped » from defending himself from a claim for delivering cargo in a damaged condition by proving that at the time of shipment there was a defect which was or ought to have been apparent, has been extended by the decisions of the Courts to cases in which the apparent defect was not in the goods themselves but in the nature or condition of their packing or containers. And the principle probably covers also cases in which goods, which normally should be shipped in some form of packing or container, are shipped without any protection at all. For this reason a Shipowner who is pressed by a Shipper to issue a « clean » Bill of Lading (which is subject to English Law) in respect of goods shipped without any protection, but which normally are shipped in some form of packing or container, or in respect of goods which in the opinion of the local ship's Agents or of the ship's Officers are shipped in inadequate packings or containers, is virtually being asked to preclude himself from raising the defence of « insufficiency of packing » which the Hague Rules allow him (Article 4 - Rule 2 (n)) even if the facts justify such a defence. It is to be borne in mind that, even if the defence of « insufficiency of packing » is available to the Shipowner, he will still be liable if the facts are that the damage to the goods was due to bad stowage or other breach of the contract of carriage for which he may be responsible under the Hague Rules, and that in spite of the insufficiency of packing the damage could have been averted by the exercise of reasonable care in the handling and stowage of the goods while they were in the custody of the Shipowner or his servants. But it is quite unacceptable that the Shipowner should in any event

be prevented from relying upon a defence allowed him by the Hague Rules merely by reason of the form in which the Bill of Lading was issued : consequently Shipowners must be allowed, and indeed it is their duty, suitably to clause the Bills of Lading which they issue in these cases.

It is perhaps advisable at this stage to give a concrete example of the manner in which the English Courts have applied the principle of « estoppel » to cases in which the inadequacy of the packing of goods was or ought to have been apparent at the time of shipment : for this purpose a decision of the Court of Appeal which has stood unchallenged for 23 years is taken as an illustration. In that case a large consignment of frozen eggs were shipped from Shanghai to London under Bills of Lading which were expressly subject to the Hague Rules and which described the goods without qualification as being « shipped in apparent good order and condition ». The eggs were in liquid form, frozen and were packed in rectangular tins weighing 42 lbs. each, without any protective covering or separation between the tins. The edges of the tins were unusually sharp, so that each tin had eight pointed corners which could easily perforate a tin stowed adjacent to it. The Court found as a fact that this potential danger was or ought to have been apparent at the time of shipment. During the course of the voyage a number of the tins were perforated by the sharp corners of the tins next to them, and their contents thereby became putrid. Bad stowage was not proved. In an action by the Endorsee of the Bill of Lading for delivering the eggs in a deteriorated condition, the Court held that the Shipowners were « estopped » from proving the true cause of the damage : viz, the dangerously sharp corners of the tins, and were, therefore, unable to rely upon the defence of « insufficiency of packing » and were liable for the damage so caused.

III. — History and result of investigations in Great-Britain.

Shortly after the end of the War attempts were made in this Country to simplify, and, where possible, standardise, the forms of documents used in and the formalities required by the export trade. As a matter of course Bills of Lading were among the most important of these documents which came under review : and it was found that over a long period of years a wide variety of clauses, affecting in one

manner or another, or intended to affect or qualify the statement that the goods had been shipped in good order and condition, had come into common use as Marginal Clauses on Bills of Lading. The fact that these clauses varied widely in their wording, clarity and meaning was of itself an obstacle to the negotiation of the Bills as documents of title to the goods; and it was further appreciated that many of these clauses in common use were obscure while others were probably invalid under the Hague Rules, in neither of which cases would they achieve their object of protecting the Shipowner. It is to be appreciated that in accepting the tender of documents including a Bill of Lading and making payment of the price thereon, the Banks are acting as agents of the Buyers upon definite instructions and authority usually contained in the Letter of Credit : the Bank's commission for so doing is relatively small, and they cannot be expected to lay themselves open to a heavy liability for accepting any documents which are not properly in conformity with their authority. Since nearly all Letters of Credit require « clean » Bills of Lading, it would be unreasonable to expect a Bank, taking up the documents for a buyer to assume the responsibility of deciding whether such clauses as « partially protected and accordingly deemed insufficiently packed within the meaning of the Rules scheduled to the Carriage of Goods by Sea Act 1924 », « partially unprotected — at Shippers' risk », « second-hand packages », « ship not responsible for bursting of bags or for loss of contents » (to mention only four out of many such clauses) rendered the Bill of Lading « unclean » or not. It was accordingly realised by the Shipowners at an early stage that the most hopeful contribution thay they could make towards a solution of the problem was to reduce the use of marginal clauses of this kind to the minimum, both in number and variety, needed for their own proper protection and that it was for the Shippers thereafter to ensure by their contracts or conditions of sale that the Banks should be authorised to accept Bills so claused.

It has not yet, as already stated, proved possible to reach a complete and comprehensive agreement on this problem : indeed this is not surprising since agreement on such a matter can only be arrived at after considerable experiment and practical experience of the working of any suggested solution. But after two years of negotiation between the London Chamber of Commerce (one of the chief Associations of Merchants in the United Kingdom) and the Federation of British In-

dustries (whose Members consist of the chief Manufacturers) on the one hand and the British Liner Committee on the other, simplified and standard clauses are now coming into general use at the instance of the British Liner Committee, which it is hoped will in the course of time become universal. It was appropriate that the matter should be dealt with on the Shipowners' side by the British Liner Committee, of which all Liner Owners of the United Kingdom and some of those of the Commonwealth are members, because the problem is in essence a Liner problem and relates to liner cargoes, i.e. parcels of various kinds of goods, rather than to the bulk cargoes normally carried by the Tramps.

The present position, which represents the maximum concessions which British Shipowners feel themselves able to make in restricting the marginal clauses affecting the condition of goods which they shall put upon their Bills of Lading, can be summarised as follows :

1. Damage to or deterioration of or defect in goods or their packings or containers visible upon a reasonable external examination at the time of shipment.

When such damage exists at the time of shipment — as distinct from the mere absence or insufficiency of packing — it is essential that the Bill of Lading be claused so as to state factually the actual condition of the goods. It is improper to issue « clean » Bills of Lading in such cases in return for a Letter of Indemnity. Appropriate clauses in such cases include such clauses as « drums leaking », « shipped wet », « containers » or « packages wet » or « stained », « torn bags »; it is important that the clause should state and state only the actual defect which is visible. Clauses which attempt to exonerate the Shipowner, without specifically qualifying the statement that the goods are shipped in good order and condition, are legally useless under the Hague Rules, such as « ship not responsible for leakage », « ship not responsible for loss of contents », « not responsible for crushing » and the like.

2. Goods which are shipped wholly unprotected.

It is not necessary to clause the Bill of Lading at all, either :

(a) if the goods are of such a nature as e.g. steel bars or bundles of steel rods, as are habitually shipped without any covering or container, because if it is the invariable practice so to ship a particular

class of goods, then the Consignees or Endorsees must be deemed to be aware of it.

or

(b) the description of the goods in the body of the Bill of Lading states that the goods are so shipped, as e.g.

« Received in apparent good order and condition 100 unprotected galvanised sheets. »

Indeed, if Shippers of goods shipped unprotected desire to avoid a marginal clause being inserted in the Bill of Lading, it is for them to assist by describing the goods as « unprotected » when they make out their Bill of Lading for signature by the Captain or local Agents. Of the two above alternatives the second is the safer if there is any doubt whether the goods are of a class which is invariably shipped without protection.

If neither of the above alternatives apply, then the following standard clause is to be stamped in the margin of the Bill :

« The goods hereby acknowledged are unprotected, and all the Carrier's rights and immunities in the event of loss or damage by reason of that fact are hereby reserved. »

In fact, however, this clause should rarely, if ever, be needed. Shippers have the remedy in their own hands to avoid its use by adopting (b) above.

3. Goods shipped in packings or containers which the carrier or his agents or servants concerned consider inadequate safely to protect or contain the goods during the normal hazards of an ocean voyage.

This may be a matter of experience or of opinion, upon which the Shipper may quite genuinely differ from the Shipowner. The latter, however, is in the position that if the statement of good order and condition remains unqualified in the Bill of Lading, and the goods are delivered damaged, he will be unable to raise on the merits the defence of « insufficiency of packing » in answer to a claim by a Consignee who is not the original shipper. It is to be emphasized again that the mere fact that the Bill of Lading is claused for insufficiency of packing does not ipso facto exonerate the Shipowner from liability in all circumstances for loss of or damage to the goods : if the damage was

in fact caused by bad stowage or other breach of the contract of the carriage, from liability for which he is not exempted, the defence of insufficient packing will not avail him. Consequently the Marginal Clauses appropriate to this class of case should be confined to a statement of opinion only, and a standard clause on these lines has been devised as follows :

« Attention is drawn to the packing of these goods, which, in the opinion of the Carrier is insufficient. All the Carrier's rights and immunities in the event of loss of or damage to the goods arising by reason of the nature or quality of that packing and/or its insufficiency are hereby expressly reserved. »

This clause is necessary even if the description of the goods in the body of the Bill of Lading refers inferentially to the defect or insufficiency to which the Officers or Agents object. Such cases arise in practice most commonly when goods are shipped in single bags, whereas a double material would have been used before the War, or is considered by the Shipowner to be required adequately to protect or retain the contents during the carriage. For example, if the Bill of Lading describes the goods as :

« 100 bags of potatoes in single bags »

and it is desired to protect the Shipowner against loss of or damage to the contents arising out of the weakness of single, as opposed to double material bags, then the above standard clause must be inserted in the margin as well.

IV. — Conclusion.

It is appreciated that the British arrangements as they stand at present do not cover all cases nor offer a solution of all the problems which arise in practice; it is felt, however, that they constitute a substantial advance towards the simplification of the marginal clauses at present in use and towards a better understanding of the difficulties between Shippers and Shipowners. There are, for example, the borderline cases, to which allusion has already been made, of goods shipped with an external blemish or defect which may well be natural to those particular goods, such as rusty steel or dented drums. It is felt that this must be a question of degree; the metal may be affected with more than the usual surface rust and be actually pitted, or the drums

may be so dented as to be structually weakened and unfit safely to contain their contents during a normal ocean voyage, it may well be on deck.

Whilst attempts were thus being made to solve these problems nationally in the U.K., the British Liner Committee has also been trying through the International Chamber of Commerce to advance matters internationally. The International Chamber of Commerce has a set of « rules » of documentary credit and the aim has been to introduce into these rules a definition of a clean bill of lading under which a clause which did no more than express the carrier's opinion, as distinct from a statement of fact, would not render the bill of lading « unclean ». If such were done, it would follow that in the case of a sale contract embodying the International Chamber of Commerce rules, a bill of lading containing one or other of the standard clauses would be a clean bill of lading for the purpose of the sale contract and acceptable to the Bank, whose duty it would be to accept a bill of lading in conformity with the terms of the sale contract. Unfortunately this expectation has not as yet materialised, and, as the rules of the Chamber stand at present, they do not achieve the object desired although the International Chamber of Commerce has recently been urged to amend them to achieve this object. The position of the Shipowners is and must remain that, if they confine themselves to the use of marginal clauses in their Bills of Lading to the extent and in the circumstances set out in this Report, there is nothing further that they can do short of surrendering the limited protective rights which the Hague Rules afford them which they cannot be expected to do.

This Report is submitted in explanation of the progress made in the U.K. and in the hope that it may help in furthering the general objective in view, which is to remove so far as possible, these difficulties to international trade.

MINUTES OF THE MEETING OF THE SUB-COMMITTEE ON MARGINAL CLAUSES ON BILLS OF LADING, HELD AT BRIGHTON ON 22nd. SEPTEMBER 1954

1. The President opened the Meeting at 2.45 p.m. and called upon **Mr. C. T. Miller** (Great Britain) as one of the Rapporteurs to speak first.

2. Mr. Miller explained that the report of the British Maritime Law Association on Marginal Clauses on Bills of Lading was written because it had been suggested that the efforts of the British to overcome their difficulties in this connection might be of assistance to other countries, and might possibly form a suitable basis for discussion by the C.M.I.

3. Mr. Miller then went on to explain briefly the three situations in which the question of Marginal Clauses arises, namely :

1. Where the Shipper offers goods for shipment which upon a reasonable external examination at the time of shipment, are clearly themselves or their packing or containers damaged, defective, or in state of deterioration.

It is clear that in this case the Bill of Lading *must* be claused so as to state factually the actual condition of the goods.

2. Where goods are shipped wholly unprotected.

Mr. Miller stated that considerable difficulty has been experienced in the U.K. in these circumstances, in that shippers object to the Bill of Lading being claused to the effect that the goods are not protected. The British solution to that problem is that there should be no difficulty if the shipper, who after all, is the man who fills in the Bill of

Lading, would state in the body of the bill that the goods are unprotected, in such a way as the following : « Shipped in apparent good order and condition 100 Bundles of Steel Bars unprotected ». Indeed, if shippers of goods shipped unprotected desire to avoid a Marginal Clause being inserted in the Bill of Lading, it is for them to insist by describing the goods as « unprotected » when they make out their Bill of Lading for signature by the Captain or Local Agent.

If that were done, no legal difficulties would arise, and from replies which had been received from other countries to the Questionnaire, it appeared that if this course were adopted there should also be no difficulties.

3. Where goods which are normally protected are tendered for shipment in packings or containers which the ship's officers or local agents consider are inadequate safely to protect or contain the goods during the normal hazards of an ocean voyage.

Mr. Miller reminded the meeting that in post-war conditions many changes in former methods of packing had taken place, e.g. the substitution of fibreboard containers for wooden boxes, etc.

This is a question upon which there can be an honest difference of opinion; there is, however only one alternative left : either, if the shipowner insists on clausing the Bill of Lading for insufficiency of packing, the Buyer's Bank will regard the Bill of Lading as unclean, or, if the shipowner accepts a Letter of Indemnity against a clean Bill of Lading, he will be unable to rely on the defence of « insufficiency of packing ».

After considerable discussion among the interested parties in the United Kingdom a solution was suggested, viz. to state in the margin that *in the opinion of the carrier* the packing of the goods is insufficient. For example, where goods are packed in bags of single ply and the Master considers that at least a two-ply bag is necessary, then the Bill of Lading should be claused so as to record the Masters' opinion. A standard clause for such a circumstance has been suggested and tried in practice in the United Kingdom and has met with a fair measure of adherence and success.

4. Mr. Miller then reverted to the first situation. Where the goods or their packing are from an external examination claerly damaged or

defective in some way, the Shipowner is on occasion pressed to issue a clean Bill of Lading in consideration of the issue by the shipper of a Letter of Indemnity.

Shipowners do on occasion yield to the importunities of the shippers and thus become a party to the issuing of a false and misleading document. In some countries, Mr. Miller understood a Letter of Indemnity given in such circumstances is null and void even against the shipper. In the United Kingdom, although the matter had never been brought before the Courts as a specific point, it was thought that they would probably consider such a Letter of Indemnity as unenforceable.

In the United Kingdom a Shipowner who makes a clear and unambiguous statement as to the condition, quality or amount of the goods accepted for shipment, is by a rule of evidence not allowed subsequently to prove that the goods were in fact damaged or insufficiently packed.

It is clear, therefore, that where a Shipowner is pressed to accept a Letter of Indemnity he is abandoning his right to show at a later date the defective nature of the goods or their packing.

Cases of this sort are believed to be sufficiently numerous in the United Kingdom and the practice is much to be deplored.

5. Mr. Miller then went on to state that he and Mr. Asser did not suggest that an International Convention can necessarily be made or would be effective, but they did suggest that national agreements on the above lines between the interested parties might be arranged so that the Banks and others would know where they stood and the number of Bills of Lading regarded as unclean would be reduced.

6. **Mr. J. T. Asser** (Netherlands) stressed that he was not speaking on behalf of the Netherlands Association, but that he had one personal point to make over and above the matters raised by Mr. Miller. He pointed out that when an assured wished to make a claim on his Underwriters, he had to prove that the goods were in sound condition at the beginning of the voyage. In his country, and he understood in some others, the statement in the Bill of Lading constituted a presumption that the goods were in fact sound and that therefore the Underwriters were prejudiced in cases where a Letter of Indemnity had been issued. The Underwriters were the first to be caught, and although

they might have an action against the Shipowner, having been subrogated in the rights of the assured, in the majority of cases they could make no recovery. This constituted an additional reason for disapproving of Letters of Indemnity.

7. **Mr. Harold Hoffman** (Great Britain) said that he was really a delegate of the Federation of British Industries who were vitally concerned in this question.

Mr. Hoffman referred to Mr. Miller's three problems or situations and said that every shipper would accept the first and second solutions proposed by him.

With regard to the third problem he referred to the shortage of pre-war types of packing and the difficulty which arose therefrom, namely, that Shipowners, accustomed to regarding a certain type of packing as essential (e.g. wood), were in the habit of clausing Bills of Lading where some substitute packing had been used, which in the opinion of the shipper was entirely adequate if the Shipowner used ordinary care in handling and stowing. Mr. Hoffman did however state that the attitude of Shipowners had recently undergone a change and that they were adopting a more realistic attitude to modern developments in packing.

Mr. Hoffman reiterated the point about the difficulty of the position of a Shipowner who naturally desired to protect himself by clausing the Bill of Lading. The Banks, too, were faced with a difficult situation when called upon to interpret an ambiguous clause in a Bill of Lading. It was not fair to blame the Banks in this connection as they were bound by the terms of the Letter of Credit.

Mr. Hoffman thought that the most practical way of solving the problem was to educate shippers in the proper description of the packings of their goods. If the packing was described in detail in the body of the bill there would be no clausing necessary.

Mr. Hoffman pointed out that some Liner Companies do consult their large shippers with regard to packing and he suggested that much might be done in the way of Shipowners laying down standards of packing in conjunction with shippers.

8. **Maître de Grandmaison** (France) said that in France two points were clear. Firstly, that banks must follow their clients' instructions : French judges were extremely strict on the interpretation of such

instructions and the banks were not able to recover from their clients if they paid wrongly. Secondly, the French banks are bound by the Uniform Customs and Practice for Commercial Documentary Credits (1951 Revision), especially Article 18 thereof.

With regard to Letters of Indemnity, French judges consider that the issuance of a Letter fo Indemnity constitutes a modification of the contractual relations between Shipowner and Shipper (vide Article 1321 of the Civil code — Contre lettre), and is of no efficiency except between the contracting parties, i.e. of no effect against the Consignee or endorsee. In France some Letters of Indemnity are valid and others are regarded as fraudulent. For instance, in the case of a technical discussion between the Master and a shipper about (say) the degree of rust on a consignment of iron bars, the judges might consider that the Master had not sufficient knowledge of the subject and that therefore a Letter of Indemnity issued in such a case might not be tainted with fraud. On the other hand, where there is evidence of definite fraudulent intent, the Letter of Indemnity is invalid though the Shipowner remains liable to the Consignee.

No real discussion had as yet taken place in France, and M[e] de Grandmaison was of the opinion that an International Convention was not necessary and that regional agreements between the commercial interests involved would be the best solution.

9. **Konsul S. Brinck** (Sweden) started by saying that he was speaking as a commercial man and not as a lawyer.

Konsul Brinck stated that it was his experience that claims under the Hague Rules Bills of Lading were increasing daily, as receivers realised that the Hague Rules give them the opportunity of making money at the expense of the Shipowner. Therefore some solution must be found as soon as possible. He did not suggest that the Hague Rules should be amended, but thought that an agreement between interested parties was the right way to approach the problem.

Mr. Brinck said that it is to be much regretted that when the ICC revised their definition of a clean B/L. in Lisbon 1951, no consideration was given to carrier's delicate position in connection with the description of the goods in Bs/L. As it is now, the clauses that ICC allow to be inserted according to § 18 and which maintain the Bs/L. clean, offer no defence for owners under the Hague Rules. It will

certainly involve great difficulties to induce the ICC so soon after the Lisbon decision to revise these prescriptions in § 18, but a severe attempt should certainly be worth while.

In Sweden the use of Letters of Indemnity is recognised but the validity of them has not been decided by any Swedish Court. Consignees have the right to ask the carrier if a Letter of Indemnity has been issued and what are its contents. Nevertheless Letters of Indemnity are not considered desirable in Sweden. It is unfair that a Shipowner must run the risk of losing a customer unless he is prepared to accept a Letter of Indemnity that may not be accepted in the Consignees' country.

10. Konsul Brinck went on to give some interesting figures. Apparently in 1953 about 100.000 Bills of Lading were negotiated through Swedish Banks in connection with shipments under Letters of Credit. Out of these, approximately 600 were of such a nature that the question arose as to whether the Bill was clean or not. The number of cases in which a specified qualification of the description of the goods was inserted in the Bill of Lading were relatively few, probably below 50. Swedish Underwriters had informed him that in approximately 60 % of their coverings of newsprint shipments a Letter of Indemnity was attached.

On the other hand, in general cargo Bills of Lading only in 1 % of the cases had Letters of Indemnity been issued. It would seem, therefore, that it was the practice rather to issue Letters of Indemnity than to insert Marginal Clauses. His personal opinion was that the total number of Letters of Indemnity behind clean Bills of Lading under export Letters of Credit in his country amounted to something like 3.000 a year.

He had been trying to examine the question of differences in the number of pieces or quantities in Bills of Lading. It occurred to him that it might be possible to include in the Uniform Customs and Practice of Documentary Credits a rule whereby banks would be allowed to withhold a proportion of the sale price applying to the shortage. With regard, however, to the packing of goods themselves or a description of the goods, there a more difficult question arose.

Konsul Brinck did not understand why the B.M.L.A. has not directed its efforts to find a solution of these matters more towards the

International Chamber of Commerce. The Federation of British Industries had not completely accepted the Uniform Customs and Practice of the International Chamber of Commerce, which in the Konsul's opinion would have made things easier. He suggested that the solution lay through the medium of the International Chamber of Commerce unless the Hague Rules were to be abolished altogether.

11. In reply to consul Brinck's query as to why the British had not accepted the Uniform Customs and Practice for Documentary Credits (1951), Mr. Miller stated that the reason was that these Rules do not deal with the third problem mentioned by him earlier on.

The British did not obtain a permissive clause under Article 18 covering the question of the difference of opinion which frequently arises in circumstances outlined in problem 3.

As for the permissive clauses allowed under this Article some were, besides, of no validity or of no use in the United Kingdom.

12. **Mr. Charles S. Haight** (U.S.A.) stated that the American view was that American Banks would not accept the standard Clause suggested by the British to cover problem 3.

He thought that American banks would take the Master's opinion as being a statement of fact.

American Banks follow the Uniform Customs of the International Chamber of Commerce, in which the British clause is not included. He suggested that it would help if the Uniform Customs were amended to include the British clause.

As far as problem 1 was concerned Mr. Haight stated that it was a crime in the U.S.A. to issue a fraudulent clean Bill of Lading, but as far as he was aware, no actual penal prosecution had been made. If an International Convention were worked out which included a provision to make it a crime to issue a fraudulent Bill of Lading, he thought that perhaps the American law as to the criminal nature of such an action would be more strictly adhered to.

Mr. Haight thought that the solution lay in an International Convention, failing which, negociations between the commercial interests involved would ease the situation.

13. **Baron F. Van der Feltz** (Netherlands) stressed that the Dutch report expressed the considered view of all interested parties in Holland. He thought that the matter was one of commercial practice

and not of law, and that therefore the difficulties should be overcome by business men. The practical solution lay in Article 18 of the Uniform Customs and Practice for Documentary Credits (1951), and it would be better to wait and see how these rules worked out in practice.

He therefore suggested that the subject should be removed from the agenda or limited to the question of the validity of Letters of Indemnity.

14. The President thereupon put it to the meeting whether it was generally thought that an International Convention was practicable or desirable or whether regional agreements or understandings were preferable. Mr. Haight was understood to say that in his view an International Convention was the goal to be aimed at but that failing such a Convention, regional agreements were the next best solution.

15. **M. Sørensen** (Denmark) also stated that in his view the C.M.I. should work to try and get an International Convention.

16. **Mr. R. Fuchs** (Yugoslavia) explained that no reply had been sent to the Questionnaire because Yugoslavia was at present engaged in recodifying their maritime law. He then proceeded to outline the Yugoslav law in the matter. In his opinion the best method of solving this problem lay in close co-operation between the parties and the International Chamber of Commerce, especially on the subject of what should constitute a clean Bill of Lading.

17. **Konsul S. Brinck** (Sweden) returned to the question of Article 18 and explained that he did not say that the Uniform Customs and Practice was necessarily the right way to a solution but was a step in the right direction. He trusted that the B.M.L.A. would be able to induce the British Chamber of Commerce to come into line with the suggestions of the British Liner Committee which have apparently been accepted here and there.

He thought that the C.M.I. should work out a review of the whole question for submission to the National Law Association.

18. **Prof. Berlingieri** (Italy) said that he thought no International Convention was necessary.

19. **Dr. K. B. Spiliopoulos** (Greece) stated that he had listened with interest to Konsul Brinck's statistics of cases found in practice

regarding Letters of Indemnity. The U.S.A. being of opinion than an International Convention was desirable, he proposed that the American Association should prepare a Draft of such Convention, on the preparation of which the National Associations would be in a much better position to study the whole question.

20. **Mr. Charles S. Haight** (U.S.A.) thereupon, to the great satisfaction of the meeting, made the following motion :

« that this Commission continue its study of the problems dis-
» cussed at this meeting; and towards that end the National Associa-
» tion of the United States undertakes to prepare and forward to the
» Rapporteurs, Messrs. C.T. Miller and J.T. Asser, a First Draft of
» an International Agreement, dealing both with Letters of Indemnity
» and Marignal Clauses on Bills of Lading, the Draft to be submitted
» for consideration by the Bureau Permanent and by the National
» Associations. »

The President then put the motion to the meeting, which was carried unanimously. The President thereupon thanked Mr. Haight for his undertaking on behalf of the American Association, and declared the meeting closed at 4.15 p.m.

FIRST DRAFT CONVENTION

Note.

In accordance with the request contained in the resolution of the Sub-Committee made at Brighton, The Maritime Law Association of the United States has prepared a First Draft of an International Convention dealing with the subject of Marginal Clauses on Bills of Lading, which might also affect the validity of Letters of Indemnity under certain circumstances.

In the discussion at Amsterdam in 1927 and also in the replies of some of the members of the present Sub-Committee, considerable emphasis was placed on the practical difficulties which necessitate the issuance of clean bills of lading for cargo which is in such condition that there is room for argument as to whether or not it is in apparent good condition, for instance steel goods affected by atmospheric rust and goods shipped in secondhand, stained wrappers. We considered including a provision in the proposed convention making the use of letters of indemnity valid under circumstances where there is honest dispute as to apparent order and condition of the goods at the time of shipment. We suggested that this could be done by means of an undertaking by the shipper, endorsed on the bill of lading, that the goods were in fact in good condition. However, when this suggestion was circulated it became apparent that such a bill of lading would be unacceptable to the banks so the idea is omitted from the enclosed First Draft.

The enclosed First Draft is submitted as a basis for discussion, not as a recommendation of the Maritime Law Association of the United States, since the matter will not be fully and finally considered by our Association as a whole until after the First Draft has been considered by the Bureau Permanent and by the National Associations,

and a Draft Convention has been proposed by the Comité Maritime International.

New York, June 28, 1955.

DRAFT.

The High Contracting Parties,

Having recognized that the unimpaired credit of negotiable bills of lading in respect to their recitations as to the number of packages or pieces, the quantity or weight, and the apparent order and condition of the goods is essential to international commerce and that it is necessary to protect this interest against any abuse in practice by the issuance of bills of lading containing false statements in any of those respects, have decided to conclude a convention for this purpose, and thereto have agreed as Follows :

Article 1.

Any person who, knowingly or with intent to defraud, makes or issues or aids in making or issuing or procures or aids in procuring the making or issuing of, or negotiates or transfers for value any negotiable bill of lading for the transportation of goods by sea from a port or place in a country which has ratified this convention to a port or place in another country, which bill of lading contains a false statement as to the number of packages or pieces, the quantity or weight, or the apparent condition of the goods, shall be guilty of a penal offence.

Article II.

Any person who, knowingly or with intent to defraud, requests a carrier or a carrier's representative to make or issue a negotiable bill of lading containing a false statement as to the number of packages or pieces, the quantity or weight, or the apparent condition of the goods and any person who procures or causes another to make such a request shall, whether or not the request is complied with, likewise be guilty of a penal offense.

Article III.

The High Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of any of the penal offences defined in the present Convention.

BELGIAN MARITIME LAW ASSOCIATION

REPORT

The Belgian Maritime Law Association has appointed a Sub Committee on Marginal Clauses and Letters of Indemnity. That committee has established the attached replies to the questionnaire drafted by Messrs. Cyril Miller and J.T. Asser.

The object of the present report is to summarize the Belgian authors and the case law on Letters of Indemnity, hoping this will be a contribution to solve the problem of the Marginal Clauses and the Letters of Indemnity.

1. Object of the Letter of Indemnity.

The refusal of the bankers to accept a claused bill of lading is the explanation of the practice of issuing Letters of Indemnity.

The refusal of the bankers is justified. The Courts have several times reminded the bankers of their obligation to follow very strictly the instructions they have received (each time they have to levy documents as a consequence of the opening of a documentary credit).

A control of the bank constitutes for the client, who gives the order, the only guarantee against the negligence or the bad faith of the exporter, the beneficiary of the credit and the only security that the latter has strictly executed the obligations resulting from the contract passed between the buyer and the beneficiary of the credit (Chevalier, Le crédit confirmé, Jur. Comm. Bruxelles, 1934, P. 102).

As a consequence, the banker has to find out whether the documents submitted to him by the beneficiary of the credit are strictly in conformity with the instructions received (Les Novelles, Droit bancaire, n° 272).

The fact that the banker is by his profession a specialist in matters of documentary credit and that he is remunerated for it, makes that the extent of his obligations is strictly interpreted. Such is the tendency of the Courts. (Cour d'Appel Bruxelles, 15 mars 1933 confirmant Commerce Bruxelles, 1er mars 1932, Jurisprudence Commerce Bruxelles, 1933, p. 381; Commerce Bruxelles, 2 mars 1933, Jurispr. Comm. Bruxelles, 1934, p. 89; 27 novembre 1948, Jur. Comm. Bruxelles 1949, p. 275).

The verification made by the bankers concerns the identity and conformity of documents with the instructions received and the regularity of such documents.

Except the case of special instructions being given by the importer, the banker has to follow normally the customs of trade he knows for appreciating formal regularity of documents. According to the distinctions he has to make, according to the nature of each document, he will follow either the customs of his country or the customs of international trade.

In the case of a bank having an accreditive containing instructions to demand a bill of lading « clean on board », they have, in order to satisfy the suppliers authority, to find out whether the bill of lading is actually a bill of lading « on board » duly dated and signed and bearing no reserves concerning the order and apparent condition of the goods, for, otherwise, the bill of lading could not be « clean ».

Must be considered as clauses making the bill of lading « unclean » and allowing a bank to refuse it, the remarks concerning the consistency of the goods, their state as well as the bad order of their packing and their condition as far as those concern a situation existing at the time of embarkation. As an example of clauses used rather frequently and having such result we may mention :

« Wet before shipment »
« Wrappers torn »
« Bars slightly rusted »
« X bundles more (or less) in dispute »
« Coils loose »
« Drums leaking », etc.

On the contrary, a bill of lading is considered to be clean even if it bears a clause that, without stating expressly that the order and/or condition of the goods are bad, suggests that such might be the case : « Second hand cases », for instance (Commission de pratiques bancaires de la Chambre de Commerce Internationale, Paris, 1950). Indeed, such a clause does not establish that the goods or their packing are not satisfactory. Drums for transport of wine are only new at their first trip. Afterwards they are « second hand », although they are satisfactory (Resolution of the « International Chamber of Shipping », April 1951).

Do also leave the bill of lading clean, the clauses that warrant the carrier for liability for risks covering the nature of the goods. Such clauses only confirm certain cases of exoneration contained in the Hague Rules (art. 91 of the Belgian Maritime Law and especially, s. IV, 2°, litt. m and p of the same article).

The origin of the Letter of Indemnity has not only to be found in the development of the documentary credit but also in the actual speed of maritime transit operations.

It is clear that in the case of a consignment of 20 or 30.000 pieces of wood, for instance, being loaded, it is practically impossible that the man who counts the pieces on board and the man who counts the same ashore come to the same figure in their final account.

What to do ? It is impossible to unload in order to count again. Each hour of waiting represents important amounts of money for the vessel. As a consequence, the shipper delivers the captain a letter by which he undertakes to indemnity the master for all consequences of his error, in the case it might appear that the counting of the master was right.

The same principle applies in the case when the master is of the opinion that the packing of the loaded goods are not in perfect order, and when the shipper says to him that in his trade which he knows, the packings are sactisfactory. This is the case for oleaginous grains which are safely, even better forwarded in second hand bags than in new ones.

If a surveyor is appointed, time is wasted. The shipper will say : As you maintain your opinion, there is my Letter of Indemnity by which I undertake to indemnify you for all liability whatever.

2. Validity and nullity of the Letter of Indemnity.

The Letter of Indemnity is a document delivered to the master or his agent by the shipper or his agent at the time of its signature and in exchange of a bill of lading without reserves.

By such « contre-lettre » subject to article 1321 of the « Code Civil » the shipper warrants the carrier for shortage apparently due to errors in counting or checking or for eventual consequences of certain external imperfections the goods or their packing seem to present.

In Belgium, before the introduction of the Hague Rules in the internal statute law, the case law and the authors in general already made a distinction between Letters of Indemnity which are sound and valid and those which are fraudulent and null.

Is lawful, the Letter of Indemnity aiming at avoiding the insertion in a bill of lading of a marginal and restrictive clause concerning the number of packages shipped in so far as the loading of the packages « in dispute » is actually doubtful and the circumstances do not permit checking. Never the third parties will have to make a complaint concerning such a Letter of Indemnity, the utility of which can moreover not be contested. Indeed, the consignee or his underwriter will dispose against the master of a valuable claim. Indeed, the master has to deliver to the bearer of the bill of lading the whole consignment which has been shipped (Smeesters & Winkelmolen, Droit Maritime et Droit Fluvial, 1, n° 425; Commerce Anvers 28 novembre 1924, J.P.A. 1924, p. 583, 18 juin 1926, J.P.S. 1926, p. 508).

On the contrary is not lawful a Letter of Indemnity hiding an actual vice of the goods or of their packing or a real shortage and supposing a fraude concerted between the shipper and the carrier to the prejudice of the third parties i.e. either the consignee who, upon the sight of the unclaused bill of lading, pays the goods he thinks to be in good order and suitable to undergo a maritime carriage, or the underwriter who can be asked to pay the consequences of damages existing at the time of loading, because the bill of lading constitutes evidence against him that the goods were in good condition at the time of loading.

Such a Letter of Indemnity is fraudulent and has to be declared completely null (article 1131 and 1133 of the Code Civil) (Smeesters

& Winkelmolen, Droit Maritime et Droit Fluvial, I, n° 425; Commerce Anvers 19 mars 1923, J.P.A. 1923, p. 80, 5 octobre 1923, J.P.A. 1923, p. 427; 12 juillet 1928, J.P.A. 1928, p. 377).

Since the introduction of the new article 91 in the Code du Commerce, livre II, by the law of the 28th November 1928, this distinction between a sound Letter of Indemnity and a fraudulent one has still more clearly been stressed by unanimous case law and authors. It has been decided that, by omitting to mention in the bill of lading the reserves concerning the external condition of the goods, the carrier contributes actually to dissimulate a vice of the goods existing before loading, offending in that way his contractual obligation referred to in article 91, A. III, 3°, C of the maritime law and which forces the carrier to give a description in the bill of lading of the state and apparent condition of the goods and he is therefore committed to repair the prejudice suffered by the consignee (Smeesters & Winkelmolen, Tome II, n° 725; G. Van Bladel, Connaissements et Règles de La Haye, n° 183; Heenen, Vente et Commerce Maritime, n° 51 et 53; Sohr et G. Van Doosselaere, Assurances-Transports, n° 1297; Cour d'Appel Bruxelles, 24 décembre 1935; Pasicrisie 1936, II, 127, Commerce d'Anvers, 11 janvier 1954, J.P.A. 1954, p. 82, jugement confirmé par un arrêt de la Cour d'Appel de Bruxelles du 17 mars 1955, non publié; Commerce d'Anvers, 1er avril 1955, en cause Capitaine Grässlund, ss. Gudrun/Rijn-Schelde et c/ Filature de Laine Peignée d'Erstein, inédit).

To summarize :

Nobody in Belgium seems to deny the utility of the practice of Letters of Indemnity. A judgment of the Antwerp tribunal de commerce dated 12 July 1928 (J.P.A. 1928, p. 377) taking into account that all Letters of Indemnity may not be produced before the courts, recognizes their frequent use and the practical advantages they offer in certain cases.

An earlier judgement of the 4th May 1925 (J.P.A. 1925, p. 193) went even further : « it is notorious, declares the Antwerp Tribunal de Commerce, and the case law has accepted this, that the Letters of Indemnity are a very old custom generally and constantly accepted at the port of Antwerp and a shipowner can not charge his agent for having followed that custom ».

There are different opinions, however, concerning the sort of liability engaged by the carrier delivering an unclaused bill of lading against a Letter of Indemnity : According to some, although the parties are bound by contractual obligations, such an act entails delectual or quasi delectual liability subject to article 1382 of the Code Civil. The plaintiff for « dommages intérêts », having the burder of proof, has to establish that the damages are the result of the hidden fact (for instance: wetting) hidden by a Letter of Indemnity and his action is not subject to the timebar established by article 91, A, III 6° of the maritime law, for this article applies only to the contractual obligations between parties (Court of Appeal Brussels, 24 December 1935, J.P.A. 1936, p. 20).

According to others — and these are the majority — the fault of the carrier is a contractual one. However, a disagreement exists as far as the determination of the prejudice caused by such fault is concerned. Such prejudice, it is sometimes said, is only eventual as long as the buyer can hope to obtain reimbursement from the supplier and, as a consequence, the reimbursement of the damages can not be claimed from the master as long as such possibility subsists (Court of Appeal Brussels, 1st April 1939, J.P.A. 1939, p. 123; J. Heenen, Vente et Commerce Maritime, n° 53). But such thesis has, since a few years, regularly been rejected by the Antwerp Tribunal de Commerce who is of the opinion that « all those who are successively entitled to the delivery of the goods, endorsees who have bought the bill of lading or have received it as a security, underwriters a.s.o... have to be practically sure that the contents of the bill of lading corresponds to the reality and that the issue of a clean bill of lading, being the condition for payment, such precaution is not weakened by the fault of the carrier; that the omission committed by the master allows the shipper to receive payment; that by subordinating payment to the delivery of a clean bill of lading, the consignee intents precisely to avoid a difficult and problematic claim in a far country against a shipper who will not fail to invoke a clean bill of lading for his exoneration; that the carrier who does not hesitate to imperil his good reputation by inserting an incorrect specification in the bill of lading is not allowed to merely send back the consignee to the shipper; that the quickest manner to assure the indemnification of the prejudice suffered by the consignee is to hold the carrier liable for a damage that would not have occurred,

without his contractual fault; that furthermore it would not be reasonable to sentence on the one hand the practice of Letters of Indemnity and to proclaim their nullity and on the other hand to allow the carrier to avoid the risk such practice offers, by authorizing him to send the injured party back to the signature of the Letter of Indemnity (Cour d'Appel de Bruxelles, 16 février 1949, J.P.A. 1944, p. 444; Commerce d'Anvers, 11 janvier 1954 — J.P.A. 1954, p. 82).

Conclusion

1. It is necessary, in conformity with the most recent authors and case law, to reject the Letters of Indemnity which can betray third parties but to admit those which intend to avoid marginal and restrictive clauses on bills of lading owing to errors or contestations in checking (Commerce d'Anvers, 4 octobre 1927, J.P.A. 1927, p. 478) — and we might add — as a consequence of the uncertainty of a fact in the case of serious doubt and in the case a verification is not possible at the time of loading. In a very recent judgment — dated 1st April 1955 — the Antwerp tribunal de commerce considers the case where it was doubtful at the time of loading whether the packing was sufficiently strong. The shipper was of the opinion that the clause « Frail packing » was not justified whereas the master desired to insert such clause alleging that such reserves were legal. It was impossible to solve that contestation without a « procédure de référé » and a judicial survey i.e. without a loss of time resulting necessarily from it. The Court admitted that in such circumstances the issue of a Letter of Indemnity was very explicable and harmless. This was a case that Mr. C. Miller called « an honest difference of opinion » and that Mr. de Grandmaison considered as « a technical discussion » (Conference Brighton 1954). We draw therefore your attention upon the fact that the recent foundation of a Belgian Office for packing might diminish the number of such difficulties, provided it succeeds in having reasonable solutions adopted by all the parties interested in maritime trade.

2. The practice of the Letter of Indemnity is not necessarily irregular and, as a consequence, it has not to be definitely condemned. In order to get rid of the fraudulent Letter of Indemnity, it is not necessary to declare all Letters of Indemnity null. The rules appearing

from the present Belgian case law and the distinction which has been adopted, are sufficient to strike fraudulent Letters of Indemnity.

3. Apparently there is no objection to the rules, applied at present in Belgium, being made more flexible and more general on the international level, taking into account the customs of trade, the banking practice, the standard of packing — in one word, various criterions that the shippers, shipowners and underwriters concerned in finding a remedy, may establish together.

The suggestion of the delegation of the United States puts complexed questions which require a thorough study. The Belgian Association reserves the right to issue an other memorandum.

Jacques Van Doosselaere
Reporter.

LIABILITY

OF

SEA CARRIERS

TOWARDS

PASSENGERS

INTERNATIONAL DRAFT REPORT

15 Aug., 1954

The International Sub-Committee having brought its investigations to an end has enabled the Drafting Committee to prepare a text which will be submitted for examination to the restricted meeting of the C.M.I. at Brighton.

Before commenting the present draft, it appears necessary to make some observations in order to specify the aim of the International Sub-Committee.

General observations.

I.

First of all, it should be noted that the legislators and Courts of the great Maritime Nations solve these problems in different ways; therefore it seems necessary to us to briefly indicate the legal principles which govern the carriage of passengers in these different countries :

In Great-Britain, contractual liberty is a rule. The carrier is free to stipulate the widest limitation of liability towards his passengers, and the stipulations mentioned upon the ticket are imperative even to the deceased passenger's claimants.

In Belgium, a legal presumption of liability lies upon the carrier unless contrary proof is given. Contractual liberty exists in this way that the carrier may exonerate himself from his liability, provided that he does not transgress the limits of public policy and of morality.

In the United States the clauses exonerating from liability are nul and considered contrary to public policy. The limitations of liability are systematically rejected or condemned.

In Denmark, Norway, Finland, Sweden, a legal presumption of liability lies upon the carrier but the carrier's liability can be limited by contract in case of death or of personal injuries to the passenger.

In Greece, exonerations are forbidden, as far as death or personal injuries of the passengers are concerned.

In Italy, the maritime carrier must prove that the accident is not a consequence of a fault for which he is responsible.

In France, no law governs the carriage of passengers; the system of contractual liberty is complete but, since the famous « Lamoricière » decision, this liberty does not exist when the action is introduced by the claimants of a deceased passenger. Indeed a presumption of fault lies upon the carrier, who is the guardian of his ship, and he will only avoid this presumption by proving the existence of « force majeure » (Act of God) or of foreign cause for which he is not responsible.

The consequences of this jurisprudential innovation of the French « Cour de Cassation » are numerous. The clauses of competence can no more be opposed to the family of the victim; the one year prescription is definitely avoided; the number of people entitled to take proceedings is practically unlimited. At last, it is so far that the carrier could not limitate his liability by appealing to the provisions of the French law about abandonment « en nature » or those of the Brussels Convention (1924) about abandonment of value.

Indeed, we know that both the national text and the international convention stipulate that, if the shipowner's fault is proved, this limitation will no more exist. Now, if we apply the system established by the « Cour de Cassation » we are obliged to presume that the shipowner is in fault, and as a consequence he will not be entitled to claim the benefit of the limitation of liability.

In the Netherlands, the carrier is responsible by law, except in cases of « force majeure ». The exoneration clauses however are forbidden, when they are meant to exonerate the carrier from his duty to properly man, equip and supply his ship, for the carriage to which it is meant.

In Switzerland « faute lourde » and « dol » cripple the effect of exoneration clauses.

In Yougoslavia, a law in preparation will lay upon the carrier a presumption of liability and the effect of « negligence clauses » will be limited.

This is the general situation of law about this subject.

If, in some countries, we are faced with an intermediate solution giving passengers a reasonable protection and respecting the traditional principles of exoneration and limitation of liability of the carrier, we must also state that some legislations, or in their absence the Courts, have introduced into the laws governing the carriages by sea an « obligation of security » which should not be admitted in these matters.

It is however impossible to deny that the great current, which appeared in the beginning of this century and which tends to protect man against machines and against those who technically and financially control it, has entered the field of Maritime Law.

To-day, we require — often with exaggeration — from the carrier and from his agents that they should be exceptionnaly handy and forseseeing. If such proceedings find their justification in their generous aim to protect the weak, they venture to lead to some excesses, such as relieving non-existing faults and systematically ignoring this traditional and ever-true notion of sharing of risks in a maritime expedition.

An international regulation only will be able to safeguard these principles.

II.

This brings us to the examination of all the efforts which were devoted before ours.

The first attempt towards the simplification of some rules about the passenger's carriage, dates from the Venise Conference in 1907.

However, the necessity to come rapidly to an agreement on the difficulties concerning the carriage of goods was the reason for disregarding these studies.

In 1917, Sir Norman Hill took up the idea under a quite different form. Sir Norman Hill was of the opinion that it was impossible to pretend that the burden of proof of the negligence committed by the maritime carrier should lie upon the passenger. He tried to solve this problem by proposing a commercial solution.

He was of the opinion that an obligatory insurance could be constituted which would be a substitute for the shipowners' liability.

This proposal was examined at the Conferences of Edimburgh and Amsterdam and was favourably received by the British Shipping

business, but it had to face the opposition of the other delegations who were of the opinion that their respective governments would never admit a law enabling shipowners to exonerate themselves beforehand under the cover of an insurance.

The studies of the appointed International Commission stopped there, and that was a pity.

In fact, the fact that Sir Norman Hill had given so much importance to this problem, was a proof that he foresaw that the shipowners had to take the initiative of some concessions, and that in order to protect themselves. If they failed to do this, the Courts and afterwards undoubtedly the Parliaments would in some way or other, impose charges to the carriers, on the ground of social interest; as they possibly could be in ignorance of the particularism of Maritime Law, those charges could be even heavier.

The evolution of law which we expect shows that the initiative had to be retaken, perhaps under a different form. The Italian Maritime Law Association must be praised for having proposed to take up again the task assigned some 30 years ago to the C.M.I. by the great English jurist.

III.

The present draft made by the International Sub-Committee has met with a main pre-judicial objection, formulated by the British Maritime Law Association.

This objection can be recapitulated as follows :

« It is to the interest of the British Shipowners and of those » from countries where contractual limitation exists, not to abandon » this protection which is efficient everywhere except in the United » States.

» The system planned in the draft formulated by the Convention » can only replace the system of contractual liberty, if the United » States would ratify this Convention, and abandon or amend their » present system. »

The Sub-Committee has valued the importance of that objection but is of the opinion that this should not stop its efforts.

It may be reasonably thought, that one day, Parliaments will take up this problem. They will probably be astonished to hear

that the maritime carrier is free to insert any clause he wants in the carriage of passengers contract, whereas he is not free to do this, when the carriage of goods is concerned.

May we quote from Fairplay, these judicious remarks « To the impartial observers it must seem a little strange that while, to enjoy the immunities of a contract of affreightment, a shipowner must provide a seaworthy ship, he can enjoy the immunities of the conditions of a passenger ticket even when, (as in this case) « the ship was not passenger-worthy ». (Marine Insurance Notes - Fairplay Sept. 2nd 1954 p. 607).

That day, the legislator will make obligatory provisions which might prejudice the shipowners' interest.

Therefore the shipowner who, in his own country, has a great contractual liberty, will no more take advantage of the classical limitation or exoneration clauses, when his ship has entered into the territorial waters of a country, where a compulsory law may apply to him.

The danger is that every nation establishes a national law in its own way and that, because a text is failing, a jurisprudential interpretation spreads similar ideas to those which promoted the « Lamoricière » decision.

On the other hand, it seems to us, that the best way to obtain from the United States an attenuation of their rigorous national law, would be to put before the American legislators a text of convention, the balance and wisdom of which could reassure them.

The U.S.A. ratified the Warsaw Convention without reservation which puts the principle of a limitation of liability as a carriage condition.

Air risks are fewer every day and air transports are as safe as sea transports.

The Sub-Committee hopes that the British Maritime Law Association will examine these arguments.

It is the British Flag which covers the most important transports; is it therefore not more vulnerable than the others ?

Tte British shipowners will never stop foreign countries from applying the most severe rules to them. In that case, it seems to us that an International Convention will be the best protection for them.

These are the preliminary remarks which had to be made.

Should we add as a conclusion, that the text submitted to the Conference is only a base for discussion ? There is no doubt that it must and will be bettered.

Comments on the articles.

Article 1.

According to an anglo-saxon habit, which was taken into account by the drafters of the Brussels Convention of 1924 on carriage of goods, and of 1952 on arrests of ships, the present Convention starts with some definitions. The wording of these definitions seems sufficiently clear so that their application does not lead to interpretation.

An observation however must be formulated in relation to one of them :

b) Contract of carriage :

The first draft declared that only the paying carriages would be entirely governed by the Convention; gratuitous carriages would only be under conventional system where the provisions in relation to limitation and exoneration of liability are concerned; all other difficulties had to be solved by the « lex fori ».

This regulation might be criticized.

Indeed, in the first place, a gratuitously carried passenger might benefit from a privileged system, compared with the other passengers; this was contrary to justice.

In the second place, the carrier took the risk of being dragged before jurisdictions which might be different from those mentioned in the Convention; this was a serious disadvantage for him.

It seemed reasonable to accept only one status for all passengers, excluding only the stowaways for whom no contract of carriage intervenes and whose lot will have to be settled one day by an international Convention.

d) Passenger's luggage.

This can only mean the objects or dresses for the passenger's personal use.

A « collection of dresses » in a mannequin's luggage, drawings amongst that of a merchant, will not be assimilated to the « luggage » accompanying the passenger.

Article 2.

This article defines the field of application of the Convention. This field is determined by two criteria independent one from the other; the first is drawn from the nationality of the parties concerned, the other is drawn from the agreements of the same parties concerned.

In what conditions will the Convention apply ?

The first condition is that the nationality of the parties concerned should be different. The convention does not apply when passenger and carrier are nationals of the same country.

The second condition for application is determined either by the nationality of the ship, or by the agreements of the parties concerned.

In the first place, the possession of the ship by a national of a contracting nation involves the application of the Convention. The law of the Flag is imposed on the passenger.

But the Convention applies also to the transport of which the port of embarkation or the landing port so as stipulated in the Contract, is in a contracting State.

This explains why, even if carrier and passenger are nationals of a contracting nation, the passenger can always take proceedings against the carrier, before a competent court (according to the Convention); he can always appeal to the conventional agreements.

The consequence of this double criterion is that the field of application of the conventional text is considerably widened. This text allows a carrier, national of a contracting State to oppose the conventional stipulations to a passenger travelling between two non-contracting nations.

That will also give a sufficient protection to the passenger pleading before the Law-Courts of a contracting nation.

This new text compared with the first draft undoubtedly reveals progress. The former anticipated the application of the international Convention only when the embarking point was in a contracting State.

The first wording was inspired by the stipulations of the Convention of 1924 on Carriage of Goods. Article 10 of that Convention

made provision that these stipulations would apply to any bill of lading issued in one of the contracting States.

If this reading had been maintained, the application field of the Convention would have been seriously diminished.

In order to make these definitions clear, we think it necessary to illustrate them by means of some examples :

So will the convention apply, during a voyage between the United States and France, if the ship flies the flag of a contracting State. It will not apply if passenger and carrier are nationals of the same State even of a contracting State.

During a voyage from Holland (contracting State) to Egypt (non-contracting State) the Convention will apply to the Dutch judges dealing with a claim, even if the ship does not depend from a contracting State, because the embarkation port was in a contracting State.

During a voyage from Argentine (non-contracting State) to Spain (contracting State) the Convention will apply for the Spanish judges dealing with a claim, because the landing port is in Spain (contracting State).

Articles 3 to 10.

Preliminary remark :

Articles 3 to 10 include provisions relating to the carrier's liability, to the exonerations of which the carrier may benefit and to the limitations of his liability.

Before examining the meaning and the field of application of each of these articles, it is important to remind of the economy of the projected draft.

Two questions had to be solved : the first was to know in which cases the carrier could or could not be held responsible; the second was to know in what conditions this liability — if it was admitted — could be limited.

1) In the first place, the Convention lays down as a principle that the carrier is responsible for damages inflicted to the passenger or to his luggage.

The carrier is obliged to bring the passenger and his luggage safe and sound to their destination; consequently he is responsible for the occurred damage.

The Convention, however, demands the existence of a causality between damage and carriage (art. 3). This being so, the principle of liability is tempered by exonerations (art. 5) and, in any case, by a legal limitation of liability (art. 7).

2) The exonerations are provided for under the form of « excepted cases » nearly similar to those, which the Hague Rules have rendered familiar.

The carrier's liability is « de droit » rejected in the enumerated cases.

There are however degrees in this legal exoneration.

It will only have an absolute effect in the case where the nautical faults (fautes nautiques) committed by the master and other agents of the carrier, lead to either shipwreck, or collision or stranding of the ship.

In these circumstances, the passenger or his claimants will not be entitled to combat this unliability by means of a contrary proof.

They will undergo the law of the « excepted cases »; this risk of carriage is definitive and cannot be avoided.

This exoneration could only be rejected in the case where the personal fault of the carrier could be proved (art. 8).

This rigour is attenuated for the other « excepted cases ». The unliability will vanish if the carrier's personal fault or the fault of his agents can be proved.

The passenger will undergo these risks, only insofar as he is not able to prove a fault, even a fault committed by the carrier's agents.

3) In any case the carrier's liability will be limited.

A lump sum indemnification will be granted to the passenger or his assigns.

This limitation is absolute in cases of faults committed by the carrier or his agents. Only a personal inexcusable fault committed by the carrier could involve forfeiture from this right to limitation.

This is the system in view. It seems to us, that it safeguards the rights of the passengers, and also that it respects a tradition dear to

all maritime nations, namely a total unliability of the carrier, when his agents have in the management of the vessel, committed important faults, from which the loss of the ship has resulted.

What is the result of all this, in the field of proofs ? (for, in every action, proof is a heavy burden for whom must produce it).

When the proof of « excepted case » is produced by the carrier, the passenger will have to produce a proof in order to combat the carrier's total unliability for his action and that of his agents.

The passenger will also have to produce a proof if he wants to obtain that the carrier's right to limitation of liability should be forfeited.

At last, the carrier will have the burden of a proof when the damage will be owed either to unseaworthiness of the ship, or to any other cause, and resulting from his fact or that of his agents.

The Sub-Committee thinks that it has found a solution which gives satisfaction both to the natural preoccupations of Judges and Parliaments and to the traditional rights of maritime carriers.

This system is, according to the Doyen Ripert :

« the original and true system of Maritime Law, which wanted » that both parties should be associated to the risks of transport and » that, in every case, should be determined which party will support » the risk. »

Article 3.

This article lays down the general principle of the carrier's liability.

There is a presumption of liability against him.

This liability will attain its full effect, only when the carrier is not able to invoke an event, enumerated in art. 5.

However, the remarkable thing in this article is the provision imposing the existence of a causality between damage and carriage operations.

Indeed, it is not sufficient, that the damage should occur on board of the ship, it must occur not only during the carriage but in relation to the carriage operations.

The implicit introduction of this notion of causality, which exists in all laws, constitutes a safeguard for the carrier.

The Sub-Committee intended to create an obligatory link of dependance between the damages and the operations provided however that the proof should not be as severe as that wanted by the doctrine of the « cause adequate »,

Article 4.

This article concerns luggage.

The Sub-Committee has made a distinction between 3 categories of luggage.

a) Registered luggage.

Is luggage which is taken over by the carrier before the embarkation and could in principle be assimilated to goods, for they are under permanent custody and under constant control of the carrier.

The national laws however, consider the carriage of luggage as an accessory contract to the carriage of passengers and in general this carriage does not follow the rules on payment of freight on contribution to general average, on suppression of lien.

In fact, by way of the registration the carrier takes over the luggage, he checks their condition; consequently, he is obliged to give them back in good condition, so as he received them, and the passenger is obliged to take them back at their arrival.

In order to be exonerated in case of damage, the carrier will have to appeal to the habitual exoneration clauses which are provided for in following art. 5.

b) Cabin luggage, which is :

Luggage placed in the luggage-room or objects placed in the safes or the armoured rooms of the ship.

The system of these different luggage and objects is a special one. Indeed, either in relation to the cabin luggage which is embarked under the care of the passengers themselves, or in relation to the luggage lodged in the luggage-room, to which the passengers may have access during the voyage, or in relation to objects put in the safes at the disposal of the passengers, the Sub-Committee is of the opinion that the passenger could, during the whole voyage, keep a very precise control upon these categories of luggage, and it seemed normal that the carrier's liability could only be accepted where the

passenger could produce the proof of the carrier's fault, or that of his passengers.

c) Precious objects.

The carrier is assimilated to a hotel-keeper; his liability can only be considered if he is considered as the trustee of these precious objects.

So is he responsible, only when he has formally accepted the custody of these objects.

However, the passenger will have to justify his claim for indemnifying in case of loss.

Article 5.

This article deals with the cases of exoneration of the carrier's liability. We are able to say that that is the main provision of this convention.

The Sub-Committee has repeated most of the provisions worded in art. 4 of the Brussels Convention on Carriage of Goods.

Paragraph 1.

The Commission has put, in § 1, the principle of the exoneration of the carrier's liability, in case of unseaworthiness or inherent vice of the ship, provided that a reasonable diligence is exercised.

This stipulation was not mentioned in the first project of the convention. Some delegates were of the opinion that there was a contradiction between obliging the carrier to bring the passenger safe and sound to his destination, on the one hand, and obliging him only to take all necessary steps to that effect, on the other hand (put a seaworthy ship at the passenger's disposal).

Before justifying the reasons which prompted the Commission to introduce this new notion, it is important to remind that the Brussels Convention (25.8.1924) had already given the carrier a serious protection. Before that Convention, it was admitted that the carrier was responsible for loss and damage to goods caused by an unseaworthy ship.

Art. 4 (1°) of the international text, abolished « this absolute guarantee applied by the carrier in each contract of carriage, that his ship was seaworthy at the beginning of the voyage ».

From now on, a reasonable diligence from the carrier involved his exoneration in case of the unseaworthiness of the ship.

Before concluding this from the text, which governs the carriage of goods by sea, the Sub-Committee studied the question, whether the new stipulation would not be prejudicial to the passenger's interests. Would it not seem strange, to admit that a carrier could suppress his liability by proving, by means of a certificate in proper form, that the ship had left in good condition.

Would it not seem exorbitant that the passenger who had proved that the damage was caused by a default of the ship, could be urged with the proof of a reasonable diligence by means of a simple certificate of inspection only.

Those objections were not accepted. Indeed, the burden of proof, which falls upon the carrier, in this circumstance, is never considered by the Tribunals as an easy one. The judge does not think sufficient to produce a certificate; on the contrary he minutely controls the statements and so he restores the balance which seemed in peril.

So the Commission was able to admit the new stipulation with great serenity.

If it appeared normal not to want from the shipowner an absolute guarantee of seaworthiness, the Commission requested from the carrier that he should exercise « reasonable diligence » in order to put a sea-worthy vessel at the passenger's disposal but it allowed him to prove that he had tended towards it.

Paragraph 2.

This paragraph includes the list of the excepted cases. It is one of the most important in the Convention.

As general remarks have been drawn up, concerning this system, it is suitable to limit this comment to a main difficulty which had to be solved by the Sub-Committee :

Must a provision be included in this Convention in relation to the exoneration from the carrier's liability, for the nautical faults committed by the master or by his agents.

Were all nautical faults to be retained ?

On the contrary, has this exoneration to be considered only in relation to serious accidents caused by a nautical fault?

E.g.: collisions, strandings, total loss, or general averages of the ship.

As last possibility, had the exoneration to be extended to serious accidents not caused by a nautical fault ?

This major difficulty was solved to the satisfaction of all members of the Commission.

Following the opinion of Mr. Ripert, the Sub-Committee decided that some risks which are qualified risks (shipwreck, collision, stranding) must automatically involve the carrier's exoneration, even if they occurred because of an error of navigation committed by the master.

So, the carrier is exonerated, in the case of major accidents, whether or not the fault of the master or of his agents is proved.

In those cases which are limitedly enumerated, it was normal that the passenger should undergo a risk, for the same reason that the shipowner undergoes a serious prejudice. This is even more so, as it must be reminded, that the faults, which might be the origin of such an accident, are not frequent nor voluntary.

This formula should not offend Parliaments which will have to ratify the Convention, because it cannot be assimilated, as far as the consequences are concerned, to the negligence clauses, which have become object of serious criticism.

To sum up, the event which is the consequence of the nautical fault and not the nautical fault itself, would constitute the excepted case.

The other « excepted cases » are classical cases upon which there is no necessity of dwelling.

The passenger will be entitled to fight the carrier's unliability by proving his personal fault, or that of his agents.

Letter (n) of article 5 reproduces the provisions of letter (q) of art. 4 of the Brussels Convention of 1924.

We draw the attention upon the nature of the proof, which the carrier will have to produce, in order to escape from the presumption weighing upon him.

In our opinion it will not be sufficient for him to prove that neither himself nor his agents have committed any fault. On the contrary, he will have to establish the circumstances in which the damage occurred, and he also will have to prove that the damage was due to a cause for which he cannot be held responsible.

If the cause of the damage remains unknown it seems to us that the carrier is responsible.

Article 6.

In that way, the fault of the victim can involve a dealing of liability or can even totally exonerate the carrier.

One « excepted case » is provided for suicide, drunkeness or disparition of the passenger.

This article follows the provisions of art. 21 of the Warsaw Convention and those of art. 6 of the Rome Convention.

However, those two Conventions stipulate that the dealing or the exoneration of liability will be appreciated and pronounced by the Court dealing with the matter according to the provisions of its own law.

The Commission was of the opinion that this reference to the « lex fori » must not be added to the Conventional text.

Article 7.

Following the Conventions of Brussels, Warsaw and Bern, the draft provides for a legal limitation of the carrier's liability.

The Brussels Convention has adopted an indemnification taxed in Gold-Sterling, but, as nobody knows exactly what a Gold-Sterling is, we cannot adopt such a measure.

The Convention of Bern adopts the germinal-franc. The Warsaw Convention has chosen the « franc-Poincaré », obtained by 65,5 m/mg gold of 900/1000, and has stipulated that the granted sums may be converted in any national currency in round figures.

The indemnifications are :

125.000 gold-frs for decease of the passenger (or 2.900.000 present Fr.Fr.);

250 gold-frs per kilogram on registered luggage (or 5.800 present Fr.Fr.);

5.000 gold-frs for luggage which remained under the custody of the passenger (or 115.000 present Fr.Fr.).

The indemnification granted in case of death or personal injury is only provisional.

The Commission suggests that this indemnification should be similar to that decided by the Warsaw Convention at its next revision.

Indeed, the Council of the International Civil Airways Organisation has been asked to bring the Warsaw limitation of liability up to 200.000 gold-francs.

The first draft suggested by the Commission reads as follows : « in case of death.... loss of luggage...., the liability of the carrier including that of his agents ».

That was the formula of the Warsaw Convention. The Sub-Committee has chosen a clearer reading : carrier's personal and civil liability.

The personal liability concerns the personal faults of the carrier; the civil liability is that, weighing upon him, in relation to faults committed by his agents.

The rule is almost universal, that one is responsible for damages, caused by persons for whom one is liable. The agent is considered either as an instrument in the hands of his principal, if he has obeyed his orders, or as having acted on his behalf, when he was acting independently.

In fact, the carrier is responsible for the facts and faults of his agents towards the passengers, for the same reason as he would be responsible towards third persons, not dealing in the contract of carriage.

But, this « civil » liability extends to the consequences of the damage bringing fact, which might have been caused by the ship itself.

We do not want to introduce in this comment the notion of guardianship dear to French civil law, but we must remind that the carrier's liability can also be involved by the fact of the ship.

Briefly, this notion of civil liability concerns the facts and faults of the carrier's agents, and the fact of the ship or of its equipment.

Article 8.

The carrier's liability will be unlimited if his personal fault implying the expectation of damage and bold acceptation of it, is established.

The passenger will have to prove the existence of an extremely serious fault; for instance, if a carrier, by giving orders or by supplying a certain material, aggravates the risks, which are incompatible with the carefulness of a wellmeant management.

Let us imagine, for instance, the case of a ship, which, by running a blockade so that the carrier may realize some profit, comes under the fire of war vessels. Passengers are wounded or killed. Who could honestly lay claim to the carrier's absolute unliability for war actions ?

If we take the case of a ship which, in order to honour a time-table and remunerative rotations, is boldly made to face the perils of a stormy sea with an unsufficient crew ?

At last, let us imagine the case of a carrier who allows his ship, to sail without a certificate of seaworthiness and with an unsufficient protection against fire.

Do you, in those cases, grant the carrier, the benefits of a total exoneration ?

On the other hand, the carrier who would have acted in such an unconsiderate and blundering way, that the voyage has become impossible could be considered as having committed a very serious personal fault. His extreme foolishness deserves a sanction.

The adopted definition has this advantage that it avoids the notions « faute lourde » (similar to « dol ») and « wilful misconduct » (which are common in the Warsaw Convention, and which confuse lawyers and Courts). The task of the judge who will have to appreciate the seriousness of the carrier's personal fault, will be easier with the definition given in the text of the Convention.

The Anglo-Saxon Courts will indirectly find again this notion of « wilful misconduct » which is similar to the fault committed by a carrier who accomplished any action, knowing that it probably would harm the passengers, or carelessly and boldly disregarded its problable consequences.

Latin jurists will, on their part, find again this notion of « faute inexcusable » and they will not have to search for the intentional element which would turn this fault into real « dol ».

This text seems satisfactory to us.

Article 9.

This clause already exists in a slightly different form in the Brussels Convention on bills of Lading.

Numerous countries did ratify the Brussels Convention on the limitation of the shipowner's liability.

However, the Sub-Committee maintained a reference to the internal law, for certain countries (Great-Britain and the Commonwealth, and the U.S.A.) that did not ratify this Brussels Convention.

Article 10.

This clause appears in slightly different forms in the Warsaw Convention and in the Brussels Convention, namely art. 3, 8,....

So will any clause, that gives the carrier more favourable conditions of liability than those provided for by the Convention, be considered as not written.

Article 11.

So as already mentioned, art. 3 and art. 4 define the carrier's liability in case of death, or personal injury which the passenger undergoes.

Art. 11, which refers to that text, specifies that the suits concerning liability can only be exercised in the conditions provided for by the Convention; art. 11 enumerates the persons entitled to lodge a claim. By this enumeration, the Commission wanted to limitate the persons who are entitled to lodge a claim. It did not wish that this question should be settled according to the lex fori.

Indeed, it was essential that the number of those who could claim for indemnification, should be limited.

The jurisprudences of the great maritime countries are not unanimous on that point, there are some more liberal nations who grant indemnification with great generosity.

However, the Convention wanted that any person, who would be supported by the deceased passenger, at the moment of his death, should be authorized to formulate a claim.

The word « actually » which was put in the text, forbids any person who might have been occasionally supported by the deceased passenger to lodge a claim.

It seems unnecessary to the Sub-Committee to make a distinction between material and moral prejudice. Indeed, in all countries, the control of the Courts is very strong and it is obvious that some relatives, whose names appear on the list of the Convention, will not obtain the reparation of a material prejudice, if it is proved that their financial situation gives them total independance towards the deceased passenger.

Article 12.

This article deals with claims for indemnification, the conditions in which these must be introduced and the time bar which can be opposed to the passenger and his assigns.

It must be noted that the Sub-Committee wanted the carrier to be notified without delay by the passenger of the personal injuries suffered.

The carrier must have the possibility of immediately ordering investigations.

« Carrier » means not only the persons whose names appear in art. 1 a), but any agent, who on board or ashore, may be considered as a qualified representative of the carrier (for instance : master, purser, medical officer, ship-agent at the port of landing); a notification given to any agent (seaman or butler) would be of no value at all.

However, it was difficult to decide that the absence of an immediate notification involved a bar, so the Sub-Committee had to maintain the principle of a 15 days' delay after the date of landing, in order to allow the passenger to give a written notice of his protest.

No notification is provided for in the case of the passenger's death or the disappearance of a passenger; they cannot escape notice and the master is immediately notified.

In relation to the luggage, the delay for protest is 5 days.

If there is no notification within the delays, the passenger will be forced to fight the presumptions edicted by the convention.

The carrier is entitled to oppose the yearly prescription to the passenger or to his claimants who did not introduce their claim.

Article 13.

The Convention gives the claimant the right to bring his action before the Courts it has determined.

The Courts, that are declared exclusively competent upon the territory of one of the High Contracting Parties, are as follows :

a) The Court of the usual place of residence of the defendant or of one of the seats of his business. It is the classical rule « forum rei ». In this circumstance the Sub-Committee has adopted the text of one of the provisions appearing in the Convention upon civil competence in relation to collisions (1952).

Indeed, the word « domicile » which usually appears in the competence rules, is sometimes wrongly interpretated in the international relations. It seemed better to adopt the term « residence ».

On the other hand, the terms « place of business » were adopted because this system allows the claimant to take legal proceedings at the place where the carrier has established for his business a seat of exploitation of a certain importance.

These provisions seem entirely satisfactory to us. They were approved by the nations which signed the former Convention.

b) The passenger may also take proceedings before the Law-Court in the port of embarkation or of destination mentioned in the contract, or before that of the port of landing.

As the Convention applies to all transports, of which the point of departure or the point of arrival was in a contracting state, it was normal that those law-courts should be declared competent.

However, the Commission wanted to provide for the case where the passenger's landing took place in a port which was not the port of destination mentioned in the contract.

It consequently allowed the passenger to take proceedings before the Law-Court where the ship finishes accidentally her voyage.

It seemed to be necessary too, to define the port of destination. Indeed, the agreements of the parties determine that port — it is expressly mentioned in the title of transport — and the intention uses to avoid that the passenger could only take legal proceedings before the Court of the end of the voyage which has no relation to the provision of the contract of sea-carriage.

MINUTES OF THE MEETING
OF THE INTERNATIONAL SUB-COMMITTEE AT BRIGHTON
21st, 23rd AND 24th SEPTEMBER 1954,
UNDER THE PRESIDENCY OF PROF. DR. J. OFFERHAUS.

I. Liability towards passengers.

Article 3.

1. With regard to the principle of the liability, Judge Alten moves a resolution aiming at imposing the onus of the proof of the fault or omission of the carrier on the passenger. It is not accepted; the Commission does indeed consider that the passenger should only have to prove the relation between the damage and the transport operations; the carrier being then supposed to be responsible.

2. Mr. Poulsson states that to the Norwegian delegation it is not clear how the « unexplained death » of a passenger during the transport is going to be treated (cfr. also art. 5, 2° m) where no reference is made of this case). The President after having given an opportunity to the « rapporteur » to express his views on the subject, confirms that such a case can not be regarded upon as being in relation with the transport operations; whereupon Mr. Poulsson declares himself satisfied.

3. About moral damage (pretium doloris) and reduction of capacity without the passenger being wounded or injured, various speakers observe on the one hand that if it is the intention to include moral damage as well as material prejudice, this should be said in as many words and on the other hand that whereas the legislation of some countries admits moral damage, that of others does not. The President, interpreting the majority's opinion, states that the word « damage » should be construed so as to include every damage whatsoever. In the circumstances the Commission decides, on Prof. Giannini's suggestion, to leave it to the drafting Committee to make up its mind whether

the word « injury » (lésion) should be kept (after withdrawing the word « personal » — corporel —) or some other formula should be found out instead such as the one praised by Mtre Prodromides « atteinte à l'intégrité de la personne » (offence to the person's integrity-entireness).

Article 5.

4. The first question to arise is whether the words «nor the master» should be added to the words « neither the carrier nor the ship » or not. According to Mtre. Prodromides, who puts this question, the answer to it depends on whether the exonerations and limitations are to profit only to the shipowner or not. Various members argue that the Convention does not deal with the master and that therefore the insertion of the words « nor the master » goes beyond its scope. This opinion is shared by the majority and duly recorded.

5. A second point is raised by Mtre. Scheffer who wants to know whether the words « nor the ship » should be kept in the wording of art. 5, the Convention's aim being to regulate only the contractual responsability? The Commission agrees with its President that although in those countries where a primary responsibility rests with the carrier and a secundary one with the ship, the text including « nor the ship » may be kept, it nevertheless be left later on to the national law to dispose of this question.

6. As to the third question which is in connection with the words « personal injury » (lésion corporelle), the same remarks as those expressed with regard to art. 3 also apply here.

7. Art. 5, 2° a.) Judge Alten suggests to repeal par. a) because according to him insurance makes it possible for the carrier in all the occurrences mentioned to take the damages and losses suffered by the passengers for his account. This suggestion is supported by Mtre. Prodromides who fears that the Parliaments would be unfavourably impressed when faced with these extensive exonerations. Judge Boeg suggests in the circumstances to add the words « unless caused by a personal fault of the carrier ». After a long debate the Commission finally decides to maintain par. a).

8. Mtre. Prodromides moves a resolution aiming at adding at the end of art. 5, 2° a) a clause more or less similar to this one : « Provided

the carrier proves that he has exercised due diligence to make the vessel seaworthy ». He is anxious to avoid that in case of shipwreck, collision or stranding as a consequence of unseaworthiness, the passenger with whom would rest the onus of proof (cfr. art. 5, 2° n) and art. 5. 1°) would be faced with too heavy a task. This resolution is not supported by the majority of the Commission.

9. Prof. Giannini raises yet another point: would all these difficulties not be remedied by an insurance to be contracted by the passenger rather than by the carrier? The President waives this problem as it does not fall within the scope of the debate.

10. Mtre Hoekstra asks why after « error in navigation » the words « error in the management of the ship » should not be added? The Commission, after having heard the explanations of the « rapporteur » on the subject, resolves to accept the principle of the alteration of the wording of the article in order to include the errors in the management of the ship as well as the errors in navigation, thus bringing the text of the Convention in harmony with that of the Hague Rules.

11. Art. 5, 2° b) : Judge Boeg suggests that a clause be added aiming at extending the exoneration to the case of the fault of the servants of the carrier, and that a similar alteration to par. n) of the same art. 5, 2° be made. Mtre Nilsson moreover states that the Danish delegation would be willing to suppress art. 5, 2° b) altogether, the case of « fire » to be included among the other occurrences mentioned in art. 5, 2° a). The commission decides not to alter the existing text.

12. Art. 5, 2° f) Mr. Norborg asks why « piracy » has not been mentioned here ? The President explains that piracy is implicitly included. This opinion is not opposed.

13. Art. 5, 2° k) Mtre Hoekstra draws the attention to the circumstance that unlike the Hague Rules the Convention did not mention the saving of property. The « rapporteur » in reply states that this omission derived from the assumption that the carrier, who might benefit by the saving of property could normally be expected to take a greater responsibility upon him. After a debate in which i.a. the President, Mtre. Govare and Mtre. Prodromides take part, the Commission decides to leave the text as it stands.

14. Art. 5, 2° m) : The President brings to notice that the Italian delegation had objected to the insertion of the word « disappearance » of the passenger. Prof. Giannini reveals that this objection is withdrawn.

15. Mtre. Hoekstra considers that apart from the cases that have been provided for, there are other ones in which the liability of the carrier should not be engaged e.g.; the lack of cautiousness of the passenger himself. The President points out that art. 6 of the Convention gives the answer.

16. Very similar is the non-observation by the passenger of the ship's regulations : Mtre Hoekstra therefore is of opinion that in such a case should be prescribed an « ipso facto exoneration » and that without prejudice of the provisions of art. 6, art. 5 should be modified accordingly. The Commission does not accept this point of view.

Article 6.

17. Mtre Govare raises the question whether it would not be advisable to add « or the negligence » after « the fact or the fault » or alternatively whether it could not better serve the Convention's purpose if the present wording be replaced by « the fact or negligence ». Mtre. Podromides thinks that « fact » is too vague an expression and he praises « fault » provided this word be given a broad meaning as in the Geneva Convention on inland transport. After Prof. Giannini, Mtre. Spiliopoulos and Mr. Potier have developed their views, the President winds up the debate and obtains the Commission's approval to replace « fact » by « act ».

Thereupon Prof. Giannini draws the attention to the difference between an act and an omission, the latter word standing for something negative. Now in the Convention this appears to have been overlooked.

In conclusion the President makes the following proposal : « act, fault or negligence » and this is the wording finally adopted by the Commission.

Article 10.

18. According to Dr. Müller an answer should be given to the question whether in this article it would not be advisable to provide that any clause aiming at reversing the onus of proof should be null

and void, or not. It is decided to leave it to the drafting Committee to suggest a solution.

19. Another much discussed problem is that of the incidence on the carrier's liability of the existence of an insurance contracted by the passenger : in other words : would the carrier be entitled to take advantage of the fact that the passenger had the benefit of an insurance in order to deny or limit his obligation towards that passenger? After a number of members had an opportunity of setting out their views, the President in conclusion suggests that owing to the differences that apparently exist between the various national laws, it would be wise to refrain from mentioning anything on the subject in the Convention. This opinion is supported by the Commission.

20. Judge Alten moves an amendement to article 10 reading : « The parties to a contract of carriage comprising the whole capacity of the ship may, notwithstanding the provisions of paragraph (1) agree on clauses as there mentioned, but no such clauses shall prejudice the rights of the passengers under the Convention ». According to him there is no reason to make the provisions of the Convention imperative as between the contractors to a Charter-party. Replying to Mr. le Doyen Ripert, he explains that his proposal aims at saying clearly that the owner and the charterer should be at liberty to agree between them on their liability inter se just as they think proper. The Commission decides that the drafting Committee should report on the question.

Article 11.

21. Thanks to an observation made by Judge Boeg an inaccuracy in the translation of the French « ou toute personne » comes to light. This will be remedied by the drafting Committee.

22. The main point at stake in this article is the exact meaning of the words « person who was actually supported... ». According to Mr. le Doyen Ripert this is a question that should be left open to the judge's appreciation. Prof. Giannini also thinks that the answer rests with the national law of each country. Prof. Sandford would like that Prof. Giannini's statement should be expressly taken over in the Convention. The Commission thereupon decides to entrust the task of finding a solution to the drafting Committee.

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II. Formalities and claims, time-limits, jurisdiction, transports carried out by the State or other Public Authorities.

Article 12.

23. Some members having asked that the alternative provided for by the first part in fine of article 12 should be more clearly defined, their demand is passed on to the drafing Committee for due consideration.

24. Mtre. Govare foresees difficulties when the date from which the prescription originates is not exactly known. What is the meaning of the word « event » at the end of the last sentence of the clause? Is it the accident or the death of the passenger following the accident, sometimes many months later? The Commission decides to ask the drafting Committee to report on the subject.

25. Mtre. Spiliopoulos is anxious to know what is meant by the word « damage » of article 12. Does it apply to both passengers and luggage or not? This question also is sent back to the drafting Committee.

26. After a lengthy debate on the question of time-limit after which any action against the carrier becomes time-barred, the President asks the Commission to vote. All delegates who are present, accept to keep the one year time-limit, Messrs. Dor, Prodromides, Boizard, Müller, Alten, Norrman and Brajkovic, who support a two years limit, excepted.

Article 13.

27. Prof. Brajkovic suggests that par. a) should be made clearer by adding the words « acting in the case ». His demand will be submitted to the drafting Committee.

28. A proposal of Mr. Nordborg to add the word « permanent » to « place of business » is also sent back to the drafting Committee's attention.

29. The Swedish delegate wonders also whether the alternatives of article 13 a) and b) and at least the last one could not advantageously be abolished? This question will be dealt with later on when examining article 2.

30. Mr. Nordborg deals with the last paragraph of article 13; considering that it might perhaps be better to restore the liberty of contracts, he proposes to substitute to it the following text : « Unless otherwise agreed by the parties, proceedings for liability shall be taken before the Court of the usual residence of the defendant or in the place of business ». Only Messrs. Grenander, Nordborg, Nilsson, Norrmen and Hoekstra vote for this proposal, but the Commission makes it clear that after the accident the parties are at liberty to chose the place of jurisdiction and charges the drafting Committee to amend, if necessary, the text of the draft Convention accordingly.

31. Prof. Sandiford is of opinion that in any case the Tribunal of the port of disembarkation must not be competent. Mr. le Doyen Ripert supports the same point of view and despite the objections of Mr. Spiliopoulos the Commission also accepts it.

32. As far as arbitration is concerned the Commission decides to allow clauses providing for arbitration but only within the limits of article 13; this is an important modification to the draft Convention.

33. Judge Alten draws the attention to a possible interpretation of the first paragraph of article 13, according to which the Convention could be made applicable not only to vessels belonging to the nations which would have ratified the Convention but also to other nations. It is decided to ask the drafting Committee to find an answer to Judge Alten's observation.

Article 14.

The Commission makes no comments on this article.

III. Application field of the Convention.

Article 2.

34. Mr. Nilsson explains that the Scandinavian countries have adopted uniform legislation and that their Parliaments will no doubt hesitate to alter this legislation. Therefore Mr. Nilssons suggests to add at the end of article 2 the following words « ou d'autres Etats dont les ressortissants sont assimilés à ceux-ci » (Note : the amendment has

been presented in french); if this amendment be accepted the Convention would not be applicable to the passenger traffic between the scandinavian countries in as much as their citizens are involved. (See further on N° 38.)

35. Judge Alten comes back to the observation he made with regard to article 13 (see N° 33) : he sees no possibility to make the Convention compulsory in countries, that have not ratified it. He therefore proposes to leave out all references to the nationality of the ship, to delete completely the second sentence of article 2 and to replace the first one by the wording : « the provisions of this convention shall have effect in relation to and in connection with any transport from a port of a contracting State to a port of another contracting State ».

Mr. de Doyen Ripert replies as follows : a distinction has to be made between the question of jurisdiction on the one hand and in this connection it is clear that it is not possible to compel a country, that has not ratified the Convention, to apply it and on the other hand the compulsory application of the Convention by the Courts of a contracting State; for such countries there are good reasons to make the Convention compulsory not only when the ship belongs to that country but also when the port of departure and the port of arrival are situated in contracting States even if the vessel belongs to a non-contracting State.

Mr. Govare thinks it would be an error to devote much attention to the cases in which the Convention does not apply, as it should be the common desire to give to it an application as wide as possible.

In conclusion the President proposes to keep the decision in abeyance until the Madrid conference.

36. Mr. Nordborg also wishes that art. 2 be amended in view of limiting the application of the Convention to one case only say when the vessel as well as the passenger belong to countries that have ratified the Convention.

Only Messrs. Norrman and Grenander support Mr. Nordborg's proposal.

In order to avoid any misunderstanding the President puts the question once more on the agenda of the 3rd session (friday afternoon). It appears that the majority of the Commission is not willing to alter the present wording of the first sentence of article 2. When

it comes to a vote only Messrs. Nordborg, Grenander and Alten declare to oppose it.

In reply to Mr. le Doyen Ripert, Mr. Nordborg emphazises that he wishes a modification by reason of general considerations and not as a consequence of the particular position of the scandinavian countries, same justifying only his opposition to paragraph 2 of the same article.

37. With regard to paragraph 2 of article 2 Prof. Sandiford speaking for the Italian delegation suggests not to apply the Convention when the voyage is « national »; to substantiate his proposal he makes reference to the inconveniences which have occurred at the time of the « Titanic » disaster.

Mtre Scheffer supports the Italian proposition.

Judge Boeg on the other hand wishes to add to paragraph 2 the words « in non international transports » after « if.... »; in such a case the law of the flag should be applicable.

Mr. le Doyen Ripert and Prof. Sandiford agree with the proposal of the Danish delegate.

The President winding up the debate agrees with Mr. le Doyen Ripert that the words « international transport » should be defined in article 1 and summarizes the commission's position as follows : the Convention does not apply when three conditions are complied with : National transports (1), ship (2), and passengers (3) of the same nationality.

The drafting Committee will prepare the necessary amendments to put the text of the Convention in harmony with the commission's views.

38. As to the transports between Scandinavian countries the President declares that they will be the object of a special protocol.

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IV. The limitation of liability.

Article 7.

39. Following a suggestion made by Mr. le Doyen Ripert the Commission decides to delete the words « including that on behalf of its servants » that appear three times in this article.

40. Mtre Prodromides wishes to replace, as a basis for the calculation of the amount of the limitation, the Poincaré franc, that does not exist, by the « franc Germinal » or gold franc. The Commission voting on the subject, decides to keep the text as it stands.

41. As far as the par. 2 is concerned (registered luggage) Mtre Hoekstra suggests to limit the liability per parcel and not per kilo. He is supported by Messrs. Scheffer, Poulssen, Grenander, Nilsson, Boeg and Müller.

As this majority is not a strong one, the President is of opinion that the question should be reexamined at Madrid.

42. The Commission adopts the addition of « dans tous les cas » after the words « est limitée.... » in par. 3 of the draft in french (note : in the draft in english the words « in no case » are already appearing).

Article 8.

43. First of all there is the question of « dolus eventualis ». After the « rapporteur » has been given an opportunity to supply the necessary explanations with regard to the additions made by the drafting Committee to the original text, the Convention accepts same.

44. Judge Alten wishes nevertheless that an alternative should be provided for : « either the prevision of the damage or the reckless acceptation of it ». The President replies that it is not an alternative but a double condition (unexcusable fault) that has been meant. The Commission votes : there is no majority to support Judge Alten's suggestion.

Article 9.

45. Messrs. Nilson and Nordborg point out that, as a reference is made to the Brussels Convention and as another Commission is dealing with the latter, this Commission should be made contact with. This point of view is agreed upon.

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V. Definitions.

Article 1.

46. On Mtre Prodromides' suggestion the word « bâtiment de mer » is replaced by the word « navire » in par. b) in the text in

french (note : this remark does not apply to the text in english as there the word « ship » already appears).

47. Judge Alten draws the attention to the words « stowaways excepted » in the same par. b) : these should be deleted as the Convention does not deal with stowaways, who are not passengers in the meaning of par. c). The Commission accepts Judge Alten's views.

48. Replying to Mtre Hoekstra the President confirms that « guests » or non-paying passengers are to be regarded as « passengers » as far as the application of the Convention is concerned.

49. On the other side and after a long debate the Commission decides not to consider as « passengers » to whom the Convention is applicable, such persons as marconists, musicians, hairdressers, etc. who are neither passengers nor members of the crew.

50. The same view prevails as far as military units are concerned.

51. With regard to par. d) Judge Alten observes that according to him the words « and of their families » should be added after « of the passengers ». The President in reply makes it clear that this question has been left open for the Courts to decide.

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VI. The responsibility with regard to luggage.

Article 4.

52. Mr. Poulsson is of opinion that the luggage other than cabin luggage should not be given a treatment different from that of goods : in the circumstances a mere reference to the Hague Rules appears to him quite sufficient. He is supported by Messrs. Poulsson, Grenander, Nordborg and Hoekstra. However the majority of the commission decides to stick to the principle laid down in article 4, as owing to the many differences between carriage of luggage on the one hand and that of goods on the other hand (bill of lading, general average, lien) it shares the point of view expressed by Mtre Warot who justifies the assumption that the carriage of luggage is the object of an autonomous contract.

53. As to the limits of the time and the place of the liability of the carrier the Commission votes once more and adopts the principle that the carrier is responsible for the luggage from the acceptance until the delivery.

54. Following a suggestion made by Prof. Giannini the Commission decides to replace the words « as much as » in par. b) by « if ».

55. With regard to paragraph c) Mr. le Doyen Ripert points out that there is a case which has not been provided for, namely that where the passenger has hired a safe, the keys of which have been handed to him.

The President suggests that the draft Committee should reexamine this question in collaboration with the French delegation.

Article 12 - Second paragraph

56. Mtre Prodromides is of opinion that it is not logical to determine time-limits for the luggage different from those adopted for the passengers.

The Commission does no agree with this point of view.

57. With regard to the same article Prof. Sandiford makes the announcement that the Italian delegation will present observations at the Madrid conference.

DRAFT CONVENTION

July 1955

Note.

The Drafting Committee met at Antwerp on the 23th and 24th July 1955. Professor Offerhaus was in the chair. Mr. Carlo Van den Bosch and Mr. Jean Warot assisted him.

They examined the draft of the reporter, taking in account the decisions taken at the Brighton Meeting of the International Sub-Committee.

Referring to the verbatim reports of the International Sub-Comittee and especially to the minutes of the sessions drafted by Mr. H.F. Voet, the Drafting Committee was able to prepare a text, which will be submitted for approval to the International Sub-Committee at Madrid.

The attention of the Sub-Committee should be drawn on the fact that the important questions of the application field of the Convention and of the rules governing the transport of luggage, should be examined, as these questions have not been solved at Brighton.

The Drafting Committee.

Article 1.

In this Convention the following expressions have the meanings hereby assigned to them :

a) « carrier » includes the shipowner or the charterer who enters into a contract of carriage of passenger and luggage.

b) « contract of carriage » applies only to a contract of carriage issued for transport on a ship of persons and their luggage.

c) « passenger » includes any person, being carried on a vessel according to a contract of carriage.

d) « luggage » includes any package or clothing for personal use of the passengers, whether or not under the custody of the carrier.

e) « ship » includes any seagoing vessel on which the passenger is carried.

f) « carriage » covers the period from the time when the passengers and their luggage are embarked to the time when they are landed from the ship including these operations but excepting the time when the passengers and their goods are staying in the ship's terminal or on quay. However, « carriage » includes the eventual transport by water from land to ship or the reverse if the costs are included in the fare or if the vessel used for this accessory transport has been put at the disposal of the passenger by the carrier.

g) International transport covers all transport of which the point of departure and the point of destination, fixed by the contract, are situated either in two different States or in the same State provided that in the latter case the ship calls on a port situated in another State.

Comments :

The headlines of this article have not been changed. A new paragraph (g) defining International Transport, has been added.

At Brighton the decision has been taken to add a definition of International Transport in order to simplify the wording of Art. 11, concerning the application field of the Convention.

The conception of « port of call » mentioned in the Warsaw Convention has been introduced according to the suggestion of the International Sub-Committee.

We should recollect on the other hand, that it has been decided after a complete exchange of views not to consider neither as a passenger, nor as a member of the crew the wireless operator, the doctors, the hairdressers, etc., as well as soldiers provided that they travel in constituted unities without titles of transport.

Article 2.

The provisions of this Convention shall have effect in relation to and in connection with any international transport by a ship flying

the flag of a Contracting State and with any transport from or to any port of one of the Contracting States.

However, if passenger and carrier belong to the same State, the Convention shall not be applied.

Comments :

This Article has been modified according to the observations made at Brighton.

In that way, the Convention shall only be applied if two conditions are fulfilled :

— the carrier must be a subject of a Contracting State.
— the point of departure and the point of destinations must be situated in the Contracting States.

As a consequence, in the case of a voyage from Le Havre to New York on board of a Dutch ship, the Convention will be applied, provided the Netherlands, State of the carrier, and France, State of the point of departure, have ratified the Convention.

Finally, the Convention will not be applied when passenger and carrier belong to the same State.

Article 3.

The carrier shall be held liable for any damage contracted in case of death or any other personal injury suffered by the passenger, except the cases under Art. 5, when the damage has occured in connection with the operations of transport, in the meaning of Art. 1 - f) of the present Convention.

Comments :

No essential point of this Article has been changed at Brighton.

The Drafting Committee was of the opinion not to accept the suggestion made at Brighton by certain members of the International Sub-Committee to incorporate expressly moral damages.

Article 4.

This Convention applies to any luggage according to following provisions :

a) The carrier shall be responsible for any damage contracted in case of destruction or loss of the registered luggage belonging to the

passenger during transport from acceptance until final delivery to the passenger, nothwithstanding the provisions of art. 1 - f).

b) As far as cabin luggage remaining during transport under the custody of the passengers on the one hand, and on the other hand luggage said « de prévoyance », stored in the special storeroom, as well as the articles put in the safes accessible to the passengers during transport are concerned, the carrier shall only be held responsible as much as the passenger can prove that the damage or loss is due to the fault of the carrier or of his servants.

c) The carrier shall not be held responsible in case of loss of money, shares, jewels and precious articles of any sort belonging to the passengers, unless those have been put into the custody of the carrier who has agreed to take them in charge and has or has not collected a corresponding reward.

Comments :

This article dealing with the transport of luggage will be examined at the Madrid Conference.

The liability of the carrier in case of loss of precious articles belonging to the passengers should be fixed at that occasion.

Article 5.

1) Neither the carrier, nor the ship shall be liable for the death of a passenger, or for any personal injury suffered by him, nor for any loss or damage to his luggage when these events result or arise from unseaworthiness unless caused by want of due diligence, before or at the beginning of the voyage, on the part of the carrier to make the ship seaworthy and to secure that the ship is properly manned, equipped and supplied : whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercice of due diligence shall be on the carrier or on the person claiming exemption under this section.

2) Neither the carrier nor the ship shall be held liable for the death of a passenger, or for any other personal injury suffered by him, nor for loss or damage to this luggage when these events arise or result from :

a) shipwreck, collision or stranding even caused by error in navigation or a fault of master, crew, pilots or other servants of the administration of the ship;
b) fire;
c) perils, danger and accidents of the sea or other navigable waters;
d) Act of God;
e) Act of war;
f) Act of public enemies;
g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;
h) Quarantine restrictions;
i) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
j) riots and civil commotions;
k) saving or attempting to save life;
l) latent defects not discoverable by due diligence;
m) suicide, drunkeness or disappearance of the passenger during transport;
n) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

However, the carrier will not be entitled to take advantage of these immunities in case a) when the damage has actually been caused by his personal fault or privity or in cases b) to m), when the damage has actually been caused by his personal fault or by the fault or privity of his servants.

Comments :

The reading of this article, which is the main article of this Convention, has been unanimously approved at Brighton. However, it was decided to provide in the excepted cases the fault of the master, the crew and the other servants of the administration of the ship.

This modification aimed at putting the present reading in harmony with the Brussels Convention 1924 on the carriage of goods.

We should recollect that in Brighton the question of the insurance of passengers has been put forward. The Sub-Committee was of the opinion that it was not advisable to start a discussion on a point of minor interest.

Article 6.

The liability of the carrier shall be released or lessened if the carrier can prove that the fact or the fault or the negligence of the injured person has caused the damage or has contributed to it.

Comments :

The reading of this article, modified according to the discussions of Brighton, has been completely maintained.

The modifications made at that time have clarified it and have put it in harmony with the formula of the Brussels Convention of 1924 on the carriage of goods.

Article 7.

1) In relation to or in connection with death or personal injury of a passenger, the liability of the carrier shall in no case exceed an amount of Poincaré Francs .... (at 65,5 mgrs of 900/1.000);

2) In relation to or in connection with damages suffered by the passenger's registered luggage the liability of the carrier including that on behalf of his servants will in no case exceed an amount of Poincaré Francs .... (at 65,5 mgrs 900/1.000) per unity of luggage carried, unless the passenger declared the value when registering.

3) In relation to or in connection with loss of luggage or goods remaining under the passenger's custody either in his cabin or in the special storeroom the liability of the carrier including that on behalf of his servants shall in no case exceed in the same conditions an amount of Poincaré Francs .... (of 65,5 mgrs gold at 900/1.000).

Comments :

It was decided at Brighton to delete the formula « responsabilité personnelle et civile ».

It was decided on the other hand to calculate the limitation of liability per unity and not per Kg.

At Madrid, a definitive text should be adopted, taking in account the new reading of article 4 c). The « limits of liability » should be fixed.

Artcile 8.

The carrier shall not be covered by the provisions of art. 7 limiting his liability if the damage arises from his personal fault implying the prevision of the damage and the reckless acceptation of it.

Article 9.

The provisions of the present Convention modify neither the rights nor the liability of the carrier such as they result from the provisions of the Brussels Convention of the 25th August 1924, in relation to the limitation of the shipowner's liability or from any national law governing that limitation.

Article 10.

Any clause relieving the carrier from liability or lessening such liability otherwise than as provided in this present Convention shall be null and void and of no effect but the nullity of this clause does not imply the nullity of the contract which shall be subject to the provision of the present Convention.

Comments :

No remarks should be made. The reading suggested at Brighton has been maintained.

It was admitted that in the case, where the Brussels Convention of 1924 concerning the limitation of shipowners liability, is modified, the reading of these articles should be put in harmony with the New Convention.

Article 11.

In all cases under Art. 3 and 4, whatever proceedings on liability can only be taken within the provisions and limitations specified in this Convention.

Claims for a passenger's death can only be introduced by the husband or wife, ascendants, descendants, legitimate, adopted or natu-

ral, or any other person who was actually supported by the deceased at the time of his death.

Comments :

This article has been changed in order to allow certain heirs excluded by the 2nd paragraph to claim for reimbursement for expenses made as a result of injuries or illness that have caused the death of the passengers.

Article 12.

In relation to and in connection with personal damage except case of death, the passenger shall inform without delay the carrier of the event whenever is possible.

Further, by default of such possibility he shall give written notice to the carrier within 15 days of the date of landing; otherwise, the passenger will be supposed, contrary proof excepted, to have been landed safe and sound.

The person receiving luggage must protest within 5 days from the receiving; otherwise, the passenger shall be presumed, contrary proof excepted, to have received his luggage in good state and in conformity with the title of transport.

Proceedings for claims for death of a passenger or for a personal injury are time barred after one year.

In cases of personal injuries the limitation period will be calculated from the date of the occurence that caused the personal injury or from the date of the landing of the passenger.

In case of death occurred after landing the limitation period will be calculated from the date on which the passenger should have been landed.

In cases of death occurred after landing the limitation will be calculated from the date of the death provided this period does not exceed three years calculated from the occurence.

Comments :

Taking in account the observations made at the Brighton meeting, the Drafting Committee has thoroughly changed the reading of this article and has also made some modifications to the text presented last September.

So the Drafting Committee has deleted in paragraph 2 the words « or his agent at the port of landing »; it is of the opinion that written notices could be given to the carrier as well at sea as on land.

The delays of 15 and 5 days to give written notice were maintained.

The time bar of 1 year was maintained too.

However, in case of death, the Drafting Committee was of the opinion that the limitation period should not be calculated in the same way in the case of a passenger's death occurred during the transport and in the case it occurred after landing. In the latter case, a special rule has been suggested, inspired by the Draft Convention on transport of passengers by road (session of Rome 1955).

Article 13.

Proceedings for liability can be taken only according to the plaintiff's preference in the territory of one of the Higher Undersigned Parties.

a) either before the Court of the usual residence of the defendant or before that of a place of business.

b) or before the Court of the place of embarkation or destination fixed by contract or before that of the port of landing.

Any clauses which would result into altering the place where the case must be sentenced according to the rules of the present Convention is null and void and of no effect.

Claims issued from transport and of which proceedings for liability have resulted can be solved by arbitration if the parties to the contract of transport have decided so, provided that the place of judgment is that fixed by the paragraph a) and b) of the present article.

However, the parties are allowed to make an agreement concerning the choice of the Courts in any place after the occurrence from which the proceedings for liability originate. The same rule shall be applied in cases of arbitration.

Comments :

This article has been modified in order to take in account the suggestions made at Brighton. The drafting Committee made two amendments :

1) It is of the opinion that the text established by the Drafting Committee in Antwerp in May 1954 should be followed because the modifications to the provisions to article 2 could not be ignored in the wording of article 13 that is its necessary complement.

The Committee is of the opinion that the competence of the Courts of the port of embarkation, the port of destination and the port of landing should be maintained. In that way, the carrier is not put in a less favourable situation because article 13 par. 1 provides that these Courts will be situated in the territory of the Higher Contracting Parties. As a consequence, the carrier will be protected by the provisions of the convention.

2) According to the suggestions of the Scandinavian delegations, the Drafting Committee suggested that, after the occurrence from which the liability originates, the parties were allowed to fix freely the choice of a Court. This provision should be applicable to the arbitration.

Article 14.

The Convention applies to commercial transports carried out by the Governments or Public Authorities within the conditions under article 1.

No remarks.

MINUTES OF THE MEETINGS HELD AT MADRID BY THE INTERNATIONAL SUB-COMMITTEE ON THE 19TH. AND 20TH. SEPTEMBER 1955 PROF. Dr. J. OFFERHAUS IN THE CHAIR.

The President opens the session paying a tribute to the memory of the late Mr. Nilsson (Denmark), who deceased since the Brighton meeting.

After having reminded briefly the history of the proceedings, he expresses the hope that it will be possible to submit a draft Convention to the plenary session to be held on the 22nd. September.

He then explains the importance of the printed summary of the preliminary reports.

He points out to the delegates a few slight amendments to be made to the draft convention as shown in the aforesaid summary on pages 233 and following ones :

Article 7 : last paragraph : « ...is limited in *any case* to a lump sum of Frs . . . . »

Article 13 : 5th. paragraph : « ...the parties in the contract of.... *have decided so* ».

Incidentally he mentions the work which has been achieved within the Institute for the unification of Law (Institut pour l'unification du droit) in Rome but, considering that the general unification of the law applicable to all passengers, irrespective of the means of transport used by them, may not be anticipated yet, he suggests to maintain what the Sub-Committee has decided until now.

Finally he fixes the agenda of the proceedings and suggests to keep it along the lines which have previously been followed.

Article 2

1. The President draws the attention of the delegates upon the division of the subject in this sense that a paragraph (g) has been

added to article 1 giving the definition of « international transport » on the one hand and that the importance of article 2 has been limited to the field of application of the Convention proper on the other hand.

The « Drafting Committee », he says, has adopted from this point of view a mixed system according to which, if an international transport is to be covered by the Convention, it must not only be carried out on board a ship flying the flag of a contracting State but, in addition, the point of departure or the point of destination must be situated in a contracting State's territory.

2. Mr. von Laun (Germany) puts the question whether by « point of departure » and « point of destination » it is to be understood they refer to the ship or to the passenger. The President explains that at the present stage of the discussion this question is prematurate and suggests to postpone the study of same.

3. Professor Sandiford (Italy) argues that since the international transport has been defined at article 1 g) the last part of paragraph 1 of article 2 « and with any transport from or to any port of one of the contracting states » should be deleted. Professor Giannini (Italy) fears moreover that two types of « international transport » might be created.

The President in reply, states the Convention will only be applicable to some and not to all international transports, the definition of which is given in paragraph 1 g); the said paragraph 1 g) is not referring to the applicability but only to the definition of an expression.

4. Professor Giannini would like to delete paragraph 2 of article 2, whereto the President replies this is not the only question which arises: actually four problems need to be examined namely :

1. the choice of points of attachment (flag, point of departure and point of arrival);
2. article 2, paragraph 2;
3. the reserves made by certain delegations, eventually to be solved by a protocol ad hoc;
4. the desirability of a paramount clause.

With the purpose of claryfying the question, Mtre Warot (France) states the French delegation, after the remarks put forward by various delegations at Brighton, was now prepared to abandon paragraph 2. An opportunity must be left, however, in favour of the nations who, attached to the liberty of conventions, would somewhat be reluctant to

rally the present project. Therefore, the possibility of making exceptions by protocols to the Convention, should be maintained.

5. Mr. Nordborg (Sweden) reminds the reserves formulated by him at Brighton (N° 36 of the minutes of the Brighton meetings). The President, in reply, asks if no misunderstanding has arisen and proposes to look them over again.

6. Mtre. Hoekstra (Netherlands) states the delegates of the Netherlands wish as large an application of the Convention as possible; therefore they are of opinion that same should be applicable when the flag belongs to a contracting State and as well when the point of departure or that of arrival are situated in such a State.

Mr. Gärtner (Denmark) expresses the same opinion whilst Mr. Nordborg repeats his wish to have the application of the Convention limited in consideration of the nationality both of the ship and the passenger.

A long discussion then follows on the point whether the proposal Nordborg, having been rejected at Brighton, may or not again be put to a vote; in conclusion the Sub-Committee agrees to vote a second time but « without prejudice »; with the exception of Mr. Nordborg himself, all delegates oppose the said proposal.

7. Professor Giannini comes back to his suggestion aiming at suppressing paragraph 2 from the text of the Convention, subject to carrying same under the form of a protocol.

The matter is put to a vote : only Mtre. Potamianos (Greece) is against the suggestion of the italian delegate. The drafting Committee will thus prepare an adequate wording.

8. In the meantime Mr. Nordborg had raised the question of the international coastal shipping and more in particular that which exists between the scandinavian countries. The President points out this question has been solved at Brighton to the satisfaction of the delegates of the countries concerned. (Minutes of Brighton N° 38).

Mtre. Potamianos, however still puts the question whether the nationals of countries other than the scandinavian are subject to the national laws of the latter for the transports aimed by Mr. Nordborg. The President replies that the Convention will not be applicable; it would be unwise, he states, to insert here the notion of the passenger's

nationality to avoid this situation; the scandinavian transports should be considered as being assimilated to national transports.

In conclusion it is decided to entrust the drafting Committe with the drafting of a suitable protocol.

9. The discussion is then resumed in respect of the 1st. paragraph of article 2. It should be known indeed whether the Sub-Committee might agree or not the system proposed by the drafting Committee (N° 1 above).

At this moment Mr. von Laun comes back to the question previously raised by him (N° 2 above). The President calls his attention to the fact that the answer lies in the definition of article 1/g) where the « point of departure and the point of destination fixed by the contract » are mentioned, which means therefore the points of departure and destination of the passenger.

Mtre. Warot adds that if the words « point of embarkation » and « point of disembarkation » have not been used, it is with the purpose of remaining in harmony with the text of the Warsaw Convention.

Mr. Nordborg is also of opinion, not to deviate from the terms of this latter Convention.

10. Mtre. Dutihl (Netherlands) raises another problem : he wonders indeed as to what will happen if the port where the passenger really disembarks is different from the point of destination as mentioned in the contract of carriage. Mtre. Hoekstra and with him the spanish delegates see in this question an argument in favour of the view according to which it is to be preferred to build on realities rather than on the stipulations of the contract of carriage.

In reply Mr. von Laun declares that if the passenger disembarks in a different port than the one originally contemplated, it will most frequently be due to an accident or an exceptional circumstance; now, the contract of carriage will not fail to foresee such an eventuality and consequently the actual port of disembarkation will be another point fixed by the contract.

This discussion which is taking place in the latter part of the session of Monday morning 19th. september is then interrupted, the sitting having to be adjourned. At the resuming, in the afternoon, the President wishing to conciliate the points of view, proposes a slight amendment to the definition of article 1 g) : the incriminated text

« ...the point of departure and the point of destination fixed by the contract... » could favourably be replaced by the following : « ...according to the stipulations of the parties the point of departure and the point of destination... »

Mtre. Camilla Dagna (Italy) explains that in the Warsaw Convention it is the voyage fixed by the contract which gives to the transport its international character, it being of little importance if actually the voyage is being interrupted or coming to an end in another country as the one in which is situated the point of destination contemplated by the parties.

After the interventions of Professor Giannini, of Mtre. Hoekstra and of Mr. von Laun, Mtre. Potamianos asserts since the draft Convention, which the Sub-Committee is discussing mainly aims at protecting the passenger, there is apparently no inconvenience in leaving to him the choice of the port of disembarkation, whilst Mtre. Dutihl, who desires to give the largest possible application to the Convention, is of opinion that should be considered as points of destination both the real port of disembarkation and the one which has been fixed by the contract.

In conclusion, after its President made the demonstration that the construction of the Warsaw Convention has not so far given rise to difficulties since its article 2 has not again been the subject of argument at the Hague Conference of September 1955, the Sub-Committee adopts the resolution he moved and instructs the drafting Committee to amend accordingly the wording of article 1 g).

11. Professor Giannini then raises the question of the paramount clause which, he says, has been rendered compulsory in the law on air-transport.

The President replies that the Warsaw Convention deals amongst others, with the passage ticket, which is not the case in the draft Convention presently under discussion; therefore the question of the paramount clause is beyond this debate.

12. Then the discussion on the points of attachment is resumed. The President considers four possible systems :

a) according to a first system it would be sufficient that the ship flies the flag of a contracting State; the applicability of the Convention would then be extremely extensive;

b) another system adds to the flag the point of departure, rendering thus the Convention applicable from the moment the ship and the point of departure both belong to a contracting State;
c) the third system is that of article 2 of the draft Convention, such as it has been adopted by the drafting Committee in the course of its meetings at Antwerp on the 23rd. and 24th. July 1955;
d) finally in a last system it would be required for the application of the Convention that as well the flag, as the point of departure and the point of destination all belong to a contracting State.

Mtre. Hoekstra states that a fifth system is also possible, namely the one according to which it would be required for the Convention becoming applicable, that either the flag or the point of departure, or the point of arrival be under the jurisdiction of a contracting State. Besides, he states, this is the view of the delegation of the Netherlands.

Professor Sandiford is of opinion that the Convention should not be applicable to a ship which is not flying the flag of a contracting State; to this Mtre. Scheffer (Netherlands) replies that he could agree with the italian point of view if the Convention were imposed to a non contracting State; quod non, since it is the carrier who is only compelled, should the case happen, to accept the application of the Convention.

Votes are then taken : in the first place in respect of the resolution of the delegation of the Netherlands; this is not carried; the Sud-Committee on the contrary accepts as one of the compulsory requirements of the applicability of the Convention, the flag; after that it refused to consider the flag as the sole requirement (Spain, Italy and the Netherlands only are voting affirmatively); is also rejected the double compulsory requirement of the flag and of the point of departure, which view is only supported by Germany and Italy.

At this moment the President draws the attention of the Sub-Committee upon the fact that by not accepting any of the systems proposed so far, the result will be to limit in a very large measure the scope of application of the Convention. This appeal is heard and finally in a last vote the unanimity of the delegations being present accepts the solution : flag plus either point of departure or point of destination.

13. Mr. Nordborg then mentions a few inadequacies in the english wording. The words « and with any » should be « provided » and « port » should read « place ».

Article 13

14. The President reads the new text of article 13 and comments the proceedings of Brighton and Antwerp; in this respect he repeats that in the 5th. paragraph « decide » is to be replaced by « have decided ».

15. Mtre. Hoekstra asks what is exactly the meaning of the words « un des sièges de son exploitation » mentioned in the second paragraph.

Mr. Poulsson (Norvay) thinks that « place of business » is a wrong expression. Mr. Nordborg reminds his remark of Brighton, namely that it would be desirable to add « permanent » to « place of business » (N° 28 of the minutes of Brighton).

Replying to these observations the « rapporteur » Mtre. Warot, explains that the meaning to be given to the expression used is that given to same by the Convention on the seizure of ships; it means consequently a branch office, not an agency. A long exchange of views then opposes the supporters of the two different ideas; according to the ones the competence must be limited to that of the Court of the « head office », in the opinion of the others the choice for which provision is made by the draft Convention should be maintained. In the course of the discussion a third resolution is moved : why not adopt the text of article 28 of the Warsaw Convention ? In conclusion the President decides to postpone the examination of the question to a later session.

16. The third paragraph of article 13 is then examined. The President deems desirable to bring the wording in accordance with the decisions already taken in respect of article 2 and article 1 g).

Mtre Potamianos resumes nevertheless the arguments put forward at Brighton by Mtre. Spiliopoulos (N° 31 of the Minutes of Brighton) in favour of the competence of the Court of the port of disembarkation, viz the port where the passenger actually disembarks as opposed to the port of destination fixed by the parties. Mr. Poulsson thinks on the other hand, even with the restriction as provided in the first paragraph of the article discussed, restriction upon which Mtre. Warot has in the meantime drawn the attention of the Committee, that too extensive a choice will be left to the passengers.

Voting takes place; the Sub-Committee decides to limit the importance of article 13 in the same way as the definition sub article 1 g).

17. Professor Giannini moves an italian resolution aiming at adding another paragraph after the existing fourth, in which it should be clearly prohibited to a passenger to bring a further action, based on the same facts, before a different jurisdiction than the one which already deals with the dispute, unless first repealing the action already in progress.

This proposal is carried by the Sub-Committee.

18. The President then comes back to an amendment put forward a few moments before by Mr. Nordborg : the Norvegian delegate would like the competence of the « forum arresti » to be recognized. The Sub-Committee rejects this amendment.

19. In the course of the discussion about the fifith parargaph. Mr. Poulsson asks whether it should not be mentioned in fine of that paragraph « the paragraphs a) or b) of the present article » instead of the « paragraphs a) and b) of the present article ». The norvegian amendment is accepted.

20. Before adjourning the session of monday afternoon, the Sub-Committee examines further without carrying it, a last amendment of Mr. Nordborg, which, besides, he had already put forward at Brighton (N° 30 of Minutes of Brighton) : it aimed at rendering purely and simply to the parties the liberty of agreeing upon the competence ratione loci.

Additional Protocol

21. The session of Tuesday 20th. September starts with the examination first and the approval next of the terms of an additional protocol by the drafting Committee in connection with the question dealt with at the second paragraph of article 2, which it has been decided to delete. The protocol will thus be annexed to the text of the draft Convention when presented to the plenary session.

Article 1

22. Professor Giannini would like to define precisely and complete paragraph c), which defines the « passenger » by the wording « who is entered on the list of passengers ». Mr. von Laun points out there are « passengers » who are not entered on the list in question but who

are nevertheless really « passengers »; he quotes the example of a passenger who, with the purpose of avoiding the application of some onerous laws for the carrier would be entered on the muster-roll.

Lecture is then given by the secretary a.i. of nrs. 47, 48 and 49 of the minutes of Brighton. The President confirms on the other hand, that the basis of the definition sub c) is the contract of carriage. The discussion about this point is thus closed.

23. Mtre. Hoekstra then speaks of the military, which brings Mtre. Warot to state that when same travel « under requisition » the Convention is not applicable. (N° 50 of the minutes of Brighton).

24. Mtre. Koelman (Belgium) having pointed out that when the military travel as units, the Government is the co-contracting party of the carrier, the President is brought to explain that the Convention also has in view the passengers who themselves have individually contracted as well as those who entered into a contract with the carrier through a third party, travel agencies for instance.

25. Professor Sandiford mentions, still with regard to the military, that at the Hague Conference, held to revise the Warsaw Convention, a proposal has been put forward aiming at allowing the contracting States to exclude, by way of protocol from the benefit of said Convention, the military personnel or any other similar kind travelling in group.

Under the circumstances the President asks the Committee to make a choice; either to accept such a protocol or leave to the Courts the care of interpreting the Convention. The second alternative is carried by a majority vote.

26. Paragraph g) of article 1 does not give rise to discussion any more, the subject having been completely exhausted the day before (nrs. 1, 3, 9 and 10 above).

Article 7

27. To the question of Mr. Nordborg, who would like to know on the one hand, whether, as desired at Brighton, the drafting Committee has kept contact with the Sub-Committee dealing with the limitation of the liability of the sea carrier, and, on the other hand, which franc is finally adopted by the said Sub-Committee as basis of

calculation for the limitation, the President replies by reminding that precisely at Brighton it had been decided to be inspired by the Warsaw Convention rather than by any other (nr. 40 of minutes of Brighton), eventually accepting also the amendments which could be made to this Convention as a result of the Hague conference of September 1955, held with the object of revising same. The Sub-Committee approves this point of view.

28. Mr. von Laun asks whether it is true that it was decided at Brighton to allow the contracting States to convert their limitations into their national currency withim their legal provisions. The Presiden states that, to his opinion, this has not been the case; however, it should be desirable to insert an article in the Convention or to add a protocol to same inspired by what has been done for other International Conventions. It should not be lost out of sight however that the considered conversion has no other aim than to give to the Courts the faculty of pronouncing sentences in their national currency.

After the reading by Mtre. Warot of article 22, 4° of the Warsaw Convention and interventions of Mtre. Camilla Dagna and Mtre. Hoekstra, the Sub-Committe decides to add to the draft additional protocol, already carried (see N° 21), an article aiming at the convertibility of the limitations into national currency and inspired by the wording and the spirit of the Warsaw Convention on the same subject.

Article 12

29. The President before entering into the discussion about this article mentions that the word « certaine » in the french text of the draft convention should be « contraire ».

30. After having read the article as drafted, he points out that there are three different parts in it : in the first part the information of the carrier is dealt with; in the second the written notices of loss and in the third the time-bar limits are treated. He there after puts five questions :

a) with regard to the first paragraph : must the notice be given to the carrier himself to be valid, or to his agents ?

b) what is the penalty when the provisions of the first paragraph are not observed ?

c) must the choice provided for in the fifth paragraph be maintained ?

d) should not the words « au plus tard » of the second paragraph be put into harmony with « dans » used in the next paragraph ?

e) what will be the time-bar limit with regard to the damages to the luggage ?

31. M. Hoekstra reminds that already at Brighton he put the question now referred to sub b) by the President. The wording of the drafting Committee gives no answer. He would like that a penalty should clearly be provided for.

The President explains that this problem has a double aspect : first we should agree on what sort of penalty should be provided for; one could think of the reversing of the onus of the proof or of indemnities; secondly we must find a way to protect the bona fide passengers and at the same time avoid the misgivings consequent upon the activities of the passengers who are not of good faith.

M. von Laun, M. Poulsson, Prof. Giannini and M. Potamianos all support the proposal of M. Hoekstra.

With regard to the good or bad faith of the passenger M. Poulsson and M. Koelman express the opinion that it is up to the Courts to consider this question and that therefor any reference to it in the Convention would be inopportune.

M. Warot on the other hand urged the Sub-Committee to be careful not to indispose the Parliaments.

In conclusion the Sub-Committee following a suggestion of Mr. Voet decides to divide the second paragraph of article 12 into two parts, a third paragraph thus beginning with the words « otherwise the passenger... » and also to change the word « prescription » in « prescriptions » in the french text.

32. The expression « without delay » appearing in the first paragraph should, according to M. Potamianos be clarified. M. von Laun gives the example of an accident occurring to a passenger in a ship on board of which there is no doctor.

M. Nordborg and M. Giannini suggest to add in the first paragraph the words « and not later than the disembarkation ».

This brings the President to explain the system embodied in article 12 : a passenger is hurt; either he advises the carrier as soon as he

can and in such a case the presumption of article 3 is applicable; or he neglects to do so; if later on notice is given of the accident to the carrier, the latter is no more presumed to be responsible unless the passenger can prove that he has been hurt as a consequence of an occurrence which is in connection with the operations of carriage.

M. Poulsson and M. Giannini are anxious to know what a passenger who is hurt, has to do. Mr. Warot explains that the passenger should first of all inform the carrier without delay and furthermore give written notice within fifteen days of the date of landing; if he complies with these requirements, he places the onus of proof on the carrier in accordance with article 3 and others.

33. The « rapporteur » also asks to the Sub-Committee to take a decision on the question of the five days limit provided for in the third paragraph. As nobody opposes the proposal of the drafting Committee, the President declares that same is adopted.

34. M. Giannini thinks that it is dangerous to provide for two points of departure for the limitation period.

The Sub-Committee accepts this point of view and decides to maintain only the date of the landing, except for the damages to the luggage where the option of the last paragraph is upheld.

35. With regard to the President's question a) (refer nr 30) the Sub-Committee refrains from defining more precisely the word « carrier » in the first paragraph.

36. As to the President's question d) the Sub-Committee decides that the drafting Committee should solve this problem.

Article 4

37. M. Poulsson comes back with the view he had already expressed at Brighton : the draft Convention should not be dealing with luggage.

A vote is taken without prejudice as M. Poulsson's suggestion had already been defeated at Brighton (refer n^{r} 52 of the minutes of Brighton). This time also the only supporters are the German, Danish, Norwegian and Swedish delegates.

38. Mr. Hoekstra moves an amendment to paragraph a) : in his opinion the period during which the carrier is responsible should be limited and not be extended beyond the moment the luggage is landed.

Mr. Warot wants the Sub-Committee to be careful to avoid any prejudice on the part of the Parliaments; on the other hand some satisfaction should be given to the delegate of the Netherlands : would it therefor not be advisable to provide for a limited period within which the passenger should take reception of his luggage ?

The President suggests that it might also be possible to agree that the sojourn of the luggage on land would not fall within the field of application of the Convention.

Mr. Giannini thinks that an adequate answer to the question raised might be given by deleting the words « notwithstanding the provisions of article 1 f). »

In conclusion the Sub-Committee adopts a resolution moved jointly by Mr. Warot and Mr. Giannini and according to which the words « delivery to the passenger » should be replaced by « put at the disposal of the passenger » on the one hand and the carrier should obtain the benefit of article 6 when there is damage to the luggage, thanks to the replacing of the words « injured person » by « passenger » on the other hand.

39. Concerning paragraph c) Mr. Giannini would like to substitute to the expression « put into custody of the carrier » the words « delivered or put into the custody of the carrier and/or his servants » because the wants to avoid that it should be held that jewels and other precious articles have to be handed to the carrier himself, whereas of course in most cases the latter is not present.

Mr. Warot replies that such a danger does not exist as the expression used by the drafting Committee can hardly be interpreted in the way the Italian delegate suggests. The Sub-Committee accepts this explanation of the « rapporteur ».

40. Mr. Hoekstra thinks that the carrier should have the opportunity to obtain information on the nature of the objects which have been put into his custody and in particular when these objects are jewels.

Mr. von Laun draws the attention of the delegates on the fact that safes are not available in all vessels.

Mr. Giannini raises the question of what may be the consequences of the fact that precious objects would have been packed in the luggage.

The President winds up the debate; in his opinion paragraph c) of article 4 is quite clear enough whereupon Mr. Dutihl makes the

observation that many of the questions that have been raised are in close connection with the limits provided for in article 7.

Article 7

41. The second part of the session of Tuesday afternoon 20th. September is devoted to the settling of various pending questions. Amongst them there is the determination of the liability limits of article 7. The President reminds that in the course of the Madrid proceedings, the Committee has already agreed on two points, namely on the one hand that the system of the Warsaw Convention should be adopted as a basis of calculation for the amounts of limitation (refer nr. 27) and on the other hand that convertibility of the said limits into national currency would be provided for by an additional protocol (refer nr. 28).

42. Thus with regard to the passengers, the carrier's liability is temporarily limited in any case to a maximum indemnity of Frs 125.000 this amount being subject to be increased in the eventuality that the Hague Conference, which is dealing with the revision of the Warsaw Convention, would adopt a higher limit. In this case the latter amount would also be considered in the draft Convention of the Committee.

43. It is also understood that the francs in question are french francs constituted by sixty five and a half milligrams of fine gold for 900/1000 of fine.

This decision will be the object of a separate paragraph to be inserted at the end of article 7.

44. Finally it is confirmed by the Committee that in the french wording the words « en tous cas » must be added between « est limitée » and « a forfait » at the end of the 3rd. paragraph of article 7.

45. Thence there only remains to determine the limits for the luggage. To the question put by the President whether the Committee agrees to admit the principle of such limitation, the Committee replies by the affirmative.

46. The President then raises the question as to whether the limitation should be established in relation either with the number of parcels or with their weight, or on the contrary a lump sun should be fixed for all the luggage of any one passenger.

Various members take part in the discussion.

Mr. Nordborg supported by Mr. Blackiston (United States) is of opinion that it is necessary to be inspired by the quod plerumque fit; now the system described in the last instance by the President is certainly that which is the most in accordance with the clauses presently inserted in the carriage contracts of luggage.

Mr. Koelman is of opinion we must remain logical. Now by adopting the limitation per passenger, one gets to this paradoxal consequence of having different limitations according to, on the one hand, the luggage being forwarded as goods or, on the other hand, it being transported as registered or accompanied luggage.

Mr. von Laun asks the Committee to express its will by a vote. This is done and a majority is in favour of adopting the system of a lumpsum limitation for the whole of a passenger's luggage, registered or not.

47. Another discussion is engaged in respect of the amount of this lumpsum. The Committee hesitates to adopt the one provided by article 22 n° 3 of the Warsaw Convention, viz. Frs. 5.000,—.

Incited by M. Poulsson, preference is finally given to the following aomunts : Frs. 6.000,— for the registered luggage, Frs. 4.000,— for any other luggage.

48. Further the question should be solved with regard to the opportunity of mentioning in the text that the carrier has the faculty of accepting higher limitations when the passenger, as to the registered luggage, makes a statement of value at the moment of registering.

The President is of opinion that in this respect no particular clause is necessary, since nothing prevents the parties from agreeing to limitations superior to those of article 7 and he points out that by doing so it is in no way derogated from the obligations resulting from article 10 of the Convention.

The Committee agrees with this point of view.

Article 13

49. With regard to article 13 the Committee has still to express its will in respect of the proposal made by certain delegates tending to add to the expression « un des sièges de son exploitation » (one of the seats of his enterprise) the word « principaux » or in english « permanent » to « place of business » (n° 15 above refers).

It is passed to vote : the proposal is rejected and the text of the « drafting Committee » is therefore sanctioned.

Additionnal Article

50. The Italian delegation in a memorandum had pointed out that without an yreason, the regulation of the officers personal liability appearing at article 7 of the previous projects had been left out. They reiterate their wish to the effect that to the 14 articles of the Convention a 15th. should be added reading as follows :

« If a servant is responsible for damages referred to in this Convention, » he will be able to avail himself of all exceptions and limitations that » could be invoked by the carrier. The total damages that can be » obtained from the carrier and from his servants should not exceed » the maximum amounts fixed by the Convention. This provision may » not be invoked by a servant who has committed an offense or a » culpable act. »

Mr. Poulsson also wonders whether the Committee should not fall into line with the attitude taken by the Sub-Committee on limitation of liability of the maritime carrier in general, which, as it is known, has changed its mind on this problem since Brighton.

The President states the Italian delegation will be given the opportunity of submitting their wish to the plenary assembly.

Miscellaneous

51. Before closing the prolonged session of Tuesday afternoon the President once more reviews all the articles and mentions for each of them the amendments made since Brighton.

52. When he arrives at article 5, the Norvegian and Swedish delegates once againt repeat the objections they had already formulated at Brighton (refer nr. 7 of the minutes of Brighton).

In spite of the vote which was carried at Brighton and upon which the Committee does not wish to come back, these delegates state they will move a resolution at the final vote in respect of the draft Convention at the plenary Assembly, in which they will ask that their reserves will be duly noted.

53. With regard to article 11, Professor Giannini is afraid that a conflict could arise between the national law and the Convention. He therefore proposes to add before « que dans les conditions et limites prévues par la présente Convention » (within the provisions and limitations specified in this Convention) at the first paragraph, the words: « ni par le passager ni par ses ayant-droits» (neither by the passenger nor by his rightful claimants).

The President is of opinion that the Convention should not deal with the devolution of a deceased passenger's inheritance; this is a matter ruled by the national law. He thinks that with the present wording no further assurances are needed.

The Committee agrees with the President's advise.

54. There are no remarks any more with regard to the remaining articles.

STOWAWAYS

FIRST DRAFT CONVENTION

The High Contracting Parties,

Having recognized the desirability of determining by agreement certain uniform rules of law relating to stowaways, have decided to conclude a convention for this purpose, and thereto have agreed as follows :

Article 1.

In this Convention the following expressions shall have the meanings hereby respectively assigned to them :

« Stowaway » means any person who secretes himself and goes to sea in a ship without the consent of the owner or master of the ship or any other person in charge of the ship.

« Port of embarkation » in relation to a stowaway means the port at which the stowaway boards the ship on which he is subsequently found.

« Port of disembarkation » in relation to a stowaway means the port in a Contracting State at which the stowaway is landed and delivered to the appropriate authority at that port in accordance with the provisions of this Convention.

« Appropriate authority » means the body or person at the port of disembarkation authorized by the Government of the State in which that port is situated to accept and deal with stowaways in accordance with the provisions of this Convention.

« Owner » includes any charterer to whom the ship is demised.

Article 2.

If a stowaway is found on board a ship registered at a port in a Contracting State, the master of that ship may land the stowaway at

any port in a Contracting State which he considers suitable for the stowaway to be dealt with in accordance with the provisions of this Convention and there deliver him to the appropriate authority.

Provided that if the master is satisfied that the stowaway is a political refugee he shall not land him at any port in a State from which he is a political refugee.

Article 3.

(1) When a stowaway is landed and delivered to the appropriate authority at the port of disembarkation :

(a) the master of the ship shall give to the appropriate authority all information in his possession relating to the nationality, or, as the case may be, the nationalities, of the stowaway and his port of embarkation;

(b) the appropriate authority shall accept the stowaway and deal with him in accordance with the following provisions of this Article;

(c) the appropriate authority shall return the stowaway to any State of which he is a national. If a State to which it is accordingly proposed to return the stowaway refuses to accept his return on the ground that he is not a national of that State, or where the stowaway is a national of more than one State, all the States to which it is accordingly proposed to return him refuse to accept his return on the ground that he is not a national of any of those States, or if the appropriate authority are satisfied that the stowaway possesses no nationality, they shall return him to his port of embarkation.

Provided that in any case where the appropriate authority are satisfied that the stowaway is a political refugee they shall not return him to a State from which he is a political refugee.

(2) A Contracting State shall accept any stowaway who is returned to the State in accordance with the provisions of this Convention.

(3) For the purposes of this Article, the appropriate authority may, in any case where they are not satisfied as to the port of embarkation of a stowaway, treat as his port of embarkation the last port at which the ship called prior to his being found on board the ship.

Article 4.

(1) When a stowaway is returned to a Contracting State of which he is a national in accordance with the provisions of this Convention the expenses of so returning him and the expenses of his maintenance at his port of disembarkation from the time when he is landed at that port until he is so returned shall be defrayed by that State.

(2) When a stowaway is returned to his port of embarkation in accordance with the provisions of this Convention the expense of so returning him and the expenses of his maintenance at his port of disembarkation from the time when he is landed at that port until he is so returned shall be defrayed by the owner of the ship. The liability of the owner of a ship under this paragraph for the expenses of maintenance of a stowaway shall not exceed the amount of such expenses for a period of two months from the time when the stowaway is landed at his port of disembarkation.

Article 5.

Nothing in this Convention shall prejudice any right which the master of a ship may have to land a stowaway at any port in a State which is not a Contracting State.

3rd June, 1955.

BELGIAN MARITIME LAW ASSOCIATION

REPORT

The Belgian Commission which was entrusted with the study of the problem of stowaways had available the following material :

— Belgian legislation;
— The report drawn up by M. le Batonnier C. Smeesters in 1939 for the Belgian Association and
— M. Jean Rondeau's report of the same period to the French Association, both accompanied by a preliminary draft of an international convention;
— the replies of the eleven national associations to a questionnaire issued by the International Commission on Stowaways;
— the report by Mr. H. E. Gorick, C.B.E., President of the International Commission;
— the draft international convention of 3rd June 1955.

It seems to emerge, both from the discussions of the International Commission and from those of the Belgian Commission, that the only problems which arise are the following :

« How to prevent stowaways getting on board », and « How to rid the ship of a stowaway ».

The solutions envisaged (in conformity with the decisions of the International Commission and according to Mr. Gorick's report) are :

1. All the States recognize that stowing away constitutes a punishable act.
2. The captain can land the stowaway at the first port of call.
   Corollary : The port authorities of this first port of call will be obliged to take charge of him.

3. The stowaway will be returned to where he was prior to the fraudulent embarkation.

Corollary : The shipping company which benefits from this measure will have to participate in the eventual expenses.

How could the convention ensure the application of these principles?

1. The convention should define the idea of fraudulent embarkation and declare that this act is punishable.

The first article of the preliminary draft convention drawn up by M. J. Rondeau contained this first paragraph : « Whoever is found on board a ship without being able to justify his presence there is guilty of the offence of clandestine embarkation ». M. Rondeau explained in his report that this « definition of the offence of clandestine embarkation (and of complicity in it) is inspired by Articles 1 & 2 of the Belgian Law of 28 July 1923. « He added further on : « Moreover it is not necessary for the ship to have put out to sea for the offence to exist, it is an offence as soon as the stowaway is on board. There is no need to prove that the individual embarked with a view to making a journey. If he had any other objective in boarding the vessel, it is up to him to prove it ».

The Belgian Commission considers that to this fundamental principle there should be added : « in whatever place the latter may be (the ship) .... ». That is, it should be specified that the act is punishable wherever the ship may be at the moment when the stowaway is discovered on it, whether at sea, in the roads or in port.

The Convention ought to have another object. It ought to state that the fact of being found on board without being able to justify one's presence is a punishable act. There is no need to qualify this statement by specifying that the act constitutes an offence against the law, this being an idea which is not common to all countries; but the Convention should stipulate that the States which accept it shall undertake to attach a penalty to the act in their legislation, each one, of course, according to its own legal system, if no penalty is yet provided for in it.

The draft convention drawn up by Mr. Gorick does not call stowing away a punishable act and does not compel the contracting States to

take the necessary legislative measures. The Belgian Commission considers, however, that the certainty for the stowaway of being prosecuted in every port of disembarkation is the best means of preventing and eliminating clandestine embarkation.

The Belgian Commission further considers that, if the contracting States intend to put an end to the plague of stowing away and do not merely wish to rid the ships of stowaways, then the Convention must proclaim punishable, and repress, not only fraudulent presence on board a sea-going ship, but also any help which made the clandestine embarkation possible. It is indeed obvious that the stowaway knows it is not sufficient for him to get on board by eluding discovery temporarily, but that first and foremost he must manage to remain hidden and to get food during the voyage. These objects can only be realised if there are connivances on the part of the crew or the shipping authorities. It is thus indispensable to make it a punishable act to give any help towards the embarking, the stay on board or the disembarking of stowaways.

The captain ought furthermore to be required to denounce the stowaway found on board his ship, and this immediately after the latter's discovery if the ship is in a port, or else as soon as the ship arrives at a port of one of the contracting States if the discovery is made at sea or even in a port at the moment of getting under way. This must not be delayed to the prejudice of all those having an interest in the ship or the cargo simply for the purpose of declaring and landing a stowaway who may be discovered when the ship is about to sail or is just leaving the port. In such case the declaration shall be made at the first port of call.

The Belgian Association proposes to cover these rules in the articles set out below :

Article 1.

Whoever is found on board a ship, at whatever place the ship may be, without being able to justify his presence, is punishable and must be dealt with according to the provisions of the present Convention.

Article 2.

Is also punishable whoever gives any kind of assistance to the embarking, the stay on board or the disembarking of the persons referred to in Art. 1.

Article 3.

Every captain is required to denounce and hand over any person found on board his ship under the conditions specified in Article 1 to the competent authorities of the first port where such person can be landed without compromising the interests for which the captain is responsible.

The Belgian Commission considers that, although it is not necessary to determine the penalties which shall attach to the punishable acts referred to above, it is nevertheless essential for the Convention to settle the question of the competence of the Courts. With this in mind, the Belgian Commission considers that the competent jurisdiction should be that of the country in which the stowaway is landed, although different ideas have been expressed on this subject. The draft of Mtre Smeesters did not deal with this point. That of M. J. Rondeau gave the competence to the authorities of the country to which the stowaway was sent back. The Belgian Commission does not support this system, because it implies transferring the culprit from one country to another with a view to bringing him to trial. Such transfer would involve complicated extra-judicial formalities and would mean that the Court to which the case was referred would have to judge entirely on reports from authorities foreign to it.

The Belgian Commission is of the opinion that the best qualified Court in every respect is the one at the place of disembarkation, because its competence is in accordance with the general rules of international law, because it will be instructed by its own national authorities and will be able to give its decision in full knowledge of the facts on sight of their report and with the minimum of delay, which is of prime importance in the interests of salutary repression.

As regards legal competence relative to the repression of accomplices, it appears fairly clear that it should appertain to the courts of the place where the accomplices gave their help to the clandestine embarkation or disembarkation. The jurisdiction of the place where the offence was committed is the best qualified to act with authority and competence, with the requisite speed and hence the requisite effectiveness. However, this rule, which is that applied in the internal law of all the states, should be modified in the case where the accomplices are members of the ship's crew. In that case the accomplices should be prosecuted before the competent jurisdiction of the country to which

the ship on board which they are serving belongs. The crew of a ship ought not in fact to be disorganised, in order to allow this prosecution, by the disembarking of one or more of its members. Besides, generally speaking the obvious judge of such a culprit will be that of the country to which the ship on which he serves belongs, who will at the same time be the judge of the country of which he is a national.

As to the competence with regard to the captain who may have infringed the obligation laid upon him by the Convention, this should also be that of the Courts of the country whose flag his ship sails under, which, again, will be at the same time the country of which the captain is a national, since national legislations almost everywhere require that the captains should be of the same nationality as the flag.

The Belgian Commission proposes that these rules should be worded as follows :

Article 4.

Every punishable act covered by Article 2 is tried before the competent jurisdiction of the country where it was committed.

If the culprit is a member of the crew of the ship on board which the act was committed, he is prosecuted before the competent jurisdiction of the country to which the ship belongs.

Any captain who has contravened Article 3 is prosecuted before the competent jurisdiction of the country to which his ship belongs.

2. The Convention must authorize the captain to land the stowaway and oblige the authorities to take him.

a) According to Mr. Gorick's draft Convention, the captain is authorized to land the stowaway at the port of his choice. The Belgian Commission feels that many States will oppose this rule, the more so since, according to the aforementioned draft, the costs of subsistence and of return will not be paid by the ship. The Belgian Commission considers further that it will be difficult if not impossible to get the contracting States, the majority of which at present make the captain responsible for the cost of returning the stowaway, to agree to such expenses being borne by the State of which the stowaway is a national. The Belgian Commission considers that the stowaway must be landed as soon as possible, without however increasing unnecessarily the ship's costs. It proposes the following wording :

Article 3.

Every captain is required to denounce and hand over any person found on board his ship under the conditions specified in Article 1 to the competent authorities of the first port where such person can be landed without compromising the interests for which the captain is responsible.

b) As a corollary to the captain's obligation to declare and hand over the stowaway, there is the obligation of the authorities of the port of disembarkation to receive the stowaways.

The Belgian Commission feels it ought to draw attention to the fact that the States which undertake to receive stowaways are granting an important advantage to shipping companies which, as a result of the complicity of their crew or of a lack of vigilance, disembark persons who in reality only increase the burden on the States where the disembarkations take place. It is therefore necessary to offer these states a quid pro quo, i.e. by declaring indemnifiable the greater part of the resultant expenses and by stipulating that only their own nationals cannot be sent back. Mr. Gorick's draft does not seem to have been drawn up in this spirit.

3. Methods of returning stowaways.

a) The aim of the Convention is to return the stowaway to where he was before the fraudulent embarkation.

Mr. Gorick's draft convention proposes to send back stowaways whose nationality is certain to the country whose subjects they are. The Belgian Commission is in agreement with that. This draft convention also recommends returning them to the port of embarkation in cases where their nationality cannot be determined.

The Belgian Commission feels that this second rule will lead to an increased burden on ports whose national Hinterland is limited and where the transit traffic is very great. It has proved to be the case that at Antwerp many stowaways are foreigners who arrived either by foreign ships or by means of rail or road traffic. Consequently the Belgian Commission proposes to insert in the Convention a rule which would permit the returning of stowaways whose nationality is not determined to the country where they have been living, and in

cases where it is not possible to determine the country, to return them to the port of embarkation.

With regard to cases where the port of embarkation cannot be determined, the Belgian Commission hesitates to accept the previous port of call. It wonders in fact what is the reasoning which can justify this new obligation placed on the contracting States. It considers that, if it is not possible to ascertain the port of embarkation, this lack of information is a result of defects in the vigilance of the ship during the crossing, and not during calls at ports.

As regards the cost of sending back, the Belgian Commission defends the point of view mentioned under heading 2 b). It considers that the Convention ought to regulate this question as follows :

1. The stowaways' cost of subsistence on board up to his disembarkation should remain a charge on the ship. It can in fact be argued that if greater vigilance had been exercised in the port by the crew on board or by the shipping company's personnel, the stowaway's presence and the resulting expenses would not have arisen. Furthermore, it is certain that the adoption and application of the Convention envisaged would have the effect of considerably reducing the number of stowaways and hence the expenses and all the inconveniences which they cause in the present state of affairs.

2. As to the expenses of disembarkation and sending back, they should logically come under the heading of the cost of maintenance on board since they have their origin in the same deficiency in the vigilance of the ship.

3. The same ought to be said of the living expenses on land between the disembarking and the sending back; however, as the shipowners seem to be asking quite justly, a limit could be placed on the period for which the authorities could demand repayment by the shipowners. This limit could be fixed at two months from the day of disembarkation. It would be in the nature of an incentive to the administrative authorities to hasten the completion of the necessary formalities to get the man sent back.

With regard to Article 4 of Mr. Gorick's draft, the Belgian Commission points out that it does not see why the expenses should be a charge to the States in all cases where that is possible. Up to the present these expenses have been paid by the ships in most States.

Now the shipowners are claiming the additional favour of being able to land stowaways at the first port of call; there is therefore no reason for claiming any quid pro quo from the contracting States.

The Belgian Commission considers that Article 5 of the draft should be deleted, since it does not conform to the principles mentioned above which, in its opinion, ought to dominate the Convention.

* *

Our Merchant Navy Administration has put forward general basic considerations on the draft international Convention presented by Mr. H. E. Gorick.

These considerations, which the Belgian Association feels it must approve, are the following :

« The scope of this Convention is much too restricted to constitute the basis of an international Convention by wich the States would agree on the measures for the purpose of checking if not of putting an end to clandestine embarkations.

For it is indeed to this positive result that concerted action by the States should lead.

This action having been put into effect, it is necessary that people disposed to attempt to stow away should know that their undertaking is destined to failure, and moreover that it carries penalties of imprisonment; that the accomplices — and stowaways in the great majority of cases can only realise their plan by means of the help and even the inspiration of accomplices — should also know that, on the failure of the undertaking, they will not escape the penalties involved for them.

It is, again, necessary that captains should not evade the part they have to take in this action; they must not avoid it through fear of police enquiries to which they will have to reply, or judge it to be simpler and more practical for them personally, to land the clandestine passengers « clandestinely »; their denunciation is indispensable, their co-operation is an important element in the international action contemplated.

It will be of little use for this action to impose obligations if these are not enforced by sanctions; and this punishment, since it results from an international action, must itself be internationally organized if we want to avoid its falling into chaos.

We are strongly of the opinion that the Maritime Committee, since the problem has been referred to it — and no organism is better qualified to deal with it — must consider it in its entirety and endeavour to give it a complete, radical solution.

We think the draft submitted to members of the International Sub-Committee is much too timid.

It is true that it has followed the lines of the recommendations formulated by the Sub-Committee (sub. 12 of Mr. Gorick's report) as constituting in its opinion the elements of an international agreement.

But we regret that up to now these recommendations have been kept within too modest limits. They merely ensure to the captain the option of landing stowaways in any port he may judge suitable. For the rest, they propose methods of sending back the disembarked stowaway, taking into consideration the case of political refugees.

At that rate stowaways will continue to try their luck; some chances of success remain, since they may still have help available from accomplices, and even from captains inspired by compassion or by the desire to get rid of the stowaway as easily as possible without formalities or explanations to the police authorities.

We think that the International Maritime Committee ought to make the necessary effort to give the question of stowaways the complete and radical settlement which it demands, and which is indispensable, considering the statistical data produced as a result of the questionnaire. »

1st August, 1955.

FRENCH MARITIME LAW ASSOCIATION

REMARKS

The French Members of the Sub-Committee, after consultation with the Committee appointed ad hoc of the Association Française de Droit Maritime, beg leave to pass the following remarks concerning the Draft of June 3rd. 1955 :

Article 1.

Stowaway. — When the consent which is required is not restricted to the one of the Owner or Master, but is extended to any person in charge of the ship, it appears simpler to avoid any enumeration and stipulate « without the consent of any person in charge of the ship ».

The definition of an Owner should be deleted but the definition of a stowaway must mention that the person in charge of the ship includes « the charterer to whom the ship is demised ».

And, to make clear that the international Convention does not cover the case of a stowaway found on board before the vessel has sailed, which case is governed by the port's domestic law, one should delete « and goes to sea » and add, in fine « and who is found after the vessel has left the port ».

This paragraph should read as follows :
« means any person who secretes himself in a ship without the consent » of any person in charge of the ship (including any charterer to » whom the ship is demised) and who is found after the ship has left » the port ».

Port of embarkation. — The words « in relation to a stowaway » are useless, as the first words of the Article are : « In this convention...»

The word « subsequently » does not appear to be satisfactory. The stowaway cannot be found on board, prior to his boarding, but it has a meaning when it stipulates that the vessel is already at sea, as provided in the definition of the stowaway. The word « subsequently » should be deleted.

Port of disembarkation. — The words « in relation to a stowaway » should be deleted.

One need not mention « in a Contracting State » as a Convention does not apply to a non-contracting State.

Ship. — Should be defined and the French Delegates suggest : « a vessel trading at sea, on rivers or on inland waters providing she performs an international voyage ».

(This covers for instance the case of a Russian stowaway embarking at Evian for Geneva.)

Article 2.

The wide scope is excellent, and the expression that the Master « may » land the stowaway waives every difficulty.

However the last line should be amended, because the prohibition to land must not only cover one State, but all States which would consider the stowaway one of their political fugitives (Bulgaria, Roumania, etc.). We suggest : « ...at any port from any State which holds him for a political fugitive ».

Article 3.

The French Delegates suggest that the two first lines be set as the general principle.

The third line should begin with : « however the stowaway shall be returned to his port of embarkation when ».

1. — (a) no remark.

(b) celà va sans dire.

(c) In the third paragraph of 1 (c) the words « provided that » should be deleted because unnecessary and leading to confusion. This paragraph sets a Rule and should form a separate provision.

1 (c) would thereby read :

« The appropriate authority shall return the stowaway to any State » of which he is a national. »

» However, the stowaway shall be returned to his port of embar-
» kation (a) when the State to which it is accordingly proposed to
» return a stowaway refuses to accept his return on the ground that he
» is not a national of that State, (b) where the stowaway is a national
» of more than one State, all the States to which it is accordingly
» proposed to return him refuse to accept his return on the ground
» that he is not a national of any of those States. (c) if the appropriate
» authority are satisfied that the stowaway possesses no nationality. »

The last paragraph of Article 3, 1, (c) should form a separate provision marked « d » in which the two first words « Provided that » should be deleted.

Art. 3, 2 — should be completed with the following words :
« with the sole exception when the State denies the alleged nationality ».

Article 4.

As the definition of the « Owner » has been deleted, the sixth line should read : « shall be defrayed by the Owner of the ship or, if any, by the Charterer with demise ».

And the said paragraph should continue as follows :

« This liability for the expenses of maintenance of a stowaway
» shall not exceed the justified amount of such reasonable expenses for
» a period of two months from the time when the stowaway is landed
» at his port of disembarkation. »

Article 5.

It is suggested to delete this article which may be misleading and bring confusion in its construction.

A Convention of this sort cannot affect non-contracting parties the position of which is the same as when the Convention did not exist.

23rd June 1955.

FINNISH MARITIME LAW ASSOCIATION

REMARKS

Article 2.

« .... contracting State, the master of that ship may .... »
Suggestion that words « of that ship » could be omitted.

Political refugees.

It is pointed out that in certain countries the authorities require a list of all persons on board and that, in addition, a thorough search is made of the ship. The master is powerless to interfere. It is suggested that if a provision relating to political refugees is included in the Convention, it should be so worded that the master should not be allowed to deviate for the purpose of delivering a stowaway at a port in a State from which the stowaway is a political refugee.

Article 3.

It is suggested that if certain rights are vested in the appropriate authority on the basis of what that authority believes, there will be long disputes in every case. There is no provision for the contingency that both the port of embarkation and the last port of call before the stowaway is found are situate in non-contracting States.

In these circumstances the following amendment to Article 3 is suggested :

« When a stowaway is delivered to the appropriate authority at a designated port, the appropriate authority may return the stowaway to any State of which he is shown to be a national and, if that State is a contracting State, it shall be bound to accept him.

If the nationality of the stowaway cannot be shown or if he has no nationality or if he is a national of a non-contracting State and that State refuses to accept him, then the appropriate authority may return him to the port of embarkation where, if situate in a contracting State, he shall be accepted.

If the port of embarkation cannot be established or if stituate in a non-contracting State, which refuses to accept the stowaway, then the appropriate authority may return the stowaway to the last port, at which the ship called prior to his being found and, if that State is a contracting State, it shall be bound to accept him. »

Article 4.

In this Article the shipowner's liability is limited to travel and two months expenses etc. It is suggested that it is necessary to stipulate in the Convention who is going to bear the additional expenses that may arise before the matter of returning is definitely settled, as otherwise there might be disputes over this between the authorities at the designated port and the authorities at the port where the stowaway is to be sent.

GERMAN MARITIME LAW ASSOCIATION

REMARKS

1. Enforcement of Convention

The German Sub-Committee feels that — in accordance with the view expressed at the Brigthon Conference — the Convention should only come into force if it has been ratified not by two but by five States. This suggestion is made on the proposition that Parliaments may hesitate to ratify the Convention if the ratification of only two states is necessary to bring the Convention into operation. It is feared that if only two States adhere to the Convention the flow of stowaways into each of the ratifying States may increase considerably. This fear may become obsolete if, instead of two, at least five States have to ratify before the Convention becomes operative.

2. Article 2.

The Sub-Committee has observed that at the Brighton Meeting it was the general opinion that the problem of political refugees should not be dealt with. If now, however, it has been decided yet to tackle the problem, the rule as contained in article 2 does not seem to be a practicable one. In order to safeguard the personal security of the refugee it should be provided that he is not to be landed at any port of any State in which there is reasonable ground for the existence of the danger of further political prosecution. It is, therefore, suggeted that article 2 be amended accordingly.

13th June, 1955.

ITALIAN MARITIME ASSOCIATION

REMARKS

1. In order to eliminate the fear that the embarkation of the stowaway at sea outside the port may be excluded, it would seem necessary to add to the 3rd paragraph of Article 1, after the words « the port in which », the words « in the proximity of which... »

2. It would seem useful to bring out the fact that the provisions resulting from consular port establishment and navigation conventions are still in force. In this connection an article 6 should be added in these terms :

« The provisions of the present Convention do not prejudice in any way the application of the provisions of existing conventions between the state of which the stowaway is a national and the state of the disembarkation port, as regards consular, port establishment and maritime navigation matters. »

3. It would seem desirable to stipulate that the treatment of stowaways cannot become privileged with respect to the passengers. An Article 7 should be added as follows :

« The stowaway can only have, with respect to the responsibilities incurred by the shipping company, the treatment provided for by the national law of the ship, and in any case he cannot have more favourable treatment than that resulting from the application of international conventions concerning the limitation of the liability of owners of seagoing ships. »

Article 2.

This Article makes provision for a ship registered « at a port ». Many Dutch ships are registered at The Hague which is not a port. Could not be omitted the words « at a port »?

COMMENTS

In drafting this Convention the Association recognized that it was its duty to attempt to reproduce in it the views of members of the International Sub-Committee as expressed during the Brighton Conference.

Since the circulation of the draft Convention (dated 3rd June) there has been an opportunity for the general study of its terms and certain amendments have been suggested.

In the first place, in order to ensure the satisfactory operation of the provisions, it is thought desirable that the Convention should contain a specific provision providing for the designation by ratifying countries of ports at which there will be Appropriate Authorities.

Secondly, it is thought inappropriate for the Convention to contain any provision covering political refugees. Quite apart from the fact that the provisions, as now drafted, would not prevent a political refugee from being sent to a country politically sympathetic to the country from which he escaped, it is thought undesirable for the master of a ship to be burdened with the responsibility of deciding whether a stowaway is a bona fide refugee.

Finally, it is considered that the provisions of Article 3 as originally drafted did not satisfactorily ensure that Appropriate Authorities would take sufficient steps to discover the nationality, or, as the case may be, the port of embarkation of stowaways and that accordingly the control now vested in Immigration Authorities over persons entering countries would have been unreasonably overruled.

For convenience the whole Convention has been retyped and the suggested amendments are contained in the document which is now attached.

Copies of these comments and enclosure have been sent to Firme Henri Voet-Genicot.

DRAFT CONVENTION
25th July 1955

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules of law relating to stowaways, have decided to conclude a convention for this purpose, and thereto have agreed as follows :

Article 1.

In this Convention the following expressions shall have the meanings hereby respectively assigned to them : « Stowaway » means a person who at any port secretes himself in a ship without the consent of the Owner of the ship or of the Master or any other person in charge of the ship, and who is found after the ship has left the port.

« Port of embarkation » means the port at which a stowaway boards the ship on which he is found.

« Designated port » means a port designated by a Contracting State in accordance with the provisions of this Convention as a port at which there is an appropriate authority.

« Appropriate authority » means the body or person at a designated port authorized by the Government of the Contracting State in which that port is situated to receive and deal with stowaways in accordance with the provisions of this Convention.

« Owner » includes any Charterer to whom the ship is demised.

Article 2.

Each Contracting State shall, within six months of the deposit of the ratification of this Convention by that State, designate an adequate number of ports within the State at each of which there is an appropriate authority; without prejudice however to the right of any State at any time to change the designated ports or increase or decrease their number.

Article 3.

(1) If on any voyage of a ship registered at a port in a Contracting State a stowaway is found, the Master of the ship may deliver the stowaway to the appropriate authority at the first designated port at which the ship calls after the stowaway is found :

Provided that, if the stowaway is found while the ship is in a designated port, the Master may deliver the stowaway to the appropriate authority at that port.

(2) Upon delivery of the stowaway to the appropriate authority, the Master of the ship shall give to that authority all information in his possession relating to the nationality, or, as the case may be, the nationalities, of the stowaway, his port of embarkation, and the date, time and geographical position of the ship when the stowaway was found.

(3) The appropriate authority at any port shall receive any stowaway delivered to them in accordance with the foregoing provisions of this Article and may deal with him in accordance with the following provisions of this Convention.

Article 4.

When a stowaway is delivered to the appropriate authority at a designated port,

(1) the appropriate authority may return the stowaway to any State of which they believe him to be a national and, if that State is a Contracting State, it shall be bound to accept him unless satisfied that he is not a national of that State,

(2) the appropriate authority may return the stowaway to the port which they believe to have been his port of embarkation if :

(a) the State, or, as the case may be, all the States of which the appropriate authority believe the stowaway to be a national, refuses, or, as the case may be, refuse, to accept his return, or

(b) if the appropriate authority are satisfied that the stowaway possesses no nationality;

and the State in which the port of embarkation is situated if a Contracting State, shall be bound to accept him unless satisfied that that port was not his port of embarkation :

Provided that, if the appropriate authority are unable to express a view as to the stowaway's port of embarkation, or the State in which the port is situated which they believe to have been his port of embarkation refuses to accept him, the appropriate authority may return him to the last port at which the ship called prior to his being found, and the State in which that port is situated, if a Contracting State, shall be bound to accept him notwithstanding that it may have previously refused to accept him in accordance with the preceding provisions of this paragraph.

Article 5.

(1) When a stowaway is returned to a Contracting State of which he is a national in accordance with the provisions of this Convention, the expense of so returning him, and the expense of his maintenance at the designated port at which he is received by the appropriate authority from the time when he is so received until he is so returned, shall be defrayed by that State.

(2) When in accordance with the provisions of this Convention a stowaway is returned to his port of embarkation, or, as the case may be, the last port at which the ship called prior to the stowaway being found, the expense of so returning him, and the expense of his maintenance at the designated port at which he is received by the appropriate authority from the time when he is so received until he is so returned, shall be defrayed by the Owner of the ship. The liability of the Owner of a ship under this paragraph for the expense of maintenance of a stowaway shall not exceed the amount of such expense for a period of two months from the time when the stowaway is received by the appropriate authority at the designated port.

Article 6.

The powers conferred by this Convention on the Master of a ship and on an appropriate authority, with respect to the disposal of a stowaway shall be in addition to and not in derogation of any other powers which he or they may have in that respect.

25th July, 1955.

III.

MINUTES

ATTENDANCE LIST

ARGENTINE

Mr. Atilio MALVAGNI, Advocate, Professor of Maritime Law at the Escuela Nacional de Nautica « Manuel Belgrano » at Buenos Aires, President of the Argentine Maritime Law Association, Buenos Aires.

BELGIUM

Mr. Albert LILAR, Minister of Justice, Hon. President of the International Maritime Committee and Hon. President of the Belgian Maritime Law Association, Antwerp.

Count Jean d'URSEL, Chargé d'affaires of Belgium at Madrid.

Mr. Léon GYSELYNCK, Managing-Director of the Banque d'Anvers, Hon. Treasurer of the International Maritime Committee and of the Belgian Maritime Law Association, Antwerp.

Mr. Jean VAN RYN, Advocate at the Cour de Cassation, Brussels.

Mr. Carlo VAN DEN BOSCH, Advocate, Hon. Secretary General of the International Maritime Committee and Hon. Secretary of the Belgian Maritime Law Association, Antwerp.

Mr. Henry VOET-GENICOT, Hon. Advocate, Average Adjuster, Antwerp.

Mr. Werner KOELMAN, Advocate, Antwerp.

Mr. André G. VAES, Advocate, Antwerp.

Mr. Henry François VOET, Dr. Jur., Average Adjuster, Antwerp.

Mr. Jacques HEENEN, Hon. Advocate, Chief of the Juridical Department of the Banque de la Société Générale de Belgique, Dr. Jur., Brussels.

Mr. Lionel TRICOT, Advocate, Antwerp.

Mr. Paul BOSMANS, Dr. Jur., Sub-Director of the Agence Maritime Internationale, Antwerp.

Mr. Leo VAN VARENBERGH, Dr. Jur., Antwerp.

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Mr. A.L. LAWES, C.B.E., Hon. Vice-President of the Canadian Maritime Law Association, President of the Lawes Shipping C°, Ltd., Montreal.

Mr. Lucien BEAUREGARD, A.C., Montreal.

Mr. Peter WRIGHT, O.B.E., Hon. Vice-President of the Canadian Maritime Law Association, Toronto.

DENMARK

Mr. N.V. BOEG, Judge, Hon. President of the Danish Maritime Law Association, Copenhagen.

Mr. Alfred GÄRTNER, Secretary of the East Asiatic Company, Copenhagen.

Mr. C. SEIDELIN-LARSEN, Judge, Copenhagen.

Mr. André M. SØRENSEN, Manager of the Danish Shipowners' Protection & Indemnity Club, Advocate, Copenhagen.

Mr. Victor WENZELL, Assistant General-Manager of the Danish Shipowners' Association, Advocate, Copenhagen.

FINLAND

Mr. Herbert ANDERSSON, Hon. Secretary-General of the Finnish Maritime Law Association, Helsingfors.

FRANCE

Mr. Georges RIPERT, Member of the Institut de France, former Doyen of the Faculty of Law of Paris, Paris.

Mr. Jean de GRANDMAISON, Advocate, Hon. President of the French Maritime Law Association, Paris.

Mr. Leopold DOR, Advocate, Hon. Vice-President of the International Maritime Committee, Paris.

Mr. J.P. GOVARE, Advocate, Member of the Académie de la Marine, Paris.

Mr. Marcel PITOIS, Dr. Jur., Vice-President of the Société Navale de l'Ouest, Paris.

Mr. Jean WAROT, Advocate, Paris.

Mr. PRODROMIDES, Dr. Jur., Juridical Councillor of the Comité Central des Assureurs Maritimes de France, Paris.

Mr. Michel DUBOSC, Advocate, Havre.

Mr. Alfred JAUFFRET, Professor at the Faculty of Law of Aix-en-Provence, Aix-en-Provence.

Mr. CHAUVEAU, Professor at the Faculty of Law of Algiers, Paris.

Miss Claire LEGENDRE, Dr. Jur., Hon. Secretary of the Comité Central des Armateurs de France, Paris.

Mr. Jacques POTIER, Sub-Manager of the Compagnie des Chargeurs Réunis, Paris.

Mr. Pierre LUREAU, Dr. Jur., Maritime Underwriter, Paris.

Mr. Raymond BOIZARD, Dr. Jur., Manager of the Assurance Company « La Bâloise », Paris.

Miss France PIETRI, Advocate, Paris.

Mr. SIMONARD, Professor at the Faculty of Law of Lille, Lille.

Mr. RAMBAUVILLE-NICOLE, General Manager of the Groupement des Réassurances Maritimes, Paris.

GERMANY

Mr. Rolf C.W. STÖDTER, Hon. President of the German Maritime Law Association, President of the German Shipowners' Association, Hamburg.

Mr. Hans-Christian ALBRECHT, Advocate, Hamburg.

Mr. Gerd COELER, Advocate, Hamburg.

Mr. Otto DETTMERS, Advocate, Bremen.

Mr. John Alfred EDYE, Shipowner, Partner of Messrs. Rob. M. Sloman Jr., Hamburg.

Mr. Kurt VON LAUN, Manager of the Shipowning Company « Neptun », Bremen.

Mr. Juergen LEBUHN, Advocate, Hamburg.

Mr. Hans Georg RÖHREKE, Hon. Secretary of the German Maritime Law Association, Manager of the German Shipowners' Association, Hamburg.

Mr. Ulrich SCHEUNER, Professor at the Faculty of Law at the University of Bonn, Bad-Godesberg.

Mr. Victor SOMMER, Shipowner, Partner of Messrs. Arthur Sommer, Hamburg.

Mr. Oskar VON STRITZKY, Manager of the Nord-Deutsche Versicherungs-Gesellschaft, Member of the Board of Directors of the Assurance Association of Hamburg, Hamburg.

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Mr. Heinz KALLUS, Head of the Legal Department of the Sea Transport Group of the Federal Ministry of Transport, Member of the Board of Directors of the Hamburg Underwriters' Association, Hamburg.

Mr. Werner SCHOEN, Advocate, Hamburg.

GREAT-BRITAIN

Sir Gonne St. Clair PILCHER, Hon. Vice-President of the International Maritime Committee, Hon. President of the British Maritime Law Association, Judge at the Queen's Bench Division, London.

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Rt. Hon. Viscount SIMON, Vice-President and Manager of the Shipping Federation and of the International Shipping Federation, London.

Mr. Horace EDMUNDS, Adjuster of Claims, London.

Mr. E.W. READING, President of the Executive Committee of the British Maritime Law Association, London.

Mr. Cyril T. MILLER, Hon. Secretary-General of the International Maritime Committee, Hon. Secretary of the British Maritime Law Association, London.

Mr. Alan KENT, Observer on behalf of Her Majesty's Government, London.

Mr. Harold GORICK, C.B.E., Joint Secretary of the British Liner Committee, Hon. Secretary General of the International Chamber of Shipping, General Manager of the Chamber of Shipping, London.

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Mr. G. GRAHAM, Joint Secretary of the British Maritime Law Association, London.

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Mr. Tage ZETTERLÖF, Advocate, Gothenburg.

Mr. Gösta WILKENS, Judge at the Tribunal of Gothenburg.

Mr. Niklas KIHLBOM, Manager of the Assurance Company « Öresund », Malmö.

Mr. Rainer HORNBORG, Manager of the Assurance Company « Indemnitas », Stockholm.

SWITZERLAND

Mr. Walter MÜLLER, Dr. Jur., Advocate and Notary, Hon. President of the Swiss Maritime Law Association, Basle.

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Mr. Charles S. HAIGHT, Hon. President of the American Maritime Law Association, Partner in the firm of Haight, Gardner, Poor & Havens, New York.

Mr. Wilbur H. HECHT, Hon. Secretary of the American Maritime Law Association, Partner in the firm of Mendes & Mount, New York.

Mr. Archie O. DAWSON, Judge of district, New York.

Mr. Henry C. BLACKISTON, Partner in the firm of Lord, Day & Lord, New York.

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Mr. Arthur H. LOUIS, Partner in the firm of Hill, Rivkins, Middleton, Louis & Warburton, New York.

Mr. John R. MAHONEY, Partner in the firm of Casey, Lane & Mittendorf, New York.

Mr. Raymond W. MITCHELL, Associate in the firm of Dow & Symmers, New York.

Mr. John C. MOORE, Partner in the firm of Haight, Gardner, Poor & Havens, New York.

Mr. J. NEWTON NASH, Partner in the firm of McNutt & Nash, New York.

Mr. Joseph M. RAULT, Partner in the firm of Terriberry, Young, Rault & Carroll, New Orleans, La.

Mr. William G. SYMMERS, Partner in the firm of Symmers, Fish, Warner & Nicol, New York.

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OBSERVERS

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INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Prof. Roberto SANDIFORD, Rome, Italy.

CHAMBRE DE COMMERCE INTERNATIONALE

Miss Claire LEGENDRE, Dr. Jur., Paris, France.

INAUGURAL SESSION

Sunday 18th September 1955

El Excmo. Sr. Ministro de Justicia español D. Antonio de Iturmendi Bañales. — Queda abierta la sesión.

Don Pelegrín de Benito. — Excmos. e Ilmos. Señores, Señoras y Señores.

Con curiosa y paradójica coincidencia, una estricta norma protocolaria y un viejo principio moral, quieren que, en algunas ocasiones, y para ciertos efectos, les últimos sean los primeros. Y ésta es la razón de que sea yo, el más modesto de cuantos asisten a este acto, quien tenga precisamente en razón de mi pequeñez y gracias a la afectuosa licencia del Excmo. Sr. Ministro de Justicia, el alto honor de iniciar con mis palabras la sesión de apertura de la Conferencia de Madrid del Comité Maritimo Internacional.

Pero ni la coincidencia del honor que reciboni la inmensa satisfacción que siento, pueden hacerme olvidar los deberes que sobre mi pesan en este momento, y, sobre todos ellos, el de procurar la brevedad de mis palabras, de modo que no retrasen un minuto más de lo necesario, la intervención de las eminentes personalidades que van a hablaros y cuyos discursos han de ser objeto de la preferente atención de todos.

Este acto, no es más ni menos que la culminación de una laboriosa etapa de trabajos e ilusiones, en cuyo servicio y exaltación he tenido parte principal. Al decir ésto, no reclamo más méritos que el de la iniciativa, por la misma razón que nunca he rehuido sus responsabilidades y sacrificios y por ello soy el primero en proclamar que cuantos lauros puedan corresponder al éxito, pertenecen integramente a otras perosnas y en particular, a los tres illustres oradores que os van a hablar, es decir, al Presidente de la Asociación Española de Derecho Marítimo, al Excmo. Sr. Ministro de Justicia y al Sr. Presidente del Comité Marítimo Internacional.

Al referirme a tales méritos y al confesar las deudas de gratitud que todos los aqui presentes y yo muy singularmente, tenemos contraidas con tan buenos amigos, es forzoso justificar su fundamento porque tal justificación constituye el objeto esencial de mis palabras, si éstas han de ser algo más que simples manifestaciones de cortesía. Para resumir la intervención de D. Ernesto Anastasio en la creación de la Asociación Española de Derecho Maritimo que con tanta dignidad preside, me limitaré a recordar ahora lo que hace cinco años escribí al frente de la Revista de Derecho Marítimo :

« Antes de que pudiera pensarse en una verdadera labor organizadora, era preciso contar con persona que, por poseer la compleja experiencia del mando y creación de empresas y de la realidad viva de los negocios, fundada en una sólida competencia financiera y en una larga práctica profesional, jurídica y marítima, reuniera la rara suma de méritos necesarios para constituir el verdadero enclave o confluencia de cuantos intereses se componen, y contraponen, en la industria y en el comercio marítimos, a fin de representar al mismo tiempo la comprensión y la independencia, inspirando a dosis iguales confianza, afecto y respeto para ganar adhesiones, vencer resistencias, suavizar asperezas y aventar minucias ».

« Este prestigio y estas dotes y cualidades, las reúne en tal grado D. Ernesto Anastasio, que la convierten hoy en un postulado nacional decisivo para coordinar los ideales e intereses que yo quería movilizar. Por ello, todos mis esfuerzos se dirigieron desde el primer momento a conquistar su ánimo para decidirle a patrocinar mis planes, tomando parte y responsabilidad en su preparación y cumplimiento... ».

Lo que después hicimos, ya lo sabéis. Se créo la Asociación Española de Derecho Maritimo; se organizaron cursos de estudios y conferencias; se formaron los Comités filiales de la Asociación en Valencia, Barcelona, Canarias y Bilbao y, sobre todo, se consiguió la admisión de nuestra Asociación en el Comité Maritimo Internacional.

La decisión unánime adoptada en su dia por la Oficina Permanente del Comité Marítimo Internacional, vino a respaldar los sentimientos que con inolvidable efusión me habia testimoniado el Presidente Lilar, probándose asi tangiblemente la realidad del prestigio y respeto de que goza España en Bélgica, en el noble pais, cuya historia corrió unida a la nuestra en los años de esplendor imperial.

Yo me complazco en reiterar pública y solemnemente la gratitud que desde entonces profesamos al Sr. Lilar y a los ilustres Consejeros del Comité Marítimo Internacional (hoy mis compañeros en la Oficina Permanente) al recibirles por vez primera en nuestra Patria.

Y finalmente, « at last but not at least » debo completar mi tributo de agradecimiento, renovando con profunda emoción todo el que debo al Sr. Ministro de Justicia, porque su simpatia y su afecto, y el estímulo que siempre tuvo la generosidad de prestarme, antes y después de regir el Departamento que con tanto prestigio gobierna, contribuyeron considerablemente en lo personal a mantener vivas mis ilusiones y a levantar mi ánimo, quebrantado muchas veces en estos años por las dificultades de la tarea, y en lo colectivo, a que nuestra labor, siempre apoyada de mil maneras, desembocara en el gran éxito final. « Augusta per angusta ».

Vuestra presencia aqui es la mejor prueba y el mejor premio de nuestro esfuerzo. Los grandes sectores españoles de la navegación y del comercio, de la banca y de los seguros, del foro y de la magistratura, tradicionalmente alejados de la gran tarea de la unificación universal del Derecho Marítimo, se han congregado al fin, y, juntando sus esfuerzos en el seno de la Asociación Española, han hecho posible la definitiva incorporación de nuestro pais a los trabajos del Comité Marítimo Internacional, permiténdonos con su espléndido y generoso apoyo, organizar la Conferencia de Madrid. Reciban ellos tambien el testimonio de mi encendida gratitud.

Para terminar, permitaseme dirigir unas palabras de bienvenida a nuestros amigos extranjeros, en los idiomas oficiales del Comité Marítimo.

Au moment de vous recevoir chez nous, je m'empresse de vous remercier vivement pour l'honneur que vous nous avez fait de répondre à notre invitation et je vous promets que vous trouverez chez nous et chez vos collègues espagnols toute la loyauté et toute la sympathie que je vous ai promis à Naples et à Brighton lors de notre proposition d'invitation.

For my English friends, I will take this opportunity of saying a few words.

Mr. President, Ladies and Gentlemen, on your arrival in Spain I hasten to express in these simple, but most heart-felt words, how pleased I am to be able to receive you in our country, and how

grateful I am that you should have decided to accept our invitation to visit us. Needless to say, you can be sure that your Spanish colleagues will tender you all that warm-hearted co-operation which I promised you at Naples, when I extended you our most cordial invitation to Madrid. May I just add, a verry hearty welcome indeed.

Señor Presidente, señoras, señoritas y señores. En el momento de recibiros en España, no puedo menos de expresaros mi agradecimiento por la gran satisfacción que vuestra visita nos procura, y aseguraros que encontraréis en nuestro pais y en vuestros colegas españoles la lealtad y el afecto que os prometí en Nápoles al haceros nuestra invitación. Sed bienvenidos.

D. Ernesto Anastasio. — El año 1897 será considerado como una fecha histórica, como una gloriosa efemérides en la historia de la unificación del Derecho Marítimo.

La fundación del Comité Marítimo Internacional, constituye uno de los acontecimientos más fecundos y trascendentales del último cuarto del sigle XIX. Corresponde a un belga insigne el honor de haber creado el órgano adecuado para disipar la confusión y los peligros de la anarquía en la vida de la Navegación. Todos debemos rendir un cálido homenaje a la nación belga, que ostenta poderecho propio la capitalidad del Comité Marítimo Internacional. Saludemos como representante de ese gran país a su Ministro de Justicia, Mr. Lilar, que con tanta dignidad nos preside.

La anarquía jurídica tanto existe por ausencia de las leyes, como por la abundancia de éstas, si se contradicen y tienen análoga fuerza de obligar al amparo de soberanías distintas. En este último caso, la determinación de la ley aplicable a la cuestión que se debate y la competencia del Tribunal que ha de juzgarla, constituyen un tremendo problema insoluble a veces, como sucede en algunos casos de abordaje. El aumento colosal del tráfico marítimo, después del descubrimiento de la máquina de vapor, con el establecimiento de las líneas regulares y la constitución de grandes sociedades anónimas, planteó la necesidad de acompasar el progreso jurídico a las nuevas características del tráfico, y el signo de tal progreso era y sigue siendo la unificación del Derecho Marítimo.

El ideal sería una sola ley y un solo tribunal, peroquién es capaz de llegar a eso ? Sin embargo, todo el mundo sabe que ahí está la única y la definitiva solución.

En una primera y dilatadísima etapa, el Derecho Marítimo se ha ido haciendo a sí mismo con una sorprendente, sencilla e ingenua unanimidad, porque vivía y se hacía al márgen de las leyes nacionales. La navegación se regía por sus propias costumbres, porque la aventura marítima planteaba a todos los que navegaban los mismos problemas que se resolvían con procedimientos y soluciones análogos. Por mucho que se haya dicho y escrito sobre las averías gruesas y muy especialmente sobre la echazón, cuando se realiza en beneficio común, es evidente que la sencilla gente de mar supo penetrar sin necesidad de graves especulaciones en la naturaleza jurídica del fenómeno y en el fondo moral que imponía distribuir el importe de los daños deliberadamente causados, entre todos los que, gracias a ellos, lograron evitar los mayores en sus intereses.

El acontecer jurídico de la navegación, ha variado rapidísimamente desde el último tercio del siglo pasado. Ya en la iniciación de la época de los nacionalismos, se registró la invasión legislativa de cada país en el ámbito de las costumbres marítimas, y al legislar cada cual por su cuenta, se ahondaban más las diferencias, precisamente cuando más necesario era borrarlas. No se quiso, no se quiere todavía reconocer que ésto de la navegación es un mundo aparte, y ello en primer término, porque el mar no es de nadie, que vale tanto como decir que constituye un bien común de todos los hombres. Pues si ésto es así, todos los hombres y no unos pocos, deben elaborar un Derecho común a todos ellos mediante el cual se gobierne la vida de los mares con procedimientos propios y con tribunales de plena competencia jurisdiccional que resuelvan los pleitos internacionales.

En tanto ésto no es posible, el Comité Marítimo Internacional lucha bravamente por avanzar en la obra de unificación del Derecho Marítimo, sintiéndose responsable de la continuidad de la tarea iniciada por Louis Franck en 1.897.

Los temas de abordaje, auxilio y salvamento han sido tratados en seis Conferencias internacionales celebradas en seis años sucesivos en Bruselas, Amberes, Londres, París, Hamburgo y Amsterdam.

De la responsabilidad de los proprietarios de buques se ha tratado en Amberes, en Londres, en París, en Liverpool, en Venecia, en Amsterdam y en Nápoles.

Se ha tratado el tema de los conocimientos de embarque en 1.924 (Conferencia de Londres y Reglas de La Haya).

El Seguro obligatorio de pasajeros, la inmunidad de los buques del Estado, la competencia civil y penal en materia de abordajes y los privilegios e hipotecas marítimas, han merecido la más cuidadosa atención del Comité Marítimo Internacional.

En toda la anterior relación de países, no aparece una sola vez el nombre de España. Este hecho, por muy deplorable que parezca, tiene una clara explicación. Con esa misma explicación comprenderemos enseguida la razón de que este importante Congreso se celebre en Madrid. Nadie ignora que hemos sido una gran nación marítima y que estamos realizando grandes esfuerzos para serlo otra vez. Codo a codo con los portugueses, alcanzamos un puesto de excepción en la historia de los descubrimientos. Nuestras naves fueron las primeras en demostrar la redondez del Planeta, con lo cual habíamos ganado un título legítimo para aspirar a la hegemonía de los oceános. Pero las situaciones de excepción no se pueden mantener indefinidamente y la propia grandeza de nuesto fabuloso imperio colonial, había de crearnos, al perderlo, heridas sangrantes de larga y difícil cicatrización que habían de dejar exhausta nuestra economía. Y con una economía débil no se puede aspirar a poseer una gran Marina Mercante; y sin una gran Marina Mercante no se pueden atacar de frente y con autoridad problemas tan arduos como los que esperan sobre la mesa de esta Conferencia; porque no se trata tanto de acertar en la exactitud jurídica de las resoluciones que se propongan y se aprueben, como de ofrecer fórmulas transaccionales cuyo éxito parece más seguro cuando las capitanean los países que poseen flotas más numerosas y dominan tráficos más extensos, en los que pueden ofrecer, frente a las elucubraciones de los juristas, las enseñanzas prácticas de la experiencia. Por eso, España ha estado físicamente ausente de las actividades del Comité Marítimo Internacional, aunque haya aceptado lo que en el Comité se ha acordado y sometido a la Conferencia Diplomática.

Pero la historia de nuestra Marina no es toda nuestra historia, sino un aspecto parcial más o menos importante de ésta, ni tampoco prospera o decae según un ritmo regular; pero sí suele acomodarse con bastante exactitud a las fluctuaciones de la vida del país, debidas unas veces al juego normal de los factores que presiden su política interior y otras a circunstancias de orden exterior favorables o adversas, pero que, en un sentido y otro, alteran el rumbo que se ha querido seguir,

dificultando la marcha o alargando la meta con un prolongado asedio de dificultades que España, al fín, ha vencido, porque ha sabido hallar el camino de la disciplina y el orden que conducen a la situación de paz que aquí vivimos y que es, a fín de cuentas, no lo dudéis un solo instante, lo que aquí os ha traído, porque la paz es el mejor clima para que florezca la amistad que aquí se os ofrecerá de corazón por todas partes y a todas horas. Qué diferencia con aquellos tiempos en que hombres universalmente reputados como eminentes y serios, jugaban con la cruel y grotesca ironía de hacer un vacío a nuestro alrededor, porque constituíamos un grave peligro para la paz !

Barcelona, Bilbao, Valencia y Tortosa ocupan un lugar destacadísimo en la historia del Derecho Marítimo; pera aquellas gloriosas actividades en las que nuestro país alcanzó justo renombre, eran pura experiencia, lección de los hechos, leyes escritas por las quillas de los barcos. Quien tiene los barcos y domina el comercio que ellos realizan, hace el Derecho. Por eso, cuando no hemos tenido barcos ni participado activamente en los tráficos, todo aquel prestigio aureolado por aquellos nombres, se ha ido haciendo borroso y confuso en la lejanía del tiempo, esperando ocasión mejor para volver por los fueros de una tradición que pugna por revivir haciéndose realidad viva y actual, porque España está haciendo Marina; porque espera tenerla en la medida que corresponde a su geografía, a su historia y a los máximos esfuerzos de su economía, que se conciertan con los impulsos que le presta el Jefe del Estado, y a través de fórmulas de protección inspiradas en el patriotismo del Gobierno para ganar el tiempo lastimosamente perdido en los años últimos de nuestra decadencia.

La Marina ha sido siempre en España el signo más visible de su progreso o de su decadencia. Causa o consecuencia, es lo cierto que nuestro poder naval ha sido rico o pobre, fuerte o débil, según lo ha sido el país, y el juicio que éste merece ahora en el mundo, debe ser el que corresponde al honor que se nos ha discernido escogiendo Madrid para sede de este importante Congreso, que ha de deliberar sobre temas tan importantes como el de la limitación de la responsabilidad de los propietarios de buques, y sobre los efectos de la inserción de ciertas cláusulas marginales relativas al acondicionamiento de las mercancías en los conocimientos de embarque.

Madrid, pues, está de enhorabuena y debe gratitud a sus ilustres visitantes. Para corresponderles hemos procurado recibirles con los

máximos honores, y el mayor de todos cuantos podíamos ofrecerles nos lo proporciona la Presidencia de Honor del Caudillo de España, que no puso el menor reparo en aceptarla, después de manifestar una vivísima curiosidad por las materias que debían sera tratadas en la Conferencia; por las personas que habían de acudir par deliberar sobre ellas y sobre los resultados probables de la discusión internacional que nos haya de conducir a la formalización de los Convenios.

Nada se puede ni se debe vaticinar cuando la Conferencia no ha empezado aún sus sesiones de trabajo; pero así como en metereología se ha llegado a predecir los cambios de tiempo con bastante exactitud, en los estudios preparatorios de estos Congresos se va creando una atmósfera de optimismo unas veces y de pesimismo otras, que permite anunciar sin grave riesgo de error, lo que ha de ser el resultado final de las deliberaciones, por lo que después de conocer lo que se dijo en Brighton y la posición adoptada por las Delegaciones de los países que allí acudieron el año pasado, no parece aventurado confiar en que salgan de este Congreso completamente ultimados alguno o algunos de los proyectos que han de discutirse, y con solo ésto, si se logra, habremos rescatado una posición que no debiamos perder nunca, saliendo a la luz de las nobles tareas que se debaten en el mundo de la navegación internacional, en vez de permanecer arrinconados como lo hemos venido estando durante tantos años, dando un ejemplo de sacrificio y de paciencia que ha sido quizá lo más difícil de entender para los que mejor conocen nuestra historia.

La limitación de responsabilidad de los propietarios de buques es un pleito viejo y trascendental sobre el cual no ha parecido nunca que exista posibilidad de acuerdo. La disparidad de criterios en el fondo es irreductible y, además, perfectamente explicable, no obstante lo cual, habrá convenio. Y debe haberlo, porque lo peor que puede suceder es que no lo haya. Un poco de injusticia siempre es mucho mejor que el caos, y cuando se trata de un poco de injusticia consentida, al fenómeno se le suele llamar transacción, fórmula mágica para la resolución de los problemas más graves.

Lo que pasa es que las transacciones tienen su momento, que esta vez puede coincidir con el clima acogedor y amable de Madrid. Y cuando un tema está agotado en términos tales que se hace imposible aportar argumentos nuevos, porque tampoco se hayan alterado las

circunstancias, ni aparecido hechos distintos de los que hasta el presente han venido dominando la discusión, se impone que ésta ceda el paso a la eficacia resolutiva de los acuerdos que vienen a ser como el coronamiento de la obra a la cual se da fín con la satisfacción del deber cumplido y con un poco de razonable orgullo por el éxito alcanzado por cuantos con buena voluntad y buena fé han contribuído a él.

Yo le auguro un pleno y resonante éxito al Congreso de Madrid Van a intervenir en él los más grandes y prestigiosos juristas del mundo, especializados en el Derecho Marítimo, y presidirá la Asamblea, con la eficacia y maestría con que sabe hacerlo y con la autoridad que deriva de su persona y del elevadísimo cargo que desempeña al frente del Ministerio de Justicia de su país, Su Excelencia Mr. Lilar, que goza en España de grandes y merecidas simpatías, porque él, a su vez, ha demostrado sentirlas por nuestra patria, que sabe ser agradecida.

Ahora bien, no caigamos en el error de creer que éste sea un Congreso de juristas y que se deba sólo a su sabiduría, que es mucha, el éxito que aquí tratamos de obtener. Precisamente los está obteniendo el Comité Marítimo Internacional, porque ningún interés del comercio marítimo se halla ausente de él; y tomar acuerdos sin la explícita y previa conformidad de los intereses, sería como escribir en la arena, y esos intereses intervienen todos en pie de igualdad con los grandes juristas, facilitando a éstos el conocimiento de los hechos. Ejercen en cierto modo una función de ordenamiento. Dan paso a lo que puede pasar; vetan o detienen lo que puede perturbar u obstruir; rechazan heroicamente con las armas de la razón, cualquier notoria injusticia que pueda perjudicar el derecho de terceros. Louis Franck supo bien lo que hacía; es bien sensible que no haya vivido lo bastante para contemplar en todo su actual esplendor el resultado de su obra.

Navieros, comerciantes, consignatarios, aseguradores, banqueros, todos cuantos tienen intereses en el transporte marítimo, tienen su puesto en las asociaciones nacionales y, a través de éstas, se hallan representados en el Comité Central. Ningún problema se resuelve sin que todos puedan opinar sobre él; primero, en cada una de las Asociaciones nacionales, después, en el Comité. Los intereses defienden libremente sus puntos de vista, lo que a ellos conviene y creen que debe ser. Los especialistas y maestros del Derecho articulan las normas y de la aprobación de todos surgen los Convenios con aspiración de leyes. Todo

gira alrededor del riesgo y la responsabilidad que atañe al naviero por razón del transporte. El naviero pretende liberarse de ella o limitarla; a tal efecto inserta toda una compleja teoría de claúsulas de exoneración de responsabilidad en los conocimientos que, si en su conjunto puede ser considerada como una práctica inmoral y abusiva, descansa en muchos casos en fundamentos sólidos para prevenir actos de mala fé que propenden a conocidos intentos de fraude y de expoliación que habría de soportar el naviero, y éste tiene el derecho y el deber de defenderse como lo tiene el cargador y el consignatario que entregan y reciben la mercancía, como lo tiene el asegurador marítimo, llamado cada día a desempeñar un papel más destacado en los problemas del transporte que no pueden tener solución definitiva, como no se cuente con el Seguro. Es fácil la profecía de que el seguro marítimo acabará declarándose obligatorio. Ni siquiera será necesario que oficialmente se imponga. Vendrá impuesta esa obligatoriedad por la fuerza misma de los hechos y de las circunstancias que nos han llevado a cifras fabulosas. Ninguna responsabilidad es efectiva sin que él la cubra. Resultaría ingenuo y pueril hablar de una responsabilidad no respaldada por la indiscutible solvencia del deudor que le da la póliza de seguro.

Y cada día será más útil y más eficaz la intervención de la Banca. El problema de las claúsulas marginales insertas en los conocimientos y de las cartas de garantía, es un problema esencialmente bancario, para asegurar el ritmo de las exportaciones. De ello se ha de ocupar también este Congreso.

Yo siento una gran emoción en esta sesión inaugural. Lo había presentido, y por eso no quise confiar a la memoria o a la improvisación, las palabras que me correspondería decir en este caso. No tengo méritos que acrediten el puesto que aquí ocupo, ni en la ciencia del Derecho, ni en las actividades del transporte marítimo, ni en los negocios de seguros; quizá se ha tenido en cuenta que he participado, siquiera sea modestamente, en todo lo relacionado con la Marina Mercante, a la que he consagrado muchos y los mejores años de mi vida, que confiere, por lo avanzado de la edad, prestigios y respetos que probablemente no hubieran podido sera ganados de otro modo. Con ellos y con los colegas que me han acompañado, aunque fuera más exacto decir que me han guiado en los trabajos de organización, se ha obtenido el apoyo moral de nuestro Gobierno, en términos realmente alentadores, como bien se demuestra con las personalidades que dan el

máximo realce a la sala; si bien debo limitarme por razones de brevedad, a reiterar públicamente nuestra rendida gratitud al Excmo. Sr. Ministro de Justicia, porque en todo momento, a lo largo de los años que lleva rigiendo dignamente tan honroso puesto, ha confirmado de modo expreso y entrañable la adhesión y el afecto que como fundador de la Asociación demostró en términos de verdadera amistad.

Debo tambien expresar inextinguible gratitud a cuantas entidades han prestado con notable espontaneidad apoyos materiales verdaderamente espléndidos, y entre ellas a las Cámaras de Comercio, Sindicatos y Compañías de Navieros y Seguros, juntamente con algunos Ayuntamientos y Diputaciones, además del Ayuntamiento y la Diputación de Madrid, que han procedido en este punto con la largueza y el señorío de sus ilustres regidores, el Conde de Mayalde y el Marqués de la Valdavia.

Y aquí estamos frente a la primera Conferencia Internacional de Derecho Marítimo, que se celebra en España, cuya capital os acoge con la más fervorosa simpatía. Hubiera querido dedicar unas palabras, no soló a cada país de los inscritos, sino tambien a cada uno de los grandes maestros cargados de prestigio y de sabiduría que tantas cosas pueden enseñarnos; pero he desistido ante el temor de incurrir en alguna lamentable omisión, o, lo que sería peor aún, en alguna involuntaria injusticia al tratar de discernir subjetivamente, como forzosamente habría de ser, los méritos y la categoría de los demás. A los efectos de nuestra admiración, de nuestra simpatía y de nuestro respeto, a todos os consideramos iguales y a todos por igual pretendemos hacerles grata su estancia en este país, que es milenario en la práctica de esas dos grandes virtudes que se llaman lealtad y cortesía. Con la lealtad y cortesía que España profesa a amigos tan dilectos como vosotros. Sed bienvenidos a nuestro país.

El Excmo. Sr. Ministro de Justicia Español, D. Antonio de Iturmendi Bañales.

Excmo. Sr. Presidente de la Conferencia de Madrid del Comité Marítimo Internacional.

Excmos. e Ilmos. Señores.

Señoras y Señores :

En virtud de la amable invitación que me fué hecha por la Comisión organizadora de esta Conferencia, me cabe hoy el honor y la

satisfacción de hallarme reunido entre vosotros y brindaros la cordial acogida y la hospitalidad que merecéis y que corresponde a la proverbial hidalguia española; expresaros tambien nuestra bienvenida y nuestro saludo y de ofreceros, finalmente, la seguridad de nuestra colaboración para el estudio de las importantes cuestiones que figuran en el temario de esta Conferencia; y para después, la certeza de que vuestras conclusiones y vuestros proyectos, encaminados a buscar y plasmar las respectivas soluciones por medio de sendos Convenios internacionales, serán estudiados por el Gobierno Español con la máxima atención y el mejor deseo.

La Asociación Española de Derecho Marítimo, y a ella he de referirme primeramente, desde la fecha relativamente próxima de su creación, ha fomentado en nuestra Patria el estudio sobre temas de Derecho Marítimo; ha impulsado la aproximación de nuestros juristas especializados y de los comerciantes del mar al movimiento internacional y, sobre todo, ha acentuado nuestra vinculación a esta tarea interesantísima de la unificación internacional del Derecho Marítimo.

Fué fundada hace apenas un lustro, o algo más de un lustro, por uno de los empresarios marítimos más ilustres y de mayor vocación, D. Ernesto Anastasio, Presidente de la Asociación, con la asistencia verdaderamente inteligente y competente del Sr. Benito Serres y otros distinguidos juristas, y contando desde el primer momento con la colaboración de personalidades representativas de la industria marítima y del comercio del mar. Y en este corto período de tiempo, además de lo que he indicado, ha conseguido tambien su reconocimiento en el orden internacional y que se solicite el que esta Conferencia se celebrase aquí en Madrid, siendo acogida la propuesta con una amabilidad que merece nuestra honda gratitud, por el Sr. Presidente del Comité Marítimo Internacional, Mr. Lilar, Ministro de Justicia belga, e hispanista relevante; y fué aceptada esta propuesta por unanimidad y entre muestras de viva simpatía hacia nuestra Patria, que yo tambien hondamente agradezco, en la Reunión que tuvísteis en Brighton el pasado año 1.954. El hecho, por consiguiente, de que estemos aqui reunidos, atestigua el éxito de la Asociación Española de Derecho Marítimo en su corta, pero eficiente vida, que yo me congratulo de poner de manifiesto para estímulo de los que trabajáis en su seno.

Permitidme también que felicite a los miembros del Comité Marítimo Internacional por la obra ingente que habéis llevado a cabo desde

vuestra fundación y sobre todo por vuestra contribución al logro de unificar las normas del Derecho Marítimo, empresa que, gracias a vosotros, está hoy en camino de realización y que en parte se ha logrado merced también a vuestros trabajos.

Hasta entonces, sólo la introducción y el esfuerzo representados por las Reglas de York y de Amberes, tuvieron consecuencias efectivas. Mejor que yo, sabéis que posteriormente en los Congresos de Amberes y de Bruselas no se lograron los resultados apetecidos. Otros llamamientos también fueron desoidos y en medio, por decirlo asi, de un ambiente de decepción general, de escepticismo, hubo hombres que tuvieron fé y que se lanzaron a la dura, aunque necesaria tarea, de unir a los interesados en los negocios del mar por encima de particularismos y de las fronteras para procurar unificar en lo posible y procedente la diversidad y la variedad de las disposiciones que regían el comercio y la economía de los mares.

Razones, por consiguiente, de gratitud y de justicia me mueven a pronunciar estas palabras de sincero homenaje a aquellos hombres que iniciaron la marcha y que continúan hoy caminando hacia ese gran objetivo de la unificación internacional del Derecho Marítimo, contribuyendo con sus trabajos, con sus publicaciones y con sus Conferencias y también con la creación de Asociaciones Nacionales de Derecho Marítimo y con la incorporación y la coordinacion de éstas en su seno, a solucionar los problemas que plantean la industria y el comercio marítimos. Y todo ésto, señores, como lo recordaba el Sr. Anastasio, con un sentido práctico que atrae nuestra atención y nuestra simpatía, porque en estas reuniones, todos habláis libremente y exponéis lo que a vuestro juicio deseáis y necesitáis, procurando la unificación, la convergencia de criterios y la solución a vuestros problemas, de un modo convencional, que al haber sido previa y voluntariamente aceptados por vosotros, preparáis el camino y hacéis más fácil la aprobación de la norma con rango internacional.

La lista y los temarios de las veintidós conferencias celebradas por el Comité Marítimo Internacional con anterioridad a la que hoy inauguramos, han proporcionado materias y puntos de vista coincidentes a los más importantes Convenios Internacionales de Derecho Marítimo; y ésto constituye, al estar suscritos hoy por España, una prueba elocuente e irrefutable de la gran obra que realizáis en pro de la seguridad jurídica internacional. A España le corresponde un puesto preeminente

en toda tarea que se relacione con el mar. En la historia del mar, con independencia y además de lo naval-militar, los españoles hemos tenido una actuación destacada tanto en lo que afecta al comercio de intercambio con los puertos atlánticos de Europa y de la extensa red mediterránea, como en la gesta heróica que alumbró los nuevos caminos marítimos descubridores de nuevas, mejor dicho, de viejas, pero desconocidas tierras, a las que habia precisión de llevar la luz de la Fé y de la Civilización y a cuyos hombres era preciso hacer partícipes de la universalidad cristiana. La historia o la intervención de España viva y activa en la vida del mar, no se ha limitado, por consiguiente, a lo esforzado y heróico, sino que ha comprendido, por decirlo asi, todo el amplio sector de las ciencias y de las artes marítimas, en sus astilleros, en sus estudios matemáticos, en su saber de astronomía, en tradición cartográfica, en sus hermandades marítimas y en sus Casas de contratación y Universidades de Mareantes. Y en cuanto al Derecho, a este Derecho Marítimo que por haberse formado por el intercambio de usos y costumbres transmitidos de puerto en puerto y de país en país, nadie por consiguiente puede invocar una paternidad única y exclusiva, permitidme que cite el Fuerto de San Sebastín del año 1.150, como el texto juridico, marítimo y mercantil más antiguo de los conocidos por la Corona de Castilla. Nuestras Ordenanzas Imperiales, las Reglas de Derecho Marítimo que contenían las Leyes de Indias, las famosas Reglas también del Consulado del Mar, formadas en Barcelona, por las leyes más comunmente conocidas entonces reguladoras del comercio marítimo y las Ordenanzas de Bilbao, aprobadas y confirmadas en el año 1.737, pero que tuvieron un ascendiente y un origen, una raiz mucho más remota, puesto que ya regían con anterioridad como procedentes de Burgos y aprobadas, como digo, anteriormente por la Reina Isabel la Católica. Estas Ordenanzas de Bilbao han constituido, o constituyeron en su tiempo hasta la publicación del Código de Comercio de 1.830, las normas de más común aplicación en nuestro Reino en cuanto a legislación mercantil y este Código de Comercio de 1.830, que me permito tambien aludir y citar en este acto, en cuanto constituye uno de los exponentes legislativos de la codificación mercantil en el tiempo, como muestra de la aportación y del espíritu creador de España en el ordem del Derecho y que mereció de muchos tratadistas extranjeros, concretamente de Pardesi el elogio de ser considerado como el mejor de los de su época. Por ello y por cuanto que

la historia del mar ha sido escrita por diversos países, por España y otros de gran potencia marinera, nos reunimos aqui hombres de las más varias nacionalidades, como corresponde también a la universalidad del mar, para discutir y aprobar aquellas normas que han de regir la conducta de nosotros, de los hombres en los negocios marítimos. El mar es físicamente uno y parece que a esta unidad física debiera también corresponder uma unidad jurídica. El comercio marítimo es cosmopolita y no se conocen para él fronteras. El mar es un camino abierto a la navegación de buques de todas las banderas. Si a ésto añadimos que sin la uniformidad sustancial del Derecho Marítimo se dificulta grandemente la vida económica mercantil, social y jurídica de los pueblos, que se producen conflictos legislativos, fácilmente concluiremos en la necesidad de la tarea que hoy se emprende. Y éste es el motivo fundamental de la Conferencia que hoy inauguramos.

Habéis incluido en vuestro Programa temas de absoluta actualidad. Algunos de ellos, tratan de modificar, mejorándolas, situaciones jurídicas ya establecidas, como el Proyecto que tiende a revisar el Convenio Internacional sobre la responsabilidad de propietarios de buques o el que trata también de obtener una modificación, mejorando como es consiguiente los Estatutos del Comité Marítimo Internacional. Otros proyectos, tratan de regular situaciones jurídicas desamparadas por la Ley o de llenar lagunas existentes. Tal es el proyecto o anteproyecto de Convenio Internacional sobre responsabilidad de los porteadores maritimos sobre pasajeros; el de las clausulas marginales de los conocimientos y cartas de garantia y, finalmente, el que afecta a los pasajeros clandestinos.

Sobre estos temas estoy informado de que hubo un cambio de ideas sumameante interesante en el previo examen que hicisteis en vuestra Reunión de Brighton del pasado año. Yo deseo que de esta Conferencia, reunidos bajo el símbolo de la paz y de la concordia en que vive España, se obtenga la coincidencia de pareceres necesaria para sacar adelante todos los proyectos, todos los temas que constituyen el programa de la misma.

Cúmpleme tambien anticiparos que al final de esta Conferencia he de inaugurarla o de declarar abierto este acto en nombre de Su Excelencia el Jefe del Estado, Generalísimo Franco, tan vinculado a las cosas del mar por su origen y por su amorosa solicitud hacia todos los problemas que el mar entraña, además de que es patrocinador de

todas las iniciativas que tiendan a mejorar las relaciones entre los pueblos y a lograr la paz universal. Y por ultimo, señores y amigos, permitidme que formule mis votos más fervientes por el éxito de la conferencia, por el feliz resultado del empeño que perseguimos, con la buena voluntad con que solemos actuar los hombres de bien. Nada más. *(Grandes aplausos).*

M. Albert Lilar. — El primer deber del Comité Marítimo Internacional es expresar al Jefe del Estado Español y al Gobierno Español el agradecimiento del Comité Marítimo Internacional por la bienvenida que nos ha dado aquí en Madrid y por el excepcional interés que han demostrado las Autoridades españolas.

Señor Ministro de Justicia, complo, este deber con sumo placer y le ruego sea fiel intérprete para el Jefe del Estado de nuestro agradecimiento por haber aceptado la Presidencia de Honor. Igualmente, quiero expresarle mi agradecimiento con motivo de la presencia de Vuestra Excelencia en este acto, que demuestra su interés particular y su simpatía. Es bien cierto que, V.E. y el Presidente de la Asociación Española de Derecho Marítimo, han insistido en la importancia de esta Conferencia, en vista de las materias que son objeto de nuestra deliberación, habiendo sido escogido Madrid como lugar de réunión. Se aceptó la invitación de la Asociación Española, únanimemente, expresando así nuestra simpatía por la nación española y la aportación de sus compatriotas a los trabajos encaminados a la unificación del Derecho Marítimo *(Grandes aplausos).*

Mesdames, Mesdemoiselles, Messieurs,

M. le Président Anastasio a rappelé dans son magnifique discours tout le sens de notre œuvre et il a souligné ce que représentait dans le domaine de l'unification plus de 50 années de travail du Comité Maritime International.

Je crois pouvoir, à mon tour, dire que les résultats obtenus sont dus à la constance et à la valeur de nos méthodes, à la vivante contribution de nos associations et à la circonstance que le Comité Maritime International a toujours cherché à grouper toutes les nations et tous ceux qui s'intéressaient à la cause de l'unification du droit maritime, quelles que soient leurs conceptions dans d'autres domaines.

L'Association Espagnole de Droit Maritime a, M. le Président, le privilège de la jeunesse, elle a été accueillie au sein de notre Comité avec affection. Oserais-je dire que nous attendions sa naissance avec patience et espoir, car les archives du Comité Maritime International révèlent que sa naissance était annoncée dès 1905. Mon éminent prédécesseur, M. Louis Franck, fit à la Conférence de Liverpool de juin 1905, l'annonce que l'Association Espagnole de Droit Maritime était en formation, à la séance administrative qu'il présidait, et l'Assemblée nomma cette même année M. Victor Concas, Ministre de la Marine Espagnole, Membre titulaire du Comité Maritime International. En 1907, l'Espagne fut représentée à Venise par M. Velez y Corralès et celui-ci intervint dans les questions relatives à la responsabilité des propriétaires de navires et dans la discussion des conflits de loi en matière de fret.

A Copenhague en 1913, l'Espagne est représentée par un délégué officiel de son Gouvernement, S.E.M. Francisco Gutiérrez Deagüera y Beys. Il est nommé vice-Président de la Conférence. A Gênes en 1925, c'est M. Corenzo Benito, Professeur à l'Université de Madrid qui représente l'Espagne; il est également élu vice-Président de la Conférence. Lorsqu'en 1950 nous eûmes le plaisir d'accueillir à la Conférence de Naples M. Pelegrin Benito Serres, nous l'avons élu vice-Président et la Conférence l'a élu membre titulaire et membre du Bureau Permanent du Comité. Depuis lors, 5 années se sont passées, nous savons aujourd'hui à quel point notre décision a été heureuse et quelle amicale et efficace collaboration nous pouvions espérer de l'Association Espagnole de Droit Maritime.

Celle-ci par la création de sa « Revista de Derecho Maritimo » à laquelle collaborent plusieurs membres du Comité, a manifesté sa vitalité, et son président, M. Ernesto Anastasio, voudra bien accepter notre décision de siéger à Madrid, comme un hommage au travail de la jeune association qu'il préside avec tant d'autorité.

Le travail du Comité a, depuis la 22e conférence tenue à Naples, reçu une fois de plus sa consécration. La conférence diplomatique qui s'est tenue à Bruxelles le 10 mai 1952 et où de nombreux membres du Comité Maritime International représentaient leur gouvernement, a abouti à la signature de trois importantes conventions : celle relative à la compétence civile en matière d'abordage, celle concernant la com-

pétence pénale en matière d'abordage et celle concernant la saisie conservatoire des navires. Ces conventions sont dans de nombreux pays soumises soit à l'adhésion des gouvernements, soit à la ratification des parlements.

Notre expérience des conventions maritimes, vous le savez tous, a parfois été malheureuse lorsqu'il s'est agi d'obtenir les ratifications qui devaient faire du travail du Comité et de celui des Conférences Diplomatiques une réalité du droit positif international. M'est-il permis de rappeler que l'Espagne a mis un soin particulier à l'examen et à la ratification de ces conventions et que les trois conventions issues de la Conférence Diplomatique de Bruxelles du 10 mai 1952 ont été toutes trois ratifiées en Espagne, le 8 novembre 1953 *(Applaudissements)*.

Notre réunion de Madid est importante par les sujets de son ordre du jour. Sans vouloir les passer en revue aujourd'hui, je ne puis m'empêcher de souligner l'intérêt de nos délibérations sur certaines questions qui, on vous l'a déjà dit, retiennent depuis de longues années l'attention des milieux maritimes et de vous dire leur espoir de voir aboutir nos débats.

Le problème de la responsabilité des propriétaires de navires est complexe et délicat. Il met en présence deux systèmes juridiques très différents, des traditions plusieurs fois centenaires et des institutions auxquelles les nations sont attachées par une longue habitude.

Le problème est délicat, parce qu'il s'agit de faire comprendre aux opinions publiques et aux parlements appelés à les exprimer que dans un ensemble de données techniques, économiques et sociales très différentes de celles qui prévalaient jadis, la limitation de responsabilité des propriétaires de navires demeure une nécessité à condition d'être organisée avec modération et sagesse.

Le Comité Maritime International s'en préoccupe depuis plus de 50 ans. Malgré l'impérieux besoin d'uniformité internationale, malgré la bonne volonté de tous et le désir d'aboutir, toutes les tentatives dans le sens de l'unification du droit en cette matière ont échoué. Pourquoi ? Sans doute le compromis de 1924 a-t-il cherché à rapprocher des points de vue trop éloignés. Il a adopté le symbole des 8 Livres par tonne, mais en le dénaturant. Le fossé existant entre les deux systèmes demeurait : d'une part paiement d'un forfait indépendant du sort du navire, d'autre part paiement lié à la perte ou à la survivance du

navire après le sinistre. En outre il faut bien reconnaître que la convention de 1924 s'est trouvée rapidement dépassée par les événements, la fluctuation des monnaies ayant créé une confusion telle que la convention loin de faire régner l'harmonie a donné naissance à des situations telles que le forfait par tonneau de jauge a varié dans des proportions considérables.

Nous avons cherché à adapter la Convention de 1926 aux circonstances en proposant la suppression de la clause or, mais le monde s'est détourné de cette formule laborieusement échafaudée, mais dépourvue d'attrait.

C'est à ce moment que nos amis anglais ont choisi leur heure, et j'ai l'impression qu'ils l'ont bien choisie. A Brighton, de nombreux délégués ont eu l'impression que le système britannique était le plus pratique, le plus rationnel et peut-être le plus équitable. Un point cependant heurtait le sentiment d'équité, c'était les 8 Livres dont la valeur actuelle est minime comparée aux 8 Livres d'il y a un siècle.

Nos amis anglais, non seulement les marchands mais aussi, et j'y insiste, les armateurs, ont eu conscience de cette vérité qui contenait en germe les principes destructeurs de l'institution toute entière. Ils ont pris les devants et tout en polissant les imperfections de leur loi nationale, ils ont cherché à répondre aux vœux essentiels de leurs partenaires continentaux. S'efforçant d'enrayer les tendances d'une jurisprudence récente, ils ont élaboré le projet qui est au départ de nos discussions actuelles.

Les travaux de la commission internationale réunie à Brighton ont permis de franchir un grand pas. Une majorité de délégués est venue proclamer, tout au moins à titre personnel, une adhésion de principe au nouveau système proposé. La concordance de ces opinions était impressionnante; il semblait que le besoin d'une loi internationale finissait par dominer les particularismes.

En décembre 1954 l'association britannique rédigea un premier avant-projet inspiré des travaux de Brighton. Depuis lors un remarquable effort a été accompli par toutes les associations. Il convient de les remercier publiquement pour leur travail diligent et constructif.

Sans doute ce travail comporte-t-il inévitablement une part de critique. Certaines divergences sont apparues, mais on peut affirmer, d'une part, que le principe d'une nouvelle convention a fait des progrès dans l'esprit de la plupart des associations et, d'autre part, la confrontation

des opinions au cours de nos prochaines délibérations amènera sans doute les opinions divergentes à reconsidérer leur point de vue.

Et je souligne qu'il ne faut pas perdre de vue dans cette étude l'aspect social et moral de la question à côté de son aspect juridique et économique. Notre examen nécessitera les soins les plus attentifs, les gouvernements suivent nos travaux avec un intérêt tout particulier et nous devons leur présenter un travail digne de la sollicitude générale dont il est l'objet. Ce n'est qu'à cette condition que nos efforts seront efficaces et qu'ils auront une chance d'être consacrés par les nations maritimes.

Les contributions fournies par les associations nationales de droit maritime ont rendu possible l'importante réunion de la commission internationale qui s'est tenue à Anvers le 5 mai dernier. A la suite des opinions et des critiques émises au cours de cette session un second avant-projet a été élaboré. Il constituera, comme texte, la base de vos délibérations de demain. Ce n'est pas ici le moment d'en remplacer la structure, je me borne à en souligner la tendance humanitaire qui vise à améliorer considérablement le sort des victimes et de leurs ayants droit en cas de sinistre grave et en ménageant les intérêts légitimes des armateurs qui contribuent si puissamment à la prospérité des nations maritimes et au développement du commerce international.

Notre conférence s'occupera ensuite d'un autre projet qui retient depuis longtemps l'attention du comité maritime : la responsabilité du transporteur maritime à l'égard des passagers. Le problème lui aussi est étudié depuis longtemps : à Venise en 1907, à Brême en 1909.

L'idée fut reprise par M. Norman Hill en 1919. Il proposait l'assurance obligatoire des passagers. Sa proposition fut examinée à Gothenbourg en 1923, à Gênes en 1925, à Amsterdam en 1927. Abandonnée en 1930 à Anvers, la question fut reprise à Naples en 1951, à l'initiative de la délégation italienne, elle fit ensuite l'objet des travaux d'une commission internationale sous la présidence de notre éminent collègue, M. le Professeur Offerhaus, qui tint des réunions successivement à Anvers et à Brighton.

Ce problème aussi est important, il préoccupe les milieux maritimes de nombreux pays : certains craignent la généralisation d'interprétations jurisprudentielles, d'autres voient le moment où les parlements se saisiraient de la question avant que les études préalables ne soient complètement mises au point.

Le projet de convention qui est soumis à la conférence a pour but de formuler une série de règles destinées à constituer ce que l'on pourrait appeler les Règles de La Haye pour le transport des passagers et à combler une lacune de l'unification du droit de la mer.

Nos travaux visent ensuite le problème des passagers clandestins et celui des lettres de garantie. C'est vous dire que la semaine qui s'ouvre demain nous réserve des possibilités de travail intensif. Nous commencerons au surplus par proclamer les nouvelles dispositions de nos statuts. Il y a quelques mois, à la suggestion de nos amis anglais, le Bureau Permanent du Comité où siégent les représentants des diverses associations a arrêté un nouveau texte des statuts destiné à remplacer le texte ancien. Celui-ci était à la fois souple et imprécis. Il méritait toute la sympathie que l'on doit à un vieux compagnon qui vous accompagne depuis un demi siècle. Le Bureau Permanent a estimé que sans rien changer à notre institution, il convenait de lui donner une forme plus présentable. Nous avons modernisé notre façade, nous l'avons fait à l'unanimité, je crois que nous l'avons bien fait et qu'à ce changement ne s'attache que le regret qui accompagne presque toujours l'abandon d'une vieille chose, même laide, à laquelle on s'était habitué et qui n'avait pas mal joué le rôle qu'on lui avait confié.

Je voudrais avant de terminer, et conformément à la tradition de nos assemblées générales, saluer la présence à notre assemblée du Comte Jean d'Ursel, chargé d'affaires de Belgique à Madrid et délégué spécialement par le ministre des Affaires étrangères de Belgique pour suivre nos travaux. Le Gouvernement belge poursuit dans le domaine du droit maritime le rôle auquel mes honorables prédécesseurs à cette tribune ont fait allusion, prêts à prendre au moment opportun l'initiative de soumettre aux gouvernements des pays intéressés les conventions de droit maritime lorsqu'elles seront préparées par nos travaux.

Je salue également la présence à cette assemblée de M. Roberto Sandiford qui a été spécialement délégué à nos réunions par l'Institut pour l'unification du droit privé de Rome où il siège avec tant d'autorité.

Je remercie également les pays qui ne sont pas encore membres de notre comité et je vise plus particulièrement les pays Sud-américains qui ont bien voulu déléguer des observateurs dont la présence est le prélude de la constitution d'associations de droit maritime et de leur participation ultérieure à nos réunions.

Vous vous rendez compte, Mesdames et Messieurs, de l'intérêt de notre réunion. Nous aborderons demain nos travaux avec entrain et optimisme.

La bienveillance du Chef de l'Etat espagnol, de son Gouvernement et en particulier du Ministre de la Justice, auquel j'entends réitérer toute ma sympathie personnelle, l'accueil de l'Association Espagnole de Droit Maritime, la collaboration des diverses instances officielles, commerciales et maritimes, enfin l'atmosphère enchanteresse de Madrid et de l'Espagne, nous permettront, j'en suis convaincu, de mener à bien les tâches que nous nous sommes assignées.

Mesdames, Messieurs, conformément à nos traditions, je dois faire à cette assemblée inaugurale quelques communications relatives aux décisions de notre Bureau Permanent.

Il m'est particulièrement agréable de pouvoir vous dire que le Bureau Permanent a admis deux nouvelles associations de droit maritime au sein de notre association : l'Association Marocaine de Droit Maritime et l'Association Israélienne de Droit Maritime. Je pense que nous serons unanimes à leur souhaiter la bienvenue et à nous réjouir de la contribution qu'ils apporteront à nos travaux.

Je suis également heureux de pouvoir vous dire que depuis notre dernière assemblée le Bureau Permanent a désigné en qualité de vice-présidents à titre personnel MM. Frédéric Sohr, Léopold Dor et, à sa dernière réunion M. Antoine Franck qui a exprimé le désir de quitter ses fonctions de secrétaire général en raison de son état de santé.

C'est la première fois que l'occasion m'est donnée de dire à l'Assemblée Générale toute la satisfaction et tout le plaisir qu'a eu le Bureau Permanent de reconnaître à ces trois personnalités du monde du droit maritime toute l'estime et toute la sympathie dont ils jouissent dans ce milieu.

A la suite de la démission de M. Antoine Franck, le Bureau Permanent a pris hier soir une autre décision. Il a désigné M. Carlo Van den Bosch jusqu'à présent secrétaire de notre Comité à la place de M. Antoine Franck en qualité de secrétaire général. Je m'en réjouis personnellement tout particulièrement, connaissant la compétence et le dévouement que M. Carlo van den Bosch apporte depuis de longues années, avec une constance et une permanence auxquelles j'entends rendre hommage, aux travaux de notre Comité. *(Applaudissements).*

Le Bureau a pris hier également des décisions concernant la nomination de nouveaux membres titulaires de notre Comité. Plusieurs propositions ont été formulées. Il m'est agréable de vous en faire part.

A la suggestion de l'association britannique ont été désignés comme membres titulaires : Sir Patrick Devlin, Sir William Mc Nair et M. Raynor.

A la suggestion de l'association italienne ont été désignés : MM. Pasanisi et Capiero, tous deux avocats italiens.

A la suggestion de l'association allemande ont été désignés : MM. le docteur Roerecke, von Stritsky et von Laun, toutes personnalités bien connues du monde maritime.

Je désire profiter de l'occasion qui m'est offerte pour dire à toutes ces personnalités toute l'estime que nous avons pour elles et tout le plaisir que nous avons à les voir prendre place parmi les membres titulaires du Comité.

Mesdames, Messieurs, les statuts de notre association nous invitent aussi à constituer le bureau de la conférence.

Je dois donc proposer à l'assemblée de désigner en qualité de vice-présidents de la conférence M. le président de l'association invitante, M. Anastasio, Sir Gonne St. Clair Pilcher ainsi que M. Léopold Dor, tous deux vice-présidents du Comité Maritime International.

Je vous suggère de désigner comme secrétaires généraux MM. Benito Serres, Cyril Miller, Carlo van den Bosch, Henry Voet, Reading, Rafael Valls Carreras.

M. Gyselynck, trésorier de notre association, prendra place au bureau. Je ne sais pas si le trésor l'encombrera, mais nous serons heureux de compter sur sa collaboration ainsi que sur celle des secrétaires si actifs et auxquels déjà au début de cette conférence nous pouvons rendre hommage car nous les voyons circuler avec une activité fébrile dès notre arrivée à Madrid. Ce sont MM. Meier, John Miller, Birch Reynardson et Leo Van Varenbergh.

Il me reste un dernier devoir, celui de rendre hommage aux membres titulaires décédés depuis notre dernière assemblée générale. Je n'en ai pas la liste par devers moi, mais je puis vous indiquer que notre association belge a perdu un de ses membres les plus distingués : M. Augustin Ficq, directeur de la Compagnie Maritime Belge, récemment décédé; l'association française a perdu M. Gervais dont la personnalité bien connue ne doit pas être indiquée à cette assemblée et

l'association danoise a perdu MM. Sindballe et Rudolf Nielsson. Nous serons tous unanimes à nous recueillir un moment en pensant à ces membres qui ont rendu d'aussi éminents services à notre Comité. J'ai peut-être omis d'indiquer d'autres personnalités qui sont décédées au cours de cette période. Ne m'en attribuez pas de grief, mais dites-vous que les représentants de ces associations n'ont pas signalés leur décès auprès du Comité.

Il ne me reste, Excellence, Monsieur le Président, qu'à vous dire une dernière fois notre reconnaissance, qui vous est déjà acquise et que nous essaierons de répondre aux vœux si chaleureux que vous avez bien voulu nous exprimer. *(Applaudissements)*.

El Excmo. Sr. Ministro de Justicia de España. — En nombre de S.E. el Jefe del Estado queda inaugurada la Conferencia de Derecho Marítimo Internacional. Ha terminado el acto.

CONSTITUTION

Monday 19th September 1955

The President reminded the Assembly that the draft Constitution had been approved unanimously by the Bureau Permanent at its meeting at Brighton in September 1954.

Mr. Boeg (Denmark) made the following observations :

1. According to the new constitution the object of the International Maritime Committee is to promote « the unification of the International maritime and commercial law ». Such a wording is unsatisfactory because the International Maritime Committee deals only with maritime law.

2. It should be left to the National Associations to decide whether to deliver annual reports upon their activities or not.

3. Mention of the Vice-Presidents should have been made in article 4.

4. The members of the Bureau Permanent should not be appointed as individuals. Each Association should be allowed to send a delegate to the meetings.

In conclusion Mr. Boeg stated that he would nevertheless refrain from moving any amendments.

All the Associations present at the Assembly adopted the Constitution unanimously.

LIMITATION

OF

SHIPOWNERS' LIABILITY

Monday 19th September 1955.

MORNING SESSION

GENERAL DISCUSSION

The Chairman opened the session at 11 a.m. and introduced the general discussion on Limitation.

Mr. Cyril Miller (Great-Britain): « I should like to make it plain » that the Convention which is now before you does not in all respects » express the view of my Association. In preparing the draft Conven- » tion, the British Maritime Law Association was particularly careful » and, I hope, succeeded in embodying, as far as possible, the views » which had been expressed at Brighton and since Brighton in written » memoranda by the other National Associations, because we felt that » was the task which had been entrusted to us by the Maritime Com- » mittee at Brighton. »

« Looking at the comments of the National Association it seems » to me that there are three main points uwon which there may be » » disagreement. »

« The first point arises under Article 1, which is the Article in » respect to the casualties which a shipowner will be entitled to limit » his liability. A number of the Associations who have stubied the draft » Convention prepared by my Association, have expressed the view » that Article 1 (a) and (b) are too wide ; that they confer too wide » a scope of limitation and liability upon shipowners. But my Associa- » tion have of course, taken into account those views with great care » and we feel that probably Article 1 (a) and (b), which define the » scope of the shipowner's right to limit, may be too wide and during

» the course of discusion we shall propose certain amendments of those » Articles which will to some extent restrict the right of limitation. It » is very necessary that when we present this Convention, if we ma- » nage to pass one at this Conference, to our respective parties, that it » shall not be said by any of them that the shipowners are asking for » too much. »

« It must be realized that for that reason we do agree with the » comments made by a number of the National Associations, and » particularly, I think, the Scandinavian Associations, that perhaps in » Article 1 the shipowner is asking too much. That is the first point. »

« The second point which I think will raise a difficulty — a diffi- » culty which I am quite sure will be surmounted — is this question » which also arises under Article 1 of what we call in England « actual » fault or privity ». No legislature in the world is going to allow a ship- » owner to limit liability if he himself has been at fault and that fault » was an effective cause of the casualties. That I think we would all » agree, indeed it is axiomatic. But the question is what degree of fault » should deprive a shipowner of his limit of liability, his right to limit » liability. We know, at least we think we know, in England what we » mean by fault or privity. Some of our friends on the Continent feel » that our phrase is too wide ; they would prefer that the shipowner » should only be deprived of his right to limit his liability if he has been » guilty of what they call, I think, culpa lata or faute lourde. One of the » difficulties is of course, that in our law we do not distinguish between » degrees of fault in the same way as many, I think most continental » nations do. That is a difficult question, but I am quite sure it is not » insuperable.

» The third point of difficulty, is the question of minimum tonnage. » In the Draft Convention which has been put before the Plenary Con- » ference the minimum tonnage is stated at the figure of five hundred » tons. It is quite obvious that no Parliament is going to pass into its » domestic law a Convention of this kind unless there is some minimum » tonnage, because small vessels are capable of inflicting very heavy » loss of life and severe damage to property. The question, to our » minds, is really a political one ; what figure should we insert into this » Convention which would be acceptable to our respective legislatures ? » Our view is that five hundred tons is about the lowest limit that you » can expect à Parliament to accept. A number of the other National

» Associations have stated that this figure is far too high. That again » is a matter which we shall have to discuss.

» In conclusion, I would like to say that I have not touched on » a number of minor points. I hope I am not insulting them by calling » them minor. I have endeavoured merely to state what I conceive to » to be the main points of discussion before us at this Plenary Confe- » rence. Looking at the comments of the National Associations it is quite » obvious that we are very near agreement upon a topic which we have » been discussing without success for fifty years. The variations in the » laws on limitation of liability are a great nuisance commercially, as » those of us who are underwriters in whatever shape or form know » to our cost. It would indeed be a sad thing if we were to emerge from » this Plenary Conference without having come to agreement and wit- » hout having a Convention in draft which we can unanimously submit » to the Brussels Diplomatic Conference. Gentlemen, upon this topic » we simply must succeed.

» I should perhaps say that we, the British Maritime Law Associa- » tion — and I am sure this applies to the other National Associations » — realize the difficulty in this respect of our American friends. I am » sure that during this discussion they will be most helpful in assisting » us to put in the draft something which is reasonable and clear. But » we know their difficulties in presenting such a Convention to their » own Congress ; we are sympathetic and we quite understand their » attitude. But, even though our American friends may find it impossi- » ble to come to an agreement with us commercially, it would be extre- » mely valuable for us if we could achieve uniformity of limitation of » liability among the European nations.

Mr. Algot Bagge (Sweden): « I suppose I am one of the few » here present who were Government delegates at the Brussels Con- » ferences of 1922 and 1923, and it might be interesting for you to hear » what happened then. The Conference dealt with exactly the same » matters which we are going to deal with now. The Nordic countries » at that time had a limitation with which we were very satisfied, a » limitation based on the value of the ship. But we said then that if » there was any hope of uniformity we would give up our law. We have » always taken the position that you cannot stand too much on your » own law if you want uniformity, because then no uniformity can be

» arrived at; you have to make concessions. At the Brussels Conference » we made two concessions to the Anglo Saxon side in order to satisfy » our desire for uniformity on the question of limitation calculated not » on the value of the ship but on the value of the tonnage. We made » that compromise which is the basis of the present Convention on limi- » tation, and we hoped of course that when the English delegates went » back to their Country they would be able to convince their deciding » authorities that they should ratify the Convention, and in that hope » the Nordic Countries ratified it, perhaps a little prematurely, with » other States before it had been ratified on the English side. Now » it has gone thirty years and is still not ratified on the English side. » They are now proposing quite a new draft as the basis of a quite new » Convention. For my part, speaking on behalf of the Swedish Asso- » ciation, I am of course much more inclined to keep the Convention » as it is, not because the compromises and concessions that were made » to the English delegates at Brussels were not good but because now » it has been enforced for many years in twelve countries and is a » natural basis for other work on the subject and we should not make » a completely new departure.

» Therefore the Swedish Delegation is of the opinion that the most » practical way of dealing with this subject is not to put up quite new » rules in a new draft from the Comité Maritime International, but to » take the Convention as a starting point. It is very natural to do that ; » twelve countries have ratified it and these countries are going to con- » sider making some alterations to the Convention, but they will not » accept quite a new departure. Also I think that this new departure » perhaps differs fundamentally from the Convention on this one point, » that we shall give up altogether the value of the ship as the basis of » calculations and speak only of calculations based on the tonnage.

» Anyhow it is much easier to get those twelve States to ratify » something new, if you take the Convention which they have ratified » and make the alterations in that Convention about which we may » agree here : that is, take the Convention with the alterations as » regards the tonnage instead of the value of the ship, with special » rules perhaps for the small ships and some other small alterations in » the Convention. But do not try to get these twelve States to accept » something which is quite new and which also, for us on the Continent,

» has the great difficulty in that it is drafted in the English way, which » it is very difficult for us to accept for introduction into our laws.

» This point of drafting, when it is a case of an International Con- » vention, is really very important. We have had some difficulty in the » different countries in introducing The Hague Rules because they were » drafted in a British way, but I think these difficulties would be mul- » tiplied here if we were to accept the drafting which the British Asso- » ciation has made. At Brussels we made a lot of concessions, not only » on this matter of tonnage, but even as regards other matters, with » the English — compromises we dit not like but we did it for the sake of » uniformity. These compromises stand, they are incorporated in the » Convention. There is no necessity for any more discussion on that.

» So far we have agreed at Brussels with the English and we are » now prepared to agree on the very important matter of dealing out » altogether the value of the ship. I think that would mean a much » better prospect of getting an agreement than if we continue to work » on the basis of the English draft. I would add to that that if you » are anyhow going to continue to work on the basis of the English » draft, you should at once appoint a Drafting Committee, because I am » sure that if we are going to deal with one point after the other in » the English draft there will be a lot of things which will need expla- » nation to us Continent people, and that could be done much more » easily in such a Drafting Committee than during discussion in the » Plenaries.

Mr. Charles S. Haight (United States): « Our Association adop- » ted a Resolution which expressly authorises our delegation to partici- » pate in the discussions here. We are very glad to be present to be able » to do so, and to participate in the drafting of an International Con- » vention.

» The problem we studied had to be examined against the back- » ground of our National Law containing certain vital factors which » we cannot change. I mention this point because, if and when our » Association take a favourable attitude on the matter of Limitation, » this entails, as we see, a fair obligation for us to recommend to our » Congress to change our National Law.

» Furthermore the fundamental difference between our National » Law and the British Draft will result in increasing substantially the

» amount of the limitation fund — at least double or more —. It would » be a voluntary assuming of a substantial burden by our shipowners » at a time when many of their lives are subsidised. As you know, » we have higher operating costs, higher maintenance costs, higher » building costs. The competition from our many friends here is stea- » dily increasing. Our Association came to the conclusion that it would » not be the right thing for us to voluntarily recommend an increase » of shipowners' burdens. If we did, it was our best opinion and » consideration that the Congress would not accept it.

» There is one further point I should mention which goes to the » deeper field of the problem. Our National Law prohibits any limita- » tion of the recovery of Passengers. You, Gentlemen, know the amount » of recovery and the valuation of human life of a seaman or a stevedore » who leaves a wife and 3 or 4 children. You know of the large awards » that our juries have given and which courts too have affirmed — with » some modifications of course.

» In so far as our situation is concerned, it has seemed to us that, » because of social pressures (the evaluation of recovery, the amount » of recovery and the extent of recovery from shipowners), the counter- » part of which has not yet been found here, there is a substantial gap » between the recovery amount paid here and those paid in the United » States. In our best view this gap would only be increased for us if » we proceed along the lines of the British proposal. We hope that that » gap, in the extent of liability, in the amount of recovery, will come » closer as time goes on and work is accomplished here along the lines » of the present draft. We would hope that when that gap has been » brought closed together that at that time it would be possible for us » and for you, Gentlemen, here and for our British friends, to see » whether the limitation of the recoveries cannot be brought more into » line.

» We very much hope that progress can be made here by the » British and the other nations here assembled. For the reasons stated » it has seemed to our Committee, to our Association, to our Shipping » Industry that this would not be the time for us to attend in our » country to bring about a change along the lines proposed. »

Mr. de Grandmaison (France) (translation): « The French Ma- » ritime Law Association agrees almost completely with the observa-

» tions made by Mr. C. Miller concerning the necessity to modify the » 1924 Convention and to adopt a clear, simple and practical basis » of Limitation.

» As a consequence we will support the draft submitted to us, » subject however to some observations and first of all upon the three » points stressed upon by Mr. C. Miller.

» We are of the opinion that the wording in article 1, 1st §, is too » wide and that as a consequence it will be necessary to find a formula » describing in a non extensive manner the application field of the » limitation.

» A second important observation should be made on the exact » meaning of « actual fault or privity » and also— in order to reply » to your preoccupations — on the question to know what is the exact » nature of the « fault » committed by the shipowner that would deprive » him of the benefit of limitation. Will it be all faults of any kind even » « faute légère » or will it be « faute lourde » or a fault foolish to such » an extent as to be fraudulent ?

» Third observation : we will support the text of the final draft » concerning the minimum of 500 Tons. On the other hand, in other » observations we will define our position having in mind that it is a » condition sine qua non of the success of the ratification of this draft » by our Parliaments that will not admit to go under a reasonable » limitation allowing the shipowner, even of a small carft, to limit his » liability under conditions that might be derisory.

» As a consequence we will discuss on those three points and I » think we will arrive easily at reasonable solutions. I draw however » your attention to the fact that we will make one or two other obser- » vations on article 2. We will ask for a paragraph to be added in » order to maintain the exclusive right of the creditors to the limitation » fund.

» If during several years proceedings are going on on the question » of liability, it should be avoided that during that time ordinary cre- » tors i.e. creditors whose claims are not subject to limitation, would be » allowed to obtain payment of the limitation fund, which might thus » de dissipated.

» We will also make an observation on article 3 § 3 relating to the » conditions of conversion of the fund into the national currency of

» the country where the fund is constituted. There is a risk of exchange » there and we think that in certain conditions this risk has to be for » account of the debtor until the time when the fund is distributed to » the creditors.

» Finally we will have a last remark to make on article 4 of the » draft that states that the domestic law of the place where the fund has been constituted shall govern the order of priority in which the fund » shall be distributed.

» We will have to make an observation of first importance and we » will say why in the present text we think that the liens of the 1926 » Convention do not apply to limitation funds owing to the fact that that » Convention deals with liens on the ship, freight and accessories and » that it is necessary in such case, in our opinion, to specify that that » privelege will be transferred and that instead of covering the ship, » their freight and accessories, will be transferred upon the limitation » fund. »

Mr. Giorgio Berlingieri (Italy) (translation): « The Italian As- » sociation regrets to express their complete disagreement with the prin- » ciples upon which the draft actually under discussion is based. This » disagreement appeared already at the Brighton Conference and it » has been especially mentioned in the Minutes of the Assembly.

» If I might summarize the reasons of our suggestions, I would say » that the error consists in having taken far too partially into conside- » ration the interests of the third parties, sacrifying the shipowner to a » large extent. We are far from the system of the abandonment which » allowed the shipowner to trifle with the rights and interests of the cre- » ditors in the case the ship was lost, saying : go and recover your claim » from the wreck of the ship.

» I think we may not forget the other conception of the « fortune » de mer », even if we modify it and consider it is represented by the » value of the ship on the departure or the beginning of the voyage, » instead of considering it as attached, bound, to the destinees of the » vessel.

» Indeed, if we take into consideration the average type of mer- » chant vessels, we can share the opinion put forward by the American » Association i.e. that the average value of an average merchant ship is

» far below £ 24 and £ 50 per ton of tonnage. If we take only that » point of view into consideration, we cannot support that a limita- » tion of liability of the shipowner is concerned here but rather an in- » crease of such liability.

» But that is not all. The draft continues taking as a basis for the » constitution of the fund the accident and not the voyage. I insist on » this point because it means that if during a long voyage, for instance » from Japan to the Mediterranean, several accidents occurred to a ship, » the limitation of £ 74, heavy already for the shipowner, might inde- » finitely be multiplied. I apologize for saying that but the question of » Limitation for Shipowners' Liability is often confounded with the » question of insurance. These are however completely different fields. » If we mix up limitation with insurance, we are getting at nothing. We » are only occupied with limitation of liability. Any risk can be covered » by insurance. Of course we can get insured against all risks but that » represents an increase of the price of transport. We may not forget » that there are shipowners who are not insured against all risks.

» Moreover, the £ 24 + £ 50 are intended to constitute a limitation » fund to which extent the owner is allowed to limit his liability for » certain obligations that can occur during the voyage, such claims are » mentioned in article 1. For all the other obligations which are not » mentioned in article 1 the liability of the owner will be unlimited. This » means therefore that after a limitation fund is constituted, perhaps » several ones if several accidents occur during the same voyage, the » shipowner has still to pay out of pocket all the other claimants who » are not covered by article 1; that means that the owner will have to » pay besides the limitation fund, the expenses of the master, for the » conservation of the ship, the continuation of the voyage, the mainte- » nance of the ship out of the homeport and also claims resulting from » salvage and assistance, wages of master and crew as well as the » premiums of salvage and assistance. Where are we going ? Let us » then change the name of the Covention, let us call it « increase of » liabilities ».

» In the frame of the claims not covered by article 1, we may not » forget that all these claims : the obligations of the master, general » averages, salvage, wages of master and crew, are privileged claims » and that in all cases when the ship is not lost the owner is obliged to

» pay them if he wants to avoid his ship being sold; besides this fund » there are also all the obligations of the owner.

» It must be kept in mind that the average mercantile marine » industry will be killed if we accept this draft, whilst it is worth we » make efforts in the frame of the equity and justice, in order to try » to save it from an unfair end which it will undergo if the draft is » adopted. »

Mr. Jean Van Ryn (Belgium) (translation): « In name of the » Belgian delegation I am authorized to say that our national associa- » tion agrees completely with the principles of the draft convention sub- » mitted to this conference.

» As Mr. Miller was very right in stressing just over a few moments, » it is necessary, in our opinion, to put an end to the present divergence » between the national legislations concerning liability. It is urgent to » put an end to an arbitrary solution adopted in this field, such solu- » tion depending presently on the country of the Court dealing with » the question.

» We are of the opinion that in front of such situations it is the » very moment for the International Maritime Committee to act and to » promote the unification which, in our opinion, is absolutely neces- » sary.

» As a consequence the Belgian Association has decided to support » the principles of the draft convention submitted to you. This does not » mean however, that we will have no observations to make, but we » may not forget that the essential point is to arrive at a result. We will » have to make some observations on some special questions, but I will » now limit me to four of them.

» Previously we have discussed already the question to know » whether limitation of liability should be considered as a faculty the » owner could use or not to his choice, in each different case or, on » the contrary, whether such limitation should be considered as being » applied by perfect right without the owner being requested to express » his will on this point.

» During previous discussions it has been said, I think, that limi- » tation applies « de plein droit ». It seems however that in certain » paragraphs of the draft convention there is some doubt as to know » whether only a possibility of limitation or a limitation « de plein

» droit » is concerned. We are of the opinion that all doubt on this point » should be avoided.

» My second observation is this that the main point of the draft » seems to be to obtain uniformity over the different rules presently » applied. We are asking whether in such conditions it is not dangerous » and whether we will not be faced with difficulties at the time of the » ratification of the draft, when we intend to arrive at a rather different » one which is to extend by the present draft the limitation of liability » to cases where there is no limitation according to the rules presently » applied.

» The third observation concerns the creditors who Mr. de Grand- » maison called just over a moment ordinary creditors. Indeed, we are » of the opinion that we may not forget that such creditors are those » who are not concerned with the limitation fund.

» Mr. de Grandmaison has drawn your attention upon the difficulty » arising in the case ordinary creditors take benefit of the fact that » during proceedings that can last several months or several years, the » fund is not distributed and try to seize the limitation fund and to get » payment out of the money provisionally reserved.

» We think there is another difficulty in the case the shipowner » possesses only the goods constituting the limitation fund. We should » avoid, for it will be admitted nowhere, that the limitation of liability » becomes indirectly and in a way that has not been foreseen, a privi- » lege for the creditors subjected to the system of limited liability. It » should be avoided that the fund be considered as a fund reserved » by privilege in all cases to the claimants subject to the system of » limited liability. In other words it has to be pointed out that the » system of the constitution of the fund supposes as an essential con- » dition that the shipowner is solvent.

» If on the contrary a shipowner whose financial situation is un- » certain and who is not able to face all his obligations as well to- » wards ordinary creditors as towards others, it may not result from the » rules of limitation of liability that the fund is reserved by a real » privilege to the claims subject to the system of limited liability.

» The fourth observation is that the draft convention submitted to » you stipulates that a limitation fund will be constituted for each acci- » dent and there seems to be a nearly unanimous agreement concerning » that rule. However we may not forget that the system of the con-

» vention on privileges is applied per voyage. As a consequence a con-
» ciliation has to be made perhaps by modifying the convention on
» privileges, but there is also a difficulty which is far from being inso-
» luble but may not be ignored and which, as it is not solved by the
» draft convention, should eventually be reserved for an other occa-
» sion. »

Mr. Sjur Braekhus (Norway): « The Norwegian Association
» agree in principle to the present draft, and we shall welcome unifica-
» tion on this basis, even if the unification is only a European one.

» In our opinion, the draft represents a great improvement as com-
» pared with the 1924 Convention. In this connection we lay stress on
» the following three points. First, the draft abandons the alternative
» system of limitation, that is limitation either on the basis of the
» value of the ship, or on the basis of a certain amount per ton. This
» is a great simplification and the new system is, from the injured
» party's point of view, more just and equitable than the 1924 Conven-
» tion. Secondly, the draft brings about a much-needed revision of the
» limitation figures. Eight paper pounds has, for a number of years,
» been an anachronism. Thirdly, the draft excludes a number of claims
» from the field of limitation. On the other side, the shipowner is now
» given the right to limit in cases of strict or absolute liability.

» In our opinion these improvements are so important that we are
» willing to support the draft. We have, however, some objections and
» reservations to make, some of them of rather great importance.
» Firstly the limitation figures have not been fixed yet, but the British
» Association has mentioned £ 50 per ton as far as liability for death
» and personal injury is concerned. I do not know if this is one of
» Mr. Miller's minor points, but we think it is rather important, and we
» find that £ 50 per ton is far too much. We will come back to this
» at a later stage of the discussion.

» Secondly, the 500 tons limit in Article 3 of the draft is also too
» high. The Norwegian Association will, on this point, propose an
» amendment to the draft.

» Thirdly, as the Swedish Association, we are not enthusiastic about
» the details of drafting. We would wish that our British friends would
» avoid phrases which can only be understood on the basis of the
» English legal tradition : as for instance the phrase : « Actual fault or
» privity ». If the English language shall serve as an international

» legal language, it must not be too closely linked to the specific British » legal traditions. We think that some improvements can be brought » about of the drafting during our discussions here. For example, as » regards Article 1, a and b. »

Mr. Joaquin Garrigues (Spain) (translation): « Faced with these » two conflicting systems, the Spanish delegation has to state that if com- » plete unanimity had existed at this Conference with regard to the system » to be adopted for the draft, we would never have set up an obstacle » to the attainment of that unanimity, but we have seen that not even » the principle submitted by the English gives general satisfaction, and » the Italian and United States Delegations have put forward very » substantial arguments against it.

» In view of this situation, it is only natural that Spain, who in » any other case would have sacrificed her own convictions, renouncing » the system based on value in order to replace it by that of the fixed » rate, has to make her reservations, and state that she subscribes to » the opinion upheld in this Assembly by the Italian and United States » Delegations. »

» Even if we admitted the English system to be a good one, we » could not accept the whole of the Convention with all its articles, » because, setting aside the principle itself (with regard to which, I re- » peat, we could reach agreement), the Convention goes to lenghts » that (one can say) increase the injustice inherent in the principle of » the fixed tariff.

» Fundamentally, and in this respect the words of my colleague » Berlingieri were very much to the point, the Spanish Delegation » would not like to see a Convention that claims to be drawn up for » the limitation of liability converted into a convention that increases » liability. And this is what would happen if the figures for the tariff » that appear in the draft, namely fifty pounds for physical injury, and » twenty-four for material damage, were maintained.

» The Spanish Delegation considers that this last figure for material » damage is extraordinarily high with the consequence that the arbitrary » element implicit in all fixed-tariff systems is increased and becomes » really unjust, the system being unacceptable if the tariff is established » on a high basis because this aggravates in an unjust and intolerable » manner what is called the limited liability of the shipowner.

» There is another point with regard to which the Spanish Delega-

» tion wishes to make reservations. I refer to the limit of 500 tons » as a minimum limit. The Spanish Delegation consider there is no » reason whatever for imposing on owners of low tonnage so extraordi- » nary a responsibility as that of raising the category of their ships » to 500 tons.

» In short, the Spanish Delegation continue to give their support to » the principle of the limitation of liability in accordance with the value » of the ship, in agreement with the United States and Italian Delega- » tions, and in the case of the admission of the system of fixed tariffs, » our Delegation would accept this also on condition that the figures » proposed for the tariff, and also the establishment of the minimum » tonnage at 500 tons, be revised. »

Mr. Jan Asser (Netherlands) (translation): « The Association » of the Netherlands have a few general observations to make.

» The first observation is the same as presented by Mr. Van Ryn » stating that the draft convention does not define whether limitation » becomes actual before the benefit of the right of limitation of liability is » asked for.

» The first solution seems to be inadmissible. Let us consider the » case of the bankruptcy of a shipowner. In the case of limitation « de » plein droit » the claims subject to limitation, according to the con- » vention, should be automatically verified for the reduced amount, » according to the convention. This seems to be neither logical nor fair. » Therefore the second solution should be adopted and it should be » clearly mentioned in the convention that the possibility of involving » the limitation of shipowners' liability is subject to the constitution of » the fund.

» The second point too is not settled by the draft submitted to » you. It concerns the question to know whether the constitution of the » fund implies a recognition of liability by the owner. Something should » be said about it in the convention.

» The third and last point concerns the application field of the con- » vention. Several systems may be considered. We have the system of » the law of the flag of the ship for which the limitation of liability is » invoked.

» Another system is based upon the nationality or domicile of the » shipowner and claimants.

» In the third place we have the system according to which the

» convention should only apply in the case the event that gives rise to » the damages, occurred in one of the contracting states, system that » is in conformity with a rule of international private law adopted by » certain countries.

» The Association of the Netherlands is of the opinion that none of » the three systems will suit and that the only solution acceptable is the » one that makes the convention applicable each time the shipowner » intends to invoke limitation of liability in a contracting state without » consideration for the flag of the ship, the nationality or domicile of » the shipowner or claimants.

» In the same line of ideas, the owner who is a national of a » contracting country and whose ship flies the flag of such country, » might have the benefit of the advantage of the convention. This might » lead to a more fair result especially in the case the non-contracting » state does not admit the limitation of shipowners' liability. »

» In these circumstances it seems to be unavoidable to insert a » new provision defining the application field. Such provision could » be similar to paragraph 3 of article 3 of the Brussels Convention » on Arrests of Ships. »

Mr. Otto Dettmers (Germany): « The sub-committee, which has » been entrusted by the German Maritime Law Association, unanimous- » ly agrees to abandon the present long-established system of limiting » shipowners' liability of the ship and freight and to fix some other » system of a lump sum based on the tonnage of the ship.

» Our Sub-Committee has realised that our traditional system is » antiquated and is, in certain cases, leading to unreasonable results. » For instance, if a ship, which has caused a serious collision and damage, » by this fact sinks on the same voyage, in such case the shipowner is » fully exonerated. On the other hand, the owner of a special ship of » high value may have practically unlimited liability. Consequently, » our sub-committee is of the opinion that so far the draft on limitation » of the British Maritime Law Association should be adopted in prin- » ciple.

» Our Sub-Committee has been very much encouraged in this reso- » lution by the interest which our German Ministry of Transport and » Shipping and the Ministry of Justice have taken in this matter, so » that it may be presumed that our German Authorities do agree as » well to the future alteration of our National Law.

» It seems clear to us that the Convention should only apply to » seagoing private owned ships, and to state-owned vessels only if » they are used for commercial shipping. The definition of seagoing » ships should be left to the law of the country.

» As to the amount of limitation, we are willing to accept £ 24 » sterling as the basis, but the additional amount of £ 50 for personal » damage is rather high, we consider, for reasons we shall explain in » the special discussion.

» As to Article 1, we accept the details of the claims upon which » the limitation shall be applied.

» As to Article 2, I expressed at the Conference in Brighton the » view that some liability should be established only once during a » voyage instead of per accident. In the meantime I have realised that » the liability per voyage is in natural consequence of our present sys- » tem of liability with ship and freight. Now we are going to abandon » this system and introduce liability with a fixed sum, without any » respect to the ship or its value. Hence it seems to us to be the natural » result that the limit of liability should apply to each accident.

» As to Articles 3, 4, 5 and 6 we have some remarks to make but » these may be postponed until the special discussion. »

Mr. K. Spiliopoulos (Greece) (translation): « The British draft, » when it was submitted to you at the Brighton Conference caught us » all somewhat unaware and that is the reason why, as I could see, » the delegations adhered nearly unamimously to the principles of the » draft. I personally accepted also in principle the draft, willing to see » the maritime law unified. However, since that time all the arguments » put forward today by the Italian delegation have appeared to me » and inspire some reserves.

» These arguments concern the question of principles. Indeed, the » British draft, as explained some minutes ago by the Spanish delega- » tion, the American delegation, the Italian delegation and all the other » delegations who came on the platform, does not bring a real limita- » tion. Anyway, the limitation suggested is completely different from » the conception of « fortune de mer ».

» In my opinion it is necessary to find a basis for general agree- » ment subject for acceptation by all delegations. Until now I noted that

» Italy, the United States, Sweden and Spain are not favourable to that » system of limitation.

» It is not a question of system; we would be prepared to accept » any system, but what is important to us is to know what will be the » effects of the system to be adopted.

» According to the calculations we can make upon the system sug- » gested by the British we cannot arrive at a limit because there is the » conception that the liability is settled per accident, and as said by » Mr. Berlingieri, we can not know how many accidents may occur » during one single voyage.

» We would easily accept the limit based on the value, because in » that case we would have fixed an amount and the shipowner would » know how far his liability goes; he would have a fixed amount for » which he knows he is liable but the system suggested by the British » is one that does give no limit; that is what we have to keep in mind » and what we should never forget.

» The problem of insurance is one of a complete different kind. It » is an economical question. I do not know whether all shipowners are » insured but I assure you that in Greece there are numerous owners, » especially those of little crafts, who are not.

» For the moment we have not to increase insurance expenses or to » help insurance companies to obtain higher premiums, we have to » limit shipowners' liability.

» This is the reason why I would suggest to our Chairman, instead » of going on working on the details of the British draft, to appoint a » little committee of coordination containing one delegate per nation, » in order to try to obtain an agreement on the principle of limitation.

» But the most important question is that we have to arrive at a » general agreement because the International Maritime Committee is » not intended to work in the scientifical field but to arrive at a result » and that result is the unification of maritime law.

» I do not think that, even when the majority accepts the British » draft, a useful result will be obtained because, as you already heard, » several countries are not prepared neither to accept the draft, nor to » make it accepted by their governments.

» This is not my personal opinion that I am exposing before you, » but I know the interests of the Greek shipowning circles and I know

» that a draft, such as the British one, will be unacceptable for the » Greek delegation.

» That is the reason why I ask Mr. Chairman to examine whe- » ther we can discuss about the appointment of a little committee of » coordination where each nation would have a representative. In that » way we might arrive to an agreement on limitation.

Mr. Atilio Malvagni (Argentine) (translation): « It has been said » that this is not a limitation of the liability of shipowner in as much as » the sums fixed in the proposals are considerably higher than the buil- » ding value of the ships. As I see it, if this point alone were involved, it » would be a matter of detal, since by lowering the proposed figures the » objection which I consider a serious one, would disappear. But we, » the Argentine Association of Maritime Law, have interpreted this » draft Convention as being in a certain manner favourable rather than » prejudical to the shipowner, since Art. 1 included among the cases » of limitation of liability the faults and errors committed by shoreside » employees, contrary to the traditional principle of Latin Law, inspi- » red by the French Ordinances of 1681, which have been followed by » the French Code, and also by the Latin American Codes of other » Latin nations, and in which the limitation of shipowners' liability » is admitted solely in cases of the actions of masters. I can only won- » der what is the reason for increasing the cases in which the ship- » owners' liability is limited by including actions that may be done by » any person ashore, as well as those of the master.

» Everything concerning the state of a ship is entrusted to a person » known as the Dockyard Superintendent. Now the Dochyeard Super- » intendent is a shoreside employee. If the Dockyard Superintendent » commits an error and allows a ship to sail without being in proper » condition the owner will be able to protect himself by the limitation » of his responsibility entrusted to a shoreside employee : and a ship- » owner cannot limit his liability in a matter so important as that of » keeping a ship in navigable state. I find all this implied in the spirit » of Art. 1 which also influences the rest of the articles of the Conven- » tion, and it therefore seems to me that instead of speaking of the pre- » judice caused to the shipowner by the increase in the number of » pounds per ton, the spirit of the article is rather to increase the cases » of limitation of liability.

» I make these observations, be it said, from a general point of » view because I am in position diametrically opposed to that which » has been adopted, and I reserve the right to make observations of » another kind when the time comes to discuss Art. 1, if the inclusion » of shoreside personnel be still insisted on, thus increasing the cases » of the limitation of shipowner's liability.

Mr. Herbert Andersson (Finland): « I have had many opportuni- » ties to discuss this matter with the Swedish Delegation, and especially » with Judge Bagge, and I am able to support all what he has said. » I shall, therefore, not repeat all the arguments he brought forward here. » I would only like to say that it seems to me to be asking too much » of those who have ratified the present Convention and who have » been working on it for well over 30 years to ask them now to leave » this Convention and bring in a new one which, I say with due res- » pect, is no better than the present Convention.

Mr. Sozo Komachya (Japan): « The Japanese Maritime Law » Association agrees, as a general principle, with the system proposed » by the draft Convention relating to the limitation of shipowners' » liability. It has been confirmed, however, that in order to give effect » to this system in Japan, there must be a substantial improvement of » the existing state of things. For instance, it would be necessary to » develop the present system of liability insurance.

» The Japanese Maritime Law Association considers, that it should » be modified in many points, but we should like to reserve them for » discussion in committee.

» We should like to add here that our shipowners are unanimous » in wanting to sustain the Convention of 1924, and they are of the » opinion also that the amount of the new Draft Convention is too » high.

Mr. O.R. Houston (United States): « I must say that I think the » existing law where the measure of liability is the value of the ship » has many charms. It has an historic basis which makes it very highly » esteemed in my country. It has been the principle under which we » have been operating for many years. Speaking for my country we, » as you probably know, are quite reluctant, or our Congress is quite » reluctant, to alter our local laws by general treaties. Mr. Cyril Miller

» recognised that point in his remarks. To throw overboard a system » with which we have been familiar for 150 years and adopt an arbi- » trary figure in my opinion would be impossible with the present » temper of my country.

» You can defend both historically and logically the fact that a » shipowners' liability should be limited to the property that he has » put at risk and which, to our way of thinking, is more or less made » into a person. The ship itself is regarded as personal and liable for » the damage it does. If the ship is given up you can defend that. » When you step beyond that position and say that the limit shall be » so many gold francs or dollars or what have you, you are giving to » the shipowner a purely arbitrary protection, limitation, which you » give to no other person who does wrong and which, I think, is quite » foreign to our point of view. For example, if one of our munition » factories were to explode and destroy a city the company that owned » and operated the factory would be liable up to its capacity to pay. » When the steamship « Grancamp » blows up and destroys Texas » City you can say, « Well, the « Grancamp » is gone, and there you » are ». There is a certain logic to that. Otherwise the French owners, » possibly in that case the French Government, might have been liable » for the whole city.

» When you get down to saying that there is a financial limit you » are doing something new, something that I think would not be done » in the United States, and I think you should appreciate that a Con- » vention along the lines of the British draft in all probability will not » receive the concurrence of my country. »

Mr. F. Manzitti (Italy): « It is obvious that there are strong » differences between the delegates. Because of this I submit to the » Chairman the desirability of following the suggestion that was first » put forward by Mr. Bagge of appointing a Draft Committee in order » to see if we can find some point of unanimity. It is the opinion of » the Italian delegation that these differences have not been co-ordinated » by the suggestions put forward by the English delegation. »

The Chairman (translation): « Before asking the other spokesmen » to come to the platform, I draw the attention of the members who » suggest to appoint a committee, upon a confusion that seems to come » forward in certain suggestions.

» I understand that there may be two points of view concerning » the continuation of our work i.e. to continue the general discussion » of the draft hoping that the different points of view will come closer » one to another during the discussion, or to entrust temporarily a less » numerous committee with the examination of the points already put » forward.

» In the present state of discussion I do not see very well how we » can appoint a drafting committee that in my thought should be en- » trusted with the task of drafting a text after the debates either at the » Assembly or in a restraint committee have permitted to find out the » ideas of the Assembly or of that restraint committee. I would like » to ask to those who used the word committee whether they think of a » committee entrusted with the examination of the principles before » coming back to the Plenary Assembly.

» I am of the opinion that presently it is not possible to appoint » a drafting committee because the different points of view have not » yet been sufficiently confronted. I think the Assembly will agree that » it is not possible to follow that way.

Sir Gonne St. C. Pilcher (Great-Britain): « I am speaking not » strictly on behalf of the British delegation but rather in my quality » as Vice-President of the Comité Maritime.

» I notice that Mr. Bagge, I think the Finnish delegate too, » make the point that they would prefer to see limitation based upon » value continued. May I draw their attention to the fact that that was » not the view which the Swedish expressed in Brighton, and it is not » the view which the Swedish delegation expressed in the observations » which they presented to this meeting.

» We came here knowing of the difficulties of our American friends » and appreciating them. I think that all the members of this gathering » must have known in advance that it was at least extremely unlikely » that the American delegation would be able to support the draft which » the British delegation has been largely instrumental in preparing.

» Apart from the American delegation the representatives of the » Italian, the Swedish, the Greek and the Finnish delegations only » have spoken against the Convention in principle.

» I do not wish to go into the points which were made by the » representatives of the delegation who opposed the draft in principle,

» but I should like to remind delegates that so far as the Italian delega-
» tion was concerned, certainly the Greek delegation and possibly some
» of the other delegations who are concerned with the question of sepa-
» rate and distinct occasions, and whether limitation should be per occa-
» sion or per voyage, that was a matter which was discussed at Brigh-
» ton. I hope those delegations who have spoken through the mouths of
» lawyers and not of shipowners or underwriters will not forget a very
» cogent speech which was made at Brighton by a prominent under-
» writer who, I think, pointed out that it would not make a pennyworth
» of difference to the premium they had to pay whether limitation was
» by voyage or by accident. If that is true it seems to dispose of at
» least one of the points of those who opposed the scheme.

» Then it is said by some, that the limit is too high, that you
» are not limiting the shipowners' liability by the draft which is before
» you, you are creating a situation in which the limit will practically
» never come into operation. That was the purpose of the draft, and
» I think you were told at Brighton by somebody much better quali-
» fied to do it than I was, someone with very great practical experien-
» ce, that the increase in pounds of the limitation fund depicted by
» the present draft will have little if any effect upon the premium
» which a shipowner has to pay.

» Then I come to the remarks made by Mr. Spiliopoulos, and I
» hope he will acquit me of any discourtesy or intention of discour-
» tesy, but ships are insured as a matter of course nowadays. If there
» are Greek ships, large or small, which are not insured — as there
» well may be — it is not for me to tender advice, but I would sug-
» gest they get themselves insured because in doing so they will follow
» the normal commercial maritime practice of the whole shipping
» world. Because there happen to be such ships which are, I feel sure,
» perhaps small ships — and I have no doubt there are small British
» ships that are not insured — that hardly seems a reason to reject
» the whole Convention in principle.

» I think and here I speak certainly for myself and I think also
» for Mr. Cyril Miller that we hope the President may decide, in view
» of the preponderance of nations who seem to accept the principle
» of this draft Convention, to allow the full assembly to continue now
» to discuss the three or four principal points and any ancillary points
» Article by Article, rather than submitting the matter to a committee.

» If you do that you have got to do everything twice. You will submit » it to a committee who will disappear into seclusion probably for a » day or two, possibly for longer, and then you have to re-submit it » to the whole meeting where, quite properly, other members who » have not taken part in the deliberations of the committee will want » to speak ».

Mr. Algot Bagge (Sweden): « I would add that there is perhaps » a little misunderstandig as to the attitude of the Swedish delega- » tion, and to dispel that perhaps I had better outline a little what is » our constructive policy. I began by saying that it would have been » better if we had taken as a basis the Convention of 1924, ratified by » twelve countries, and introduced into that Convention the modifica- » tions which the British and others are now using, because all the » work done then would be useful.

» I must confess that I have been a little astonished by seeing that » the different heads of the delegations and other people have been » saying, that the general feeling is that we should proceed with the » draft now put forward. Of course, we could very well do that, be- » cause the work done as yet is only Committee work.

» Just to dispel any misunderstanding on what is the position of » the Swedish delegation, I will say that we agree, as we have said in » our observations, that the value of the ship shall no longer play a » role in the determination of liability. As Professor Braekhus has very » excellently said, that simplifies very much the rather complicated » stipulation of the Convention of 1924. We agree too that the higher » limits — the amount will, of course, be discussed afterwards — should » be effective and realistic. We wish — to us this is a very important » matter — that the drafting will be clear so that it will be understood » not only in England or in Anglo-Saxon countries, but everywhere » where the Convention is going to be ratified. Therefore, the drafting » must, I understand, be rather modified. Then we want a rule which » protects the small tonnage.

» Well, these are what we agree to, and I think that is rather » constructive even in comparison, even if you compare it with the » Convention of 1924.

» As far as the other questions are concerned. I think we will » arrive to an agreement later on. But from that standpoint I think that

» as soon as possible we should really have a Committee — I take » back my word « drafting » Committee — which would deal with the » matter, while we sit round the table, while we make compromises, » while we can arrive at an agreement on that basis, because the » majority of the delegations have agreed on the basis of the British » draft. After that, if we come to a conclusion at this Conference, it » could be put before the Plenary Session ».

Mr. Leopold Dor (translation): « Like my eminent friend Sir » Gonne Pilcher I will not speak in my capacity as a representative of » my delegation, but as Vice-President of the International Maritime » Committee and also as Vice-President of the International Sub-Com- » mittee on Limitation of Liability. I will try to make a synthesis of » all that has been said by the heads of delegations. I will try to » make an absolutely neutral and impartial synthesis.

» But before that I will try to put before you a fact of which » nobody has spoken until now and that is of highest importance i.e. » that there is something we may not do, that is to do nothing. We » may not go on staying in the muddle for at present the 1924 Conven- » tion ratified by several countries of Western Europe is not ratified » neither by the United Kingdom nor by the United States. As a con- » sequence when a collision occurs, the solicitor entrusted with the » interests of one of the two vessels never knows what to do. He waits » for the moment when the ship calls at a port of a country where the » limitation of liability allows to seize the ship and plays in that way » with the two vessels hide-and-seek.

» Further when you seize a ship in a country, you never know » whether the national law or the 1924 Convention will be applied.

» We must come out of this situation at any price. (Applause).

» Let us do something good if we can, something less good if it » is not possible to do something very good, but let us do something.

» Now I come to the opponents of the British draft, for it is use- » less, I think, to examine the position of those who are in favour of » it, because the latter are prepared to start the discussion of the » articles.

» In order to come out of the present muddle the British present » a practical and simple solution, that of £ 24 paper Pounds per ton, » which is the amount of the British solution of before 1914, 8 gold

» Pounds. A British chancellor of the Exchequer has declared that the » Pound Sterling equals 8 shillings and as a consequence, when the » British give use actually £ 24 per ton, which is three times more » than in 1924, this is extremely reasonable and it is a simple and » practical way of limitation.

» This solution meets however opponents; the principal of them is » my eminent friend Prof. Berlingieri.

» He seems to have a sentimental attachment to the old system » of the abandonment of the vessel.

» That old conception of « fortune de mer » which goes back to » the « rôles d'Oléron » was understandable and justifiable at the time » a sailor left for instance for the Indies for 2 or 3 years. That is a » long time ago. I think as a consequence that the old principle of » « fortune de mer » has to be left aside. No Parliament will admit » today to accept a system according to which the shipowner is al- » lowed to give nothing in the case of loss of human life.

» Furthermore Mr. Berlingieri has made a suggestion in which I » see the heel of Achilles of his speech. Indeed he has declared that » he was ready to accept the value of the beginning of the voyage. Be » careful, if you accept the value of the beginning of the voyage, there » is no question of « fortune de mer » any more. Although the ship is » at the bottom of the sea, the claimant will have the right to say : » I ask the value of that ship perfectly sound, her value at the time she » left the port of loading. This is completely the same as to limit to » an amount which will more or less vary, but it is an amount of » money representing the value of the ship. If you admit this, you » admit at the same occasion the British system of a lump sum limi- » tation.

» The British say to you that it is easier and more practical to » fix once and for all that amount of money at the approximative value » of the ships at the beginning of the voyage i.e. at £ 24 per ton and » £ 50 in the case of loss of human lifes, than to calculate each time » the value at the beginning.

» Further Mr. Berlingieri says that the system of accepting several » limitations in the case of three collisions instead of limiting liability » for the three cases, obliges to make a calculation for each accident. » Allright. If you accept a master as awkward as to cause three colli-

» sions, it is your concern. You should only discharge him and appoint » another. If you are the terror of the seas, you have but to pay.

» I agree completely with Mr. Berlingieri that the question present- » ly under examination has nothing to do with insurance. However it » is necessary to remember that, when Mr. Berlingieri presents the » poor shipowner in rags who does not know where to find money to » pay his creditors, he is backed by people who pay indemnifications » for collision and, as a consequence, he is not so poor as my eminent » friend tries to present him.

» To what extent is the system unfavourable to the shipowner ? » Why do you mean that the obligation of constituting a limitation » fund for a collision discharges the shipowner at the same time from » his obligation to pay the master and the crew or the coal merchant » who supplied him with fuel for his ship ? The two things have no » link between each other. It is again pleading the thesis of the poor » shipowner.

» I think that are the principal objections of Mr. Berlingieri.

» I should like to reply in a few words to Mr. Asser's very inte- » resting speech. Mr. Asser has, I think, collaborated with Mr. Miller » to the preparation of the draft. It concerns the limitation of liability » applicable « de plein droit ». I reply no. The limitation of liability » is not a defense on the grounds, it is a defense against execution. » Only when a final judgment has been pronounced against the ship- » owner, and when the latter accepts liability, he opposes the execu- » tion by saying : I limit my liability. As a consequence such limita- » tion is not applicable « de plein droit » i.e. the shipowner may invoke » it or not. He may pay £ 40.000 or if he likes he may pay £ 100.000. » He is completely free to do so.

» Further Mr. Asser invoked the recognition of liability. I reply » that as far as French law is concerned, the fact of opposing limita- » tion of liability to the execution is recognition of liability. But the » fact of constituting a fund is never a recognition of liability.

» Finally concerning the last point of Mr. Asser's speech it is very » delicate to know which law has to be applied : the law of the flag, » the law of the nationality of the shipowner, the law of the country » where the accident occurred or finally the law of the country of the » Court.

» I think that the last one is the easiest to be applied, if you » like to solve this question in your convention. It is the Court who » upon request for execution and upon the refusal of the shipowner » to excute, will have to judge the question — it is the Court of the » place where the fund has been constituted — this Court applying » their proper law they know very well. In that way we will know » that when a fund is constituted it will be judged according to the » law of the country where it is constituted.

» These are my remarks. Be sufficiently confident in the English » draft, a simple, clear and practical draft, and start afterwards the » discussion of the articles and there at article 1 we shall see whether » it is possible to come to an understanding ».

Mr. le Doyen Ripert (France) (translation): « Gentlemen, I » asked to come to the platform after the explanations of Sir Gonne » Pilcher in order to support with all my forces his observations be- » cause I thought that after what he had said nothing more was to » be added.

» We have been called to Brighton in order to deliberate on a draft » of an international convention concerning the lump sum limitation » of liability. On this problem the arguments in favour and against the » system of lump sum limitation have been put forward again. The » delegates who will think afterwards to have to recommend to their » governement not to accept such limitation when the draft will be » established are free to vote against this draft. But we may not forget » that the question is not complete, presently we have a convention » that fixes a limitation for liabilities. Some of those who criticize are » those who have not adopted that convention and we, who have » adopted it, we come and renounce freely to it in order to obtain » international unification of law.

» We are called together on a definite draft and as a consequence » I ask the Assembly not to discuss the questions of principle con- » cerning the abandonment « en nature « or « en valeur », but to help » to establish this new draft of international convention based upon the » draft discussed in the Sub-Committee when the draft will be finished. » During the final deliberation everyone will be allowed to express his » opinion. Presently it is too early, it is useless to fling at each other » different systems of limitation. That is all what I wished to say ».

The Chairman adjourned the session.

AFTERNOON SESSION

Mr. A. L. Lawes (Canada): « The attitude of Canada was clearly » established in our reply in the booklets which have been published.

» Mr. Dor gave us the reasons why the British proposal should be » accepted as something to work on. They are not committing the » British Governement, any more than I can commit the Canadian » Government, to any line of policy, but it is something we can recom- » mend to our Governments.

» The reason I really asked to speak was to raise the question of » what is a sea-going ship. Are vessels trading on the Great Lakes, » either coming through the canals or not coming through, the canals, » sea-going ships.

» We used to consider the Great Lakes as domestic waters — with » the United States — but very soon they will be international waters » in every sense of the word. Now is that sea in this sense or is it fresh » water lakes and as such not part of this Convention ? I would like » to leave that question with you. »

Mr. Vaes (Belgium) (Translation): « My colleague and friend » Mr. Van Ryn has explained this morning the official point of view » of the Belgian delegation. I should like that the present intervention » be regarded only as a personal contribution in order to try to guide » the discussions of this Conference to a constructive solution.

» We are at the end of half a day of debate between opponents and » partisans of the British draft. I cannot believe that the main reason » for which they disagree is found only in the attachment of some » of them to the old system of the abandonment of the value of the » ship. We find the proof of it in the fact that several heads of » delegations who seemed this morning to stick to the system of the » 1924 Brussels Convention, cannot dispute that the official reports

» of their national associations, although regretting sometimes to have » to abandon a system to which these countries were sentimentally » attached, have declared to be prepared to accept unanimously the » British system of the lump sum abandonment. I believe that there » will be no difficulty in convincing again those who seemed at a certain » moment to have already been convinced of the practical character » of the system of our English friends without if being necessary to go » as far as does Mr. Dor, when he said that the conception of « fortune » de mer » was an abandonned and out of date idea for I do not see how » from a legal point of view we might attach the English system of the » lump sum abandonment to an other conception than that of « fortune » de mer », adapted to more modern standards.

» I think, as far as I am concerned, that the debate of this morning » has revealed that at the bottom of the antagonism between the parti- » sans and the opponents of the British system there is something that » weighs upon these debates as much as a mortgage : the figure of £74.

» Well, Gentlemen, it is possible that, when we will start the dis- » cussion of the amount of the limitation, even the Belgian delegation, » which is warmly supporting the British draft, will make some sugges- » tions in order to bring it down to more reasonable standards.

» However, I think that the error comes from the fact that some » of you think that those £ 74 are as some sort of sine qua non condition » of the British draft and that it is the scarecrow of those £ 74 that » makes that some of you, who three months ago said they were » supporting the British draft, toady say that they prefer to go back to » the 1924 Convention.

» I ask Mr. Chairman, whether in order to make some progress » it would not be useful that Mr. C. Miller should state before this » assembly what the figure of £ 74 means, because we may not forget » that that amount is not mentioned neither in the draft nor in the » « final draft ».

The Chairman (translation): « The observations of Mr. Vaes are » extremely relevant and as far as I am concerned, I will give him » immediate satisfaction.

» I should like, if that is convenient, to ask at once to Mr. C. » Miller to reply to the question that has been put. I think also, as » Mr. Vaes has said, that the figure of £ 74 is precisely a scarecrow. »

Mr. C. Miller (Great-Britain): « I am extremely grateful to Mr. » Vaes for bringing out to the forefront of our dicussion what I agree » with him is probably an obstacle in the minds of many of the delegates » who have expressed opposition to the draft Convention, which is now » before the plenary conference. May I say this, that as Mr. Vaes » remarked, in Article 3, which is a master article for this purpose, the » figures have been left out in the draft prepared by my Association; » there is a blank. That is for a very good reason, because, as I have » said before and I think it cannot bear too much repetition, the » British Maritime Law Association were endeavouring to produce a » draft in accordance with the views expressed by the majority of the » delegations at Brighton and by the majority of reports of the national » Associations. We felt it our duty to incorporate all the majority views » in so far as we could. It was obvious that the figures to be inserted » in Article 1 (a), (b), and the proviso must be left in blank for » discussion at this Conference.

» At the same time, we thought it right — and I still think we are » right about it — to put in the margin our indication of what we » thought again open to discussion, those figures should be.

» May I just for one moment explain to the Conference how those » figures were reached. Now our principles were two : in the first » place as regards property damage, we thought that if you multiply » the figure of the 1924 Convention by three you get an approximate » figure of equivalent value at the present time. That is how the figure » of £ 24 was arrived at, certainly as regards our underwriters in the » British Maritime Law Association who have been extremely helpful » to us throughout this project; they seem quite content about this, » but still that figure is open to discussion.

» But as regards loss of life, I would like to point out to the Confe- » rence why we placed so high a value of limitation on this particular » item of loss, loss of life and personal injury. It is because we appreciate » — and I appeal to everybody in this Conference to bear this well in » mind — that when this Convention comes to be passed into our » respective domestic laws, it is not the Comité Maritime who is going » to decide the figure, nor is it our respective governments, but it is » our parliaments who are going to decide what figure, if any, the » shipowner is entitled to have as a limitation for loss of life and

» personal injury. We felt that in modern times and under modern » ideas of social justice — which, of course, have vastly changed in the » last 25 years — shipowners can really only ask their parliament, with » any hope of success, for a continuation of their right to limit for loss » of life and personal injury if so high a figure is put upon that particular » item of loss that save in the most exceptional catastrophe the ceiling » will never be reached at all. »

Mr. C. Van den Bosch (Belgium) (translation): « Gentlemen, » after the different points of view have been opposed one to another » during the debates of this morning and of this afternoon and at a » moment when they seem to come definitely closer to each other, the » Chairman of this assembly has invited me to make a critical report » on the principles of the first draft submitted to you.

» My intention is to stress the differences between the first draft » and the second one.

» Unlike the previous draft, the present draft concerns only sea- » going ships.

» In article 1 the word « ship » has been replaced by « seagoing » ship » in accordance with the unanimous opinion expressed at Ant- » werp. Furthermore it is necessary to exclude expressly war ships » and state-owned ships not involved in commercial operations.

» Article 1 gives the rule of the limitation of liability; the enumera- » tion is a limitative one.

» A first gap appears immediately. We wish that the unlimited » liability should be the exception. As a consequence the burden of » proof is on him who alleges that the owner has lost his right to » limitation.

» If I rightly remember, all the members gathered at Antwerp » approved that point of view. As a consequence the article should » mention it without ambiguity.

» The new reading limits considerably the number of claims for » which the owner is allowed to invoke limitation of liability. Sharp » critics have indeed been raised against the extension of the limitation » to acts of servants ashore, especially when these acts do not concern » navigation or management of the ship.

» Satisfaction has been given to those critics in two manners : first » of all we have limited the application of the convention to acts

» concerning the navigation or the management of the ship; secondly » we have made it a condition of applicability that the injured persons » or the damaged goods should be on board or under the custody of the » owner in view of the carriage within the perimeter of the ship i.e. » on quay or on crafs used to put them on board. These important » restrictions have been introduced since the Antwerp meeting. I think » that the example given by our eminent colleague, Mr. de Grandmaison, » concerning the case of transport strike and of the necessity for the » owner to charter cars for the carriage of passengers from Paris to » Le Havre is presently excluded because precisely of the restriction » of the field of application made in the new draft. Perhaps it might » be desirable to have more precisions but I do not think so.

» One case however seems to be excluded from the application field » of the convention although it has been on the basis of article 1. It » seems to me that that gap has been overlooked by the drafters. In » order to make me more understandable I would like to give an » example.

» During loading operations a sling falls upon a passer-by who » is not a passenger of the ship concerned. Normally the limitation has » to be applied. However the present drafting does not cover this case, » as neither an act of navigation nor of management is concerned, and, » on the other hand, the injured person, victim of the accident, is » neither on board of the vessel, nor has to come on board.

» A second example will better illustrate my observation : As a » consequence of bad stowage goods get heated and catch fire and » cause an explosion destroying everything in the neighbourhood. This » is the case of the casualties of Bombay and Halifax. Bad stowage » is however not an act of navigation. It might not be an act of » management of the vessel. On the other hand the damaged properties » are neither on board nor have to be loaded.

» It seems to me that these extremely important cases do justify » the application of the limitation of liability and that the present » wording has betrayed the intention of the drafters. I think that » remedy should be applied to this gap.

» I should like to make an observation on article 1 : it concerns » the exceptions and more specially the exception relating to the claims » of the crew. The wages are excluded for they are not mentioned in

» article 1. I think there are no difficulties in this respect. Most of the » present legislations however exclude personal injuries of members of » the crew from the system of limitation. It seems to be impossible to » deprive the servants from the advantage obtained since several years. » The new wording takes into account the objections raised on this » subject at Antwerp in the secundo of the last paragraph of article 1.

» I think that this disposition solves the difficulty that did stop us » for a moment at Antwerp. It is likely to satisfy the beneficiaries.

» The order of the old articles 2 and 3 has been inverted. Article 2 » of the final draft establishes the limitation per accident. It rejects » as a consequence the limitation per voyage. The advantages of such » solution have been emphasized by the British and French delegates » and I think I have not to come back on these.

» When two accidents have occurred during the same voyage it » might be impossible to determine to which of the two accidents the » damages are to be attributed. What should be done in that case ? » It is not up to me in my capacity as « rapporteur » to give the reply » but I think the question has to be put.

» We arrive now at article 3 that refers to the way in which the » limitation fund is divided and appropriated, such as described in the » British memorandum that has been put before the delegates.

» I think I am allowed to say that the system proposed by our » English friends has been accepted by all the delegates present at the » International Sub Committee.

» I give you here in a few words the details of that system. If we » adopt as a basis, and I mention it only as an example, the lump sum » of £ 24 for property claims, and the lump sum of £ 50 for personal » claims, the solution will be as follows :

» — first case, we suppose that the accident caused only personal » injuries, a rare case in practice; in that case the victims are entitled » to a limitation fund up to £ 74 per ton;

» — when on the contrary the consequences of the accident are » limited to property claims, only the claimants are allowed to share » a limitation fund of £ 24 per ton;

» — when there are both property and personal claims and when » the latter are in excess of the £ 50 limit, the £ 24 limit will be

» apportioned in proportion to the non paid balance of the personal » claims and the amount of the material claims;

» — it is understood that the amounts of lump sum limits, the » currency in which they will be expressed and the calculation of the » tonnage are left to the decision of our assembly.

» Remains the faculty of conversion and the date upon which such » conversion to be made. Nobody has criticized the faculty of conver- » sion, the necessity of which is evident, but who has to bear the risk of » exchange, the debtor or the claimant ?

» The first draft accepted the date of the accident. Such solution » has been severely criticized for it would put the risk of exchange on » the victim. It has been replaced by a disposition adopting several » dates : that of the payment, that of the constitution of the limitation » fund, that on which a security or another guaranty is supplied.

» The two first ones (payment or constitution of the limitation » fund) seem to me to give satisfaction to the wishes which have been » expressed. The third one on the contrary brings a new element of » incertainty that we tried precisely to avoid. The constitution of the » fund is equivalent to a liberating payment; which is not the case » when a security is given, as this leaves open the discussion about » liability. The third solution cannot be put on the same level as the » others and should as a consequence logically be deleted from the con- » vention.

» Article 4 has been considerably simplified and combined with » the old article 5 that disappears as a distinct disposition. It raises » however the important question of the privileges and their rank. » Article 4 transfers certain privileges concerning the ship on the limi- » tation fund. In principle such operation is from a legal point of view » conceivable; this is moreover what actually happens now. When the » owner, who asks the benefit of limitation, pays to the liquidator the » lump sum of which he is indebted the privileges are transferred on » that sum which is considered to be consigned instead of the vessel.

» However the new article will put the nations who have ratified » the 1926 Convention on privileges and mortgages, in a difficult situa- » tion. From now on the assignment of the privileges will no longer » be the ship or her substitute, the lump sum limit, but the limitation » fund. As a consequence the new system might lead to the revision

» of a great number of internal laws concerning privileges and put » under discussion the 1926 Convention. Indeed the two subjects seem » to me to be indissolubly bound. It will be up to your assembly to » take a decision on this delicate and complicated problem.

» There is no doubt that we will be able to solve this difficulty but » we may not slip it aside. Objections have been made : what will » become of the privileged claims which are not entitled to the limitation » fund, for instance the claims of the State, of the crew, of the Salvor ? » I think the reply is as follows : these claimants keep their privilege » on the ship, without any connection with the limitation fund. If the » ship is lost, the fate of the claimants will not be different from that » which they will undergo in accordance with the existing laws; they will » not be entitled to oppose their privilege to the fund, not more than it is » the case now, but their claims will subsist. They will be able to exercice » them against the other assets of the owner, but if these assets are not » sufficient the situation will be that of a bankrupt debtor and in that » case it will not be possible to constitute a limitation fund; that is what » our eminent colleague Mr. Van Ryn, has said so excellently at the » Antwerp meeting, pointing out that the constitution of a limitation » fund is only conceivable for the benefit of a solvent debtor i.e. a » shipowner in bonis; but it seems to me that this consideration brings » the discussion out of the frame of the Convention on the Limitation » of Liability.

» At the end of article 4 you have read, Gentlemen, a note pointing » out that the question of the limitation of the number of places where » it will be permitted to constitute the fund, will be reserved for further » examination and discussed afterwards.

» I want to say you a word on this subject. The idea to limit the » number of places where the shipowner would be permitted to consti- » tute his fund has been accepted by the large majority of the members » of the International Sub Committee. The purpose is evidently to » prevent misuse.

» What are the places that have been suggested ? Five have been » put forward : the place of the accident, the place of the first port of » call, the place of the seizure, the principal place of business of the » shipowner and the place of the Court.

» Article 5 concerns seizure and securities. It has been subject to » no critics, only the wording will necessitate some adjustments.

» The old article 7 has been deleted. The Sub-Committee was indeed » of the opinion that its contents should be left to the internal law : it » concerns the delays a Court could grant to the debtor in order to stop » provisionally the execution of the decisions of the Court pronounced » against him.

» I arrive, Gentlemen, at the synthesis of article 6 that is the last » one of our new draft. The object is to avoid that the owner will be » frustrated from the benefit of the limitation by a bypass. The delegates » of Great-Britain draw our attention upon the following case : An » accident occurs. According to the law in force, the owner has the » benefit of limitation of liability, but as the damage is a consequence » of a personal act committed by a member of the crew who, according » to the present law has not the benefit of limitation of liability, the » claimants take legal proceedings against the member of the crew.

» What to do inpractice in order to avoid that a member of the » crew would be definitely ruined ? In the end it is the shipowner or his » underwriters who pay the damages to the victims. As a consequence » we see that the owner is frustrated from the benefit of limitation by a » bypass.

» The old wording which was the same as article 8 has been » criticized several times. These critics were taken into account to a » large extent by granting the benefit of limitation to the master and » to the members of the crew responsible for a fault of navigation and » of management of the ship.

» I admit that from a purely legal logic point of view the solution » might be considered as a little monster but I think on the other hand » that it may be accepted on account of finalist considerations on the » level of possibilities and practical necessities. »

The Chairman (translation): « I thank Mr. Van den Bosch for » his explanation. Does somebody want to make further observations on » the principles of the draft ?

» I suggest, as the existing difficulties have now been somewhat » cleared up by the general discussion, to examine the observations » made on the principal articles, and to start with the first one. »

ARTICLE 1

Mr. C.T. Miller (Great-Britain): « I think I said this morning, » we appreciate that this very important Article, is too wide.

» May I deal with Article 1 (a) first ? You will notice that » Article 1 (a) as it is drafted in the draft Convention is designed to » cover the shipowner's liability for cargo before it is loaded in his » ship; that is to say, while it is still on the quay awaiting shipment. » The reason why that was put in was because certain shipowning » interests felt that they ought to be protected in case in which they were » liable, having inved a bill of lading — which we call a received for » shipment bill of lading — liable for the cargo while it was on the » quay or in the warehouse awaiting shipment.

» The view has been expressed that in those circumstances in » modern times the shipowner is nearly always protected by The Hague » Rules, Article 4, Rule 5, by which his liability is limited to £100 — » now £200 under the Gold Clause Agreement — per unit of cargo. » We feel very strongly that the objection made by a number of National » Associations, that the shipowner ought to be content with that, is » correct.

» Therefore, we suggest, in order to simplify, as our French friends » have begged us to do on several occasions, the drafting of Article 1 (a) » — the drafting of the Convention as a whole, in particular 1 (a) — » and in order to meet that objection, 1 (a) should read simply as » follows.

» « Loss of life or personal injury to any person or loss of or » damage to any property whatsoever on board the ship. »

» I insert « Loss of life or personal injury to any person... » because » under our Law, and I think under Continent Laws, a shipowner can » limit his liability for loss of life or personal injury to persons who are » actually on board his ship whatever the cause of the catastrophe. » He can also limit his liability for loss of life or damage to cargo » whatever the cause of the catastrophe.

» I perhaps should have explained that the difference between » Article (a) and Article (b) (which we shall come to in a moment) » is that under Article (a), whatever the cause of the disaster, whatever » the cause of the loss of life or personal injury, loss of or damage to » cargo, may be, provided it is actually in the shipowner's ship, he is » entitled to limit his liability.

» Now we come to the much more important Article. Article 1 (b), » which deals with the shipowner's right to limit his liability for loss » of life, personal injury or damage to property outside his ship, » whether it be on land or whether it be in another ship. That is the » type of case in which a catastrophe could well arise.

» Again I give as an illustration the « Grancamp » and the « Ocean » Liberty » cases.

» As far as our Law is concerned — I do not know how far this » is true of the laws of any other European countries — a shipowner » is not, under our existing Law, entitled to limit his liability for loss » of life or personal injury caused ashore. That is, we think, a very » grave defect in our Law. If the principle of limitation is to be admit- » ted at all, that the shipowner should be entitled to limit for loss of » life, or personal injury caused outside his ship, not in another ship » but ashore, we do feel however that Article 1 (b) as drafted is » objectionable in two ways : one, it is complex, and I know it is very » difficult to turn into other languages, especially the French language, » and two, it may be too wide.

» Therefore, what we suggest is this : that for this type of limit- » ation — that is the limitation for property damage, and life and » injury outside the ship — the shipowner's right of limit should be » restricted to faults in the navigation or management of the ship or » in the loading, carriage or discharge of the cargo.

» What we propose for Article 1 (b) is the following :

» « Loss of life or personal injury to any person other than persons » on board the ship... »

» « ...or damage to any property or rights whatsoever other than » property on board the ship caused by the act, neglect or default of » the Master or Pilot, or any member of the crew or any other persons » for whos act, neglect or default the owner, is responsible in the » navigation or management of the ship or in the loading, carriage » or discharge of the cargo thereon. »

» I think that is a much simpler drafting of Article 1 (b). It is, » I hope, inoffensive in the sense that the shipowner is not asking for » too much. His right to limit is conditioned by this, that the cause » of the casuality must be either in the navigation or in the management » of the ship or in the loading, carriage or discharge of the cargo. We » think that is as far as shipowners can reasonably be expected to go.

» Now if we may finish Article 1, so that the whole Article is open » to discussion, I must remark that as regards Article 1 (c), which is » liability for removal of wreck, this is a liability in respect of which » shipowners, as I understand it, under most continental laws, are » entitled to limit their liability. Under our law they are not, and since » this matter was last discussed in the Comité Maritime International » we have had parley with our Harbour and Dock Authorities Associa- » tion to see whether we could come to some arrangement. Unfortuna- » tely, we have not been able so far to come to any arrangement with » them and, therefore, we are in honour bound to them — if this Con- » vention is passed — to ask for the insertion of a protocol with regard » to the matters mentioned and set out in Article 1 (c).

» Article 1 (d) is not necessary in our law, but I understand it is » vitally necessary for our French friends, because of the Lamorcière » decision, and it is to that type of absolute liability that Article 1 (d) » is directed. If there is anything wrong with the drafting, or if it does » not cover the Lamorcière decision, our French friends will no doubt » tell us, but it is very important.

» We now come to the proviso which deals with salvage and general » average contribution. I think everybody is agreed that those should » be excluded from the ambit of this Convention. But the second matter, » namely crew claims, is one that has given a very great deal of trouble » to deal with.' The position is this : under English law if membres of » the crew of a vessel are injured by the negligence of another member » of the crew they have now, as our law stands, a right of action against » the shipowner for the negligence of his servants. They used not to » have it and now they do. But they are in the same position as any » other life or injury claims, and if the shipowner establishes a limitation » fund the members of the crew claim against that limitation fund, just » as would the passengers on the ship that are injured or killed, or any » other life and injury claim against that ship. They share *pari passu* » with all other life and injury claimants and have no priority over them.

» As I understand it, in Belgian law — I assume that the French » law is the same — a shipowner cannot limit his liability for loss of » life or personal injury to a member in the crew of the ship and, » therefore, in this Convention we must endeavour to cover both systems, » of law which are at variance in this respect, and we endeavoured to » do that by the provisos (2) and (3).

» On looking through these Articles we have come to the conclusion » that they are perhaps a little to diffuse, a little too wordy; if I may » say so. I take full responsibility, because I drafted them originally » and I do not like them at all now. We thought they could be run » together in the following :

» « Claims made by any master and member of the crew or other » servant in the employment of the owner if, under the law governing » such employment, the owner is not permitted to limit his liability in » respect of such claim; except that such claims, as they are made against » the limitation fund shall be subject to the conditions of this Con- » vention. »

» That last proviso seems to us to be necessary. We may well be » wrong about it, it is a very difficult point upon which to come to a » final conclusion, for this reason. I understand that in Belgium injured » members of the crew, or the dependants of deceased members of the » crew, never claim against the limitation fund. Why should they ? » They have a right against the shipowner. They can arrest his ship » and, therefore, in Belgium the question would never arise of a member » of the crew claiming against the limitation fund. But this Convention » is not only going to be applied in those countries in which the law is » similar to the law in Belgium, it is going to be applied in countries » such as our own in which the law is totally dissimilar and, therefore, » I think we must put in some proviso that if crew members do claim » against the limitation fund even though under the law governing the » employment, the owner cannot limit his liability, nevertheless they » shall share *pari passu* with other life and injury claims. We envisage » the possibility of a Belgian shipowner putting up a limitation fund » in, say, my country — Great Britain — because a ship was arrested » there. If, then, the members of the crew were to pursue their remedies » against the limitation fund even though under the law governing the » the Belgian law, which is that the shipowner cannot limit against » members of his crew, the English judge might be in some difficulty

» as to the administration of the fund. It may be that this is unneces-
» sary, but we do feel that some such proviso ought to be so in the
» case of limitation funds being administered in countries in which there
» is no law that the shipowner cannot limit against members of his
» crew. »

Mr. J.T. Asser (Netherlands): « The Dutch delegation feels that
» the beginning of Article I should be re-worded in the manner I gave
» this morning, and it should be set out quite clearly that the shipowner
» may only invoke limitation of the liability by putting up the funds.
» Article 1 should be set.

» The second point is, it should be said that the burden and onus
» of proof with regard to the fault or privity should be on the person
» claiming the existence of such actual fault or privity. »

Mr. A. Malvagni (Argentine) (translation): « The actions of
» shoreside personnel employed by the Owners are included in article 1.
» It seems to me that this is too wide, because it will also permit the
» possible interpretation that the shipowner or shipping company shall
» be exempt from liability for errors that may be due to the Dockyard
» Superintendent, and senior employee or official in their firm who
» is responsible for the seaworthiness of the vessel, a state of affairs
» particularly likely to occur in limited liability companies, and at no
» time admissible. »

» I ask why this privilege should be given to shipowners, because
» it is indeed a real privilege in comparison with the position of all
» other persons engaged in business on land. There is no connection
» in this case with the other causes that have given rise to this situa-
» tion. »

Mr. G. Ripert (France) (translation): « We have three observa-
» tions to make on article 1.

» In the first paragraph the owner shall not be liable in the case
» the occurrence, giving rise to the claim, has not been caused by the
» personal fault of the owner, or by a fault committed with his consent.
» If this wording is interpreted according to the French legal method
» it would be up to the owner to prove that he did not commit any
» fault, a condition that will be very difficult to comply with. I think
» we would improve the wording by saying « unless it is established
» that the occurrence has resulted from the fault... », the victim would
» then have to prove the existence of the fault and only that proof

» would deprive the owner from the benefit of the limitation of liability.

» The second observation refers to the removal of wrecks. You » should not forget that under a number of national laws, the removal » of wrecks supposes an abandonment « in natura » of same, because » it must be made possible for the Authorities to remove the wreck. » It might be enough before the final protocol that reservations be » made in case the national law would impose the abandonment in » order that the owner might not invoke the limitation of liability.

» The third observation concerns claims. Owing to a very laudable » humanitarian intention, the limitation of liability is not opposed to » the crew, as har as actions in the frame of the compulsary insurance » laws are concerned. Nearly always the actions are introduced against » the shipowner by the Board which has indemnified the mariner and » are not based upon the special law, but upon the « droit commun » » and we see then reappear the liability of the shipowner in the frame of » article 1382. If you would insert in the draft a paragraph stipulating » that only personal claims of the crew are concerned, excluding all » other actions for liability, we will be completely satisfied. »

Baron Van der Feltz (Netherlands): « According to Article 1 of » the present draft there will be no possibility of limitation if the » occurrence giving rise to the claim has taken place without his actual » fault or privity. In my country, the Netherlands, strong opposition » has arisen against this principle. Althoug it was already embodied » in the 1924 Convention it was not inserted in our revised Maritime » Code of 1927, which stipulates that a shipowner cannot limit the » liability in case of the loss or damage being caused by him inten- » tionally or through gross negligence of himself. Perhaps one of the » reasons that the Netherlands did not adhere to the 1924 Convention » was the fact that limitation of liability was excluded in case of actual » fault or privity of shipowners.

» Our main objections are threefold : first, the principle laid down » in this Article 1 seems illogical; second, it restricts the right to limit » too much; and third, the wording is ambiguous and will give rise to » various constructions in various countries.

» As to the first point, as the draft now stands, the slightest » negligence of the owner himself will be sufficient to exclude the right » of limitation. But why then except from this principle the case that » a master, who is at the same time partly or solely the owner of the

» ship, may make a mistake or may make an actual fault with privity.

» There is much more logic in a system according to which only » wilful misconduct or perhaps gross negligence is relevant as to the » right of limiting the liability of a shipowner. In both cases it is » reasonable to exclude the right of limitation.

» Now the second point : in our opinion the principle of actual » fault or privity restrains too much the right to limit. In practice it » would also appear that the occurrence which gave rise to a claim » falling within the scope of Article 1 very often has taken place with » the owner's actual fault or privity. »

Baron Van der Feltz gave the example of a collision which occured at the time when the officer commanding the ship had no legal licence although the shipowner did not know it.

» Now my third point : in our opinion the wording itself is ambi- » guous and rather vague. In the English text it is said, « where the » occurrence giving rise to the claim has taken place without his » actual fault or privity... »; whereas in the French text it is said » « donnant naissance à la créance n'aura pas été causée par la faute » personnelle du propriétaire ». It is a detail which I am only men- » tioning but I think I have to draw attention to the difference between » « has taken place » and « n'a pas été causée ». It is not the same » thing.

» The true construction of the English words « actual fault or » privity » are well known in Anglo Saxon law.

» In our opinion a lot of difficulties will arise in construing those » words in the various countries who will ratify the Convention.

» In these days there is a diplomatic conference in The Hague » where various countries are discussing some alterations to the Warsaw » Convention of 1929.

« The delegates to that conference intend to deprive the carriers » of the benefit of limitation only in the case he has caused the dama- » ges intentionally. The legal committee of the I.C.A.O. is of the » opinion that such innovation is justified on the one hand by the » increase of the limit of liability and on the other hand that the word » « fault » has given rise to various constructions in the various coun- » tries.

» I think we have to follow our colleagues of the I.C.A.O. »

ARTICLE 2

Mr. J. de Grandmaison (France) (translation): « We have to present a short observation concerning article 2 and we ask to add a » 3rd paragraph.

» We are preoccupied indeed with the following situation : the limi- » tation fund can be constituted in different conditions. The fund can » be constituted by a shipowner who admits his liability but who can » actually not pay his claimants for various reasons, for example, in » the case the claimants do not arrive at an agreement owing to the » fact that some of them pretend to privileges, which others dispute. » In that case the owner constitutes the fund and admits at the same » time his liability. But the shipowner may constitute a limitation fund » in order to obtain for instance the withdrawal of the seizure of his » ship. The fund is thus constituted. The proceedings are going on. » Such proceedings may last one, two or three years. During that time » the financial situation of the owner may change and it is possible » that at the moment the claims of the various claimants will be » confirmed by a final decision of the Court there are other claimants » whose claims are not reduced by our Convention i.e. claims we called » this morning « ordinary », for instance, the claim of a banker against » his client, the shipowner.

» It is possible that such ordinary claimants might have seized » the fund because the limitation fund has remained an asset of him » who has constituted it. This limitation fund continues to be a part » of the assets of the shipowner, who has constituted the fund.

» It seems to us that it is reasonable to adopt a rule which makes » it possible to assign the limitation fund to the exclusive guaranty » of the claims for the security of which it has been constituted.

» We have in our French law a similar proceeding : « saisie-arrêt ». » When somebody alleges that he is a claimant of somebody else, he may, » if authorised by the Court, take a conservative measure by way of

» « saisie-arrêt » for instance, in the hands of the banker, on the account » of his debtor and if the debtor disputes his liability, he says to the » Court in order to obtain the withdrawal of the « saisie-arrêt » : I am » prepared to deposit the amounts involved and here they are. In that » case the seizure in withdrawn but the law provides that this deposit » thus constituted is especially appropriated to the security of the claim » for which the « saisie-arrêt » had been made and this constitutes a » privilege for the exclusive benefit of the claimant. From that » time the proceedings can go on and last two or three years. During » that time the situation of the debtor can become bad, he can become » bankrupt; this is of no importance, for the fund is especially appro- » priated for the claimant. We think, as a consequence, that it would » be very simple to follow the same principle and to add to article 3 » a third paragraph reading as follows : « The fund constituted in that » way shall be available only for the guaranty of the claims, for the » security of which the fund has been constituted, and the claimants » will have on the fund a special privilege excluding all others ».

» The holder will be of course the man who has the custody of the » fund.

» This is a measure of security. It seems fair that the claimants » who have seized the ship of their debtor see the seizure withdrawn » by the constitution of a fund. But these people should not run the » risk of the insolvency of their debtor. In order not to run that risk, » the fund has to be appropriated. »

Mr. C. Miller (Great-Britain): « Maître de Grandmaison supposes » a shipowner establishes a fund and then fights on the question of » liability for two or three years. At the end of that time the fund might » be taxed by ordinary creditors such as a wife claiming alimony. Under » our law that could not happen. That apparently is not so in France, and what our French friend wants is an addition, paragraph (3), which » will run something like this, that the limitation fund when established » shall be available only for the persons who have claims arising out » of that casualty. Now to us there is no objection whatever to that » being put into the Convention. »

Mr. J.A.L.M. Loeff (Netherlands): « I should like to say a few » words on the payment into Court.

» In our opinion the payment into Court, is something which can » be paid before the question of blame has been settled. However, » when the question of blame has been settled there is a retrospective » effect. If y am right, it is just a further development of the system » followed by our French friends. »

ARTICLE 3

Mr. E. Flystard (Norway): « In view of the inflation in monetary » values since the adoption of the now existing Convention the Norwe- » gian Delegation is in complete accord with the proposed increase from » £8 to £24 per ton for property claims.

» The Norwegian Delegation however is presently not able to sup- » port the suggested augmentation from £8 to £50 in respect of claims » for death and personal injury. Even though such a substantial increase » may socially and ethically seem both justifiable or desirable we never- » theless feel that the proposal in this respect is going too far, almost » tantamount to making some of the fundamental principles of limitation » illusory.

» We hold the view that these matters are not only a question of » insurance. The money needed to meet the increased liabilities will, » of course, ultimately have to be provided by the shipowners irrespec- » tive of which set of underwriters may be concerned.

» For logical, economical and practical purposes the Norwegian » Delegation must therefore maintain the view that the limit in respect » of death and personal injury claims be also fixed at £24, making the » total limitation fund available £48 per ton where both groups of » claims are involved.

» In conclusion I may perhaps add that with the dominant position » Norwegian shipping occupies in our commercial and economic life » our approval of a total of £74 would quite probably not be acceptable » to the Norwegian Government or Parliament, and we are therefore » faced with the opposite problem to that facing the British Delegation.»

Mr. L. Dor (translation): « With regard to the £ 24, I think there » is no question of an increase of the shipowners' liability because before » 1914 they paid 8 gold £, and because it is admitted that 24 paper » Pounds have certainly not more value then 8 gold Pounds. We come » indeed only and simply back to the situation of before the first war.

» Finally even for the £50 in the case of personal injuries, figures » which have frightened so much certain members and especially Mr. » Berlingieri, the multiplicator 3 in comparison with 1914 has also been » applied here. Before 1914 the owner paid 14 gold Pounds as limitation » for personal injuries. We may say that £50 is not very different.

» I draw your attention upon the fact, as I did this morning, that » we have not only to prepare a draft convention but that such draft » has also to be ratified by a diplomatic conference and above all by » our Parliaments. Now the ideas of all Parliaments on this question » of personal injuries have changed to a large extent. The ideas of the » Courts have changed too. The French Courts especially are much » more liberal today in calculating the indemnifications to be granted » to widows of sailors or of passengers who lost their lifes as a result » of a collision than they were 10 or even 5 years ago. »

Mr. Martin Hill (Great-Britain): « Objection has been raised to » the provision in paragraph (2) that for the purpose of this Convention » no ship shall be deemed to be less than 500 tons. I would like to begin » by saying that no objection has been raised in our own country where » we had strong representations both from the trawler owners and from » the tug owners and also from the lightermen that it is unreasonable to » say that a ship for this purpose is more than its actual tonnage. That » is not the view of the British Maritime Law Association; it is not the » view which, as I understand it, was accepted by the International » Sub-Committee at Antwerp in May at which I also dealt with this » particular point.

» Mr. Cyril Miller stressed in his remarks with particular reference » to life and personal injury claims that one had got to satisfy the par- » liaments in relation to social justice as parliaments think about it » today. With very small ships whatever figure you take you are » going to get a negligible amount such as we believe no parliament » would accept.

» Now 500 tons and £74 a ton, which is the extreme and very » unlikely figure of maximum liability, is £37,500. I should have thought » that any parliament would say that it is quite idle to pretend that a » shipowner who has done damage for which he is liable cannot afford » to have an insurance policy for £37,500. Everybody who goes out on » the street in a motor car has got one. »

Mr. F. Halvorsen (Norway): « There exists, presumably, in no » other country such an important and extensive line and cargo trade » by small ships as in Norway. The quantity of merchandize carried » on board small liners and freighters is believed to be about twice as » much as by rail. Very fews of these ships are over 300 tons, and the » majority fall under 100 tons.

» This branch of the Norwegian shipping trade is carried on under » extremely difficult conditions financially, and if these small ships » shall be deemed to be 500 or 300 tons when calculating the limitation » of liability the additional insurance premium will mean a very heavy » burden on the shipowners.

» According to this the Norwegian Maritime Law Association beg to » suggest alterations in Article 3, Section (2) of the draft Convention » as set forth in the supplementary observations just mentioned. We » propose that for ships under 300 tons the limitation of liability shall be » on the basis of the sound value of the ship in undamaged condition at » the time of the occurrence giving rise to that liability, but in no case » more than £24 per ton calculated on the basis of 300 tons.

» We admit that our proposal will to some extent disturb the sim- » plicity which is so well obtained in the draft of the British Association, » but we see no other way in which the problem of small ships can be » solved, if it shall be solved in a Convention. »

» We will not be surprised if we hear that objections are made » against our suggestion and we would like to make it clear that in » the case the British Association are of the opinion that no limit can » be based upon the value of the ship, we would suggest to exclude » the little ships (e.g. those of less than 300 tons) from the application » field of the Convention and to submit their limit to the National » Law ».

Mr. K. Pineus (Sweden): « The question of the small vessels is » a difficult one. You have the small fishing crafts, you have the » trawlers, but you have also the valuable but small tugs. To deal » with them in a Convention in an equitable way, having regard to all » their special needs, is certainly not easy. I think we have to face » this problem in a somewhat different line from the one Mr. Martin » Hill so ably put forward to you. But we must not draft a Convention » in such a way that we put a too heavy burden on the small ship-

» owners, because the weaker side is not always the creditors, but it » may be the debitors because they are smaller people. Parliaments » everywhere are listening to that section.

» Now the Swedish delegation feels — and we have said so in our » Report — that we cannot accept the 500 tons line. I think there is » much in the Norwegian proposal, not necessarily because it is easier, » but the best way to deal with the problems of the small vessels is to » say that vessels up to a tonnage of 300 tons should be left to the » National Legislators to deal with specially, and they should not be » included in this Convention. »

Baron F. Van der Feltz (Netherlands): « It will be very hard for » us to accept paragraph (2), Article 3 of the present draft : if the » minimum of 500 tons is maintained. This is the position of the Nether- » lands: 1285 sea-going vessels, totalling about 3.000.000 tons. Of those » 1285 vessels there are 754 ships below 500 tons, totally a quarter of » a million tons. According to the present Dutch Law a ship of 500 tons » can limit its liability to about £7000. If the Convention is accepted » for that ship, the limit of liability will be raised to about £38,000. » For a ship of 100 tons the present Dutch limit is about £1400. That » sum will equally be raised to £38,000.

» Those 754 ships are not just ships that are trading along the » Netherlands coast from one Netherlands' port to another Netherlands' » port, but they are trading over all the seas of the world, in the Baltic, » in the Mediterranean, in the English and Irish Seas, along the coast of » France, Spain, Portugal, Africa and South Africa.

» Consequently the proposal made by the Norwegian delegation, and » seconded by Mr. Pineus of the Swedish delegation, cannot be accepted » by the Netherland's delegation, as the greater part of those ships have » to limit the liability not in their own country, but in other countries, » and therefore it is very difficult to accept them in the present Coven- » tion because uniformity will then not be reached.

» We think it is possible to come to a compromise if the present limit » of 500 tons is set considerably lower, but — now I am speaking per- » sonally — I think, if we could come to a figure of 300 tons, it would be » possible to overcome the objections of the Netherlands' delegation. »

The President closed the session.

Tuesday 20th September 1955.

MORNING SESSION

Mr. N.V. Boeg (Denmark) (translation): « The Danish delega-
» tion have a few remarks to make.

» The paragraphs 1 a) and b) give a definition of what is
» called « material damages » and « personal injuries ». It is further
» declared that such definitions apply to the questions covered by
» articles 3 and 4.

» Personally I do not understand why article 5 cannot be drafted
» in the same way. It seems to me that the problems are the same and
» that it would be more logical to use the same wording in article 5.
» as in 3 and 4.

» With regard to paragraph 2 we agree with our Scandinavian
» friends that the figure of 500 Tons is far too high and the Danish
» delegation suggests a limit of 250 Tons.

» As to the question of material damage, we agree upon the Nor-
» wegian suggestion to accept £24 per Ton.

» With regard to personal injuries we are prepared to accept also
» £24 as suggested by our Norwegian friends : in that way we arrive at
» a maximum of 24 + 24 say £48. »

Mr. K. Jansma (Netherlands): « Speaking entirely on my own
» behalf, as a membre titulaire of the Comité Maritime...

» I am wondering how much an increase of liability, according to
» the draft, will cost for the shipowners...

» I believe my fellow lawyers will in many cases assert that in more
» than one country if the judge has the opportunity to hand out a
» comfortable allowance to a *persona miserabilis* that, and the know-
» ledge that it is all paid by the insurance would, I am sure, tend to

» make this Convention more expensive to the shipowners than is now » expected.

» This Convention has been defended as a social measure, but » something should be done to prevent the progressive governments and » parliaments imposing measures that would go even farther. We should » bear in mind that in the actual social legislation there is never an » opportunity for an injured person to receive fantastic sums. For » instance, in the way of compulsory accident insurance of employees, » there the injured person does not receive vague sums to be assessed » by the Courts of Justice, but there is a definite ceiling fixed by the » law in proportion to the income of the person in question, and apart » from wilful acts and gross negligence this ceiling will never be » exceeded. If this Convention is a social measure, I should like to » point out that this is exactly the ceiling which we do not find in this » Convention, and which it is going to be very difficult to bring in.

» Now that we have no such ceiling I believe that it is really more » than important that the maximum liability should not be higher than » is absolutely necessary, because it would tend to increase the costs » of the shipowners. The figure of £50, as we understand it, is only » based on the vague feeling that it would find grace in the eyes of » Members of Parliament; but what I suggest is that it should be based » on some kind of statistics, and there must be some statistics because » we are assured that the £50 will never be reached practically, so there » must be persons who know how much is going to be paid.

» I would advise this Committee to investigate, in how far it is true » that the figure should be £50 and whether a smaller figure would not » be sufficient. »

Mr. K. Spiliopoulos (Greece) (translation): « Replying to the » objection of most delegates alleging that the English draft implies » an increase of the shipowners' liability and that such increase affords » mathematically and logically at least an increase of insurance expen- » ses, Sir Gonne Pilcher recommended to those who supported that » view to take the advice of Messrs. C. Miller, Martin Hill and Raynor.

» In the eyes of Sir Gonne Pilcher such advice would replace all » other arguments but we should really wish to know these arguments » against that thesis, as we never heard anything up to now. But » if such advice, substituting legal arguments, is a proof of the good

» faith and common sens that prevails in British Case Law, it can » unfortunately not be an argument for the continental lawyers towards » their Parliaments or towards all other competent authority...

» Moreover there cannot be any doubt that the contributions of » the shipowners to the clubs will be increased and that, as far as hull » insurance is concerned, if the premiums are not increased, the insured » values will be increased, which has the same result.

» Finally, I reserve to prove later on, by figures, that the amounts » suggested by the British Association are excessive and unbearable. »

Mr. C.D. Raynor (Great-Britain): « I think it would perhaps be » opportune if at this stage I amplified in my capacity of an hull under- » writer and of an underwriter of shipowners' liability for damages done » by collision the remarks which Sir Gonne Pilcher made yesterday.

» I would like to give it as my personal opinion that the eventual » effect upon insurance costs will be almost negligible. The number » of cases involving limitation on the existing bases is comparatively » small when one pays regard to the vast field of our insurance activities.

» Hands have been thrown up in horror at the thought of an overall » limitation figure of £74 per ton; whereas in point of fact the owners » of costly modern vessels are already exposed to much higher scale » of liability where the principle of limitation is based on the value of » the vessel.

» May I recall to you what I said at the Brighton meeting in » September last year, that in the British Courts over a period of 27 » years 1925 to 1952 the number of limitation actions amounted to only » 140 cases and the limitation funds involved aggregated something less » than £2.750.000.

» Moreover the increase in the amounts of the claims for collision » liability will be very largely offset by increased recoveries in respect » of loss or damage to the insured vessel.»

» One finale point : we have been constantly reminded of the fact » that under the new draft Convention the shipowners will be saddled » with an increased financial burden. But, may I gently remind them » that they are not always at the paying end ».

Mr. J. de Grandmaison (France) (translation): « Which is the » position of the French shipowners concerning the suggested limita- » tions of £24 and £50 and concerning the minimum tonnage of 500 » Tons ?

» Their position is based on the actual facts. Our shipowners do » not wish to increase the cost of their management but they consider » that such new convention is the last chance they have to avoid return- » ing to common law.

» There seems to be in this Assembly some confusion in the ideas » of some delegates as they seem satisfied that, if the present con- » vention is not accepted, their national law which applies an extremely » favourable system of limitation of liability will continue to be ac- » cepted.

» The French shipowners however are of the opinion that, if this » new convention is not ratified and admitted by the majority of the » maritime countries, we will necessarily arrive to an overthrow of » maritime law in a great number of countries and to the suppression » of all limitation of shipowner's liability.

» This is a question which will not be discussed by the International » Maritime Committee, it is not a question wich will be discussed by » the Governments, but it is a question which will be discussed in » Parliament by the members of Parliament who have generally simple » views on this problem. Such members would consider for instance » that if you are killed by a bicycle, the situation is the same as if you » were killed by a Rolls Royce, the widow and the children suffer the » same damage and they have to be paid equally.

» If in Parliament somebody would take the example given yester- » day by our American friend, the case of the « Grancamp », the » member of Parliament would say : here the Grancamp, she is along- » side quay, she blows up, she destroys a city and kills 2.000 people. » Under limitation system : the Grancamp will be abandoned, and not » a penny will be paid. But, if next to the Grancamp, on the quay, » there is a small workshop, a small factory, which blows up, its owner, » who owns only this small factory, will be compelled to pay up to his » last penny. Our Parliament would not approve such a Law.

» We therefore are afraid that this is our last chance and that we » are playing with fire. In these circumstances the French shipowners » think it is not too expensive to buy the security of a convention on » limitation of liability by accepting the limits which have been sugges- » ted. We would be happy if a compromise could be concluded and a

» lower limit be considered, but we are afraid this could be dangerous. » It is necessary that such limits would be substantial and could not be » considered as too poor. We think that in order to have such limita- » tion accepted by our Parliaments, they should be accepted first by an » international convention grouping the majority of maritime nations.

» Our second observation will be extremely short. Article 3 does » not supply a definition of the tonnage to be applied. We come to the » conclusion that we prefer to maintain the tonnage as ascertained by » the 1924 Convention — no difficulties occurred since 1924 and we think » it is the best system. This should be stated in article 3.

» Our third and last observation : article 3 in fine is in respect of » the constitution of the limitation fund or of the deposit of a security » in order to obtain the withdrawal of the seizure of the ship.

» It is stipulated in the last paragraph that the limitation fund » constituted in that way or that such bank security may be converted » in the national currency of the state in which the fund is constituted » or the security deposited.

» We would like to point this out : When a shipowner decides to » pay his creditors, he pays and that is the end of is. But if for a » reason or an other, instead of paying, he prefers to supply a security, » in that case the shipowner is still obliged when he pays, to give to his » creditors the full amount of the limit fixed by the Convention, this » limit being a gold limit. If, between the time the fund is constituted » and converted into the national currency of the place where the fund » is constituted, such currency is devaluated and has lost say half or » 2/3 of its value, it is obvious that such a risk is not for account of » the creditor, it is a risk of the debtor.

» That is the reason why we have prepared a text which should » be the last paragraph of article 3 and which I shall have the honour » to deposit in the hands of Mr. Chairman at the bureau of this » Conference. This is the text :

» When the owner limits his liability in accordance with the pro- » visions of the Convention, then, for the purpose of any proceedings » in any State, those amounts may be converted into the national cur- » rency of that State at the rate of exchange prevailing, as the case » may be, at the date when the payment is made to the claimants or

» at the rate of the date of the constitution of the fund or at the rate » of the date when the bail or other security is supplied. The differen- » ces in exchange will be on the owner as long as he will not have paid » his claimants or as long as he will not have placed the limitation » fund at the disposal of his claimants according to the rules of proce- » dure fixed by the law of the country where the fund has been » constituted ».

» We request you, Gentlemen, to kindly examine this text which » seems to me reasonable and containing no difficulties, it affords an » essential security for claimants to whom a limitation fund or another » type of limitation of liability would be opposed. »

Mr. H.G. Röhreke (Germany): « On behalf of the German Dele- » gation I should like to make the following remarks on the contents of » Article 3 of the draft.

» The British proposal to raise the limit for property claims to £24 » is fully agreed to.

» The German Delegation is not in line, however, with the further » proposal to raise the limit for personal claims to £50 or £74. It appears » to us that the same principle which holds good for the limit of property » claims should also be invoked for the purpose of fixing the limit » of personal claims. That means the limit shall be three times as high » as in the 1924 Convention, in other words £48.

» The second remark I should like to make is on paragraph (2) of » this Article. With regard to this, we are prepared to set aside the » principle and substitute a limit of 300 tons as has been suggested » already by other delegations.

» The final remark which is to be made on behalf of the German » delegation is this : as to paragraph (3) of Article 3, we have originally » proposed that the conversion of the French franc currency into » national currencies should be regulated in accordance with Article 15 » of the 1924 Convention. On reconsideration of this point, we have » come to the conclusion that taking into account the possibilities of » devaluation the most reliable conversion system seems to be that pro- » posed in the draft. Although this system has never been applied in » Germany up to now, I am confident that it will find the necessary » approval of the bodies which will have to accept and to ratify the » Convention.

» In our opinion it should be clearly understood, however, that » once the owner has provided the bail or established the fund the risk » of devaluation lies with the claimant. Although we read paragraph (3) » in this way, we feel that this could perhaps be expressed even more » clearly in that provision. »

Baron Van der Feltz (Netherlands): « Before dealing with para- » graph (3) of Article 3, I wish to make three observations on behalf » of the Netherlands' delegation.

» First, as to the figures mentioned in sterling on pages 6 and 7 » of the final draft, figures already mentioned several times — £24 » and £50. I am authorized to say that these figures are acceptable to » all parties concerned in the Netherlands.

» Secondly, as to the calculation of the ship's tonnage, we fully » agree with the Report. We are in favour of an insertion of the rele- » vant Article of the 1924 Convention.

» My third point is with reference to the suggestion my friend, » Asser, and I made yesterday. We formally propose the following » amendments to Article 1.

» The first sentence of Article 1 to be deleted and replaced by the » following :

» « The owner of a sea-going ship may limit his liability so that » he shall not be liable beyond the amount specified in Article 3 of » this Convention in respect of any of the following claims, unless it is » established that the occurrence giving rise to the claim is attributable » to his wilful misconduct or his gross negligence. »

» A new paragraph is to be added at the end of Article 1, which » paragraph shall read as follows :

» « The fact that the owner of a ship limits his liability shall not » constitute an admission of liability. »

» Paragraph (3) of Article 3 of the present draft is of vital impor- » tance for this Convention, for it is dealing with a highly technical » point which, no doubt, was dealt with in Article 15 of the 1924 » Convention.

» The present draft says that the conversion of the amount of » French francs into national currencies must be done at the rate of ex- » change prevailing at a certain date. I feel that the words « at the rate

» of exchange prevailing at a certain date » are rather vague and may » give rise to certain difficulties especially in countries where there is a » free gold market. I think it is absolutely necessary that in this » Article the definition is inserted of the rate of exchange against which » the amounts mentioned in the Convention may be converted in » national currencies. I think there are two possibilities : it could be » said that the rate at which the sums may be converted should be the » rate at which the competent authorities of the countries where the » proceedings take place buy or sell gold from or to non-residents. » Another possibility is that the Convention takes as the rate of » exchange the average price of gold on the official gold market in » London or New York.

» My second observation, as regards paragraph 3, is the date on » which the conversion should take place. In principle there are three » moments which are relevant to be taken as the moment of conversion, » namely, the moment the claim arises — which was the moment in the » old draft — the moment judgment is given and the liability is » established and thirdly, the moment of payment.

» I think we must make a choice. If we accept the draft paragraph » 3 as it stands now, it will be very dangerous to arrest a ship, because » if bail is given to prevent the arrest then the risk of the amount of » the bail is entirely on the creditor's shoulders, and I do not think » that without an admittance of liability it is reasonable that that risk » should be put on the creditor. »

Mr. J. Van Ryn (Belgium) (translation): « The question is to » know whether the constitution of the limitation fund implies a re- » cognition of liability or not; according to some, such recognition of » liability results from the constitution of the fund. According to others » this is not correct, and according to a third thesis, which seems » also to have been defended, it would depend on whom constitutes » the fund to recognize or not at that moment his liability.

» The difference op opinions which have appeared on this impor- » tant question is perhaps being caused by a mere misunderstanding » and in order to clear it away, it will be sufficient to refer to the » proper aim of the draft convention under discussion. Indeed, we » have only to organize what is called limitation of liability. No ques- » tions of procedure are involved, not questions of seizure, not other

» questions which have been discussed at a previous conference and » which have resulted in a convention which is already into force.

» The main dispositions of the draft under discussion suppose » necessarily that the question of shipowners' liability has been decided » by a court or by an agreement between the interested parties or by » a recognition of liability if the owner is of the opinion that it is » useless to contest the claims of the plaintiffs.

» The whole economy of the draft is thus based on the idea that » the case concerned is one where the liability has already been esta- » blished either by judgement or by recognition. The only question is » to organize the execution of the obligations of carrier as a result of » his liability established by judgment or recognition and to organize » the execution of such liability, by taking into account the traditional » idea that the shipowner is liable up to a lump sum for any one » accident, liability that may not be higher than a certain amount. » When the question is put in that way the problem I spoke about » a few minutes ago is no longer to be faced, or more exactly, is sup- » posed to have been solved already. But then an accessory question » has to be examined, that question has been somewhat discussed about » article 3 but especially about article 5. It is the situation which arises » when an arrest is being effected on behalf of a creditor to whom a » carrier might eventually oppose his limitation of liability.

» In this case the question of liability has not yet been solved. » There is neither a judgment nor recognition of liability by the debtor.

» Today we have not to discuss the question of the arrest which » has been decided by the 1952 Convention which stipulates that in » such cases those who are entitled to operate an arrest and who have » effected it will have to undergo withdrawal of such seizure when the » shipowner supplies a guarantee or a security.

We have to visualise the case where the limitation of liability is » opposed to a claimant who has made an arrest in conformity with » the convention we are discussing now. It is quite clear that the » amount of the security to be supplied to obtain the withdrawal of the » seizure can be influenced by the eventual limitation of the liability » of the owner.

» The owner is entitled to limit the security he supplies in order » to obtain the withdrawal of the seizure. He is entitled to limit his

» liability the day when the judgment would have accepted it. On the » other hand — what has been done in article 5 — a collective character » has to be given to such security.

» But here something else is at stake. Here — and that is the » essential point upon which I would like to draw your attention — is » no question of a limitation Fund. Here a security has to be supplied » and not a limitation fund to be constituted. The constitution of a » limitation fund has to be considered as a payment whereas the » constitution of a security has nothing to do with payment.

» As the constitution of the limitation fund is a payment, it must » be taken that the liability has been established or recognized. It » implies the existence of a debt. To the contrary, the constitution of a » security does not imply any recognition of liability.

» In fact it will often happen that the security to be constituted in » order to obtain the withdrawal of a seizure or of more seizures will » be equivalent to the amount of the limitation fund which might be » constituted afterwards when the question of liablity will be solved.

» In other words the question whether the constitution of the » limitation fund implies a recognition of liability seems to me not to » be the true problem. In fact the constitution of the fund can only » be contemplated when the liability has been established beforehand, » and I am wondering whether doubt has not been raised in the minds » of several delegates owing to the wording of the last al. of Art. 3, » where a Shipowner is supposed to constitute a Limitation Fund » although no judgment has yet been given, that no Tribunal has » recognized his liability or that he himself did not recognize liability.

» Such hypothesis can never be realized. There can be constitution » of security, constitution of warranty or, according to English law, what » is called « payment into Court », but there can be no actual consti- » tution of a limitation fund i.e. payment. There can be no payment » before there is a debt. As a consequence it might be advisable to cor- » rect the actual wording of the last paragraph of article 3 by dropping » the words « or has established a limitation fund » and by maintain- » ing only the words : « or if before that date the owner has made » payment into Court in respect of that liability or has provided bail » or other security in accordance with article 5 of this Convention, » at the date of such payment or provisions, as the case may be ».

» For the same reasons it might be advisable to change somewhat » the wording of the amendment to article 3 suggested by the French » Association. For the time being I am not going to make a more » definite statement, on this point, because I should like to think it » over before delivering an outlined opinion about it. »

Mr. Sjur Braekhus (Norway): « The Norwegian delegation thinks » that the new draft af Article 1 is a great improvement and I think we » can accept it as this. In Article 1 (b) we would have preferred the » phrase « or any other persons in the service of the vessel », which is » the same phrase as Article I number 1 of the 1924 Convention, to be » used instead of the words, « in the navigation or management of the » loading, carriage or discharge of the cargo ».

» The results will, I think, be practically the same; but there are » cases where limitation should be granted, which will be covered by » the more general wording of the 1924 Convention but not by the » present draft. For example, the responsibility for injury to passengers » during embarkation or disembarkation.

» As regards the proviso 2, we think the wording is still unsatisfac- » tory but that is a question of drafting.

» I should like to put a question to Mr. Miller. It is definitely one » of the minor points and I am afraid that by putting the question I » shall demonstrate my own ignorance. The question is : what is meant » by the word « right » in Article 1 (b) and (d) ? Is it right in a » thing, for example, the rights of the mortgagee of the vessel ? Would » rights of this kind be covered under the term « property » ? Or does » the word « right » also cover pure contractual rights, for example » the right under a charter party ? Can, for instance, the owner limit » his responsibility towards the charter party, which is the result of a » fault in the navigation of the ship ? If that is the case, we are back » to the rule in Article 1, number 4, of the 1924 Convention, a rule » which I thought should be abandoned. Could the word « right » be » deleted ?

» Lastly I should like to say a few words about the £50 limit. The » Biritish Association has told us that they dare not present a Bill to » Parliament with a lower figure than £50 per ton for death and per- » sonal injury claims; and secondly, that this — to give a lower amount

» — would be against the modern ideas of social justice; and thirdly, » that the augmentation of the limits is not going to make a shadow » of difference to the P and I premiums. I think it is difficult to » reconcile those arguments, if the last point is correct why should » they then lay such stress on the two others.

Mr. Garrigues (Spain) (translation): « The Spanish Delegation » finds that it has to intervene again, in connexion with the discussion » of Art. 3 of the Convention, in order to recall the position it adopted » during yesterday morning's session.

» We said then, and repeat now, that we would subscribe to the » English proposal on two conditions, namely : first, provided the » rates were reduced to more reasonable levels, which could be borne » by all fleets of like age and condition to the Spanish and others. » Secondly, provided the minimum limit of 500 tons, also referred to » in Article 3 of the Convention were suppressed.

» Since our agreement to this Convention was conditional, we » should naturally like to have a clear statement on this point from the » English Delegation.

» « The Spanish Delegation, in its wish to be cooperative in this » matter, and esteeming, naturally, that any reduction not based on » rational calculation will be an arbitrary reduction, nevertheless, in » order to reach an agreement, and to enable all to attain the aim to » which we sincerely aspire, which is the approval of the international » Convention, ventures to propose a reduction of 20 per cent in the » figures that appear in the draft.

» Another essential point on which the Spanish Delegation would » like to know the opinion of the English Delegation is the standard to » be adopted for the constitution of the limitation fund, that is to say » whether this fund is to be constituted for each casuality, or per » voyage. The problem is economically very far-reaching, and we feel » that on this point, too, we have a right to demand some definite » clarifying statement. »

Mr. Fr. Berlingieri (Italy): « The Italian delegation is willing, » in order to co-operate to the success of this Conference, to propose » some amendments to the various Articles of the draft.

» As our first concern the Italian delegation agrees to the amend- » ments proposed yesterday by Mr. Miller, and they agree also with the

» new text of the first paragraph proposed by the Dutch delegation. » Should such text proposed by the Dutch delegation not be accepted, » the Italian delegation think that a clarification is necessary as to the » first paragraph in respect of the French translation of the words » « actual fault or privity », inasmuch as the circumstance that occurs » giving rise to the claim has taken place without the consentment » of the owner and does not imply necessarily a fault on his part unless » he was in a position to avoid the consequences of the above occur- » rence.

» The Italian delegation therefore believes that in the French text » the words « fait ou faute » should be adopted. If this is not the case » it should at least follow the suggestion of M. le Doyen Ripert and the » wording of the article should be as follows : « Lorque les faits donnant » naissance à la créance n'auront pas été causés par la faute ou qu'on » aurait pu prévenir... ».

» The deletion of the first line of the proviso is proposed. There » is in fact no reason why the claims for salvage on general average » should be excluded, as such exclusion in fact would cause a further » increase in the owner's liability. On the other side, the fact that such » claims are proportional to the value of the vessel does not exclude » that after the values of such claims having been determined, such » claims should not be subject to limitation.

» As far as Article 2 is concerned, the Italian delegation think » that the principle of the limitation applying on any distinct occasion » on one side causes an increase of the owner's liability and on the » other side is theoretically dangerous inasmuch as it is very difficult » to determine the causal relation between what caused the occurrence » and the occurrence giving rise to the claim, as it implies a solution » of the vexed question of the criterion of causality to be followed.

» This difficulty has already been noticed, as it has been suggested » yesterday to regulate the special rule in the case of two occasions » following one upon the other with the impossibility of ascertaining » which of these occasions caused a particular occurrence.

» Apart from this, a practical difficulty might arise as different » causes could follow the distinct rules, in this respect the principle of » causality, and therefore deem that a certain occasion is the cause » of an occurrence; and with the constitution of a second fund of

» limitation where the first one has already been constituted otherwise » for occurrences of the same type.

» It is therefore advisable to avoid such difficulties and follow the » principle of the limitation per voyage.

» As to the increase of the owner's liability, the objection that the » limitation on a distinct occasion would not increase the cost of » insurance, cannot be taken into consideration. In fact, it is the opinion » of the Italian delegation that the statement made in this respect by » some British clubs' representatives, cannot be considered a sufficient » guarantee by their Parliament ».

Mr. J.A.L.M. Loeff (Netherlands): « May I recall to you that in » the Netherlands a payment made in Court implies no recognition » of liability and that such payment has no retro-active result in the » case where liability is admitted afterwards.

» If I understood rightly, in Great-Britain the payment made to » the Court can only be done after the settlement of the question of » liability. Mr. Lange pointed out that it was not possible to pay in » Court without recognition of liability. I can hardly share that point » of view.

» Supposing that at the end of a voyage a claim is introduced » higher than the limit and that the shipowner who admits liability » pays the limitation fund in Court, in that case he cannot recognize » by such payment his liability for claims which will be introduced » afterwards and which might be subject to the same limit. I think that » the system applied in the Netherlands has to be preferred. »

Mr. E. Pasanisi (Italy) (translation): « I would like to repeat » clearly that the Italian delegation have never supported the principles » of the abandonment. That principle is dead and we are ready to » bury it. We have always defended the criterion of the value of the » ship at the beginning of the voyage. It should be noted that, although » such may seem to be strange, there is no great difference between » the point of view of the Italian delegation and that of the English » draft, at least as far as the general principles are concerned.

» The British draft is also based upon the criterion according to » which the limitation has to be based upon the value of the ship at

» the beginning of the voyage. The only difference between our two » points of view is that we take the real value of the ship at the » beginning of the voyage whereas the British draft would like to » create a conventional value of the Vessel by applying a fixed figure » per ton.

» The Italian delegation would be prepared to accept a valuation » based on the conventional value of the draft if it was proved that » there is a very important reason not to adopt the more logical criterion » of the real value and that if, by adopting a conventional value, we » will not arrive to too great misfortune for the small and middle ship- » owners. It would be too bad also for the owners of big liners. That is » why the Italian delegation is of the opinion that the limit should be » based on the value of each ship at the beginning of the voyage. Such » solution constitutes already a great improvement on the 1924 Conven- » tion, provided that a maximum value and a minimum tonnage be » fixed. With such a system the Italian delegation think it will be » possible to adopt a rather high maximum limit as it would mean a » maximum and not a normal limit. Such solution, although it favours » the owners of big ships, would approach the maximum. On the » other hand it would be sure that in each case the claimants will have » at their disposition a fund proportionally equal to the value of the » ship at the beginning of the voyage, and we would avoid the absurd » reduction of liability for small ships. That is in our opinion the most » important point. We will avoid consequences as this which could » occur under the terms of the British draft i.e. that a ship of 7.000 T. » for instance will have the benefit of a limitation of liability of £500.000 » as well if it concerns a liberty ship that costs about £250.00 as well » as a luxurious liner costing £2 or 3.000.000. This is the reason why » the Italian delegation has made the suggestions in the memorandum » which has been distributed at the beginning of the conference.

» These suggestions can be summarized as follows : the limitation » of liability should be fixed as the value of the ship at the beginning » of the voyage. Such limit would however in no case be higher than » a certain figure which could be, as it is only a maximum figure, the » same limit as suggested by the British Draft. The ships of less than » 300 Tons would be submitted to the limit applied to ships of 300 » Tons.

» That is why we suggest following amendment on article 3 :

» « The amount beyond which the owner of a ship is not responsible » in the cases specified in article 1 of this Convention is determined by » the value of the ship at the beginning of the voyage. However, the » liability of the shipowners will in no case be higher than :

» a) £ 24 per ton for claims in respect of loss of or damage to properties » or rights of wreck liability;

» b) £ 50 per ton in respect of loss of life or personal injuries. »

» The remainder of this article could be maintained, except the » modification of the figure of 500 Tons, which figure we should like » to fix at 300. These are, Mr. Chairman, the suggestions of the Italian » delegation.

Mr. K. Pineus (Sweden): « Mr. Braekhus said that the Norwe- » gians were not quite sure what was meant by the word « rights » » as used in Article 1 (b) and also in the printed draft (d) and also » in Article 3. Here is one more Delegation who come up on the » platform to say that we are not quite sure what the English Delegation » means by using the word « rights ».

» As regards the new British draft in respect of Article 1 (b) we, » the Swedish Delegation, would prefer to retain the words we had in » the old Convention, « in the service of the vessel ». In respect of » the proviso dealing with crew claims we believe that it would be » materially improved were we to cut out the words starting with, « if, » under the law governing.... » to the end of « submit a draft ». We » think it would be sufficient to say, « claim made by any master, » member of the crew or any other servant in the employment of the » owner », and stop it there.

» We have reached a very difficult time at this Conference because » we are just facing great difficulties. The main point, as was said » yesterday, is what figures are we likely to find international agree- » ment on.

» I would suggest that we retain the £24 as suggested in the » British draft, and for personal injury we add not £50 but £40. We » said something about it in our preliminary report and we think that » at home we could defend that figure and perhaps we could, by sug- » gesting that figure, come a little nearer to an international agreement.

» Having reached the stage where you begin to reach a result by a » compromise you never know really where you will end. I will take » a further step to help us to make progress. As you may remember, » the Swedish delegation took a very strong position with regard to the » smaller vessels. We still regard that as a problem which cannot be » solved as easily as it has been in the printed draft. But we suggest, » in order to reach a compromise, that we reduce the figure from 500 » tons to 300 tons. We will try to get people at home to accept that » figure. It is no exaggeration to say that I think it will be very » difficult, but we must try to do something acceptable to both parties.

» With regard to the question of whether we should have gross » tonnage or dead weight, and so on, the Norwegian delegation sug- » gested gross tonnage at Brighton, and I very much doubt whether » that is not the best solution, in spite of the very able remarks made » by the French delegation, and supported by Maître de Grandmaison. » On behalf of my delegation I suggest that tonnage in this Convention » should be gross tonnage.

Mr. Vasco Taborda Ferreira (Portugal) (translation): « With re- » gard to article 1, I have heard that the Convention should be limited » to commercial ships and should not include war-ships. The British » proposition I received this morning does not contain such amend- » ment.

» I should like that the assembly gives an advice in this case for it » seems to me that the limitation of liability should only be applied to » commercial ships.

» Now I would say a word about paragraph 2) as it is suggested » today by the British delegation. According to the idea of other » speakers I would like to say that the French text of the draft is too » vague and as such contains serious difficulties for practical applica- » tion.

» The words « rights of any kind » seem to me to be extremely » vague and difficult to define. How can we apply such article in » practice ?

» In the French text there is a word which is extremely dangerous » for lawyers, the word « causés ». Such difficulty does not exist in the » English text. The British have moreover a different conception, that

» of the « consideration » which word avoids the difficulties which » might be raised by the word « causés » of paragraph b) of article 1. » I will try to find another wording that I will submit to you.

» In article 3 we are fully in discussion. I think that first of all we » should know whether we like to limit or not.

» Which is the logical basis we might find for limitation of liability, » if we are willing to accept such limitation. I see but one solution, » that is the value of the ship.

» I think however that we could admit the lump sum system of » our English friends, provided it is moderated by the amendment of » the Italian delegation and that the limit of 500 Tons is brought back » to 300 Tons.

Mr. O. Dettmers (Germany) : « The new draft of paragraph 1 » (a) and (b) par. 1 is very clear and an improvement. As to para- » graph 2 (2) and (3), we feel some doubt as to whether the new » provision is an improvement.

» In our German law claims of German masters and mariners for » personal injury are not possible against any German shipowner or » any master or member of the crew of any Germany ship. Our system » of compulsory social insurance is such as to restrict the Mariners' » claim for personal injury entirely towards the Social Insurance » Institution. There is only one exception : a shipowner is fully liable » if he has been condemned by a penal court for having caused the » accident intentionally.

» You will understand that we do not wish to introduce any possi- » bility for German masters or mariners to lodge claims for personal » injury against a German shipowner or against the limitation fund.

» Some of my friends have some doubts whether the new draft of » Article 1 makes it sufficiently clear that the Convention shall not » apply so far as claims of masters or mariners are not allowed under » the national law.

» My personal opinion is that under the Convention which is deal- » ing only with the limitation of liability the shipowner has always the » right and possibility to deny and claim at all, and that the Conven- » tion will apply to such claims only which are materially founded » under the national law. »

AFTERNOON SESSION

ARTICLE 4, 5 and 6

The Chairman (translation): « Gentlemen, the agenda of today has » been fixed by the bureau of the conference as follows. First we will » exchange — and I suggest to do so shortly — our views on the » other articles which have not been examined so far. Further, the » delegates who wish to make general observations will come to the » platform. Thereafter I will interrupt the session for a few minutes » and ask the delegates and delegations to introduce amendments or » wishes or decisions they might wish either to submit to the Sub-Com- » mittee or to submit to the votes of this Assembly. Further, if — as » I suppose it will — the Assembly agrees upon the appointment of a » « commission de mise au point » I will ask you to appoint that Sub- » Committee today before leaving. That Sub-Committee, according to » the decision that has just been suggested to the Bureau of the Con- » ference, will be constituted by one member per delegation. In the » meantime you might, delegation by delegation, nominate the per- » sonality you wish to sit in that committee. That Sub-Committee will » work tomorrow and the following day ».

Mr. R.P. Cleveringa (Netherlands): « We are wondering whether » it would be more advisable to insert in article 4 a few words precising » its provision. We are wondering whether this article is not drafted » in a too restrictive way because it refers only to the rank of claims » and creditors and because it states amongst others that that rank » is submitted to the internal law of the country where the fund is » constituted. Other questions are however left without solution. That » is the reason why we are wondering whether it would be advisable to » insert in this article the words « and all other rules concerning the » constitution of the fund and all other rules of procedure ». These

» words should be inserted at the 6th line of article 4 after the words » « property claims ».

» One of the delegates might ask whether the present intervention is » not useless because of the last paragraph of article 6. I think that » nevertheless this intervention is valuable because article 6 refers only » to the case where a seizure has been made and we can imagine also » that a fund is constituted without seizure and in that case we have to » know whether and how, according to what rules, the fund has to be » constituted.

» In the Netherlands we apply to a certain extent a system similar » to that which is put forward by the draft convention. The deposit is » made at the Court and we have a complete procedure that settles » all the questions that might occur at that occasion. »

Mr. Fr. Berlingieri (Italy): « The Italian association is of the » opinion that certain rules of procedure should be incorporated in the » convention. (He read art. 2 § 2, the note on art. 4 and art. 5 § 3 » and 4).

« These rules, in the opinion of the Italian delegation, are not suffi- » cient, because they do not state clearly some fundamental principles, » namely :

» 1. That after the fund of limitation has been constituted no » personal action can be instituted against the other assets of the owner » on the part of the claimants subject to the limitation.

» 2. That the constitution of a fund, especially in the case of the » sinking of the ship, shall not be admitted when the owner is not able » to give sufficient guarantee of his financial possibility of paying at » least the privileged claimants and those who have a mortgage or » hypothec on the vessel not admitted to the limitation.

» 3. That the claimants who are not subject to the limitation » cannot in any case take an action with a view to being paid out of » the fund of limitation.

» 4. That it is necessary to establish a date after which, in case » of bankruptcy of the owner, the claimants who are not subject to » the limitation cannot request that the fund be included in the bank- » ruptcy assets.

» All these principles could be embodied in the following rules :

» 1st Article : The owner who wishes to avail himself of the benefit » of the limitation must file an application for this purpose with the » competent judicial authority of the lieu of his domicile or other places » which can be agreed upon by the Conference; submitting to this judge » the list of all the claimants who are subject to the limitation, and » of all the claimants who, even if not subject to the limitation, have a » maritime lien or mortgage on the vessel. The owner shall also, on » penalty of forfeiture of his right limitation, deposit the fund of limit- » ation with the said judicial authority or the chancery of the court, » within a certain determined period of time from the application.

» 2nd Article : The judge entrusted with the proceedings will fix » a hearing for the appearance of the other claimants indicated in the » preceeding Article, taking into account the domicile of the various » claimants, and his order shall be served by the letter.

» Should all possible objections to the admission of the owner to » the benefit of limitation be rejected by the judicial authority, the » same will share the fund between the claimants subject to the limit- » ation, according to their right and compliance to the principles of » the Brussels Convention of 1926 on mortgage and maritime liens. » Upon request of the claimants not subject to the limitation, who have » a maritime lien or a mortgage on the vessel, the owner shall not be » admitted to the benefit of the limitation, in case he does not give » sufficient guarantee of his financial capacity of satisfying such » claimants.

» 3d Article : After the fund of limitation has been constituted, no » personal action of conservative or executory character (saisie conser- » vatoire ou saisie exécutoire) can be instituted or prosecuted against » any other asset of the owner on the part of the claimants, who are » subject to limitation, belonging to any contracting state.

» 4th Article : No claimant who is not subject to limitation can » take an action with the view of being paid out of the fund of » limitation, unless all the claimants subject to limitation have already » been totally satisfied.

» In the case of the owner being declared bankrupt after the » constitution of the fund of limitation and the rejection of the objec- » tions mentioned in the preceding Articles, the claimants not subject

» to limitation shall not be entitled to request that the fund be included » in the bankruptcy assets. »

Mr. Prodromidès (France) (translation): « The French delega- » tion does not visualize clearly how it will be possible to work article » 4 of your draft. Said article stipulates that the rank, according to » which the claimants will be paid out of the limitation fund, will be » fixed by the internal law of the country where the fund has been » constituted. That means that the privileges will be exercised, accord- » ing to the rank fixed by the law of that Country.

» It is on this point that we do not see very clearly how the privi- » leges will be exercised on the limitation fund. The privileges, those » of the 1926 Brussels Convention as well as those of the national » laws have a fixed assignment : the ship, her freight and accessories. » That means that the privilege on the ship will be transferred on the » proceeds of the sale when the ship is sold. The limitation fund is » however completely independent from the ship except that its amount » is fixed according to the tonnage, but that is another question. The » limitation fund is a part of the land estate (« fortune de terre ») of » the shipowner. Consequently, in the present state of things, it is not » possible to visualize a privilege, whose assignment is presently well » fixed, which could be exercised against a fund formed out of the » land estate (« fortune de terre ») of the shipowner.

» Two solutions may be adopted. The first consists in deleting » article 4 if you are of the opinion that it is preferable not to mention » privileges. A second solution, which is preferred by the French » delegation, is a follows : to stipulate expressly that if some claimants » submitted to limitation have a privilege on the ship, such privilege » will be transferred on the limitation fund. That is a possibility » because it has been expressly said in the text. In that case you will » have created in the convention on limitation a new kind of assign- » ment : the limitation fund. If you do not say that, article 4 cannot » work.

» The French delegation supports the second system and submits » to you following text which has been distributed and which I will » read rapidly :

» « Au cas où des créances soumises à la limitation de responsabilité » de l'article 1er de la présente convention seraient privilégiés sur le » navire, le fret et accessoires, ce privilège serait transporté sur le Fonds » de limitation. »

» « En ce cas, l'ordre dans lequel se fera le règlement des créances » sur le Fonds sera déterminé par la loi intérieure de l'Etat dans lequel » le Fonds sera constitué. »

Mr. A. Malvagni (Argentine) (translation): « The Argentine Ma- » ritime Law Association has an observation to make in respect of Art. » 4 in so far as this establishes that the Regulation for credits (which is » the privilege) shall be determined and prescribed in accordance with » the law of the place where the limitation fund is constituted. We, » however, consider that this regulation should be given a fixed form, » and the only way to is to follow the 1926 Brussels Convention for the » countries that have adopted that convention and to follow the law » of the flag for the countries that have not adopted the said conven- » tion.

» In this way, two types of advantages would be obtained. In » the first place, the rights would be fixed, and in the second, the doc- » trinal principles of the great legal authorities and of the law would » be followed. And above all, there would be no occasion for creditors » to seek, according to the circumstances, to sue the ship in the port » of the nation that best suits them, in accordance with the privilege » that corresponds to their credit.

Mr. J. Heenen (Belgium) (translation): « The Belgian delega- » tion is of the opinion that the problem brought by article 4 of the » draft convention submitted to you necessitates a very close examina- » tion. I refer to the question where the limitation fund can be » constituted by the shipowner who asks the benefit of limitation of » liability.

» The question is important because it is necessary to avoid that » the choice of the owner would favour certain claimants and frustrate » others as a consequence of the legal system of privileges applied in » the country he has chosen. Furthermore, the choice might be fixed » by still other considerations upon which it is not necessary to insist » now and which are entirely opposite the administration of good » justice.

» For this reason the Belgian delegation suggests that the places » where the fund will be constituted will be limited imperatively i.e. » that the convention will leave to the owner the choice of the places » but that the choice will be limited.

» Which places might be taken in consideration for the purpose. » There are possibly 5 of them.

» 1°) First of all, the most logical and most normal place, the » place of the accident.

» 2°) The first port where the ship will enter after the accident » or if the claim results from damage to cargo as a consequence of the » execution of obligations resulting from the contract of transport and » that accordingly the accident is only ascertained after the arrival at » the port of destination, then the port of destination instead of the » first port reached after the accident.

» 3°) The first port at which the vessel be arrested by any claimant » as far as the seizure has been made in order to obtain payment of a » claim to be paid out of the limitation fund.

» 4°) The place where the owner has his principal place of business » (Siège d'exploitation) is opposed here to « the registered Seat ». » Why ? Because the « registered seat » can be fixed by the owner » using his own discretion and it can possibly not correspond in any » way with the place where the ship is in fact managed. Such situation » might be unfair and favour some claimants and frustrate others.

» 5°) Finally the place of the court before which the litigation is » brought; no danger of an arbitrary choice could be contemplated as » the place is chosen by the plaintiff and the owner has no alternative » than to accept this choice. There can however arise some difficulty » about the choice of this fifth place, namely that proceedings would » be started by somebody who is in connivance with the owner who » might choose a court situated in a country governed by a law either » abnormal or which could lead to unfair solutions.

» Anyway, and that is the point on which I just like to insist, it » is necessary that the convention should fix imperatively a limited » number of places.

Mr. Sozo Komachiya (Japan): « It seems that Article 5, para-» graph 3, is the disposition relating to international common security » in the case of the arrest of ship etc.

» Supposing that « limitation fund » of a shipowner A is 15 million » pounds, B arrested A's ship at London for the claim of 10 million » pounds and A deposited the same amount. Afterwards C arrested » A's ship at Yokohama for his claim of 20 million pounds. If A » wants to get the order of release at Yokohama is it enough to deposit » there 5 million pounds. By what proceedings would the Japanese » Court enable B to exercice his right on the security deposited at » London ?

» It would be impossible to get the effect of Article 5, paragraph 3, » unless in this draft Convention there are some dispositions relating » to this problem.

» Another question : in what State must the assessment of claims » against the « limitation fund » be done ? Shall it be determined by » the domestic laws of the contracting State ? If so, how can the con-» flict of assessments between many contracting States be determined ?

» We suggest to insert a uniform provision for the assessment of » the claims mentioned in Article 1.

Mr. A. Bagge (Sweden): « The Swedish delegation in their » observations to this Article ask that the words in Article 6 (2) refer-» ring to the Arrest Convention of Brussels should be struck out. » Whether Sweden will ratify the Arrest Convention is as yet not pos-» sible to say, but if the Convention will not be ratified by the Swedish » Government we can, of course, not accept the reference in Article » 6 (2) to the Arrest Convention.

» The Swedish delegation therefore suggest, that that reference be » struck out, and that we put « lawfully arrested ». This is the expres-» sion which has been used in the Convention of Civil Jurisdiction at » Brussels in 1952 ».

Mr. N.V. Boeg (Denmark) (translation): « The Danish delega-» gation is formally opposed to article 5 of the 1952 Convention.

» In my opinion it is not legally correct to say « le tribunal peut » « ordonner la mainlevée de la saisie du navire », for in my opinion, » when the conditions are fulfilled, the Court has no choice. In that

» case it is bound to withdraw the seizure, and that is the reason why I » suggest to say « le tribunal ordonnera la mainlevée ».

Mr. J.A.L.M. Loeff (Netherlands): « Article 5 deals with various » questions concerning the role of the contracting states where one » limitation fund only can be set up and every claimant has to apply » to that one single fund. But of course, apart from the contracting » states there are other states which have a distinct maritime law. Now » what would normally happen if one of the plaintiffs for loss of cargo » just does not bring a claim in the contracting states in which a limita- » tion fund has been set up, but just goes outside the contracting states, » seizes a vessel of the defendant owner and gets a hundred per cent ? » I think it would be very easy to put into this Convention a provision » to the effect that the owner who has been forced to pay, or who can » prove that he will be forced to pay outside the Contracting States » a hundred per cent of the claim, will be allowed to prove against » the limitation fund for what he has paid. He ought to be subrogated » to the claim which he has been forced to pay or which he can prove » he will be forced to pay outside the Contracting States ».

The Chairman (translation): « Does somebody else ask to come » to the platform on article 5 ? We now pass to article 6 ».

Mr. J.T. Asser (Netherlands): « Article 6 enumerates different » categories of persons.

» This enumeration is limitative and, for that reason, the Nether- » lands Delegation is somewhat afraid that it might have overlooked » one person or another who, according to the general tenor and inten- » tion of the Convention, should be able to avail himself of the » limitation, yet who, as a result of not having been expressly mentioned » in Article 6, would be excluded from doing so. This applies particu- » larly when Dutch Law should apply to the merits of the question » of Liability.

» Dutch Law has a concept which is unknown in other systems of » law, namely, a concept of what we call the « reeder ». The « reeder » » who need not be the owner, nor the charterer by demise, nor even » manager, is briefly he who appoints the captain of a ship and who » thereby becomes personally liable as if he were the owner.

» At the Naples Conference the same problem arose in connexion » with the Convention on Arrest, and that problem was finaly solved » by a paragraph reading as follows : « When in the case of a charter » by demise of a ship the charterer and not the registered owner is » liable in respect of the maritime claim... » This provision is further » applicable to any case in which a person other than a registered » owner is liable in respect of a maritime claim ».

» Following the example set by the 1952 Convention the Nether- » lands delegation proposes to add to Article 6, paragraph 2 sub- » paragraph (c) of the draft the following words; « and generally any » person other than the registered owner who is liable in respect of one » of the claims referred to in Article 1 » ».

Mr. A. Bagge (Sweden): « Mr. Asser said that the 1924 Conven- » tion had a gap which he has tried to fill.

» When we made the Brussels Convention of 1924 we thought » that if a Convention dealt with limitation of shipowner's liability, » we should not regulate the liability of masters which had nothing to » do with the shipowner's liability.

» Presently the benefit of limitation provided by Article 6 has » been extended to masters and members of the crew of the ship. » I understand that the reason for that was that a judgment has been » made somewhere, where the claim has been directed not against the » shipowner nor against the ship but directly to the master, and has » been based on the supposition that the master has been guilty of a » fault in what he has been doing as master. Now if the shipowner is » liable for what the master has done of course the Convention is accu- » rate. But if the shipowner is not liable for what the master has done » then, a limitation of the master's personal liability does not belong » to a Convention on the limitation of the shipowner's liability. I am » of the opinion that in that case the master has to bear personally the » consequences of his acts.

» If I can understand eventually the point of view that you want » to extend the Convention also to the personal fault of the master » when the claim is directed against him personally, or because of his » fault, I cannot understand limitation of liability in favour of agents, » charterers, managers and operators.

» The Swedish delegation, therefore, wants you to retain the » stipulation in Article 10 of the 1924 Convention and strike out para- » graph (2) of Article 6 ».

Mr. C. Miller (Great-Britain): « I will endeavour to reply to the » points made particulary by Mr. Justice Bagge on Article 6. We are » merely talking about the master of the ship. So I fail to see how » it could be possible for him, the master, to be liable without the » owners also being vicariously liable.

» This Article is to us, vitally important because it has occurred » in recent years to certain evilly minded people to sue the master or » officer of the watch of a ship in a collision case, so as to avoid the » owner's limitation of liability. The owner, of course, has to stand » behind his master, not just because he is a decent fellow, but because » if he did not stand behind his master, in modern times he would not » get his ships manned. Therefore, it is quite essential that when we » are revising our laws on limitation of liability, we should stop this » particular gap.

» I understand that the main objection, however, of the Swedish » delegation concerns the actions against the agents of the owners of » ships. That, of course, is a matter for discussion, but I would point » out to the Conference that again it is not any act that the agent or a » shipowner may do. It must be an act which relates, which is a default » or neglect in the navigational management of a ship or in the loading, » discharge or carriage of the cargo. We do not see why any agent, if » in the highly unlikely event of an agent being guilty of such an act » should not enjoy the protection of limitation, because it would be just » as simple for the claimants to go against the agent whom, for business » purposes, the shipowner would, in most cases, be bound to support.

» However, there is one matter in Article 6 which causes us, the » British Maritime Law Assocation very great concern in this Article. » It is a matter upon which no one has yet touched.

» It is obvious that if you are going to give a master or a ship's » officer or a member of the crew protection by way of limitation of » liability, you must not saddle him with fault or privilege depriving » him of his right to limit for a fault in navigation ; otherwise it would » not be the slightest use giving him the right to live at all, because

» in 999 cases out of 1000 the master or the ship's officer or the mem-
» ber of the crew would be sued personally for a fault in the navigation
» of the ship. But the words « or management » had been added to
» the drafted Convention because a number of the national associa-
» tions so desired.

» We think that that is extremely dangerous, because the addition
» of the words « or management » might well enable a charterer, ma-
» nager or operator of the ship to limit his liability in circumstances
» in which the shipowner himself would not have been able to limit
» his liability because he would have been guilty of fault or privity.
» We do feel that objection should be taken by any legislature or
» government lawyer. We think that extremely dangerous, and to
» leave that in, might jeopardise the whole of this important Article.
» Therefore the proposition of the British Maritime Law Association
» is that from this draft, in the last sentence, the words « or mana-
» gement » should be deleted ».

Baron Van der Feltz (Netherlands): « Mr. Cyril Miller said that
» he could not conceive a case in which a master would be personally
» liable without the shipowner being liable. I know very well that in
» England the jurisprudence is that the shipowner who has a contract
» has a liability towards a cargo owner; that that will help the master
» and the crew, and yet the master and the crew can rely on the stipul-
» ations of the clauses of the bills of lading exempting the shipowner of
» liability. But that construction is not followed in various other coun-
» tries.

» We have in our law a special stipulation saying that the master
» is never personally liable unless the damage is caused by his wilful
» misconduct or gross negligence.

» The second point which interested me in Mr. Miller's speech was
» the last sentence of Article 6. He proposed to delete the words « for
» management » in the last sentence. As I told you yesterday, the
» Netherland's sea-going fleet contains a lot of small vessels which are
» owned or partly owned by the master. Therefore it is of vital interest
» to us that that master has the right to limit his liability in those cases
» in which he is liable, not only when he has made a fault in navigation
» of the vessel, but also in the management of the ship.

» Then there is a last question about a new Article which is not » yet in the Convention. We have circulated an amendment which » reads as follows :

» « This Convention shall apply wherever the Owner of a ship » limits his liability in the jurisdiction of one of the Contracting States.

» Nevertheless any Contracting State shall be entitled wholly or » partly to exclude from the benefits of this Convention any Govern- » ment of a non-Contracting State or any Owner of a seagoing ship » who has not, at the time when he wishes to limit his liability, his » habitual residence or principal place of business in one of the Con- » tracting States or whose ship, in respect of which he wishes to limit » his liability, does not, at the time aforementioned, fly the flag of one » of the Contracting States. »

Mr. A. Malvagni (Argentine) (translation): « The Argentine Ma- » ritime Law Association has an observation to make on the 3rd para- » graph of article 6. Indeed we do not understand very well the mean- » ing of the words « management of the ship ».

» If the management of the ship by the master who is owner of the » ship is concerned, this provision might mean that such person is » allowed to limit his liability in the case where the ship was not sea- » worthy. As a consequence it is necessary to give a clear definition » of the words « management of the ship ».

» The Argentine has the youngest fleet. In my country there are » much more charterers than shipowners and up till now only the » interests of the shipowners have been generally taken into account.

» If the Committee hopes to unify the law and to obtain the » adhesion of all the governments, the interests of the charterers, which » will be defended by the Argentine and by the other Latin-American » countries, where 13 % only of the trafic are carried out by national » ships, have to be taken into account. I learned indeed that the » Comité Maritime wishes to interest in their work all the Latin-Ameri- » can countries. It is necessary as a consequence that those countries » are aware that their interests are defended by the committee.

» I have wished to stress this point because I hope that at the next » occasion I will not be the only delegate of Latin-America but we will » be 5 or 7.

Mr. C.S. Haight (U.S.A.): « On reviewing the comments made » by our delegation yesterday, I should add one more factor.

» Our law of limitation has been functioning to the satisfaction » of all of the maritime interests in our country for something like 150 » years and, therefore, we, and other nations like us who do not have » a pressing problem now, must face the situation. And speaking for » ourselves alone, if we go to our Congress now, when our law is » functioning satisfactorily to all maritime interests, and seek a change, » there is, in the best opinion of our committee and our association, a » substantial risk that our Congress or Parliament which is not and » cannot be primarily shipping minded, might decide against limitation, » because when the question is opened as to our basic law no one can » tell where that may lead. Motor carriers and other people who » transport goods and passengers do not have the right to limit. We » have no doubt, of course, that the ship-owning industry is and should » be entitled to limit with a fair way of doing so, but whether our » Congress, on a further review, would come to that conclusion no man » here can say.

» I have mentioned that in some little detail, because, if anything » happened to destroy limitation in the United States it would hurt » every one of us, not just the United States flag vessels, but all of » our good friends here who come to our shores and ports.

» This does however not exclude any possible uniformity covering » also the U.S.A. ».

» Our law, in death and personal injury matters is already in » accord with the British proposal. We have a fixed amount in dollars » per ton, as a minimum safeguard for the death and personal injury » claimants. If the vessel is lost that minimum is there as their safe- » guard. If the vessel is only partially damaged or, as sometimes hap- » pens, a vessel solely at fault doing serious damage has almost no » damage to herself, then under our law her value after the casualty, » plus her pending freight, stands as the fund, and that can be in » excess, for death and personal injury claimants, of the 60 dollars » per ton.

» As to property damage, we do have a law that limits the liabi- » lity of the owner to the value of the vessel after the casualty and her » freight on that voyage.

» To consider, therefore, our laws as a possible pattern, would » mean no change in what we have come to see to be the one really » vital issue of this Convention — the death and personal injury » claimants' protection. It would, of course, mean some changes as » to the property damage. I should add one more thing concerning the » limitation for material damages. The experience of the British has » shown that it is better to submit the limitation to the value of the » ship because in that way it escapes from devaluation — changes in » the value of the goods following generally the changes in the value » of the ships — and because it takes into account the differences » between the several types of ships.

» Finally uniformity is more necessary since the development of the » trade on the Great Lakes and on the St. Lawrence.

» If our suggestion that our law, with subtle changes and amend- » ments, as might be needed, should meet the favour and approval » of other nations and delegations here, then we would urge most » earnestly and sincerely that our British colleagues give their best » consideration to the possibility that they too might come to such an » agreement. We realise that that might mean that they would then be » faced with the further necessity of exercising their outstanding art of » persuasion upon the British authorities concerned.

» All of us here have worked hard and long and that is particularly » true of our British colleagues. It would be a great pity for this » Conference to end with a result which cannot be widely accepted. » We earnestly hope that the result reached will be one which the United » States too can accept. »

Mr. Akita (Japan): « It is with the special permission of you, » Mr. President, that I have the honour of speaking on behalf of the » Japanese Shipowners' Association on the limitation of shipowners' » liability.

» In the opinion of the Japanese Shipowners' Association the new » system proposed by the British Association has great merits in its » simplicity and clearness. However, all the countries in the world » have their own specialities, and it is difficult to cover these different » features with one simple system. In Japan there will be a good reason » to adopt the value of the ship as the basis for limiting the liability in

» the case of total loss, otherwise shipowners will always have to face » the fear of bankruptcy owing to causes beyond their control ».

The Chairman interrupted the session af 6.45 and invited the delegations to appoint a representative for the drafting committee.

The session reopened.

The Chairman (translation): « To avoid any misunderstanding I » would like to point out that, in the opinion of the bureau, the Sub- » Committee we will appoint in order to examine the draft, will not be » only a drafting committee. The idea I submitted to you a little » while ago is that we should appoint a restricted Sub-Committee of » one member per delegation and who will try to find the points » whereupon there is agreement. I should like that thereon there be » no misunderstanding at all.

» The Sub-Committee is constituted as follows :

» Argentine	Mr. Malvagni
» Belgium	Mr. Van Ryn
» Canada	Mr. Beauregard
» Denmark	Mr. Boeg
» Finland	Mr. Andersson
» France	Mr. de Grandmaison
» Germany	Mr. Dettmers
» Great-Britain	Mr. McNair
» Greece	Mr. Spiliopoulos
» Italy	Mr. Giorgio Berlingieri
» Japan	Mr. Komachiya
» Netherlands	Mr. Van der Feltz
» Norway	Mr. Braekhus
» Portugal	Mr. Ferreira
» Spain	Mr. Garrigues
» Sweden	Mr. Kaj Pineus
» Switzerland	Mr. Müller
» United States	Mr. Haight

Sir Gonne Pilcher (Great-Britain): « I should like to propose » first that inasmuch as the members of this sous-commission have » many varying views on different Articles or points, it is quite clearly » very desirable that the Chairman of the Committee should be someone » who is completely impartial and also somebody who has a good » knowledge of both the French and the English languages. I suggest » for your consideration that it would be desirable to appoint someone » with the qualities I have mentioned. Therefore I propose for your » consideration the name of our Secretary General, Mr. Carlo Van den » Bosch, who knows both languages extremely well, and who is in a » completely impartial condition.

The Chairman (translation): « I think that the reaction of the » Assembly is a sufficient approval of the suggestion of Sir Gonne » Pilcher. As a consequence, I will ask Mr. Van den Bosch kindly to » accept this difficult charge. I rely much upon him, upon his diplo- » macy to supply us Friday morning in a perfect unanimity a well » worked-out draft ».

» I would like that whole Thursday be devoted to this important » work.

» That work of Thursday will be of capital importance. The » success, the half success or the failure of our conference depend from » it.

Mr. Van den Bosch (Belgium) (translation): « Mr. Chairman, » Gentlemen, I beg to express first of all my deep gratitude for the » honour and for the confidence you just expressed to me.

» Our Chairman told us that the fact to be president of the Sub- » Committee that has to conciliate the different points of view and to » submit to the General Assembly a draft that can be accepted is not » an honour but a charge. I am perfectly aware of the heavy charge » that lies on the Sub-Committee but beg leave not to agree with our » eminent chairman when he says that it is not an honour. I have » indeed the feeling to be litteraly crushed under the honour and I » wish that the distinguished members of this Assembly would have » no doubt about that ». (Applauses).

The session is closed.

Thursday 22nd September 1955.

MORNING SESSION

SPECIAL RESTRICTED SUB COMMITTEE

GENERAL DISCUSSION

Chairman : Mr. Carlo Van den Bosch, secretary of the C.M.I.

The Chairman opened the session and suggested to try first to arrive at an agreement on the principles.

Mr. C. Miller (Great-Britain) (reporter of the International Sub Committee) declared that he agreed to accept and that he hopes to be able to convince his Governement to accept the minimum of 300 Tons and the limit of £ 40 concerning personal injuries.

He added that he agreed to support the suggestion of Mr. de Grandmaison concerning article 3, but that he could not accept as a basis for limitation neither the value of the ship after the accident nor the value at the beginning of the voyage.

He informed then the delegates of the wish of the interested circles to substitute to the Poincaré Franc which has merely a fictive value, the Swiss Gold Franc.

Mr. G. Berlingieri (Italy) puts forward that the valuation of the ship at the beginning of the voyage is practicable as same is being applied in matters of general average and assistance and salvage.

He declared however that he is prepared to accept the principle of a limitation per accident and of a lump sum per ton of tonnage, provided however that 2 or 3 categories of ships are established.

The Chairman pointed out that general average, assistance nor salvage cases are not covered by the convention.

Mr. Sole de Sojo (Spain) declared that he is prepared to accept
(1) the principle of limitation based upon a lump sum per ton of tonnage;
(2) the minimum of 300 Tons;
(3) to substitute the Swiss Gold Franc to the Poincaré Franc;
(4) to reduce the limit of £ 50 to £ 40 as far as personal injuries are concerned.

He pointed out however that a proportional reduction might be applied to the material damages.

Mr. Vaes (Belgium) pointed out that the valuation of the ship has a contractual origin in the matter of general average and is unavoidable in the case of assistance and salvage whereas in the case of personal injuries the situation is different because the victims can not know beforehand whether the person liable for the damages is owner of a big vessel or of a small vessel and because a minimum tonnage is necessary for small ships as their building price is much higher.

He added that it is not fair to protect the owners of ships which are not insured, for such owners would in that case have the benefit on the one hand of a reduction of the costs and of management, on the other hand of a reduction of liabilities. Furthermore the compulsory insurance is being more and more generalised.

Mr. H. Andersson (Finland) declared that he could accept a limit of £ 40 but made reserves as to the minimum tonnage of 300 tons.

Mr. K. Spiliopoulos (Greece) is of the opinion that it is necessary to find a compromise between the British and American systems.

The Chairman was of the opinion that it would be extremely difficult to arrive at such a result and that considerable progress would already be reached if we could arrive at an agreement between the other countries.

Mr. J. de Grandmaison (France) was of the opinion that it would not be possible to realize the project of Mr. Spiliopoulos and insisted upon the fact that the French Parliament is presently examining the

system of limitation actually in force and that only an international agreement, even a partial one, might avoid the suppression of limitation in France as far as personal injuries are concerned.

He accepted the compromise proposed by Mr. Pineus as well as the suggestion of Mr. C. Miller to substitute the Swiss Gold Franc to the Poincaré Franc.

Mr. Kaj Pineus (Sweden) said he is glad that the Swedish suggestion is accepted as a basis for compromise. He accepts the suggestion of Mr. Miller concerning the Swiss Gold Franc.

He pointed out that an agreement between the European countries might bring the countries presently opposed to the draft to accept it afterwards.

Mr. Ch. Haight (United States) pointed out that in opposition to what happens in Great-Britain and France where the Parliaments are already examining the question of limitation, the American Congress is not yet dealing with the problem, and he was of the opinion that if we did wish to avoid that the limitation be suppressed, the suggestion submitted to the Congress should concern only the rate of limitation and not changing the principles.

Mr. V. Taborda Ferreira (Portugal) declared that he prefers a system of limitation based upon the value of the ship at the beginning of the voyage, but that he might eventually accept a system establishing several categories of ships.

Mr. Walter Müller (Switzerland) pointed out that Switzerland has had recently to adopt a system of limitation and has accepted the system applied in Great-Britain because in that system

(1) the claimants obtain always an indemnification;
(2) it is easy to calculate the amount of the limitation;
(3) the system is simple.

He was however of the opinion that the drafting of the convention should be revised in order to make it more understandable to the continental jurists.

Mr. O. Dettmers (Germany) pointed out that the German system is similar to the American and that it has been working satisfactorily but that he is prepared to abandon it and to accept the system of the draft which is more simple and more fair.

He thinks that the German Authorities will be prepared to accept the minimum of 300 tons and to accept the system adopted by the 1924 Convention for the calculation of tonnage.

Mr. L. Beauregard (Canada) pointed out that in his opinion the figures of the Convention could be increased but not diminished.

Mr. A. Malvagni (Argentine) declared that he can accept the system of the draft provided the limit be not too low. He added that he thought that all the countries of South-America will accept that point of view.

Mr. S. Komachiya (Japan) reminded that, although the Japanese Association had accepted the draft, the shipowners disagreed. He hoped that unanimity of the other Associations would allow him to convince more easily the Japanese shipowners of the opportunity to accept the draft.

Baron Van der Feltz (Netherlands) declared that the Netherlands Association agreed to accept the limit of 300 tons and the figure of £ 40 for personal injuries. He added that he personally agreed to substitute the Swiss Gold Franc to the Poincaré Franc but that it had not been possible for the time being to obtain the opinion of his Association on this subject. He pointed out that the present Dutch system contains 12 categories of limits but that that system is not satisfactory.

Mr. S. Braekhus (Norway) declared that he is not authorized to accept neither the figure of £ 40 nor the minimum of 300 tons. He suggested £ 24 for personal injuries and £ 24 for material damage and he suggested to limit the liability of small ships to their value at the beginning of the voyage.

Mr. N.V. Boeg (Denmark) declared that he accepts the principles of the English draft but that he asked that the minimum tonnage be reduced to 250 tons and the lump sum of £ 24 or eventually £ 26 per ton be accepted for personal injuries.

Mr. G. Berlingieri (Italy) declared that he observes he remains the only defender of the principle of limitation to the value of the ship at the beginning of the voyage, but that he hoped that that circumstance will facilitate his task of convincing his Association and the

competent circles in Italy of the necessity to rally the unanimous agreement of the other countries on the principle of the lump sum limitation.

The Chairman thanked Mr. Berlingieri for that statement and closed the discussion on the principles of the draft, pointing out that these principles have been accepted by Great-Britain, France, Canada, Sweden, Norway, Denmark, Finland, Netherlands, Belgium, Spain, Germany, Argentine and Portugal.

AFTERNOON SESSION

SPECIAL RESTRICTED SUB COMMITTEE

The Chairman opened the session and suggested to seek an agreement on the contents of the various articles and to appoint a Drafting Committee in order to elaborate the final draft to be submitted to the Assembly.

ARTICLE 1

Baron Van der Feltz (Netherlands) suggested to incorporate in the Convention the definitions of the words « Sea-going vessel », « wreck liability », « material damages », « personal injuries », « Shipowners ».

He withdrew his suggestion as a consequence of the interventions of the Chairman, of Mr. Beauregard, of Sir William Mc Nair, of Mr. de Grandmaison, of Mr. Andersson and of Mr. Taborda.

Netherlands Amendment

« The Owner of a Sea-going vessel will be allowed to limit his » liability up to the amounts specified in Article 3 of this Convention » in respect of following claims, unless it is proved that the occurrence » giving rise to the claim resulted from a wilful misconduct or a heavy » fault of the Owner ».

* *

The Chairman pointed out that this amendment contained three new provisions :

(1) The Owner will be allowed to limit his liability;
(2) Reverse the burden of proof;
(3) Introduction of the conception of wilful misconduct and heavy fault.

He opened the discussion concerning the first item and pointed out that it is not easily reconcilable with the second item.

Mr. J. de Grandmaison (France) opposed the amendment and argued that the Court could not be allowed not to apply the limitation.

Baron Van der Feltz (Netherlands) was of the opinion that it is necessary to avoid that the limitation be applied even in cases when the limitation fund is not constituted.

The Chairman shared the point of view of Baron Van der Feltz and is of the opinion that Article 4 should be amended in accordance.

Sir William Mc Nair (Great-Britain) pointed out that in Great-Britain the limitation can only be applied by decision of the Court.

Mr. J. Van Ryn (Belgium) pointed out that the Dutch suggestion was only acceptable if it established the necessity to bring forward a request for limitation.

* *

Mr. J. de Grandmaison (France) suggested to draft Article 1 as follows : « qu'en aucun cas la responsabilité... ».

Baron Van der Feltz (Netherlands) pointed out that the adding of the words « en aucun cas » did not suit because there are exceptions.

Mr. J. de Grandmaison (France) was of the opinion that the words «.en aucun cas » referred to the claimants who follow.

Mr. J. Van Ryn (Belgium) pointed out that according to Belgian law the words « en aucun cas » add nothing.

Mr. J. de Grandmaison (France) withdrew his amendment.

* *

Baron F. Van der Feltz (Netherlands) drew the attention of the delegates on the drafting of the 2nd paragraph of Article 2 : « When the Owner of a ship limits his liability... » and pointed out that there might be a contradiction between the two articles.

Mr. K. Pineus (Sweden) suggested to adopt the drafting of the 1924 Convention : « The Owner shall not le liable beyond... ».

Mr. G. Berlingieri (Italy) shared this point of view.

Baron Van der Feltz (Netherlands) declared that he would agree to the following drafting : « if the Shipowner limits... he shall not be liable beyond... ».

The Chairman pointed out that this new drafting was only the reflexion of the first one.

The Chairman asked to pass the amendment, the object of which was to add the words « will be allowed to limit ».

The amendment is rejected unanimously except one vote and two abstentions.

* *

The Chairman opened the discussion concerning the second point of the Dutch amendment.

Sir William Mc Nair & Mr. K. Pineus (Great-Britain and Sweden) were of opinion that the burden of proof was on the Shipowners because he requires a preferential treatment.

Mr. J. de Grandmaison (France), supported by Mr. Müller, Mr. Sole de Sojo and Mr. Spiliopoulos, was of the opinion that it is not possible to oblige the Shipowner to supply a negative proof, the more as he does not require a preferential treatment but the application of the Convention.

Sir William Mc Nair (Great-Britain) suggested to adopt the words « unless where it is established that the occurrence... ».

This suggestion was adopted unanimously, except two abstentions.

* *

The Chairman opened the discussion on the 3rd point of the Dutch amendment.

Sir William Mc Nair (Great-Britain) opposed that amendment and put forward that the English Judge is not accustomed with the expresion « wilful misconduct » and that such expression might allow him not to apply the Convention in the cases of unseaworthiness.

Mr. J. Van Ryn (Belgium) and **Mr. J. de Grandmaison** (France) asked to keep the old reading as well as the old translation.

The 3rd point of the Dutch amendment is rejected unanimously except one vote and two abstentions.

Argentine Amendment

The object of this Amendment is to add after the words « without his actual fault or privity », the words « the expression « Shipowner » covers all persons of the board of the Shipping Companies ».

Mr. A. Malvagni (Argentine) stressed that the object of this amendment was to make it clear that the expression « Shipowner » covers all the members of the board of the Shipping Companies.

Mr. C. Miller (Great-Britain) and **Mr. W. Müller** (Switzerland) pointed out that this is a question to be submitted to the international law of the State of which the Shipowner is a subject.

The Chairman suggested to put down in the Report on the Motives the amendment of Mr. Malvagni.

This suggestion is accepted unanimously.

PARAGRAPH 2

British Amendment

a) Loss of life or personal injury to any person or damage to any property whatsoever being carried on board of the ship.

b) loss of life or personal injury to any person other than persons being carried on the ship, or loss of or damage to any rights or property other than property on board the ship caused by the

neglect or default of the master or pilot or any other member of the crew or any other person for whose act, neglect or default the owner is responsible in the navigation or management of the ship or in the loading, carriage or discharge of the cargo thereof.

Littera a.

Mr. J. Van Ryn (Belgium) pointed out that the words « any person being carried » have been translated by « survenu à bord ».

Mr. C. Miller (Great-Britain) replied that he had preferred not to employ the word « transporté » owing to the fact that he wanted to cover by paragraph a) only the members of the crew and not the longshoremen and the visitors.

Mr. J. de Grandmaison (France) suggested the translation « toute personne étant à bord en vertu d'un contrat ».

Baron Van der Felz (Netherlands) was of the opinion that it was more logical to put « toute personne à bord ».

Mr. C. Miller (Great-Britain) pointed out that the words « à bord » do not suit, owing to the fact that for political reasons it is preferable to apply the limitation concerning personal injuries that did not occur on board the vessel, only to cases of negligence or fault in the navigation or in the management of the ship.

At the request of Mr. Pineus, Mr. MILLER confirmed that the words « transporté sur le navire » did not mean that the ship has to be in motion.

At the request of the Chairman he confirmed that a passenger who is on the gangway is not « on board the ship ».

The new reading of littera a) was accepted with the reserve of a proper translation of the words « carried in the ship ».

Littera b.

At Mr. Pineus' request **Mr. Miller** pointed out that the words « loading, transport, a.s.o. » cover transhipment.

At Mr. Taborda's request the **Chairman** pointed out that littera a) referrs to all persons and goods who are to be carried, whereas littera b) covers only the persons and goods who are not carried.

The new wording of littera b) was accepted with the reserve of a more proper wording.

Littera c.

Mr. L. Beauregard (Canada) asked whether this provision could not possibly involve difficulties owing to the fact that the authorities who will be obliged to remove the wrecks might consider themselves to be liable.

This point of view was only shared by Mr. Malvagni.

The new wording of littera c) is approved with the reserve of a more proper wording.

Littera d.

Mr. J. de Grandmaison (France) suggested to delete the word « seulement » as possibly the judge might only apply the limitation in the case of custody.

Mr. K. Pineus (Sweden) suggested to add the word « absolute (liability) » which corresponds according to Sir William Mc Nair to « abstraction faite de toute preuve de faute ».

Taking in account these two modifications, the new text of littera d) is accepted, a more proper wording being required.

The meeting recorded the suggestion of Mr. Müller to add the words « du fait de l'exploitation ».

PARAGRAPH 3

Baron F. Van der Feltz (Netherlands) pointed out that in The Netherlands the wireless-operator is not considered to be a servant of the owner.

Mr. S. Braekhus (Norway) was of the opinion that the wording of the draft was too complicated and that it should be simplified.

Mr. H. Andersson (Finland) suggests to limit the application of this disposition by using the words : « servants of the ship ».

French Amendment

The present article does not apply to :

« (i)...

» (ii) claims made by the Master, a member of the crew or any » other servant of the Owner, provided they are brought forward per- » sonally by them, excluding such claims as introduced by compul- » sory State insurances to recover the amounts they have paid — or » by their assigns who should claim in their own capacity ».

Mr. J. Van Ryn (Belgium) is doubtful whether the French amendment will not be opposed in the Parliament as the State Assurance is directly concerned. Moreover it would be easy for the Insurances to bypass this disposition by compelling the Assured to present personally the claim.

Mr. J. de Grandmaison (France) pointed out that it would not be fair to frustrate the Shipowners from the benefit of limitation towards a concern collecting their assets from the Shipowners themselves.

British Amendment

The object of this amendment was to delete the last paragraph of article 1. It was accepted.

Netherlands Amendment

« The Owner of a sea-going ship will be allowed to limit his liabiilty up to the amounts specified in article 3 of this Convention for the following claims unless it is proved that the fact giving rise to the claim has resulted from wilful misconduct or heavy fault of the Owner ».

Mr. W. Müller (Switzerland) was of the opinion that this is a question of judiciary procedure to be governed by the national law.

Mr. L. Beauregard (Canada), supported by the Chairman, was of the opinion that if there is to be a limitation, the question of liability has to be settled previously.

Sir William Mc Nair (Great-Britain) was of the opinion that the problem put by the Dutch amendment had to be decided according to the lex fori.

As **Baron F. Van der Felz** (Netherlands) had no authority to withdraw his amendment, the question was reserved.

ARTICLE 2

PARAGRAPH 1

The Chairman pointed out that owing to the statement made by Mr. Berlingieri the first paragraph was accepted unanimously, except reserves of Italy, Argentine, the United States and Spain.

PARAGRAPH 2

Mr. J. Van Ryn (Belgium) suggested to bring this paragraph in line with article 1 : « when the owner limits... where the liability is limited ».

This suggestion was accepted.

French Amendment

« The fund so constitued will be set aside in hands of its holder, » to the payment of the claims for the security of which the fund » has been constituted an exclusive privilege on that fund will be » granted to such claims ».

Mr. J. Van Ryn (Belgium) drew the attention on the fact that the constitution of the fund has to be considered as a liberation of the debtor and that if the fund is specially put apart for the payment of certain claims, il would be considered as a security which would be cancelled in the case of bankcruptcy.

This amendment might have in some countries such as Belgium the opposite result to the one intended.

He suggests therefore to follow therein the lex fori.

Mr. J. de Grandmaison (France) was of the opinion that the submission to the lex fori can hardly be accepted, but if the constitu-

tion of the fund is to be considered as a liberating payment he will withdraw his amendment.

Mr. J. Van Ryn (Belgium) pointed out that the amendment might be maintained provided an other wording not mentioning the words « bail » and « security » be adopted.

Mr. J. de Grandmaison (France) was of the opinion that it was necessary to take first a decision concerning the Dutch amendment on article 1.

Sir William Mc Nair (Great-Britain) suggested the following wording : « The limitation fund shall be effected either by payment into Court under the orders of the competent Court, or, if permitted, by the competent Court, by payment into the hands of a third party and in that case... ».

Mr. Dettmers (Germany) pointed out that especially in the case of arrest of the ship the object of the constitution of the Fund is to liberate the ship without recognizing liability.

Mr. J. Van Ryn (Belgium) suggested to state more clearly in article 5 about the Arrest, that the deposit of a security up to the amount of the limit does not constitute a recognition of liability.

The Chairman put to vote the amendment of the Dutch delegation on article 1.

This amendment was accepted by 14 votes and 2 abstentions.

The Chairman postponed the passing of the French suggestion amended by Sir William Mc Nair, as the new wording of the amendment is not yet terminated.

The Chairman suggested then to appoint a Drafting Committee constituted of Mr. de Grandmaison, Sir William Mc Nair, Mr. Müller and Mr. Van Ryn.

This suggestion was approved.

Friday 23rd September 1955.

SPECIAL RESTRICTED SUB-COMMITTEE

ARTICLE 3

PARAGRAPH 1

After discussion the figures of £ 24 and £ 40 were accepted.

Finland, Norway and Denmark voted against. Italy, the United States and Argentine have abstained from voting.

PARAGRAPH 2

After discussion the figure of 300 tons was accepted.

Denmark, Sweden and Norway voted against. Three delegations of which Spain abstained from voting.

The Chairman acted that the system of calculation of tonnage of the 1924 Convention was unanimously accepted.

PARAGRAPH 3

Baron F. Van der Feltz (Netherlands) suggested the reading « at the official rate of exchange » (« legal » in French).

Mr. J. de Grandmaison (France) pointed out that in some countries there are two different official rates.

The suggestion was rejected.

* *

The Chairman acted the agreement of the members to substitute the Swiss Gold Franc to the Poincaré Franc and suggested to entrust the Drafting Committee with the drawing up of a text referring to

the Swiss Gold Franc with the reserve that experts wille definite what is exactly the Swiss Gold Franc.

This suggestion was accepted unanimously, two abstentions excepted.

Franco-Belgian Amendment

« Where the Owner of a ship limits his liability in accordance » with the provision of this Convention, then the amounts referred » to in this article may be converted for the purpose of any proceed- » ings into the national currency of the State of which the acting » Court depends, at the rate of exchange prevailing, as the case may » be, at the date when the payment is made to the claimants or at » the rate of the date of the constitution of the fund or at the rate » of the date when the bail or any other security is supplied.

» The differences in exchange will be on the Owner as long as » he will not have paid his claimants or as long as he will not have » placed the limitation fund at the disposal of his claimants according » to the rules of procedure fixed by the law of the country where » the fund has been constituted .

Mr. J. de Grandmaison (France) asked whether it is strictly necessary to mention a payment made to the Court.

On the affirmative reply of Mr. Miller he suggested that the risk of exchange be borne by the claimant as from the time of such payment.

Sir William Mc Nair (Great-Britain) supported by Mr. Pineus, Mr. Van Ryn and Mr. Chairman suggested that this question be decided according to the national laws.

Mr. J. de Grandmaison (France) was of opinion that the problem being very important must be settled by the Convention, but that the decision might eventually be left to the Assembly.

Baron F. Van der Feltz (Netherlands) drew the attention upon the fact that the risk of exchange must be borne by the claimants as they did choose the Court.

Mr. L. Beauregard (Canada) suggested to delete in the 1st paragraph the words « or at the rate of the date when the bail or any

other security is supplied ». In that way the 2nd paragraph is no longer necessary. (Agreement of the Chairman).

Sir William Mc Nair (Great-Britain) suggested to delete in the 3rd paragraph the words « or supply bail or any other security » in accordance with article 5 of this Convention ». (Agreement of the Chairman).

Mr. C. Miller (Great-Britain) suggested following reading : « Where the owner of a ship limits his liability in accordance with » the provisions of this Convention, then for the purpose of any pro- » ceedings in any State with respect to that liability, those amounts » may be converted into the national currency of that State at the » rate of exchange prevailing at the date the owner has made pay- » ment into court in respect of that liability or has established other- » wise a limitation fund ».

The Franco-Belgian amendment was withdrawn and the suggestion of Mr. Miller was accepted unanimously, except the abstentions of Norway, Denmark, Sweden, the Netherlands, Italy and the United States.

ARTICLE 4

Italian Amendment

« 1) The owner who wishes to avail himself of the benefit of the » limitation must file an application for this purpose with the » competent Judicial Authority of his domicile or... (other places » to be agreed upon) submitting to such authority the list of all » the claimants who are subject to the limitation and of all the » claimants who, even if not subject to limitation have a maritime » lien or a mortgage on the vessel.

» 2) The Owner shall also under penalty of forfeiture of his right » of limitation deposit the fund of limitation with the said Judi- » cial Authority within... days from the above application.

» 3) The judge entrusted with the proceedings will fix a hearing for » the appearance of all the claimants indicated in the preceeding » article, taking into account the domicile of the various clai- » mants, and his order shall be served upon the letter.

» 4) Should all possible objections to the admission of the owner
» to the benefit of limitation be rejected by the judicial authority,
» the same will share the fund between the claimants subject to
» the limitation, according to their rank and in compliance to the
» principles of the Brussels Convention of 1926 on mortgage and
» maritime liens. Upon request of the claimants not subject to
» the limitation, who have a maritime lien or a mortgage on the
» vessel, the owner shall not be admitted to the benefit of the
» limitation, in case he does not give sufficient guarantee of his
» financial capacity of satisfying such claimants.
» 5) After the fund of limitation has been constituted, no personal
» action of conservative or executory character (saisie conserva-
» toire ou saisie exécutoire) can be instituted or prosecuted against
» any other asset of the owner on behalf of the claimants, who
» are subject to limitation, belonging to any Contracting State.
» 6) No claimant who is not subject to limitation can take an action
» with the view of being paid out of the fund of limitation, unless
» all the claimants subject to limitation have already been totally
» satisfied.
» 7) In the case of the owner being declared bankrupt after the
» constitution of the fund of limitation and the rejection of the
» objections mentioned in the preceeding articles, the claimants
» not subject to limitation shall not be entitled to request that the
» fund be included in the bankruptcy assets ».

Mr. G. Berlingieri (Italy) who had brought this amendment said that in respect of the statement which he has since made he does no more insist that this amendment be examined.

Sir William Mc Nair (Great-Britain) suggested to exclude from the Convention any rule of procedure.

Mr. W. Müller (Switzerland) pointed out that the Italian amendment contained some very important suggestions especially paragraphs 5 and 6.

Mr. J. Van Ryn (Belgium) was of the opinion that said paragraphs could be inserted in article 2, but that paragraph 7 should be deleted.

The suggestion of Mr. Van Ryn was accepted.

Netherlands Amendment

The object of this amendment is to insert after the words «against the limitation fund », the words « and also the rule concerning the constitution of the fund and any other rules of procedure ».

This amendment was accepted.

Argentine Amendment

The object of this amendment is to submit the rank of the claims to the 1926 Convention for the States which have ratified this Convention and to the law of the flag for the States which have not adhered to it.

Mr. A. Malvagni (Argentine) pointed out that the object of this amendment was to avoid that claimants try to submit the proceedings to a Court where their rights are protected by privileges.

Sir William Mc Nair (Great-Britain) said that such provision was partly useless as the countries which have ratified the 1926 Convention have inserted the provisions of said Convention in their national laws.

The Chairman suggested to examine the Argentine suggestion at the same time as the French amendment.

French Amendment

« If the claims submitted to the limitation of liability of article » 1 of this Convention are privileged on the ship, the freight and » accessories, such privileges will be transferred on the limitation » fund.

» In that case the rank according to which the claims will be » settled out of the fund will be fixed by the internal law of the State » where the fund will be constituted ».

The Chairman pointed out that some claimants who are not privileged deserve more interest than the victims of an accident who are not on board the ship.

Mr. J. Van Ryn (Belgium) shared this point of view but added that the amendment is justified because otherwise there would be no privilege.

Mr. J. de Grandmaison (France) said that he is prepared to withdraw his amendment provided Art. 4 should no more mention a rank of settlement for the claimants. In that case no privilege would be imposed upon the Limitation Fund.

The Chairman suggested to insert in article 3 a provision excluding all privileges.

This suggestion was accepted.

Belgian Amendment

« The limitation fund has to be constituted at the choice of the » owner within the following limits :
» 1) the place of the accident;
» 2) the first port where the ship enters after the accident or if the » claim relates to damage to the cargo, the port of destination,
» 3) the first port at which any ship belonging to the owner has been » arrested with the object of obtaining payment of a claim covered » by the limitation fund;
» 4) the place were the owner has his principal seat of business;
» 5) the place of the Court before which there is an action pending » for the recovery of a claim covered by the limitation fund ».

Baron F. Van der Feltz (Netherlands) said that no fund might be constituted in a non-contracting State.

Mr. C. Miller (Great-Britain) pointed out that this is not possible when a ship is arrested in a non-contracting State.

The Chairman was of the opinion that there is no longer possibility of connivance because there are no longer privileges.

Sir William Nc Nair (Great-Britain) pointed out that according to the international laws of Great-Britain it is not allowed to establish a limitation fund in a foreign country when the case is pending before a British Court.

Mr. J. Van Ryn (Belgium) suggested to add after the word « shipowner » the words « provided the choice is authorized by the law of the place ».

The Belgian amendment, amended by Mr. J. Van Ryn was accepted.

ARTICLE 5

Swedish Amendment

The object of this amendmnet is to delete in the 2nd paragraph the words « in any circumstances » when the arrest is permitted under or not contrary to the International Convention relating to the arrest of sea-going ships signed at Brussels on the 10th May 1952 ».

This amendment was accepted.

Netherlands Amendment

« This Convention will be applicable anytime when the Owner » of a ship limits his liability in the jurisdiction of the contracting » States. Nevertheless, each contracting State may deny all or part » of the advantages of the present Convention to any non-contracting » State or to any shipowner who, on the day he would limit his lia- » bility, has not his usual residence or his principal office in one of the » contracting States, or whose ship for which he would limit his liabi- » lity does not fly at the said day the flag of one of the contracting » States ».

Mr. L. Beauregard (Canada) was wondering whether such amendment is necessary.

Mr. J. Van Ryn (Belgium) was of the opinion that this is a question of procedure that should be decided by the internal law.

Mr. H. Andersson (Finland) was of the opinion that the amendment should be adopted.

Sir William Mc Nair (Great-Britain) said that, in said case the owner has a personal right on the fund.

Mr. J. Van Ryn (Belgium) pointed out that according to Belgian law a same solution would prevail and that as a consequence it is not necessary from his standpoint to insert the amendment into the Convention.

Mr. K. Pineus (Sweden) supported the Dutch suggestion.

The Netherlands amendment was passed, 6 delegates voted for, 3 voted against and 7 abstained from voting.

Mr. K. Spiliopoulos (Greece) suggested that the Dutch amendment be re-examined after the Conference if no final wording is accepted.

Mr. K. Pineus (Sweden) suggested to insert the amendment in the Convention in its actual wording but pointed out that the final wording would be presented afterwards.

That suggestion was adopted.

ARTICLE 6

Netherlands Amendment

The object of this amendment is to add to littera c of paragraph 2 the words « and generally every person who is not the owner but who is liable for one of the claims mentioned in article 1 ».

Mr. K. Pineus (Sweden) suggested to delete littera c).

Mr. C. Miller (Great-Britain) suggested to leave it to the Diplomatic Conference to settle this question.

The deletion of littera c) was accepted.

Sweden voted against, the United States and Italy abstained from voting.

Baron F. Van der Feltz (Netherlands) suggested that paragraph 3 of article 6 be put in accordance with the new drafting of article 1.

Mr. K. Pineus (Sweden) and **Mr. C. Miller** (Great-Britain) did not share this point of view.

The suggestion of Baron van der Feltz was rejected by 12 votes against 2 and 4 abstentions.

ADDITIONAL ARTICLE

Netherlands Draft of an additional article.

» a) The Shipowner is entitled to claim against the fund for what he
» paid (with interests and costs) to a creditor who is not entitled
» to share in the repartition of the fund, provided he proves that

» he was forced to pay the said creditor without the possibility of
» compelling him to bring a claim against the fund, although the
» said claim would be subject to limitation under this Convention.
» b) This disposition is to be applied irrespective of the fact whether
» the other creditor was paid before or after a fund as provided in
» this Convention was set up.
» c) When at the time of the distribution of the fund it is doubtful
» whether the shipowner will possibly still be forced to pay another
» creditor under the circumstances set out under (a), it will be
» within the discretion of the Court that has the custody of the
» fund, to order to set aside an amount sufficient to protect the
» shipowner if eventually he would have to exercise the rights re-
» ferred to under a) ».

This article was adopted.

The Chairman closed the discussions and thanked all those who took part in the work of the Sub-Committee.

Mr. C. Miller (Great-Britain) paid hommage to the Chairman for the way he presided the discussions.

The session was closed.

FINAL DISCUSSION OF THE PLENARY CONFERENCE

Mr. C. Van den Bosch (Belgium) (translation): « Gentlemen, I » have pleasure in submitting you a positive result. In the Interna- » tional Sub Committee grouping 17 associations, the delegates of the » following associations have voted in favour of the principle of a lump » sum :

Argentine
Belgium
Canada
Denmark
Finland
France
Germany
Great-Britain
Japan
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland

» This means that that principle has been admitted by your Sub » Committee by an overwhelming majority of 15 votes on a total of 17.

» We have to express some regrets concerning the position adopted » by the United States. Indeed, it appeared not to be possible to find » a compromise between the system of the British Draft and the internal » law of the United States, but I wish to add immediately that the very » distinguished delegate and President of the American Association, » Mr. Haight, has proved during our arduous and sometimes passionate » debates to adopt a very conciliating and co-operative position of real » international understanding, and I wish to do homage to him there- » fore.

» The second association whose delegate has thought not to » be able to accept the principle admitted by the majority of the Sub-

» Committee is Mr. Berlingieri, representing the Italian Association. » But here also our eminent colleague has proved to wish sincerely to » cooperate and we were able to ascertain that the minds in Italy had » already progressed towards an international uniform agreement by » admitting the principle of a limitation of liability based on the value » of the ship before the accident.

» As our friend and colleague Mr. Pineus expressed it with much » witness during the discussions, we were not and we are not in a » conference of disarmament where decisions have to be taken unanim- » ously. I think that we are allowed to consider that from the moment » where 15 maritime nations of a total of 17 i.e. covering nearly all the » seas of the world, have agreed upon the adoption of a single principle » of limitation of liability, we have made a very big step forward.

» We have tried to avoid all fetichism of wording. We have taken » as a point of departure of our discussions neither the wording of the » 1924 Convention, nor even in most parts, the last draft presented » by the British Association. What we tried to realize is an agreement » on the ideas, on the substance and we have put confidence for the » purpose of putting such ideas and such substance in a text following » them as near as possible, in a Drafting Committee composed by » personalities as eminent and as competent as Sir Willam McNair and » Mr. C. Miller for the English reading and Mr. J. de Grandmaison » and Mr. J. Van Ryn for the French reading. I wish to thank here » very particularly these personalities for the considerable effort they » have kindly made in order to be able to submit to you within a » few hours the text of a Convention.

» It is in a certain way a new Convention that we have elaborated, » taking into account as far as possible a middle solution between the » opinions which were opposed. Of course, we have not been able to » obtain in all circumstances a unanimity of each disposition of detail » but I can say you that each disposition of the Convention and » especially each amendment which has been adopted has been accepted » by a very large majority of votes.

» In the past there have always been reserves and disagreement » about the drafts that we have elaborated, but we were able to ascertain » that during the Diplomatic Conference, which is the real seat of final » discussions, the delegates have tried to abolish the rugosities still

» existing and to rally the points of view which were still opposed one » to another.

» I will simply, in these preliminary reports, stress certain striking » points of the new convention which we have elaborated.

» First of all the limitation lump sum has been fixed by 11 votes » against 3 and 3 abstentions at £24 per ton for material damages and » at £40 per ton for personal injuries.

» We agreed also unanimously upon the way of calculating the » tonnage and we have rallied the system already adopted by the 1924 » Convention.

» By a majority of 14 votes and 3 abstentions, thus no vote » against, the principle of limitation per accident has been adopted » by your Sub-Committee.

» On the other hand a very large majority has brought back from » the 500 tons of the draft to 300 tons, the minimum tonnage or more » exactly the minimum limit under which the liability of the owner » will not be allowed to fall.

» Finally, the Sub-Committee has innovated on an extremely im- » portant point which threatened to divide the delegations i.e. the dis- » tribution pari passu of the limitation fund between the claimants, » solution which avoids all difficulties concerning the national systems » of privileges. This decision has been adopted unanimously ».

The Chairman (translation): « I suppose, Gentlemen, that the » detailed examination made by the Sub-Committee, presided over by » our friend Mr. C. Van den Bosch, will allow us not to start again the » discussion at the Plenary Session.

» I suggest that in a few moments we face the different points » of view and that afterwards I suggest you to postpone until tomorrow » the votes on the draft as well as the other votes and wishes we have » to make.

» I think however that it is strictly necessary that I allow each » member of the Plenary Assembly to make, if he wishes to do so, » certain observations on the text adopted by the Sub-Committee.

» I suggest as a consequence to muster one after another each » article of the new convention, and that at the occasion of each article » the members who wish to do so, submit to the Assembly their eventual » observations.

» Accordingly I will, first of all ask, the Assembly and all the » members who wish to come to the platform whether somebody wishes » to do so concerning the wording of article 1. »

Mr. C.T. Miller (Great-Britain): « There is just one little matter » in Article (1) which I fear entirely through my fault we overlooked. » It is a matter which I mentioned to the Plenary Conference during, » I think, my preliminary address which was as long ago as last » Monday.

» In Article (1) (c), regarding wreck liability, I told the Plenary » Conference we were unable to come to an arrangement with our » Dock and Harbour Authorities and therefore we should have to make » a reservation. Therefore to Article (1) (c) there should be added » the following few words :

» « The high contracting parties reserve the right to exclude from » Article 1 wreck liability ». »

The Chairman (translation): « Does somebody else wish to come » to the platform on article 1 ? We come now to article 2. Does some- » body ask to come to the platform on article 2 ? Article 3. »

Mr. Algot Bagge (Sweden) (translation): « The Swiss Gold Franc » has suddenly been introduced instead of the Poincaré Franc... » I suppose that the reason is that the Swiss Gold Franc exists and » that it will be easier to calculate a sum according to that Swiss Franc » than according to a Poincaré Franc that does not exist.

» It is possible — for everything is possible — that even the » Swiss Gold Franc is devaluated and becomes the Swiss Paper Franc. » I think it will be more prudent to follow the great conventions such » as the Postal Convention, the Warsaw Convention and the other » Conventions who have not adopted an existing Franc.

» Accordingly I take the liberty of suggesting you to examine » whether it will not be more prudent to adopt the same reference as » the Postal Convention and the Warsaw Convention. »

Mr. Kaj Pineus (Sweden): « I should like to put on record, and » be happy to see in the minutes of this meeting, the gratitude the » delegates of this Commission feel towards our acting Chairman, Carlo » Van den Bosch. I do not know if any of you have seen or read the

» play by Thornton Wilder, which was played in Edinburgh recently » and where Hercules says, « I have killed the hydra, it was not easy ». » But I think if we have not killed the hydra Carlo Van den Bosch may » certainly say it was not easy.

» Mr. Chairman, the Swedish delegation just examined the amend- » ment suggested by the other Scandinavian delegations and supported » by Portugal.

» The Swedish delegation asked me to inform you that they support » that amendment. »

Mr. Benito (Spain) (translation): « I wish to inform you that the » Spanish delegation shares the opinion expressed by the Scandinavian » delegation and suggesting that the ships of less than 300 tons should » be allowed to apply the system of the value of their exact tonnage » and not that of the Convention. The Spanish delegation shares the » opinion of the Scandinavian delegation concerning the exclusion of » the little ships from the benefit of the Convention. »

Mr. N.V. Boeg (Denmark): « I wish to avoid any possible incon- » venience or misapprehension, but I should like to state that the » amendment of the three Scandinavian countries should be maintained » in opposition to the amount of £40 stipulated in the Convention. »

Mr. Taborda (Portugal) (translation): « I wish to inform you » that Portugal rallies the reservation Denmark, Finland and Norway » have made on article 3 concerning the minimum tonnage of the » liability. »

Mr. J.T. Asser (Netherlands): « Mr. Van den Bosch said that » article 4 meant that all creditors should rank against the limitation » fund « pari passu à moins de faute. » If that should be the meaning » we think we should make a certain reservation because the Dutch » delegation does not think that is right. If that should be the meaning » we propose to insert in the first paragraph of Article 4, after the » words, « relating to the constitution... » the words, « and the distri- » bution of the fund » so as to be quite clear that any question relating » to the rank of claims should be governed by the « lex loci ». »

Mr. C.T. Miller (Great-Britain): « I must say one word about » Article 4 (2) which is new. In that Article it is laid down that at

» the choice of the owner a limitation fund may be constituted within » the following limits; that is to say the owner has a restricted choice » of where, in what country, he may put up a limitation fund. At the » insistence of the British representatives on the Drafting Committee » a proviso is added, « provided that the choice provided for by the » Article shall only be exercisable if the domestic laws of the place » for which the owner elects so permit. » That is because in England » the whole of this enumeration is quite useless because you cannot » limit liability until you have been sued, or your ship has been arrested » in England, and judgment has been given against you or you have » admitted liability. Then you claim limitation. But I understand from » our friends, especially our Belgian friends, who proposed this amend- » ment, that that is not so in continental law. In continental law you » may be able to start limitation proceedings even though no suit has » been brought against either you or your ship in that jurisdiction.

» I have heard complaints of the British rigidity in this hall on a » number of occasions. On this occasion, although we felt very unhappy » about this enumeration, even as applied to foreign jurisdictions, in » order not to be difficult we let it go in for better or for worse into » this draft Convention which of course, is not final, because it will » be submitted to the Diplomatic Conference before it can be passed » into our domestic law. But, I must warn the Conference that our » Government and our underwriters may take very serious objection » to that. At this Conference we do not feel it right to reopen this very » difficult question and, therefore, with this warning, with this caveat, » which I know will be recorded, we are prepared to let it go in. But » I do not want anybody to think that that subject, when the British » delegates arrive at the Diplomatic Conference, will not lead to strong » objection ».

Mr. Walter Müller (Switzerland) (translation): « This morning, » in the Sub-Committee, the Italian delegation has made an amend- » ment on Article 4. The idea was that once the limitation fund is » constituted, a personal action, a conservatory or executory measure » would not be allowed to be made against the assets of the shipowner.

» I did not find that idea in the new drafts. It has however been » assured that the persons in charge of the drafting would take that » idea into account and would make a draft in a appropriate way. I

» think it is only the lack of time that made that that provision has » been forgotten. I would however draw your attention upon the fact » for the idea has been put forward this morning. »

Chairman (translation): « Does somebody ask to come to the » platform on Article 4 ?

» If nobody asks to come to the platform, we pass to Article 5.
» Does somebody ask to come to the platform ?
» If nobody asks to come to the platform, we pass to Article 6.
» Does somebody ask to come to the platform ?
» If nobody asks to come to the platform, we pass to Article 7.
» Does somebody ask to come to the platform ?
» If nobody asks to come to the platform, we pass to article 8.
» Does somebody ask to come to the platform ?
» If nobody asks to come to the platform, I close the session.

» Gentlemen, I suggest to adopt following procedure, if the Assem- » bly agrees. At the meeting of tomorrow morning I will take up again » each convention, article by article, in order to have them passed by » the Assembly. During the discussion of each of the articles I will » put to vote first the amendments which will have been made and » further each of the articles. When the articles will have been passed » I will ask the Assembly to vote on the whole of the draft. I believe » that is the usual and the most practical way of working. I ask the » delegations that they submit to me in writing their amendments at » the beginning of the meeting of tomorrow... »

The session was closed.

LIABILITY

OF

SEA CARRIERS

TOWARDS PASSENGERS

Thursday 22nd September 1955

MORNING SESSION

Chairman : Sir Gonne St. C. Pilcher, Hon. Vice-President of the I.M.C.

The Chairman : « Gentlemen, your President, Mr. Lilar, who has » unavoidably been called away for today on public business, has asked » me to preside over this session, which is a session dealing, as you » know, with the responsibility of shipowners towards passengers and » responsibility for the loss of passengers' luggage.

» There has been a Sub-Committee working on this topic, which » was appointed in May, 1953 and which has held a number of mee- » tings presided over by Mr. Offerhaus.

» I think the best procedure to follow will be to ask Mr. Offerhaus » to open the discussion on this draft Convention, which his Sub-Com- » mittee has put before you.

» I propose that when Mr. Offerhaus has done this — we should » ask Mr. Hill, who is here representing the British delegation, to state » quite shortly the attitude of the British delegation towards this draft » Convention. Then thereafter the discussion will be open for any dele- » gate who wishes to make any observations and when that is comple- » ted we will then take the Convention clause by clause, and finally » we will take a vote on the Convention as a whole, one vote per » delegation. At this meeting it is not proposed to put forward any » definite resolution as to what shall happen to the Convention, but to » reserve that to the *session de clôture*.

» I propose now to ask Mr. Offerhaus if he will be good enough » to open the discussion.

Mr. J. Offerhaus (Président of the International Sub-Committee).

» Mr. Chairman, ladies and gentlemen, I have accepted to be the » first speaker on the draft Convention on the carriage of passengers, » a subject-matter which has already been considered at the Naples » Conference when the Italian delegation suggested to bring it on the » agenda of the International Maritime Committee.

» It is thanks to this initiative that the Bureau Permanent in its » meeting of May 1953 instituted an International Sub-Committee and » that at the same time the French Association started the drafting of » a draft Convention.

» We have not yet discussed this draft Convention as such, but » from the beginning and particularly at the Amsterdam Conference in » October 1953 we have discussed a questionnaire, the answer to which » should be used as a basis for a possible Convention.

» After this discussion at Amsterdam, which lasted for two days, » the problem was deferred until the Brighton session. Meanwhile there » was a new meeting of the Bureau permanent and another one of the » drafting Committee.

» At Brighton, discussions were held during three meetings which » were attended by all the members of the sub-Committee ; verbatim » reports of these meetings except the last one were handed to these » members but all the decisions are contained in the printed reports » which you have received.

» There were some articles on which no decision had been taken » so far. That is the reason why the drafting Committee met in July, » amended and drafted the articles which had already been approved » on the one hand and made some suggestions with regard to the arti- » cles which had not been considered at Brighton on the other hand.

» You have at your disposal three printed documents : the first one » is a report of August 1954, which is not entirely up to date but may » be used as a basis of reflection, the second one is the report of Mr. » Voet and the third one is the draft Convention, as it was proposed » by the drafting Committee at its meeting in July 1955 with the addi- » tion of some comments of the « rapporteur » and the secretariate.

» In this Madrid Conference the International Sub-Committee has » met as early as Monday morning, in the afternoon of that day and » in the morning and in the evening of the day before yesterday ; the » discussions on the articles on which a decision had not yet been taken

» at Brighton have been closed and the drafted text of the articles, » which had already been examined, has been reviewed.

» You will understand that after the last meeting of this Interna- » tional Sub-Committee on Tuesday afternoon and taking into account » that we were engaged for the excursion of Wednesday, it was neces- » sary to have the new draft typed out on Tuesday evening and that is » the reason why you have received the new texts in french and in » english only this morning.

» The Chairman of this meeting has told you that it would be » necessary to explain to you what is meant by the new draft and to » start with general observations. Now, you have seen that in the origi- » nal text of the draft Convention which has been prepared by the dele- » gation of the French Association, many ideas — I do not mean many » articles — had been taken from the rules contained in the Convention » on bills of lading of 1924. On the other hand, as the passenger is by » his nature a subject-matter other than a commodity, many rules had » to be drafted in a different way and for which there was no other » example but that of the Warsaw Convention on carriage by air.

» There was also a Subcommittee of the Institute for the Unifica- » tion of private law in Rome, which was planning a Convention on » carriage by road. In the latest Conferences on carriage by rail a » new Convention has been drafted in which the subject-matter of » the passenger has been dealt with much more thoroughly than ever » before. On the other hand this same Institute of Rome must be » credited with the initiative of having appointed an International » Sub-Committee that should consider the whole subject of the lia- » bility of the carrier towards the passenger. This Sub-Committee » has held two meetings. The first one in April 1954 in Rome which » should have been presided over by the Chairman of that Sub-Com- » mittee Mr. Albert Devèze, but where I took the Chair, as he was absent » The second one in April 1955 where Mr. Albert Devèze was in the » Chair and which was attented by the representatives of all means of » transport. This Sub-Committee has submitted a report drafted by Mr. » Caillau of the French railways and minutes of the meetings which » might make you realize that the International Subcommittee, appoin- » ted by the Institute of Rome proposes a number of rules which might » be made applicable within the law on the liability towards passengers » in general.

» It has at all times been observed at the meetings of this Subcom-
» mittee of Rome that regarding the maritime law a special position
» should be adopted because in the maritime law there was already
» the example of the commodities and all the interested parties were
» to some extent used to look at the rules of the Convention on bills
» of lading as a scheme, as a project to which one had become accusto-
» med and therefore in this Convention on passengers rules should be
» accepted which would not be entirely the same as those adopted in
» the Warsaw Convention and in the draft Conventions on carriage
» by rail and road.

» In the discussions of our International Subcommittee we have
» devoted much attention to the question of the passengers in general
» and we have taken as many ideas as possible out of all these projects.

» The general idea of the draft Convention, which you have be-
» fore you is to follow, for all matters of form, the system of the
» Hague Rules on bills of lading.

» We have started by giving a number of definitions. I shall not
» discuss thoroughly the articles themselves but I would like to give
» you an idea of the system which has been chosen.

» We then find in article 2 a definition of the field of application
» of the Convention, a definition that is missing in the Brussels Con-
» vention but that appears in the Warsaw Convention.

» Thus already in article 2 we realize that there is a difference in
» the system because we find here the field of application of the Con-
» vention with which, according to some people, article 10 of the Con-
» vention on bills of lading is dealing, but which, according to others,
» this Convention fails to mention and for which in some countries a
» paramount clause has been substituted.

» There is a limitation of the field of application in article 2, and
» one of the principle of the liability in article 3.

» Then there are the exceptions of article 4 on bills of lading. But
» in the Convention on bills of lading it has always been difficult to
» know precisely whether the Rules of the Convention are to be amen-
» ded by what is provided for in the national law of every country.

» Thus in article 3 of the Convention we are examining today,
» there is a precise rule on the liability, say on the liability for death
» and personal injury when the damage has occured in connection with
» the operations of carriage; this wording indicates very well that the

» passenger is different from commodities, that he may move around » in the ship and that therefor there is a possibility of death or accident » and that on the other hand the liability should be limited to some » extent by saying that it must be in connection with the carriage but » not more than that ; there is a liability only in such a case and it is » up to the carrier to prove that one of the cases provided in article 5 » is applicable.

» In article 4 we find a rule regarding luggage meant as follows : » first a liability towards registered luggage, secondly a limited liability » towards cabin and similar luggage in as much as there is no liability » unless the passenger proves that there is a fault on the part of the » carrier, thirdly no liability for precious articles, unless the carrier has » accepted them as such.

» In article 5 you will observe that a treatment of the exceptions » has been adopted which is to some extent similar to that of the Con- » vention on bills of lading, in as much as in the last sentence of arti- » cle 5 it has been provided for that it is permissible to prove that there » is a fault of the carrier or of his servants.

» In article 6 we find the idea of an immunity from liability in the » case of the fault of the passenger himself, his act or his negligence » with a possibility to relieve or to reduce the liability.

» Article 7 is missing. The wording of it will be handed to you in » the course of this meeting. The reason for it is as follows : we have » a long time ago regarding the idea of the liability towards the pas- » sengers themselves agreed to adopt the system of the Warsaw Con- » vention as it will be amended during the meeting of the I.C.A.O. » which is now taking place at the Hague but there are some doubts » as to the liability of the carrier towards luggage.

» Presently a system of division of this liability is submitted to » you in as much as there is a limitation of Frs. 5.000.— regarding the » registered luggage and a limitation concerning all the other luggage.

» As you see these cases are somewhat similar to those which are » discussed at the Hague at this very moment for the carriage by air » and about which it has been said : « if the damage arises from his » personal fault implying knowledge of the damage and reckless accep- » tance thereof ».

» In article 9 a reservation is made with regard to the applicability » of the Brussels Convention on the limitation of the Shipowners' liabi-

» lity. It is therefor a second limitation in addition to that of article 7.

» In article 10 you will find the nullity clause.

» Article 11 is dealing with the case where a plaintiff might intro-
» duce a claim based not on the contract but on some other ground e.g.
» unlawful act. Moreover the number of persons for whom it is permis-
» sible to make a claim is limited.

» In article 12 you will find the rules on notices and prescriptions.

» Finally article 13 is settling questions about proceedings and
» jurisdiction. We finish with article 14 which provides that the Con-
» vention applies to commercial transport within the meaning of arti-
» cle 1, undertaken by Governments or Public Authorities.

» There is also an additional protocol that will be discussed later
» on and wherein you will find the possibility for the contracting States
» to make a reservation on two points.

» The first one is similar to that which is admitted in the Conven-
» tion on bills of lading and the scandinavian States have made use of :
» the second reservation is in connection with the idea that perhaps
» there are States which would not be allowed to give effect to the
» Convention towards subjects of a State of which the ships fly the
» flag.

» We would have liked, as you have seen in the printed text, to
» make a general exception with regard to these few cases, but it did
» appear that most countries would prefer not to bring into the Conven-
» tion itself an exception regarding the said cases and to allow each
» country to make such a reservation, if desired.

» I would now want to point out some alterations which are to be
» made to the type-written text which is before you....

» I believe that I have thus explained the subject-matter of the
» draft which is submitted to you and the basis of our discussion. I have
» thought it opportune to say you these few words on the meaning of
» the articles in order that we should know precisely what we are going
» to discuss about. (Applause).

Mr. Martin Hill (Great-Britain): « The British view on this pro-
» ject remains the same as that which I expressed at Brighton and has
» at any rate the merit of consistency. The proposal for a Convention
» to unify internationally the responsibilities of the shipowners as car-
» riers of passengers was, as Mr. Offerhaus said, raised at the Naples
» Conference four years ago. When the International Commitee was

» appointed after that Conference to investigate it, the British represen-
» tative on the Committee, who was Mr. Cyril Miller, proposed, at the
» request of the British Maritime Law Association, that before going
» further with the matter the Permanent Bureau should be asked to
» find out whether the United States was likely to become party to a
» Convention of this kind. That advice was not acceptable to the Com-
» mittee but when at Brighton last year the American Delegate said
» so clearly that there was no prospect of the Congress in the United
» States adopting a Convention like this, we of the British Delegation
» then said that we were opposed to going any further with it and there-
» fore felt that we could play no useful part in the Committee's further
» deliberations.

» The objective of the Comité Maritime in all its work is to achieve
» a sufficient measure of international uniformity and of law, and in
» this instance it seems that that objective is defeated from the outset, if
» the American travelling public, which is from our point of view the
» largest and the most important, is evitably outside the scope of uni-
» formity.

» For this reason alone the British Maritime Law Association is
» not in favour of going further at this stage with the Draft Convention
» now before us.

» It will no doubt be said that the British shipowners, for whom
» I primarily speak, are against a project like this since it takes away
» from them their present legal rights which they enjoy under British
» law to arrange their own terms of carriage with their passengers, and
» it does so in a manner which inevitably adds to their present liabili-
» ties. It would be quite idle to deny this and that is the right and pro-
» per attitude for the British shipowners to adopt.

» However, the matter does go more deeply than the mere objec-
» tion by the interest concerned to a statutory increase in his own par-
» ticular responsibilities. The American rule of law, as I understand it,
» is that it is against public policy within certain spheres to allow some-
» one to render services of certain kinds to contract out of responsibility
» for the negligence of himself and his servants. In The Hague Rules
» that rule of American law or public policy was to some extent miti-
» gated, but in the case of passengers by sea — I am not sure whether
» it is not by land as well — my understanding is that one cannot con-
» tract out responsibility for negligence of any kind at all. That is their

» public policy and in the result their law and present British law are » at complete opposite extremes.

» I can appreciate the public policy reasoning behind the American » rule, but the point about it is that it is within the field to which it » applies : it is a generale rule. One can cite many examples where » it operates, such as the stevedore, the tugowner, the lighter owner, » the barge owner, the owner of the crane who hires it out and other » appliances, and many others of that type engaged in transport opera- » tions both on land and on water, all of whom under English law make » their own terms with their opposite parties. There are arguments one » can see for both methods, but the attitude of the British shipowner » in all these things is that he much prefers to be allowed to leave » these questions to business arrangement and not invite the Par- » liaments to interfere with matters of this kind. He holds that view » whether it operates in his favour or against it. Last year the British » Maritime Law Association was invited to take part in the promotion » of a Bill in Parliament which would compel lighter owners to accept » liability in cases of negligence and the British shipowners, in whose » interest it was, said, « No » ; they preferred to arrange their own » business with the lighter owners and not have Parliament arrange it » for them.

» Finally, it has to be appreciated in connection with this proposed » Convention that it is the passengers and not the shipowner who are » going to pay for it. All increased liabilities of this kind have to be » met out of the voyage receipts since that is the only source from » which they can be provided. Do the passengers want the cost of sea » travel to go up in the result of increased liabilities of this kind, » or do they prefer, as at present, to effect their own insurance which » they can do very cheaply and at their own figure ? Under this Con- » vention they will still have to insure if the limited amounts referred to » in the Convention are regarded by them as inadequate, as they may » very well be.

» For these reasons the British delegation is opposed to going fur- » ther with this Convention at this Conference. Given more time it is » possible that our views will be modified, but our instructions at this » Conference are such that we can go no further than to suggest that » possibility in time we may be more receptive to the proposal than

» we are today. Holding these views about the need for and the useful-
» ness of this proposed Convention, it follows that we must continue
» to say here as we did in Brighton that we cannot usefully participate
» in discussions of questions of detail raised by it, numerous as these
» obviously are both in regard to the substance and in regard to the
» drafting.

The Chairman : « I thought it proper to allow Mr. Hill the first
» word, but do not be discouraged, because I think most of you have
» known for some considerable time that that was, broadly speaking,
» the attitude of the British delegation towards this question.

» I now ask any delegate who would like to make any observa-
» tions on the general principle of the Convention to do so.

Mr. O.R. Houston (U.S.A.): « The head of the American dele-
» gation, as you know, is engaged with the Convention for the limita-
» tion of shipowners' liability and I am, therefore, acting as his deputy.

» When this problem of liability to passengers came up three years
» ago, the American Maritime Law Association appointed a committee
» which examined the problem and reported to the Association, and
» its report was endorsed by the Association. The relevant part of the
» report is as follows — briefly :

» The impediment to any Convention governing the carriage of
» passengers that might be advantageous to ourselves or other maritime
» nations is that by law in the United States a carrier of passengers for
» hire is liable for injury to a passenger resulting from the negligence
» of himself and his agents, including the negligence of ships' officers
» and crew, and cannot validly contract against such negligence.

» The only escape from this is to persuade the Congress of the
» United States to change this law, and to accomplish this it would be
» necessary to convince Congress that the law is unfair to American
» shipping and probably also that some substitute is more beneficial to
» shipowners and the travelling public.

» At the present time we see no reasonable prospect of success
» along these lines. We believe that any attempt to obtain Congressional
» approval to any plan thus far suggested would be doomed to failure.

» Indeed, we think there is not any reasonable likelihood that any
» uniform programme could be evolved at this time which would obtain

» the necessary legislative sanction here. Therefore, as far as the Uni-
» ted States is concerned, we believe that the efforts towards the Con-
» vention now are futile. We regret our inability to prepare and submit
» a proposal that might be acceptable.

» Since that time there has been a slight change in the position.
» The ICAO has had meetings and has proposed certain amendments
» to the Warsaw Convention, to which the United States adheres. The
» Warsaw Convention, in effect, imposes liability regardless of fault,
» but up to a very limited amount. Our Government sent a representa-
» tive to the ICAO Conference and urged that the limit of liability to
» a passenger should be increased to 25.000 dollars. Our representative
» apparently intimated that the United States was content with a partial
» revision of the liability to passengers in that respect. Logically I can
» see no reason why the liability of an air carrier to a passenger by air
» should be materially different from the liability of a carrier by sea
» to a passenger by sea.

» The proposed Convention does not go quite as far as the Warsaw
» Convention. It does impose liability on the shipowner, but subject
» to a considerable list of exceptions. Those exceptions, it is true, fol-
» low the lines of the Hague Rules; our American Carriage of Goods
» by Sea Act. But I think it is reasonably clear that the present propo-
» sed Convention is not quite up to the liberality of the Warsaw
» Convention as to the extent of liability.

» On the whole I am inclined to agree with Mr. Martin Hill, that
» at the present moment probably nothing can be gained by proceeding
» with this Convention. I want to say, however, that there are many
» of us who would like to see international rules for international travel
» and commerce made more uniform. The conduct of the United States
» in the past may have seemed to you to negative that and to indicate
» a spirit of isolation, which I must admit does exist. But there are
» some of us — many of us — who would like to do something in
» harmony with the rest of the world on these lines.

» If the United States goes along with the revision of the Warsaw
» Convention, and if a Convention in respect of passengers at sea can
» be proposed that would come close to the Warsaw Convention, I think
» the subject might well be revived; otherwise, for the moment, I am
» entirely in accord with my colleague Mr. Martin Hill. »

Mr. Peter Wright (Canada): « The Canadian Association is one » of the youngest represented here, and one of the disabilities of youth » is that is has not had an opportunity of considering this Convention » in its meetings. It is, therefore, not possible for the Canadian dele- » gation to support this Convention.

» On the other hand, we are very anxious in our Association to » support every going forward for uniformity in this field and our » position on that is this, that we would welcome the opportunity » of studying this Convention, whether the field is hopeful at the pre- » sent time or not hopeful, because we feel that every effort that can » be made towards uniformity is going to lead in the long run to it. »

Mr. le doyen Ripert (France): « I want to give an answer in a » few words to the spirit of opposition that comes up against the project » that has been drafted by the International Subcommittee. When » listening to the previous speakers it might appear as if it were the » first time that a Convention on the carriage of passengers is submitted » to the I.M.C. Yet the drafting has been going on for many years. » As one of the oldest members of the I.M.C. I might be permitted » to recall a remembrance : It was no other than the British delegation, » which, about twenty years ago, upon the intervention of Sir Norman » Hill had asked that the question of the carriage of the passengers » should be examined. There is indeed something, I dare almost call » it something disgraceful to see that national Associations very easely » come to an agreement when the matter at stake is to make a Con- » vention on the liability towards commodities but that when it is a » question of human beings there is no international agreement to be » found any more. However, do you think that in all the Parliaments » of the world it will be permitted for a long time to come that you » would be able to draft rules which will become compulsory every- » where and to all Courts when it is a question only of repairing » damages to property and which the insurers will pay, whereas on the » contrary when it comes up to damages caused to passengers, many » of which are perhaps miserable people, there will be only diversity » amongst the laws and disputes in the Courts ?

» The I.M.C. is not composed only of representatives of materia- » listic interests. It is not enough to say that the Shipowners of a » country do not agree that their laws be changed. The shipowners

» are not the only ones to be affected and if the passengers can not » be represented here, it is up to the jurists to carry forward the » observations which are favourable to them.

» Moreover it is to the interest of the shipowners themselves that » it be so. We have warned them that the Courts in the various » countries would become more and more severe towards them. In » the U.S.A., if I am informed well, the Courts are severe regarding » all personal injuries and the indemnities are reaching higher and » higher amounts.

» To leave the making of rules regarding this liability to the legis- » lation of the States would mean to run the risk that the Parliaments » would carry bills unduly severe towards the Shipowners. It would » be much more difficult to come to terms later on after these national » laws will have been passed, than to reach an agreement now.

» Do not forget that you drafted and put into application an inter- » national Convention on arrests of ships that will make it possible to » arrest in all the ports of the world for the personal injuries which » will have been caused by a foreign ship. It is therefor much to the » shipowners' interest that this question be settled by a Convention or » that a pattern of rules should be presented to the Parliaments.

» Personnally I am of opinion that even if some countries would » not be now in a position to adhere to an international Convention, » it would be nevertheless desirable that same should be carried as a » pattern for a bill to the benefit of all the countries which might think » it fit for them to pass a national law. That is the reason why I ask » the I.M.C. in spite of the oppositions that have appeared, to give to » the world the general lines of a project that might later be amended » or corrected but that would show to the world that we do not abandon » this important matter. »

Mr. Giannini (Italy): Ladies and gentlemen. After what has been » said by M. Rippert with the authority that is attached to him, it » would be needless for the Italian delegation to intervene. However » as we are more or less the god-fathers of the child which was christened » at Naples, I have something to tell you.

» First of all I bring our entire approval to the views of Mr. Ripert » Indeed this Convention is not made only for the benefit of the Ship- » owners. I am myself a Shipowner and a son of a Shipowner and

» I can tell you that this Convention is also made for the benefit of the » passengers. You know that in some instances very considerable » indemnities have been obtained whereas in others they have been » trifling even after the cases had been in the Courts for many years. » There has been some sort of scandal when regarding the same disaster » the Courts of various countries have taken entirely different decisions, » the allowances being sometimes five or ten times bigger or smaller.

» There is therefor some sort of social achievement to attain in » putting some order in what might be called a juridical chaos.

» On the other hand there is no doubt that the Parliaments will » not pass a bill that is not severe towards the shipowners. We are » not here to indulge in academic discussions but to arrive at practical » results.

» Let us remember the debates which have preceded the adoption » of the bill on the labour accidents. When Lord Chamberlain moved » the bill on the labour accidents in the British Parliament he spoke in » his address of his doubts about the way the bill would be welcomed. » Now, this bill was carried; the same thing happened in other countries » that have adopted similar laws.

» As it has been said, the Warsaw Convention has been accepted, » but from a juridical point of view, something much more important » happened when almost all countries have accepted the Convention » on damages on the ground. If therefor a plane crashes on a house, » the owner of this house, a peaceful inhabitant, will not be permitted » to claim for damages more than an amount in proportion with the » weight of the plane. There is no partnership but the victim must » share the risk. Indeed we must here to the notion of fault substitute » that of the risk, in particular since machines that create such big » risks have been used. It is a social law that forces us to share the » risk among all the parties concerned.

» It is the same in the Convention of 1924 that is applicable to the » passengers of a colliding ship who are third persons with respect » to the other vessel. They also are subject to the limitation of liability. » There are other examples still.

» As Mr. Ripert told you, it is now more than half a century that » we are working to achieve the settlement of this problem. At Naples » we had settled the principles, reserving the drafting of a Convention

» for a later date. The question had been put by Mr. Anderain in 1909 » but it was not examined further. I think the time has come that we » should go along.

» In conclusion I would say that the Italian delegation asks you to » approve the Convention as it stands; if it is to be amended do not » forget that there is the diplomatic Conference. I am sure that it is the » experience which will later on indicate how we will have to improve » our work. We will do a fine job not only for the benefit of the » passengers but also for that of the Shipowners and for the benefit of » the entire maritime community. » (Applause).

The Chairman : « Would any other delegate like to speak on » the main points ? Of course, there are a number of delegations who » are favour of the draft Convention. We have not got a great deal of » time and it might perhaps be desirable that members of the delega- » tions who are supporting the Convention reserve what they have to » say until such time as a particular clause in which they are interested » comes up for discussion. »

Mr. Koelman (Belgium) : Mr. Chairman, Ladies and Gentlemen. » On behalf of the Belgian delegation I have to make the following » statement.

» Belgium has given so much evidence for many years of its desire » to participate to the unification of the maritime law as to enable me » to say that my country cannot be suspected not to have done all that » was possible and is still possible in this matter. Nevertheless Belgium » is also attached to the principle of the freedom of Conventions, as » long as this principle can be maintained.

» Our national law permits the freedom of conventions in the sub- » ject matter that is here examined and this law has not so far in » Belgium given rise to abuses. We would nevertheless be prepared » to sacrifice this principle if we saw a possibility of unification now. » On account of the views expressed so far by the representatives of » many big countries, which are much more important than ourselves » as far as maritime navigation is concerned, we see that no agreement » between the points of view is possible.

» In the circumstances we are unable, despite our desire, to support » the principle of the Convention. We have taken part in the drafting

» because we hoped that an agreement would be possible and that it » was desirable to improve the draft as much as it could be, but we be- » lieve that the conditions for the modification are not yet prevailing » and that therefor it would be better, and I regret it, to reserve the » question for a later date.

Mr. Annar Poulsson (Norway): « On behalf of the Norwegian » delegation I would say that we are very disappointed at the attitude » taken by the British and the American Associations. We feel very » strongly — as has been said by France — that the time has come » when we will have to alter the rules on passengers travelling by sea, » and something will very soon develop from the different Parliaments » if we do not do anything about the situation today.

» We have now an opportunity to combine this passenger Conven- » tion work with the limitation work. As it stands now we are more free » to discuss and to find good rules before we accept the limitation » Convention as it is proposed now. If we come to a situation where » the very high amounts which are proposed in the limitation Conven- » tion are accepted, then it will be much more expensive and much » more difficult — for all shipowners' interest — to accept any passen- » ger Convention which might then be thought of.

» Although on the Norwegian side we have some points which we » still dislike very much in the proposed Convention on passengers, we » must emphasize that we very much agree with the work which has » been done and that the Convention should not be left by itself ; more » work should be done on it to try to find a good solution ».

The Chairman : « Would anyone else like to speak on this gene- » ral question ?

» We will now proceed with the Convention Article by Article. » Article 1 is a definition Article.

» Does anyone wish to say anything on Article 1 ?

» If nobody desires to say anything on Article 1, we will proceed » to Article 2 ; you will observe the final words of this Article are un- » derlined and are, therefore, new.

» Now we come to Article 3.

» As nobody wishes to speak on Article 4, we will proceed to » Article 5 ».

Mr. Annar Poulsson (Norway): Regarding Article 5, point 2 (a), » the Norwegian delegation has at the meetings in Amsterdam, Brighton » and in the meetings here, pointed out that we disagree on the incon- » sistency of the rule which Article 5, 2 (a), contains. The rule as it » is proposed provides liability in some instances of a fault being made » by the ship's crew, captain, etcetera, and in other cases of exactly the » same fault there would be liability, the liability depending on the » result of the same action or fault of the shipowner's servants. This, » we think, is not a rule at all consistent with the social lines of viewing » this question, which is taking place in our time, or that one should » entirely exclude the owner's liability for these faults or one should » accept the liability regardless of what results so far as the vessel is » concerned.

» We feel very strongly that the liability should rest with the » shipowners, even if the fault results in a collision or sinking. As I » said previously, although we strongly support the work of the Con- » vention — and we agree with regard to the other Articles — we must » specifically reserve our position with regard to Article 5, 2 (a), and » I want to have that reservation put into the protocol ».

Mr. Folke Lindahl (Sweden): « Mr. President, Ladies and Gen- » tlemen, the Swedish delegation — who is in favour of the Convention » and is willing to approve of same — takes the same attitude and » makes the same reservation as Norway. We want to have this » reservation put into the protocol of the meeting. Thank you ».

Mr. K. Jansma (Netherlands): « Mr. Chairman, Gentlemen, the » President of the Committee, Mr. Offerhaus, said in his opening re- » marks that The Hague Rules had more or less served as a model for » the draft Convention now before us. There is one basic difference » between The Hague Rules and the present Convention, which he him- » self also pointed out : The Hague Rules merely deal with merchandise » and the present rules deal with human life and the welfare of human » beings .

» There is also another very big difference which M. le Doyen » Ripert has so eloquently referred to, that when The Hague Rules » were drafted there were two parties at the convention table : on the » one side there were the shipowners and on the other side there were

» the cargo owners, the shippers and those representing their interests. » With The Hague Rules there was a free discussion between these » two parties and the final result had to be considered as a compromise » between conflicting interests. Here there is only one party repre- » sented at the conference table — the shipowners. What we have here » before us is typical of what the French call « contrat d'adhésion », » rules formulated by one side and which have to be taken or refused » by the other side. Of course, the case of refusal did not arise and » therefore the responsibility of the Comité Maritime is very much » healthier because we have to bear in mind what the other party » would say if they were at the conference table and had a strong » organisation behind them and were able to discuss the matter with us. » Then I think when we look at Article 5, that it is not the ideal con- » tract which Mr. le Doyen Ripert said we should try to arrive at.

» In Article 5 the shipowners have contracted out a great many » liabilities which if they were themselves passengers — and unable to » insure themselves — they would certainly not accept. If you ask » if this is an ideal and fair contract I think we must say it is not.

» For instance, in Article 5, paragraph 2 (b), you will find the » word « fire ». Is it fair that if a passenger embarks on a ship and » his wife receives the information that he has been killed by fire then » there is no liability on the shipowner unless the widow can prove » that the fire was caused by the fault of the shipowner, when the » damage has actually been caused by his personal fault or privity or » when it has been caused by the fault or privity of his servants ?

» I really believe that this Convention — which probably will not » be accepted today — should be revised in the sense that we should » try to insert such clauses in it to enable the passengers to receive » something.

» Article 12, the limitation clause, says that proceedings with » regard to claims resulting from loss or damage to the luggage of the » passenger shall be time-barred after one year. I wonder if this » has not been copied too lightly from The Hague Rules. In The » Hague Rules we have the question of the cargo owner who is a busi- » nessman ; he knows The Hague Rules by heart and when he has a » loss he knows that he has to put in his claim within a year. Is it fair » to impose that same short term on the widow who hears that her

» husband has disappeared during a voyage and who has the greatest » difficulty in getting the evidence about the cause of the disappearance, » and who will then also have the greatest difficulty and a very diffi- » cult decision to make as to whether she shall really institute legal » proceedings against the powerful shipowners ? I think, Mr. Chair- » man, that there is absolutely no reason. It is, of course, for the » convenience of the shipowners, but there is no imperative need for » this short period of limitation. I suggest when we re-write this Article » that this period should be very considerably lenghtened ».

Mr. R.P. Cleveringa (Netherlands): « Mr. President, it would » perhaps be a good thing, in order to avoid confusion, if I were to » underline that Mr. Jansma was not speaking in the name of the Dutch » Delegation. It is a pity that I have to contradict Mr. Jansma ».

The Chairman : Mr. Jansma was speaking as a « titulaire ».

Mr. R.P. Cleveringa (Netherlands): « — and therefore I take the » opportunity of making this short remark ».

Mr. Offerhaus : « I think that there is not much to be said about » article 5 but as the Norvegian and Swedish delegates have made some » reservations regarding par. 2a), although they knew that this article » has been discussed many times by the International Subcommittee, » I want to make this point clear. The assembly will understand that » from a juridical point of view it may seem paradoxical that the » carrier would not be liable in the case of a very grave error in navi- » gation, whereas he is liable in trifling cases.

» The International Subcommittee had three main reasons to decide » so : the first one was that in the present state of affairs it does not » happen often that an accident causing the death of or personal in- » juries to a passenger occurs as a consequence of a collision or a » stranding and that therefore if an exception is made in these very » few cases it does not alter very much the prevailing situation. Second- » ly according to the existing laws of many countries it is permissible » to agree exoneration in the cases of force majeure and of errors in » navigation : what is provided for in article 5 par. a2) therefore comes » back to what is already existing. On the other hand you should not » forget that the Convention is new in as much as it introduces many » compulsory rules and that is why it is undoubtedly very favourable

» to the passengers; I can moreover assure you that the Subcommittee, » from the very beginning, has been keen on setting up rules which » would not be favourable towards the carriers but in favour of the » passengers. In particular as it was known that there was an opposition » on the part of the British and American delegations, it has been the » intention to draft a contract of carriage favourable to both parties » and I believe that the Sub-Committee has more or less succeeded to » achieve this.

» The third reason that has guided the International Sub-Commit- » tee in the drafting of article 5 par. 2a) is that in this case it is not » very difficult for the passenger to take an insurance on his life or for » personal injuries. I know that you may not say that the insurance » covers everything and that for that reason the Convention would not » be necessary, but I believe that in special cases like this advice might » be given to the passengers to the effect that they would take an in- » surance on their life and for personal injuries.

» In my capacity of President of the International Sub-Committee » I am very pleased that the Norvegian and Swedish delegations, al- » though opposing article 5 2a) are nevertheless prepared to accept the » Convention, subject to this reservation. That is why I should thank » you, Mr. Chairman, to see to it that this reservation should be noted » in the minutes of this meeting. »

The Chairman : « Gentlemen, does anyone else wish to say a word » at all on this Article ?

» Perhaps I might just say this : of course sitting where I am, I am » not speaking on behalf of the British delegation because I am im- » partial in this matter. The way the matter presents itself to me, and » no doubt to many of you, is this : you have on the one hand the » United States delegation who, for reasons that one can well under- » stand even though those reasons may have been slightly whittled » down by their adherence to the Warsaw Convention, take up the very » logical attitude which they do. Public policy, it has been said, is a » difficult horse to ride and it is liable to get out of hand. But their » public policy in this matter is perfectly intelligible and has been in » force for a very long time.

» Then you have the second position, and that is the position which » the supporters of this Convention adopt. They say, « Let us, in so

» far as we can, put passengers on the same basis as cargo ». That is » to say, the shipowner will have to prove that he has exercised due » diligence to make his ship seaworthy, and if some unfortunate pas- » senger is hurt or killed or drowned because of some defect of the » ship the burden of proof will be on the shipowner to prove that his » ship was seaworthy or to prove at any rate that if she was unsea- » worthy the unseaworthiness did not cause the damage. Now that is a » most important matter, the burden of proof. It is particularly impor- » tant in this Article because, whilst the shipowner has to prove that » he has exercised due diligence in regard to the seaworthiness of the » ship, the unfortunate passenger has to prove that none of the string » of exceptions upon which he is entitled to rely in Article 5 (2) occur- » red other than through some act of negligence on the part of the » owner. That is to say, it is no good his saying, « I am covered by » fire, I haven't the slightest idea how the fire started but I say fire » » because the shipowner will then say, « Oh yes, it is true it was a fire, » but it wasn't a fire for which I or my servants were responsible; it » was an act of God or something of that kind ». Under the English » system of law, and no doubt under many other systems of law, » it may prove very difficult for the passenger to get the material to » prove, even if it be the fact, that the shipowner's servant was negli- » gent. So the onus of proof is equally important under this Article » where it lies upon the passenger as where it lies on the shipowner and, » in fact, forms the substratum of the whole Article, or so it seems » to me.

» We have listened with interest to such suggestions and criticisms » as have been made to the Article. I confess I ask myself — and I » have no doubt there are half a dozen good answers to it — why in » 5 (2) (a) it was not possible to follow more exactly the similar » exception clause in The Hague Rules. I have no doubt there are good » reasons why it was not. We know in England now to our cost, and to » the lawyers' gain, what a neglect or default in the navigation of the » ship means. Those were the words in The Hague Rules and they » were more or less a translation of rather similar words in the French » in The Hague Rules. However, it may well be that for good reasons » they do not appear in the present draft, and those are matters on » which I merely ask myself a question which I am unable to answer. » I dare say there are good reasons for it.

» Now does anyone wish to say any more on Article 5 ? »

Mr. A.W. Knauth (United States): « I am speaking for myself » really in order to state some facts which I have often discussed with » Mr. Giannini of the Italian delegation and which I rather expected » Mr. Giannini to mention, but I had not heard him say the similar » things.

» The first is, why are the passengers disorganised ? There is a » great difference between life and accident insurance and cargo in- » surance. When cargo is insured the cargo underwriter is subrogated » to the claim and rights of his assured. But in personal injury and » accident law the underwriter of the personal policy does not become » subrogated. Therefore, we do not meet here the organisation of life » insurance and accident companies of the world who normally, if there » was subrogation, would step forward and speak for the passenger. » That is one reason why we do not have an organisation on behalf of » the passengre. They are well organised through their insurance com- » panies, but their insurance companies have no right to subrogation » and, therefore, do not waste any time coming to speak to us.

» The second fact is about fire. Very little cargo carries a match » or cigarette lighter in its pocket. Almost every passenger carries a » match if not a cigarette lighter. No cargo ever smokes in bed and » falls asleep; a great many passengers do that. No cargo walks around » the ship on two legs and falls on a staircase through not looking where » it is walking; most passengers do that. There is a little cargo which » is self-igniting and that cargo usually carries a great big yellow label » or a red label by international rule, and we know all about it; we do » not put a label on a passenger who has a package of cigarettes and » matches in his pockets. That, of course, leads to a third point, that » passengers are at liberty to act for themselves. They have minds and » thoughts, arms and feet, and they move around as they see fit. When » they find themselves in trouble they have the first chance to get » themselves out of trouble by using their own faculties; a piece of cargo » has no such abilities. Those are very great differences and I just » want to state them because they are not a matter of opinion, they are » a matter of information and fact. »

The Chairman : « If no one else wishes to speak on Article 5 we » come to Article 6 which is an article, I rather anticipate, which will » not provoke a great deal of discussion.

» Unless anyone wishes to speak on Article 6 we come to Article 7 » which is on a separate piece of paper with which you were provided. » That deals with the limits of liability subject to the provisions of the » Warsaw Convention. »

Mr. Offerhaus : « Gentlemen, I have already told you that article » 7 of the draft Convention had been drafted somewhat later than the » other articles.

» We had agreed that the principle of the limitation of the lia- » bility should be taken from the Warsaw Convention because we knew » that this Convention would be modified — at this very moment the » Warsaw Convention is revised at The Hague and I do not know » which will be the result, as many suggestions have been made —; » already at Brighton we were arguing on the point whether to adopt » the franc Germinal or the Poincaré franc and I believe that at » Brighton the latter system has been accepted for the very reason » that the rules of the Warsaw Convention would be modified.

» In the Warsaw Convention e.g. at the article 2, reference is made » to the Poincaré franc regarding all the limitations mentioned in the » first paragraph of that article. In our Convention it is done in another » way i.e. in the first paragraph the Poincaré franc is referred to and it » goes without saying that in the paragraph 2 and 3 the same franc is » meant.

» It seems to me that par. 1 is clear enough. With regard to the » luggage it is very difficult to find out a system that would adapt » itself to some extent to the carriage by sea; it was not possible to » accept without any alteration article 22 of the Warsaw Convention » because the situation of the luggage in the carriage by air is some- » what different. The Warsaw Convention has been taken over in as » much as there has been provided a maximum of 5000 gold francs, I » quote article 22 par. 3 « 5000 Poincaré francs for the luggage that » remain in the custody of the passenger ». The question has arisen » whether or not the situation regarding luggage to which the passenger » could accede was the same.

» The second question was whether for some kinds of luggage the » liability of the carrier should be limited per kilo, per unit or per » passenger. The final result of our discussions was that a limitation » per passenger might be accepted.

» Another question was this : should a maximum of 5000 gold » francs be provided for with regard to all liabilities or should a dis- » tinction be made between the registered luggage and other luggage » and if so should different amounts be taken into account for registered » luggage on the one hand and cabin luggage on the other hand ? » It would have been possible to bring into the picture an amount of » 3000 or 4000 gold francs regarding cabin luggage and of 6000 or 7000 » as far as the registered luggage was concerned. We have thought » that these amounts were somewhat arbitrary, and we have preferred » to accept the same figure for all kinds of luggage. Some passengers » have only registered luggage, others only cabin luggage. It seemed » to us that it was opportune to provide a maximum of 5000 francs » for the first category and a maximum of 5000 francs for the second » category.

» There is also the question of convertibility as it has been said in » article 22 of the Warsaw Convention : « It will be possible to convert » them in each national currency in round figures ». I think we agree » on the necessity of such a convertibility. I do not know whether such » a rule should be inserted in the Convention; so far we have been of » opinion that we might mention in the minutes of this meeting that it » is permissible to convert in that way. »

The Chairman : « After what Mr. Offerhaus has said, is there » anybody who wants to speak about this article ? Mr. Knauth ».

Mr. A.W. Knauth (United States): « At this very moment the » Aviation Group of the I.C.A.O. is meeting at The Hague to consider » revising the Warsaw Convention. The one defect in the Warsaw Con- » vention has slowly come to light and is being considered at The » Hague by the experts now sitting there. That defect is this : when » they made the Warsaw Convention in 1929 every aeroplane accident » to a passenger almost without exception resulted in the passenger's » death; it was very, very rare to have injured passengers.

» With the enormous improvement in aviation, it has now become » quite common to have injured passengers.

» Now the Warsaw Convention makes no extra allowance for the » hospital, the doctor, the nurse, the people who take care of the in- » jured, who are gathered to restore them to health. That is quite a » serious defect in the Warsaw Convention. Practically every other

» social system in the world gives the injured person a remedy in two » parts : one part is the expenditure for the medical care, the hospital, » the nursing; the next element is the wages or the moral damages, or » whatever you wish to call it. The Warsaw Convention makes no allo- » wance for the caring and curing medically of the injured person, and » if we adopt the Warsaw principles we would do very wisely to con- » sider attaching to our system an allowance of a reasonable nature » for medical expenses. I wish to bring that to your attention.

» As to sea baggage, of course it is never weighed. There is no » reason in the shipping industry why a system of weighing should be » installed. In the aviation business there is the greatest reason for » having accurate knowledge of how much the baggage weighs and » where it is put in the aeroplane, otherwise the aeroplane will fall and » you will have a dreadful accident. That is not so at sea; therefore » there is no sense in telling the shipping industry that it must go into » the activity of weighing all the baggage of all the passengers of any » kind. The obvious answer is to limit liability for passengers as is done » today. »

The Chairman : « Is it your proposal then that in addition to what- » ever be the appropriate sum, maximum sum, for loss of life and per- » sonal injury, in the case of personal injury there should be added » to that what we in England call special damages, which is hospital, » doctor's expenses and so on. »

Mr. A.W. Knauth (United States): « That is right. In the United » States we also call it special damages. »

Mr. Offerhaus : « Mr. Chairman, in some projects that have been » drafted by the Institute for the unification of private law of Rome, » the principle explained by Mr. Knauth has been introduced. There » are supporters of that system who say that in such cases it is very » reasonable to indemnify the passenger on account of the expenses » he has made, hospital costs etc. in excess of the limits of the maxi- » mum. The question has been discussed in our Sub-Committee and we » have been of opinion that for the time being we should remain in » line with the Warsaw Convention.

» But if on the occasion of the revision of the Warsaw Convention, » the maximum is increased, we might perhaps accept the new figure.

» We might perhaps say that, provided in the new Convention on » carriage by air the principle that the hospital costs etc. will be paid » regardless of the maximum, is adopted, the I.M.C. would take the » view that this system should be introduced in the Convention on » passengers. If we do this, we are in agreement with the projects » I have spoken to you about and also with the project that has been » supported by the Sub-Committee dealing with the transport of pas- » sengers in general. »

The Chairman : « I gather Mr. Poulsson would like to speak ».

Mr. A. Poulsson (Norway): « Before leaving Article 7 I would » like, on behalf of the Norwegian delegation, to most emphatically » agree to the proposal of Mr. Offerhaus that we should, with regard » to the expenses of special damages, follow whatever alterations they » will agree to in the Warsaw Convention. But with regard to the » luggage, we still think it is not quite reasonable to have the same » amount when it is concerning the registered luggage as when it is » concerning the other luggage. We believe it is a question of prin- » ciple, the shipowners have got more responsibility when they have » taken registered luggage into the ship's custody. Whilst, on the other » hand, the luggage which the passenger keeps in his cabin he can » have an eye on more or less by himself. On the other hand, the ship- » owners have no possibility really to guard that part of the luggage.

» We quite agree that it will be a bit difficult to find two figures » which are corresponding to each other, but there should to our mind » be a certain difference which marks this question of custody. We » would suggest 6.000 and 4.000 instead of 5.000 for 2) and 3). »

Mr. Nordborg : « I support Mr. Poulsson's suggestion ».

The Chairman : « You have heard that there is one matter in » this Article upon which there seems to be a slight difference of opi- » nion, the Norwegian and Swedish delegations favouring the figure » of 6.000 francs and 4.000 francs respectively for luggage carried in » the hold and in the cabin, rather than 5.000 francs for each. Now » that is a matter upon which I feel we should be capable of agreement.

» I wonder whether those who originally proposed 5.000 francs » for each category of luggage would be prepared to assent to the pro- » posal of 6.000 for luggage in the hold and 4.000 for luggage in the » cabin ? Does anyone object to that proposed small amendment.

» Very well, I take it if nobody objects to that small amendment, » the amendment is carried.

» That deals with Article 7.

» We have now come to Article 8.

» If nobody wishes to speak on Article 8, we will go on to Article 9.

» Article 10 : the Convention being fashioned as it is, it seems » almost necessary that there should be an article in the terms of » Article 10 or some such terms, but if any member or any Delegate » would like to say anything about it by all means do so. If not Article » 10 stands.

» Would any Delegate like to say something on Article 11 ? Then » Article 11 is passed.

» Article 12 is a procedural Article, and I think something has » already been said about the time limit in that Article. I think Mr. » Offerhaus would like to say a word about Article 12. »

Mr. Offerhaus : « I would answer to Mr. Jansma that I have » waited until art. 12 came under discussion. He has said that for the » widows and the other heirs it would not be fair to introduce a one-year » prescription. My answer is this : It is easy for the heirs and their » lawyer to issue a protest in accordance with their national laws to » the effect that the time limits of one or two years should be ex- » tended : it is here a prescription not a loss of right. »

The Chairman : « Would anyone else like to say anything on » Article 12 ?

Mr. A.W. Knauth (United States): « It seems to me very interes- » ting to make a deliberate difference, two differences, between our » Convention and the Warsaw Convention on the question of time. » The Warsaw Convention allows two years and not one day longer. » We are proposing to allow one year and then allow the extension of » time by some local national system, if one exists in some countries. » Those are two astonishing differences and I am not aware of any » sound reason — either business, insurance or legal — for those » differences. Speaking for myself, I do urge all of you to adopt » exactly the same as the Warsaw Convention on the matter of time : » two years and not a minute longer ».

Mr. J. Offerhaus (Netherlands): « Mr. Chairman, I can tell Mr. » Knauth that this problem has been discussed in Amsterdam and in

» Brighton. In Brighton the members of the Commission took a vote » on one or two years. This is only a question of comparing the inte- » rests of the passenger and the interests of the carrier. Assuming you » say it should be two years, then the carrier has only a written protest » of such a thing according to the second paragraph of this item, and » there is a reversal of the burden of proof. But that does not say » that during those two years each passenger in such a case will pre- » pare legal proceedings and then, at a certain time during the second » year, bring a lawsuit against the carrier in which it is very difficult » for him to get evidence. This is why we took the intermediary view » in saying that it must be one year, but as a prescription and not a » decheance, so that during that year if the passenger wants to sue » eventually after a year has elapsed then he is obliged to give the legal » assignation or another kind of deed by which the carrier knows that » there will be legal proceedings in order that he can collect his evi- » dence ».

The Chairman : « Is that all anyone wishes to say on Article 12 ? » Very well then, we come now to Article 13. This is, of course, an » important Article. Would anyone like to say anything on Article » 13 ? »

» Very well then, that Article is passed.

» Article 14 is merely formal.

» Very well, Gentlemen, that concludes the Articles taken seriatim. » Now comes the « projet de protocole ».

Mr. Sandiford : « Mr. Chairman, the Italian Association observes » that without due explanation, the rules regarding the personal liabi- » lity of the servants which appeared in the article 7 of the previous » drafts, have been deleted.

» The limitation of liability is not a favour granted to the shipow- » ners. It is the application of the modern theories aiming at substi- » tuting the notion of risk to that of fault, whenever an undertaking » works with the aid of machines. Apart from the fact that the sol- » vency of the servants would in most cases be doubtful, it may happen » that the passenger having been dismissed before the Courts regarding » his claim against the carrier on account of the Convention, starts » proceedings against him on the ground that he is liable in his capa- » city of master of his servants.

» The case has recently been decided — on the 30th. July 1954 » in favour of the passenger by the London Court of Appeal in » Adler v. P. & O.

» On account of this possibility the International Sub-Committee of » the Rome Institute dealing with the unification of the law on liability » has proposed the following text : « If a servant is responsible for » damages referred to in this Convention, he will be able to avail » himself of all exceptions and limitations that would be invoked by » the carrier. The total damages than can be obtained, from the carrier » and from his servant should not exceed the maximum amounts fixed » by the Convention. This provision may not be invoked by a servant » who has committed an offense or a culpable act ».

Mr. Offerhaus : This topic is well known to the Sub-committee. » The question is whether in a Convention that deals with the liability » of the carrier and wherein the contract of carriage is the basis, a rule » should be introduced stating that whenever the servants are involved, » the same rules apply. I have in mind the case where the claim of the » plaintiff is against the servant and not the carrier ; the plaintiff » brings a suit against the servants the Captain or somebody else in » order to avoid the rules on the limitation of liability. I have been » told that some Courts have, in cases where the law admits limitation » of liability, condemned the servants.

» That is the reason why the Subcommittee has considered the » possibility of introducing such a rule. However it has held the view » that for the time being such a rule would bring about a lot of diffi- » culties because the contract of carriage is the basis of the Convention » and it would be inopportune to introduce rules entailing the liability » of other persons than the carrier himself. This does not mean that » the Subcommittee is of opinion that in the case where there is a » limitation of liability or when the carrier is relieved of liability, we » recommend to the passenger to claim against the servants. Not at » all, we want only to suggest that no such article should be inserted » in the Convention itself.

» The Italian delegation thinks about the same ; they want to » adhere to the Convention but they suggest that a wish be expres- » sed to the effect that a new article should be introduced stating that » the same rules apply whenever claims are made against the servants.

» I do not think that the Subcommittee opposes such a wish but we » propose not to bring into the debate on the Convention itself the » principle of the personal liability of the servants.

The Chairman : « Would you agree that an article as proposed » by the Italian delegation should be added and in such a case should » this article be put at the end of the Convention ? »

Mr. Offerhaus : « After the vote on the Convention we might de- » cide whether or not to express the wish that an article dealing with » the personal liability of the servants should be added ».

The Chairman : « Mr. Offerhaus takes the view that it would be » better to vote now by delegation on the principle of the Convention » going forward and then, at the session de cloture we can determine » whether or not we will give effect to the wish of the Italian delega- » tion for the insertion of this particular Article ».

Mr. Kurt von Laun (Germany): « I should like to add some » words to the additional draft protocol ».

The Chairman : « This is the additional clause ? ».

Mr. Kurt von Laun (Germany): Yes. Ladies and Gentlemen, I » should just like to enquire whether it is not necessary to include » a third figure in the additional draft protocol concerning the right » of the contracting States to express a limit of liability into their own » currency. I am not quite sure whether this has been proposed for- » mally ».

Mr. Offerhaus : « At some time we have considered whether this » question should not be added to article 7.

» The question put by Mr. von Laun is this : is it permitted to » express in the national currency in round figures the amount mentio- » ned in article 7 ? We have then thought that it was not necessary. » Mr. von Laun proposes now to add in the additional protocol the » possibility of a third reservation to the effect that the High Contract- » ing Parties would be allowed to introduce in their national laws rules » permitting to express the maxima in each national currency in round » figures.

» I think, Mr. President, this is a question about which you can » vote. In my opinion, the Commission is not against it, because the » result is quite the same.

The Chairman : « I think so. The object of taking the vote by » delegation today is in order that a little report may be made out and » presented at the session de clôture, when a decision will be arrived at » as to whether the draft Convention shall be sent to a diplomatic » conference.

» The matter which we have just been discussing can, I think, » be dealt with quite satisfactorily in that short report, and I feel sure » that complete satisfaction can be given to Mr. von Laum, and those » who think like him, before the draft Convention is finally sent for- » ward to a diplomatic conference, if that is done.

We will proceed alphabetically.

Argentina	Not present
Belgium	No
Canada	Abstain
Columbia	Not present
Chile	Not present
Denmark	Yes
Finland	Abstain
France	Yes
Germany	Yes
Great Britain	No
Greece	Yes
Italy	Yes
Japan	Abstain
Netherlands	Yes
Norway	Yes, with a reservation
Portugal	Not present
Spain	Yes
Sweden	Yes
Switzerland	Not present
United States	Abstain

» Gentlemen, the result of that voting is that there are nine dele- » gations in favour of allowing the draft Convention to go forward, » there are two delegations who are opposed to that course and there » are four delegations who have abstained from voting. »

STOWAWAYS

Thursday, the 22nd September 1955

AFTERNOON SESSION

Chairman : Mr. Leopold Dor,
Vice-President of the International Maritime Committee.

The Chairman opened the session and invited at once Mr. H. Gorick, President of the International Sub-Committee, to come to the platform.

Mr. H. Gorick (Great-Britain) gave first of all a survey of the material difficulties resulting from the presence of stowaways on board of seagoing ships. Further he pointed out that the Draft Convention submitted to the Assembly has been examined at four meetings of the Sub-Committee, two of which at Brighton and two at Madrid. He proceeded as follows :

« Before dealing with this Convention it is necessary to explain » that the stowaway problem really divides itself into two main parts. » The first part relates to the preventive measures which can be taken » to prevent stowaways getting on board ship, in other words, to frus- » trate the whole object of his secretion on board ship. The Sub-Com- » mittee does not regard that phase of the matter as appropriate to the » kind of Convention which is before you today. You will remember, » however, that in its report from the Brighton Conference the Sub- » Committee did express the opinion that more vigorous steps should » be taken to prevent unauthorised persons from gaining access both » to port areas and to ships themselves, and recommended that good » results would flow from a review by port authorities and shipowners » of the measures taken to achieve this end ».

» Secondly there have been suggestions, particularly by the Bel-
» gian Delegation, that provisions should have been incorporated in
» this Convention stipulating that a stowaway had committed an offen-
» ce which was punishable. Indeed the Belgian Delegation suggested
» that provisions of this kind covering offences and punishments should
» apply also to any persons assisting the stowaway and to masters who
» failed to report the presence of stowaways on board. The Sub-Com-
» mittee however takes the view that this matter must be left to the
» national laws of countries to deal with offences on board ships of
» their own flags. The enquiries which we have carried out show that
» many countries already have national laws making it clear that the
» act of stowing away is an offence which is punishable. The nature
» of the punishments varies from country to country. On this matter,
» therefore, the Committee recommend that countries should review
» these provisions of their national laws and where, in the light of
» experience, they have not proved adequate, then they should streng-
» then them. Similarly, in those countries where the act of stowing
» away is not an offence which is punishable, they should consider the
» adoption of appropriate punitive provisions.

» I should like to add, that in this examination of the matter it
» has become clear to the Sub-Committee that some countries, al-
» though possessing punitive measures of this kind, do not apply
» them, either at all or at any rate with any consistency. The Sub-
» Committee expresses the firm opinion that punitive measures should
» be strictly and effectively enforced.

» May I now turn to the revised draft of the Convention which
» is before you ? It is necessary to explain that, as the Sub-Committee
» has seen it, its task is not to present a watertight legal document
» which is capable of application in all countries, but to produce mate-
» rial for the consideration of a diplomatic conference, recognizing as
» they do that if their proposals should be favourably received then
» adoption would require changes, and often substantial changes, in
» national legislation. In other words, what the Committee has tried to
» do is to recommend principles, or shall I say propose a sensible plan,
» for an international understanding, having in mind again that the
» object is perhaps two-fold; to frustrate the purpose of a stowaway
» boarding a ship; and, secondly, to get rid of the present almost im-
» possible position where shipowners sometimes carry stowaways round

» the oceans for years. Such aims have been reached at according to » the unanimous views of the Sub-Committee by the Draft which you » have at hand.

» Mr. Chairman, perhaps it would help to comply with your wishes » in dealing with the general principles of this Convention if I made » no attempt to deal with it article by article but gave the Assembly » the general run of it. The proposals are as follows :

» — the master is given the right to land, or perhaps I should » say deliver, the stowaway at the first suitable port of call, that is » the first stage in the exercise.

» — Second, where nationality can be established the stowaway » is to be returned to his own country.

» — Thirdly, a stateless stowaway, or one whose nationality can- » not be established, is to be returned to the country in which the port » at which he embarked is situated.

» The cost of repatriating a stowaway to his own country and the » cost of maintaining him pending arrangement for his return the Con- » vention suggests should be borne by his own country. In the case, » however, of stateless stowaways or those whose nationality cannot be » established, the expense of returning him to the country in which his » port of embarkation was situated as well as the maintenance costs, » the Convention provides that they should be borne by the shipowner, » subject however to the fact that the amount should not exceed the » cost incurred during a period of two months. The International Sub- » Committee feels that that is a reasonable burden to ask the shipowners » to bear, and it would be unreasonable to ask them to bear the whole » cost of maintenance for an unlimited period.

» — The last and quite important provision in the Convention is » the one dealing with political refugees. The Convention provides that » nothing in it shall in any way affect the power or discretion of a » State to grant political asylum. This aspect of the matter gave some » concern to the Committee and there was a good deal of discussion » on it. I expect many of the Delegates will know that this problem » of political refugees was specially stressed in 1936 and 1937 when » the stowaway question was before the League of Nations, and I » would suggest that the years that have passed have not reduced its » importance or its difficulty. The Sub-Committee is unanimous in

» affirming that the power or discretion of countries to grant political » asylum is quite fundamental to many States, and could not and » should not be interfered with or impinged upon in any way by the » provisions of this draft Convention.

» I think there is perhaps only one other point on the Convention » which I ought to mention in opening this discussion, and that is » in relation to a minimum number of ratifications that one should » consider before the Convention is brought into operation. There have » really been two points of view expressed by members of the Sub- » Committee, one is that we should get progress if two countries only » ratified the Convention; others rather feel that it would encourage » other countries to take on the obligations and responsibilities of the » Convention if there was a minimum provision for a minimum ratifi- » cation of, say, five. But the conclusion was, Mr. Chairman, that that » was essentially a point which could be settled by the diplomatic con- » ference. Their main task was to suggest a plan for this international » understanding and if, as the Sub-Committee earnestly hopes, Mr. » Chairman, the diplomatic conference in due course will find at » government level that these proposals have some good in them, then » they can decide this point of the number of ratifications. »

Mr. S. Holt (Norway), **Mr. A. Loeff** (Netherlands), and **Mr. Fr. Manzitti** (Italy) informed the Assembly of the fact that their respective Associations approved the Draft Convention.

Mr. Leo Van Varenbergh (Belgium) pointed out that the Belgian delegation had recorded that, in the opinion of its authors, the present Draft is of a special make. Indeed, in opposition to the other Conventions the subject dealt with by the Convention on stowaways does not only settle questions of personal interests. Indeed, in this case the authorities, who will be obliged to face with new expenses, according to the new Convention, are not represented in the I.M.C., and as a consequence, the present Draft constitutes only a solution put forward by mercantile circles interested in the problem of stowaways.

Taking into account this remark, the Belgian delegation approved the Draft Convention.

Mr. J.-P. Govare (France), **Mr. R. Snedden** (Great-Britain), **Mr. C. Zitting** (Finland), **Mr. H.-C. Albrecht** (Germany) and **Mr. José**

Luis de Azcarraca (Spain) informed the Assembly of the agreement of their respective delegations.

Mr. Peter Wright (Canada) and **Mr. Oscar R. Houston** (United States) stated that their respective delegations will not be able to vote because their associations did not have the opportunity to examine the Draft Convention. Both delegations, promised to recommend to their respective associations to adopt the Draft Convention, the President put then the Draft to vote.

Argentine : absent
Belgium : yes
Canada : not voting
Denmark : yes
Finland : yes
France : yes
Germany : yes
Great-Britain : yes
Greece : absent
Italy : yes
Japan : yes
Netherlands : yes
Norway : yes
Portugal : absent
Spain : yes
Sweden : yes
Switzerland : absent
United States : not voting

The Chairman thanked all those who had contributed to the elaboration of the Draft Convention on Stowaways and closed the session.

MARGINAL CLAUSES

AND

LETTERS OF INDEMNITY

Friday 23th September 1955.

MORNING SESSION

Chairman : Mr. Albert Lilar,
President of the International Maritime Committee.

The Chairman opened the session and called upon Mr. Leon Gyselynck, Hon. treasurer of the I.M.C. and President of the International Sub-Committee.

Mr. Leon Gyselynck : « The problem of the Marginal Clauses and the Letters of Indemnity is an old one.

Indeed, since 1927 at the Amsterdam Conference the International Maritime Committee has been preoccupied with it but the interests to be conciliated are so diverse and their complexity is so substantial that until now no solution has been found on the international level.

At Brighton in 1954 the International Sub-Committee on Marginal Clauses has asked the Maritime Law Association of the United States to prepare a first draft of an international convention.

By its memorandum dated 28th June 1955 that Association has submitted to us the text of that first draft, and pointed out that it was presented as a basis for discussion and not as a recommendation of the Maritime Law Association of the United States.

In July 1955 the National Associations had the opportunity to examine that Draft of International Convention.

In the meantime two further documents have reached us at Madrid. On the one hand, a report of the Italian Maritime Law Association and on the other hand, a new draft of the American delegates at Madrid. This draft has however been presented only as a basis for discussion and does not engage their Association that has not had the opportunity to take a decision on that subject.

In the midst of the International Sub Committee who met yesterday, the first draft and the new proposition of the United States has been the object of a long and useful exchange of views.

On two points the advices were unanimous : on the one hand, the opinion prevails that a solution of internal penal juridiction, such as pointed out by the First Draft Convention of the Association of the United States, may never be considered on its own as a satisfactory one and that, on the other hand, in the present state of our work, it is not possible to recommend the adoption of a draft convention and it is first necessary to bring about a deeper study of the question by the National Commissions most of which have not yet had the opportunity to take a decision on the first draft of the United States.

In these conditions the International Sub Committee on Marginal Clauses and Letters of Indemnity has the honour to suggest to submit to the Plenary Session of tomorrow the following wish :

Draft Resolution proposed by the International Commission

The Conference, having heard the Report made by the President of the International Commission on Marginal Clauses, requests the Administrative Council :—

(i) to circulate as soon as possible among the National Associations :—

  (a) the text of the First Draft Convention prepared by the Maritime Law Association of the United States, annexed to a Note from the said Association dated New York 28th June, 1955.

  (b) Such other proposals on the topic under review as may be submitted to the Administrative Council by any National Association on or before the 30th June, 1956.

(ii) to suggest to the National Associations that they report on the above mentioned First Draft Convention and proposals to the Administrative Council on or before the 31st December, 1956.

(iii) to transmit the above mentioned Draft, proposals and reports to the International Commission for further study for the purpose of reporting again to the Conference ».

The Resolution proposed by M. Léon Gyselynck was accepted by all the delegations.

CLOSING SESSION

Saturday 24th September 1955.(*)

The Chairman (translation): To-day's session will be devoted to the final passing of the drafts which have been established during this session and of the recommendations which have been formulated.

Before this however, I would like to inform the Assembly that it has been suggested this morning to the Bureau Permanent to appoint as new titulary members Mr. Ingianni and Mr. Francesco Berlingieri of the Italian delegation.

I have pleasure in informing the Assembly that both members have been appointed as titulary members. Mr. F. Berlingieri will allow me to say him that the vote of this morning has been particularly influenced by the efficient and devoted work he made during the Madrid session *(hear, hear)*.

We now start with the different points on the agenda of the Conference. The first point I submit to your votes is the following :

During our last session concerning the marginal clauses, the President of the International Sub-Committee, Mr. Gyselynck, presented a Draft Resolution. I will read it again and ask you whether you agree to consider this Draft Resolution as a recommendation of the Madrid Conference. Here is the French reading :

« La Conférence, ayant pris connaissance du rapport présenté par
» le Président de la Commission Internationale des clauses marginales,
» prie le conseil de gestion :
» 1. de faire parvenir le plus tôt possible aux Associations nationales
» a) le texte du « first draft Convention » préparé par l'Asso-
» ciation de Droit Maritime des Etats-Unis et annexé à une

(*) The minutes of this session have not been abbreviated.

» note de cette Association datée de New-York le 21 juin
» 1955;

» b) toutes autres propositions relatives au sujet de questions
» qui seraient soumises au Conseil de gestion par toute
» Association Nationale au plus tard le 30 juin 1956.

» 2. de recommander aux Associations Nationales de faire rapport sur
» ce « first draft Convention » et sur ces propositions au conseil
» de gestion, au plus tard le 31 décembre 1956;

» 3. de transmettre le « first draft Convention » ainsi que les propo-
» sitions et rapports précités à la Commission Internationale afin
» d'être étudiés par elle en vue d'en faire l'objet d'un nouveau
» rapport à la conférence.

» The Conference, having heard the Report made by the President
» of the International Sub-Committee on Marginal Clauses, requests
» the Administrative Council :—

» (i) to circulate as soon as possible among the National Associa-
» tions :—

» (a) the text of the First Draft Convention prepared by the
» Maritime Law Association of the United States, an-
» nexed to a Note from the said Association dated
» New York 28th June, 1955.

» (b) Such other proposals on the topic under review as may
» be submitted to the Administrative Council by any
» National Association on or before the 30th June,
» 1956.

» (ii) to suggest to the National Associations that they report on the
» above mentioned First Draft Convention and proposals to
» the Administrative Council on or before the 31st December,
» 1956.

» (iii) to transmit the above mentioned Draft, proposals and reports
» to the International Sub-Committee for further study for the
» purpose of reporting again to the Conference.

The Assembly is invited to vote on this recommendation.

Argentine	yes	Italy	yes
Belgium	yes	Japan	yes
Canada	yes	Netherlands	yes
Denmark	yes	Norway	yes

Finland	yes	Portugal	yes
France	yes	Spain	yes
Germany	yes	Sweden	yes
Great-Britain	yes	Switzerland	yes
Greece	yes	United States	yes

The recommendation formulated by the International Sub-Committee and which I just read over again has been adopted unanimously by the delegations.

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The second point on which the Assembly have to vote is the Draft Convention on Stowaways.

As customary, we ought to pass today all the resolutions, but our distinguished colleague Mtre Dor did already pass the Draft on Stowaways during the session of discussion and this draft has already been adopted at that time. I suppose that the Associations have not changed their minds since these two days.

I just will ask to those who were absent at the time the resolution was passed and who might have thought that the passing would take place today whether they wish to vote :

Argentine	abstention
Canada	abstention
Greece	yes
Portugal	yes
Switzerland	yes

The vote passed at the session of discussion is confirmed except that three more Associations have agreed upon the draft.

***

As to the Convention on Passengers.

The Norwegian and Swedish delegations have made observations on this draft and the Italian delegation has submitted a recommendation.

I am not in possession of amendments to the text which has been circulated. In order to avoid any misunderstanding I ask the Assembly whether any Association presents an amendment to the wording established by the Sub-Committee.

If your answer is no we will vote article by article and afterwards we will pass the Draft Convention as a whole.

I presume the Assembly will agree that in order to safe time, I will not read again each article because you have a copy of the draft at hand. I consider thus that the Assembly admit that the articles have been read. If you agree the vote on each of the articles can be carried by rising hands. I mean the heads of delegations.

Article 1 : adopted
» 2 : »
» 3 : »
» 4 : »
» 5 : »

Mr. Bagge (Sweden) (translation): The Swedish delegation approve article 5 but beg to make a reserve for article 5 (2) a).

The Chairman (translation): The reservation made by the Swedish delegation is recorded.

Mr. S. Braekhus (Norway) : The Norwegian delegation make the same reserve.

The Chairman (translation): Article 5 is adopted.

Article 6 : adopted
» 7 : »
» 8 : »
» 9 : »
» 10 : »

Article 11 : Mr. Komachiya, delegate of Japan, is asked to come to the platform.

Mr. S. Komachiya (Japan): Mr. Chairman, Ladies and Gentlemen I am very sorry to say that I would like to make a reserve on the latter part of Article 11 which allows to some persons a right to compensation in the event of the death of a passenger. This is not appropriate because of its bearings on the laws of succession of each contracting State.

The Chairman (translation): Your observation is recorded.

Article 12 : adopted
» 13 : »
» 14 : »

The Sub-Committee has also drafted a protocol that has been submitted to you. I will read it again, if you agree :

» On proceeding to the signature of the international Convention for the unification of certain rules concerning matters relative to transport of passengers, the undersigned Plenipotentiaries have adopted the present protocol which shall have the same value as if its provisions had been inserted in the text itself of the Convention to which it refers.

» The High Contracting Parties reserve for themselves expressly the right :

» 1) not to give effect to the Convention on such transports which according to their own National Law are not considered as international transports in the meaning of art. 1 g) of the Convention.

» 2) not to give effect to the Convention when, in the case of an international transport, the passenger and the carrier are subjects of the same contracting State.

» 3) to transfer into terms of their own monetary system, in round figures, the sums referred to in article 7 of the Convention. »

Do the Assembly agree upon joining the additional protocol to the text which is submitted ? The Assembly agree.

I thus put to vote the text as a whole, including the protocol. I presume however that before voting, certain delegates want to deliver some statements.

Mr. Koelman (Belgium) (translation): The Belgian delegation will abstain from voting for they cannot agree upon all the principles contained in the draft convention. On the other hand they do not wish to prevent that the draft be submitted to the next Diplomatic Conference.

The Chairman : This statement is recorded.

I pass thus the « International Convention for the unification of certain rules relating to the carriage of passengers by sea. »

Argentine	abstention
Belgium	abstention
Canada	abstention
Denmark	yes
Finland	abstention
France	yes
Great-Britain	no

Germany	yes
Greece	yes
Italy	yes
Japan	yes
Netherlands	yes
Norway	yes : with express reservation with regard to Article 5 (2) a).
Portugal	yes
Spain	yes
Sweden	yes : with express reservation with regard to the same article
Switzerland	yes
United States	abstention

The draft is adopted by 12 votes against 1 and 5 abstentions.

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The Chairman (translation): We will examine now the draft on limitation of liability. We will submit to vote the draft convention article by article. I might ask you to pay some more attention to this draf because it is more difficult and because there are amendments.

Mr. Ripert (France) (translation): Mr. Chairman, Gentlemen, I would not have asked to come to the platform at this time of the discussions if there was only a question of drafting, but the wording used in article 1 covers a solution of principle of such an importance that the French delegation cannot possibly accept the present wording of the text. Several foreign delegations have accepted the amendment we have presented and they are presently astonished as we are, about the wording of the text.

I have explained already at the first session that the principle of this convention is that the shipowner in the cases referred to is only liable up to a limited figure and that the reserve applies only when the shipowner has committed a fault or where he has caused by his own fact the occurrence giving rise to damages.

To express this solution which seemed to have been accepted by several delegations, it was necessary that article 1 should state very strictly that the shipowner's liability is limited in the cases referred to without any condition. Well, the text is exactly the contrary, as it declares that the shipowner is only liable for the claims referred to,

when it is established that the occurrence giving rise to the claim has not been caused by the fault or privity of the Owner. You put on the owner the obligation to prove that the occurrence does not result from his fault and you put on him not only such obligation but also the burden of proof of something negative, the fact that he committed no fault and that he has not participated in the occurrence. Well, such a proof is not possible and in that way it will always be possible to plead before the Courts that the owner has not supplied sufficient evidence for limiting his liability.

It is possible that the wording goes further than the intentions of the drafters. It is possible that the French language has such subtilities that the influence of the wording on the application field of the text has not been taken into account. Bur, there is no doubt that according to the present wording the shipowner will have the double burden of proving that the occurrence is one of those which have been referred to and that such occurrence has not been caused by his own fault.

The French delegation suggest consequently a modification of the text which is very small in itself but the results of which are very important. The first paragraph should be read as follows : « The owner of a sea-going ship shall not be liable beyond the amount specified in article 3 of this Convention in respect of any of the following claims » (Le propriétaire d'un navire de mer n'est responsable que jusqu'à concurrence du montant déterminé dans l'art. 3 de la présente convention pour les créances suivantes) and then the modification : « unless it is established that the occurrence giving rise to the claim has resulted from the actual fault or privity of the owner » (« à moins qu'il ne soit établi que l'événement donnant naissance à la créance ait été causé par le fait ou la faute du propriétaire »). The wording « unless it is established » means « unless the claimant proves against the owner that he has committed a fault or has participated to an occurrence that has given rise to damages ». In that way the provision of article 1 is subversed. The rules concerning the burden of proof are then established in the right way. It is up to the victim to prove against the limited liability that there has been a fault committed by the shipowner.

This is the amendment I have submitted to the Chairman and I ask you to kindly submit it to the Assembly in the name of the French delegation (hear, hear).

The Chairman (translation): I ask Mr. C. Miller to proceed to the translation in English of the text of the amendment presented by the French delegation.

Mr. C.T. Miller (Great-Britain): The French amendment is as follows rendered in English :

« The owner of a sea-going ship shall not be liable beyond the amount specified in Article 3 of this Convention in respect of any of the following claims. »

Now comes the amendment :

« Unless it is established that the occurrence giving rise to the claim has taken place without his actual fault or privity. »

Mr. Van der Feltz (Netherlands) (translation): The translation is not right.

The Chairman (translation): In this case could you give a correct translation ?

Mr. Miller will correct himself.

Mr. Miller (Great-Britain): I have not got the French text down correctly, I thought that Mr. le Doyen Ripert said « à moins qu'il ne soit établi que l'événement donnant naissance à la créance ait été causé par le fait ou la faute du propriétaire ». « Unless it is established that the occurrence giving rise to the claim has resulted from the fault and privity of the owner ».

That is a very substantial amendment. Have all the English speaking people got it now ?

The Chairman (translation): Do we agree upon the text now suggested by Mr. Miller ? I would not like we vote on a misunderstanding. Thus, the French text has been read and Mr. C. Miller has just given you the right translation.

Mr. Van den Bosch (Belgium) (translation): I would like to point out that the text suggested by Mr. le Doyen Ripert has been adopted unanimously by the International Sub-Committee except one vote.

The Chairman (translation): Anyway, as the text of the amendment has not been included in the whole of the text submitted to you, the amendment has to be passed and I ask the delegations, who are willing to adopt the new reading of the first paragraph of article 1 suggested by the French delegation, to vote by saying yes. Those who

vote yes are thus of the opinion that the wording put forward by Mr. Ripert has to be adopted.

Argentine	yes	Norway	yes
Belgium	yes	Portugal	yes
Canada	no	Spain	yes
Denmark	yes	Germany	yes
Finland	abstention	Great-Britain	no
France	yes	Greece	yes
Italy	abstention	Sweden	no
Japan	yes	Switzerland	yes
Netherlands	yes	United States	abstention

The wording adopted by the French delegation is adopted by 12 votes against 3 and 3 abstentions (hear, hear).

Are there amendments on article 1 ? If there are none I pass article 1.

Mr. Miller begs to make a statement on the occasion of the vote on article 1.

Mr. C.T. Miller (Great-Britain): Gentlemen, it would be very unfortunate if the Convention on which we all have worked so hard, would break down on this point, but if the French amendment is left without a reservation, I am afraid the British delegation will be bound to vote against the Convention as a whole. That would be a disastrous result after all our work. What we propose therefore is that at the end of article I there should be added this reservation :

« The British Government reserves the right of retaining the existing English law as to the burden of proof of actual fault or privity ».

The Chairman (translation): The reserve of the British delegation is recorded.

Mr. C.T. Miller (Great-Britain): There is just one other reserve, which should have been put in article 1, but was left out owing to the hurry of our work yesterday. Formally I would mention it again. This is the further reservation :

« The High Contracting Parties reserve the right of excluding wreck liability from this Convention ».

Mr. Algot Bagge (Sweden) (translation): Is this reservation going in the Protocole of Signature and not in the text ?

The Chairman (translation): No, not in the text.

Article 1 is adopted and the reserves made are recorded.

Article 2 : Are there amendments to article 2 ?

Mr. Van den Bosch (Belgium) (translation): Gentlemen, owing to the hurry in which the texts have been drafted an amendment which has been unanimously adopted by the International Sub-Committe except one vote and one abstention has not been inserted in the text submitted to you.

It concerns a paragraph which should be inserted after paragraph (3) of article 2 and which reads as follows : « Après constitution du fonds, aucun droit ne pourra être exercé du chef des créances pour lesquelles le propriétaire est autorisé à limiter sa responsabilité sur tout autre bien du propriétaire. »

The Chairman (translation): In order to avoid all misunderstanding I ask for a translation of the amendment suggested by Mr. Van den Bosch.

Mr. C.T. Miller (Great-Britain): The English translation of the translation of the Italian amendment is as follows :

« After the establishment of the limitation fund, no right can be exercised relating to claims for which the shipowner is entitled to limit his liability against any other of his assets ».

The Chairman (translation): I put to vote the amendment submitted by Mr. Van den Bosch translated by Mr. C. Miller.

Argentine	yes	Norway	yes
Belgium	yes	Portugal	yes
Canada	yes	Spain	yes
Denmark	yes	Germany	yes
Finland	yes	Great-Britain	yes
France	yes	Greece	yes
Italy	yes	Sweden	abstention
Japan	yes	Switzerland	yes
Netherlands	yes	United-States	abstention

The amendment is adopted by 16 votes and 2 abstentions.

I put to vote now article 2 amended by the Assembly. Those who are in favour of article 2 are invited to rise hands. Article 2 is adopted.

Article 3. There is an amendment.

Mr. C. Van den Bosch (Belgium) (translation): Gentlement, the explanation I have given you a few minutes ago concerning the amendment of article 2 applies also to the amendment on article 3. In fact this amendment has already been adopted unanimously by the International Sub-Committee except one abstention but owing to circumstances has not been inserted in the text submitted to you. The object of the amendment is to insert in article 3, between (1) and (2) the following wording : « In each part of the limitation fund the distribution among the claimants shall be made in proportion to the amounts of their respective claims ». As a consequence of the adding of this provision the numbers of the paragraphs have to be changed and (2) becomes (3) while (3) becomes (4).

The Chairman (translation): I put to vote now the amendment presented by Mr. C. Van den Bosch.

Argentine	yes	Portugal	abstention
Belgium	yes	France	yes
Canada	yes	Germany	yes
Denmark	yes	Great-Britain	yes
Finland	abstention	Greece	yes
Italy	yes	Spain	yes
Japan	yes	Sweden	yes
Netherlands	abstention	Switzerland	yes
Norway	yes	United States	abstention

The Chairman (translation): The text is adopted by 14 votes less 4 abstentions.

The Dutch delegation has suggested another amendment to article 3.

Mr. Van den Bosch (Belgium) (translation) : I think this amendment is no longer necessary because the text which has been circulated deletes already the words of which the Dutch delegation asked the cancelling.

The Chairman (translation): I read again the amendment suggested by the Dutch delegation :

It is proposed to delete in article 3 paragraph 3 the words « when the owner's claim so to limit his liability is allowed by the competent Court or, if before that date » and the words at the end of the same paragraph « at the date of such payment or establishment as the case may be. »

Mr. C. Van den Bosch (Belgium) (translation): Owing to a material error, the words, the cancelling of which is asked by the Dutch delegation are still in the text submitted to the Assembly. The International Sub-Committee has agreed unanimously to delete them. They have only been maintained owing to a material error.

The Chairman (translation): If I am right the object of the statement of Mr. C. Van den Bosch is to ask for the adoption of the Dutch amendment.

Do the Assembly agree upon this interpretation or should I pass the amendment ?

If there are no opponents I will consider that the question is settled and that the words referred to in the Dutch amendment on article 3 are deleted (agreement).

Mr. Algot Bagge (Sweden): There is a proposition of amendment put forward by the Danish, Finnish, Norwegian, Portuguese, Spanish and Swedish delegations : « In the « Protocole de signature » which is going to be affixed to the Draft Convention shall be inserted the following reserve :

The High Contracting Parties reserve the right of deciding that the Owner of a vessel not exceeding 300 tons shall be entitled to limit his liability either to the amounts mentioned in article 3 of this Convention, or to an amount corresponding to the value of the vessel in sound condition at the time of the occurrence giving rise to the liability ».

We do not suggest to have this amendment in the text but added to the « Protocole de signature » as a reservation of the High Contracting Parties.

The Chairman (translation): Several delegations have asked to insert a provision in the protocol.

First of all I will pass article 3 and afterwards I will pass the Scandinavian suggestion because this suggestion concerns article 3.

Mr. Algot Bagge (Sweden): I only want to add that the Swedish delegation is going to vote for article 3, subject to the gold content of the Swiss franc being inserted.

The Chairman (translation): I put to vote article 3 (adopted).

I pass the draft protocol submitted by the Danish, Finnish, Norvegian, Portuguese, Spanish and Swedish delegations. This text has to be inserted in the protocol and not in the text of the convention, as indicated by Mr. Bagge.

The draft of the Danish, Finnish, Norwegian, Portuguese, Spanish and Swedish delegations is adopted.

We now come to article 4.

I ask Mr. Van den Bosch to come to the platform.

Mr. C. Van den Bosch (Belgium) (translation): The Dutch Association has suggested an amendment. This amendment has already been adopted by the International Sub-Committee unanimously except 2 votes. The object of the amendment is to add at the end of article 4 the following provision : « and provided that the place chosen shall be within the jurisdiction of one of the Contracting States ».

Mr. C.T. Miller (Great-Britain): The amendment proposed by the Italian delegation at the end of Article 4 contains a proviso :

« Provided that the choice provided for by this article shall only be exercisable if the domestic laws of the place for which the owner elects so permits. »

And the Netherlands delegation wish to add : « And provided that the place chosen shall be within the jurisdiction of one of the Contracting States ».

The Chairman (translation): I put to vote the Dutch amendment.

Argentine	yes	Portugal	yes
Belgium	yes	France	yes
Canada	abstention	Great-Britain	abstention
Denmark	abstention	Germany	yes
Finland	yes	Greece	yes
Italy	abstention	Spain	yes
Japan	yes	Sweden	abstention
Netherlands	yes	Switzerland	yes
Norway	abstention	United-States	abstention

The Chairman (translation): The amendment is adopted by 11 votes and 7 abstentions.

Mr. Asser (Netherlands) (translation): There is a second Dutch amendment on article 4.

The Chairman (translation): The Dutch Association suggest the following amendment :

« 2. Il est proposé d'insérer dans le premier alinéa après les mots « relative à la constitution » les mots « et à la distribution ».

» 2. It is proposed to insert in Article 4 paragraph 1 after the words « relating to the constitution » the words « and the distribution ».

I put to vote the amendment.

Argentine	abstention	Italy	abstention
Belgium	yes	Japan	yes
Canada	yes	Netherlands	yes
Denmark	abstention	Norway	yes
Finland	yes	Portugal	yes
France	yes	Spain	abstention
Germany	yes	Sweden	abstention
Great-Britain	yes	Switzerland	yes
Greece	yes	United-States	abstention

The amendment is adopted by 12 votes and 6 abstentions.

There is no amendment on article 4 any more. I put to vote article 4 (adopted).

We come to article 5.

Does somebody want to come to the platform ?

I put to vote article 5 (adopted).

We come to article 6.

Does somebody want to come to the platform ?

I put to vote article 6 (adopted).

We come to article 7.

Does somebody want to come to the platform ?

I put to vote article 7 (adopted).

We come to article 8.

Does somebody want to come to the platform ?

I put to vote article 8 (adopted).

Gentlemen, we now vote on the whole of the Draft Convention.

Argentine	yes
Belgium	yes
Canada	yes, with the same reserve as Great-Britain.
Denmark	abstention
Finland	yes
France	yes
Germany	yes
Great-Britain	yes (subject to the reservation)
Greece	abstention
Italy	abstention
Japan	abstention
Netherlands	yes (with the reserve concerning the fault of the shipowner - article 1)
Norway	abstention
Portugal	abstention
Spain	yes
Sweden	abstention
Switzerland	yes
United States	no

Mr. C.S. Haight (United States): The United States vote « no » for the reason that the suggestions we put forward as a basis towards a compromise that would enable us to join with the others, were not found acceptable. We hope that those suggestions may be reviewed later on by the Governments concerned and by the Delegations here, and that at the Diplomatic Conference it will be possible to find time enough to examine these suggestions thoroughly and, at that time, it will be possible to find a basis for a solution.

The Chairman (translation): Gentlemen, the draft convention on limitation of liability is adopted by 11 votes against 1 and 7 abstentions.

The Chairman : « Messieurs, conformément à notre tradition, je » propose à l'assemblée d'émettre le vœu qu'une réunion de la con- » férence diplomatique soit proposée afin que les projets de convention » sur lesquels nous sommes tombés d'accord à Madrid lui soient soumis. » Nous avons pris coutume de charger le Bureau Permanent de notre » Comité de transmettre ces vœux au Gouvernement belge. Je suppose

» que l'Assemblée qui vient d'émettre ces votes sera d'accord pour que » cette fois aussi, un vœu dans ce sens soit communiqué aux hautes » autorités compétentes. *(Applaudissements)*.

» Quelqu'un désire-t-il encore formuler l'une ou l'autre observa- » tion, car nos travaux vont se terminer.

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» Messieurs, il ne me reste qu'à vous dire que nous allons nous » séparer. Je crois que le travail que nous avons accompli à Madrid » et les accords que nous y avons réalisés nous permettent de dire une » fois de plus que le Comité Maritime International a répondu à sa » tâche.

» Je crois que nos amis espagnols qui nous ont accueillis avec l'es- » poir de voir les accords de Madrid se réaliser, voient leur vœu exaucé. » Je suis heureux de pouvoir le leur dire.

» Je suis heureux aussi de pouvoir remercier toutes les délégations » — et j'y insiste — ici présentes, pour la collaboration efficace qu'elles » ont apportées à nos travaux. Si j'y insiste, c'est parce que je considère » que même les délégations qui n'ont pu se rallier à nos conclusions » n'ont pas moins apporté, par leur présence et leur collaboration un » élément efficace qui, tôt ou tard portera ses fruits. Que ces déléga- » tions soient remerciées au même titre que les autres. Je me permets » de viser particulièrement le chef de la délégation américaine qui, s'il » n'a pas pu apporter l'adhésion de son pays à plusieurs de nos con- » ceptions, y a apporté un esprit amical et de collaboration que je ne » puis m'empêcher de souligner. *(Applaudissements)*.

» Je voudrais aussi remercier tous ceux qui dans le travail d'élabo- » ration des textes que nous venons de voter ont manifesté une fois de » plus une compétence et un dévouement exceptionnels. Je pense » notamment à nos 4 chefs de file qui ont travaillé avec succès. Je pense » à M. Offerhaus pour les passagers, à M. Gorick pour les stowaways, » à M. Gyselynck pour les clauses marginales et enfin « last but not » least » à notre ami M. Van den Bosch qui a accepté de présider les » travaux d'une commission dont les perspectives au départ n'étaient » pas particulièrement encourageantes. Je crois que tous ont bien mérité » du comité maritime international.

» Je voudrais aussi y joindre ceux qui, dans chacune des commis- » sions, leur ont apporté leur collaboration. J'ai peur d'en nommer

» quelques-uns et d'en oublier d'autres mais je pense en ce moment » à la collaboration particulièrement efficace apportée à M. Offerhaus » par M. Warot et M. H.F. Voet, à M. Gorick par M. W. Reynardson, » à M. L. Gyselynck par M. Graham, à M. Van de Bosch par M. Ber- » lingieri et M. J. Gyselynck. Je pense également à la collaboration » des jeunes et particulièrement à celle de M. John Miller et M. Leo » Van Varenbergh. Je leur suis à tous également reconnaissant et je » leur exprime la gratitude du Comité.

» Messieurs, je ne sais pas encore quand nous nous reverrons. Cer- » tains d'entre nous se reverront à la réunion prochaine du Bureau » Permanent, d'autres peut-être à la conférence diplomatique, d'autres » enfin à notre prochaine assemblée. Il n'a pas paru possible au Bureau » Permanent de décider aujourd'hui de la date ni du lieu de notre » prochaine conférence, cela se fera au cours des mois qui vont suivre » mais je crois qu'il conviendrait à tous que nous terminions notre » séance de clôture en disant encore une fois notre reconnaissance à » nos amis espagnols pour la façon dont ils nous ont reçus. Ils nous ont » reçus admirablement. Notre ami M. Benito sait à quel point nous » l'avons apprécié. Je dirai qu'ils nous ont un peu fatigués. S'ils n'en » sont pas responsables c'est que peut-être nos constitutions ne résistent » pas à ces travaux de jour et de nuit auxquels nos amis espagnols » nous ont habitué. *(sourires et applaudissements)*.

» Ils voudront en tout cas bien voir dans mon propos l'expression » de l'affection et de la reconnaissance que nous avons pour eux.

» Avant de nous séparer de Madrid, le Comité Maritime a décidé » de manifester par un geste bien modeste sa reconnaissance à l'égard » des personnalités espagnoles qui nous ont accueillis. Nous ne vou- » drions pas quitter Madrid sans leur serrer la main et sans leur répéter » notre reconnaissance. Dans quelques minutes, vers 1 heure, nous » accueillerons à l'Hôtel Ritz les personnalités espagnoles qui ont fait « partie des groupements d'accueil à Madrid. Je demande aux délégués » de vouloir bien prendre part pendant quelques minutes à cette réunion » pour que nous ne nous séparions pas avant d'avoir eu l'occasion, » une dernière fois, de nous réunir amicalement.

» Je vous remercie tous de votre collaboration à la conférence ». *(Hear, hear)*.

The session was closed.

IV.

DRAFT-CONVENTIONS

1955

PROJET DE CONVENTION INTERNATIONALE SUR **LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER**

Texte voté par l'Assemblée Plénière du C.M.I. à Madrid le 23 septembre 1955.

—

Les Hautes Parties Contractantes,

Ayant reconnu l'utilité de fixer d'un commun accord certaines règles uniformes de droit concernant la responsabilité des propriétaires de navires de mer;

Ont décidé de conclure une Convention à cet effet, et en conséquence ont convenu ce qui suit :

Article 1er

(1) Le propriétaire d'un navire de mer n'est responsable que jusqu'à concurrence du montant déterminé dans l'article 3 de la présente Convention pour les créances suivantes à moins qu'il ne soit établi que l'événement donnant naissance à la créance ait été causé par le fait ou la faute du propriétaire.

Ces créances de toutes personnes quelconques sont celles qui ont leur source dans l'une des causes suivantes :

INTERNATIONAL DRAFT CONVENTION RELATING TO **THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS**

Text voted by the Plenary Assembly of the C.M.I. at Madrid on the 23th September 1955.

—

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules of law relating to the limitation of the liability of owners of sea-going ships, have decided to conclude a Convention for this purpose, and thereto have agreed as follows :

Article 1.

(1) The owner of a sea-going ship shall not be liable beyond the amount specified in Article 3 of this Convention in respect of any of the following claims unless it is established that the occurrence giving rise to the claim has resulted from the actual fault or privity of the owner. The said claims are claims made by any person whatsoever in respect of

a) Pertes de vie ou lésions corporelles de toute personne se trouvant à bord pour être transportée ou pertes ou dommages de tous biens se trouvant à bord du navire.

b) Pertes de vie ou lésions corporelles à toute autre personne sur terre ou sur l'eau ou pertes ou dommages à tous autres biens ou droits causés par tout acte ou négligence ou faute du capitaine, du pilote ou de tout autre membre de l'équipage ou de toute autre personne (se trouvant à bord du navire ou non) dont le propriétarie est responsable pourvu que ces acte, négligence, ou faute se rapportent à la navigation, à l'administration du navire ou au chargement, transport ou déchargement des marchandises transportées.

c) Toute obligation ou responsabilité légale provenant de l'enlèvement des épaves, née ou occasionnée par le renflouement, l'enlèvement ou la destruction de tout navire (y compris tout ce qui est à bord du navire) coulé, échoué ou abandonné. Ces obligation et responsabilité seront dans la suite de ce texte dites par abréviation : « responsabilité pour épave ».

d) Perte et dommages de biens,

a) Loss of life or personal injury to any person being carried in the ship or of loss of or damage to any property whatsoever on board the ship.

b) Loss of life or personal injury to any person whether on land or water (other than persons being carried on the ship) or loss of or damage to any property or rights whatsoever whether on land or water (other than property on board the ship) caused by the act neglect or default of the Master or Pilot or any member of the crew or any other person (whether on board the ship or not) for whose act, neglect or default the owner is responsible in the navigation or management of the ship, or in the loading, carriage or discharge of the cargo thereof :

c) any obligation or liability imposed by any law relating to the removal of wreck arising from or in connection with the raising, removal or destruction of any ship (including anything on board the ship) which is sunk, stranded or abandoned, which said obligation or liability is hereinafter referred to as «wreck liability» or

d) loss or damage to any property

droits de toute nature ou perte de vies ou dommages corporels à toutes personnes, soit à terre, soit sur l'eau, qui ne seraient pas visés par les paragraphes précédents, pour lesquels le propriétaire est responsable à raison du fait de la propriété, de la possession, de la garde ou du contrôle du navire, sans qu'il soit besoin de prouver sa faute.

(2) Le présent article ne s'applique pas :

i) aux créances du chef d'assistance, de sauvetage ou de contribution en avarie commune;

ii) aux créances du capitaine, des membres de l'équipage ou de tout autre préposé du propriétaire du navire se trouvant à bord ou dont les fonctions se rattachent au service du navire (à l'exclusion des créances de leurs ayants-cause, agissant en leur nom personnel) si d'après la loi régissant le contrat d'engagement, le propriétaire n'a pas le droit de limiter sa responsabilité relativement à ces créances.

(3) le fait d'invoquer la limitation de sa responsabilité n'emporte pas la reconnaissance de cette responsabilité.

Article 2.

(1) Les limitations de responsabilité prescrites par l'article 3 de cette Convention s'appliqueront à

or rights of any kind, or loss of life or personal injury caused to any person, whether on land or water (not being any loss, damage or injury to which the preceding provisions of this Article apply), for which the owner is liable by reason of his ownership, possession, custody or control of the ship and without proof of negligence.

(2) Provided that nothing in this Article shall be taken to apply to :

i) Claims for salvage or for general average contributions;

ii) Claims made by any Master, member of the crew or other servant in the employment of the owner on or in connection with his ship (or their dependents) if under the law governing such employment the owner is not permitted to limit his liability in respect of such claims.

(3) The fact that the owner of a ship limits his liability shall not constitute an admission of liability.

Article 2.

(1) The limits of liability prescribed by Article 3 of this Convention shall apply to the aggregate of

l'ensemble de toutes les créances pour perte de vies, dommages corporels, perte ou dommage de tous biens, atteinte à tous droits, responsabilité pour épave, nées d'un même événement, sans avoir égard aux créances pour de tels pertes, dommages corporels, dommages matériels, responsabilité pour épave, nés ou à naître d'un autre événement.

(2) Lorsque la responsabilité du propriétaire est limitée par application des dispositions de cette Convention, aux créances du chef des susdites pertes, dommages corporels ou matériels, responsabilités pour épave, provenant d'un événement distinct, le montant global de cette responsabilité limitée du chef de ces diverses causes, constituera un fonds dit « fonds de limitation ».

(3) Le fonds ainsi constitué sera affecté exclusivement au paiement des créances pour lesquelles le propriétaire est autorisé à limiter sa responsabilité et aucun autre créancier n'aura aucun droit sur ce fonds.

Après constitution du fonds aucun droit ne pourra être exercé du chef des créances pour lesquelles le propriétaire est autorisé à limiter sa responsabilité sur tout autre bien du propriétaire.

Article 3.

(1) Les montants au delà desquels le propriétaire du navire ne

all claims in respect of loss of life, personal injury, loss of or damage to property or rights and wreck liability, which arise on any distinct occasion without regard to any claims in respect of such loss, injury, damage or wreck liability which may have arisen or may arise on any other distinct occasion.

(2) Where the liability of the owner of a ship is limited in accordance with the provisions of this Convention for claims in respect of such loss, injury, damage or wreck liability arising on a distinct occasion, the aggregate amount of his limited liability for those claims shall constitute one limitation fund.

(3) The limitation fund, when constituted, shall be available only for the payment of the claims in respect of which the owner is entitled to limit his liability and no other creditors shall have any other claim on this fund.

After the establishment of the limitation fund no right can be exercised relating to claims for which the shipowner is entitled to limit his liability against any other of his assets.

Article 3.

(1) The amounts beyond which the owner of a ship, in the cases

sera pas responsable dans les cas spécifiés dans l'article 1er de cette Convention sont :

a) ceux des créances du chef de pertes ou dommages de biens ou de responsabilité pour épave (celles-ci étant dénommées : « dommages matériels » dans le présent article et l'article suivant) d'un montant global ne dépassant pas francs . . . . (1) par chaque tonneau de jauge du navire;

b) ceux des créances du chef de pertes de vies ou de dommages corporels subis par toute personne quelconque(celles-ci étant dénommées « dommages corporels » dans le présent article et le suivant), d'un montant global ne dépassant pas francs . . . (2) par chaque tonneau de jauge du navire.

Etant entendu que, lorsque le total reconnu des dommages corporels dépasse francs . . . . (3) par chaque tonneau de jauge du navire :

i) s'il y a aussi des créanciers du chef de dommages matériels, l'on déterminera le montant total des dommages matériels établis ainsi que celui des soldes restant dus sur les dommages corporels établis et la partie du fonds de limitation qui représente la limite

(1) £24.
(2) £40.
(3) £40.

specified in Article 1 of this Convention, shall not be liable are :

a) for claims in respect of loss of or damage to property or rights or wreck liability (such claims being referred to in this and the next following Article as « property claims ») an aggregate amount not exceeding Francs.... (1) for each ton of the ship's tonnage;

b) for claims in respect of loss of life or personal injury caused to any person (such claims being referred to in this and the next following Article as « personal claims ») an aggregate amount not exceeding Francs . . . . (2) for each ton of the ship's tonnage.

Provided that, where the established personal claims in aggregate exceed Francs . . . . (3) for each ton of the ship's tonnage, then

i) if there are also persons having property claims, there shall be ascertained the sum of the established property claims and the sum of the unsatisfied balances of the established personal claims, and that part of the limitation

(1) £24.
(2) £40.
(3) £40.

de la responsabilité du propriétaire quant aux dommages matériels sera, sans préjudice des dispositions de l'article 4 de la présente Convention, réparti entre les créanciers du chef de dommages matériels établis et les personnes créancières d'un solde du chef de dommages corporels établis, et ce dans la proportion du montant des dommages matériels établis par rapport au montant des soldes impayés des dommages corporels établis.

ii) s'il n'y a aucun créancier du chef de dommages matériels, la limite de la responsabilité prescrite pour les dommages corporels sera augmentée d'un nouveau montant de francs . . . (1) par chaque tonneau de jauge du navire.

(2) Dans chaque partie du fonds de limitation, la répartition se fera entre les ayant-droits, proportionnellement au montant de leurs créances.

(3) Pour déterminer la limite de la responsabilité d'un propriétaire, conformément aux dispositions précédentes de cet article, tout navire de moins de 300 tonneaux de jauge sera considéré comme étant un navire de 300 tonneaux.

(1) £24.

fund which represents the limit of the owner's liability for property claims shall, without prejudice to the provisions of Article 4 of this Convention, be divided between the persons having established property claims and the persons having unsatisfied balances of established personal claims in the ratio of the sum of the established property claims to the sum of the unsatisfied balances of the established personal claims; and

ii) if there are no persons having property claims, the limit of liability prescribed for personal claims shall be increased by a further Francs....(1) for each ton of the ship's tonnage.

(2) In each part of the limitation fund, the distribution among the claimants shall be made in proportion to the amounts of their respective claims.

(3) For the purpose of ascertaining the limit of an owner's liability in accordance with the preceding provisions of this Article the tonnage of a ship of less than 300 shall be deemed to be of 300 tons.

(1) £24.

(4) Les montants mentionnés dans cet Article seront considérés comme se rapportant au franc suisse or.

Lorsqu'un propriétaire de navire usera du droit de limiter sa responsabilité conformément aux dispositions de la présente Convention, ces montants, pour les besoins de toutes procédures, pourront, dans tout Etat, et au regard de cette responsabilité, être convertis dans la monnaie nationale de l'Etat au cours du change en vigueur à la date où le propriétaire a effectué un paiement au tribunal en raison de cette responsabilité, ou a autrement constitué un fonds de limitation.

(5) Pour l'application de cette Convention le tonnage sera calculé comme suit :

— pour les navires à vapeur ou autres navires à propulsion mécanique le tonnage net augmenté du volume qui, à raison de l'espace occupé par les appareils de force motrice a été déduit du tonnage brut en vue de déterminer le tonnage net;
— pour les voiliers, le tonnage net.

(4) The amounts mentioned in this Article shall be deemed to refer to Swiss Gold Francs.

Where the Owner of a ship limits his liability in accordance with the provisions of this Convention, then for the purposes of any proceedings in any State with respect to that liability those amounts may be converted into the national currency of that State at the rate of exchange prevailing at the date when the owner has made payment into court in respect of that liability or has otherwise established a limitation fund.

(5) For the purposes of this Convention tonnage shall be calculated as follows :

— In the case of steamships or other mechanically propelled vessels there shall be taken the net tonnage with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage;
— In the case of sailing ships there shall be taken the net tonnage.

Article 4.

(1) Lorsque la responsabilité du propriétaire d'un navire est limitée par application des dispositions de la présente Convention les règles rela-

Article 4.

(1) Where the owner of a ship limits his liability in accordance with the provisions of this Convention, the rules relating to the consti-

tives à la constitution et à la distribution du fonds et toutes autres règles de procédure seront déterminées par la loi nationale de l'Etat où le fonds a été constitué.

(2) Le fonds de limitation peut être constitué au choix de l'armateur dans l'un des lieux suivants :

a) le lieu de l'accident;
b) le premier port où entrera le navire après l'accident ou, s'il s'agit d'une créance relative à des dommages aux marchandises, le port de destination;
c) le premier port où un navire appartenant au propriétaire a été saisi en vue d'obtenir paiement d'une créance couverte par le fonds de limitation;
d) le lieu où le propriétaire a son siège principal d'exploitation;
e) le siège du tribunal devant lequel est pendante une action en recouvrement d'une créance participant au fonds de limitation.

Etant entendu que le choix prévu par cet article ne pourra s'exercer que si la loi du pays où se trouve le lieu choisi par le propriétaire le permet, et pour autant que le lieu choisi soit situé dans un des Etats contractants.

Article 5.

(1) Dans tous les cas où un propriétaire est autorisé à limiter sa responsabilité, aux termes de cette

tution and the distribution of the limitation fund and all other rules of procedure shall be determined in accordance with the domestic laws of the State in which the fund is constituted.

(2) The limitation fund may be constituted at the choice of the owner within the following limits.

a) the place of the accident;
b) the first port where the ship enters after the accident or if the claim relates to damage to cargo the port of destination;
c) the first port at which any vessel belonging to the owner has been arrested with the object of obtaining payment of a claim covered by the limitation fund;
d) the place where the owner has his principal place of business;
e) the place of the Tribunal before which there is a pending action for the recovery of a claim covered by the limitation fund.

Provided that the choice provided for by this Article shall only be exercisable if the domestic laws of the place for which the owner elects so permits and provided that the place chosen shall be within the jurisdiction of one of the contracting States.

Article 5.

(1) Where in respect of any claim for which the Owner of a ship may limit liability under this Convention

Convention, et lorsque le navire aura été saisi et qu'une caution ou autre garantie aura été fournie pour un montant égal à la pleine limite de responsabilité du propriétaire pour perte de vies, dommages corporels, pertes ou dommages matériels, responsabilité pour épave et toutes autres demandes qui, en accord avec les termes de cette Convention entraîneraient la constitution d'un fonds de limitation, la garantie ou autre sécurité fournie sous réserve des dispositions de l'article 5, paragraphe (1), de cette Convention profitera à tous les créanciers.

(2) Lorsqu'un navire aura été régulièrement saisi dans le ressort d'un Etat contractant, pour sûreté de l'une de ces créances, le tribunal ou toute autre autorité judiciaire compétente de cet Etat peut ordonner la mainlevée de la saisie du navire.

a) à condition qu'il soit justifié :

i) que le propriétaire a déjà fourni une caution satisfaisante ou toute autre garantie pour un montant égal à la pleine limite de sa responsabilité pour perte de vies, dommages corporels, dommages ou responsabilité pour épave, selon la cause de sa responsabilité et pour toutes autres demandes qui entraîneraient la constitution d'un fonds de limitation si le propriétaire

the ship is arrested and bail or other security is given for an amount equal to the full limit of the owner's liability in respect of the loss, injury, damage of wreck liability giving rise to that claim and all other claims which, upon the owner limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund, the bail or other security so given shall, subject to the provisions of Article 4 of this Convention, be available for the benefit of all persons making such claims.

(2) Where in respect of any such claim a ship is lawfully arrested within the jurisdiction of any of the contracting states the court or other appropriate judicial authority of that State may order the release of the ship.

a) if satisfied that

i) the owner has already given satisfactory bail or other security for an amount equal to the full limit of his liability in respect of the loss of life, injury, damage or wreck liability giving rise to that claim and all other claims wich, upon his limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund and

entendait se prévaloir des limites de responsabilité prévues par la présente Convention, et

ii) que la caution ou autre garantie est disponible au profit du demandeur, conformément à ses droits, ou

b) à condition qu'il soit justifié :

i) que le propriétaire a déjà donné une caution satisfaisante ou une autre garantie pour un montant inférieur à la pleine limite de sa responsabilité pour perte de vies, dommages corporels, pertes et dommages, et responsabilité pour épave, selon la cause de sa responsabilité, et pour toutes autres demandes qui entraîneraient la constitution d'un fonds de limitation si le propriétaire entendait se prévaloir des limites de responsabilité prévues par la présente Convention, et

ii) que la caution ou autre sécurité est disponible au profit du demandeur, conformément à ses droits.

Pourvu que le propriétaire fournisse une seconde caution ou autre garantie qui, ajoutée à la première déjà fournie, couvrirait intégralement le montant total de sa responsabilité limitée.

ii) the bail or other security is available for the benefit of the claimant in accordance with his rights, or

b) if satisfied that

i) the owner has already given satisfactory bail or other security for an amount which is less than the full limit of his liability in respect of the loss, injury, damage or wreck liability giving rise to that claim and all other claims which, upon his limiting his liability in accordance with the provisions of this Convention, would constitute one limitation fund, and

ii) the bail or other security is available for the benefit of the claimant in accordance with his rights.

Provided that the owner shall give such further bail or other security as would, when added to the bail or other security, already given equal the amount of the full limit of his said liability.

(3) Dans tous les cas où un navire aura été saisi pour une des causes et dans les conditions prévues au paragraphe (2) du présent article, le tribunal ou toute autre autorité judiciaire compétente de l'Etat contractant dans le ressort duquel le navire est saisi prendra, dans l'exercice de son pouvoir juridictionnel, conformément aux dispositions du dit paragraphe, toutes mesures dans la limite de ses pouvoirs pour s'assurer que, dans tous les Etats contractants pris en bloc, la caution globale ou autre sécurité requise ne dépasse pas le montant de la pleine limitation de responsabilité du propriétaire pour la dite demande d'indemnité et pour toutes autres demandes d'indemnité qui entraîneraient la constitution d'un fonds de limitation, si le propriétaire décidait de se prévaloir des dispositions de la présente Convention.

(4) Toutes questions de procédure relative aux actions engagées par application des dispositions du présent article et toutes questions relatives aux délais dans lesquels ces actions doivent être exercées seront réglées par la loi interne de l'Etat contractant dans lequel le procès aura lieu.

(3) In every case in which a ship has been arrested in respect of any such claim and in such circumstances as are referred to in paragraph (2) of this Article, the court or other appropriate judicial authority of the contracting state within whose jurisdiction the ship is arrested shall, in the exercise of its jurisdiction in accordance with the provisions of the said paragraph, take all steps within its power to ensure that in all the contracting states taken as a whole, the aggregate bail or other security required does not exceed the amount of the full limit of the owner's liability in respect of that claim and all other claims which, upon his limiting in accordance with the provision of this Convention would constitute one limitation fund.

(4) All questions of procedure relating to proceedings in pursuance of this Article and questions relating to the limitation of time within which such proceedings may be brought shall be determined by the domestic laws of the contracting State in which the proceedings are brought.

Article 6.

(1) Dans la présente Convention, toute référence à la responsabilité du

Article 6.

(1) In this Convention any reference to the liability of the owner of

propriétaire du navire, quels que soient les termes employés, inclut la responsabilité du navire lui-même.

(2) Sous réserve des dispositions du paragraphe (3) du présent article, les dispositions précédentes de la présente Convention s'appliquent à toutes les personnes suivantes :

a) capitaine et membres de l'équipage du navire;

b) affréteurs, tous gérants de navires et leurs agents, et

c) en général, toute personne, autre que le propriétaire, qui serait tenue de l'une des créances mentionnées à l'article 1er, tout comelles s'appliquent aux propriétaires eux-mêmes, étant stipulé que le montant global de la resme elles s'appliquent aux propriétaires eux-mêmes, étant stipulé que le montant global de la responsabilité limitée du propriétaire et de toutes ces autres personnes pour perte de vies, dommages corporels, pertes et dommages et responsabilité pour épave, encourus pour le même événement, ne pourra excéder les montants fixés par l'article 3 de la présente Convention et constituera un fonds de limitation.

(3) Lorsque le fait donnant naissance à l'une des créances visées à l'article 1er de cette Convention a

a ship, however worded, shall be taken to include a reference to any liability of the ship.

(2) Subject to the provisions of paragraph (3) of this Article, the preceding provisions of this Convention shall apply to any of the following persons, namely

a) masters and members of the crews of ships;

b) charterers, managers and operators of ships and their agents, and

c) generally any person other than the owner who is liable in respect of any of the claims mentioned in Article 1, as they apply to the owners of ships, provided that the aggregate amount of the limited liability of the owner and all such persons in respect of any loss, injury, damage or wreck liability arising on the same occasion shall not together exceed the amounts specified in Article 3 of this Convention and shall constitute one limitation fund.

(3) Where an occurrence giving rise to any of the claims mentioned in Article 1 of this Convention is

pour cause la faute du capitaine ou d'un membre de l'équipage qu'il soit ou non à ce moment le seul propriétaire d'un navire limite ou cherche affréteur ou gérant du navire, ce fait ne sera pas considéré avoir été causé par sa faute ou commis avec son consentement, soit en sa qualité de capitaine ou membre de l'équipage, selon le cas, soit en sa qualité de seul propriétaire ou copropriétaire ou affréteur ou agent du navire, s'il l'était au moment de l'événement générateur de responsabilité, lorsqu'il s'agira d'une faute de navigation ou d'administration du navire.

Article 7.

La présente Convention s'appliquera chaque fois que le propriétaire, ou un copropriétaire du navire à limiter sa responsabilité devant les tribunaux de l'un des Etats contractants ou tente de faire libérer un navire saisi dans le territoire de l'un de ces Etats.

Néanmoins, tout Etat contractant aura le droit d'exclure totalement ou partiellement du bénéfice de cette Convention tout Etat non contractant ou tout propriétaire d'un navire de mer qui n'a pas, au moment où il prend des mesures pour limiter sa responsabilité ou pour obtenir la libération du navire conformément à l'article 5 de cette Convention, sa résidence habituelle ou son siège

due to the fault of the master or any member of the crew (whether or not he be at the same time solely or partly owner, charterer, manager or operator of the ship) the occurrence shall not be deemed to have taken place with his actual fault or privity, whether as master or member of the crew, as the case may be, or, if he be at the same time solely or partly owner, charterer, manager or operator of the ship, as sole or part owner, charterer, manager or operator, as the case may be, if his fault were only a fault of navigation or management of the ship.

Article 7.

This Convention shall apply whenever the owner of a ship limits or seeks to limit his liability in the jurisdiction of one of the contracting States, or seeks to secure the release of a ship arrested in any such jurisdiction.

Nevertheless any contracting State shall be entitled wholly or partly to exclude from the benefits of this Convention any non-contracting State or any owner of a sea-going ship who has not, at the time when he takes steps to limit his liability or to secure the release of a ship under Article 5 of the Convention, his habitual residence or principal place of business in one of the contracting states or whose ship, in respect of

principal d'exploitation dans l'un des Etats contractants ou dont le navire à raison duquel il veut limiter sa responsabilité ou dont il veut obtenir la libération ne bat pas, à la date ci-dessus prévue, le pavillon de l'un des Etats contractants.

which he wishes to limit his liability or to secure its release, does not, at the time aforementioned fly the flag of one of the contracting states.

Article 8.

Tout Etat contractant se réserve le droit de déclarer pour les besoins de sa loi nationale quelles autres classes de navires, le cas échéant, doivent être comprises dans l'expression « navire de mer ».

Article 8.

Each contracting State reserves the right to declare for the purposes of its domestic law what additional classes of ships, if any, are to be included in the expression « seagoing ships ».

PROTOCOLE DE SIGNATURE

Les Hautes Parties Contractantes se réservent le droit de décider que le propriétaire d'un navire jaugeant moins de 300 tonnes sera autorisé à limiter sa responsabilité soit aux montants mentionnés dans l'Article 3 de la présente Convention, soit à un montant qui correspond à la valeur saine du navire au moment de l'événement qui a donné lieu à la créance.

PROTOCOLE DE SIGNATURE

The High Contracting Parties reserve the right of deciding that the owner of a vessel not exceeding 300 tons shall be entitled to limit his liability either to the amounts mentioned in Article 3 of this Convention, or to an amount corresponding to the value of the vessel in sound condition at the time of the occurrence giving rise to the liability.

Réserve des délégations britannique et canadienne concernant l'article 1er.

« Le Gouvernement britannique (canadien) se réserve le droit de maintenir la loi anglaise (canadien-

Reserve made by the British and Canadian delegations concerning article 1.

« The British (Canadian) Government reserves the right of retaining the existing English (Cana-

ne) existante en ce qui concerne le fardeau de preuve de « fait ou faute ».

Réserve de la délégation britannique concernant l'article 1er C.

« Le Gouvernement britannique se réserve le droit d'exclure du champ d'application de l'article 1er les obligations relatives aux épaves ».

OBSERVATIONS

La commission qui a élaboré le présent projet a accepté à la majorité le principe contenu dans un amendement à l'article 5 présenté par la délégation néerlandaise, étant précisé que le propriétaire ne serait fondé à se faire créditer du paiement fait par lui que dans la mesure où ce paiement aurait pu être recouvré devant les tribunaux du pays dans lequel le fonds de limitation a été constitué.

a) Le propriétaire du navire est autorisé à recourir contre le fonds pour les montants (intérêts et frais compris) payés à un créancier qui n'a pas de droits sur le fonds, à condition qu'il soit prouvé que le propriétaire a été obligé ou sera obligé de payer le dit créancier sans pouvoir obliger celui-ci à recourir contre le

dian) Law as to the burden of proof of « the actual fault and privity ».

Reserve made by the British delegation concerning article 1 C.

« The British Government reserves the right to exclude from Article 1 wreck liability. »

OBSERVATIONS

A majority of the Sub-Committee that has prepared this draft, accepted the principle contained in the following amendement to the article 5, produced by the Netherlands Delegation, subject to the understanding that the owner should only be entitled to credit for payment made to the extent that such payment could have been recovered in the court of the country in which the limitation fund has been constituded.

a) The shipowner is entitled to claim against the fund for what he paid (with interests and costs) to another creditor than those who claim against the fund, provided it is proved that he was forced to pay or will be forced to pay the said creditor without the possibility of compelling the said creditor to make a claim

fonds, quoique sa créance soit soumise à la limitation en vertu de la présente Convention.

b) Le paragraphe a) doit être appliqué que le créancier ait été payé avant ou après la constitution d'un fonds conformément aux dispositions de la présente Convention.

c) Lorsque, au moment de la distribution du fonds, il n'est pas certain que le propriétaire du navire ne sera pas obligé de payer d'autres créanciers dans des circonstances définies sous a), le Tribunal, qui a la garde du fonds, pourra ordonner la réservation d'un montant suffisant pour couvrir le propriétaire du navire pour le cas où il pourra exercer le droit lui accordé par a).

against the fund, although the said claim would be subject to limitation under this Convention.

b) Paragraph (a) is to be applied irrespective of the fact whether the other creditor was paid before or after a fund as provided in this Convention was set up.

c) When at the moment of the distribution of the fund it is doubtful whether the shipowner will yet be forced to pay another creditor under the circumstances set out under (a), it will be within the discretion of the court that has custody of the fund, to order the setting aside of an amount sufficient to satisfy the shipowner if eventually he will have the rights referred to under a).

PROJET DE CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE **TRANSPORT DE PASSAGERS PAR MER,**

Texte voté par l'Assemblée Plénière du C.M.I. à Madrid le 24 septembre 1955.

—

Article 1er

Dans la présente Convention, les mots suivants sont employés dans le sens précis indiqué ci-dessous :

a) « transporteur » comprend le propriétaire du navire de mer ou l'affréteur, partie à un contrat de transport de passagers et de bagages;

b) « contrat de transport » s'applique uniquement au contrat de transport passé pour le transport de personnes et de leurs bagages sur un navire;

c) « passager » comprend toute personne qui est transportée sur un navire en vertu d'un contrat de transport;

d) « bagages » comprend tous colis ou effets à l'usage personnel des passagers, qu'ils soient remis ou non à la garde du transporteur;

INTERNATIONAL DRAFT CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO **THE CARRIAGE OF PASSENGERS BY SEA,**

Text voted by the Plenary Assembly of the C.M.I. at Madrid on the 24th September 1955.

—

Article 1.

In this Convention the following expressions have the meanings hereby assigned to them :

a) « carrier » includes the shipowner or the charterer who enters into a contract of carriage of passengers and luggage;

b) « contract of carriage » applies only to a contract of carriage issued for transport on a ship of persons and their luggage;

c) « passenger » includes any person being carried on a vessel according to a contract of carriage;

d) « luggage » includes any package or personal effects of the passengers, whether or not under the custody of the carrier;

e) « navire » comprend tout navire de mer sur lequel le passager est transporté;

f) « transport » comprend le séjour des passagers et de leurs bagages à bord du navire, depuis l'embarquement jusqu'au débarquement y compris ces opérations, à l'exclusion du séjour des passagers et de leurs bagages dans les gares maritimes et sur les quais;

Toutefois, il comprend leur transport éventuel par eau, de terre au navire ou inversement, si le prix en est compris dans le billet ou si le bâtiment utilisé pour ce transport accessoire a été mis à la disposition du passager par le transporteur.

g) «transport international» comprend tout transport dont, d'après les stipulations des parties les points de départ et le point de destination sont situés soit dans deux Etats différents soit sur le territoire du même Etat, à la condition que le navire fasse escale dans un port soumis à la souveraineté d'un autre Etat.

e) « ship » includes any sea-going vessel on which the passenger is carried;

f) « carriage » covers the period from the commencement of embarkation of the passengers and their luggage until the completion of the disembarkation but not including any period whilst in a marine station or on a quay. However « carriage » includes transport by water from land to ship or vice-versa if the cost is included in the fare or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier;

g) «international transport» covers all transport whose place of departure and place of destination, according to the agreement of the parties, are situated either in two different States or in the same State provided that in the latter case the ship calls on a port situated in another State.

Article 2.

Les dispositions de la présente Convention s'appliquent à tous les transports internationaux effectués par un navire battant le pavillon d'un Etat contractant, à condition

Article 2.

The provisions of this Convention shall have effect in relation to and in connection with any international transport by a ship flying the Flag of a Contracting State provi-

que le point de départ ou le point de destination se trouve sur le territoire d'un Etat contractant.

Article 3.

Le transporteur est responsable du dommage survenu en cas de mort du passager ou de toute lésion corporelle subie par lui sous réserve des cas exceptés prévus par l'art. 5 lorsque le dommage s'est produit en relation avec les opérations du transport tel qu'il a été difini par l'art. 1er f) de la présente Convention.

Article 4.

La présente Convention s'applique à tous les bagages conformément aux dispositions ci-après :

a) le transporteur est responsable du dommage survenu en cas de perte ou avarie des bagages enregistrés du passager, depuis leur prise en charge jusqu'à leur mise à disposition du passager nonobstant la disposition de l'art. 1er f);

b) en ce qui concerne, d'une part, les bagages de cabine qui restent sous la garde des passagers pendant le transport et, d'autre part, les bagages dits de prévoyance, entreposés dans la soute spéciale du navire, ainsi que les objets déposés dans les chambres fortes ou

ded that the place of departure or the place of destination be situated in the territory of a Contracting State.

Article 3.

The carrier shall be held liable for any damage suffered as a result of the death or any other personal injury of the passenger, except in the cases provided in art. 5, when the damage has occurred in connection with the operations of carriage in the meaning of Art. 1 f) of the present Convention.

Article 4.

This Convention applies to any luggage according to the following provisions :

a) The carrier shall be responsible for any damage suffered as a result of the destruction or loss of the registered luggage belonging to the passenger during carriage from the time it is accepted until it is put at the disposal of the passenger, notwithstanding the provisions of art. 1 f).

b) As far as cabin luggage remaining during carriage under the custody of the passengers on the one hand, and on the other hand luggage (said « de prévoyance »), stored in the special storeroom of the ship, as well as articles put in the safes accessible to the passengers

coffres-forts du navire auxquels les passagers ont accès au cours du voyage, la responsabilité du transporteur ne sera retenue que si le passager rapporte la preuve que le dommage ou la perte est dû à la faute du transporteur ou de ses préposés;

c) le transporteur n'est pas responsable en cas de perte des espèces monnayées, titres, bijoux et objets précieux de toute nature appartenant aux passagers, à moins que ceux-ci n'aient été déposés entre les mains du transporteur qui aura accepté de les prendre comme tels en charge et perçu ou non un droit correspondant.

during carriage are concerned, the carrier shall only be held responsible if the passenger can prove that the damage or loss is due to the fault of the carrier or of his servants.

c) The carrier shall not be held responsible for loss of money, shares, jewels and precious articles of any kind belonging to the passengers, unless these have been put into the custody of the carrier who has agreed to take them in charge as such and has or has not collected a corresponding fee.

Article 5.

1. Ni le transporteur, ni le navire ne seront responsables de la mort d'un passager ou de toute lésion corporelle subie par lui ainsi que de toute perte ou dommage survenu à ses bagages, lorsque ces faits proviennent ou résultent de l'état d'innavigabilité du navire à moins qu'ils ne soient imputables à un manque de diligence raisonnable de la part du transporteur, avant le transport ou au début de celui-ci, à mettre le navire en état de navigabilité ou à assurer au navire un armement, équipement ou approvisionnement convenables; toutes les fois qu'une perte ou un dommage aura résulté

Article 5.

1. Neither the carrier, nor the ship shall be liable for the death of a passenger, or for any personal injury suffered by him, or for any loss or damage to his luggage when these events result or arise from unseaworthiness of the vessel unless caused by want of due diligence, before or at the beginning of the carriage on the part of the carrier to make the ship seaworthy or to secure that the ship is properly manned, equipped and supplied; whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercice of due diligence shall be on the carrier or on the

de l'innavigabilité, le fardeau de la preuve, en ce qui concerne l'exercice de la diligence raisonnable, tombera sur le transporteur ou sur toute autre personne se prévalant de l'exonération prévue au présent paragraphe.

2. Ni le transporteur ni le navire ne seront responsables de la mort d'un passager ou de toute lésion corporelle subie par lui, ainsi que de toute perte ou dommage survenu à ses bagages, lorsque ces faits proviennent ou résultent :

a) de naufrage, d'abordage ou d'échouement, même causé par une erreur de navigation ou une faute du capitaine, des marins, pilotes ou autres préposés dans l'administration du navire;
b) d'incendie;
c) des périls, dangers ou accidents de la mer ou d'autres eaux navigables;
d) d'un « acte de Dieu »;
e) de faits de guerre;
f) du fait d'ennemis publics;
g) d'un arrêt ou contrainte de prince, autorité ou peuple, ou d'une saisie judiciaire;
h) d'une restriction de quarantaine;
i) de grèves ou lock-outs ou d'arrêts ou entraves apportés au travail pour quelque cause que ce soit, partiellement ou complètement;
j) d'émeutes ou troubles civils;

person claiming exemption under this section.

2. Neither the carrier nor the ship shall be held liable for the death of a passenger, or for any other personal injury suffered by him, or for loss or damage to his luggage when these events arise or result from :

a) shipwreck, collision or stranding even caused by an error in navigation or a fault of the master, crew, pilots or other servants in the management of the ship;
b) fire;
c) perils, danger and accidents of the sea or other navigable waters;
d) act of God;
e) act of war;
f) act of public enemies;
g) arrest or restraint of princes, rulers, or people, or seizure under legal process;
h) quarantine restrictions;
i) strikes or lock-outs or stoppage or restraints of labour from whatever cause, whether partial or general;
j) riots and civil commotions;

k) d'un sauvetage ou tentative de sauvetage de vies humaines;

l) de vices cachés échappant à une diligence raisonnable;

m) du suicide, de l'ivresse ou de la disparition du passager au cours du voyage;

n) de toute autre cause ne provenant pas du fait ou de la faute du transporteur, ou du fait ou de la faute de ses agents ou préposés, mais le fardeau de la preuve incombera à la personne réclamant le bénéfice de cette exception et il lui appartiendra de démontrer que, ni la faute personnelle, ni le fait du transporteur, ni la faute ni le fait des agents ou préposés du transporteur, n'ont contribué aux pertes et dommages ci-dessus énumérés.

Toutefois, le transporteur ne pourra se prévaloir de son irresponsabilité dans le cas (a), s'il est établi que le dommage a été causé par une faute personnelle du transporteur ou dans les cas de (b) à (m), s'il est établi que le dommage a été causé par sa faute personnelle ou par une faute de ses préposés.

Article 6.

La responsabilité du transporteur sera écartée ou atténuée si le transporteur fait la preuve que l'acte, la faute ou la négligence du passager

k) saving or attempting to save life;

l) latent defects not discoverable by due diligence;

m) suicide, drunkenness or disappearance of the passenger during transport;

n) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

However, the carrier will not be entitled to take advantage of these immunities, in case (a) when the damage has actually been caused by his personal fault or privity or in cases (b) to (m), when the damage has actually been caused by his personal fault or by the fault or privity of his servants.

Article 6.

The carrier shall be relieved from liability or the same will be reduced if the carrier can prove that the act or the fault or the negligence of the

a causé le dommage ou y a contribué.

Article 7.

1. En cas de mort d'un passager ou de toute lésion corporelle subie par lui, la responsabilité du transporteur est limitée dans tous les cas à une indemnité de frs 125.000,—.

2. En cas de perte ou de dommages survenus aux bagages enregistrés du passager, la responsabilité sera limitée à une somme de frs 6.000,— par passager.

3. En cas de perte ou dommages survenus à tous les autres bagages et objets du passager la responsabilité du transporteur est limitée en tous cas à frs 4.000,— par passager.

Les sommes indiquées ci-dessus sont considérées comme se rapportant au franc français constitué par soixante cinq et demi milligrammes d'or fin au titre de neuf cents millièmes de fin.

Article 8.

Le transporteur sera déchu du bénéfice de la limitation de responsabilité prévue par l'art. 7, s'il est établi que le dommage provient de sa faute personnelle, impliquant la prévision du dommage et son acceptation téméraire.

passenger has caused the damage or has contributed to it.

Article 7.

1. In the event of the death or personal injury of a passenger, the liability of the carrier shall in no case exceed an amount of Frs 125.000,—.

2. In the event of loss or damage suffered by the passenger's registered luggage the liability of the carrier will in no case exceed an amount of Frs 6.000,— per passenger.

3. In the event of loss or damage suffered by all other luggage or effects of the passenger the liability of the carrier shall in no case exceed an amount of Frs 4.000,— per passenger.

The above mentioned sums are considered as referring to the French franc, each such franc consisting of 65 1/2 milligrams gold of millesimal fineness 900.

Article 8.

The carrier shall not be covered by the provisions of art. 7 limiting his liability if the damage arises from his personal fault implying knowledge of the damage and reckless acceptance thereof.

Article 9.

Les dispositions de la présente convention ne modifient ni les droits ni les obligations du transporteur, tels qu'ils résultent des dispositions de la Convention de Bruxelles sur la limitation de responsabilité des propriétaires de navires de mer, ou de toute loi interne régissant cette limitation.

Article 10.

Toute clause tendant à exonérer le transporteur de la responsabilité ou à établir une limite inférieure à celle qui est fixée dans la présente Convention, ainsi que toute disposition ayant pour effet de renverser le fardeau de la preuve incombant au transporteur, sont nulles et de nul effet, mais la nullité de cette clause ou de cette disposition n'entraîne pas la nullité du contrat qui reste soumis aux dispositions de la présente Convention.

Article 11.

Dans tous les cas prévus aux art. 3 et 4 toute action en responsabilité à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

En cas de mort du passager, l'action en découlant pourra seulement être exercée par le conjoint, par les ascendants, les descendants légitimes, naturels ou adoptifs, ou par

Article 9.

The provisions of the present Convention modify neither the rights nor the duties of the carrier such as provided in the Brussels Convention relating to the limitation of shipowners' liability or from any national law governing that limitation.

Article 10.

Any clause relieving the carrier from liability or lessening such liability otherwise than as provided in this Convention, as well as any clause the object of which is to shift the onus of proof which lies on the carrier, shall be null and void and of no effect, but the nullity of this clause does not imply the nullity of the contract as a whole which shall be subject to the provisions of this Convention.

Article 11.

In all cases under Art. 3 and 4 any claim seeking to impose liability can only be made subject to the provisions of this Convention.

Claims for a passenger's death can only be introduced by the husband or wife, ascendants, descendants, legitimate, adopted or natural, or any other person who was actually supported by the deceased at the time of his death.

toute autre personne qui, au moment du décès, serait effectivement à la charge du passager décédé.

Article 12.

Dans tous les cas où il y aura lésion corporelle du passager et hors le cas de décès, le passager doit aviser sans retard le transporteur de l'événement, chaque fois qu'il en a la possibilité.

En outre, il doit adresser des protestations écrites au transporteur, au plus tard quinze jours après la date du débarquement.

Faute de se conformer à ces prescriptions le passager sera présumé, sauf preuve contraire, avoir été débarqué sain et sauf.

La personne ayant droit à la délivrance des bagages, doit adresser une protestation écrite au transporteur dans les cinq jours après la date de cette délivrance ou après celle à laquelle les bagages auraient dû être délivrés, faute de quoi le passager sera présumé, sauf preuve contraire, avoir reçu ses bagages en bon état et conformément au titre de transport.

Les actions en réparation du préjudice résultant de la mort d'un passager ou de toute lésion corporelle, se prescrivent par un an.

En cas de lésion corporelle, le délai de la prescription court à partir du jour du débarquement.

En cas de décès survenu au cours

Article 12.

The passenger shall whenever possible inform the carrier without delay of any personal injury other than death.

He shall furthermore give written notice to the carrier within fifteen days of the date of landing.

If he fails to comply with these requirements the passenger will be supposed, in the absence of contrary proof, to have been landed safe and sound.

The person who is entitled to receive the luggage must give notice in writing to the carrier within five days from the date on which he has actually received the luggage or same should have been delivered to him; if he fails to do so he will be supposed, in the absence of contrary proof, to have received his luggage in good condition and in accordance with the title of transport.

Proceedings with regard to claims resulting from death of a passenger or from any personal injury are time barred after one year.

In case of personel injury the limitation period will be calculated from the date of the disembarkation of the passenger.

In the event of death occurring during carriage the limitation period

du transport, le délai de la prescription court à partir de la date à laquelle le passager aurait dû être débarqué.

En cas de décès survenu postérieurement au débarquement, le délai court à partir de la date du décès sans qu'il puisse dépasser trois ans à partir du jour de l'événement.

Les actions en réparation du préjudice résultant de la perte ou des dommages affectant les bagages des passagers se prescrivent par un an.

Dans ce cas le délai de la prescription court à partir du jour de l'événement qui a provoqué cette perte ou ces dommages ou de celui de la délivrance des bagages.

will be calculated from the date on which the passenger should have disembarked.

In the event of death occurring after disembarkation the limitation period will be calculated from the date of death provided this period does not exceed more than three years from the occurrence.

Proceedings with regard to claims resulting from loss or damage to the luggage of the passenger shall be time barred after one year.

In that case the limitation period will be calculated from the date of the occurrence causing this loss or damage or from the date of the delivery of the luggage.

Article 13.

Dans le territoire d'une des Hautes Parties Contractantes, l'action en responsabilité pourra être intentée au choix du demandeur uniquement :

a) soit devant le Tribunal de la résidence habituelle du défendeur ou d'un des sièges de son exploitation;
b) soit devant le Tribunal du point du départ ou du point de destination stipulés au contrat.

Est nulle et non avenue toute clause qui aurait pour effet de dé-

Article 13.

Proceedings for liability can be taken only according to the plaintiff's preference in the territory of one of the High Contracting Parties.

a) either before the Court of the usual residence of the defendant or before that of a permanent place of business;
b) or before the Court of the place of departure or that of destination according to the agreement of the parties.

Any clauses which would result into altering the place where the

placer le lieu où doit être jugé le litige selon les règles portées à la présente Convention.

Le demandeur ne pourra pas intenter au même défendeur une nouvelle action basée sur les mêmes faits, devant une autre juridiction sans se désister de l'action déjà introduite.

Les litiges qui feront l'objet d'une action en responsabilité, pourront être résolus par arbitrage si les parties au contrat de transport en ont décidé ainsi, mais à la condition que le lieu du jugement soit celui déterminé par les alinéas a) ou b) du présent article.

Toutefois, postérieurement à l'événement qui a motivé l'action en responsabilité, les parties au contrat de transport peuvent librement convenir du choix d'un Tribunal en quelque lieu que ce soit.

Il en est de même en cas d'arbitrage.

case is to be heard according to the rules of this Convention is null and void and of no effect.

The claimant shall not be allowed to bring a further action against the same defendant on the same facts in another jurisdiction without discontinuing an action already instituted.

Claims seeking to impose liability may be decided by arbitration if the parties to the contract of carriage have so agreed, provided that the place of judment is that fixed by the paragraph a) or b) of the present article.

However, the parties are allowed to make an agreement concerning the choice of the Courts in any place after the occurrence from which the proceedings for liability originate.

The same rule shall be applied in cases of arbitration.

Article 14.

La Convention s'applique aux transports à titre commercial effectués par l'Etat ou les autres personnes juridiques de Droit Public dans les conditions prévues à l'art. 1er.

Article 14.

The Convention applies to comcercial transport within the meaning of article 1 undertaken by Governments or Public Authorities.

PROJET DE PROTOCOLE ADDITIONNEL

En procédant à la signature de la Convention internationale pour l'unification de certaines règles en matière de transport de passagers, les Plénipotentiaires soussignés ont adopté le présent protocole qui aura la même valeur que si ses dispositions étaient insérées dans le texte même de la Convention à laquelle il se rapporte.

Les Hautes Parties contractantes se réservent expressément le droit:

1) de ne pas appliquer la Convention aux transports qui d'après leur loi nationale ne sont pas considérés comme transports internationaux au sens de l'article 1er g) de la Convention;

2) de ne pas appliquer la Convention lorsque pour un transport international le passager et le transporteur sont ressortissants du même Etat contractant;

3) de convertir en leur monnaie nationale en chiffres ronds les sommes indiquées à l'art. 7 de la Convention.

Article additionnel.

(proposé par la délégation italienne, accepté par l'Assemblée plénière par 2 voix et 16 abstentions).

ADDITIONAL DRAFT PROTOCOL

On proceeding to the signature of the international Convention for the unification of certain rules concerning matters relating to passengers, the undersigned Plenipotentiaries have adopted the present protocol which shall have the same value it would have, if its provisions had been inserted in the text itself of the Convention to which it refers.

The High Contracting Parties reserve expressly the right :

1) not to give effect to the Convention on those transports which according to their own national law are not considered as international transports in the meaning of art. 1 g) of the Convention;

2) not to give effect to the Convention when in the case of an international transport the passenger and the carrier are subjects of the same contracting State;

3) to translate into terms of their own monetary system in round figures the sums referred to in article 7 of the Convention.

Additional article.

(submitted by the Italian Delegation and accepted by the Plenary Assembly by two votes and sixteen abstentions).

Si un préposé est responsable d'un dommage visé par la présente Convention, il pourra se prévaloir de toute exception et limitation que pourrait invoquer le transporteur. La réparation totale, qui peut être obtenue de la part du transporteur et de ses préposés, ne doit pas dépasser le maximum établi dans la Convention. Cette disposition ne peut être invoquée par un préposé qui a commis un dol ou une faute lourde.

Réserves faites par les délégations suédoises et norvégiennes pour l'article 5.

Quoiqu'en principe les délégations norvégiennes et suédoises soient favorables au texte de la Convention, elles désirent formuler une réserve en ce qui concerne l'article 5, 2 a).

A notre avis cette stipulation exclut les accidents les plus désastreux qu'il semble plus essentiel de couvrir de préférence aux cas moins importants dans le cadre de l'article proposé.

Nous ne voyons pas de raisons pour traiter cette question des responsabilités suivant les conséquences d'un acte et non suivant le caractère de l'acte lui-même.

Dès lors à notre avis il faudrait envisager si cette stipulation ne doit pas être supprimée.

If a servant is responsible for damages referred to in this Convention, he will be able to avail himself of all exceptions and limitations that could be invoked by the carrier. The total damages that can be obtained from the carrier and from his servants should not exceed the maximum amounts fixed by the Convention. This provision may not be invoked by a servant who has committed an offense or a culpable act.

Reserves of the Norwegian and Swedish delegations on article 5.

Although in principle in favour of the draft Convention, the Norwegian and Swedish Delegations want to make a reservation with regard to Article 5.2.a.

In our opinion this provision excludes the most disastrous accidents which it seems even more essential to cover than the smaller cases within the scope of the proposed Article.

We see no reason for treating the question of liability according to the result of an act and not according to the character of the act itself.

It should, therefore, in our opinion be considered whether this provision should be deleted.

PROJET DE CONVENTION INTERNATIONALE SUR LES **PASSAGERS CLANDESTINS**

Texte voté par l'Assemblée Plénière du C.M.I. à Madrid le 23 septembre 1955

—

Les Hautes Parties Contractantes,

ayant reconnu qu'il était désirable de préciser par un accord certaines règles uniformes de droit relatives aux passagers clandestins, ont décidé de conclure une Convention à cet effet et ont, dans ce but, convenu de ce qui suit :

Article 1er

Dans cette Convention les expressions suivantes auront le sens qui leur est respectivement assigné :

« Passager clandestin » signifie une personne qui en un port quelconque (ou en un lieu en sa proximité) se dissimule dans un navire sans le consentement du propriétaire du navire ou du capitaine ou de tout autre personne ayant la responsabilité du navire et qui est découverte après que le navire a quitté ce port (ou lieu).

INTERNATIONAL DRAFT CONVENTION RELATING TO **STOWAWAYS**

Text voted by the Plenary Assembly of the I.M.C. at Madrid on the 23th September 1955

—

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules of law relating to stowaways, have decided to conclude a Convention for this purpose, and thereto have agreed as follows :—

Article 1.

In this Convention the following expressions shall have the meanings hereby respectively assigned to them :

« Stowaway » means a person who at any port (or place in the vicinity thereof) secretes himself in a ship without the consent of the Owner of the ship or of the Master or any other person in charge of the ship and who is found after the ship has left that port (or place):

« Port of Embarkation » means

« Port d'embarquement » signifie le port (ou lieu en sa proximité) où un passager clandestin monte à bord du navire dans lequel il est découvert.

« Port de débarquement » signifie le port dans un Etat contractant où le passager clandestin est remis à l'autorité qualifiée conformément aux stipulations de cette Convention.

« Autorité qualifiée » signifie le service ou la personne au port de débarquement autorisés par le Gouvernement de l'Etat dans lequel ce port est situé à recevoir et traiter les passagers clandestins conformément aux stipulations de cette Convention.

« Propriétaire » inclut tout affréteur en coque nue du navire.

the port (or place in the vicinity thereof) at which a stowaway boards the ship on which he is found.

«Port of Disembarkation» means the port in a Contracting State at which the stowaway is delivered to the appropriate authority in accordance with the provisions of this Convention.

« Appropriate Authority » means the body or person at the port of disembarkation authorised by the Government of the State in which that port is situated to receive and deal with stowaways in accordance with the provisions of this Convention.

« Owner » includes any charterer to whom the ship is demised.

Article 2.

(1) Si au cours d'un voyage d'un navire immatriculé dans un Etat contractant un passager clandestin est découvert, le capitaine du navire peut remettre le passager clandestin à une autorité qualifiée du premier port d'un Etat contractant où le navire fait escale après la découverte du passager clandestin, ce port étant considéré par le capitaine comme convenable pour que le passager clandestin soit traité conformément aux stipulations de la présente Convention.

Article 2.

(1) If on any voyage of a ship registered in a Contracting State a stowaway is found, the Master of the ship may deliver the stowaway to the appropriate authority at the first port in a Contracting State at which the ship calls after the stowaway is found, being a port which he considers suitable for the stowaway to be dealt with in accordance with the provisions of this Convention :

If, however, the stowaway is found while the ship is in a port in

Si, toutefois, le passager clandestin est découvert alors que le navire est dans un port d'un Etat contractant, le Capitaine peut le remettre à l'autorité qualifiée de ce port.

(2) Lors de la remise du passager clandestin à l'autorité qualifiée le capitaine du navire devra donner à cette autorité toute information en sa possession concernant ce passager clandestin et notamment sur sa nationalité ou, le cas échéant, ses nationalités, son port d'embarquement et la date, le moment et la position géographique du navire lorsque le passager clandestin fut découvert.

(3) L'autorité qualifiée de tout port devra recevoir tout passager clandestin qui lui est remis en conformité avec les précédentes dispositions de cet article et devra agir à son égard conformément aux dispositions suivantes de cette Convention.

Article 3.

Lorsqu'un passager clandestin est remis à l'autorité qualifiée au port de débarquement,

(1) L'autorité qualifiée peut retourner le passager clandestin à tout Etat dont elle estime qu'il est un national et si cet Etat est un Etat contractant, il sera obligé de l'accepter à moins que cet Etat ne con-

a Contracting State the Master may deliver the stowaway to the appropriate authority at that port.

(2) Upon delivery of the stowaway to the appropriate authority, the Master of the ship shall give to that authority all information in his possession relating to that stowaway including his nationality, or, as the case may be, his nationalities, his port of embarkation, and the date, time and geographical position of the ship when the stowaway was found.

(3) The appropriate authority at any port shall receive any stowaway delivered to them in accordance with the foregoing provisions of this Article and deal with him in accordance with the following provisions of this Convention.

Article 3.

When a stowaway is delivered to the appropriate authority at the port of disembarkation,

(1) The appropriate authority may return the stowaway to any State of which they consider him to be a national, and, if that State is a contracting State, it shall be bound to accept him unless satis-

sidère qu'il n'est pas un de ses nationaux.

(2) L'autorité qualifiée peut retourner le passager clandestin à l'Etat dans lequel se trouve le port qu'elle estime être son port d'embarquement à condition que :

a) l'Etat ou, le cas échéant, tous les Etats dont l'autorité qualifiée estime que le passager clandestin est un national, refuse ou, le cas échéant, refusent d'accepter son retour.

b) L'autorité qualifiée considère que le passager clandestin ne possède aucune nationalité.

L'Etat dans lequel est situé le port d'embarquement, s'il est un Etat contractant, sera obligé de l'accepter à moins qu'il ne considère que ce port n'est pas son port d'embarquement.

Toutefois , si l'autorité qualifiée ne peut déterminer le port d'embarquement du passager clandestin, ou si l'Etat dans lequel est situé le port qu'elle estime être le port d'embarquement, refuse d'accepter le passager clandestin, l'autorité qualifiée peut le retourner à l'Etat dans lequel se trouve situé le dernier port d'escale du navire avant la découverte du passager clandestin, et l'Etat dans lequel ce port est situé, s'il est un Etat contractant, sera obligé de l'accepter conformément

fied that he is not a national of that state,

(2) the appropriate authority may return the stowaway to the State in which the port which they consider to have been his port of embarkation is situate if :

(a) the State, or, as the case may be, all the States of which the appropriate authority consider the stowaway to be a national, refuses, or, as the case may be, refuse to accept his return, or

(b) the appropriate authority are satisfied that the stowaway possesses no nationality.

The State in which the port of embarkation is situate, if a Contracting State, shall be bound to accept him unless satisfied that that port was not his port of embarkation. If, however, the appropriate authority are unable to express a view as to the stowaway's port of embarkation, or the State in which the port which they consider to have been his port of embarkation is situate, refuses to accept him, the appropriate authority may return him to the State in which the last port at which the ship called prior to his being found is situate, and the State in which that port is situate, if a Contracting State, shall be bound to accept him in accordance with the preceding provisions of this paragraph.

aux dispositions précédentes de ce paragraphe.

Article 4.

(1) Quand, conformément aux stipulations de cette Convention, un passager clandestin est retourné à un Etat contractant dont il est un national, les frais de ce retour et ceux de son entretien dans ce port de débarquement, depuis le moment où il a été pris à charge par l'autorité qualifiée de ce port jusqu'à son renvoi, seront supportés par cet Etat.

(2) Quand, conformément aux stipulations de cette Convention, un passager clandestin est renvoyé à l'Etat dans lequel est situé le port d'embarquement où, le cas échéant, l'Etat dans lequel est situé le dernier port d'escale du navire avant la découverte du passager clandestin, les frais de son renvoi et ceux de son entretien à son port de débarquement du moment de sa prise en charge par l'autorité qualifiée à ce port jusqu'à son renvoi, seront supportés par le propriétaire du navire.

La responsabilité du propriétaire d'un navire en ce qui concerne les frais ci-dessus d'entretien d'un passager clandestin ne pourront pas excéder le montant des dits frais pour une période de deux mois à dater de la prise en charge du pas-

Article 4.

(1) When, in accordance with the provisions of this Convention, a stowaway is returned to a Contracting State of which he is a national, the expense of so returning him and the expense of his maintenance at his port of disembarkation from the time when he is received by the appropriate authority at that port until he is so returned, shall be defrayed by that State.

(2) When, in accordance with the provisions of this Convention, a stowaway is returned to the State in which his port of embarkation is situate, or, as the case may be, the State in which the last port at which the ship called prior to the stowaway being found is situate, the expense of so returning him and the expense of his maintenance at his port of disembarkation from the time when he is received by the appropriate authority at that port until he is so returned, shall be defrayed by the Owner of the ship. The liability of the Owner of a ship under this paragraph for the expense of maintenance of a stowaway shall not exceed the amount of such expense for a period of two months from the time when the stowaway is received by the appro-

sager clandestin par l'autorité qualifiée à son port de débarquement.

Article 5.

(1) Les pouvoirs conférés par cette Convention au Capitaine d'un navire et aux autorités qualifiées en ce qui concerne le sort d'un passager clandestin s'ajouteront et ne dérogeront pas à tous autres pouvoirs que lui ou elles peuvent avoir à cet égard.

(2) Les stipulations de cette Convention ne porteront en aucune manière atteinte à toute loi nationale ou internationale ou aux usages constitutionnels relatifs au pouvoir et à la faculté pour un Etat Contractant, d'accorder le droit d'asile politique.

priate authority at his port of disembarkation.

Article 5.

(1) The powers conferred by this Convention on the Master of a ship and on an appropriate authority, with respect to the disposal of a stowaway, shall be in addition to and not in derogation of any other powers which he or they may have in that respect.

(2) The provisions of this Convention shall not in any way affect any national or international law or constitutional practice relating to the power or discretion of a Contracting State to grant political asylum.

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Printed in Belgium

IMPRIMERIES GENERALES LLOYD ANVERSOIS, S.A.
ANTWERP