

INTERNATIONAL MARITIME COMMITTEE

International Subcommittee

on

**REGISTRATION OF SHIPS UNDER
CONSTRUCTION**

2.

REPLIES TO QUESTIONNAIRE

ITALY	RSC 4
SWEDEN	RSC 5
DENMARK	RSC 6
NETHERLANDS	RSC 7
GERMANY	RSC 8

FEBRUARY 1963

ITALIAN MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER
CONSTRUCTION

REPLY TO THE QUESTIONNAIRE

I. The questionnaire.

1. Registration of ships under construction in an official register is compulsory in Italy, pursuant to article 233 of the navigation code which reads as follows :

233. (Declaration of construction). Whoever undertakes the construction of a vessel or craft shall previously file with the competent office of the place where the construction of the hull is going to be carried out a declaration thereof indicating the yard and the factory where the hull and the propelling machinery will be constructed, and the names of the persons who will be in charge of such construction.

The office shall register such declaration in the register of ships under construction.

The changement of the persons in charge of the constructions shall likewise be notified to the office and endorsed on the registrar.

2. Registration of ships under construction must be effected, as stated in article 233 of the navigation code, prior to the commencement of the construction.

3. The following instruments may be registered, when they refer to ships under construction :

- (i) Shipbuilding contracts (article 238 of the navigation code).
- (ii) Contracts of sale (art. 2684 n. 1 of the civil code).
- (iii) Contracts which constitute or modify rights of usufruct or of use on a ship or which transfer such rights (article 2684 n. 2 of the civil code).
- (iv) Waivers to the rights mentioned under (ii) and (iii) (article 2684 n. 3 of the civil code).

- (v) Settlements pertaining to differences on the rights mentioned under (ii), (iii) and (iv) (article 2684 n. 4 of the civil code).
- (vi) The judicial orders of transfer of ownership or of other rights on a vessel, issued in connection with a forced sale (article 2684 n. 5 of the civil code).
- (vii) Judgements which have the effect of constituting, modifying or extinguishing the ownership or any of the rights mentioned under (iii), (iv) and (v) (article 2684 n. 6 of the civil code).
- (viii) Deeds relating to the division of the deceased assets between the heirs, to the acceptance of the will or of the bequest of the deceased, when they pertain to any of the rights mentioned under (ii), (iii) and (iv).
- (ix) Deeds relating to the assignment of the assets of a person to his creditors (article 2687 of the civil code).
- (x) Judgements relating to the acquisition of any of the rights mentioned under (ii), (iii), and (iv) by usucaption (art. 2689 of the civil code).
- (xi) Lawsuits relating to any of the rights mentioned under (i), (ii), (iii), (iv) and (v).

It follows that contracts of affreightment cannot be registered.

4. Registration of ships under construction is mandatory, but registration on the register of any of the preceding paragraph is not mandatory. Failure of applying for registration, by means of the declaration of construction mentioned under paragraph 1, is punished with a fine (article 1182 of the navigation code). The failure of registration of any of the instruments referred to above is dealt with subsequently, under (vii).

5. The subject matter is not clearly defined by the law, as regards ships under construction.

The problem relating to the ownership of a ship under construction has been debated by the authors in Italy; the prevailing theory is that, unless the parties agree otherwise, when the construction is undertaken by the builder for the account of another person, and the material is supplied by the builder, the person on whose account the construction is performed acquires the ownership of the vessel during the progress of the construction.

Since the transfer of ownership is due to the materials being used in the construction, it is doubtful whether the registered rights and charges comprise also materials which, although intended for the construction, have not been used yet. We think that, at least so far, the majority is of a negative of opinion, although we believe that the affirmative should be much more reasonable.

6. Registers of ships under construction are kept by the port authorities. Therefore, as stated in article 233 of the navigation code, the declaration of construction must be filed with the registrar in the district whereof the construction of the hull will be effected.

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

1. It is our feeling that a Convention in this matter is in fact desirable, especially in as much as it would facilitate the transfer of ships into other States' registers after the construction has been completed, without rendering it necessary to execute again mortgages and hypothecations. A convention would thus encourage the construction since securities could be executed right upon the commencement of the construction and would continue to exist even after the building is completed.

2. The problem does not arise in Italy since an hypothecation may be executed and registered as soon as the ship under construction is registered, which means even before the construction is actually commenced.

3. This is not usual, since as stated before, according the prevailing opinion the ownership is acquired by the purchaser immediately. The purchaser is also protected when, as it is usual, the shipbuilding contract states that during the construction the ownership will be transferred to the purchaser in proportion with the instalments paid. In fact in such case, if the progress of the construction is of 50 % and if the purchaser has paid 50 % of the price, he will be the owner of the whole construction.

III. Who may apply for registration ?

As it appears from article 233 of the navigation code, the application must be made by the yard. The purchaser is of course entitled to request the yard to do so.

IV. When is registration permissible ?

Under Italian law registration must be effected prior to the commencement of the construction.

Since usually yards do not build ships for their own use (although this may happen) registration follows the execution of the shipbuilding contract.

This rule is, in our opinion, very satisfactory since it is thus possible for the parties to immediately register any instrument concerning the vessel, such as the shipbuilding contract, an hypothecation, etc.

V. Instruments which should be registered.

1-4. The position under Italian law has already been stated above under I (3).

In our opinion it should be possible to register all the instruments the registration whereof is allowed under Italian law, and thus certainly the instruments mentioned under (i), (ii) and (iii).

We think it would also be advantageous to permit registration of contracts of affreightments (which is not allowed by our law) and assignments thereof or of the freights thereunder since now it is usual, especially for big vessels as tankers, to enter into long terms contracts of affreightment (generally time or consecutive voyage charter parties) at the very moment of execution of the shipbuilding contract, and since the assignment of the future freights is an usual collateral security to a mortgage or an hypothecation.

5. Registration should not be made compulsory, but should be left entirely to the choice of the parties or any of them. It will thus be effected by the party having an interest to it on account of its legal effects (see below, under VII).

VI. Material and equipment.

In our opinion it would be a great improvement on the present legal status first to clearly specify what is meant by ship under construction namely if only the hull and the materials which have already been used and form part of the hull, or also all materials which are already within the yard and are intended for use in the construction.

The problem has nowadays an increasing importance on account of the considerable degree of pre-fabrication.

Are the pre-fabricated sections part of the ship or not ?

We believe that all materials destined for the construction, and clearly marked should be considered part of the ship.

It must in fact be borne in mind that, unless particular market conditions compel the builders to finance the newbuildings and to accept delayed payments, it is normal for the purchaser to pay one or more instalments of the construction price prior to the keelaying to cover the cost of purchase of steel and other material and the cost of the pre-fabrication.

Should such material not be considered as *the ship* or part of the ship under construction the legal title of the owner thereof (be it the purchaser or the builder) could not be registered.

Obviously it could be pointed out that these materials are ordinary chattels, but an effort should be made to extend to them the effects of registration.

On the assumption that such ideas are acceptable, it follows that the registration of instruments relating to ships in course of building would automatically cover all materials intended to be used for the construction, provided they are clearly marked and they are within the limits of the yard.

Coming now more specifically to the various questions submitted we should like to say the following :

1. Registered rights and charges should comprise, as a matter of law, materials and equipments intended to be used in the construction, provided that :

2. (a) Such materials and equipments are located in the builder's yard;
- (b) they are intended for the newbuilding and clearly marked as such.

We do not think the additional conditions listed as (c) and (d) are necessary.

As regards the ownership, it should only be stated that the rule whereby the registered rights or charges comprise materials and equipment intended for but not yet incorporated in the newbuilding does not apply with respect of materials and equipment not owned by the builder or by the purchaser when it is proved that the party seeking the application of such rule is in bad faith; in other words, when at the time of registration, the party applying for it knows that the materials or equipment were not owned by the builder or by the purchaser.

3. We do not think that special entries should be permissible for certain materials individually.

4. Registration of special rights in materials or equipment as separate entities, would, in our opinion, create many difficulties and would be contrary to the normal practice. In addition, if such rights and charges differ from those on the ship under construction, there would be no reason why registration should take place on the register of ships under construction.

Otherwise it should also be permissible to register in the ships' register rights and charges on special equipment on board, such as wireless set, radar, etc.

VII. Legal consequence of registration.

1. Registration has no consequence as to relations between the parties, with the exception of registration of hypothecations, for prior to it the hypothecation is not yet in existence.

2. The general effect of registration is that :

(a) The instruments which under Italian law are subject to registration have no effect towards persons who have acquired rights or charges on the subject matter pursuant to an instrument which has been registered prior to the registration of the instruments mentioned above;

(b) After an instrument has been registered, all rights acquired by third parties even prior to the date of such instrument have no effect as regards the party who has effected the registration, if such rights have not been registered.

3. Registered instruments should obtain such priority the moment when registration is actually effected by the registrar.

4. We use the concept of priority only as regards securities, namely lines, hypothecations and pledges, and not as regards the effect of registration. Anyhow the wording is, we believe, clear since it brings about the same result.

5. In our opinion the good faith of the person effecting the registration of a right or charge should not come into consideration for the reasons stated hereafter under Article 6 of the draft Convention.

VIII. Transfer of the newbuilding to another State.

This is, in our opinion, one of the most interesting aspects of the Convention, one with respect to which uniformity is really desirable.

We think that in principle the wording of article 10 and 11 is sufficient to establish the desired protection, although we should like to suggest some amendments.

We shall anyhow revert on the matter when separately dealing with them.

II.

THE DRAFT CONVENTION

Article 1

We have no comment, as regards the substance of this article, although it would be preferable, in our mind, that registration be made compulsory.

Article 2

We assume that there is a good reason for the provision whereby the High Contracting Parties may restrict registration of ships under

construction to ships ordered by a foreign purchaser, such reason being that it is likely that some Nations would otherwise refuse to sign or ratify the Convention.

Article 3

In our submission there should be no need for a rule specifying the time whereafter the registration of instruments relating to ships in the course of building is permissible. In fact the important issue is to establish when registration of ships under construction may be effected since, when a ship is registered, any instrument can be registered.

We believe that registration of ships under construction should be permissible even prior to the time when the building is actually commenced. Therefore, if the possibility of a construction being commenced without a contract having been signed (e.g. because the yard is doing it on its own) does not deserve any special regulation in an international Convention, it might be stated that registration shall be permissible (even if not compulsory) when a contract has been signed, whereupon any of the instruments specified in article 4 (and, in addition other instruments the registration of which is permissible under the national law) may be registered in the ships' register.

We believe that alternatives B and C would not do any good and would create confusion, since it is not easy to establish either when the constructional work has been commenced or when such work has proceeded so far that the ship may be satisfactorily identified. Both such alternatives would leave to national laws too great a freedom to the detriment of the achievement of international unification.

Article 4

We agree in principle on this article, but should like to know whether the word « property » is wide enough and corresponds to what in French are « la propriété et les autres droits réels ».

Of course registration of contracts of affreightment would be advantageous and we would whither we could also cover it expressly.

Article 5

Priority should be based on the time of actual registration and not on the time of application for registration. Otherwise it would be quite impossible to know which is the legal situation from the register since there might be instruments not yet registered, but already filed. We think that it is in the interest of third parties to establish the above rule.

The delay in effecting the registration, if any, can justify an action against the registrar for damages.

Article 6

We are not in favour of this rule which would diminish the strength of registration, his knowlege of the existence of other instruments should have no legal effect. The priority should be based only on the time when the registration is effected without any possibility of destroying it by proving that the party effecting the registration knows that other instruments were in existence.

Article 7

The priority of maritime liens, possessory liens and statutory right in rem, which are not subject to registration, cannot be impaired by the rule provided for under article 5.

We believe that such principle might be expressed by saying that the provision of article 5 does in no way alter the national or international rules relating to the validity and priority of maritime and other liens. We mean by this to cover the following special characteristic of the maritime liens, namely : (a) that they can arise as security of a claim against a person who is not the owner; (b) that they follow the res into whomsoever possession and ownership it may come.

Article 8

If it is thought that this matter cannot be the object of international unification, we agree on this rule.

Article 9

We are not in favour of the possibility of registering rights and charges on machinery etc. but if such registration is possible under some national law, we fully agree on the advisability of having this rule in the future Convention. We should perhaps suggest to delete the last words « necessary for its navigation », in order to extend the protection granted by this article to all the ship's appertainances.

Article 10

We suggest to keep the wording of this article as close as possible to that of article 1 of the 1926 Convention on mortgages and maritime liens. It is better firstly to refer to the way in which rights (is this term wide enough ?) and charges (would it not be better to speak of mortgages, hypothecations and similar charges ?) are effected and then to the way in which they are registered.

As regards registration, we believe that reference should be made to the law of the State where the vessel is built and not only to the Convention.

Article 11

This, as previously stated, is one of the most important, if not the most important, rule in the convention since it enables the transfer of registered rights, mortgages, hypothecations and other charges from the register of ship under construction kept in one contracting State to the register of ships of another contracting State.

The fundamental purpose of this rule, as we conceive it, should in fact be the transfer of all such data from one register to another.

The simplest way to achieve such result is, we believe, the following :

- (i) That the contracting States, as suggested in the present wording of this article agree not to allow registration of ships built in another contracting State unless a certificate delivered by the registrar of the latter setting out all registered rights, mortgages, hypothecations and similar charges be submitted;
- (ii) that after delivery of such certificate the registration of the ship, as suggested, should be frozen so that no further registration be permissible;
- (iii) that the contracting State receiving the above certificate should cause its competent authorities to register all data set out in the said certificate in the ships' register, in the same order so as not to alter the priorities;
- (iv) that after such registration will have been effected, the registrar shall issue a certificate so stating, which shall be submitted to the registrar of the contracting State where the ship has been built, whereupon the ship shall finally be cancelled from such registrar.

We believe that such procedure, which is already in great part suggested in the present wording, would ensure full protection to third parties since cancellation of the ship from the register of ships under construction will not be effected until after the registration of such ship in the register of another contracting State will have been properly done.

We do not attempt for the time being to draft an amendment, but should be happy to do so if the above idea will meet with the approval of the majority of the Members of our Committee.

October, 1962.

SWEDISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER
CONSTRUCTION

REPLIES TO QUESTIONNAIRE

The Swedish Association of International Maritime Law should like to give the following answers to the questionnaire of the International Subcommittee dated August 1962. Our rapporteurs are Mr. N. Grenander and Mr. R. Heden. Owing to the length of the questions a reproduction of the questions at the same time as the answers in the way usually adopted by our Association so far has had to be dispensed with in this case.

I. Present legal situation in Sweden.

1. a) *Only in the circumstances explained under b).*

b) As soon as the ship under construction can be legally measured, it can be registered provisionally and a regular ship's mortgage can be given. Only when the ship is launched can she be legally measured, that is to say at a rather advanced stage of its construction.

A new method of construction according to which the ship is built indoors from astern from keel to upper deck and gradually pushed out in a drydock (« the tooth-paste method » or the « Arendal method ») might well necessitate new or amended rules as for the time when legal measurement should take place.

c) If the yard has received an advance in money or material and a special agreement on this point has been made, and if this agreement has been registered with the local Court or the local Community Director, the lender in case of bankruptcy of the yard gets a certain priority in the material or what is constructed from the money advanced. (*Cf. Swedish Maritime Code Sec. 3.*)

The value of this priority seems never to have been legally tested in Sweden.

d) According to a law from 1883 a creditor has the possibility to get a mortgage on the yard's movable goods with a priority that can be executed under specific conditions. Between a mortgage like this and mortgages under 1 b) and c) a legal conflict of interests can arise. This makes the juridical situation in Sweden between the yard and the purchaser's interests probably unusually complicated.

In case Sweden should ratify an international convention this problem under d) must also be solved.

2. See above under 1 b). An amendment of the law was, however, made in 1931 to make it possible to have the mortgage ready at the delivery of the ship from the yard.

3. In the cases described under 1 b) the title as such and, more commonly, in the cases described under 1 c) in the special agreement mentioned there.

4. There is no provision under Swedish law which makes the registration of a ship under construction mandatory. When the ship is fully finished the owner must register it in the National Ship's Register, which is kept centrally at the City Court of Stockholm.

5. The registered right under 1 c) above comprises materials as a matter of law (alt. b) in the questionnaire).

The materials should be situated on the precincts of the yard.

6. The preliminary registration under 1 b) above is — as said — organized centrally.

The registration under 1 c) is kept locally in the district where the yard is situated, as already stated.

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

1. It is not possible for our Association to answer this question by a simple yes or no. Opinion in Sweden is somewhat divided on the desirability of a convention.

The need for a reform on the lines suggested in the draft Convention receives strong support in the shipping and banking circles.

The Swedish shipyards, however, do not subscribe to this view. They submit — also with a certain fervor — that the Swedish shipyards have been financially strong and in cooperation with banks a lot of new-buildings have been financed. In connection with the delivery of the completed ship — when the right of ownership is transferred from yard to shipowner — the lender (yard or bank) receives ordinary mortgages as security for outstanding debts on the ship. In their view therefore there is no special need for a convention in Sweden.

In view of what has been said the Swedish Association feels it must take up a somewhat cautious attitude as to the desirability of a convention. Its final standpoint will to a large extent have to depend on the contents of such a convention.

2. We know that there has been some problems of this nature in Sweden but they are certainly not common occurrences.

3. It is not usual in Sweden that purchasers get a bank guarantee. The economy of the Swedish yards has in general been good. A bank guarantee is at times put up when a new-building is made for the Swedish Navy. It has also occurred that one of the small yards has agreed to arrange a bank guarantee for advance money.

The cost of a bank guarantee is one percent per annum.

III. Who may apply for registration ?

a) The yard and the purchaser should agree to the registration, but only the yard should be entitled to apply for registration. Or to put it in another way. Only the yard, upon proof that the purchaser agrees.

b) In case a law-reform is enacted it should — with the character and market of the Swedish Shipbuilding industry — be necessary that registration of ships under construction be permitted irrespective of the nationality of the purchaser.

IV. When shall registration be permissible ?

There are in fact several problems attached to this question. When should it be possible to register the ship under construction ? When should it be possible to register a mortgage in the ship under construction ? What materials should a registered mortgage comprise ? Or to formulate the last question differently. When should the material which is intended for the newbuilding become subject to a mortgage ?

There is a difference of opinion in Sweden as to the time to be recommended. The shipping and banking interests would like to make registration permissible at an early stage, preferably when the shipbuilding contract has been duly executed.

The shipyards would prefer, in case a convention is decided upon, that registration should become permissible not earlier than when the newbuilding is launched. *The reason for their attitude is twofold.* They submit the following views :

2) *The present newbuilding-prices will probably remain for a considerable time.* The yards must therefore avoid all extra costs for wages to workers employed to mark and handle materials. A more automatic — and specific — possibility of security does not appear before the newbuilding is launched.

2) At present it seems that quite new construction methods — due to the competition the world over — are under way. (The « tooth-paste method » or the « Arendal method ». Cf. above under I 1. b). With these new methods the time for construction comes down to

about half a year and the need for a legal reform shrinks from still another reason than stated above under II 1.

In case an international convention is laid down it should, however, stipulate that registration is permissible only at one given stage of the construction. The aim of such a convention must be to strive for unification not giving the different nations an opportunity to choose among three (or more) alternatives.

The Swedish Association believes that it should be for the International Subcommittee to try to find a compromise between the different views on this point after a full discussion on the matter.

V. What instruments may be registered ?

3. b) As a reform should aim primarily at promoting the financing of shipbuilding the only instruments in need of an early registration should be mortgages on the newbuilding.

The need to register other instruments should be left to the experience of the future.

5. The matter of registration should be left entirely to the discretion of the parties. If no difficulty exists to finance the newbuilding, there should be no necessity to register any instruments, as these in principle are private documents.

VI. Materials and equipment.

1. a/b. The question of what materials and equipment should be comprised by the registration should be regulated by law and should not depend on the nature of the agreement between the parties.

2. If the International Subcommittee should agree to allow registration of the shipbuilding contract (Cf. question IV above) then the registered rights should comprise such material and equipment which fulfil all the following requirements : a) located in the builder's yard. b) intended for the newbuilding, c) marked as such and d) owned by the shipbuilder.

If the International Subcommittee should adopt the view that the registration of a newbuilding under construction should only be allowed when the ship has been launched then the registered rights should comprise at the most materials, if any, on board the launched newbuilding intended for it, although not yet incorporated into the floating ship under construction, provided they are owned by the yard.

3. Our answer is no.

4. The Swedish Association would prefer that the Convention stipulated that on delivery of the completed vessels special rights in material and equipment, if any, should lapse.

Whether it should be considered worth while to take up the points raised under question 4 under a separate convention we are not prepared to say definitely at this stage. Our impression is, however, that the matter could be left to national law.

VII. Legal consequences of registration.

1. Under Swedish law the yard is now the sole owner of the new-building until it has been delivered and handed over to the purchaser. Our Association holds the view that a convention on registration of ship under construction should in no way be allowed to change this position.

2. a) The yard's ordinary creditors might demand mortgages on the yard's property or moveable goods, or personal or bank guarantees.

b) An agreement would be necessary for a yard's possessory lien for the unpaid part of the contract price. As it is now the yard already has a right to detain the completed vessel when the purchaser cannot pay.

c) The ship under construction and the material intended for it would belong to the estate of the bankrupted yard.

3. The registered instruments should obtain priority from the day they are produced to the registrar.

Due to Swedish national statute-law the result might probably be that official registration will be taken up once a week also for this new kind of mortgage (as with ship's mortgage and mortgage in houses). All applications for a mortgage are with this Swedish system brought together and registered as on each Wednesday at 12 o'clock. Therefore it does not e.g. make any difference if one person is asking for a mortgage on Monday and another Tuesday, they will both be registered with the same priority on following Wednesday.

On this point the Swedish Association is, however, ready to accept the principle of priority which gathers a majority of votes.

4. Our answer is yes.

5. It is hardly thought desirable to introduce the question of good faith in this Convention. Different legislations probably have different views as to the effect generally of good faith. At any rate it is felt that with the values involved in a newbuilding the creditor should take the risk for non-registration quite independently of good or bad faith. Article 6 of the Draft Convention would therefore appear to be superfluous.

VIII. Transfer of the newbuilding to another State.

Our answer is in the affirmative.

Article 11 seems to meet also another important point, the need to recognize ordinary ships mortgages in as many states as possible. This is indeed most welcome.

The Swedish Association would like to seize the opportunity thus offered to underline the importance of making ordinary ship mortgages internationally valid. The present costs of ships and the difficulty to finance them make this aspect an even more relevant and urgent problem than before. The 1926 Convention has not yet been ratified by Great Britain, The Netherlands, Japan, The Federal Republic of Germany or the USA. The Swedish Association should indeed welcome and support any action the C.M.I. might think fit to undertake to stimulate action in this matter.

It seems therefore that Article 11 should receive a particularly close attention by the Stockholm Conference in 1963. Were Article 11 adopted as suggested in the draft Convention this would appear to have the happy consequence that a mortgage in a ship under construction would become an ordinary ship's mortgage when the ship is completed and delivered even if on delivery the ship should be transferred to the flag of another contracting State.

Stockholm, 22nd October, 1962.

For

*Swedish Association of International Maritime Law
Kaj Pineus, President | Claës Palme, Hon. Secretary*

DANISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER
CONSTRUCTION

REPLIES TO QUESTIONNAIRE

*(Answer prepared by Mr. E. Behrendt-Poulsen,
advocate at the Supreme Court of Denmark)*

I

Present legal situation in Denmark.

re 2. Registration of ships under construction in Denmark may be entered in the official Danish Central Register on the following conditions :

The construction of the newbuilding must according to a statement by the authorities be so far advanced that the ship may be satisfactorily identified and is estimated to be of not less than 20 gross register tons when completed.

The owner of the ship must be a Danish citizen or in the case of limited liability companies not less than 2/3 of the Board members must be Danish citizens and resident in Denmark.

The name of the builder may be registered if the yard consents thereto in writing, and vice versa.

re 2. See under re 1.

re 3. In order that an instrument may be registered it must establish, create, amend or annul a title, a mortgage, a right of use or a right limiting the owner's competence to dispose of or deal with the vessel in one or several specified respects.

Maritime liens may not be registered.

re. 4. Whereas the final registration of the completed ship is compulsory, registration of ships under construction is temporary and voluntary.

The legal consequence of non-registration of a right in a registered ship is that the right in question is not legally protected against transfer of title or transfer of security if the transferee is in good faith. Further the right is not protected against the owner's creditors or against his bankruptcy estate.

re 5. The registered rights or charges comprise :

re a. the newbuilding.

re b. A registered right in a ship shall, provided nothing to the contrary has been agreed upon by the parties, also comprise machinery, boilers, engines, radio equipment, echo sounder, fishing gear, instruments and other appurtenances, paid for by the owner and intended for, but not yet incorporated in the newbuilding.

Further, a registered right in a ship which is temporarily registered, comprises the materials procured for the construction of the ship, provided such materials are individualized at the builder's yard and have been properly marked as intended for the building of the ship in question.

re c. See under re b.

re 6. Registration is made by entry in a Central Register for the whole country, situated in Copenhagen.

Entries may also be made via those customs houses which are authorized as district registers.

II

re 1. A convention on the lines indicated in the draft seems desirable.

re 2. Cases of the said nature have occurred.

re 3. As far as we know it is not usual in Denmark to arrange such guarantees.

III

Concerning who may apply for registration in Denmark reference is made to the above remarks under I 1.

IV

Regarding at what stage of the construction process registration is permissible reference is made to the above remarks under I 1.

The reason for the requirement under the Registration Act as amended in 1957, viz. that the newbuilding must be so far advanced that the ship may be satisfactorily identified is undoubtedly that the basis for registration is too indefinite at an earlier stage, e.g. if there exists only a contract between the parties.

V

Regarding which instruments may be registered reference is made to the above remarks under I 3.

re 1. A shipbuilding contract may be registered, as a charge.

re 2a. A declaration of ownership to the newbuilding may be registered.

re 2b. No special rights may be created or reserved in a ship's component parts or in the tackle and appurtenances mentioned above, apart from fishing gear.

re 2c. Transfer of title may be registered.

re 3a. Possessory liens may not be registered, this being superfluous.

re 3b. Mortgages may be registered.

re 3c. Seizure and acts of execution may be registered.

re 4a. Charter-parties may be registered.

re 4b. Assignment of a charter-party may be registered, but assignment of claims for money requires denunciation in respect of the party who is to pay the amount due (the debtor acc. to the claim).

re 5. Registration of the completed ship is compulsory, cf. above remarks under I 4.

VI

Regarding to what extent registration comprises materials and equipment reference is made to the above remarks. The extent of the registration in Denmark is governed by law.

re 2 a-d. The equipment must be paid for by the owner and must be intended for incorporation in the ship. The materials must be individualized at the builder's yard and properly marked as intended for the ship, cf. I 5b.

re 3. There are no qualifications with regard to the types of material and equipment.

re 3. No special rights may be created or reserved in materials or equipment.

VII

Regarding the legal consequences of registration :

re 1. No consequences to the relations between the parties.

re 2a. Registration creates priority in relation to the yard's ordinary creditors, and

re 2c. In relation to the yard's trustee in bankruptcy, but

re 2b. not in relation to the yard's possessory lien.

However, the buyer is also protected, re a and c without registration if it is possible to identify the newbuilding in the yard.

re 3. Legal protection is in force from the day when the instrument was produced to the registrar provided that it is later finally registered.

re 4. The wording seems satisfactory.

re 5. Yes, but the good faith should also exist at the time when application for registration is handed in.

VIII

The wording seems in general satisfactory but article 11 ought to be supplemented by an addition to the first paragraph of the following wording :

« . . . or on presentation of a certificate to the effect that no registration has taken place. »

2. november 1962.

N.V. Boeg, formand.

NETHERLANDS MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER
CONSTRUCTION

REPLY TO QUESTIONNAIRE

I

1. According to art. 314 to. 318 of the Dutch Commercial Code and art. 7 of the Maatregel Schepen ships under construction may be registered in an official register.

2. Registration is possible when the construction of the ship on the slipway has commenced (Maatregel Schepen art. 8 : 2).

3. The instruments which may be registered are :
instrument of title (property) (artt. 314, 318)
instrument of mortgage (hypotheek) (318 k)
demise charters (for a limited purpose, art. 322).

Moreover the institution of legal proceedings for delivery of the vessel may be registered (see art. 218 a).

4. Registration of title or any other instrument is not mandatory but a ship, of which the title of property can be registered but which has not in fact been registered, will not get a « zeebrief » (document permitting i.a. the ship to fly the Dutch flag — Zeebrievenwet art. 4 : 1).

5. Registered rights comprise the newbuilding only.

6. The registers are organized locally but there is a central register in which all local registrations are entered (Maatregel Schepen art. 5).

II

1. The need for a reform on the lines suggested is not felt in our country as the existing regulations are in line with the Draft Convention and work satisfactorily.

2. No.

3. Sometimes, but not often, the Yard gives to the purchaser a bank guarantee as security for the repayment by the Yard of the instalments paid by the purchaser.

III

a) Anybody who is proprietor of the Ship under construction may apply for registration.

b) In order to give some security to the purchaser, the parties often agree that title to the materials appropriated for the construction will pass to the purchaser as soon as these materials have come in the possession of the Yard and that title to the ship under construction will vest in the purchaser as from the moment at which the construction has commenced. In that case naturally only the purchaser has the right to have the ship under construction registered in his name.

c) combination of a) and b) is always possible if the building-contract or some subsequent agreement so provides.

d) According to art. 312 a ship under construction in the Netherlands is a Dutch ship, irrespective of the nationality of the purchaser. It seems wise to retain such provision.

IV

Registration of ships under construction should only be permissible

c) when the constructional work has been commenced in a place from which the newbuilding is supposed to be launched.

Only at that stage of the shipbuilding sufficient identification is possible. Such identification seems necessary to avoid fraud.

V

1. The answer to this question depends on the consequence national law attaches to the registration.

According to Dutch law the following *can* already now be registered :

2 a) Ownership

2 c) Transfer of title

3 b) Mortgage

3 c) Acts of execution (enforcement) and arrest

4 a) Demise charter.

See moreover the possibility of registration of institution of legal proceedings for delivery (art. 318a).

5. The Dutch system seems satisfactory.

VI

1 and 2. A registered right on movables is extremely difficult to materialise and would mean a complete innovation in to-day's Dutch law.

3 and 4. There is nothing against an entry being made in the register stating that certain parts of the equipment, such as radar and radio apparatus, do not belong to the owner of the ship, provided such parts can easily be identified and detached, so that they do not form an integral part of the vessel.

VII

1. No legal consequences between parties should attach to registration.

2. Complete priority (with the exception of maritime liens) should be attached to registered rights of security.

3. Such priority should be granted from the day and hour when the instruments are registered (b).

4. Yes, provided date and hour of registry are substituted for date and hour of application.

It should, however, be made possible that parties agree to a non-chronological order of mortgages (vide German law).

5. Yes.

VIII

Yes, but attention should be paid to the International Convention on Maritime Liens and Mortgages.

Amsterdam, 16th January 1963.

GERMAN MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER
CONSTRUCTION

REPLIES TO THE QUESTIONNAIRE

I.

1. It is now regulated by sections 76-81 of the « Federal Act relating to rights in registered ships and ships under construction » (Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken vom 15. November 1940). In Germany, registration of ships under construction has been admitted for the first time by an act of 1926.

2. Under German Law, the registration of a newbuilding — not of a shipbuilding contract — is permissible, if

- (i) either the whole keel has been laid on the stocks
- (ii) or two ribs of the ship's frame with the double bottom and the outer hull sheathing (i.e. two prefabricated sections) have been completed anywhere on the shipyard.

The rule mentioned under (ii) has been construed by the German ship registrars (Schiffsregistergerichte) beyond the wording of the law, since it did not longer comply with the development of marine engineering from prewar times.

3. a) Only two « rights in rem » may be registered : title and ship mortgages. The ship under construction and the title in it are registered only in two cases : when the ship under construction is to be mortgaged or when it is to be sold by judicial auction. The title alone may not be registered. A fiduciary owner, therefore, cannot have his title registered.

b) « Rights in personam » relating to a ship under construction cannot be registered, neither in a newbuilding nor in a commissioned ship. A contract of affreightment, therefore, cannot be registered, nor can a bareboat charter.

4. a) Registration of a ship mortgage is mandatory. Without registration, the ship mortgage does not exist, not even in relation to the owner-mortgagor himself.

b) As to the registration of *title*, see para I 3 a).

5. a) Title or shipmortgage comprise the whole newbuilding. A reservation of title in materials extinguishes when the material is incorporated in the newbuilding as an « essential part ». Title in other, not « essential » parts can continue to exist, e.g. in the wireless set or in the radar set. The same applies to equipment, which is not tightly combined to the newbuilding.

b) The ship mortgage comprises as a matter of law certain materials, which must

- (i) belong to the owner of the newbuilding,
- (ii) be situated on the precincts of the yard,
- (iii) be fit to become parts of the vessel, e.g. steel plates, cables, motors, wireless set.
- (iv) be marked as to become parts of the newbuilding, usually by the yard's number of the newbuilding, written onto the material white paint.

An inventory is not requested.

6. The register is organized locally with the courts of the first instance, in the district of which the yard is located (Amstgerichte).

II

1. No, as to the civil law.

Yes, as to the Conflict of Laws. Art. 11 of the Draft should — with certain alternations — be adopted.

2. No. (In one case, foreign purchasers lost money by pure ignorance of the law.)

3. No. Either, a bank extends a loan to the purchaser against a ship mortgage in the newbuilding, or the purchaser pays with his own funds against conveyance of the title from the yard company to him.

III

According to the German Ship Registration Ordinance (Schiffsregisterordnung vom 26. Mai 1951) the yard can apply for registration (see 1. 3. a), even if it is not the owner. An owner other than the yard may apply for his registration by virtue of an instrument

from the yard, certifying conveyance of title to him. No difference is made as to the nationality of the owner. These principles should be maintained.

IV

To meet the economic requirements, registration should be permissible as early as possible. On the other hand, certain juridical conditions should be complied with :

- (i) As an initial stage of a ship mortgage, the mortgage in a new-building should relate to an already material, although early form of a ship, not only to a mere immaterial contractual claim. It should always be a « *ius in rem* ».
- (ii) As a collateral for a loan, the object of a ship mortgage should represent an economic value, which might be sold in the market, from the very beginning. A contractual claim cannot usually be sold.
- (iii) As an object of a judicial execution, the matters, which are covered by the mortgage, must be identifiable at any time. The legal qualifications set out under lit. IV. b) of the Questionnaire will not always meet these demands. Even materials, which are properly marked, but are not in any way treated, shaped or otherwise altered to meet special requirements of a certain new-building, may, in the course of the rationalized work of a modern yard, be used for another vessel. If the marked material is not stored in a specified place within the area of the yard (For comparison, see Art. X of the Convention on the International Recognition of Rights in Aircraft, Geneva, 19th June, 1948), it should be fit to become a part of a special vessel.
With this proviso, we agree to your proposal IV b), in all other cases to IV c).

V

Mere contractual obligations should not be registered. The registration of contractual obligations would be sensible only if they would become enforceable to everybody by registration. It is one of the fundamental principles of our law that contractual obligations are enforceable only between the parties concerned.

Title, hypothecation and acts of execution should be evident to everybody by means of public registration

A possessor may always have the right of detention. Since his possession of the ship is evident, there is no need for a registration

of his right, which is only a consequence of his possession and not a right in rem.

Since the economic interests of the third parties may possibly be involved, at least in cases of bankruptcy, the law should require the parties to have their title in the vessel, in single parts of its equipment, their mortgages and acts of execution be registered as a condition of their origination.

VI

1. For reasons of unification and simplicity, the title in registered newbuildings and mortgages should as a matter of law extend to certain materials and equipments.

2. These equipments and materials should

a) either be located in a specified area, where only parts of the newbuilding are located (see IV iii) or be fitted for the special requirements of the newbuilding and located anywhere in the yard (see IV iii)

b) be marked with the sign of the newbuilding

c) be owned by the registered owner of the newbuilding.

An inventory should not be provided, since differences between the inventory and the stock, orderly marked with the newbuilding's number, would arise the question, whether the inventory or the stock itself are decisive. The stock only should.

3. As far as the national law allows rights in single parts of the ship's equipment, these should be registered, too, as a matter of clearness to third parties and of evidence in law suits. Practically, separate *title* would be possible in the radio or radar apparatus. By German Law, a separate *mortgage* in them is not allowed (see 1 5). The Geneva Convention of 1948 on the International Recognition of Rights in Aircraft, Art. X, denies, too, separate mortgages in single parts.

To sum up : In future it should be made possible to register the title in single parts of the equipment as far as a special title in these parts is permitted by the respective national law. Mortgages in single parts should not be admitted and consequently not be registered.

4. a) Since everybody, who buys a marked part of a newbuilding, ought to be cognizant of registered rights in it, the question 4a) should be restricted to all persons, who, in fact, do not know of the right. We agree under this proviso.

b) Yes.

c) No. As far as separate title or, in other countries, separated mortgages in certain parts of the equipment are admitted by law, the delivery of the vessel is no sufficient reason to let the right lapse. (Art. 9 of the Draft to be abolished.)

VII

1. Contrary to the German Law now in force, a transfer of title would not be possible without registration. This might be important to a purchaser, who wants the right of a fiduciary owner, before the vessel is delivered to him.

In accordance with German Law now in force, a mortgage would originate not earlier than it has been registered.

2. a) c) Registration of a third person's title or mortgage would create priority (mortgage) or inattachability (title) to the yard's creditors and trustee in bankruptcy.

b) A possessory lien does not exist in German Law as for ship yards. They only get a right of detention and are entitled to a registered mortgage in the newbuilding. Without having got it, they have a right of detention only, to facilitate the seizure and judicial auction of the vessel.

3. We recommend your proposal a), according to German Law.

4. Yes. Attention should be drawn, however, to the problem of maritime liens, which have priority without registration, even to registered mortgages. Maritime liens may arise as soon as the newbuilding has been launched.

5. Article 6 of the draft would not apply in German Law, except for maritime liens. Nevertheless, the question of good faith could arise, when mortgagor's registration as owner of the newbuilding is wrong. In this case, the mortgagee would, according to German Law now in force, acquire a mortgage, if he does not know that somebody else is the owner. He must be in good faith at least until application for registration has been produced to the registrar. If the good faith at the time of the contract would be decisive, the right owner, who had not been registered, would not be protected by his correct registration prior to the mortgagee's application for registration.

VIII

1. As to Art. 10 : Rights or charges, which are unknown to the law of the deciding court (*lex fori*), may be recognized only in accordance with the rules of Conflict of Laws. Generally, they may not. Therefore, Art. 10 should be restricted to title, including fiduciary title, and mortgage. They are known to almost all legislations.

2. As to Art. 11 : The fifth line should run : « ... the State where the newbuilding has been *constructed, whether registered or not*, setting out *the non-registration or, as the case may be, all...* ». This should protect the mortgages of a newbuilding against an owner, trying to mortgage the completed vessel for a second time in his native country by concealment of the older mortgages.

List of recommendations regarding the DRAFT

- Art. 1 Agreed on.
- Art. 2 Agreed on.
- Art. 3 Alternative B agreed on with the recommendations under IV.
- Art. 4 Agreed on with the recommendations under V 1. 4. as to the second sentence.
- Art. 5 Agreed on (VII 2.3.4.).
- Art. 6 Agreed on with the recommendation under VII 5.
- Art. 7 Agreed on.
- Art. 8 Agreed on. (Recommendations to the national law, not to the draft, see under VI.)
- Art. 9 Not agreed on (see under 1. 5. a), VI 3., VI 4. c).
- Art. 10 Agreed on with the recommendation under VIII 1.
- Art. 11 Agreed on with the recommendation under VIII 2.

Hamburg, January 8th, 1963.