

INTERNATIONAL MARITIME COMMITTEE

CONSTITUTION

MEMBERS

RATIFICATION OF MARITIME
CONVENTIONS

MARITIME CONVENTIONS OF 1957

CONFERENCE

OF

RIJEKA

ATTENDANCE

PRELIMINARY REPORTS

MINUTES

RESOLUTIONS AND DRAFT CONVENTION

1959

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

I

INTERNATIONAL MARITIME COMMITTEE

CONSTITUTION

MEMBERS

RATIFICATIONS OF MARITIME
CONVENTIONS

BRUSSELS' CONVENTION 1957

CONSTITUTION

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 report 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 Article 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 (*) :

Hon. President	:	Albert LILAR
Hon. Vice-Presidents	:	Sir Gonne St. Clair PILCHER Frédéric SOHR Léopold DOR Antoine FRANCK
Hon. Secretary-Generals	:	Cyril MILLER Carlo VAN DEN BOSCH
Hon. Treasurer	:	Léon GYSELYNCK
Administrative Secretary	:	Firm Henry VOET-GENICOT
Members	:	Argentina, Atilio MALVAGNI Belgium, Jean VAN RIJN Canada, C.J. BURCHELL Denmark, N.V. BOEG Finland, Herbert ANDERSSON France, Jean de GRANDMAISON Germany, O. DETTMERS Great-Britain, E.W. READING Greece, Kyriakos SPILIOPOULOS Israel, N. Italy, Giorgio BERLINGIERI Japan, Teruhisa ISHII Marocco, N. Netherlands, J.T. ASSER Norway, Sjur BRAEKHUS Poland, Stanislaw MATYSIK Portugal, Taborda FERREIZA Spain, Luis HERMIDA Sweden, Kaj PINEUS Switzerland, Walter MÜLLER Turkey, M.N. GÖKNIL United States, Arthur M. BOAL Uruguay, N. Yugoslavia, Vladislav BRAJKOVIC

(*) on January 1st, 1960.

TITULARY MEMBERS

Carl Erik AHMANSSON

Managing Director of the Sveriges Angfartygs Assuransförening, Gothenburg, Sweden

H.C. ALBRECHT

Advocate, Moenkebergstrasse, 22 Hamburg 1, Germany

Hendrik AMELN

Advocate, Average Adjuster, President of the Legislative Committee of the Storting, President of the Norske Veritas, Slootsgatan, 1, Bergen, Norway

Ernesto ANASTASIO

Advocate, Captain, President of the Cia. Trasmediterránea, President of the Company « La Union y El Fénix Español », President of the Spanish Maritime Law Association, Alcala, 39, Madrid, Spain

Herb. ANDERSSON

Shipowner, Secretary General of the Finnish Maritime Law Association, Finska Angfartygs Aktiebolaget, 4, S. Magasinsgatan, Helsingfors, Finland.

J.T. ASSER

Advocate, President of the Netherland's Maritime Law Association, Keizersgracht, 391, Amsterdam, Netherlands

Algot BAGGE

Former President of the Swedish Maritime Law Association, Judge at the Supreme Court, Floragatan, 2, Stockholm, Sweden

L. BARBER

P.O.B. 420, 119, Avenue du Général Drude, Casablanca, Morocco

M. BARTOS

Ambassador at the State Secretary for Foreign Affairs, Belgrade, Yugoslavia

Lucien BEAUREGARD

Advocate, 620, St. James Street West, Montreal, 3, Quebec, Canada

Pelegrin de BENITO SERRES

Auditor at the State Council, Auditor of the Navy, Avenida José Antonio, 1º, 2º, Madrid, Spain

Francesco BERLINGIERI

Advocate, Via Roma, 10, Genoa, Italy

Giorgio BERLINGIERI

Advocate, Vice-President of the Italian Maritime Law Association, Via
Roma, 10, Genoa, Italy

Henry C. BLACKISTON

Partner in the firm of Lord, Day & Lord, 25, Broadway, New York 4,
N.Y., U.S.A.

Arthur M. BOAL

Advocate, President of the American Maritime Law Association, 116, John
Street, New York 38, N.Y., U.S.A.

N.V. BOEG

Councillor at the Court of Appeal, President of the Danish Maritime Law
Association, Ceresvej, 9, Copenhagen, Denmark

Raymond BOIZARD

Marine Underwriter, Manager of the Assurance Company « La Baloise »,
24, rue St. Marc, Paris, France

Vladislav BRAJKOVIC

Professor at the University of Zagreb, President of the Yugoslav Maritime
Law Association, Cvijetna cesta, 29, Zagreb, Yugoslavia

Sjur BRAEKHUS

Professor of Maritime Law at the University of Oslo, President of the
Norwegian Maritime Law Association, Observatorie Terrasse, 8, Oslo,
Norway.

Hugo BRANDT

Manager of the Norddeutsche Versicherungsgesellschaft, 12 Alterwall,
Hamburg 11, Germany

José Ruiz BRAVO

Advocate, Liquidador de Averias, 35, Al. Recalde, Bilbao, Spain

Hans Christian BUGGE

Managing-Director of the Insurance Companies « Christiana » and « Po-
seidon », Prinsensgt, 7, Oslo, Norway.

W.A. BURCHARD-MOTZ

Former Mayor of Hamburg, former President of the German Maritime Law
Association, Kl. Flottbek, Baron Voight-Strasse, 19, Hamburg, Germany

C.J. BURCHELL

Advocate, Canadian Pacific Building, Halifax, Nova Scotia

Max CAILLE

Doctor of Law, Secretary General of the Morocco Maritime Law Associa-
tion, 34, Boulevard Mohamed V., Casablanca, Morocco

Raffaele CAFIERO

Advocate, Riviera di Chiaia, 215, Naples, Italy

Placido CIVILETTI

Advocate, Via Ippolito d'Aste, 85, Genoa, Italy

R.P. CLEVERINGA

Professor at the University of Leiden, Rynburgerweg, 29, Leiden, Netherlands

Alberto CAPPAGLI

Advocate, 25 de Mayo, 393, 2º, Buenos Aires, Argentine

José Luis de AZCARRAGA

Advocate, Secretary General of the Spanish Maritime Law Association, 4, Avenida des los Toreros, Madrid, Spain

Carlos Theodoro da COSTA

Commodore, Secretary General of the Portuguese Maritime Law Association, Ministério da Marinha, Lisbon, Portugal

Henri CROZE

Advocate, 3, Boulevard Mohamed V, Casablanca, Morocco

M. DRAGUSTIN

Manager of the Maritime and Fluvial Administration, Belgrade, Yugoslavia

Atilio Dell' Oro MAINI

Advocate, Avenida de Mayo, 651 - 2º, Buenos Aires, Argentine

A. DELPRAT

Managing Director of the Stoombootmaatschappij « Nederland », Prins Hendrikkade, 108, Amsterdam, Netherlands

Jules A. DENOEL

Former Director of the Treaties Department at the Ministry of Foreign Affairs, rue de la Loi, Brussels, Belgium

Otto DETTMERS

Advocate, 47/53, Sögestrasse, Bremen, Germany

Sir Patrick DEVLIN

Vice-President of the British Maritime Law Association, Judge of the Queen's Bench Division, Strand, London W.C. 2., England

Henry DEVOS

Doctor of Law, Former Director General of the Maritime Administration, Avenue E. Mesens, 67, Brussels, Belgium

Léopold DOR

Advocate, Vice-President of the International Maritime Committee, rue Scheffer, 39, Paris XVI, France

Michel DUBOSC

Advocate, 131, Boulevard de Strasbourg, Le Havre, France

Nils DYBWAD

Advocate, Managing Director of the Nordsk Skibrederforening, Postbox 379, Oslo, Norway

E.F. ECKHOFF

Judge at the Supreme Court, 1, Grubbegt, Oslo, Norway

Horace B. EDMUNDS

Adjuster of Claims, « Honeysuckles », 3a, Hemnall Street, Epping, Essex, England

Antoine FRANCK

Advocate, Vice-President of the International Maritime Committee and Secretary General of the Belgian Maritime Law Association, 30, rue des Escrimeurs, Antwerp, Belgium

Joaquim GARRIGUES DIAZ-CANABATE

Professor at the University of Madrid, Vice-President of the Spanish Maritime Law Association, 16, Antonio Maura, Madrid, Spain

A. GÄRTNER

Managing secretary of the East Asiatic Company, Holbergsgade, 2, Copenhagen K., Denmark

Jakob GELTING

Advocate, Treasurer of the Danish Maritime Law Association, Vingaardstraede, 3, Copenhagen, Denmark

Amedeo GIANNINI

Plenipotentiary Minister ad honorem, Councillor of State, President of the Italian Maritime Law Association, Via del Seminario, 113, Rome, Italy

Torquato C. GIANNINI

Professor at the University of Rome, L.T. Mellini, 24, Rome, Italy

James-Paul GOVARE

Advocate, President of the French Maritime Law Association, rue de Lasteyrie, 5, Paris XVI, France

Harold GORICK

Joint Secretary of the British Liner Committee, Secretary General of the International Chamber of Shipping, Manager of the Chamber of Shipping, 3/6, Bury Court, London, E.C. 3., England

Per GRAM

Advocate, Nordisk Skibrederforening, Rådhusgatan, 25, Oslo, Norway

H. GRAMM

Advocate, Heilwigstrasse, 39, Hamburg 20, Germany

Jean de GRANDMAISON

Advocate, Former President of the French Maritime Law Association, Boulevard Raspail, 87, Paris 6., France

Nils GRENANDER

Doctor of Law, Vice-President of the Swedish Shipowners' Association, Vice-Administrator delegate of the Sveriges Redareförening, Kungssportsavenyen, 1, Gothenburg C, Sweden

Léon GYSELYNCK

Hon. Advocate, Professor at the University of Brussels, Treasurer of the International Maritime Committee and of the Belgian Maritime Law Association, 48, Meir, Antwerp, Belgium

Erik HAGBERGH

Councillor at the Court of Appeal, Lutzengatan, 5, Stockholm, Sweden

Luis HERMIDA

General Manager of the Union y El Fénix Español, President of the Spanish Maritime Law Association, Alcalá, 39, Madrid, Spain

Darre HIRSCH

Manager of the Norwegian Shipowners' Association, Radhusgatan, 25 VI, Oslo, Norway

Martin HILL

Hill, Dickinson & Co., Waterstreet, 10, Liverpool, England

Leif HOEGH

Shipowner, 55, Parkveien, Oslo, Norway

Sverre HOLT

Captain, Toldbodgatan, 20, Oslo, Norway

Oscar R. HOUSTON

Advocate, former President of the Maritime Law Association of the United States, Partner in the firm of Bigham, Englar, Jones & Houston, 99, John Street, New York 7, U.S.A.

Em. HÖGBERG

General Manager of the Rederi A.B. Svea, Skeppsbron, 28, Stockholm, Sweden

Teruhisa ISHII

President of the Japanese Maritime Law Association, 1466, Yoyogi Tomigaya, Shibuya-ku, Tokyo, Japan

K. JANSMA

Advocate, Weteringschans, 92, Amsterdam, Netherlands

J.J. KAMP

President of the A.I.R.B.R., Minervahuis II, Meent 94, Rotterdam, Netherlands

Natko KATICIC

Professor at the University of Zagreb, Secretary of the Yugoslav Maritime Law Association, 51, Prekrizje Gornje, Zagreb, Yugoslavia

Cletus KEATING

Advocate, Partner in the firm of Kirlin, Campbell & Keating, 120, Broadway, New York 5, U.S.A.

Niklas KIHBLÖM

Underwriter, Postbox, 273, Malmö, Sweden

Niels KLERK

Advocate at the Supreme Court, 4, Ameliegade, Copenhagen K., Denmark

Arnold W. KNAUTH

Advocate, 60, East 42nd Street, New York City, U.S.A.

Sozo KOMACHIYA

Professor at the University of Tokyo, 178, 3-chome, Onden Shibuya-ku, Tokyo, Japan

Sven LANGE

Managing Director of « Försakrings A.B. Atlantica », Hamngatan, 5, Malmö, Sweden

A.L. LAWES

Advocate, 410, Nicholas Street, Montreal, Quebec, Canada

Antonio LEFEBVRE d'OVIDIO

Advocate, Professor at the University of Naples, 86 Via Barberini, Rome, Italy

Léon LESIEUTRE

Société Chérifienne de Remorquage et d'Assistance, Quai Paul Chaix, Port de Casablanca, Morocco

Pierre LESUEUR

Technical Adviser of the Compagnie Transatlantique, 6, rue Auber, Paris, France

Peter LETH

Underwriter, 2, Palaegade, Copenhagen, Denmark

Albert LILAR

Advocate, Senator, Vice-President of the Cabinet, Professor at the University of Brussels, President of the International Maritime Committee and of the Belgian Maritime Law Association, 33, rue Jacob Jordaens, Antwerp, Belgium

Folke LINDÅHL

Manager of the Svea Line, Skeppsbron, 28, Stockholm, Sweden

J.A.L.M. LOEFF

Advocate, Meent, 132, Beursgebouw, Rotterdam, Netherlands

Atilio MALVAGNI

Advocate, President of the Argentine Maritime Law Association, Avenida Roque Sáenz Peña, 615, Buenos Aires, Argentine

Francesco MANZITTI

Average Adjuster, President of the Chamber of Commerce of Genoa and of the Council of the Merchant Marine at Genoa, Via Garibaldi, 2, Genoa, Italy

Georges MARAIS

Hon. Advocate, 11bis, rue de Milan, Paris IX, France

Jacques MARCHEGAY

Secretary General of the Comité Central des Armateurs de France, Boulevard Hausmann, 73, Paris, France

Léonard J. MATTESON

Partner in the firm of Bigham, Englar, Jones & Houston, 99, John Street, New York 38, N.Y., U.S.A.

Conrado MEIER

Maestro Lasalle, 16, Madrid, Chamartin, Spain

Cyril T. MILLER

Manager of the United Kingdom Mutual Steamship Assurance Cy Limited and of the Standard Steamship Owners' Protection & Indemnity Association Limited, Secretary General of the International Maritime Committee, Secretary of the British Maritime Law Association, 24, St Mary Axe, London E.C. 3., England

Sir William Mc. NAIR

Vice-President of the British Maritime Law Association, Judge of the Queen's Bench Division, Strand, London W.C. 2., England

Eduardo Basualdo MOINE

Advocate, Secretary of the Argentine Maritime Law Association, 918, av. San. Martin, Buenos Aires, Argentine

Walter MÜLLER

Advocate, President of the Swiss Maritime Law Association, St. Alban-graben, 8, Basle, Switzerland

Fritjof NORDBORG

Broströms Juridiska Avdelning A.B., Broströms, Gothemburg C, Sweden

J. OFFERHAUS

Professor at the University of Amsterdam, Former President of the Netherlands' Maritime Law Association, 16, Prinses Margrietlaan, Amstelveen, Netherlands

Claës PALME

Advocate, Secretary of the Swedish Maritime Law Association, 1, Wahrendorffsgatan, Stockholm C., Sweden

Emilio PASANISI

Advocate, 16, Via Tibullo, Rome, Italy

Sir Gonne PILCHER

Judge of the Queen's Bench Division, Vice-President of the International Maritime Committee, President of the British Maritime Law Association, Strand, London W.C. 2, England

Alan PHILIP

Advocate, 4, Kalundsgade, Copenhagen, Denmark

Kaj PINEUS

Average Adjuster, President of the Swedish Maritime Law Association, Skeppsbrohuset, Gothenburg, Sweden.

Marcel PITOIS

Shipowner, Secretary General of the French Maritime Law Association, 35, Avenue Paul Doumer, Paris IX, France

Heinz PFLUEGER

Advocate, 1, Alstertor, Hamburg 1, Germany

Phocion POTAMIANOS

Advocate, Shipowner, Secretary of the Hellenic Maritime Law Association, 19, rue Lycabette, Athens, Greece

Jacques POTIER

Manager of the Cie. Maritime des Chargeurs Réunis, 3, Boulevard Malesherbes, Paris VIII, France

Annar POULSON

Manager of the Assuranceforeningen Skuld, 18, Stortingsgatan, Oslo, Norway

John C. PRIZER

Advocate, Partner in the firm of Thacker, Proffitt, Prizer, Crawley & Wood, 40, Wall Street, New York 5, U.S.A.

PRODROMIDES

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

Robert RANQUE

Advocate, 1, Place Mirabeau, Casablanca, Morocco

Carl RASTING

Professor at the University of Copenhagen, 3, Mynstersvej, Copenhagen V., Denmark

C.D. RAYNOR

Underwriter, Lloyd's, London, E.C. 3., England

E.W. READING

Average Adjuster, Partner in the firm of Hogg, Lindley & Co., Palmerston House, 51, Bishopsgate, London E.C. 2., England

A. REIN

Advocate, 1, Kronprinsesse Märthas pl., Oslo, Norway

Kjeld RÖRDAM

Advocate, Secretary of the Danis Maritime Law Association, 41, Bredgade, Copenhagen, Denmark

Hans Georg RÖHREKE

Secretary of the German Maritime Law Association, Neuer Wall, 86, Hamburg 36, Germany

Nils ROGBERG

Managing Director of the Sjöförsäkrings Aktiebolaget AGIR, 19-21, Svegerungsgatan, Stockholm, Sweden

Arne RYGH

Advocate, Secretary of the « Oslo Rederforening », 524, Sjøfartsbygningen, Oslo, Norway

J. RUBIO GAISIA MINA

Professor at the University of Madrid, Fortuny, 3, Madrid, Spain

Roberto SANDIFORD

Chamber President of the Council of State, Secretary General of the Italian Maritime Law Association, Via G. Mercalli, 31, Rome, Italy

Francis SAUVAGE

Advocate, Boulevard Raspail, 26, Paris, France.

H. SCHADEE

Average Adjuster, 8, Wijnstraat, Rotterdam, Netherlands

H.E. SCHEFFER

Advocate, 400, van Alkemadelaan, The Hague, Netherlands

C.L. SCHÖNMEYER

Advocate, 1, Währendorffsgatan, Stockholm, Sweden

Antonio SCIALOJA

88, Viale Angelico, Rome, Italy

Frédéric SOHR

Doctor of Law, Underwriter, Vice-President of the International Maritime Committee, Vice-President of the Belgian Maritime Law Association, Avenue de l'Uruguay, 3, Brussels, Belgium

André SÖRENSEN

Advocate, Manager of the Danish Shipowners' Defence Association, Amaliegade, 33, Copenhagen K., Denmark

Kyriakos SPILIOPOULOS

Rector of the Ecole des Sciences Economiques et Commerciales, Secretary General of the Hellenic Maritime Law Association, 1, rue Vissarionos, Athens, Greece

Hans STEUCH

General Manager of the Baltic and Maritime Conference, 19, Kristianiagade, Copenhagen, Denmark

Rolf STÖDTER

Shipowner, 86, Neuer Wall, Hamburg, 36, Germany

William G. SYMMERS

Advocate, 37 Wall Street, New York, 5, N.Y., U.S.A.

Ladislav TAMBACA

Average Adjuster, Professor at the Superior Maritime School, Rijeka,
Yugoslavia

Alexandre TSIRINTANIS

President of the Hellenic Maritime Law Association, Professor at the
University, 40, rue Solonos, Athens, Greece

Niels TYBJERG

Højbro Plads, 21, Copenhagen, Denmark

Carlo VAN DEN BOSCH

Advocate, Secretary General of the International Maritime Committee, and
of the Belgian Maritime Law Association, 30, rue des Escrimeurs, Antwerp,
Belgium

Baron F. VAN DER FELTZ

Advocate, Herengracht, 433, Amsterdam, Netherlands

Jean VAN RYN

Advocate, Professor at the University, Secretary General of the Belgian
Maritime Law Association, 62, Avenue du Vert-Chasseur, Brussels, Bel-
gium

R. de la VEGA

Advocate, Calle 25, de Mayo 489 - 5º, Buenos Aires, Argentine

P. VILLADSEN

Section-chief at the Ministry of Commerce, Industry and Navigation, Slots-
holmgaden, 10, Copenhagen, Denmark

Henry VOET

Doctor of Law, Hon. Advocate, Average Adjuster, 17, rue de la Bourse,
Antwerp, Belgium

Reinhart VOGLER

Vice-President of the Hanseatisches Oberlandesgericht, 10, Lindenstrasse,
Hamburg, Germany

Kurt VON LAUN

Manager of the Shipowning Company « Neptun », Langestrasse, 98, Bre-
men, Germany

Oscar VON STRITZKY

Manager of the Nord-Deutsche Versicherungs-Gesellschaft, Alter Wall, 12,
Hamburg 11, Germany

Jean WAROT

Advocate, 27, Boulevard St. Germain, Paris V., France

Victor WENZELL

Advocate, Manager of the Danish Shipowners' Association, Amaliegade,
33, Copenhagen K., Denmark

Peter WRIGHT

Advocate, Vice-President, 67, Yonge Street, Toronto, Ontario, Canada

RATIFICATIONS

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

COLLISIONS

BETWEEN VESSELS

Signed at Brussels on September 23rd, 1910

RATIFICATION :

Germany (*)	February 1st, 1913
Austria	February 1st, 1913
Belgium	February 1st, 1913
Brazil	December 31st, 1913
Denmark	June 18th, 1913
France	February 1st, 1913
Great Britain	February 1st, 1913
Greece	September 29th, 1913
Hungary	February 1st, 1913
Ireland	February 1st, 1913
Italy	June 2nd, 1913
Japan	January 12th, 1914
Mexico	February 1st, 1913
Nicaragua	July 18th, 1913
Norway	November 12th, 1913
Netherlands	February 1st, 1913
Portugal	July 25th, 1913
Rumania	February 1st, 1913
Russia	February 1st, 1913
Sweden	November 12th, 1913

ADHESION :

Argentine	February 28th, 1922
Australia	September 9th, 1930
Canada	September 25th, 1914
Ceylon	February 1st, 1913

(*) *German Federal Republic* : Put again into force from November 1st 1958 between, on the one hand, the German Federal Republic and, on the other hand, the Allied Powers except Hungary, Poland and Uruguay which answered in the negative and New Zealand, Rumania and the U.R.S.S. which abstained from replying (Agreements of Brussels of September 25th and October 18th 1958).

Dominican Republic	July 23rd, 1958
Danzig	June 2nd, 1922
Egypt	November 29th, 1943
Spain	November 17th, 1923
Esthonia	May 15th, 1929
Finland	July 17th, 1923
East-Africa	February 1st, 1913
Bahamas, Barbadoes, Bermuda, Cyprus, Gold Coast, Falkland, Fidji, Gambia, Gibraltar, Gilbert and Elllice, British Guyana, British Honduras, Hong-Kong	February 1st, 1913
Jamaica, (Caimans, Caicos and Turk's isl.), Labuan, Leeward Isles (Antigoa, Dominica, Montserrat, St. Christopher-Nevis, Virgin Islands)	February 1st, 1913
Federated Malay States	February 1st, 1913
Malta, Mauritius, Southern Nigeria, Norfolk	February 1st, 1913
Papua, St-Helena, Salomon, Seychelles, Sierra-Leone, Somaliland, Straits Settlements	February 1st, 1913
New Foundland	March 11th, 1914
Tobago, Trinidad, Wei-Hai-Wei, Windward (Grenada, St-Lucia, St. Vincent)	February 1st, 1913
Haiti	August 18th, 1951
Italian Colonies	November 9th, 1934
Latvia	August 2nd, 1932
New Zealand	May 19th, 1913
Poland	June 2nd, 1922
Colonies of Portugal	July 20th, 1914
Switzerland	May 28th, 1954
Turkey	July 4th, 1955
Indian Union	February 1st, 1913
U.R.S.S.	July 10th, 1936
Uruguay	July 21st, 1915
Yugo-Slavia	December 31st, 1931

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES OF LAW RESPECTING
ASSISTANCE AND SALVAGE

AT SEA

Signed at Brussels on September 23rd., 1910

RATIFICATION :

Germany (*)	February 1st, 1913
Austria	February 1st, 1913
Belgium	February 1st, 1913
Brazil	December 31st, 1913
Denmark	June 18th, 1913
United States America	February 1st, 1913
France	February 1st, 1913
Great Britain	February 1st, 1913
Greece	October 15th, 1913
Hungary	February 1st, 1913
Ireland	February 1st, 1913
Italy	June 2nd, 1913
Japan	January 12th, 1914
Mexico	February 1st, 1913
Norway	November 12th, 1913
Netherlands	February 1st, 1913
Portugal	July 25th, 1913
Rumania	February 1st, 1913
Russia	February 1st, 1913
Sweden	November 12th, 1913

ADHESION :

Argentina	February 28th, 1922
Australia	September 9th, 1930
Canada	September 25th, 1914
Ceylon	February 1st, 1913
Danzig	October 15th, 1921
Dominican Republic	July 23rd, 1958
Egypt	November 19th, 1943
Spain	November 17th, 1923
Estonia	May, 15th, 1929

(*) *German Federal Republic* : Put again into force from November 1st 1958 between, on the one hand, the German Federal Republic and, on the other hand, the Allied Powers except Hungary, Poland and Uruguay which answered in the negative and New Zealand, Rumania and the U.R.S.S., which abstained from replying (Agreements of Brussels of September 25th and October 18th 1958).

Finland	July 17th, 1923
East-Africa	February 1st, 1913
Bahamas, Barbadoes, Bermuda	February 1st, 1913
Cyprus, Gold Coast, Falkland, Fiji, Gambia, Gibraltar, Gilbert and Ellice, British Guyana, British Honduras, Hong-Kong	
Jamaica, (Caimans, Caicos and Turk's Isl.), Labuan, Leeward Isles (Antigua, Dominica, Monserrat, St-Christopher-Nevis, Virgin Islands)	February 1st, 1913
Federated Malay States	February 1st, 1913
Malta, Mauritius, Southern Nigeria, Norfolk	February 1st, 1913
Papua, St-Helena, Salomon, Seychelles, Sierra-Leone, Somaliland, Straits Settlements	February 1st, 1913
New Foundland	March 11th 1914
Tobago, Trinidad, Wei-Hai-Wei, Windward, (Grenada, St-Lucia, St-Vincent)	February 1st, 1913
Haiti	August 18th, 1951
Erythrea, Italian Somali	June 2nd, 1913
Italian Colonies	November 9th, 1934
Latvia	August 2nd, 1932
New Zealand	May 19th, 1913
Poland	October 15th, 1921
Colonies of Portugal	July 20th, 1914
Switzerland	May 28th, 1954
Turkey	July 4th, 1955
Indian Union	February 1st, 1913
U.R.S.S.	July 10th, 1936
Uruguay	July 21st, 1915
Yugo-Slavia	December 31st, 1931

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO THE
LIMITATION
OF THE LIABILITY OF OWNERS OF SEA-GOING VESSELS
AND PROTOCOL OF SIGNATURE
Signed at Brussels on August 25th, 1924

RATIFICATION :

Belgium	June 2nd, 1930
Brazil	April 28th, 1931
Denmark	June 2nd, 1930
Spain	June 2nd, 1930
France	August 23rd, 1935
Hungary	June 2nd, 1930
Norway	October 10th, 1933
Poland	October 26th, 1936
Portugal	June 2nd, 1930
Sweden	July 1st, 1938

ADHESION :

Dominican Republic	July 23rd, 1958
Finland	July 12th, 1934
Monaco	May 15th, 1931
Turkey	July 4th, 1955

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

BILLS OF LADING

AND PROTOCOL OF SIGNATURE

Signed at Brussels on August 25th, 1924

RATIFICATION :

Germany (*)	July 1st, 1939
Belgium	June 2nd, 1930
Spain	June 2nd, 1930
United States of America	June 29th, 1937
France	January 4th, 1937
Great Britain and Northern Ireland	June 2nd, 1930
Hungary	June 2nd, 1930
Italy	October 7th, 1938
Japan	July 1st, 1957
Poland	October 26th, 1936
Rumania	August 4th, 1937
Yugo-Slavia	April 17th, 1959

ADHESION :

Australia	July 4th, 1955
Papua and Norfolk	July 4th, 1955
Nauru and New Guinea	July 4th, 1955
Ceylon	December 2nd, 1930
Denmark	July 1st, 1938
Egypt	November 29th, 1943
Finland	July 1st, 1939
Ascension	November 3rd, 1931
Bahamas, Barbadoes, Bermuda, Northern Borneo, Cameroons, Cyprus, Gold-Coast, Falkland, Fiji, Gambia, Gibraltar, Gilbert and Ellice, British Guiana, British Honduras, Hong-Kong, Jamaica, (Caimans, Caicos and Turk's isl.), Kenya, Leeward (Antigoa, Dominica, Monserrat, St-Christopher-Nevis, Virgin Islands)	December 2nd, 1930

(*) *German Federal Republic*: Put again into force from November 1st 1958 between on the one hand, the German Federal Republic and, on the other hand, the Allied Powers except Hungary, Poland and Rumania (Agreements of Brussels of September 29th and October 18th, 1958).

Federated Malay States	December 2nd, 1930
Unfederated Malay States	December 2nd, 1930
Mauritius, Nigeria	December 2nd, 1930
Palestine	December 2nd, 1930
St-Helena	November 3rd, 1931
Salomon	December 2nd, 1930
Sarawak	November 3rd, 1931
Seychelles, Sierra-Leone, Somaliland, Straits Settlements, Tanganyika, To- bago, Tonga, Trinidad, Windward (Grenada, St-Lucia, St-Vincent)	December 2nd, 1930
Zanzibar	December 2nd, 1930
Israel	September 5th, 1959
Monaco	May 15th, 1931
Norway	July 1st, 1938
Netherlands	August 18th, 1956
Portugal	December 24th, 1931
Overseas Territories	February 2nd, 1952
Sweden	July 1st, 1938
Switzerland	May 28th, 1954
Turkey	July 4th, 1955

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO MARITIME

LIENS AND MORTGAGES,

Signed at Brussels on April 10th, 1926

RATIFICATION :

Belgium	June 2nd, 1930
Brazil	April 28th, 1931
Denmark	June 2nd, 1930
Spain	June 2nd, 1930
Esthonia	June 2nd, 1930
France	August 23rd, 1935
Hungary	June 2nd, 1930
Italy	December 7th, 1949
Norway	October 10th, 1933
Poland	October 26th, 1936
Rumania	August 4th, 1937
Sweden	July 1st, 1938

ADHESION :

Finland	July 12th, 1934
Monaco	May 15th, 1931
Portugal	December 24th, 1931
Switzerland	May 28th, 1954
Syrie	February 14th, 1951
Turkey	July 4th, 1955

**INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES CONCERNING THE**

IMMUNITY OF STATE-OWNED SHIPS,

Signed at Brussels on April 10th, 1926

RATIFICATION :

Germany (*)	June 27th, 1936
Belgium	January 8th, 1936
Brazil	January 8th, 1936
Chile	January 8th, 1936
Denmark	November 16th, 1950
Esthonia	January 8th, 1936
France	July 27th, 1955
Hungary	January 8th, 1936
Italy	January 27th, 1937
Italian Colonies	January 27th, 1937
Norway	April 25th, 1939
Netherlands	July 8th, 1936
Curaçao, Netherlands Indies, Surinam	July 8th, 1936
Poland	January 8th, 1936
Portugal	June 27th, 1938
Rumania	August 4th, 1937
Sweden	July 1st, 1938

ADHESION :

Greece	May 19th, 1951
Switzerland	May 28th, 1954
Turkey	July 4th, 1955

(*) *German Federal Republic* : Put again into force from November 1st 1958 between on the one hand, the German Federal Republic and, on the other hand, the Allied Powers except Hungary, Poland and Rumania (Agreements of Brussels of September 29th and October 18th, 1958).

DENUNCIATION :

Poland	March 17th, 1952
Rumania	September 21st, 1959

ADDITIONAL PROTOCOL TO THIS CONVENTION

Signed at Brussels on May 24th, 1934

RATIFICATION :

Germany	June 27th, 1936
Belgium	January 8th, 1936
Brazil	January 8th, 1936
Chile	January 8th, 1936
Denmark	November 16th, 1950
Esthonia	January 8th, 1936
France	July 27th, 1955
Hungary	January 8th, 1936
Italy	January 27th, 1937
Italian Colonies	January 27th, 1937
Norway	April 25th, 1939
Netherlands	July 8th, 1936
Curaçao, Netherlands Indies, Surinam	July 8th, 1936
Poland	January 8th, 1936
Portugal	June 27th, 1938
Rumania	August 4th, 1937
Sweden	July 1st, 1938

ADHESION :

Greece	May 19th, 1951
Switzerland	May 28th, 1954
Turkey	July 4th, 1955

DENUNCIATION :

Poland	March 17th, 1952
Rumania	September 21st, 1959

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO
CIVIL JURISDICTION

IN MATTERS OF COLLISION
Signed at Brussels on May 10th, 1952.

RATIFICATION :

Spain	December 8th, 1953
Yugoslavia	March 14th, 1955
Egypt	August 24th, 1955
Holy Seat	August 10th, 1956
Portugal	May 4th, 1957
France	May 25th, 1957
French Overseas Territories	
Republic of Togo and Cameroons	April 23rd, 1958
Great Britain	March 18th, 1959

ADHESION :

Switzerland	May 28th, 1954
Costa Rica	September 13th, 1955
Cambodia	November 12th, 1956

INTERNATIONAL CONVENTION FOR THE UNIFICATION
OF CERTAIN RULES RELATING TO

PENAL JURISDICTION

IN MATTERS OF COLLISION OR OTHER INCIDENTS OF NAVIGATION
Signed at Brussels on May 10th, 1952.

RATIFICATION :

Spain	December 8th, 1953
France	May 20th, 1955
French Overseas Territories	
Republic of Togo and Cameroons	April 23rd, 1958
Egypt	August 24th, 1955
Yugoslavia	April 21st, 1956
Holy Seat	August 10th, 1956
Portugal	May 4th, 1957
Great Britain	March 18th, 1959

ADHESION :

Burman Union	July 8th, 1953
Switzerland	May 28th, 1954
Haiti	July 17th, 1954
Costa Rica	July 13th, 1955
Republic of South Vietnam	November 26th, 1955
Cambodia	November 12th, 1956

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

ARREST

OF SEA-GOING SHIPS

Signed at Brussels on May 10th, 1952

RATIFICATION :

Spain	December 8th, 1953
Egypt	August 24th, 1955
Holy Seat	August 10th, 1956
Portugal	May 4th, 1957
France	May 25th, 1957
French Overseas Territories	
Republic of Togo and Cameroons	April 23rd, 1958
Great Britain	March 18th, 1959

ADHESION :

Switzerland	May 28th, 1954
Haiti	November 4th, 1954
Costa Rica	July 13th, 1955
Cambodia	November 12th, 1956

INTERNATIONAL CONVENTION RELATING TO THE
LIMITATION
OF THE LIABILITY OF THE OWNERS OF SEA-GOING VESSELS
Signed at Brussels on October 10th, 1957

RATIFICATION :

**Great Britain
and
Northern Ireland**

February 18th, 1959

France

July 7th, 1959

Spain

July 16th, 1959

INTERNATIONAL CONVENTION RELATING TO
STOWAWAYS

Signed at Brussels on October 10th, 1957

ADHESION :

Morocco

January 22nd, 1959

BRUSSELS' CONVENTIONS

1957

CONVENTION INTERNATIONALE SUR LA LIMITATION DE LA RESPONSABILITE DES PROPRIETAIRES DE NAVIRES DE MER

*Signé à Bruxelles
le 10 octobre 1957*

INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEA-GOING SHIPS

*Signed at Brussels
on the 10th October 1957*

Les Hautes Parties Contractantes,

Ayant reconnu l'utilité de fixer d'un commun accord certaines règles uniformes concernant la limitation de 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 1^{er}

(1) Le propriétaire d'un navire de mer peut limiter sa responsabilité au montant déterminé par l'article 3 de la présente Convention pour les créances qui résultent de l'une des causes suivantes, à moins

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules relating to the limitation of the liability of owners of sea-going ships;

Have decided to conclude a Convention for this purpose, and therefore to have agreed as follows :

Article 1

(1) The owner of a sea-going ship may limit his liability in accordance with Article 3 of this Convention in respect of claims arising from any of the following occurrences, unless the occurrence giving

que l'événement donnant naissance à la créance ait été causé par la faute personnelle du propriétaire :

(a) mort ou lésions corporelles de toute personne se trouvant à bord pour être transportée, et pertes ou dommages de tous biens se trouvant à bord du navire;

(b) mort ou lésions corporelles de toute autre personne sur terre ou sur l'eau, pertes ou dommages à tous autres biens ou atteintes à tous droits causés par le fait, la négligence ou la faute de toute personne se trouvant à bord du navire, dont le propriétaire est responsable, ou de toute autre personne ne se trouvant pas à bord et dont le propriétaire est responsable; pourvu que, dans ce dernier cas, le fait, la négligence ou la faute se rapportent à la navigation, à l'administration du navire, au chargement, au transport ou au déchargement de la cargaison, à l'embarquement, au transport ou au débarquement des passagers;

(c) Toute obligation ou responsabilité imposée par une loi relative à l'enlèvement des épaves et se rapportant au renflouement, à l'enlèvement ou à la destruction d'un navire coulé, échoué ou abandonné (y compris tout ce qui se trouve à bord), ainsi que toute obligation ou

rise to the claim resulted from the actual fault or privity of the owner:

(a) Loss of life of, or personal injury to, any person being carried in the ship, and loss of, or damage to, any property on board the ship;

(b) Loss of life of, or personal injury to, any other person, whether on land or on water, loss of or damage to any other property or infringement of any rights caused by the act, neglect or default of any person on board the ship for whose act, neglect or default the owner is responsible or any person not on board the ship for whose act, neglect or default the owner is responsible: Provided however that in regard to the act, neglect or default of this last class of person, the owner shall only be entitled to limit his liability when the act, neglect or default is one which occurs in the navigation or the management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers;

(c) Any obligation of liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and

responsabilité résultant des dommages causés par un navire de mer aux ouvrages d'art des ports, bassins et voies navigables.

(2) Dans la présente Convention, l'expression « dommages corporels » désigne les créances d'indemnité résultant de mort et de lésions corporelles; l'expression « dommages matériels » désigne toutes les autres créances mentionnées au paragraphe (1) ci-dessus.

(3) Le droit d'un propriétaire de navire de limiter sa responsabilité dans les cas visés au paragraphe (1) du présent article lui est reconnu même si sa responsabilité dérive de la propriété, de la possession, de la garde ou du contrôle du navire sans preuve de sa faute ou de celle de personnes dont il doit répondre.

(4) Le présent article ne s'applique pas :

(a) aux créances du chef d'assistance, de sauvetage ou de contribution en avarie commune;

(b) aux créances du capitaine, des membres de l'équipage ou de tous autres préposés du propriétaire du navire se trouvant à bord ou dont les fonctions se rattachent au service du navire, ainsi qu'aux créances de leurs héritiers et ayants cause, si, selon la loi régissant le contrat d'engagement, le propriétaire n'a pas le droit de limiter sa responsabilité relativement à ces

any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways.

(2) In the present Convention the expression « personal claims » means claims resulting from loss of life and personal injury; the expression « property claims » means all other claims set out in paragraph (1) of this Article.

(3) An owner shall be entitled to limit his liability in the cases set out in paragraph (1) of this Article even in cases where his liability arises, without proof of negligence on the part of the owner or of persons for whose conduct he is responsible by reason of his ownership, possession, custody or control of the ship.

(4) Nothing in this Article shall apply :

(a) To claims for salvage or to claims for contribution in general average;

(b) To claims by the Master, by members of the crew, by any servants of the owner on board the ship or by servants of the owner whose duties are connected with the ship, including the claims of their heirs, personal representatives or dependents, if under the law governing the contract of service between the owner and such servants the owner is not entitled to limit his

créances, ou, si, selon cette loi, il ne peut le faire qu'à concurrence d'un montant supérieur à celui prévu à l'article 3 ci-après.

(5) Si le propriétaire d'un navire est autorisé à faire valoir à l'égard d'un créancier une créance pour un dommage résultant du même événement, les créances respectives seront compensées, et les dispositions de la présente Convention ne s'appliqueront qu'au solde éventuel.

(6) La *lex fori* déterminera la personne à qui incombe la preuve que l'événement donnant lieu à la créance a été ou non causé par la faute personnelle du propriétaire.

(7) Le fait d'invoquer la limitation de sa responsabilité n'emporte pas la reconnaissance de cette responsabilité.

Article 2

(1) La limitation de la responsabilité déterminée par l'article 3 de la présente Convention, s'applique à l'ensemble des créances du chef de dommages corporels et de dommages matériels nées d'un même événement, sans avoir égard aux créances nées ou à naître d'un autre événement.

(2) Lorsque l'ensemble des créances résultant d'un même événement dépasse les limites de la responsabilité telles qu'elles sont dé-

terminées en respect de such claims or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 3 of this Convention.

(5) If the owner of a ship is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance if any.

(6) The question upon whom lies the burden of proving whether or not the occurrence giving rise to the claim resulted from the actual fault or privity of the owner shall be determined by the *lex fori*.

(7) The act of invoking limitation of liability shall not constitute an admission of liability.

Article 2

(1) The limit of liability prescribed by Article 3 of this Convention shall apply to the aggregate of personal claims and property claims which arise on any distinct occasion without regard to any claims which have arisen or may arise on any other distinct occasion.

(2) When the aggregate of the claims which arise on any distinct occasion exceeds the limits of liability provided for by Article 3 the

terminées par l'article 3, le montant global correspondant à ces limites pourra être constitué en un fonds de limitation unique.

(3) Le fonds ainsi constitué est affecté exclusivement au règlement des créances auxquelles la limitation de la responsabilité est opposable.

(4) Après la constitution du fonds, aucun droit ne peut être exercé, pour les mêmes créances, sur d'autres biens du propriétaire par les créanciers auxquels le fonds est réservé, à condition que le fonds de limitation soit effectivement disponible au profit du demandeur.

Article 3

(1) Les montants auxquels le propriétaire d'un navire peut limiter sa responsabilité dans les cas prévus à l'article 1^{er} sont :

(a) au cas où l'événement n'a donné lieu qu'à des dommages matériels, une somme totale de 1.000 francs par tonneau de jauge du navire;

(b) au cas où l'événement n'a donné lieu qu'à des dommages corporels, une somme totale de 3.100 francs par tonneau de jauge du navire;

(c) au cas où l'événement a donné lieu à la fois à des dommages corporels et à des dommages

total sum representing such limits of liability may be constituted as one distinct limitation fund.

(3) The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(4) After the fund has been constituted, no claimant against the fund shall be entitled to exercise any right against any other assets of the shipowner in respect of his claim against the fund, if the limitation fund is actually available for the benefit of the claimant.

Article 3

(1) The amounts to which the owner of a ship may limit his liability under Article 1 shall be :

(a) Where the occurrence has only given rise to property claims, an aggregate amount of 1000 francs for each ton of the ship's tonnage;

(b) Where the occurrence has only given rise to personal claims an aggregate amount of 3.100 francs for each ton of the ship's tonnage;

(c) Where the occurrence has given rise both to personal claims and property claims an aggregate

matériels, une somme totale de 3.100 francs par tonneau de jauge du navire, dont une première partie de 2.100 francs par tonneau de jauge sera exclusivement affectée au règlement des créances du chef de dommages corporels, et dont une seconde partie de 1.000 francs par tonneau de jauge du navire sera affectée au paiement des créances du chef de dommages matériels; toutefois, lorsque la première partie est insuffisante pour payer intégralement les créances du chef de dommages corporels, le solde impayé de celles-ci viendra en concurrence avec les créances du chef de dommages matériels pour être payé par la seconde partie du fonds.

(2) Dans chaque partie du fonds de limitation, la répartition se fera entre les créanciers, proportionnellement au montant de leurs créances reconnues.

(3) Si, avant la répartition du fonds, le propriétaire d'un navire a payé en tout ou en partie une des créances indiquées à l'article 1, paragraphe (1), il est autorisé à prendre, à due concurrence, le lieu et place de son créancier dans la distribution du fonds, mais seulement dans la mesure où, selon le droit du pays où le fonds est constitué, ce créancier aurait pu faire reconnaître en justice sa créance contre le propriétaire.

amount of 3.100 francs for each ton of the ship's tonnage, of which a first portion amounting to 2.100 francs for each ton of the ship's tonnage shall be exclusively appropriated to the payment of personal claims and of which a second portion amounting to 1.000 francs for each ton of the ship's tonnage shall be appropriated to the payment of property claims: Provided however that in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payment against the second portion of the fund.

(2) In each portion of the limitation fund the distribution among the claimants shall be made in proportion to the amounts of their established claims.

(3) If before the fund is distributed the owner has paid in whole or in part any of the claims set out in Article 1 paragraph (1), he shall pro tanto be placed in the same position in relation to the fund as the claimant whose claim he has paid, but only to the extent that the claimant whose claim he has paid would have had a right of recovery against him under the national law of the State where the fund has been constituted.

(4) Lorsque le propriétaire établit qu'il pourrait être ultérieurement contraint de payer en tout ou en partie une des créances indiquées à l'article 1, paragraphe (1), le tribunal ou toute autre autorité compétente du pays où le fonds est constitué pourra ordonner qu'une somme suffisante sera provisoirement réservée pour permettre au propriétaire de faire ultérieurement valoir ses droits sur le fonds, aux conditions indiquées dans le paragraphe précédent.

(5) Pour déterminer la limite de la responsabilité d'un propriétaire de navire, conformément aux dispositions du présent article, tout navire de moins de 300 tonneaux de jauge sera assimilé à un navire de ce tonnage.

(6) Le franc mentionné dans cet article est considéré comme se rapportant à une unité constituée par soixante-cinq milligrammes et demi d'or au titre de neuf cents millièmes de fin. Les montants mentionnés au paragraphe (1) du présent article seront convertis dans la monnaie nationale de l'Etat dans lequel la limitation de la responsabilité est invoquée; la conversion s'effectuera suivant la valeur de cette monnaie par rapport à l'unité définie ci-dessus, à la date où le propriétaire de navire aura constitué le fonds,

(4) Where the shipowner establishes that he may at a later date be compelled to pay in whole or in part any of the claims set out in Article 1 paragraph (1) the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable the shipowner at such later date to enforce his claim against the fund in the manner set out in the preceding paragraph.

(5) For the purpose of ascertaining the limit of an owner's liability in accordance with the provisions of this Article the tonnage of a ship of less than 300 tons shall be deemed to be 300 tons.

(6) The franc mentioned in this Article shall be deemed to refer to a unit consisting of sixty five and a half milligrams of gold of millesimal fineness nine hundred. The amounts mentioned in paragraph (1) of this Article shall be converted into the national currency of the State in which limitation is sought on the basis of the value of that currency by reference to the unit defined above at the date on which the shipowner shall have constituted the limitation fund, made the payment or given a guarantee which

effectué le paiement ou fourni, conformément à la loi de cet Etat, toute garantie équivalente.

(7) 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 tous autres navires, le tonnage net.

Article 4

Sans préjudice des dispositions prévues à l'article 3, paragraphe (2) de la présente Convention, les règles relatives à la constitution et à la distribution du fonds éventuel et toutes les règles de procédure sont déterminées par la loi nationale de l'Etat où le fonds est constitué.

Article 5

(1) Dans tous les cas où un propriétaire est autorisé à limiter sa responsabilité, en vertu de la présente Convention, et lorsque le navire ou tout autre navire ou tout autre bien appartenant au même propriétaire, a été saisi dans le ressort d'un Etat contractant, ou

under the law of that State is equivalent to such payment.

(7) For the purpose of this convention tonnage shall be calculated as follows :

- In the case of steamships or other mechanically propelled ships 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 all other ships there shall be taken the net tonnage.

Article 4

Without prejudice to the provisions of Article 3, paragraph (2) of this Convention, the rules relating to the constitution and distribution of the limitation fund, if any, and all rules of procedure shall be governed by the national law of the State in which the fund is constituted.

Article 5

(1) Whenever a shipowner is entitled to limit his liability under this Convention, and the ship or another ship or other property in the same ownership has been arrested within the jurisdiction of a Contracting State or bail or other security has been given to avoid arrest, the

qu'une caution ou une autre garantie a été fournie pour éviter la saisie, le tribunal ou toute autre autorité compétente de cet Etat peut ordonner la mainlevée de la saisie du navire ou de tout autre bien ou la libération de la garantie donnée, à condition qu'il soit prouvé que le propriétaire a déjà fourni une caution suffisante ou toute autre garantie pour une somme égale à la pleine limite de sa responsabilité, telle qu'elle résulte de la présente Convention et que la caution ou la garantie ainsi fournie est effectivement disponible au profit du demandeur, conformément à ses droits.

(2) Lorsque, dans les circonstances mentionnées sous le paragraphe (1) du présent article, une caution ou autre garantie a déjà été donnée:

- (a) au port où s'est produit l'accident donnant lieu à la créance;
- (b) au premier port d'escale après l'accident si celui-ci n'a pas eu lieu dans un port;
- (c) au port de débarquement ou de déchargement, s'il s'agit d'une créance relative à des dommages corporels ou à des dommages aux marchandises;

Le tribunal ou toute autre autorité compétente ordonnera la mainlevée de la saisie du navire ou la libération de la caution ou autre garantie lorsque les conditions indiquées au paragraphe (1) du présent article seront réunies.

Court or other competent authority of such State may order the release of the ship or other property or of the security given if it is established that the shipowner has already given satisfactory bail or security in a sum equal to the full limit of his liability under this Convention and that the bail or other security so given is actually available for the benefit of the claimant in accordance with his rights.

(2) Where, in circumstances mentioned in paragraph (1) of this Article, bail or other security has already been given :

- (a) at the port where the accident giving rise to the claim occurred;
- (b) at the first port of call after the accident if the accident did not occur in a port;
- (c) at the port of disembarkation or discharge if the claim is a personal claim or relates to damage to cargo;

the Court or other competent authority shall order the release of the ship or the bail or other security given, subject to the conditions set forth in paragraph (1) of this Article.

(3) Les dispositions des paragraphes (1) et (2) du présent article seront également applicables, si la caution ou toute autre garantie déjà donnée est inférieure à l'entière limite de la responsabilité sous l'empire de la présente Convention, à condition qu'une caution ou toute autre garantie suffisante soit donnée pour la différence.

(4) Lorsque le propriétaire a donné caution ou fourni une autre garantie pour un montant correspondant à la pleine limite de sa responsabilité conformément à la présente Convention, cette caution ou cette autre garantie pourront servir au paiement de toutes les créances dérivant d'un même événement et pour lesquelles le propriétaire peut limiter sa responsabilité.

(5) La procédure relative aux actions engagées par application des dispositions de la présente Convention et les délais dans lesquels ces actions doivent être exercées, seront réglés par la loi nationale de l'Etat contractant dans lequel le procès a lieu.

Article 6

(1) Dans la présente Convention, la responsabilité du propriétaire du navire inclut la responsabilité du navire lui-même.

(2) Sous réserve du paragraphe

(3) du présent article, les disposi-

(3) The provisions of paragraphs (1) and (2) of this Article shall apply likewise if the bail or other security already given is in a sum less than the full limit of liability under this Convention : Provided that satisfactory bail or other security is given for the balance.

(4) When the shipowner has given bail or other security in a sum equal to the full limit of his liability under this Convention such bail or other security shall be available for the payment of all claims arising on a distinct occasion and in respect of which the shipowner may limit his liability.

(5) Questions of procedure relating to actions brought under the provisions of this Convention and also the time limit within which such actions shall be brought or prosecuted shall be decided in accordance with the national law of the Contracting State in which the action takes place.

Article 6

(1) In this Convention the liability of the shipowner includes the liability of the ship herself.

(2) Subject to paragraph (3) of this Article, the provisions of this Convention shall apply to the char-

tions de cette Convention seront applicables à l'affrètement, à l'armateur, à l'armateur gérant, ainsi qu'aux capitaine, membres de l'équipage et autres préposés du propriétaire, de l'affrètement, de l'armateur ou de l'armateur gérant, agissant dans l'exercice de leurs fonctions, de la même manière qu'elles s'appliquent au propriétaire lui-même, sans que le montant global de la responsabilité limitée du propriétaire et de toutes ces autres personnes du chef de dommages corporels et matériels, résultant d'un même événement, puisse excéder les montants fixés conformément à l'Article 3 de la présente Convention.

(3) Lorsqu'une action est dirigée contre le capitaine ou les membres de l'équipage, ceux-ci peuvent limiter leur responsabilité même si l'événement qui est à l'origine de la créance, a pour cause leur faute personnelle. Toutefois, si le capitaine ou le membre de l'équipage est en même temps seul propriétaire, co-propriétaire, affrètement, armateur ou armateur-gérant, la disposition du présent paragraphe ne s'applique que lorsqu'il s'agit d'une faute commise en sa qualité de capitaine ou de membre de l'équipage.

terer, manager and operator of the ship, and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment, in the same way as they apply to an owner himself : Provided that the total limits of liability of the owner and all such other persons in respect of personal claims and property claims arising on a distinct occasion shall not exceed the amounts determined in accordance with Article 3 of this Convention.

(3) When actions are brought against the master or against members of the crew such persons may limit their liability even if the occurrence which gives rise to the claims resulted from the actual fault or privity of one or more of such persons. If, however, the master or member of the crew is at the same time the owner, co-owner, charterer, manager or operator of the ship the provisions of this paragraph shall only apply where the act, neglect or default in question is an act, neglect or default committed by the person in question in his capacity as master or as member of the crew of the ship.

Article 7

La présente Convention s'appliquera chaque fois que le propriétaire d'un navire ou toute autre personne ayant le même droit en vertu de l'article 6, limite ou cherche à limiter sa responsabilité devant les tribunaux de l'un des Etats contractants ou tente de faire libérer un navire ou tout autre bien saisi ou une caution ou toute autre garantie, 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 toute personne qui n'a pas, au moment où elle prend des mesures pour limiter sa responsabilité ou pour obtenir, conformément à l'article 5, la libération d'un navire, ou de tout autre bien saisi ou d'une caution ou de toute autre garantie, sa résidence habituelle ou son siège principal d'exploitation dans l'un des Etats contractants ou dont le navire à raison duquel elle veut limiter sa responsabilité ou dont elle veut obtenir la libération, ne bat pas, à la date ci-dessus prévue, le pavillon de l'un des Etats contractants.

Article 8

Tout Etat contractant se réserve le droit de déterminer quelles sont les autres catégories de navires qui

Article 7

This Convention shall apply whenever the owner of a ship, or any other person having by virtue of the provisions of Article 6 hereof the same rights as an owner of a ship, limits or seeks to limit his liability before the Court of a Contracting State or seeks to procure the release of a ship or other property arrested or the bail or other security given within the jurisdiction of any such State.

Nevertheless, each Contracting State shall have the right to exclude wholly or partially, from the benefits of this Convention any non-Contracting State, or any person who, at the time when he seeks to limit his liability or to secure the release of a ship or other property arrested or the bail or other security in accordance with the provisions of Article 5 hereof, is not ordinarily resident in a Contracting State, or does not have his principal place of business in a Contracting State, or any ship in respect of which limitation of liability or release is sought which does not at the time specified above fly the flag of a Contracting State.

Article 8

Each Contracting State reserves the right to decide what other classes of ship shall be treated in the

seront assimilées aux navires de mer pour les besoins de la présente Convention.

Article 9

La présente Convention est ouverte à la signature des Etats représentés à la dixième session de la Conférence diplomatique de Droit Maritime.

Article 10

La présente Convention sera ratifiée et les instruments de ratification seront déposés auprès du Gouvernement belge qui en notifiera le dépôt par la voie diplomatique à tous les Etats signataires et adhérents.

Article 11

(1) La présente Convention entrera en vigueur six mois après la date du dépôt d'au moins dix instruments de ratification dont au moins cinq émanant d'Etats qui possèdent chacun un tonnage global égal ou supérieur à un million de tonnes de jauge brute.

(2) Pour chaque Etat signataire, ratifiant la Convention après la date du dépôt de l'instrument de ratification déterminant l'entrée en vigueur telle qu'elle est fixée au paragraphe (1) du présent article, elle entrera en vigueur six mois après le dépôt de son instrument de ratification.

same manner as sea-going ships for the purposes of this Convention.

Article 9

This Convention shall be open for signature by the States represented at the tenth session of the Diplomatic Conference on Maritime Law.

Article 10

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government which shall notify through diplomatic channels all signatory and acceding States of their deposit.

Article 11

(1) This Convention shall come into force six months after the date of deposit of at least ten instruments of ratification, of which at least five by States that have each a tonnage equal or superior to one million gross tons of tonnage.

(2) For each signatory State which ratifies the Convention after the date of deposit of the instrument of ratification determining the coming into force such as is stipulated in paragraph (1) of this Article this Convention shall come into force six months after the deposit of their instrument of ratification.

Article 12

Tout Etat non représenté à la dixième session de la Conférence diplomatique du Droit Maritime pourra adhérer à la présente Convention.

Les instruments d'adhésion seront déposés auprès du Gouvernement belge qui en avisera par la voie diplomatique tous les Etats signataires et adhérents.

La Convention entrera en vigueur pour l'Etat adhérent six mois après la date du dépôt de son instrument d'adhésion, mais pas avant la date d'entrée en vigueur de la Convention telle qu'elle est fixée à l'article 11 (1).

Article 13

Chacune des Hautes Parties Contractantes aura le droit de dénoncer la présente Convention à tout moment après son entrée en vigueur à son égard. Toutefois, cette dénonciation ne prendra effet qu'un an après la date de réception de la notification de dénonciation au Gouvernement belge, qui en avisera par la voie diplomatique tous les Etats signataires et adhérents.

Article 12

Any State not represented at the tenth session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of the deposit of any such instruments.

The Convention shall come into force in respect of the acceding State six months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 11 (1).

Article 13

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of such notification.

Article 14

(1) Toute Haute Partie Contractante peut, au moment de la ratification, de l'adhésion, ou à tout moment ultérieur notifier par écrit au Gouvernement belge que la présente Convention s'applique aux territoires ou à certains territoires dont elle assure les relations internationales.

La Convention sera applicable aux dits territoires six mois après la date de réception de cette notification par le Gouvernement belge, mais pas avant la date d'entrée en vigueur de la présente Convention à l'égard de cette Haute Partie Contractante;

(2) Toute Haute Partie Contractante qui a souscrit une déclaration au titre du paragraphe (1) du présent article, étendant l'application de la Convention aux territoires ou à certains territoires dont elle assure les relations internationales, pourra à tout moment aviser le Gouvernement belge que la Convention cesse de s'appliquer aux territoires en question.

Cette dénonciation prendra effet un an après la date de réception par le Gouvernement belge de la notification de dénonciation;

(3) Le Gouvernement belge avisera par la voie diplomatique tous les Etats signataires et adhérents de toute notification reçue par lui au titre du présent article.

Article 14

(1) Any High Contracting Party may at the time of its ratification of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the territories for whose international relations it is responsible.

The Convention shall six months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of this Convention in respect of such High Contracting Party;

(2) Any High Contracting Party which has made a declaration under paragraph (1) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government;

(3) The Belgian Government shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this article.

Article 15

Toute Haute Partie Contractante pourra, à l'expiration du délai de trois ans qui suivra l'entrée en vigueur à son égard de la présente Convention, demander la réunion d'une Conférence chargée de statuer sur toutes les propositions tendant à la révision de la présente Convention.

Toute Haute Partie Contractante qui désirerait faire usage de cette faculté en avisera le Gouvernement belge qui se chargera de convoquer la Conférence dans les six mois.

Article 16

La présente Convention remplace et abroge, pour les relations entre les Etats qui la ratifient ou y adhèrent, la Convention internationale pour l'unification de certaines règles concernant la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles, le 25 août 1924.

En foi de quoi, les Plénipotentiaires, dûment autorisés, ont signé la présente Convention.

Fait à Bruxelles, le 10 octobre 1957, en langues française et anglaise, les deux textes faisant également foi, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement belge qui en délivrera des copies certifiées conformes.

Article 15

Any High Contracting Party may three years after the coming into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a conference be convened in order to consider amendments to this Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the Conference within six months thereafter.

Article 16

In respect of the relations between States which ratify this Convention or accede to it, this Convention shall replace and abrogate the International Convention for the unification of certain rules concerning the limitation of the liability of the owners of sea-going ships, signed at Brussels, on the 25th of August 1924.

In Witness whereof the Plenipotentiaries, duly authorized, have signed this Convention.

Done at Brussels, this tenth day of October 1957, in the French and English languages, the two texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

PROTOCOLE DE SIGNATURE

(1) Tout Etat pourra, lors de la signature, de la ratification ou de l'adhésion à la présente Convention, formuler les réserves prévues au paragraphe (2). Aucune autre réserve à la présente Convention ne sera recevable.

(2) Les réserves suivantes seront seules recevables :

(a) Réserve du droit d'exclure l'application de l'article 1, paragraphe (1) (c).

(b) Réserve du droit de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge.

(c) Réserve du droit de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

PROTOCOL OF SIGNATURE

(1) Any State, at the time of signing, ratifying or acceding to this Convention may make any of the reservations set forth in paragraph (2). No other reservations to this Convention shall be admissible.

(2) The following are the only reservations admissible :

(a) Reservation of the right to exclude the application of Article 1 paragraph (1) (c).

(b) Reservation of the right to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

(c) Reservation of the right to give effect to this Convention either by giving it the force of law or by including in the national legislation, in a form appropriate to that legislation, the provisions of this Convention.

CONVENTION
INTERNATIONALE SUR LES
PASSAGERS CLANDESTINS

*Signé à Bruxelles
le 10 octobre 1957*

Les Hautes Parties Contractantes,

Ayant reconnu qu'il était désirable de fixer par un accord certaines règles uniformes relatives aux passagers clandestins, ont décidé de conclure une Convention à cet effet et ont, dans ce but, convenu de ce qui suit :

Article 1^{er}

Dans la présente Convention, les expressions suivantes auront le sens précis indiqué ci-dessous :

« 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 toute autre personne ayant la responsabilité du navire et qui est à bord après que le navire a quitté ce port ou lieu.

« 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.

INTERNATIONAL
CONVENTION RELATING TO
STOWAWAYS

*Signed at Brussels
on the 10th October 1957*

The High Contracting Parties,

Having recognised the desirability of determining by agreement certain uniform rules 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 specified hereunder :

« Stowaway » means a person who, at any port or place in the vicinity thereof, secretes himself in a ship without the consent of the shipowner or the master or any other person in charge of the ship and who is on board after the ship has left that port or place.

« Port of Embarkation » means 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 at which the stowaway is delivered to the appropriate autho-

« Port de débarquement » signifie le port dans lequel le passager clandestin est remis à l'autorité compétente conformément aux stipulations de la présente Convention.

« Autorité compétente » signifie la personne ou le service au port de le débarquement, autorisé par le Gouvernement de l'Etat dans lequel ce port est situé, à recevoir et traiter les passagers clandestins conformément aux stipulations de la présente Convention.

« Propriétaire » inclut tout affréteur en coque nue du navire.

Article 2

(1) Si au cours d'un voyage d'un navire immatriculé dans un Etat Contractant, ou portant le pavillon d'un tel Etat, un passager clandestin est découvert dans un port ou en mer, le capitaine du navire peut, sous réserve des dispositions du paragraphe (3), livrer le passager clandestin à l'autorité compétente du premier port d'un Etat Contractant où le navire fait escale après la découverte du passager clandestin, et dans lequel il estime que ce passager sera traité conformément aux dispositions de la présente Convention.

(2) Lors de la livraison du passager clandestin à l'autorité compétente, le capitaine du navire devra

rity 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) If on any voyage of a ship registered in or bearing the flag of a Contracting State a stowaway is found in a port or at sea, the master of the ship may, subject to the provisions of paragraph (3), 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, and at which he considers that the stowaway will be dealt with in accordance with the provisions of this Convention.

(2) Upon delivery of the stowaway to the appropriate authority, the master of the ship shall give to

remettre à cette autorité une déclaration signée contenant toute information en sa possession concernant ce passager clandestin et notamment sur sa, ou ses nationalités, son port d'embarquement, la date, l'heure et la position géographique du navire lorsque le passager clandestin a été découvert, ainsi que mention du port de départ du navire et des ports d'escales subséquents avec les dates d'arrivées et de départs.

(3) Sauf si un passager clandestin est sous le coup d'une mesure antérieure individuelle d'expulsion ou de refoulement, l'autorité compétente de tout port d'un Etat Contractant devra recevoir tout passager clandestin qui lui est livré conformément aux précédentes dispositions de cet article et devra agir à son égard conformément aux dispositions de la présente Convention.

Article 3

Lorsqu'un passager clandestin est remis à l'autorité compétente au port de débarquement :

(1) Cette autorité peut le renvoyer à tout Etat dont elle estime à la fois qu'il est un national et que cet Etat le reconnaît comme tel.

(2) Mais lorsque l'Etat ou, les Etats dont l'autorité compétente estime que le passager clandestin est un national, refuse ou, refusent

that authority a signed statement containing all information in his possession relating to that stowaway including his nationality or nationalities, his port of embarkation and the date, time and geographical position of the ship when the stowaway was found, as well as the port of departure of the ship and the subsequent ports of call with dates of arrival and departure.

(3) Unless the stowaway is under a previous individual order of deportation or prohibition from entry, the appropriate authority of a Contracting State shall receive any stowaway delivered to it in accordance with the foregoing provisions of this Article and deal with him in accordance with the provisions of this Convention.

Article 3

When a stowaway is delivered to the appropriate authority at the port of disembarkation :

(1) This authority may return him to any State of which it considers that he is a national and is admitted as such by that State.

(2) When, however, the State or States of which the appropriate authority consider the stowaway to be a national refuses or refuse to

d'accepter son renvoi, ou, lorsque l'autorité compétente considère que le passager clandestin ne possède aucune nationalité, ou que, pour les raisons mentionnées à l'article 5 (2) il ne doit pas être renvoyé dans son propre pays, la dite autorité peut, sous réserve des dispositions de l'article 5 (2), renvoyer le passager clandestin à l'Etat dans lequel se trouve le port qu'elle estime être son port d'embarquement.

(3) En outre, lorsque le passager clandestin ne peut être renvoyé conformément aux paragraphes (1) ou (2) du présent article, l'autorité compétente peut, sous réserve des dispositions de l'article 5 (2), le renvoyer dans l'Etat dans lequel se trouve le dernier port d'escale avant qu'il ait été découvert.

(4) Enfin, lorsqu'un passager clandestin ne peut être renvoyé conformément aux paragraphes (1), (2) ou (3) du présente article, l'autorité compétente peut le renvoyer dans l'Etat Contractant dont le navire portait le pavillon quand le passager clandestin fut découvert.

L'Etat dans lequel le passager clandestin est ainsi renvoyé est tenu de l'accepter, sous réserve des dispositions du paragraphe (3) de l'article 2.

Article 4

Les frais d'entretien d'un passager clandestin au port de son dé-

accept his return, or when the appropriate authority is satisfied that the stowaway possesses no nationality or that, for reasons mentioned in Article 5 (2), he should not be returned to his own country, then the said authority may, subject to the provisions of Article 5 (2), return the stowaway to the State in which the port which they consider to have been his port of embarkation is situated.

(3) However, if the stowaway cannot be returned as provided under paragraph (1) or (2) of this article, the appropriate authority may, subject to the provisions of Article 5 (2), return him to the State in which the last port at which the ship called prior to his being found is situated.

(4) Finally, when the stowaway cannot be returned as provided under paragraph (1), (2) or (3) of this Article, the appropriate authority may return him to the Contracting State whose flag was flown by the ship in which he was found.

The State to which the stowaway is accordingly returned, shall be bound to accept the stowaway, subject to the provisions of Article 2 (3).

Article 4

The costs of maintenance of a stowaway at his port of disembarkation

barquement, ainsi que ceux de son renvoi dans l'Etat Contractant dont il est un national sont supportés par le propriétaire du navire, sans préjudice de son recours éventuel contre l'Etat dont le passager clandestin est un national.

Dans tous les autres cas le propriétaire du navire assumera les frais de renvoi, mais ne sera tenu des frais d'entretien que pendant trois mois à dater de la remise du passager clandestin à l'autorité compétente.

L'obligation éventuelle d'un dépôt ou d'une caution pour garantir le paiement des frais ci-dessus est régie par la loi nationale du port de débarquement.

Article 5

(1) Les pouvoirs conférés par la présente Convention au capitaine d'un navire et aux autorités compétentes en ce qui concerne le sort d'un passager clandestin s'ajouteront et ne dérogeront pas à tous autres droits et obligations que lui ou elles peuvent avoir à cet égard.

(2) Pour l'application des dispositions de la présente Convention, le capitaine et les autorités compétentes du port de débarquement tiendront compte des motifs que le passager clandestin invoquerait pour ne pas être débarqué ou renvoyé dans tels ports ou tels Etats

kation as well as those for returning him to the country of which he is a national shall be defrayed by the shipowner, without prejudice to the right of recovery, if any, from the State of which the stowaway is a national.

In all other cases the shipowner shall defray the costs of returning the stowaway but he will not be liable to defray maintenance costs for a period exceeding three months from the time when the stowaway is delivered to the appropriate authority.

Any obligation to provide a deposit or bail as a guarantee for payment of the above costs shall be determined by the law of the 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 or obligations which he or they may have in that respect.

(2) As regards the application of the provisions of this Convention, the Master and the appropriate authorities of the port of disembarkation will take into account the reasons which may be put forward by the stowaway for not being disembarked at or returned to those ports

mentionnés à la présente Convention.

(3) Les dispositions de la présente Convention ne porteront en aucune manière atteinte aux droits et obligations de l'Etat Contractant à accorder l'asile politique.

Article 6

La présente Convention est ouverte à la signature des Etats représentés à la dixième session de la Conférence diplomatique du Droit Maritime.

Article 7

La présente Convention sera ratifiée et les instruments de ratification seront déposés auprès du Gouvernement belge qui en notifiera le dépôt par la voie diplomatique à tous les Etats signataires et adhérents.

Article 8

(1) La présente Convention entrera en vigueur entre les dix premiers Etats qui l'auront ratifiée, six mois après la date du dépôt du dixième instrument de ratification.

(2) Pour chaque Etat signataire ratifiant la Convention après le dixième dépôt, elle entrera en vigueur six mois après la date du dépôt de son instrument de ratification.

or States mentioned in this Convention.

(3) The provisions of this Convention shall not in any way affect the power or obligation of a Contracting State to grant political asylum.

Article 6

This Convention shall be open for signature by the States represented at the tenth session of the Diplomatic Conference on Maritime Law.

Article 7

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government which shall notify through diplomatic channels all signatory and acceding States of their deposit.

Article 8

(1) This Convention shall come into force between the ten States which first ratify it, six months after the date of the deposit of the tenth instrument of ratification.

(2) This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the tenth instrument or ratification, six months after the date of the deposit of the instrument of ratification of that State.

Article 9

Tout Etat non représenté à la dixième session de la Conférence diplomatique de Droit Maritime pourra adhérer à la présente Convention.

Les instruments d'adhésion seront déposés auprès du Gouvernement belge qui en avisera par la voie diplomatique tous les Etats signataires et adhérents.

La Convention entrera en vigueur pour l'Etat adhérent six mois après la date du dépôt de son instrument d'adhésion, mais pas avant la date d'entrée en vigueur de la Convention telle qu'elle est fixée à l'article 8 (1).

Article 10

Chacune des Hautes Parties Contractantes aura le droit de dénoncer la présente Convention à tout moment après son entrée en vigueur à son égard. Toutefois, cette dénonciation ne prendra effet qu'un an après la date de réception de la notification de dénonciation au Gouvernement belge, qui en avisera par la voie diplomatique tous les Etats signataires et adhérents.

Article 11

(1) Toute Haute Partie Contractante peut, au moment de la ratifi-

Article 9

Any State not represented at the tenth session of the Diplomatic Conference on Maritime Law may accede to this Convention.

The instruments of accession shall be deposited with the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of the deposit of any such instruments.

The Convention shall come into force in respect of the acceding State six months after the date of the deposit of the instrument of accession of that State, but not before the date of entry into force of the Convention as established by Article 8 (1).

Article 10

Each High Contracting Party shall have the right to denounce this Convention at any time after the coming into force thereof in respect of such High Contracting Party. Nevertheless, this denunciation shall only take effect one year after the date on which notification thereof has been received by the Belgian Government which shall inform through diplomatic channels all signatory and acceding States of such notification.

Article 11

(1) Any High Contracting Party may at the time of its ratification

cation de l'adhésion, ou à tout moment ultérieur, notifier par écrit au Gouvernement belge que la présente Convention s'applique aux territoires ou à certains territoires dont elle assure les relations internationales. La Convention sera applicable aux dits territoires six mois après la date de réception de cette notification par le Gouvernement belge, mais pas avant la date d'entrée en vigueur de la présente Convention à l'égard de cette Haute Partie Contractante.

(2) Toute Haute Partie Contractante qui a souscrit une déclaration au titre du paragraphe (1) du présent article, étendant l'application de la Convention aux territoires ou à certains territoires dont elle assure les relations internationales, pourra à tout moment aviser le Gouvernement belge que la Convention cesse de s'appliquer aux territoires en question. Cette dénonciation prendra effet un an après la date de réception par le Gouvernement belge de la notification de dénonciation.

(3) Le Gouvernement belge avisera par la voie diplomatique tous les Etats signataires et adhérents de toute notification reçue par lui au titre du présent article.

Article 12

Toute Haute Partie Contractante pourra, à l'expiration du délai de

of or accession to this Convention or at any time thereafter declare by written notification to the Belgian Government that the Convention shall extend to any of the territories for whose international relations it is responsible. The Convention shall six months after the date of the receipt of such notification by the Belgian Government extend to the territories named therein, but not before the date of the coming into force of the Convention in respect of such High Contracting Party.

(2) Any High Contracting Party which has made a declaration under paragraph (1) of this Article extending the Convention to any territory for whose international relations it is responsible may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such territory. This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

(3) The Belgian Government shall inform through diplomatic channels all signatory and acceding States of any notification received by it under this article.

Article 12

Any High Contracting Party may three years after the coming

trois ans qui suivra l'entrée en vigueur à son égard de la présente Convention, demander la réunion d'une Conférence chargée de statuer sur toutes les propositions tendant à la révision de la présente Convention.

Toute Haute Partie Contractante qui désirerait faire usage de cette faculté en avisera le Gouvernement belge qui se chargera de convoquer la Conférence dans les six mois.

En foi de quoi, les Plénipotentiaires, dûment autorisés, ont signé la présente Convention.

Fait à Bruxelles, le 10 octobre 1957, en langues française et anglaise, les deux textes faisant également foi, en un seul exemplaire, qui restera déposé dans les archives du Gouvernement belge qui en délivrera des copies certifiées conformes.

into force of this Convention in respect of such High Contracting Party or at any time thereafter request that a Conference be convened in order to consider amendments to this Convention.

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which shall convene the Conference within six months thereafter.

In witness whereof the Plenipotentiaries, duly authorized, have signed this Convention.

Done at Brussels, this tenth day of October 1957, in the French and English languages, the two texts being equally authentic, in a single copy, which shall remain deposited in the archives of the Belgian Government, which shall issue certified copies.

PROJET DE CONVENTION
INTERNATIONALE POUR
L'UNIFICATION DE
CERTAINES REGLES EN
MATIERE DE TRANSPORT
DE PASSAGERS PAR MER

*Voté à Bruxelles
le 7 octobre 1957*

INTERNATIONAL DRAFT
CONVENTION FOR
THE UNIFICATION
OF CERTAIN RULES
RELATING TO THE CARRIAGE
OF PASSENGERS BY SEA

*Voted at Brussels
on the 7th October 1957*

Article 1^{er}

Dans la présente Convention, les mots suivants sont employés dans le sens précis indiqué ci-dessous :

- a) « transporteur » comprend une quelconque des personnes suivantes, partie à un contrat de transport : le propriétaire du navire ou l'affrèteur ou l'armateur;
- b) « contrat de transport » signifie un contrat conclu pour le transport de passagers autre qu'un contrat d'affrètement;
- c) « passager » veut dire uniquement une personne transportée sur un navire en vertu d'un contrat de transport.
- d) « navire » signifie uniquement un navire de mer;
- e) « transport » comprend la période pendant laquelle le passager est à bord du navire ainsi que les opérations d'embarquement et de débarquement de ce

Article 1

In this Convention, the following expressions have the following meaning :

- a) « carrier » includes any of the following persons who enters into a contract of carriage : the shipowner, the charterer or the operator of the ship;
- b) « contract of carriage » means a contract to carry passengers, and does not include a Charter party;
- c) « passenger » means only a person carried in a ship under a contract of carriage;
- d) « ship » means only a seagoing ship;
- e) « Carriage » covers the period while a passenger is on board the ship, or in the course of embarking or disembarking, but does not include any period

passager, mais ne comprend pas la période pendant laquelle le passager se trouve dans une gare maritime ou sur un quai. En outre, le transport comprend le transport par eau du quai au navire ou vice-versa, si le prix de ce transport est compris dans celui du billet, ou si le bâtiment utilisé pour ce transport accessoire a été mis à la disposition du passager par le transporteur;

- f) « transport international » comprend tout transport dont, d'après les stipulations des parties, le point de départ et le point de destination sont situés dans deux Etats différents, soit sur le territoire du même Etat, à la condition que le navire fasse escale dans un port situé dans un autre Etat;
- g) « Etat contractant » signifie un Etat dont la ratification ou l'adhésion à la Convention a pris effet et dont la dénonciation n'a pas pris effet.

Article 2

Les dispositions de la présente Convention s'appliquent à tous les transports internationaux effectués soit par un navire battant le pavillon d'un Etat contractant, soit que

while the passenger is in a marine station or on a quay. Moreover, « 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.

- f) « international carriage » means all carriage of which the place of departure and the place of destination, according to the agreements of the parties, are situated either in two different states or in the same state, provided that in the latter case the ship calls at a port situated in another state.
- g) « contracting State » means a State whose ratification or adherence to this Convention has become effective and whose denunciation thereof has not become effective.

Article 2

This Convention shall apply to any international carriage if either the ship flies the flag of a contracting State or if, according to the agreements of the parties, the place

le point de départ ou le point de destination, d'après les stipulations des parties, se trouve sur le territoire d'un Etat contractant.

Article 3

Le transporteur et ses préposés exerceront une diligence raisonnable pour mettre et conserver, pendant tout le transport, le navire en état de navigabilité et assurer au navire un armement, équipement, et approvisionnements convenables, et assurer la sécurité des passagers à tous autres égards.

Article 4

1. Le transporteur sera responsable de tout dommage occasionné par la mort d'un passager ou ses lésions corporelles, lorsque le dommage a été occasionné au cours du transport, si le dommage provient de la faute ou de la négligence du transporteur ou de ses préposés, ces derniers agissant dans l'exercice de leurs fonctions.

2. La faute ou la négligence du transporteur ou de ses préposés sera présumée, sauf preuve contraire, si la mort ou les lésions corporelles ont été causées par un naufrage, abordage, échouement, explosion ou incendie ou sont en relation avec un de ces événements.

3. Sauf dans les cas prévus au paragraphe 2 de cet article, le far-

of departure or destination is in the territory of a Contracting State.

Article 3

The carrier, his servants and agents shall exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at all times during the carriage, and in all other respects to secure the safety of the passengers.

Article 4

1. The carrier shall be liable for any damage suffered as a result of the death of, or personal injury to the passenger when the damage has occurred in the course of the carriage, if the damage arises from the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

2. The fault or neglect of the carrier, his servants and agents shall be presumed, unless the contrary is proved, if the death or personal injury arises from or in connection with ship-wreck, collision, stranding, explosion or fire.

3. Except as provided in paragraph 2 of this article, the burden

deau de la preuve de la faute ou de la négligence du transporteur ou de ses préposés incombe au demandeur.

Article 5

Dans le cas où le transporteur établit que la faute ou la négligence du passager a causé sa mort ou ses lésions corporelles ou y a contribué, le tribunal pourra, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

Article 6

1. La responsabilité du transporteur en cas de mort d'un passager ou de lésions corporelles est limitée dans tous les cas à un montant de 250.000 frs.

2. Dans le cas où, d'après la loi du tribunal saisi, l'indemnité peut être fixée sous forme de rente, le capital de la rente ne peut dépasser cette limite.

3. Toutefois, par une Convention spéciale avec le transporteur, le passager pourra fixer une limite de responsabilité plus élevée.

Article 7

Le transporteur sera déchu du bénéfice de la limitation de responsabilité prévue par l'art. 6 s'il est

of proving the fault or neglect of the carrier, his servants or agents shall be on the claimant.

Article 5

If the carrier proves that the death of, or personal injury to the passenger was caused or contributed to by the fault or neglect of the passenger, the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 6

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 250.000 Frs.

2. Where, in accordance with the law of the court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of these payments shall not exceed the said limit.

3. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6,

prouvé que le dommage résulte d'un acte ou d'une omission du transporteur fait, soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résultera probablement. .

Article 8

Les dispositions de la présente Convention ne modifient en rien les droits et obligations du transporteur, tels qu'ils résultent des dispositions des Conventions internationales sur la limitation de la responsabilité des propriétaires de navires de mer, ou de toute loi interne régissant cette limitation.

Article 9

Toute clause tendant à exonérer le transporteur de sa 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 ou soumettant les litiges à la compétence d'un tribunal déterminé ou à l'arbitrage, sont nulles et non avenues, 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.

if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 8

The provisions of this Convention shall not modify the rights or duties of the carrier, provided for in international Conventions relating to the limitation of the liability of owners of sea-going ships or in any national law covering such limitation.

Article 9

Any provision purporting to relieve the carrier of his liability or to establish a lower limit than that fixed in this Convention, as well as any provision purporting to shift the burden of proof which rests on the carrier, or to require disputes to be submitted to any particular jurisdiction or to arbitration, shall be null and void, but the nullity of that provision shall not involve the nullity of the contract which shall be subject to the provisions of this Convention.

Article 10

(1) Dans tous les cas prévus aux articles 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.

(2) En cas de lésions corporelles, subies par le passager, l'action en responsabilité ne pourra être intentée que par le passager même.

(3) En cas de mort du passager, l'action en paiement de dommages ne peut être intentée que par les ayants-droit de la personne décédée ou les personnes à sa charge et seulement si ces ayants-droit ou ces personnes ont le droit d'intenter l'action suivant la loi du tribunal saisi.

Article 11

(1) En cas de lésion corporelle du passager, celui-ci doit aviser sans retard le transporteur de l'événement chaque fois qu'il en a la possibilité.

(2) 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.

(3) Les actions en réparation du préjudice résultant de la mort d'un

Article 10

(1) In all cases covered by articles 3 and 4 any action for damages, however founded, can only be brought subject to the conditions and the limits set out in this Convention.

(2) Any claim for personal injury suffered by a passenger may only be brought by the passenger himself.

(3) In case of death of the passenger an action for damages may be brought only by the personal representatives, the heirs and the dependants of the deceased, and only if such persons are permitted to bring the action in accordance with the law of the Court seized of the case.

Article 11

(1) The passenger shall whenever possible, inform the carrier without delay of any personal injury suffered by him.

(2) He shall furthermore give written notice of such injury to the carrier within fifteen days of the date of disembarkation. If he fails to comply with these requirements, the passenger shall be presumed, in the absence of contrary proof, to have disembarked safe and sound.

(3) Actions for claims resulting from the death of a passenger or

passager ou de toute lésion corporelle, se prescrivent par un an.

(4) En cas de lésion corporelle, le délai de la prescription court à partir du jour du débarquement.

(5) En cas de décès survenu au cours du transport, le délai de la prescription court à partir de la date à laquelle le passager aurait dû être débarqué.

(6) 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'accident.

Article 12

(1) Si une action est intentée contre le préposé du transporteur en raison de dommages visés par la présente Convention, ce préposé, s'il prouve qu'il a agi dans l'exercice de ses fonctions, pourra se prévaloir des exonérations et des limites de responsabilités que peut invoquer ce transporteur en vertu de la présente Convention.

(2) Le montant total de la réparation qui, dans ce cas, peut être obtenu du transporteur et de ses préposés ne pourra dépasser la date limite.

(3) Toutefois, le préposé ne pourra se prévaloir des dispositions

from any personal injury shall be time barred after one year.

(4) In case of personal injury, the limitation period shall be calculated from the date of the disembarkation of the passenger.

(5) In the event of death occurring during carriage the limitation period shall be calculated from the date on which the passenger should have disembarked.

(6) In the event of death occurring after disembarkation the limitation period shall be calculated from the date of death provided that this period shall not exceed three years after the accident.

Article 12

1) If an action is brought against a servant or agent of the carrier arising out of damages to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier himself is entitled to invoke under this Convention.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limit.

(3) Nevertheless, the servant or agent shall not be entitled to avail himself of the provisions of the two

des deux paragraphes précédents, s'il est prouvé que le dommage résulte d'un acte ou d'une omission du préposé fait, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résultera probablement.

Article 13

La Convention s'applique aux transports à titre commercial effectués par l'Etat ou les autres personnes juridiques du Droit Public dans les conditions prévues à l'article premier.

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;

(2) de ne pas appliquer la Convention, lorsque le passager et le

preceding paragraphs, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 13

The Convention shall also apply to commercial carriage within the meaning of article 1 undertaken by Governments or Public Authorities.

ADDITIONNEL 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 validity 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 in relation to carriage which according to their national law is not considered to be an international carriage;

(2) not to give effect to the Convention when the passenger and the

transporteur sont ressortissants du même Etat contractant;

(3) de convertir en leur monnaie nationale en chiffres ronds les sommes indiquées à l'article 6 de la Convention;

(4) de donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans leur législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

carrier are subjects of the same Contracting State;

(3) to convert into their own currency in round figures the sums referred to in article 6 of the Convention;

(4) to give effect to this Convention either by giving it the force of law or by including in their national legislation in a form appropriate to that legislation, the provisions of this Convention.

RESERVE SPECIALE

Le Gouvernement du Royaume-Uni se réserve le droit de ne pas donner effet aux dispositions de la présente Convention qui concernent des limites établies sur une base per capita.

SPECIAL RESERVATION

The Government of the United Kingdom reserve the right not to give effect to those provisions of this Convention relatively to limits established on a per capita basis.

II

CONFERENCE OF RIJEKA

1

ATTENDANCE

SPONSERING COMMITTEE

Ljubo BABIC

President of the Foreign Trade Committee

Vojin BAJOVIC

Member of the Executive Council of the Assembly of the People's Republic of Serbia, Secretary for Traffic.

Peko DAPCEVIC

Member of the Federal Executive Council, Secretary for Communications and Traffic

Jovan DORDEVIC

President of the Legal Council of the Federal Executive Council

Léon GERSKOVIC

Secretary for legislation and organization of the Federal Executive Council

Edo JARDAS

President of the People's Committee of the District of Rijeka

Mate JERKOVIC

Admiral, Commander in Chief of the Yugoslav Navy

Ante JURJEVIC

President of the Association of the Shipbuilding Industry

Cedo KAPOR

Member of the Executive Council of the Assembly of the People's Republic of Bosnia and Herzegovina, Secretary for Traffic

Vicko KRSTULOVIC

Member of the Executive Council of the Diet of the People's Republic of Croatia, President of the Committee for maritime affairs of the Diet

Sime MATIJASEVIC

Secretary of the Seamen's Trade Union

Vukosava MICUNOVIC

Secretary for Traffic of the Executive Council of the People's Republic of Montenegro

Slobodan NAKICENOVIC

State Under-Secretary at the Yugoslav Federal Committee for Nuclear Energy and Secretary of the Committee

Bojan POLAK

Member of the Executive Council of the Assembly of the People's Republic of Slovenia, Secretary for Traffic

Blagoje POPOV

Member of the Executive Council of the Assembly of the People's Republic of Macedonia, Secretary for Industry

Koca POPOVIC

State Secretary for Foreign Affairs, member of the Executive Council

Miljenko PROTEGA

State Secretary of the Administration of Justice of the People's Republic of Croatia

Spiro SAVIN

President of the Yugoslav Shipping Association

Vladimir SIMIC

Vice-President of the Federal People's Assembly, Chairman of the Union of Jurists' Associations of Yugoslavia

Mirko ZEKULIC

President of the Yugoslav Association of Sea-Ports

Milovan ZORICIC

Former Judge at the International Court of Justice

OFFICERS OF THE CONFERENCE

Hon. President :	Albert LILAR
Hon. Vice President :	Vladislav BRAJKOVIC
Hon. Secretary General :	Cyril MILLER Carlo Van den BOSCH Natko KATICIC
Hon. Treasurer :	Léon GYSELYNCK
Hon. Administrative Secretary :	H. F. VOET
Hon. Secretary :	Ladislav TAMBACA Ive KISIC Léo Van VARENBERGH William BIRCH-REYNARDSON

YUGOSLAV ORGANIZING COMMITTEE

President : Milan BARTOS

Professor at the Faculty of Law at Belgrade, Ambassador to the State Secretariate for Foreign Affairs of the Federal People's Republic of Yugoslavia

Secretary : Ive KISIC

Legal Adviser of the Ship-owning Company « Jugolinija », Rijeka

Members :

Miroslav DRAGUSTIN

Director of the Maritime and Fluvial Administration, Belgrade

Radivoj KESIC

Director General of the Ship-owning Company « Jugolinija », Rijeka

Ladislav TAMBACA

Professor at the Marine High School, Rijeka

Nikola VUKSA

Director General of the Ship-owning Company « Jadrolinija », Rijeka

Nikola PERCIC

Legal Adviser at the Shipping Agency « Jadroagencija », Rijeka

LIST OF ATTENDANCE

BELGIUM

Albert LILAR
Pierre BAUGNIET
Carlo van den BOSCH
René BOSMANS
Fernand COLLIN
Léon GYSELYNCK
Werner KOELMAN

M. J. PLUYMERS
Jean van RYN
Lionel TRICOT
André VAES
Robert VAES
Leo van VARENBERGH
H. F. VOET

CANADA

Lucien BEAUREGARD
A. L. LAWES

LEAVEY
Peter WRIGHT

DENMARK

N. V. BOEG
Alfred GÄRTNER

Bernhard GOMARD
Jacob HALD

FINLAND

Fredrik NORRMÉN

FRANCE

Paul CHAUVEAU
Michel DUBOSC
James Paul GOVARE
Jean de GRANDMAISON
Pierre LATRON
Julien LE CLÈRE
Claire LEGENDRE

France PIETRI
Marcel PITOIS
Jacques POTIER
Paul REMBAUVILLE-NICOLLE
Jacques VILLENEAU
Jean WARROT

GERMANY

H. Ch. ALBRECHT
Gerhard BRENER
H. BURCHARD-MOTZ
Gerd. COELER
O. DETTMERS
Karl HARTMANN NECKER

Kurt VON LAUN
Jürgen LEBUHN
Hans Georg ROEHREKE
Werner SCHÖN
Victor SOMMER
Oscar VON STRITZKY

GREAT BRITAIN

W. R. A. BIRCH-REYNARDSON	C. T. MILLER
M. H. DOWNES	J. D. MILLER
J. G. GORDON	P. H. MITCHELL
C. T. GREENACRE	W. NEWSON
C. HARRIS	C. D. REYNOR
Martin HILL	E. W. READING
Harold HOFFMAN	R. D. RILEY
J. HONOUR	John TREVOR
Alan KENT	

GREECE

S. J. MACRYMICHALOS	Kyriakos SPILIOPOULOS
Meletis K. METHENITIS	Themistocle VALSAMAKIS
Phocian POTAMIANOS	

ISRAEL

CASPI,	A. W. SCHAL
JACOVI,	

ITALY

Francesco BERLINGIERI	Bruno FORTI
Giorgio BERLINGIERI	Amedeo GIANNINI
Osvaldo BOTTA	Lapo LEGAT
Ferrante CAPPONI	Giuseppe MERCADANTE
Dante CAPONERA	Emilio PASANISI
Camilla DAGNA	Sergio ROSSI
Egidio DAGNA	Roberto SANDIFORD
Vito Dante FLORE	Enzio VOLLI

JAPAN

J. HOMMA	H. TANIKAVA
----------	-------------

NETHERLANDS

J. T. ASSER	A. LOEFF
R. P. CLEVERINGA	J. A. L. M. LOEFF
Baron H. COLLOT D'ESCURY	R. MICHIELSEN
R. P. M. DE BOK	H. SCHADEE
B. DEPUIS	H. E. SCHEFFER
Baron F. VAN DER FELTZ	J. C. SCHULTSZ
J. P. KRUSEMAN	

NORWAY

Sjur BRAEKHUS
Hans Chr. BUGGE
Einar FLOYSTAD
Fruystein HALVORSEN

Sverre HOLT
Annar POULSON
Alex REIN
Knut SELMER

POLAND

Maciej CHORZELSKI
Josef GORSKI
Jan LOPUSKI
Stanislav MATYSIK
Kazimir MIHALSKI

Josef PAWLIKIEWICZ
Marija RASKOWSKA
Bierzanck REMIGIUSZ
Stanislav SUCHORZEWSKI
Antoni WALCRUCK

PORTUGAL

Correia DE BARROS

Vasco TABORDA FERREIRA

SPAIN

Ignacio BERTRAND
Maria Jose GARIBI

Luis HERMIDA
Juan B. MONFORT

SWEDEN

Nils GRENANDER
Sten HEDEN
H. G. MELLANDER
Fritjof NORDBORG
Claës PALME

Per DREIJER
Kaj PINEUS
Lars RAINER
Sten RUDHOLM
André Major SÖRENSEN

SWITZERLAND

Walter MÜLLER

R. Th. SARASIN

TURQUIE

Haydar ARSEVEN
Hayri BARAN

Mazhar Nedim GÖKNIL

UNITED STATES

Arthur M. BOAL
John F. GERITY
Charles S. HAIGHT
Wilbur HECHT

Arnold W. KNAUTH
Roy LEIFFEN
Herbert M. LLOYD
Edwin LANGCOPE

John R. MAHONEY
Leonard J. MATTESON
John C. MOORE
Clarence G. MORSE
John C. PRIZER
Edward D. RANSON

Jos. M. RAULT
Robert SEAVER
William STANDARD
George B. WARBURTON
Burton H. WHITE

YUGOSLAVIA

Juraj ANDRASSY
Gavro BADOVINAC
Milan BARTOS
Vladislav BRAJKOVIC
Miroslav DRAGUSTIN
Natko KATICIC
Ive KISIC
Zdenko KOCIJAN
Viktor KUKULJAN
Stojan NOVAKOVIC

Emilio PALLUA
Nikola PERCIC
Zvone RIHTMAN
Ljubo SMOKVINA
Frano SPEHAR
Andrija SUC
Ladislav TAMBACA
Milan TRAMPUZ
Aleksandar VLASKALIN

OBSERVERS

Robert VAES

Ministère des Affaires Etrangères et du Commerce Extérieur de Belgique.

Alan KENT

Her Majesty's Government, London

John TREVOR

British Ministry of Fuel and Power, London

Mahomed MAHJOUBI

Embassy of the Kingdom of Morocco, Belgrade

Hasan Abdel Hamid HASSAN

Abdel Salam M. EL MEHMUD

Embassy of the United Arabian Republic

Neil D. NAIDEN

Deputy General Counsel U. S. Atomic Energy Commission, Washington

Max ISENBERGH

Special Assistant for Atomic Energy to the Ambassador, American Embassy,
Paris

Peter KOENZ

OSREDKAZ

International Atomic Energy Agency, Vienna

Ratko PESIC

International Labour Office, Geneva

Jerry L. WEINSTEIN

European Atomic Energy Agency, O.E.E.C., Paris

Reinhart BAUER

Communauté Européenne de l'Energie Atomique, Euratom, Bruxelles

Roberto SANDIFORD

Institut International pour l'Unification du Droit Privé, Unidroit. Rome

Bozo BOSANAC
Vojin DMITROVIC

Yugoslav Federal Committee for Atomic Energy

Col. Mile DESPOT
Maj. Jovica PATRNOGIC

State Secretary for Foreign Affairs and State Secretary for National
Defense of the Federal People's Republic of Yugoslavia

Stjepan LAMER

Secretary for Transport to the Executive Council of the People's Republic
of Croatia

Mihailo SMIRNOV

Institute for Foreign Trade, Belgrade

Dejan JANCA
Miodrag SUKIJASOVIC

Institute for International Policy of Economy, Belgrade

Natko KATICIC

Adriatic Institute of the Yugoslav Academy for Sciences and Fine Arts,
Zagreb

H. STEUCH

Baltic and International Maritime Conference

Vladislav BRAJKOVIC

International Chamber of Commerce, Paris

Milos RADOJKOVIC
Bogdan BABOVIC
Borko NIKOLAJEVIC

Yugoslav International Law Association

CONFERENCE OF RIJEKA

2

PRELIMINARY REPORTS

REVISION OF THE INTERNATIONAL CONVENTION
FOR THE UNIFICATION OF CERTAIN RULES
OF LAW RESPECTING

ASSISTANCE AND SALVAGE AT SEA

*Preliminary Report
of the Hon. President of the International Sub-Committee*

As the different countries do not interpret in the same way Article 14 (of the Convention) concerning the applicability of the Convention to ships of war and other public vessels, the Bureau Permanent of the Comité Maritime International took the decision to put this question on the agenda of the C.M.I. activities and entrusted the Yugoslav Association with the preparation of an introductory note and a questionnaire which were to be the basis for studying this topic.

Eleven Associations replied to the questionnaire and the Bureau Permanent decided to constitute an International Sub-Committee appointing at the same time the undersigned as President of the Sub-Committee and Mtre Dor as a member, the National Associations being requested to send a representative to the Sub-Committee.

Up to the time of writing this report four National Associations appointed their representatives :

French Association : Mr. Julien Le Clère
Netherlands Association : Mr. R. Michielsen
Swedish Association : Mr. Nils Grenander
Yugoslav Association : Mr. S. Novakovic.

The questionnaire reads as follows :

1. Does the international law of your country give a solution to the problem raised by article 14 in connection with the application of internal law; and if so, which is the solution ?
2. Which is the solution adopted by the Courts as to the application of the internal law ?
3. Have the Courts had the opportunity of pronouncing themselves on the meaning of article 14 of the International Convention and, in the affirmative, which is the solution adopted ?
4. Can a satisfactory solution be given to the problem of the right of an equitable remuneration for the assistance given by ships of

war and other State-owned vessels to private ones by the revision of article 14 and which provisions do you consider as being useful to that effect ?

5. Would it perhaps not be useful to insert into the revised text of article 14 (or into an additional article) a provision correlative to the one of article 3 § 1 (1) of the International Convention of 1926 for the Unification of certain Rules concerning the Immunities of State-owned vessels, provision putting on the Contracting States the obligation to face with their duty of granting an equitable remuneration to the salvors in case of assistance or salvage given by a private vessel to a man of war or another State-owned vessel exclusively appropriated to a public service.

A short synoptic of the main points contained in the replies of the National Associations will apparently enable us to trim more easily our studies.

Questions n° 1 and n° 2

Germany : The internal law contains no rule similar to article 14. The Courts make no difference between the rights of State-owned ships and private ones in the case of assistance and salvage.

Argentine : The internal law contains no rule similar to article 14. The Courts do not allow the men of war to obtain a remuneration.

United States : The internal law complies with the Convention. The foreign ships of war and other foreign State-owned vessels are allowed by the Courts to claim for a remuneration but they are not compelled to pay one. American ships of war and other American State-owned vessels do not ask for remuneration but they have the obligation to pay one.

Finland : In the case of assistance and salvage to ships of war and other state-owned ships, the latter have to pay a remuneration, but in the case the same ships assist or save they are only allowed to obtain reimbursement of their costs. The Courts did not fix principles for the solution of the problem.

France : In both cases the State-owned ships have to comply — according to the Courts — with the same rules as private ships but the Courts dealing with two sets of cases are not the same.

Italie : The internal law contains no rule similar to article 14. The Courts do not allow the men of war to obtain a remuneration.

Norway : The internal law contains no rule similar to article 14. State-owned ships have to pay a remuneration. Their right to claim for a remuneration is still sub judice.

Netherlands : The internal law contains no rule similar to article 14. The Courts did not take decisions in these cases.

Poland : The internal law contains no rule similar to article 14. The new draft maritime Code makes no difference between State-owned and private ships in connection with the right to claim for or the obligation to pay a remuneration for assistance and salvage services. Up till now the Courts did not have the opportunity to take a decision in these matters.

Sweden : The internal law contains no rule similar to article 14. The Courts compel the state-owned ships to pay a remuneration whereas they have taken no decisions as to the rights of such ships to a remuneration.

Yugoslavia : The internal law contains no rule similar to article 14. The Courts have taken decisions in matters of assistance and salvage between State-owned and private ships.

Question n° 3

Germany : No.

Argentina : No.

United States : See reply to n° 2.

Finland : No.

France : Certain Courts have granted to the Military Navy a right to remuneration. No decision has been taken in case of State-owned ships exclusively employed on a public service.

Italy : No.

Norway : The Supreme Court has adopted a solution similar to that given to the problem dealt with by article 13 of the International Convention on Limitation of Shipowners' Liability 1924, solution which makes the Convention applicable to the State-owned ships as far as this is allowed by the internal law.

Netherlands : No.

Poland : No.

Sweden : Same reply as to question n° 2.

Yugoslavia : No.

Question n° 4

Germany : A revision is not necessary but if it is made State-owned ships, including men of war, and commercial ships have to be put on the same level in matters of assistance and salvage; States should have

complete liberty as to the procedure to be applied in the cases of assistance where a State-owned ship is implied.

Argentine : See reply to question n° 5.

United States : The American law does not allow revisions.

Finland : In the case of assistance and salvage services rendered to private ships by State-owned ships, the latter should be entitled to claim for payment of reasonable expenses and perhaps of a remuneration for the crew.

France : Absolute right of the private individuals to claim for a remuneration. Optional right for the State.

Italy : An additional protocol should annul between contracting States article 14 of the Convention.

Norway : No.

Netherlands : Same reply as the Italian Association.

Poland : Revision of the additionnal protocol by introducing the French suggestions.

Sweden : No, because the Courts can solve their problems.

Yugoslavia : By means of an additional Protocol granting to the men of war and other State-owned ships, the benefit of the right granted by the Convention to commercial ships.

Question n° 5

Before giving the replies to this Question it seems to be necessary to point out that it appears from the replies of certain Associations that the reference — in question n° 5 of the questionnaire — to the 1924 Convention has given rise to some misunderstandings in its interpretation, in such a way that the solution of article 14 of the 1910 Convention should be formally connected with the text of the 1926 Convention. However, in mentioning point 2 of paragraph 1 of article 3 of the 1926 International Convention on the Immunity of State-owned ships, the Yugoslav question intended only to abbreviate the explanation of the principle — admitted by everybody — those who have ratified the Convention and those who have not — according to which, for men of war or other State-owned ships, only the Court of the flag can be competent.

Germany : Yes, but by reserving for the States the right to determine the proceeding to be followed in all cases of assistance where a State-owned ship is involved.

Argentine : As in the German proposition it is suggested that the Court of the State owning the ship, should be competent each time a State-owned ship has or has been assisted.

United States : A revision of the 1910 Convention providing a remuneration for assistance services to a man of war or a State-owned vessel exclusively used for a public service would be supported by the American Association.

Finland : No, but the State-owned ships should pay a remuneration for assistance and salvage services.

France : Yes.

Italy : No.

Norway : No.

Netherlands : No.

Poland : No expressed opinion.

Sweden : This is a problem to be solved by the national legislations of the States which have not ratified the 1926 Convention.

Yugoslavia : It would be useful to provide the competent Court in the case of salvage of or assistance to a man of war or an other State-owned vessel and to make the principles of the 1910 Convention applicable to these ships.

In making a summary of the replies obtained we ascertain that the National Associations which declared to support the revision are those of Argentine, France, Italy, Netherlands, Poland and Yugoslavia, — and even the one of Germany which will join in the case the others consider such necessary —, Finland could also be added provided its reservations are taken into account.

The United States' Association, although they do not consider a modification of the American law, admit an amendment relating to the remuneration for salvage of or assistance to men of war or State-owned ships exclusively used for a public service.

The Norwegian and Swedish Associations are of the opinion that no revision is needed, putting forward that the national Courts are in a position for solving this problem.

In other words, excepted the Finnish Association which, as a consequence of their particular situation (the public service of ice-boats), opposes with strong objections the remuneration of services rendered by State-owned ships, and excepted the Norwegian and Swedish Associations, which consider that the Convention is sufficiently adequate, all the other Associations agree that a revision of the Convention should be advisable.

According to the points of view put forward two groups can be made of the replies of these Associations.

The first should be the one which promotes the principle that men of war and other vessels only used for public service should be governed by the same rules as the merchant vessels.

The second group should be the one which suggest only remuneration for salvage services rendered to a ship of war and to vessels used for a public service.

The first solution has been proposed by the Associations of France, Germany, Italy, Netherlands and Poland; Yugoslavia, although it proposes to apply the same rules to all ships rendering assistance services, suggests that in the case of assistance rendered by a ship of war or a vessel only used for a public service, the Court of the flag should be competent in opposition to point 2, paragraph 1 of Article 3 of the 1926 Convention on the Immunity of State-owned ships. Let us add finally that the French proposal contains a suggestion as to make the same rules of competence and procedure applicable to these ships in order to avoid the system of double jurisdiction presently in force in France (administrative tribunals for men of war and other public vessels and Court of law for private ships).

The second solution is put forward in the replies of the United States Association, which, referring to legal provisions and national practice points out that a foreign ship of war or State-owned vessel is not liable to pay an indemnity for salvage services. In a general way the United States do not claim for compensation relating to salvage services rendered by a ship of war or an other State-owned vessel but according to the Public Vessel Act 1925 the third parties are entitled to claim for salvage services rendered to State-owned ships and other public vessels of the United States. Based upon these facts and taking into account the problem of passive liability of salvage service is settled by the national law, the United States Association admits only amendments of the 1910 Convention as far as they are along the lines of the American law presently in force.

Finland, although — as far as the remuneration for services rendered by ships used for a public service is concerned- it sticks to a principle owing to the particular circumstances of the Baltic Sea and although it admits even to grant to salvors an indemnification equal to their expenses as well as a remuneration to the crew, recognizes the right to remuneration when assistance is rendered by a State-owned ship.

In the Yugoslav reply a particular problem has been pointed out, namely to know whether the Convention is applicable to men of war and other ships used in a public service. This problem will occur mainly if, — in revising the 1910 Convention — according to the suggestions of the Dutch and Italian Associations article 14 is deleted by means of an additional protocol.

Considering all the replies as a whole, some substantial and formal considerations can be put forward.

According to their substance, all the suggestions — in a general way — Finland excepted — and without considering whether Article 14 should be revised or not — agree to grant a right for remuneration where assistance has been rendered by a ship of war or an other state-owned vessel to a private ship. As to the cases where ships of war or other State-owned vessels have been assisted or salvaged, a few Associations, alleging that they never ratified the 1926 Convention (Italy, Netherlands), suggest either to abolish article 14 or to entirely assimilate men of war and vessels engaged in a public service to commercial ships as well when they render assistance or salvage services as when they are assisted or salvaged (Germany, Poland) However, even if that point of view is admitted, the competence of the State of the flag of the assisted ship should be admitted in the case a ship of war or State-owned vessel is concerned, which doubtless has to have the benefit of their immunity.

As far as the form is concerned, those who are in favour of a revision, support unanimously the adoption of an additional Protocol. It is obvious that all the Associations followed the same idea stressed in the Yugoslav reply, i.e. that the possibility should be left open of applying the Convention even without the Additional Protocol in the case where the additional Protocol is not ratified by the same high number of States as the Convention itself, which has been enjoying amongst all the Brussels' Conventions, the most worldwide application.

Considering what has been said before, I think it will be useful to introduce a discussion aiming at suppressing the present Article 14 and substituting to it a new article to be inserted in an additional protocol and giving a solution along the following lines :

- 1°) that the 1910 Convention should be applicable to the cases where assistance or salvage services have been rendered by commercial private owned ships to ships of war or to State-owned ships performing a public service without any commercial aim;
- 2°) that the 1910 Convention should be applicable to the cases where assistance or salvage services have been rendered by ships of war or State-owned ships performing a non-commercial public service to a private owned ship;
- 3°) that confusion should be avoided as to the sole competence of the Court of the State of the flag in matters of salvage and assistance services rendered to a man of war or a State-owned ship engaged in a non-commercial public service, and I am of the opinion that

this could be realized in following closely the wording of n° 2 of paragraph 1 of Article 3 of the 1926 Convention.

- 4°) that, of course, paragraph 3 of Article 10 of the 1910 Convention should not be applicable to men of war or State-owned ships engaged in a non-commercial public service; this will necessitate a formal reservation;
- 5°) that finally the national legislations should be entitled to fix, as to the men of war and State-owned yachts, in which conditions Article 11 of the 1910 Convention will be applicable to the master of such ships; such reservation should leave liberty to the State of taking into account the particular aims these ships have to serve.

It seems to me that the problems mentioned above would be solved by drafting in the frame of an Additional Protocol a new Article 14 following the lines of the French suggestion and reading :

- « Art. 14. — This Convention shall apply to services of assistance and »
» salvage rendered by a private-owned ship to a ship of war or a State- »
» owned vessel.
» The States will have liberty of asking application of the Convention »
» even in the case a ship of which they are owner has rendered assis- »
» tance or salvage services to private owned ships.
» Concerning claims for assistance or salvage services rendered to men »
» of war, State-owned yachts, inspection crafts, hospital ships, auxiliary »
» ships, supply ships and other crafts owned or operated by a State and »
» solely engaged at the time the claim originates in a public non com- »
» mercial service, the claimants are entitled to apply to the competent »
» Courts of the State owning or operating the ship.
» Paragraph 3 of Article 10 of this Convention shall not be applicable to »
» the ships mentioned in the previous paragraph of this Article.
» The High Contracting Parties reserve themselves the right of fixing »
» the conditions for applying Article 11 to the masters of ships of war »
» or State-owned yachts. »

Zagreb, 7th February 1959.

V. BRAJKOVIC,
Hon. President of the International Sub-committee.

LIABILITY FOR DAMAGE CAUSED BY NUCLEAR INCIDENTS IN THE COURSE OF CARRIAGE BY SEA

REPORT OF THE C. M. I.

*submitted to the European Nuclear Energy Agency
of the Organization for European Economic Co-operation.*

1. The C.M.I. are in general agreement with the basic principles adopted by the Steering Committee of the European Nuclear Energy Agency, that is to say —

(a) all liability in respect of nuclear incidents should be channelled to the operator of the nuclear installation;

(b) the proposed Convention should not affect the operation of existing international Conventions, such as the Brussels Convention on Maritime Collisions of 1910 and the Brussels Conventions on Limitation of the Liability of Owners of Seagoing Ships of 1924 and 1957.

2. Accordingly the C.M.I. think it necessary to reconcile these principles by enabling the person liable under an existing maritime Convention to enjoy a right of recourse against the operator liable under the proposed Convention, subject to the limitation of the operator's liability under the proposed Convention.

3. The C.M.I. have attempted to give effect to these principles by proposing certain changes in a few of the Articles proposed for the Convention, so as to bring these Articles into line with existing maritime law, without, however, interfering in any way with the guiding principles adopted by the Steering Committee. Attached to this Report is the text proposed by the C.M.I. of certain modifications in Articles 2, 3 and 9 of the Draft Convention, together with a new Article 2 bis.

4. The following is a short explanation of the C.M.I.'s proposals, the references being to the attached text : —

Article 2(a)

The proposed wording of sub-paragraphs (1), (11) and (111) is intended to avoid the restriction of liability to mere physical damage,

without interfering with the duty of the Court to determine according to the applicable law the extent of the consequences for which the operator is liable. The expression « originating from » would seem to be more appropriate in relation to a stationary reactor than the words « coming from », which would seem to be more suited to carriage, which is dealt with in Article 2 (b).

Article 2(b)

The C.M.I. are of the opinion that the proposed Convention should provide that the liability of the operator of a nuclear installation in a Contracting State should pass to another such operator when he takes charge of the substances, but cannot provide that the operator of an installation outside a Contracting State shall assume the liability. For this reason it is proposed that, in the event of carriage to a Non-Contracting State the liability of the original operator shall continue until the goods are discharged in a Non-Contracting State, even though the receiving operator, whose installation is in a Non-Contracting State, may have taken charge of the substances at an earlier stage in the carriage. This is necessary in order to render ineffective against third parties agreements between operators whereby the operator in a Contracting State would avoid liability in respect of the carriage of nuclear materials by sea, even through the waters of Contracting States and on the open seas.

Article 2(c)

This paragraph deals with the converse situation, when the nuclear materials are being carried from a Non-Contracting State to a Contracting State, but excludes liability under the Convention for nuclear incidents occurring before the materials are loaded on board the sea-going ship for carriage from the territory of the Non-Contracting State.

Article 2(d)

In this paragraph the C.M.I. suggest the addition of the words « within the territory of one or more Contracting Parties », so as to avoid the possibility that the paragraph might serve as the foundation of a system under which carriage by sea might only be permitted on the condition that the carrier assumed liability for nuclear incidents instead of, and to the same extent as, the operator. Such a system would be contrary to universal maritime law and practice.

Article 2(f)

The original text proposed by the Steering Committee (Article 2 (d)) causes concern to the C.M.I. because it does not provide for a single nuclear incident arising from the carriage of nuclear material originating from more than one installation and carried in a single ship or in two colliding ships. To deal specifically with damage caused by more than one nuclear incident appears to create confusion and is perhaps unnecessary.

Article 2(g)

The wording proposed by the C.M.I. is only put forward for the purpose of clarification. However, a number of National Associations of the C.M.I. took the view that direct action against Underwriters in respect of liability arising out of the carriage of nuclear materials by sea should only be allowed if it becomes essential because the person liable has become insolvent or has gone into liquidation, or if a judgment against him cannot be enforced. Other National Associations pointed out that «insolvency» and «liquidation» have different meanings in different national systems of law. This question, however, is not primarily one of maritime law. In this connection it should be observed that compulsory insurance may require some restriction of the defences available to the Underwriters if and insofar as the interests of the victims of a nuclear incident might thereby be prejudiced.

Articles 2(h) and (i)

Paragraph (h) sets out the two principles referred to in paragraph 1 of this Report and paragraph (i) provides for the right of recourse of the carrier, shipowner and other persons who may be held liable under existing Conventions or under the law of a Non-Contracting State, which State would not be obliged to apply the proposed O.E.E.C. Convention. A shipowner would be particularly vulnerable to actions in Non-Contracting States because the ship in question or another ship belonging to him would be liable to be arrested in such a State. To preserve the principle of channelling liability, not only the owner of the carrying ship (and the other persons mentioned above) but also of any other ship which may negligently collide with the carrying ship must enjoy the right of recourse against the operator liable under the Convention.

Article 2(j)

This is a new provision intended to prevent the carriage of nuclear materials being regarded in itself as « actual fault or privity » whereby the shipowner and other persons may be deprived of the right to limit their liability in accordance with existing Maritime Conventions and domestic law.

Article 2 bis

This Article introduces the principle of a certificate, without which the carriage of nuclear materials must not be permitted by any Contracting State. The method of enforcement is a matter for public law, and in the view of the large majority of National Associations of the C.M.I. the lack of a certificate should not affect the system of civil liability to be established by the proposed Convention. However, a small minority contended that the lack of a certificate ought to result in the imposition of liability on the carrier if in fact the operator liable under the Convention was not insured as required by the Convention and moreover could not meet his liabilities under the Convention.

The C.M.I. suggest that the Steering Committee should consider the addition of a further provision to the effect that a certificate properly issued by the competent authority of a Contracting State and countersigned by or on behalf of the insurer or financial guarantor should be conclusive proof of the facts required by Article 2 bis to be in the certificate.

Article 3(b)

The only change proposed is the deletion of the word « international » before the word « carriage », because in the absence of a definition the expression « international carriage » has no precise meaning. Furthermore it is thought that liability arising from carriage between places in a single State should also be subject to a uniform limit inasmuch as the results of a nuclear incident in the course of such carriage may very well cause damage outside that State.

One National Association considered that the limit of liability fixed by Article 3 was too low, whilst another National Association advocated an even lower limit because they considered that the risks involved in carriage of nuclear material were substantially less than those of a stationary reactor. The C.M.I. as a whole take the view that this is not primarily a matter for them.

Article 9(a)

This Article is intended to reproduce the effect of paragraphs (a), (b) and (c) of the O.E.E.C. draft, but to avoid conferring exclusive jurisdiction on the Courts of Non-Contracting States, which could only result in a failure to apply the Convention.

The C.M.I.'s proposal is based on the assumption that the definition of « nuclear incident » in Article 1 (a), which now appears to be ambiguous, will be amended so as to make it clear that the occurrence referred to is the initial incident involving the nuclear material and not any subsequent incident ultimately leading to the personal injury or damage. For example, if an occurrence on a ship carrying nuclear materials on the open seas results in persons on a nearby shore being injured by subsequent radio-activity, it should be made clear that the nuclear incident means the incident in the ship, occurring on the high seas, and not the subsequent incidents on shore which finally lead to the injury of the victims. The C.M.I. understand that it is by no means impossible for radioactive particles to be carried some considerable distance by air disturbed by a fire or explosion or by other means.

Article 9(b)

This is a new provision added for the purpose of avoiding any possibility of interference with national law relating to jurisdiction in actions of recourse, referred to in the proposed Article 2 (i).

This is a matter of procedure which, in the view of the C.M.I. should be left to the national law, so as not to preclude the person liable under this Convention from being made a party to the action against the shipowner or other person if the *lex fori* so permits. For example, a ship which, by its negligent navigation, has caused a collision resulting in a nuclear incident, may be arrested at its next port of call and may be held liable for the damage under the Brussels Collision Convention of 1910. If so, it is convenient for all concerned that the operator liable under the Convention should be made a party to the action if the *lex fori* so permits.

5. The C.M.I. are aware that the proposed Convention will not afford adequate protection to the general public, including passengers and ships crews, unless and until the Convention is extended beyond the confines of the members of O.E.E.C. and receives world-wide application. The C.M.I. wish it to be known that their services are available for achieving this result in relation to maritime law. Furthermore, the C.M.I. remain at the disposal of the Steering Committee of

E.N.E.A. to clear up any questions which may arise out of this Report or the annexed draft Clauses, and in order to avoid any possible misunderstanding the C.M.I. would be grateful if they could be given the further opportunity of commenting on any revised text in English or French which may be adopted by the Steering Committee, in view of the peculiar legal conceptions and terminology of the law maritime.

Antwerp, March 2nd 1959.

THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY

O.E.E.C. — DRAFT CONVENTION

as revised by the C.M.I. - 1st March 1959.

Preamble

The Governments of
.....
.....

Considering that the European Nuclear Energy Agency established within the framework of the Organization for European Economic Co-operation (hereinafter referred to as the « Organization »), is charged to encourage the elaboration and harmonization of legislation relating to nuclear energy in participating countries, in particular with regard to third party liability and insurance against atomic risks;

Desirous of ensuring adequate and equitable compensation for persons who suffer damage caused by nuclear incidents whilst taking the necessary steps to ensure that the development of the production and uses of nuclear energy for peaceful purposes is not thereby hindered;

Convinced of the need for unifying the basic rules applying in the various countries to the liability incurred for such damage, whilst leaving these countries free to take, on a national basis, any additional measures which they deem appropriate including the application of the provisions of this Convention to damage not covered therein;

Have agreed as follows :

Article 1

For the purposes of this Convention :

(a) « Nuclear incident » means any occurrence causing damage arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste.

(b) « Nuclear installation » means reactors, other than those comprised in any means of transport; factories for the manufacture, processing or reprocessing, not including mining or milling, of nuclear fuel; factories for the separation of isotopes of nuclear fuel; facilities

for the storage of nuclear fuel or radioactive products or waste; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee of the European Nuclear Energy Agency (hereinafter referred to as the « Steering Committee ») shall from time to time determine.

(c) « Nuclear fuel » means fissionable material in the form of uranium metal, alloy, or chemical compound, plutonium metal, alloy, or chemical compound, and such other fissionable material as the Steering Committee shall from time to time determine.

(d) « Radioactive products or waste » means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of producing or utilizing nuclear fuel, except nuclear fuel, and except radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purpose. Provided that incidents involving such radio-isotopes in nuclear installations shall be deemed to be nuclear incidents for the purposes of this Convention.

(e) « Operator » means the person considered as the operator of a nuclear installation by the competent public authority.

Article 2

(a) The operator of a nuclear installation shall be liable in conformity with the provisions of this Convention, for :

- (1) loss of life of or personal injury to, any person;
- (11) loss of or damage to any property other than property which is held by the operator or in his custody or under his control and which is so held in connection with, and at the site of, such installation; and
- (111) infringements of any rights, and any other loss, damage or liability incurred by the Claimant.

(hereinafter together referred to as « such damage ») upon proof that such damage was caused by a nuclear incident involving nuclear fuel or radioactive products or waste in or originating from such installation which have not at the time of the nuclear incident been taken in charge by another operator.

(b) The operator of a nuclear installation shall also be liable in conformity with the provisions of this Convention, for such damage, upon proof that such damage was caused by a nuclear incident occurring in the course of the carriage of and involving nuclear fuel or radioactive products or waste, coming from such installation until the nuclear fuel or radioactive products or waste involved shall have been.

either (1) taken in charge by the operator of nuclear installation situated within a Contracting State, who shall be liable in conformity with the provisions of this Convention in respect of nuclear incidents occurring thereafter :

or (11) discharged in a Non-contracting State.

(c) Where nuclear fuel or radioactive products or waste are sent from a nuclear installation situated outside the territory of the Contracting Parties to a nuclear installation situated within such territory, the operator of the latter installation shall be liable in conformity with the provisions of this Convention in respect of any nuclear incident occurring after the nuclear fuel or radioactive products or waste shall have been loaded on board the seagoing ship for carriage from the territory of the Non-Contracting State.

(d) However, where the carriage within the territory of one or more of the Contracting Parties is performed pursuant to a licence or authorization granted in accordance with national legislation which provides that the person so licenced or authorised shall be exclusively liable, such person shall be considered as the operator liable in accordance with this Convention.

(e) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation, only the operator of the installation in which the nuclear fuel or radioactive products or waste are at the time such damage is caused, or if they were not in a nuclear installation at that time, only the operator of the last installation in which they were (or the operator liable in accordance with paragraph (b) or (c) of this Article), shall be liable.

(f) If such damage gives rise to liability of more than one operator in accordance with this Convention, the liability of the several operators shall be joint and several, but the liability of any one operator shall not exceed the limit referred to in Article 3.

(g) A right to compensation under this Convention may be exercised only against the operator or operators liable in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor referred to in Article 6 is given by the national law of the Court exercising jurisdiction under Article 9, it may be exercised against such insurer or other financial guarantor.

(h) No other person shall be liable for such damage but this provision shall not affect any international agreement opened for signature before this Convention comes into force.

(i) Subject to the limitation of liability provided for in Article 3, any carrier and any owner, charterer, manager or operator of a ship shall be entitled to be held harmless and indemnified by the operator liable under this Convention for any sums in respect of any such damage for which that carrier or other person is obliged to pay

- (1) under any such international agreement as is referred to in the foregoing paragraph or
- (11) under the law of a Non-Contracting State.

(j) The mere fact of carrying nuclear fuel or radioactive products or waste shall neither be considered as an act constituting actual fault or privity of any person nor deprive him of his rights or defences under any other Convention, Statute or Law.

- (k) The operator shall have a right of recourse only :
- (1) if such damage results from an act or omission done with intent to cause damage, against the person who so acts or omits to act, unless the national law applicable excludes such right or recourse; or
 - (11) if so provided expressly by contract.

(l) Where provisions of national health insurance, social security, workmen's compensation or occupational disease compensation systems comprehend compensation for such damage caused by a nuclear incident, rights of beneficiaries under, and rights of recourse against operators by virtue of, such systems shall be determined by the national law applicable.

Article 2 bis

In respect of carriage of nuclear fuel or radioactive products or waste to or from the territory of a Contracting State the operator liable in accordance with this Convention shall provide a certificate issued by the competent authority of the Contracting State in the territory of which his nuclear installation is situated.

The Certificate shall contain —

- (1) The name and address of the person liable under this Convention;
- (2) The name and address of the insurer or financial guarantor furnishing the security required by Article 6;
- (3) The nature and amount of such security.

The Certificate shall be countersigned by or on behalf of the insurer or financial guarantor aforementioned.

Article 3

(a) The aggregate of compensation required to be paid in respect of such damage caused by any single nuclear incident shall not exceed the maximum liability established in accordance with this Article.

(b) The maximum liability of the operator in respect of such damage caused by any single nuclear incident shall be 15,000,000 European Monetary Agreement units of account as defined at the date

of this Convention, provided that in respect of a nuclear incident not occurring in the course of carriage, any Contracting Party, taking into account the possibilities for the operator of obtaining the insurance or other financial security required pursuant to Article 6 (a), may establish by national legislation a greater or lesser amount, but in no event less than 5,000,000 such units. The sums mentioned above may be converted into any national currency in round figures.

(c) Any interest and costs awarded by a Court in actions for compensation under this Convention shall not be considered to be compensation for the purpose of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this article.

Article 4

(a) Periods of limitation for actions for compensation under this Convention shall be ten years from the date of the nuclear incident, but any Contracting Party may, by national legislation, establish a shorter period either from the date at which the person suffering the damage has knowledge or from the date at which he may reasonably be presumed to have knowledge of both the damage and the person liable, provided that the period of ten years shall not, except in accordance with paragraph (b) of this Article, be exceeded.

(b) Any Contracting Party may, by national legislation, establish a period of limitation longer than ten years if it has taken measures to provide for indemnification of the operator in respect of any actions for compensation introduced after the expiry of the period of ten years.

Article 5

Except as any Contracting Party may provide to the contrary, the operator shall not be liable for damage caused by a nuclear incident due to an act of armed conflict, invasion, civil war, insurrection, or a grave natural disaster of an exceptional character.

Article 6

(a) To cover the liability provided for in Articles 2, 3, and 4, the operator shall be required to have and maintain insurance or other financial security of the amount established in accordance with Article 3 and of such type and terms as the competent public authority shall specify.

(b) No insurer or other financial guarantor shall suspend or terminate such insurance or other financial security provided for in paragraph (a) of this Article without giving notice in writing of at least two months to the competent public authority.

(c) The sums provided as insurance or other financial security may be drawn upon only for compensation for damage caused by nuclear incidents.

Article 7

The nature, form, and extent of the compensation, within the limits of this Convention, as well as the equitable distribution thereof, shall be governed by the national law applicable.

Article 8

Compensation payable under this Convention and sums provided as insurance or other financial security in accordance with Article 6 shall be freely transferable between the monetary areas of the Contracting Parties.

Article 9

(a) Jurisdiction over actions for compensation under this Convention shall lie only with the Courts of the country where the nuclear installation of the operator liable is situated or in the case of carriage to which Article 2 (d) applies of the country issuing the licence or authorization therein referred to.

However, in the case of a nuclear incident, occurring in the course of carriage, if the nuclear fuel or radioactive products or waste involved are at the time of the nuclear incident within the territory or territorial sea of a Contracting State, jurisdiction shall only lie with the Courts of that State.

(b) Nothing in this Article shall affect jurisdiction over actions for recourse under this Convention.

(c) Judgments entered by the competent Court under the provisions of this Convention after trial, or by default, shall, when they have become enforceable under the law applied by that Court, become enforceable in any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgments.

Article 10

(a) The provisions of this Convention shall be applied without any discrimination based upon nationality, domicile, or residence.

(b) In all matters both substantive and procedural not governed by these provisions, national law shall apply.

(c) Such national law shall be applied without any discrimination based upon nationality, domicile, or residence.

Article 11

(a) Any Contracting Party may take such measures as it considers desirable to provide additional compensation in respect of damage caused by nuclear incidents occurring in its territory.

(b) If any such measures are taken by any Contracting Party, the additional compensation shall be made available without discrimination to any nationals of the Contracting Parties in respect of damage suffered within its territory, except in so far as such compensation includes benefits deriving from national health insurance, social security, workmen's compensation or occupational disease compensation systems.

(c) The application of such measures in respect of damage suffered within the territory of another Contracting Party, to nationals of other Contracting Parties shall be determined by agreement between the Contracting Party taking such measures and such other Contracting Parties.

Article 12

Decisions taken by the Steering Committee under Article 1 (b) and (c) of this Convention shall be adopted by mutual agreement of the members representing the Contracting Parties.

Article 13

Any dispute arising between two or more Contracting Parties concerning the interpretation of this Convention shall be examined by the Steering Committee and in the absence of friendly settlement shall, upon the request of a Contracting Party concerned, be submitted to the Tribunal established by the Convention of 20th. December, 1957, on the Establishment of a Security Control in the Field of Nuclear Energy.

Article 14

(a) This Convention shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Organization.

(b) This Convention shall come into force upon the deposit of instruments of ratification by not less than five of the Signatories. For each Signatory ratifying thereafter, this Convention shall come into force upon the deposit of its instrument of ratification.

Article 15

Amendments to this Convention shall be adopted by mutual agreement of all the Contracting Parties. They shall come into force when ratified or confirmed by two-thirds of the Contracting Parties. For each Contracting Party ratifying or confirming thereafter, they shall come into force at the date of such ratification or confirmation.

Article 16

(a) The Government of any Member or Associate country of the Organization which is not a Signatory to this Convention may accede thereto, by notification addressed to the Secretary-General of the Organization.

(b) The Government of any other country which is not a Signatory to this Convention may accede thereto by notification addressed to the Secretary-General of the Organization and with the unanimous assent of the Signatories. Such accession shall take effect from the date of such assent.

Article 17

Any Contracting Party may terminate the application of this Convention to itself by giving twelve months notice to that effect to the Secretary-General of the Organization.

Article 18

Any Contracting Party may, at the time of signature or ratification of or accession to this Convention, or at any later date, notify the Secretary-General of the Organization that this Convention shall apply to any territory or territories which are mentioned in the notification

and for whose international relations the Contracting Party is responsible. Any such notification may in respect of any territory or territories mentioned therein be withdrawn or modified by notification to the Secretary-General of the Organization.

Article 19

It is understood that when an instrument of ratification or accession is deposited by any Signatory or acceding Government, such Signatory or Government will be in a position under its own law to give effect to the provisions of this Convention.

Article 20

The Secretary-General of the Organization shall give notice to all Signatories and acceding Governments of the receipt of any instrument of ratification, accession, notification under Article 18, withdrawal, and decisions of the Steering Committee under Article 1 (b) and (c). He shall also notify them of the date on which this Convention and any amendment thereto comes into force.

In witness whereof, the undersigned Plenipotentiaries, duly empowered, have signed the present Convention.

Done in Paris, this day of Nineteen Hundred and Fifty Nine, in the English and French languages, both texts being equally authentic, in a single copy which shall remain deposited with the Secretary-General of the Organization for European Economic Co-operation by whom certified copies will be communicated to all Signatories.

C.M.I. AMENDMENTS TO O.E.E.C. DRAFT CONVENTION ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY

(1st March 1959)

(O E E C D R A F T)

Article 2

(a) The operator of a nuclear installation shall be liable, in conformity with the provisions of this Convention, for :

- (i) damage to any person; and
- (ii) damage to any property other than property which is held by the operator or in his custody or under his control and which is so held in connection with, and at the site of, such installation,

upon proof that such damage was caused by a nuclear incident involving nuclear fuel or radioactive products or waste in or coming from such installation, which have not at the time of the nuclear incident been taken in charge by another operator.

(b) The operator of a nuclear installation shall also be liable, in conformity with the provisions of this Convention, for such damage, upon proof that such damage was

(C M I D R A F T)

Article 2

(a) The operator of a nuclear installation shall be liable in conformity with the provisions of this Convention, for :

- (i) loss of life of, or personal injury to, any person;
- (ii) loss of or damage to any property other than property which is held by the operator or in his custody or under his control and which is so held in connection with, and at the site of, such installation; and
- (iii) infringements of any rights, and any other loss, damage or liability incurred by the Claimant

(hereinafter together referred to as «such damage »)) upon proof that such damage was caused by a nuclear incident involving nuclear fuel or radioactive products or waste in or originating from such installation which have not at the time of the nuclear incident been taken in charge by another operator.

(b) The operator of a nuclear installation shall also be liable in conformity with the provisions of this Convention, for such damage, upon proof that such damage was

caused by a nuclear incident occurring in the course of the carriage of and involving nuclear fuel or radioactive products or waste coming from such installation until the nuclear fuel or radioactive products or waste involved have been taken in charge by another operator.

Provided that :

- (i) Where nuclear fuel or radioactive products or waste are sent from an installation situated outside the territory of the Contracting Parties, the operator of the nuclear installation for which they are destined shall be liable; and

- (ii) Where the carriage is performed pursuant to a licence or authorization granted in accordance with national legislation which provides that the person so licensed or authorized shall be exclusively liable, such person shall be considered as the operator liable in accordance with this Convention.

caused by a nuclear incident occurring in the course of the carriage of and involving nuclear fuel or radioactive products or waste, coming from such installation until the nuclear fuel or radioactive products or waste involved shall have been —

either (i) taken in charge by the operator of a nuclear installation situated within a Contracting State, who shall be liable in conformity with the provisions of this Convention in respect of nuclear incidents occurring thereafter :

or (ii) discharged in a Non-Contracting State.

(c) Where nuclear fuel or radioactive products or waste are sent from a nuclear installation situated outside the territory of the Contracting Parties to a nuclear installation situated within such territory, the operator of the latter installation shall be liable in conformity with the provisions of this Convention in respect of any nuclear incident occurring after the nuclear fuel or radioactive products or waste shall have been loaded on board the sea-going ship for carriage from the territory of the Non-Contracting State.

(d) However, where the carriage within the territory of one or more of the Contracting Parties is performed pursuant to a licence or authorization granted in accordance with national legislation which provides that the person so licensed or authorized shall be exclusively liable, such person shall be considered as the operator liable in accordance with this Convention.

(c) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation only the operator of the installation in which the nuclear fuel or radioactive products or waste are at the time such damage is caused, or if they were not in a nuclear installation at that time, only the operator of the last installation in which they were (or the operator liable in accordance with paragraph (b) of this Article), shall be liable.

(d) If such damage is caused by more than one nuclear incident and gives rise to liability of more than one operator in accordance with this Convention, the liability of the several operators shall be joint and several, but the liability of any one operator shall not exceed the amount established in respect to him in accordance with Article 3.

(e) A right to compensation for such damage may be exercised only against the operator or operators liable in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor referred to in Article 6 is given by the national law (either of the place where the nuclear installation is situated, or, in the case of nuclear incidents occurring in the course of carriage, of the place where the nuclear fuel or radioactive products or waste involved were at the time of the nuclear incident) it may be exercised against such insurer or other financial guarantor.

(f) No other person shall be liable to pay compensation for any such damage for which an operator

(e) If the nuclear fuel or radioactive products or waste involved in a nuclear incident have been in more than one nuclear installation only the operator of the installation in which the nuclear fuel or radioactive products or waste are at the time such damage is caused, or if they were not in a nuclear installation at that time, only the operator of the last installation in which they were (or the operator liable in accordance with paragraph (b) of this Article), shall be liable.

(f) If such damage gives rise to liability of more than one operator in accordance with this Convention, the liability of the several operators shall be joint and several, but the liability of any one operator shall not exceed the limit referred to in Article 3.

(g) A right to compensation under this Convention may be exercised only against the operator or operators liable in accordance with this Convention, or, if a direct right of action against the insurer or other financial guarantor referred to in Article 6 is given by the national law of the Court exercising jurisdiction under Article 9, it may be exercised against such insurer or other financial guarantor.

(h) No other person shall be liable for such damage but this provision shall not affect any in-

is liable in accordance with this Convention.

ternational agreement opened for signature before this Convention comes into force.

(i) Subject to the limitation of liability provided for in Article 3, any carrier and any owner, charterer, manager or operator of a ship shall be entitled to be held harmless and indemnified by the operator liable under this Convention for any sums in respect of any such damage for which that carrier or other person is obliged to pay

(i) under any such international agreement as is referred to in the foregoing paragraph or

(ii) under the law of a Non-Contracting State.

(j) The mere fact of carrying nuclear fuel or radioactive products or waste shall neither be considered as an act constituting actual fault or privity of any person nor deprive him of his rights or defences under any other Convention, Statute or Law.

(g) The operator shall have a right of recourse only :

(i) if such damage results from an act or omission done with intent to cause damage, against the person who so acts or omits to act, unless the national law applicable excludes such right of recourse; or

(ii) if so provided expressly by contract.

(h) Where provisions of national health insurance, social security, workmen's compensation or occupational disease compensation systems comprehend compensation for such damage caused by a nuclear incident, rights of beneficiaries un-

(k) The operator shall have a right of recourse only :

(i) if such damage results from an act or omission done with intent to cause damage, against the person who so acts or omits to act, unless the national law applicable excludes such right of recourse; or

(ii) if so provided expressly by contract.

(l) Where provisions of national health insurance, social security, workmen's compensation or occupational disease compensation systems comprehend compensation for such damage caused by a nuclear incident, rights of beneficiaries under,

der, and rights of recourse against operators by virtue of such systems shall be determined by the national law applicable.

and rights of recourse against operators by virtue of such systems shall be determined by the national law applicable.

Article 2 bis

In respect of carriage of nuclear fuel or radioactive products or waste to or from the territory of a Contracting State the operator liable in accordance with this Convention shall provide a certificate issued by the competent authority of the Contracting State in the territory of which his nuclear installation is situated.

The Certificate shall contain —

- (1) The name and address of the person liable under this Convention;
- (2) The name and address of the insurer or financial guarantor furnishing the security required by Article 6;
- (3) The nature and amount of such security.

The Certificate shall be countersigned by or on behalf of the insurer or financial guarantor aforementioned.

Article 3

(a) The aggregate of compensation required to be paid in respect of such damage caused by any single nuclear incident shall not exceed the maximum liability established in accordance with this Article.

(b) The maximum liability of the operator in respect of such damage caused by any single nuclear incident shall be 15,000,000 European Monetary Agreement units of ac-

Article 3

(a) The aggregate of compensation required to be paid in respect of such damage caused by any single nuclear incident shall not exceed the maximum liability established in accordance with this Article.

(b) The maximum liability of the operator in respect of such damage caused by any single nuclear incident shall be 15,000,000 European Monetary Agreement units of ac-

count as defined at the date of this Convention, provided that (in respect of a nuclear incident not occurring in the course of international carriage,) any Contracting Party, taking into account the possibilities for the operator of obtaining the insurance or other financial security required pursuant to Article 6 (a), may establish by national legislation a greater or lesser amount, but in no event less than 5,000,000 such units. The sums mentioned above may be converted into any national currency in round figures.

(c) Any interest and costs awarded by a Court in actions for compensation under this Convention shall not be considered to be compensation for the purpose of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this article.

Article 9

(a) Jurisdiction over actions for compensation under Article 2 (e) of this Convention shall lie only with the courts of the country where the nuclear installation of the operator liable is situated.

(b) In the case of nuclear incidents occurring in the course of carriage, such jurisdiction shall, except as otherwise provided in paragraph (c) of this Article lie with the courts of the country where the nuclear fuel or radioactive products or waste involved were at the time of the nuclear incident.

(c) If the nuclear incident occurs in the course of carriage on the high

count as defined at the date of this Convention, provided that in respect of a nuclear incident not occurring in the course of carriage, any Contracting Party, taking into account the possibilities for the operator of obtaining the insurance or other financial security required pursuant to Article 6 (a), may establish by national legislation a greater or lesser amount, but in no event less than 5,000,000 such units. The sums mentioned above may be converted into any national currency in round figures.

(c) Any interest and costs awarded by a Court in actions for compensation under this Convention shall not be considered to be compensation for the purpose of this Convention and shall be payable by the operator in addition to any sum for which he is liable in accordance with this article.

Article 9

(a) Jurisdiction over actions for compensation under this Convention shall lie only with the Courts of the country where the nuclear installation of the operator liable is situated or in the case of carriage to which Article 2 (d) applies of the country issuing the licence or authorization therein referred to.

However, in the case of a nuclear incident, occurring in the course of carriage, if the nuclear fuel or radioactive products or waste involved are at the time of the nuclear incident within the territory or territorial sea of a Contracting State, jurisdiction shall only lie with the Courts of that State.

seas, or if the place where the nuclear fuel or radioactive products or waste involved were at the time of the nuclear incident cannot be determined, jurisdiction shall lie with the courts of the country where the nuclear installation of the operator liable in accordance with Article A(b) and 2(b)(i) is situated, or, if Article 2(b)(ii) is applicable, with the Courts of the country granting the licence or authorization referred to therein.

(d) Judgments entered by the competent Court under the provisions of this Convention after trial, or by default, shall, when they have become enforceable under the law applied by that Court, become enforceable in any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgments.

(b) Nothing in this Article shall affect jurisdiction over actions for recourse under this Convention.

(c) Judgments entered by the competent Court under the provisions of this Convention after trial, or by default, shall, when they have become enforceable under the law applied by that Court, become enforceable in any of the other Contracting Parties as soon as the formalities required by the Contracting Party concerned have been complied with. The merits of the case shall not be the subject of further proceedings. The foregoing provisions shall not apply to interim judgments.

PROVISIONAL REPORT
OF THE RESTRICTED SUB-COMMITTEE
RELATING TO

LIABILITY OF OPERATORS OF NUCLEAR SHIPS

A.

There are three Conventions at present under discussion dealing with nuclear liabilities :

1. A Convention which the Organization for European Economic Cooperation (O.E.E.C.) is preparing for application to O.E.E.C. Countries.

2. A Convention which the International Atomic Energy Agency of the United Nations has under consideration, intended ultimately to be of world-wide application.

3. A Convention under preparation by Euratom which is intended to be complementary to the O.E.E.C. Convention and to apply only to Euratom Countries.

In addition to these Conventions legislation is now being considered in certain countries, which deals with the liabilities of the operators of land reactors. In addition the United States has provided an indemnity for the s/s « SAVANNAH » which is of world-wide application.

Hitherto none of the Conventions or legislation deal with the question of the liability of operators of nuclear ships.

It is known that a number of nuclear ships, at present all Government-owned, are already in service and it is apparent that the time is not far off when a larger number of nuclear ships will be constructed and operated for commercial purposes. It is to be expected that such vessels will ultimately be operated by private interests. It is, therefore, the view of the Comité Maritime International that it is a matter of urgency that the liability of those who operate floating reactors should be most carefully considered and that at an early date a draft international Convention, intended to be of world-wide application, be produced.

B.

Such a Convention will deal primarily with a matter of supreme public interest and for this reason it must be acceptable to all Governments concerned.

In preparing this draft, therefore, we have put to the forefront of our consideration the following vital factors :

1. The protection of the public.
2. The feasibility of the operation of nuclear ships by private interests on a commercial basis.
3. The protection of conventional ships.
4. The vital necessity of unifying the law upon this topic throughout the world.

C.

In our draft Convention we have made no affirmative provision with regard to Governmental licensing, because this is a matter, in our opinion, essentially for the Governments concerned. Nevertheless we must assume that no nuclear ship will be allowed to operate except under stringent license by the appropriate Government Authority. The conditions underwhich such licenses will be granted will, we profoundly hope, be internationally agreed. Primarily we assume that such conditions will be directed towards the maintenance of very high standards of health and safety in the design, construction and operation of the reactor. Because we consider the point of such importance, we have assumed that no such license will be granted unless the licensing Authority has satisfied itself that the financial security required under the Convention shall be at all times available for the compensation of any victims of a nuclear incident without any restriction whatsoever. We have further assumed that the licensing Authority will be a Governmental Authority and have found it necessary to provide in the Convention that the « licensing State » is that « which has licenced, registered, or otherwise given authority for the operation of the nuclear vessel ».

D.

In framing this Convention we are conscious that it does in some respects conflict with a number of earlier international maritime Conventions, some of many years standing; it is our intention that where such conflict arises this Convention shall always prevail. We appreciate that ultimately it will be necessary for a number of these Conventions to be amended by the Diplomatic Conference in Brussels.

E.

We conceive that the fundamental principles upon which the Convention should be based are as follows :

1. The operator of a nuclear ship should be absolutely liable, without regard to fault on his part or on the part of those for whom he may be vicariously responsible, for nuclear damage as defined in the Convention. In following this principle which we find to be that upon which the above mentioned Conventions and legislation are all based, we have attempted to give it the widest possible application and we have only allowed one exception, namely that of « war, hostilities, civil war or insurrection ».

2. This absolute liability is also to be exclusive. No person other than the operator of the nuclear ship should be liable for nuclear damage, even if that damage was caused by the negligence of the person suffering damage, or by the negligence of those for whom he is responsible.

3. This absolute and exclusive liability must, however, be subject to some limit in amount and in time.

4. Whatever limit in amount be ultimately decided upon it is essential that the operator of the nuclear ship be compelled to effect and maintain insurance (or other financial security) to compensate those suffering damage by reason of a nuclear incident in the maximum amount obtainable upon the commercial world market.

We appreciate that these principles conflict with traditional concepts of law. But we find that this is an entirely new problem and that the paramount consideration, which is that, in the event of a nuclear casualty, the victims shall receive proper compensation, requires that the sole and exclusive liability falls upon one person; that person must be readily accessible for the purpose of compensation and must be covered by adequate financial security. If one introduces into this scheme ideas of contribution or liability dependant upon negligence, it is our opinion that this object will not be achieved.

F.

In parenthesis we would observe that it is indeed likely that the operator of a nuclear ship which causes nuclear damage would in many jurisdictions be held liable merely by reason of the fact that he was responsible for operating a nuclear vessel.

G.

We have found the question of the limitation amount the most difficult problem with which we have to deal.

Unlikely as it may be that a nuclear incident will occur if proper safety regulations are devised and observed, it must be recognised that if such an incident were to occur, the consequent damage might be greatly in excess of any sum coverable by the operator's commercial insurance. For this reason we conceive that it is essential that the licensing States should supplement the sum available from the operator's commercial insurance up to an amount stipulated in the Convention.

Many maritime Nations have already adopted the policy of promoting the peaceful use of nuclear energy through its application to the propulsion of ships, and we expect that many more maritime Nations will adopt this policy in the future. In order adequately to compensate the victims of a nuclear incident for the damage to persons and property which they may suffer, we consider that it is right that Governments adopting this policy should supplement the operator's commercial insurance up to a stipulated amount. This amount can only, in our view, be determined between Governments at the Diplomatic Conference, but it is obvious that the amount must be sufficient to assure the public that victims of a nuclear incident will be adequately compensated.

Quite apart from the encouragement of this new technology, all maritime Nations will derive benefit from the system we propose and, whether or not they themselves plan to promote nuclear ships, they will be able to obtain protection that will be afforded to their citizens against injury and damage which may be caused by foreign flag nuclear ships in their territorial waters.

We have left blank in our Convention (Art. III (i)) the figure at which the operator's portion of the nuclear liability fund should be fixed, but it should, in our opinion, equal the maximum coverage obtainable by him using all the resources of the international insurance market. This amount cannot at the time of this Report be stated with accuracy, but we expect that sufficient information will be available before the Rijeka Conference to enable the adoption of a realistic figure at that Conference.

We have had considerable discussion as to the means whereby Governments could make their financial contribution in consonance with existing legal procedure. In our opinion the most feasible method might be an express provision in the Convention that the licensing State shall add to the owner's portion of the nuclear limitation fund

such sum as may be necessary to satisfy all claims up to the limit which ultimately be fixed between Governments. This is a matter which will clearly require inter Government discussion and, for this reason, we feel unable to make a specific recommendation or to suggest a provision in the Convention to govern the point.

H.

A world-wide Convention of the type which we propose is particularly necessary for the protection of owners of non-nuclear vessels. The operation of nuclear ships will subject non-nuclear ships to the risk of causing a nuclear incident by collision with a nuclear ship. This Convention will relieve the non-nuclear shipowner of all nuclear liability.

I.

As regards the limitation in time, we see no reason to depart from the period of ten years which is stipulated in all the above Conventions.

J.

In this report we have purposely confined ourselves to what we conceive to be the basic principles of a Convention regulating the liability of operators of nuclear ships. We appreciate that there are matters of detail, of varying importance, with which we have not dealt. We consider, however, that these will be appropriate for discussion at the Rijeka Conference and should not burden this report.

K.

In conclusion we express the earnest hope that a definite conclusion will emerge from the Rijeka Conference; it is with this object that we have endeavoured to clarify the issues for the assistance of the national Associations.

Antwerp, July 11-12th, 1959.

DRAFT OF INTERNATIONAL CONVENTION
RELATING TO THE
LIABILITY OF OPERATORS OF SEAGOING
NUCLEAR SHIPS

Article I

In this Convention the following words shall have the meaning hereby assigned to them :

(i) « nuclear ship » means any seagoing ship equipped for the utilisation of nuclear fuels.

(ii) « licensing State » means the Contracting State which has licensed, registered or otherwise given authority for the operation of a nuclear ship.

(iii) « operator » means the person designated or recognized by the licensing State as operator of a nuclear ship; if no such authority has been given or is in effect the owner of the nuclear ship shall be considered the operator.

(iv) « nuclear fuel » means fissionable material and other material coming therefrom in such form, amount or combination that they are capable of producing energy by undergoing a process of nuclear transformation used or intended for use on a nuclear ship.

(v) « radioactive products or waste » means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of utilizing nuclear fuel.

(vi) « nuclear damage » means loss of life or personal injury to any individual, loss of or damage to any property or infringements of any right caused by a nuclear incident.

(vii) « nuclear incident » means any occurrence or succession of occurrences having the same origin, which in whole or in part arises out of or results from the radioactive toxic, explosive or other hazardous properties of nuclear fuel of a nuclear ship or radioactive products or waste produced therefrom and held by the operator of that ship on board or in connection with that ship and coming therefrom and which causes nuclear damage.

(viii) « Persons » includes individuals, partnerships, associations of persons and Bodies corporate, Governments, their Departments and public Authorities.

PROJET DE CONVENTION INTERNATIONALE
RELATIVE A LA

RESPONSABILITE DES EXPLOITANTS
DE NAVIRES DE MER NUCLEAIRES

Article 1^{er}

Dans la présente Convention les expressions suivantes auront le sens précis indiqué ci-dessous.

(i) « Navire nucléaire » signifie tout navire de mer équipé pour l'utilisation de combustibles nucléaires.

(ii) « Etat d'immatriculation » signifie tout Etat contractant qui a accordé la licence, qui a procédé à l'immatriculation ou qui a autorisé d'une autre manière l'exploitation d'un navire nucléaire.

(iii) « Exploitant » signifie la personne désignée ou reconnue par l'Etat d'immatriculation comme exploitant d'un navire nucléaire; si telle autorisation n'a pas été accordée ou n'est pas effective, le propriétaire du navire nucléaire sera considéré comme étant l'exploitant.

(iv) « Combustible nucléaire » signifie toute matière fissile ou autre matière en provenant dans une forme, quantité ou combinaison qui est susceptible de produire de l'énergie en subissant un processus de transformation nucléaire utilisée ou destinée à être utilisée à bord d'un navire nucléaire.

(v) « Produits ou déchets radioactifs » signifie toute matière radioactive produite ou rendue radioactive par exposition à la radiation qu'implique le processus d'utilisation de combustibles nucléaires.

(vi) « Dommages nucléaires » signifie perte de vie, lésion corporelle de tout individu, perte ou dommage matériels ou atteinte à tout droit causés par un accident nucléaire.

(vii) « Accident nucléaire » signifie tout événement ou succession d'événements ayant la même origine et qui en totalité ou en partie provient ou résulte des propriétés radioactives, toxiques, explosives ou autrement dangereuses de combustible nucléaire d'un navire nucléaire ou des matières ou déchets radioactifs produits par ce combustible et détenus par l'exploitant de ce navire à bord ou en relation avec ce navire et en provenant, et qui ont causé des dommages nucléaires.

(viii) « Personnes » comprend des personnes physiques, des sociétés, des associations, des personnes juridiques, des Gouvernements, leurs départements et leurs autorités publiques.

Article II

(i) The operator of a nuclear ship shall be solely and absolutely liable in accordance with this Convention for nuclear damage, except nuclear damage to the nuclear ship and its appurtenances, upon proof that such nuclear damage was caused by a nuclear incident involving nuclear fuel of such ship or radioactive products or waste produced in such ship.

(ii) Such liability of the operator shall arise from any nuclear incident occurring from the time the nuclear fuel of the ship shall be taken in charge by the operator and until the redelivery thereof, or of any radioactive products or waste, produced thereby, to another person duly authorized by law to take charge of the same and required by law to accept responsibility for any nuclear incident caused thereby and shall include liability for any nuclear damage caused by a nuclear incident involving nuclear fuel of the nuclear ship or radioactive products or waste produced thereby otherwise discharged from the ship lost or abandoned.

(iii) No other person shall be liable for nuclear damage for which the operator of a nuclear ship is liable under section (i) and (ii) of this article.

(iv) The operator shall have a right of recourse only :

- (i) if nuclear damage results from an act or omission done with intent to cause damage in which event the operator shall have a right of recourse against the person acting or omitting to act with such intent; or
- (ii) if so provided expressly by contract.

Article III

(i) The operator of a nuclear ship shall in no circumstances be liable for more than... in respect of any one nuclear incident, notwithstanding the fact that the nuclear incident should have resulted from any fault or privity of that operator.

(ii) The operator of a nuclear ship shall maintain insurance or other financial security of such type and on such terms as the licensing State shall specify, to cover the operator's liability in accordance with the provisions of paragraph (i) of this Article.

(iii) If the insurance or other financial security referred to in paragraph (ii) of this article is not maintained or yields less than full the amount of the operator's liability under paragraph (i) of this Article, the licensing State shall itself be responsible for the deficit.

Article II

(i) L'exploitant d'un navire nucléaire est responsable à l'exclusion de toute autre personne et de manière absolue conformément à la présente Convention de tout dommage nucléaire à l'exception des dommages nucléaires au navire et à ses accessoires pour autant qu'il soit prouvé que ces dommages nucléaires ont été causés par un accident nucléaire mettant en jeu des combustibles nucléaires du navire ou des matières ou des déchets radioactifs produits dans le navire.

(ii) Cette responsabilité de l'exploitant sera limitée aux accidents nucléaires survenus depuis la prise en charge par l'exploitant de combustibles nucléaires du navire jusqu'à la remise de ces combustibles ou de tous produits ou déchets radioactifs en provenant à une autre personne légalement autorisée à en prendre charge et légalement obligée d'assumer la responsabilité de tous dommages nucléaires causés par ces matières, étant précisé qu'en ce qui concerne les combustibles nucléaires, produits et déchets radioactifs qui ont été déchargés d'une autre manière ou abandonnés l'exploitant n'encourera pas d'autres responsabilités que celles prévues dans la présente Convention.

(iii) Aucune autre personne ne sera responsable d'un dommage nucléaire dont l'exploitant d'un navire nucléaire est tenu par application des paragraphes (i) et (ii) du présent Article.

(iv) L'exploitant n'aura un droit de recours que

- (1) si le dommage nucléaire a été causé par un accident nucléaire qui résulte d'un acte ou d'une omission commise dans l'intention de causer un dommage; dans ce cas l'exploitant a un droit de recours contre la personne qui a agi ou qui a omis d'agir avec une telle intention; ou
- (2) si pareil recours a été prévu conventionnellement.

Article III

(i) En aucun cas le montant pour lequel l'exploitant d'un navire nucléaire sera responsable aux suites d'un accident nucléaire ne pourra dépasser..., même au cas où l'accident nucléaire aurait été causé par tout acte ou faute quelconque de l'exploitant.

(ii) L'exploitant d'un navire nucléaire devra maintenir une assurance ou toute autre garantie financière du type et suivant les conditions qui seront déterminées par l'Etat d'immatriculation, pour couvrir la responsabilité d'exploitant en conformité avec les dispositions du paragraphe (i) du présent article.

(iii) Si l'assurance ou toute autre garantie financière visées au paragraphe (ii) du présent article n'est pas maintenue ou s'avère inférieure à la couverture intégrale de la responsabilité d'exploitant instaurée par le paragraphe (i) du présent Article, l'Etat d'immatriculation sera responsable de l'absence ou de l'insuffisance d'assurance ou de garantie financière.

Article IV

Whenever damage is caused or contributed to by a nuclear incident and by one or more other occurrences and the damage from such separate causes is not reasonably separable, it shall for the purpose of this Convention be deemed to have been exclusively caused by the nuclear incident.

Article V

Claims for compensation against the operator of a nuclear ship under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident; in the case of nuclear damage by a nuclear incident involving nuclear fuel or radioactive products or waste, which have been lost or abandoned and have not been recovered, the period for the extinction of the claim shall be ten years from the date of the loss or abandonment.

National legislation of the Contracting State having jurisdiction may however establish a period of not less than two years for the extinction of the claim either from the date of which the individual or the person suffering damage has knowledge or from the date at which he ought reasonably to have known of the damage, provided that a period of ten years shall not be exceeded.

Article VI

Where provisions of national health insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for nuclear damage, rights of beneficiaries thereunder shall be determined by the national law of the Contracting State having established such systems; if such compensation is payable by any person other than the operator liable under this Convention, such person shall be subrogated to the rights of such beneficiaries against that operator to the extent of the amount so paid.

Article VII

If nuclear damage is caused or contributed to by nuclear incidents for which more than one operator is liable under the provisions of this Convention and the damage caused by each incident is not reasonably ascertainable, those operators shall be jointly and severally liable for such damage and they shall have the right of contribution between each other so that the total amount of their liability for such damage is

Article IV

Dans tous les cas où un accident nucléaire et un ou plusieurs autres événements auront causé ou contribué à causer des dommages nucléaires et qu'il ne sera pas possible de déterminer avec certitude les effets de chaque cause, ces dommages seront considérés, pour les besoins de la présente Convention, comme ayant été causés uniquement par l'accident nucléaire.

Article V

Le droit à une indemnisation de la part de l'exploitant d'un navire nucléaire prévu par la présente Convention sera éteint si une action n'est pas introduite endéans les dix ans à compter de la date de l'accident nucléaire; dans le cas où le dommage nucléaire est causé par un accident dans lequel est impliqué du combustible nucléaire ou des produits ou des déchets radioactifs qui ont été perdus ou abandonnés, le délai prévu pour l'extinction du droit sera de dix ans à compter de la date de la perte ou de l'abandon.

Toutefois, la loi nationale de l'Etat contractant compétent peut fixer un délai supérieur à deux ans, pour l'extinction du droit à partir de la date à laquelle l'individu ou la personne victime d'un dommage, a connaissance ou à partir de la date à laquelle il aurait raisonnablement pu avoir connaissance de ce dommage, pourvu que le délai de dix ans ne soit pas dépassé.

Article VI

Dans les cas où des systèmes d'assurance nationale contre la maladie, de sécurité sociale, de compensation professionnelle et de compensation en matière de maladies professionnelles comprennent un système d'indemnisation pour des dommages nucléaires, les droits des bénéficiaires de ce système seront fixés par la loi nationale de l'Etat contractant qui l'a établi; si pareille indemnisation est à charge d'une personne autre que l'exploitant responsable en vertu de la présente Convention, cette personne sera subrogée dans les droits de ces bénéficiaires contre l'exploitant jusqu'à concurrence du montant payé de ce chef.

Article VII

Si des accidents nucléaires ont causé ou contribué à causer des dommages nucléaires et engageant, en vertu des dispositions de la présente Convention, la responsabilité de plus d'un exploitant, et s'il n'est pas possible de déterminer avec certitude quel est le dommage causé par chaque accident, ces exploitants seront conjointement et solidairement responsables de ces dommages et ils auront un droit de recours entre

equally divided between them, each being subject to the limitation provided in article III sub-paragraph (i) of this Convention.

Article VIII

No liability shall attach to an operator of a nuclear ship in respect of nuclear damage caused by nuclear incidents due to war, hostilities, civil war or insurrection.

Article IX

Nothing in this Convention shall apply to claims for salvage or to claims for contribution in general average.

Article X

The sums provided by insurance or other financial security referred to in article III in respect of the liability of an operator under this Convention shall be exclusively available for compensation of the nuclear damage, for which that operator is liable.

Article XI

(i) The Contracting State shall enact legislation such as to ensure that the sums provided by insurance or other financial security shall be made available for the compensation referred to in the preceeding article within the jurisdiction of the licensing State.

(ii) The administration and distribution of the sums referred to in the preceeding section of this Article XI shall be done without discrimination based upon nationality, domicile or residence.

(iii) The sums referred to in paragraph (i) of this Article XI shall be freely transferable between the monetary areas of the Contracting States.

(iv) When the sums referred to in paragraph (i) of this Article XI shall be made available for the compensation of nuclear damage arising on any distinct occasion within the jurisdiction of the licensing State, no claimant shall thereafter be entitled to exercise any right against any other assets of the operator of the nuclear ship involved in respect of his claim for nuclear damage and any bail or other security given by that operator in other contracting States shall be released.

(v) If before the sums referred to in paragraph (i) of this Article XI have been distributed, the operator has paid in whole or in part any of the claims for nuclear damage, he shall be placed in the same position

eux de telle manière que le montant total de leurs obligations pour ces dommages soit partagé entre eux par parties égales, chacun restant soumis à la limitation prévue par le paragraphe (i) de l'Article 3 de la présente Convention.

Article VIII

Un exploitant d'un navire nucléaire ne sera responsable d'aucune façon des dommages nucléaires causés par des accidents nucléaires résultant de guerre, hostilités, guerre civile ou insurrection.

Article IX

Aucune disposition de la présente Convention ne s'appliquera à des créances pour sauvetage ou à des contributions en avarie commune.

Article X

Les sommes fournies par l'assurance ou toute autre garantie financière visée par l'Article 3 en matière de responsabilité d'exploitant prévue par la présente Convention, sont exclusivement réservées à l'indemnisation des dommages nucléaires dont cet exploitant est responsable.

Article XI

(i) Les Etats contractants prendront les dispositions législatives propres à assurer que les sommes fournies par l'assurance ou toute autre garantie financière soient disponibles pour l'indemnisation visée par les articles précédents dans le ressort de l'Etat d'immatriculation.

(ii) L'administration et la distribution des sommes visées par le paragraphe précédent du présent article XI seront effectuées sans discrimination basée sur la nationalité, le domicile ou la résidence.

(iii) Les sommes visées par le paragraphe (i) du présent Article seront librement transférables entre les zones monétaires des Etats contractants.

(iv) Lorsque les sommes visées par le paragraphe (i) du présent Article auront été fournies dans le ressort de l'Etat d'immatriculation pour l'indemnisation de dommages nucléaires résultant de tout accident nucléaire distinct, aucun créancier ne pourra exercer un droit quelconque pour sa réclamation du chef de dommage nucléaire contre un autre actif de l'exploitant du navire nucléaire impliqué et toute garantie ou autre sécurité fournie par l'exploitant dans un autre Etat contractant sera libérée.

(v) Si, avant que les sommes visées au paragraphe (i) du présent Article XI n'aient été distribuées, l'exploitant a payé en totalité ou en partie une quelconque réclamation pour dommage nucléaire, il sera mis

in relation to those sums as the claimant for nuclear damage, whose claim he has paid.

(vi) Where the operator establishes that he may at a later date be compelled to pay in whole or in part any claim for nuclear damage, the Court or other competent Authority of the licensing State may order that a sufficient part of the sums referred to in paragraph (i) of this Article XI shall be provisionally set aside to enable the operator at such later date to enforce his claim against those sums in the manner set out in the preceeding paragraph.

Article XII

(i) Without prejudice to the rules of jurisdiction of the national laws of the Contracting States, jurisdiction for nuclear damage for which the operator of a nuclear ship is liable in accordance with the provisions of this Convention shall lie in the choice of the claimant

- (a) with the Courts of competent jurisdiction of the licensing State, or
- (b) with the Courts of the competent jurisdiction of the Contracting State within the territory of which the nuclear damage occurred.

(ii) A final judgment of a Court of competent jurisdiction within one of the Contracting States in accordance with sub-paragraph b) of the preceeding section shall be recognised and given effect by the competent Authority of the licensing State which is entrusted with the administration and distribution of the sums referred to in paragraph (ii) of Article XI of this Convention.

Article XIII

This Convention applies to nuclear damage occurring wherever in the world.

Antwerp, July 11-12th, 1959.

dans la même situation en ce qui concerne ces montants, que le réclamant pour dommages nucléaires qu'il a indemnisé.

(vi) Lorsque l'exploitant établit qu'il pourrait être amené à payer plus tard en totalité ou en partie une indemnité quelconque pour dommage nucléaire, le tribunal ou autre autorité compétente de l'Etat d'immatriculation peut ordonner qu'une partie suffisante des sommes visées par le paragraphe (i) du présent Article XI sera réservée afin de permettre à l'exploitant de faire ultérieurement valoir ses droits sur ces sommes de la manière précisée dans le paragraphe précédent.

Article XII

(i) Sans déroger aux lois nationales des Etats contractants, relatives à la juridiction, le demandeur en dommages et intérêts pour dommages nucléaires dont l'exploitant d'un navire nucléaire est responsable, en vertu de la présente Convention aura le choix de porter son action

(a) soit devant les tribunaux de la juridiction compétente de l'Etat d'immatriculation;

(b) soit devant les tribunaux de la juridiction compétente de l'Etat sur le territoire duquel le dommage nucléaire s'est produit.

(ii) Un jugement passé en force de chose jugée rendu par un tribunal de la juridiction compétente d'un des Etats contractants conformément au sous-paragraphe (b) du paragraphe précédent, sera reconnu comme tel et rendu exécutoire par l'autorité compétente de l'Etat d'immatriculation chargée de l'administration et de la distribution des sommes visées par le paragraphe (ii) de l'Article XI de la présente Convention.

Article XIII

La présente Convention s'applique à tout dommage nucléaire où qu'il survienne de par le monde.

Anvers, le 11-12 juillet 1959.

LETTERS OF INDEMNITY

Draft Resolution proposed by
THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

1. *The Conference*, bearing in mind that the unimpaired credit of the Bill of Lading as a document of title to goods has become essential to international commerce,

2. *Recognizing* (1) that many types of goods are normally shipped with external appearances which give rise to dispute as to whether the goods are in apparent good order and condition, (2) that in the course of handling before shipment on ocean vessels small damages frequently occur and (3) that after completion of loading honest disputes may occur as to the number of packages and other particulars, which disputes frequently cannot be resolved without expenses and delays which would unduly burden the flow of commerce.

3. *Recognizing, therefore*, that there are many circumstances in which it is not correct to issue unclaused bills of lading,

4. *Recognizing, moreover*, that the requirement of unclaused bills of lading as a necessary credit document in connection with international sales of goods has, as a matter of commercial necessity, given rise to the artificial practice of issuing unclaused bills of lading against letters of indemnity given by shippers, without which practice international commerce would be seriously hampered unless the rigid requirement of unclaused bills of lading is relaxed,

5. *Recognizing, also*, that in accepting unclaused bills of lading in connection with credit transactions, Banks and consignees rely not merely on the description of the goods contained in such bills of lading, but, more importantly, on the legal obligation of the carriers to make good any inaccuracies in such description, and most of all on the legal obligation of the shippers to ship goods complying with the terms of the contract of sale, and

6. *Recognizing, finally*, that the practice of issuing unclaused bills of lading against letters of indemnity in commercially justified cases has increasingly led to the use of the same device in unjustifiable cases, resulting in serious frauds, an evil which causes losses and expence to

consignees, underwriters and shipowners and which must be stamped out by all possible means, but that it is not feasible by legislation to distinguish between justifiable and unjustifiable cases.

7. *Puts on record* the unanimous agreement of the meeting that it is necessary to change the credit requirements of international sales to deal correctly with the needs of modern commerce in such a way as to avoid the necessity of issuing letters of indemnity against unclaused bills of lading in circumstances hitherto considered commercially justifiable and thus making feasible the prevention of this practice in all circumstances;

8. *Respectfully Urges* the International Chamber of Commerce to add to its « Uniform Customs and Practice for Commercial Documentary Credits » a new Article 18 A to read as follows :

« *Article 18 A.* If the credit contains the provision, « shippers's supplemental indemnity acceptable », shipping documents bearing reservations as to the apparent good order or condition of the goods or the packaging may be refused except in the case of Sea or Ocean bills of lading which shall be accepted if accompanied by a « Shipper's Supplemental Indemnity » in the form attached hereto (so made out as to give indemnity against the reservations contained in such bill of lading), duly executed by the shipper and by the carrier ».

9. *Suggests* to the International Chamber of Commerce that, concomitant with the adoption of the proposed Article 18 A, Article 11 of its « Uniform Customs and Practice for Commercial Documentary Credits » be amended by the insertion of « shippers » before « carriers » in the next to last line of said Article.

10. *Proposes* for the consideration of the International Chamber of Commerce the form of Shipper's Supplemental Indemnity attached hereto,

11. *Respectfully points* out to the International Chamber of Commerce that such a combination of claused bill of lading and supplemental indemnity would give security fully equal to an unclaused bill of lading and avoid the difficulties caused by the present practice,

12. *Instructs* the Bureau Permanent to transmit copies of these proceedings to the International Chamber of Commerce and to all other organizations which publish definitions of trade terms, to follow what is done and to keep the members of the International Maritime Committee informed of all developments.

PROPOSED FORM OF
SHIPPER'S SUPPLEMENTAL INDEMNITY

/s B/L N°.....

Dated at on

Letter of Credit N°

The above mentioned bill of lading contains the following reservation relating to the goods :

(quote the text of the reservation)

Notwithstanding the above-quoted reservation, the undersigned shipper considers that it is in the best interest of the buyer that the goods be delivered under the applicable contract of sale and paid for under the above letter of credit because at the time of shipment :

(strike out inapplicable words)

(a) The condition of the goods complied with the requirements of the contract of sale and the reservation is due to a difference of opinion between the carrier and the shipper.

(b) The (i) leading marks, (ii) number, (iii) quantity and (iv) weight of the goods were/was in fact as stated in the bill of lading without the reservation and the reservation is due to a difference of opinion between the carrier and the shipper.

(c) The damage giving rise to the reservation was negligible and could not be remedied without disproportionate (i) expense, (ii) delay to the goods, (iii) delay to the vessel.

Accordingly, in consideration of the acceptance of this undertaking to supplement the above-mentioned bill of lading, the shipper agrees fully to indemnify the consignee, endorsee or holder of said bill of lading in respect to all loss, damages and expenses arising or resulting from the goods being damaged, short, slack or differently marked at the time of shipment, to the extent that such damage, shortage, or slackage or difference in marks is indicated by the above-quoted reservation.

In consideration of the acceptance of this undertaking to supplement the above-mentioned bill of lading, the carrier hereby undertakes fully to indemnify the consignee, endorsee or holder of said bill of lading in respect to all loss, damages and expenses arising or resulting from the goods being damaged, short, slack or differently marked at

PROJET DE FORMULE DE GARANTIE SUPPLEMENTAIRE DU CHARGEUR

SS. Conn. N°

Daté à le.....

Lettre de Crédit N°

Le connaissance mentionné ci-dessus contient la réserve suivante concernant les marchandises :

(mentionner le texte de la réserve)

Nonobstant la réserve mentionnée ci-dessus, le chargeur soussigné considère qu'il est du plus grand intérêt de l'acheteur que les marchandises soient livrées sous couvert du contrat de vente applicable et payé dans les conditions de la lettre de garantie précitée au moment du chargement :

(biffer les mots qui ne sont pas d'application).

a) Le conditionnement des marchandises est conforme aux exigences du contrat de vente et la réserve est due à une différence d'opinion entre les transporteurs et les chargeurs.

b) Les (I) marques principales, (II) le nombre, (III) la quantité et (IV) le poids des marchandises est/sont en fait comme déclarés dans le connaissance sans la réserve et la réserve est due à une différence d'opinion entre le transporteur et le chargeur.

c) La perte donnant lieu à la réserve est négligeable et ne peut pas être réparée sans (I) dépenses, (II) délais pour les marchandises, (III) délais pour le navire disproportionnés.

En conséquence, ayant accepté le présent engagement dans le but de pallier au connaissance précité, le chargeur s'engage à indemniser pleinement le destinataire, endossataire ou porteur du dit connaissance pour toute perte, dommage et frais résultant du fait que les marchandises étaient avariées, présentaient des manquants ou étaient marquées différemment au moment du chargement, jusqu'à concurrence des avaries, des manquants ou des différences de marques indiqués dans la réserve précitée.

Considérant l'acceptation de ce document dans le but de supplées au connaissance précité, le transporteur prend pleinement l'engagement d'indemniser les destinataires, endossataires ou porteurs du dit connaissance pour les pertes, dommages ou frais pouvant résulter du fait que les marchandises étaient avariées, présentaient des manquants ou étaient différemment marquées à l'époque du chargement dans la

the time of shipment to the extent that such damage, shortage, or slackage or difference in marks is indicated by the above-quoted reservation, reserving its rights to a like indemnification from the shipper.

In consideration of the carrier giving the undertaking set forth above, the shipper hereby represents to the carrier that under the terms of the above letter of credit the use of a supplemental indemnity in this form is authorized by the buyer and undertakes fully to indemnify the carrier in respect to all loss, damages and expenses arising or resulting from the giving of such undertaking.

.....
Shipper

.....
Carrier

mesure où pareils dommage, manquant ou différence de marque étaient indiqués dans la réserve précitée, se réservant le droit de réclamer au chargeur une indemnification semblable.

Prenant en considération l'engagement précité pris par le transporteur, le chargeur affirme au transporteur que suivant les conditions de la lettre de crédit précitée, l'emploi d'une garantie supplémentaire de la présente forme est autorisé par l'acheteur et il s'engage pleinement à indemniser le transporteur pour toutes pertes, dommages ou frais pouvant résulter de l'émission de pareil engagement.

.....

Le chargeur

.....

Le transporteur

CONFLICTS OF LAW

REPORT OF THE INTERNATIONAL SUB-COMMITTEE

Introduction

When the Hague Rules were drafted it was the intention to put an end to a juridical situation which permitted the carrier who had signed a Bill of Lading to deliver the goods to the holder of the Bill of Lading wherever, whenever, and however it suited him — to use the phraseology employed at that time.

This defect in International Maritime Law was certainly remedied, but if importers and exporters do not now complain any longer about the scope of the immunity clauses, they are nevertheless subjected to different treatment depending upon whether the carriage in question is from a contracting State or a non-contracting State and indeed the treatment differs even between one contracting State and another.

Present situation

This means that the possibility of enforcing the carrier's liability will differ materially according to whether the cargo comes from Chile, a non-contracting State, or from Australia, a contracting State, or from the United States, a contracting State which has extended the field of application of the Convention. The introduction of compulsory liability has therefore given rise to difficulties of an entirely different nature in that such liability is dependent upon the port of loading or discharge.

This variation in treatment may also affect the carrier. Indeed, as regards carriage which is outside the scope of the Convention, carriers of a contracting State are often deemed to be bound by the provisions of the Convention merely because their ships fly the flag of a contracting State, whereas owners from a non-contracting State do not run this risk in their own Courts.

Thus the question of similarity of treatment is inextricably bound up with the question of compulsory liability.

A distinction must be made between three different categories, as follows : —

1. Carriage from a contracting State and carriage from a non-contracting State, and
2. Carriage between different contracting States, and
3. Disputes between subjects of one contracting State and disputes between subjects of different contracting States.

The Origin of the Present Difficulties

Let us return to the three categories enumerated in the previous paragraph.

1. The only way to obtain uniformity between the rules applied by contracting States and those in force in a non-contracting State is to increase the number of signatures and ratifications.

2. The origin of the variation in treatment existing between contracting States is due to the way in which these States have taken advantage of the Protocol of Signature which allows each contracting State to enforce the Convention in a form appropriate to the peculiarities of its own legal system. The texts so drafted have resulted in the introduction of fundamental differences, the most usual and most glaring of which is the manner of proving damages ascertained at the port of discharge.

In this connection, Article 9 sub paragraph 2 should be mentioned. This sub paragraph allows contracting States to convert the limit (expressed in pounds sterling) into round figures in their own currency. This has given rise to a serious divergence between the figures at present applied.

3. The Convention in general and Article 10 in particular does not define the field of application of the Convention with any precision. This results in some Contracting States applying their national law to disputes between their own nationals on matters connected with international transport, whereas other contracting States apply the Convention in similar circumstances.

The Problems

This short survey shows that international uniformity has not even been secured between States that have signed and ratified the Convention; a fortiori the situation is even less satisfactory as regards States that have not yet signed it.

Thus the first object to be attained is the adoption of the Convention by all Maritime Nations. This task, however, is not the responsibility of the C.M.I.

The second object is to put an end to the lack of precision and effectiveness of the above mentioned texts. This is the task to which the sub-committee has directed its attention.

Approach to Problems

A clear distinction should be made between problems which arise from the wording of the Protocol and those which originate from other texts.

1. The sub-committee came to the conclusion that it was not practical to amend the Protocol.

Some members were particularly insistent about this and the sub-committee unanimously adopted this point of view. Furthermore, the sub-committee rejected the idea of maintaining Article 10 and of adding a paragraph to the Protocol setting out the field of application of the present Article 10. This was because any modification of the present text of the Convention would necessitate a meeting of the Diplomatic Conference. In that event it was felt that it would be better to change the rule by amending the actual text of the rule itself.

2. This attitude — inevitably a negative one — was not adopted in relation to Article 10.

Solutions

The sub-committee had first to make a decision on a preliminary question, namely whether the amendment should extend or narrow the field of application of the Convention. The sub-committee is unanimously in favour of a wider interpretation of the present text of Article 10. The sub-committee is of the view that a new attitude should be adopted in construing the text and that the field of application should be widely interpreted thus exceeding that laid down in the present Article 10.

Port of Loading and Port of Discharge

The draftsmen of the 1924 Convention assumed that all States would ratify the Convention and that it was only necessary to determine the place where the Bill of Lading was issued as this would, according to the generally accepted rules on Conflicts of Law, determine the law to be applied and thus define the exact scope of application of the Convention.

Unfortunately these expectations proved too optimistic, so much so that it has been necessary to propose a system which will give the Convention the widest possible scope of application.

Article 10 only takes into consideration the place where the Bill of Lading is issued and it does not make any provision as to the port of discharge. The sub-committee has not found any valid reason for excluding cases where the place of issue of the Bill of Lading is not in a contracting State, whereas the actual port of loading is.

In short, it was decided to take account not only of the port of loading but also the place of issue as elements in determining whether the Convention should apply.

For the same reason the sub-committee felt it desirable that the Convention should be applied whenever the port of discharge is situated in a contracting State.

Finally, the sub-committee accepted the proposal that, if, for one reason or another, the goods do not reach the port of discharge originally stipulated the Convention should apply both when the original port of destination is situated in a contracting State and when the actual port of discharge is so situated.

Nationality of the Parties

Several national Associations have pointed out that it would not be possible to apply an international Convention when the parties concerned are all subjects of the State in which the Court is situated.

The sub-committee was, however, of the opinion that the Convention should be applied when either the place where the Bill of Lading is issued, or the port of destination, or the port of loading, or the port of discharge is situated in a Contracting State, and that no other condition should be added.

Thus the idea that treatment should vary according to the nationality of the ships or parties involved has been expressly rejected.

For these reasons the sub-committee proposed that Article 10 should read as follows : —

« The provisions of the Convention shall apply, whatever the nationality of the vessel, the shipper, the carrier or the person entitled to delivery : —

- a) to every Bill of Lading evidencing a carriage of goods when the port of destination thereof is situated in a contracting State. For this purpose, the port of destination is the one shown in the Bill of Lading or, if not, the port where the goods are actually discharged;
- b) to every Bill of Lading issued in a contracting State, even if neither the port of departure or of destination of the goods is situated in a contracting State. »

The sub-committee appreciated that the suggested extension will result in restricting the field of application of certain national laws, but it was of the opinion that the suggested system offers the best method of avoiding a number of conflicts of laws.

Additional Problems

The sub-committee when it was studying these problems, accepted the view — expressed on numerous occasions — that the amendment

to Article 10 would constitute only a partial solution of the problems which arise at the present time when the Bills of Lading Convention is applied in different States.

- a) For example, it is clear that the draftsmen of the Convention intended that there should be uniformity regarding the limits of liability to be applied in the Contracting States. Yet the following limitation figures are applied, depending on the State where the dispute is heard (extract from « On Ocean Bills of Lading » by A. Knauth) :

Australia	£	100	= \$ 224
Canada	\$	500	= \$ 503
Denmark	Kr.	1,800	= \$ 261,66
Egypt	£	100	= \$ 280
France	F.	100,000	= \$ 285
Germany	Mk.	1,250	= \$ 300
India	R.	1,500	= \$ 280
Italy	L.	200,000	= \$ 320
Netherland	Fl.	600	= \$ 160
Norway	Kr.	1,800	= \$ 244
Spain	P.	5,000	= \$ 550
Sweden	Kr.	1,800	= \$ 347
Union of South Africa	£	100	= \$ 280
United Kingdom	£	100	= \$ 280
United States	\$	500	= \$ 500

The draftsmen of the Warsaw Convention succeeded in avoiding these difficulties and it is clear that the time has come for the Bills of Lading Convention to benefit from this experience as did the 1957 Limitation Convention.

In these circumstances the sub-committee intends to commence a study of the possibility of amending Article 9 sub paragraph 2.

- b) The 1924 Convention has been applied in some countries for more than 30 years and, on the whole, it has proved satisfactory. However, several Associations and members have expressed the view that the time may have arrived for some progress to be made towards unification in the law relating to carriage of goods by sea. For this reason the sub-committee is of the opinion that it might be useful to examine the possibility of establishing uniform international draft rules covering problems which were not dealt with in the 1924 Convention. In particular, the sub-committee has in mind the following matters : —

1. Pro Rata and invoice value clauses.
2. Limitation as to value and as to time for action in matters concerning indirect damage (by delay and delivery to a person not entitled).

3. Liability for acts committed by a preceding carrier on a through bill of lading.
 4. Validity of both-to-blame clause.
 5. Unseaworthiness and deck cargo.
 6. Liability before loading and after discharging.
- c) During its studies the sub-committee discovered that the provisions of the 1924 Convention have not been interpreted uniformly by all who have applied them. However, the majority of members were of the opinion that it would be inadvisable to amend the existing provisions.

Those members who were in favour of amending the provisions stressed that certain provisions had been interpreted by the majority of States in a clearly defined manner, whereas, only a few States had departed from this interpretation. The amendment of the existing text would, for this reason ensure greater international uniformity. On the other hand, those who favoured maintaining the present text argued that the 1924 Convention was a compromise based on a large number of concessions and that the slightest alteration would run the risk of jeopardising the whole structure of the compromise. They also emphasised the danger which would confront uniformity if there were two Conventions — an original one and an amended one — covering the same subject matter. Indeed, it was not certain that all the existing contracting States would immediately adopt the proposed amendments and some might never adopt them at all.

- d) The sub-committee considered whether it should endeavour to resolve all the conflicts of law which might arise between the different laws which had been adopted to give effect to the provisions of the 1924 Convention. If the answer to this question is in the affirmative, it would be tantamount to an admission of the present divergences between the above mentioned laws. The C.M.I. has, of course, accepted the task of promoting international uniformity of maritime law. If, however, the C.M.I. was to start considering solutions to conflicts of law — even if these conflicts were the result of an imperfection of a system which it had itself established — it would have to deal with an entirely different problem presenting very great difficulties. Moreover, these problems of conflicts of law concern not only contracts of carriage but also contracts of sale and insurance which always go hand in hand. A rule laid down by the C.M.I. would therefore only solve the difficulties encountered in connection with one of the above contracts. It is for this reason that the sub-committee considered it preferable for the C.M.I. not to undertake the solution of these problems. The sub-committee is, however, quite ready to embark upon such a study if the C.M.I., which appointed it, considers it proper to remedy this absence of uniformity.

Conclusions

In view of the foregoing the sub-committee requests that the Plenary Conference of the C.M.I. should express its views on the following points : —

- 1° Should the C.M.I. invite the Diplomatic Conference on Maritime Law to replace the present text of Article 10 by the following words.
« The provisions of this Convention shall apply, whatever the nationality of the vessel, the shipper, the carrier or the person entitled » to delivery : —
 - » a) To every Bill of Lading evidencing a carriage of goods when
» the port of destination thereof is situated in a contracting State.
» For this purpos, the port of destination is the one shown in
» the Bill of Lading or, if not, the port where the goods are
» actually discharged.
 - » b) To every Bill of Lading issued in a contracting State, even if
» neither the port of departure or of destination of the goods is
» situated in a contracting State. »
- 2° Does the Plenary Conference agree that the opportunity should be taken for the sub-committee to elaborate upon the following : —
 - a) An amendment to Article 9 sub paragraph 2 of the Convention on Bills of Lading.
 - b) A draft Convention on matters relating to international carriage by sea which are covered in bills of lading but which have not been dealt with in the 1924 Convention.
 - c) No amendment to the 1924 Convention other than Article 9 sub paragraph 2 and Article 10.
 - d) No draft rules on conflicts of law intended to achieve greater uniformity in matters relating to carriage by sea and covered in bills of lading.

Götenborg, May 1959.

Hon. Secretary,
Leo Van Varenbergh

Hon. Vice-President,
Kaj. Pineus.

COORDINATION OF THE TEXTS OF THE CONVENTIONS ON LIMITATION AND ON MORTGAGES

Introductory Report of the FRENCH MARITIME LAW ASSOCIATION

Our Association, at the request of the Comité Maritime International to report upon the harmonization of the Draft Convention limiting the liability of shipowners with the Convention on Privileges and Mortgages, approved the following report after examining the Draft prepared by Monsieur Pierre Lureau.

The Association states that art. 4 § 3 and art. 7 of the Convention on Privileges maintains same in the same order even when the debtor is entitled to limit his liability. He could apply this limit formerly namely by applying the 1924 Brussels Convention.

But this Convention is to be replaced by the text established in Madrid and this text decides that as soon as the limitation fund is created :

- on the one hand « persons authorized to claim on the fund cannot exercise any right against any other asset of the shipowner » whereas « the other creditors shall not have any right on the fund » (art. 2 § 3);
 - on the other hand « the distribution of the fund itself shall be effected among the claimants in proportion to the amount of their respective claims (art. 3 § 2).
- a) In consequence, first of all the Association is of the opinion that the privileged claims which, from now on, shall be entitled to the fund, cease to be privileged as from the time they become so entitled to that fund. These claims get a benefit of a new kind as a substitute for the actual privilege.

This finding upon which we cannot come back without implicating the whole construction of the Draft is so more important that as the claims entitled to the limitation fund are principally those for personal injuries to passengers or to crews or for damage to goods or luggage or damages to any other goods, there are claims which are privileged when they arise and which occupy moreover the same rank (the fourth one) in the order of international privileges. Henceforth, these claims

are going to be taken apart from the other privileged claims as to the funding (ship, freight and accessories) and as to their being privileged and shall have a special fund for their benefit.

This implies some upsetting in the order of the different claims such as determined by the Convention on Privileges, but this is not due to the loss of the privilege for those admitted to the limitation fund, but to the system of the creation of a fund assigning a certain amount to certain claims.

- b) Secondly the Committee is of the opinion that, as the distribution is effected *pari passu* between the claimants on the fund, the claims that were privileged, lose the order which the 1926 Convention assigned to them. However, this fact does not change anything as these claims already occupy, as we mentioned above, the same fourth rank. In any case they would have been distributed on the same rank in proportion to their amount.

The only disadvantage is that these originally privileged claims on the limitation fund, which are by large the main ones, may eventually be assigned on the same rank with other non privileged claims which are :

- 1° Claims of the same kind, that is to say for material damage, loss of life or personal injury, which did occur **ashore**, as the Madrid text is of a broader extent than that on Privileges, the claims arising from such damages occurring ashore may be admitted to the limitation fund.
- 2° Claims for raising the wreck which is labelled « wreck liability » by the Madrid text.

This double disadvantage did not seem sufficient to the French Association to suggest an amendment to the Madrid text in order to maintain a hierarchy between the claims entitled to the fund, for this was obviously the only matter at stake.

In the circumstances, the Madrid Draft being maintained as a whole, the ideal solution of harmonization might be to correct the Convention on Privileges and Mortgages, so that any trace of maintenance of any privilege for a claim admitted to the limitation fund should disappear at the same time as this fund is created.

This solution was set aside because it was not workable : the Convention on Privileges does exist and it is difficult to amend it, so more that the Madrid text is, up to now, only a Draft. Although the present drafting may be sufficient, it seems suitable to avoid any possible misunderstanding, for instance because of certain foreign notions, according to which the privilege should be liable to part from the claim

and to find an application elsewhere. With this aim, the French Association suggests to add to § 3 of art. 2 in fine : « after the establishment of the limitation fund, no right can be exercised relating to claims for which... etc. » an amendment providing that this shall be the same with privilege; this will be achieved by adding this single word to the text : « After the establishment of the limitation fund no right nor privilege can be exercised... ».

Moreover, the Association made another observation by studying this question :

The Convention on Privileges assigns a second rank : « to claims » resulting from the contract of employment of the captain, the crew » and other persons engaged on board ». Such claims arise without doubt from the contract of employment and find their origin therein.

Now art. 2 § 2 of the Madrid text quotes: « claims of the master, the members of the crew or all other shipowner's servants... if according to the law governing the contract of employment etc. » One might think at the first reading that the claims referred to in this text are also those which, for the Captain, the crew or other servants result from the contract of employment and are the same as those referred to in the Convention on Privileges. This might have as a consequence that these claims, which are privileged at the second rank would be put on the same when admitted to the limitation fund, as the other claims to which we referred.

Actually the Committee is of the opinion that this results only from an error of interpretation, as the wording of the Madrid Draft shows that it relates to claims arising from loss of life or personal injury or from damages to goods belonging to the master, crew, etc... that is to say which arise from an accident and not from the contract of employment.

In order to avoid any misunderstanding — which would be serious — the Committee suggests to repeat once more in the paragraph concerned the words « loss of life, personal injury, etc... ». The text concerned would then read as follows : art. 3 § 2 ii : « to claims for loss of life, personal injury, loss or damage to properties of the Master, the members of the crew, etc.

After which it will be clearly certain that the above mentioned provisions of the 1926 Convention on Privileges and Mortgages can no more be applied each time a limitation fund is constituted. In such cases they are no more applicable. The same solution does apply to the « Code de Commerce français ».

Hon. Reporter,
Pierre LUREAU.

Hon. President,
James-Paul GOVARE.

REGISTRY OF OPERATORS OF SHIPS

DRAFT REPORT

of the Hon. President of the International Sub-Committee

.. .. .

CONCLUSIONS

I

The Sub-Committee regrets sincerely to have to state that a few national Associations — and more especially the British, Belgian, Spanish, Greek and Swiss Associations — have not replied to the questionnaire.

Amongst the Associations which have sent reports the German, Argentine, United States, French, Polish, Turkish and Yugoslav reports can be considered as substantially favourable. On the other hand, the Scandinavian Countries and the Netherlands have proved to be more hesitating than opposed to the draft so that it will be most useful to try to persuade these Countries.

II

The Sub-Committee think it is advisable to make some points clear in order to dispel some doubts which appeared.

A)

The Convention should be named ' « Convention on the Publicity of the Operator » (and not « Naval Publicity »).

B)

The suggested publicity will only become really effective in connection with claims which have no privilege on the ship because the privileged claims can be executed against the ship even in case the claimants know that the debtor is not the owner of the ship but a bare-boat charterer.

C)

The publicity should only be made in the case of a bare-boat charter because only in such case somebody, different from the owner, operates the ship for his own benefit and is liable for obligations contracted by the master; indeed, only in such case there is an operator.

PUBLICITE DE L'ARMATEUR

PROJET DE RAPPORT

du Président de la Commission Internationale

La Commission Internationale qui a été chargée d'élaborer un rapport pour la prochaine Conférence Internationale de Rijeka, estime devoir faire précéder ledit rapport — qui prendra la forme de « conclusions » — d'un bref résumé des rapports présentés par les différentes Associations Nationales de Droit maritime des divers pays (dans l'ordre alphabétique desdits pays).

★★

ALLEMAGNE

A l'occasion de l'examen du rapport de l'Association allemande de Droit maritime, la Commission croit opportun de confirmer que la publicité projetée ne pourrait viser que la location du navire coque nue, parce que c'est en pareille hypothèse seulement qu'une personne — le locataire — autre que le propriétaire devient armateur du navire.

Elle constate non sans intérêt que cette forme d'utilisation du navire est peu fréquente en Allemagne : mais il est évident que cette circonstance ne saurait constituer un empêchement à l'adoption projetée de la publicité du contrat.

Cette publicité — dont, nonobstant la circonstance rappelée ci-dessus, le rapport ne nie pas les avantages — serait remarquablement facilitée, en Allemagne, par le fait que la lettre de mer que tout navire doit avoir à bord confirme toutes les particularités contenues dans le registre d'immatriculation des navires.

Toutefois, une certaine hésitation peut naître du fait que, à ce qu'il semble, il est possible de tenir à bord une forme très résumée de la lettre de mer et qu'en pareil cas, cette dernière ne contiendrait que les données purement techniques relatives au navire, avec le droit pour celui-ci de battre pavillon allemand, sans qu'aucune mention n'y soit faite en ce qui concerne la publicité ou en ce qui concerne les hypothèses.

Il ne serait peut-être pas difficile pour l'Allemagne, si une Convention était élaborée conformément aux idées exprimées dans le projet, de retoucher sa législation pour que la lettre de mer conservée à bord doive toujours être la reproduction exacte des données résultant du registre d'immatriculation, où les contrats de location coque nue devraient également être inscrits.

D)

The Sub-Committee suggests that the draft will admit that, unless a declaration of operator is made, the owner will be considered as operator, except the contrary is proved.

E)

The recording of the declaration of operator should not be compulsory. Both the owner and the operator shall be entitled to make it recorded and both will have to supply a supporting document to the competent Recording Office.

F)

The recording of the declaration of operator in the registry office of the ship and on the certificate of registry which has to be always on board the ship, should be sufficient for relieving the owner of liability in relation to non privileged claimants on the ship for obligations contracted by the bare-boat charterer. The Sub-Committee suggests furthermore to display on board the ship at a get-at-able place an irremovable and conspicuous panel bearing if necessary the seals of the master.

III

The Sub-Committee was nearly unanimously of the opinion that, contrary proof excepted, third persons are entitled to consider the ship-owner as sole liable for obligations put on the master or the ship-agent. As a consequence, nobody should question whether a system is useful which offers a safe way of proving that an other person than the ship-owner operates the ship and is liable for the obligations mentioned above.

IV

Sometimes it has been affirmed the Publicity of the Operator as it has been suggested, aims at satisfying a claimants' interest. It has been said also sometimes that, on the contrary, the interest of the owners should be given satisfaction. One can be astonished to ascertain that the real double aspect has only be taken into consideration in a few cases, for certain aspects are really in favour of the owner whereas others are in favour of the claimants.

The interest of the owner is perhaps the most obvious one. Indeed, when the owner rents his ship to somebody who will operate her for personal account, the owner is aware of course that he will not be a stranger to the obligations which may occur when the ship is trading. Indeed, the owner can be held liable for obligations towards privileged claimants, even if these appear to have been contracted either by the master for account of the charterer or even personally by the charterer.

The owner will easily face this delicate situation in the case e.g.

ARGENTINE

La Commission est d'accord pour reconnaître que le titre qui a été proposé pour cette Convention est imprécis. En effet, l'expression « publicité navale » est indubitablement trop vaste par rapport à ce qui devrait être l'objet de la Convention.

Toutefois, ce titre pourrait être formulé d'une manière plus synthétique que celle suggérée par l'Association argentine, c'est-à-dire comme il a été proposé : « publicité de l'armateur ». La publicité projetée n'a pas d'autre but, en effet, que celui de faire connaître aux tiers la personne qui, en réalité, gère le navire pour son propre compte, c'est-à-dire celui qui en est l'armateur.

La Commission soussignée proposerait de ne pas donner un caractère obligatoire à la publicité en question, et cela pour les raisons qui seront exposées plus loin.

Il est naturel que la publicité de l'armateur, qui aurait pour but de soustraire le propriétaire du navire aux actions des tiers, naissant d'obligations à charge de celui qui aurait assumé pour son propre compte la gestion du navire, ne présenterait une utilité qu'à l'égard des créances non pourvues d'un privilège maritime, puisque les titulaires de ces créances pourront toujours agir contre le navire. Telle est l'anomalie, que l'on ne peut d'ailleurs pas éviter, inhérente à l'institution juridique du privilège, qui rend le propriétaire du navire patrimoniallement responsable, même pour des dettes qui ne lui sont point propres, sauf, bien entendu, son action personnelle contre le véritable responsable desdites dettes.

Fort intéressante est l'indication fournie par l'Association argentine, relative à l'existence, en Argentine, d'un Registre naval où les contrats de location doivent être inscrits.

Etant donné la réflexion qui a été faite ci-dessus et les considérations qui seront exposées ultérieurement, il faut exprimer quelques réserves quant au caractère obligatoire de ces inscriptions.

Il faut reconnaître l'exactitude de la remarque faite ensuite dans le rapport examiné ici, d'après laquelle, faute de pouvoir étendre aux documents de bord cette publicité, celle-ci serait incomplète parce que ses effets viennent à disparaître en pareil cas dès que le navire est en cours de navigation.

Il faudrait, par conséquent, exprimer le vœu que l'Argentine, dont le *Código de Comercio* impose, en son article 925, au capitaine de tenir, entre autres, également à son bord « el pasaporte del buque o carta de mar », étende à ce dernier document — comme l'exige la loi italienne — toutes les formes de publicité qui sont prévues pour les registres d'immatriculation.

Bien qu'en vérité, on ne saurait méconnaître l'utilité de la proposition consistant à instituer, à côté des registres d'immatriculation des navires, des sections spéciales pour communiquer par radio aux bureaux

of collision, assistance and salvage, general average, passengers' or cargo claims because he can contract an insurance cover. However there are cases without remedy e.g. when the charterer does not pay the master and the crew.

However this reason seems not to be sufficient for avoiding the owner from contracting a cover for the other obligations which may occur when the ship is trading and which are not protected by a privilege. So, e.g. when the charterer has incurred liability for breach of contract of carriage concluded by the master or a ship-agent, for the obligations involved by a towage contract or by a contract relating to piloting or custodizing which do not concern the latest voyage, for supplies made by the master or the agent in the port of registry, for repairs and supplies not ordered and executed « for the real need of the conservation of the ship or for the continuation of the voyage ». So, in the latest case he will not have the benefit of a privilege, e.g., supply of bunkers made by the master after accomplishing the voyage or perhaps for coming back to the home port.

The interest of the claimants is not less substantial. Owing to the suggested publicity the claimants will be able to know with certainty the person for whose account the master or the ship agent has really contracted without running the risk of having to face the argument of the owner, held liable, according to which he is not bound by the contract referred to.

This interest could even exist in the case where the ship is mortgaged or privileged and where the claimant would prefer to have a creditor who is not the owner of the said ship.

During the discussions relating to the approval of the arrest of ships some delegations (especially the delegation of the Italian Association) have stressed at several occasions the advisability of publishing in one way or another, the name of the real owner of the ship but at that time this appeal proved to be a mere « vox clamans in deserto ».

This necessity has even not been felt when discussing the famous paragraph 4 of article 3 of the Convention, the text of which cannot seem, after ten years, to be an aberrant provision.

This text rightly referred to in the report of the French Association reads as follows :

« In the case of demise-charter, when the charterer is sole liable for a claim against the ship, the claimant is entitled to arrest the ship or an other owned by the charterer in conformity with the Convention, but no other ship owned by the owner can be arrested on the grounds of that claim.

The preceding paragraph applies also to all cases where a person other than the owner is liable for a claim against the ship. »

The above mentioned provision, although accepted by the majority, can hardly be praised.

du Registre dans les ports étrangers vers lesquels le navire fait voile, les renseignements utiles concernant la publicité en question, il est permis d'estimer qu'une telle proposition serait difficile à réaliser.

Quant au projet de Convention proposé par l'Association argentine, il en sera question plus loin.

DANEMARK

Le rapport de l'Association danoise de Droit maritime est tellement bref qu'il est impossible d'en faire un résumé utile.

Il n'y est fait aucune mention des raisons pour lesquelles, puisqu'il existe au Danemark une loi d'après laquelle il est possible, sinon obligatoire, d'enregistrer dans le registre d'immatriculation le fait que le navire est géré par un tiers qui n'en est pas le propriétaire, une telle publicité ne pourrait pas s'étendre également aux lettres de mer qui se trouvent à bord des navires et qui devraient être considérées comme une forme de publicité parallèle à celle du registre d'immatriculation.

ETATS-UNIS

Le rapport de l'Association de Droit maritime des Etats-Unis est particulièrement intéressant, non seulement à cause de l'autorité même de cette source, mais tout spécialement pour les conclusions substantiellement favorables auxquelles ladite Association est parvenue.

Ce rapport mérite donc un examen détaillé de la part de la Commission.

Il commence par souligner que, d'après la législation des Etats-Unis, lorsqu'un navire est loué coque nue, les créanciers sont munis d'une action *in rem*, à condition cependant qu'ils puissent prouver qu'ils ont été raisonnablement diligents dans la vérification du point de savoir si celui qui a commandé les réparations, les provisions, etc., était autorisé à engager le navire.

Toutefois, plus particulièrement, la règle qui contient cette disposition (le paragraphe 973 du *Federal Maritime Lien Act* du 23 juin 1910, modifié en 1920) a donné lieu à de graves difficultés d'interprétation qui ont eu pour conséquence que les créanciers se trouvent souvent aux Etats-Unis dans la même position où se trouvent les créanciers dans les pays où la doctrine de la responsabilité *in rem* pour les provisions, etc. n'est pas admise.

A cet égard, la Commission connaît l'existence d'un arrêt, bien que non récent, de la Cour Suprême, qui a décidé que le propriétaire du navire est responsable pour une fourniture de *bunker* commandée par l'affrètement, lorsque le contrat d'utilisation du navire n'interdit pas la naissance d'un *maritime lien*.

Le rapport examiné ici déclare donc que le projet de Convention aurait pour sûr résultat d'assurer un avantage aux tiers créanciers.

Indeed, it is not conceivable that when it is stated first that the debtor is not the owner but a different person, the claimant is allowed to satisfy himself — even for claims without privilege, this should be stressed — on an asset owned by an other person.

Even if it was necessary to bow to the fact that this Convention has been approved, it should be taken into account that specific regulations concerning the rights of third persons claiming in the case of a ship chartered by demise, cannot disregard the necessity of granting to these third claimants a safe way for verifying whether or not they have to face such a case.

This necessity was — and is — the more obvious as the demise charter has been based on the interdiction for the claimant to arrest a sistership of the owner.

Do recall here the words of the President of the Sub-Committee pronounced at the meeting of this sub-committee held on the 25th September 1951 during the Naples Conference :

«

Il se pose donc une question grave. Il y a un créancier d'un navire. Ce créancier ne peut pas saisir le navire qui a donné lieu à sa créance. Il attend qu'il arrive dans ce port un *sistership* du même propriétaire, mais lors de la saisie, le propriétaire dit : « Ah, non. La créance était une créance sur l'affrèteur. Voici mon contrat d'affrètement; il y avait *demise* ». Qu'arrive-t-il alors ? Spécialement suivant la législation française, le seul fait qu'une saisie est révoquée parce qu'elle est injustifiée donne lieu tout de suite à des dommages-et-intérêts. Dès lors sera-t-il possible d'admettre la bonne foi du créancier ? Voilà pourquoi la délégation italienne avait proposé une solution tendant à donner satisfaction aux exigences de toutes les autres délégations et qui consistait à pouvoir opposer le *demise* aux tiers. Le tiers doit avoir connaissance du *demise*, de façon à empêcher au moins que, de mauvaise foi, lorsqu'on fait une saisie d'un *sistership*, le propriétaire saisi puisse montrer un contrat établissant que ce *sistership* était affrété en *demise* au moment où la créance est née. »

V

As a consequence, the Sub-Committee is of the opinion, by majority of votes, that following replies should be given to the questionnaire submitted to the different national Associations.

1. *Question* : It is advisable to draft an international convention the aim of which is to inform third parties of the fact that the ship is not operated by the owner ?

Reply : Yes.

Répondant ensuite à la question n° 3, le rapport estime qu'il est possible d'utiliser, sans plus, les registres d'immatriculation et le certificat d'immatriculation qui se trouve à bord du navire, documents qui sont déjà employés pour la publicité des droits réels. Et le rapport suggère fort opportunément qu'un document séparé, bien visible et accessible au public, soit en outre placé près de la timonerie, où figureraient tant le nom du propriétaire du navire que la date et le lieu du contrat d'affrètement (*rectius* : de location) et le nom de l'affrèteur (*rectius* : du locataire) ou de l'*operator* (exploitant).

Du reste, la suggestion faite ci-dessus trouve un écho, exactement correspondant, dans une clause précise du formulaire de *bare boat charter* en usage dans le commerce maritime international, où l'on peut lire, entre autres, ce qui suit à la clause n° 13 :

« The Charterer agrees to notify any person furnishing repairs, supplies, towage or other necessities to the vessel that neither the Charterer nor the Master has any right to create, incur or permit to be imposed upon the vessel any liens whatsoever except for crew's wages and salvage. Such notice, as far as may be practicable, shall be in writing. The Charterer further agrees to fasten to the vessel in a conspicuous place and to maintain during the life of this Charter, a notice reading as follows :

« This vessel is the property of
» It is under Charter and by the terms of
» the Charter neither the Charterer nor the Master has any
» right, power or authority to create, incur or permit to be
» imposed upon the vessel any liens whatsoever except for
» Crew's wages and salvage. » »

Il semble également opportun de rappeler ici que la Chambre de Commerce de Gènes a récemment prié une Commission de juristes de mettre au point un formulaire-type italien de location coque nue, appelé « Italscafo 1956 », qui contient la clause n° 12 suivante :

« Il conduttore è tenuto a depositare il presente contratto alla Capitaneria di Porto di iscrizione ed a fare la dichiarazione di armatore. Inoltre, il conduttore è tenuto a portare a conoscenza dei terzi la propria qualità di armatore anche mediante affissione sulla nave, in luogo ben evidente per tutta la durata del contratto, il del seguente avviso :

« Questa nave, di proprietà di è ora locata
» a in forza di contratto stipulato a
» il , che il conduttore è tenuto ad esibire a
» chiunque abbia interesse a prenderne visione. » »

Pour les besoins des Etats qui, comme les Etats-Unis, permettent l'*actio in rem*, les documents en question pourraient peut-être mentionner en outre explicitement quelles sont les réparations ou provisions pour lesquelles le locataire ou l'*operator* est autorisé à engager le navire.

2. *Question* : Are you of the opinion that for the publicity referred to under 1, the registers of the offices of Registry of ships and the certificates of registry can be used ?

Reply : Yes.

VI

It is doubtless that the preliminary draft of the Italian Association can be improved e.g. by making the registry of the declaration of operator optionnal and not compulsory and by recommending according to the lines of the suggestion of the United States Maritime Law Association, to have on board the ship at a get-at-able place a panel mentioning the name of the owner of the ship and, if the case may be, of the bareboat charterer.

This draft is now submitted to discussion by the Conference and a restricted sub-committee could be appointed in order to elaborate a second better and more complete draft.

Giorgio BERLINGIERI

Vice-Président of the Italian Maritime
Law Association

President of the International Sub-Committee.

Le rapport de l'Association des Etats-Unis suggère fort opportunément que la Convention pourrait stipuler que, si aucun document de location n'accompagne les documents de bord, les tiers seront autorisés à considérer la propriétaire du navire comme responsable pour les réparations, provisions, etc., tandis qu'au contraire, la présence à bord du navire du certificat de location, placé avec les documents de bord, constituera une preuve définitive pour écarter du propriétaire le fardeau des responsabilités dérivant des frais exposés, autres que celles spécifiquement énumérées dans la section 4 du certificat de location.

En terminant, le rapport exprime la préoccupation que, le navire se trouvant sous le contrôle de l'affrètement (locataire), celui-ci pourrait avoir intérêt à supprimer la publicité du contrat.

Cet inconvénient — qui mérite du reste une grande attention — n'existerait pas pour ce qui regarde l'inscription du contrat sur le registre d'immatriculation et sur le certificat de nationalité se trouvant à bord du navire. En effet, ces inscriptions devraient être effectuées par les Bureaux maritimes compétents et on ne saurait imaginer que le locataire veuille se rendre coupable d'un délit aussi grave que celui d'altérer le certificat d'immatriculation ou de nationalité se trouvant à bord du navire.

Quant au document attestant l'existence du contrat — document qui devrait être affiché de manière bien visible, dans un lieu accessible au public — sa conservation pourrait être assurée par l'apposition de sceaux par le capitaine; et la Convention pourrait même contenir une disposition de nature pénale frappant quiconque qui se rendrait coupable de toute soustraction, suppression ou altération du document en question.

FINLANDE

Le bref rapport de l'Association finlandaise de Droit maritime nous apprend qu'il existe bien en Finlande un Registre d'immatriculation, mais que ce Registre ne peut être utilisé pour y enregistrer le fait que le navire est géré par une autre personne que son propriétaire.

Le propriétaire qui figure au Registre d'immatriculation — comme le souligne ce rapport, — est présumé être aussi celui qui gère le navire; et il est responsable de toutes les dépenses qui se rattachent à cette gestion.

Le rapport en question affirme qu'au cas où le navire aurait été affrété à temps, le capitaine doit, lorsqu'il assume des obligations qui regardent l'affrètement, informer le fournisseur de la circonstance qu'il signe commandes et reçus pour le compte de l'affrètement.

Le rapport paraît cependant ne pas apercevoir que la publicité qui fait l'objet de la Convention projetée devrait déployer principalement, pour ne pas dire exclusivement, ses effets dans le cas de location de navires coque nue. Puisqu'en pareil cas, le capitaine, de même que

tout l'équipage, est nommé par le locataire, qui assume effectivement la qualité d'armateur, on ne voit pas comment le propriétaire pourrait être tranquille de ne pas avoir à répondre éventuellement d'obligations naissant de la gestion du navire.

L'Association finlandaise conclut son bref rapport en affirmant que l'état de choses actuel est satisfaisant.

La Commission se permet donc d'insister sur l'existence effective et réelle de l'intérêt que présente pour le propriétaire d'un navire loué par lui coque nue à une autre personne, la limitation de ses propres responsabilités aux seuls cas où les obligations qui naissent durant la gestion de ce navire seraient pourvues d'un privilège.

FRANCE

I

L'Association française, non sans de nombreuses réserves, peut être considérée comme substantiellement favorable à l'institution de la publicité de l'armateur projetée.

Il est exact de remarquer — cette observation est du reste conforme au projet préparé par l'Association italienne — que la publicité se révèle particulièrement utile dans le contrat de location d'un navire coque nue, puisque c'est en pareil cas surtout que le propriétaire dudit navire reste complètement étranger à la gestion de ce dernier et que le locataire assume la qualité d'armateur.

L'examen du rapport très diligent de l'Association française offre l'occasion d'affirmer à nouveau que, même si les tiers étaient tenus de savoir que le navire n'est pas géré par son propriétaire, mais par celui qui l'a loué, lesdits tiers auront toujours le droit d'agir sur le navire lorsqu'il s'agit d'une créance privilégiée. Il faut bien le répéter : il s'agit là d'un risque que le propriétaire sait devoir courir lorsqu'il donne son navire en location à quelqu'un, un risque inhérent à la propriété du navire et inséparable de celle-ci.

Il n'y a donc aucun doute que la publicité projetée s'avère particulièrement utile :

- a) lorsque le navire a été loué coque nue; et
- b) lorsque les créances des tiers ne sont pas assorties d'un privilège sur le navire.

La Commission est particulièrement heureuse de relever l'affirmation suivante que contient le rapport extrêmement intéressant — elle tient à le répéter — de l'Association française :

- « Il existe donc un intérêt certain pour le propriétaire du navire,
- » à ce que les tiers connaissent, par une publicité appropriée, la
- » location dont le navire est l'objet et le nom de l'affrètement-armateur. »

II

Une considération qui mérite une attention toute spéciale est celle (n° 6 dans le rapport) relative à la possibilité que la Convention du 10 mai 1952 donne au créancier du locataire de saisir le navire pour des créances exclusivement relatives audit locataire (article 3, paragraphe 4).

Cette disposition n'est guère heureuse.

Déjà à la Conférence d'Amsterdam (1949), mais tout spécialement à celle de Naples (1951), la Délégation italienne avait soutenu la nécessité que les tiers fussent mis à même de savoir si le navire était géré par une autre personne que son propriétaire et cela en particulier afin que les dits tiers pussent savoir s'ils avaient ou non le droit de procéder à la saisie conservatoire d'un autre navire appartenant au même propriétaire. Cette proposition ne recueillit pas les suffrages de la majorité et c'est ainsi que fut approuvé le texte actuel, peu heureux, du paragraphe 4 de l'article 3. Et il est même permis de supposer que ce texte constitue peut-être l'obstacle le plus sérieux à la ratification de cette Convention, à laquelle n'a procédé jusqu'ici qu'un nombre d'Etats fort restreint, bien que sept années environ se soient écoulées depuis sa signature.

Cette constatation permettra peut-être d'affronter aujourd'hui le problème de la publicité de l'armement sans trop se soucier de cette disposition peu heureuse.

Ce point fera l'objet d'un examen ultérieur dans la partie du présent rapport consacrée aux conclusions.

Le rapport de l'Association française soulève encore une autre objection sérieuse pour ce qui regarde les Etats chez lesquels, comme c'est le cas de la France, l'abandon en nature est encore en vigueur, parce que l'armateur-affrèteur ne pourrait pas jouir de la faculté de limiter de la sorte sa responsabilité.

On pourrait obvier peut-être à cet inconvénient, sans doute grave, en obligeant le propriétaire qui a donné son navire en location, à assumer contractuellement l'engagement de procéder lui-même à l'abandon toutes les fois que le locataire démontrerait qu'il y a intérêt : et le contrat pourrait prévoir en outre les contre-garanties que, en vue de pareille hypothèse, le locataire devrait accorder au propriétaire.

Toutefois, la limitation de la responsabilité au moyen de l'abandon du navire est une institution qui, déjà dépassée par l'infortunée Convention de Bruxelles de 1924, doit être considérée aujourd'hui comme définitivement ensevelie depuis la signature de la nouvelle Convention de Bruxelles de 1957.

Il convient du reste d'accueillir sans réserve la proposition de l'Association française de ne pas en venir à la stipulation de la Convention projetée ici, avant la ratification de la nouvelle Convention de Bruxelles qui a accueilli le système de la limitation forfaitaire.

Le rapport de l'Association française suggère enfin comment devrait être organisé le système de la publicité. La Commission a tenu compte de ces suggestions dans la partie du présent rapport consacrée aux conclusions.

NORVEGE

Le rapport de l'Association norvégienne de Droit maritime contient certaines considérations vraiment intéressantes.

On y reconnaît en effet que celui qui gère le navire est responsable du chef des obligations tant de nature contractuelle qu'extracontractuelle; que parfois la personne de cet *operator* ne coïncide pas avec celle du propriétaire du navire; et que, dans ce cas particulier, c'est le premier qui en devient responsable.

Après ces affirmations préliminaires, ce qu'on peut lire ensuite dans le rapport est moins clair : à savoir qu'il est sans pertinence aux fins de la responsabilité personnelle que le créancier ait ou non connaissance de ce que l'affrèteur (le locataire) et non le propriétaire soit personnellement responsable : ce qui est ajouté ensuite est encore moins clair : à savoir que, lorsque le propriétaire n'est pas *operator*, il ne peut encourir aucune responsabilité (à moins que cette responsabilité envers les tiers ne soit fondée sur quelque titre spécial).

L'intérêt que le propriétaire a, de faire connaître aux tiers que le responsable du chef des opérations contractées par le capitaine n'est pas lui — le propriétaire — mais bien un *operator*, paraît évident à la majorité de la Commission.

Il convient ici d'insister encore sur le principe d'après lequel la publicité ne peut avoir un contenu pratique que pour les *claims* qui ne sont pas pourvus d'un privilège, parce que les créanciers privilégiés auront toujours le droit de faire valoir leurs créances sur le navire. On perd trop souvent de vue, dans cette matière, que la proposition qui avait été faite, en son temps, de faire coïncider les *claims* visés à l'article premier de la Convention internationale du 10 mai 1952 sur la saisie conservatoire des navires, avec ceux qui sont munis d'un privilège, n'a pas été accueillie. Il existe, par conséquent, des « créances maritimes » qui ne sont pas privilégiées, ainsi, par exemple : les créances relatives à l'inexécution d'un contrat de transport, au remorquage, au pilotage pour des voyages antérieurs; les créances relatives à des fournitures faites au navire par le capitaine au port d'immatriculation; les créances relatives à des réparations et ravitaillements non justifiés par les exigences de la conservation du navire ou de la continuation effective du voyage, etc.

Il semble donc à la majorité de la Commission que la simple considération qu'il existe des créances non privilégiées et qu'il est de l'intérêt du propriétaire de se protéger contre les actions sur le navire du chef de ces créances, souligne — au lieu de l'exclure — la nécessité d'une forme de publicité dans ce domaine.

L'association néerlandaise de Droit maritime rappelle en tout premier lieu comment la publicité navale est organisée dans sa propre législation : l'armateur y est le personnage central, sur lequel incombe la responsabilité pour les obligations qui naissent du commerce maritime, conformément aux articles 321 (1) et 321 (2) du Code de commerce. Si le propriétaire n'est pas lui-même l'armateur, parce qu'il a cédé l'usage du navire, au moyen d'un contrat de location, à une tierce personne, ce qui fait de celle-ci un armateur aux termes de la définition que l'article 320 du Code de commerce donne de l'armateur, il est possible de faire constater pareille circonstance au moyen d'une inscription dans le registre maritime où le navire est immatriculé et où figure le nom de son propriétaire. Si cette inscription fait défaut, le propriétaire restera responsable, avec l'armateur, vis-à-vis des tiers de bonne foi, pour les obligations naissant de la gestion du navire aux termes de l'article 321 (1) prérappelé du Code de commerce.

Le rapport remarque que ce système correspond en substance à celui qui est actuellement proposé par le projet de Convention sous examen, mais il ajoute qu'il n'est fait usage que très rarement de cette publicité, parce que les *bare-boat charterers* n'existent presque pas aux Pays-Bas, à l'exception de quelques grandes sociétés pétrolières.

Bien qu'elle trouve déjà dans la législation actuelle de son pays la possibilité de donner publicité à la déclaration d'armateur, l'Association néerlandaise de droit maritime se déclare cependant fort hésitante quant à l'utilité d'une Convention internationale sanctionnant une telle publicité parce que — tels sont ses propres termes — la pratique aurait déjà trouvé d'autres solutions plus satisfaisantes que le synthèse de publicité réalisée au moyen des registres d'immatriculation et des lettres de mer.

Arrivé à ce point, le rapport donne l'exemple d'une société de remorquage de Rotterdam qui recevrait une demande de remorquage et d'assistance des agents locaux d'un navire grec prêt à pénétrer dans le *Nieuwe Waterweg*. Il objecte que cette société ne se donnera certainement pas la peine de consulter au préalable le registre d'immatriculation du navire au Pirée, tandis qu'elle n'aura, d'autre part, même pas la possibilité de contrôler les lettres de mer ou l'acte de nationalité de ce navire puisqu'il n'est pas encore arrivé à Rotterdam.

Il serait aisé de répondre qu'un exemple de ce genre ne peut certes suffire pour généraliser l'impossibilité pour le fournisseur d'une prestation ou de provisions, de se rendre compte en vérifiant, à bord, quelle est la personne réelle pour laquelle le capitaine demande à ce fournisseur son intervention.

Mais il faut dire quelque chose de plus au sujet de la généralisation — affirmée dans ce rapport — de la coutume d'après laquelle la fonction de représentant commercial de l'armateur a pratiquement disparu aujourd'hui dans la figure du capitaine, étant donné que celui-ci voit

ses fonctions se restreindre toujours plus au domaine technique de la navigation, et qu'à l'heure actuelle les engagements commerciaux sont pris normalement par les agents terrestres de l'armateur, lesquels savent parfaitement pour compte de qui ils assument de telles obligations.

Si la première de ces affirmations est exacte, en ce qui concerne au contraire la seconde, la majorité de la Commission ne peut que marquer son désaccord quant aux conclusions auxquelles arrive le rapport en question.

Il faut répéter ici ce qui a déjà été dit en d'autres circonstances, savoir que lorsqu'un propriétaire de navire loue celui-ci coque nue, il est pratiquement mis à l'écart de la gestion dudit navire : en effet, non seulement le capitaine et l'équipage, mais même les agents aux divers ports d'escale sont choisis et nommés par le *charterer*, quand ils ne le sont pas par le capitaine lui-même.

Or, puisqu'en matière de publicité relative à la personne de l'armateur effectif, les intérêts du propriétaire et ceux du locataire peuvent se trouver en conflit, il est facile d'apercevoir comment l'intérêt que le propriétaire peut avoir à la publicité de l'armateur serait uniquement confié à la loyauté et à la correction scrupuleuse de mandataires du locataire, qui pourraient être à même de porter atteinte, même dans une grave mesure, à cet intérêt, ne fut-ce que par une attitude simplement passive ou muette.

Par conséquent, il est permis d'espérer que, puisque les Pays-Bas possèdent déjà une organisation appropriée permettant de réaliser la publicité de l'armateur projetée, cet Etat voudra bien en faire usage dans ce domaine.

POLOGNE

L'Association polonaise de Droit maritime a accueilli avec faveur le projet de Convention, tout particulièrement en considération du projet de Code maritime polonais actuellement à l'étude, qui prévoit précisément la possibilité d'inscrire, non obligatoirement, le nom de l'armateur dans les registres d'immatriculation des navires (où l'on n'inscrit actuellement que le nom du propriétaire). En outre le Code projeté prévoit que, à défaut d'une telle inscription, la présomption légale d'après laquelle le propriétaire du navire en est l'armateur, devra s'appliquer.

En ce qui concerne la publicité invoquée, on pourrait parfaitement utiliser, comme complément des données résultant des registres d'immatriculation, les lettres de mer se trouvant à bord des navires.

Le rapport propose ensuite l'extension du système de publicité en question aux navires de faible tonnage auxquels, d'après certaines législations, ne s'étend pas l'obligation de l'immatriculation. Cette différenciation qui n'existe, en effet, que dans certains pays, pourra faire l'objet d'un examen spécial à l'occasion des débats qui auront lieu au sein de la Conférence.

SUEDE

Le rapport de l'Association suédoise de Droit maritime nous apprend qu'il existe, en Suède, deux sortes de registres : l'un, tenu par le *Maritime Board*, relatif à la propriété et à la nationalité des navires et l'autre, tenu par un département spécial au sein de la *City Court* de Stockholm, qui contient les détails relatifs aux *mortgages* sur navires.

Ce dernier registre est plus limité, seuls les navires sur lesquels des *mortgages* ont été accordés y figurant.

Il faudrait inscrire dans ces deux registres ou dans l'un d'eux seulement les noms des personnes ayant pris un navire en location coque nue (il est raisonnable d'exclure l'opportunité de créer un troisième registre). D'autre part, étant donné que le premier registre est publié chaque année, le registre où sont inscrits les *mortgages* semble être plus approprié aux nécessités de la publicité envisagée.

Mais le rapport conclut en déclarant qu'il ne parvient pas à apercevoir les avantages que les tiers pourraient retirer du système projeté de publicité de l'armateur.

Cette dernière observation fera l'objet d'une mise au point dans les conclusions du présent rapport.

TURQUIE

L'Association turque de Droit maritime se déclare favorable à la proposition de donner une forme de publicité au fait que le navire est géré par une autre personne que son propriétaire. Et puisque, dans la législation turque, il n'y a pas de registre spécial pour cette publicité, tant le registre d'immatriculation que les lettres de mer pourraient être utilisés à ce fin.

Le rapport exprime l'opinion que les inscriptions à apposer sur ces deux documents ne devraient constituer, à l'égard des tiers, qu'une présomption simple, c'est-à-dire admettant la preuve contraire : et que s'il n'existe aucune inscription d'armateur, il faudra considérer comme tel le propriétaire du navire, toujours jusqu'à preuve du contraire.

Pour ce qui regarde le jeu des présomptions, le rapport appelle une mise au point.

On y constate une certaine préoccupation pour les conséquences injustes auxquelles serait exposé un créancier qui, ayant intenté une action contre le locataire, parce que celui-ci, d'après la publicité apparaissait comme étant l'armateur, se verrait ensuite débouté de son action parce que le défendeur rapporterait la preuve qu'il n'est pas l'armateur.

Ici, il faut bien s'entendre.

Nous sommes d'accord pour déclarer que la publicité de l'armateur admet la preuve contraire. Mais cette preuve contraire n'est admise qu'en faveur des tiers et jamais contre eux. Et elle doit être admise en

leur faveur pour éviter précisément qu'un propriétaire malhonnête ne fasse semblant d'avoir loué son navire à un tiers pour que celui-ci le gère pour son compte propre, mais en réalité pour se débarrasser des responsabilités correspondantes en s'en déchargeant sur le dos d'un armateur homme de paille, qui pourrait être insolvable ou difficilement repréable.

Au contraire, tant le propriétaire que l'armateur inscrits devront subir les conséquences de la publicité sans pouvoir être admis à prouver le contraire.

YUGOSLAVIE

Le rapport de l'Association yougoslave de Droit maritime se déclare favorable au projet. Il observe qu'on peut affirmer que la législation yougoslave est déjà organisée en vue de réaliser la publicité en question, d'autant plus qu'il est déjà possible, mais non obligatoirement, d'effectuer l'inscription de la qualité d'armateur dans les registres d'immatriculation du navire, registres auxquels correspond le certificat de nationalité qui doit se trouver à bord.

Le rapport de cette Association se demande aussi s'il faut que cette publicité ait un caractère déclaratoire ou constitutif.

A propos de cette question, la Commission observe qu'en matière de publicité, la doctrine distingue avant tout la « publicité-information », appelée aussi publicité non nécessaire, de la publicité nécessaire. Il n'est pas douteux que la publicité de l'armateur envisagée rentre dans le cadre de cette seconde catégorie, parce que la reconnaissance contractuelle de la qualité d'armateur chez celui qui prend en location le navire n'aurait aucune efficacité à l'égard des tiers dans la publicité.

Mais la publicité nécessaire se distingue, à son tour, en publicité déclaratoire et publicité constitutive.

Il ne nous paraît pas douteux qu'il ne s'agit pas en l'espèce d'une publicité constitutive, mais plus simplement d'une publicité déclaratoire : et cela à la fois parce que cette publicité a pour objet une situation de fait déjà existante — qui n'est certes pas *crée* par ladite publicité — et parce que les tiers doivent toujours pouvoir être admis à rapporter la preuve contraire, c'est-à-dire à prouver le caractère éventuellement simulé de la déclaration d'armateur.

CONCLUSIONS

I

La Commission doit avant tout constater, avec un vif regret, qu'un certain nombre d'Associations nationales seulement n'ont pas envoyé leurs réponses au questionnaire. Et ce regret est d'autant plus vif si

l'on considère que parmi les Associations nationales absentes figurent les Associations anglaise, belge, espagnole, grecque et suisse.

Parmi les Associations qui ont envoyé leur rapport, on peut considérer comme substantiellement favorables : l'Allemagne, l'Argentine, les Etats-Unis, la France, la Pologne, la Turquie et la Yougoslavie. On peut dire, d'autre part, que les Etats scandinaves et les Pays-Bas se sont montrés peut-être plus incertains que nettement contraires : il serait donc particulièrement utile de tenter de faire œuvre de persuasion auprès de ces Etats.

II

La Commission croit opportun de mettre au point quelques circonstances, ce qui permettra sans doute de tirer au clair certains doutes qui se sont manifestés.

A)

La Convention devrait s'intituler « Convention sur la publicité de l'armateur » (et non « Convention sur la publicité navale »).

B)

L'utilité de la publicité en question n'est destinée à sortir ses pleins effets qu'à l'égard des créances qui ne sont pas pourvues d'un privilège sur le navire, puisque pour les créances exclusivement privilégiées, les créanciers peuvent agir exécutoirement sur le navire, même s'ils ont connaissance du fait que le débiteur n'est pas le propriétaire dudit navire, mais une tierce personne à laquelle le navire a été loué coque nue.

C)

La publicité ne devrait avoir lieu que dans les cas où le navire est loué coque nue, puisque ce n'est qu'en pareils cas qu'on se trouverait en présence d'une personne, différente du propriétaire, qui gère le navire dans son propre intérêt et pour le compte de laquelle le capitaine doit faire face à des obligations et assumer des responsabilités : ce n'est qu'en pareil cas, en effet, que cette personne assumerait la qualité d'armateur.

D)

La Commission propose que soit établie dans le projet la présomption *juris tantum* d'après laquelle, à défaut de déclaration d'armateur, il faut considérer comme armateur le propriétaire du navire.

E)

L'inscription de la déclaration d'armateur ne devrait pas avoir un caractère obligatoire. Elle doit pouvoir être demandée tant par le propriétaire du navire que par celui qui assume la qualité d'armateur : dans un cas comme dans l'autre, il faudra évidemment exhiber le document qui en fait foi, au Bureau Maritime compétent.

F)

Les formes de publicité requises pour que le propriétaire du navire ne doive pas répondre vis-à-vis des créanciers non assistés d'un privilège sur le navire pour les obligations contractées par le locataire coque nue, devraient consister dans la déclaration d'armateur, inscrite tant au registre d'immatriculation du navire du port où ledit navire est inscrit, que dans les lettres de mer qui doivent toujours se trouver à bord. La Commission propose qu'en outre un tableau, inamovible et bien visible, portant s'il le faut les sceaux du capitaine, où seront indiqués tant le propriétaire que l'armateur, soit affiché à bord du navire, dans un lieu bien accessible au public.

III

L'accord est pratiquement unanime pour estimer que, jusqu'à preuve du contraire tout au moins, les tiers ont le droit de considérer le propriétaire du navire comme le seul responsable pour les obligations auxquelles a dû faire face le capitaine ou l'agent du dit navire. Dès lors, nul ne devrait mettre en doute l'intérêt que présente un système permettant d'offrir un moyen sûr pour rapporter la preuve que quelqu'un d'autre que le propriétaire du navire en est effectivement l'armateur et, par conséquent, le responsable des obligations susmentionnées.

IV

Il a été affirmé parfois que la publicité de l'armateur telle qu'elle a été proposée, tend à satisfaire un intérêt des créanciers. Parfois encore, il a été déclaré que l'intérêt à satisfaire était au contraire celui du propriétaire. On peut s'étonner de constater que l'aspect réellement double de cet intérêt n'a été que rarement pris en considération, car il existe réellement, sous certains aspects, en faveur du propriétaire, et sous d'autres, en faveur des tiers créanciers.

L'intérêt du propriétaire est peut-être le plus évident.

Lorsqu'en effet, le propriétaire loue son navire à un tiers pour que ce dernier exerce pour son propre compte l'industrie de la navigation, il ne peut évidemment se laisser bercer par l'illusion qu'il pourra rester étranger aux obligations qui pourront naître pendant la navigation de ce navire. Car ce propriétaire pourra, en effet, être appelé à répondre de certaines de ces obligations même s'il apparaît qu'elles ont été contractées par le capitaine pour le compte du locataire du navire, ou même personnellement par le locataire, toutes les fois que les créanciers sont privilégiés.

Le propriétaire pourra sans peine faire face à cette situation délicate dans les cas, par exemple, d'abordage, d'assistance et de sauvetage, d'avarie commune, de dommages aux personnes ou aux choses transportées, parce qu'il pourra se couvrir par une assurance. Mais il n'en

ira pas de même dans certains cas, pratiquement sans remède possible, où — par exemple — le locataire aurait failli à ses obligations relatives aux salaires du capitaine ou de l'équipage.

Il ne paraît cependant pas que cette raison puisse être retenue comme suffisante pour empêcher le propriétaire de se couvrir à l'égard de toutes les autres obligations qui peuvent naître pendant la navigation et qui ne donnent pas lieu à un privilège : ainsi, par exemple, lorsque le locataire s'est rendu coupable d'inexécution d'un contrat de transport conclu par le capitaine ou par un agent du navire; pour les obligations naissant d'un contrat de remorquage, ou encore pour celles relatives au pilotage ou aux frais de garde qui ne se réfèrent pas au dernier voyage; pour les fournitures faites par le capitaine ou par un agent du navire au port d'inscription du dit navire, pour les réparations et ravitaillements qui n'auraient pas été commandés et effectués « pour les besoins réels de la conservation du navire ou de la continuation du voyage ». Resterait ainsi, dans ce dernier cas, exclue du privilège, par exemple, une fourniture de bunker que le capitaine aurait faite après avoir terminé le voyage et peut-être même pour faire retour au port d'armement.

L'intérêt des créanciers ne serait pas moins réel et concret. Grâce à la publicité envisagée, les créanciers pourraient connaître avec certitude la personne véritable pour le compte de laquelle le capitaine ou l'agent a contracté, sans courir donc le risque de se trouver en présence de prétentions à l'égard desquelles le propriétaire, retenu obligé, pourrait opposer qu'il est étranger au rapport juridique correspondant.

Cet intérêt pourrait exister même au cas où le navire serait grevé d'hypothèques ou de privilèges, ce qui pourrait pousser le créancier à préférer d'avoir comme personne obligée une autre personne que le propriétaire du dit navire.

Au cours des discussions qui ont porté à l'approbation de la Convention sur la saisie conservatoire des navires, certaines délégations (notamment la délégation de l'Association italienne) ont souligné à plusieurs reprises l'opportunité de rendre public, d'une manière ou d'une autre, le nom de l'armateur effectif du navire, toutes les fois que le dit armateur n'est pas le propriétaire du navire. Mais cet appel resta, à l'époque, une « vox clamans in deserto ».

Cette nécessité ne fut même pas ressentie lorsque vint en discussion le fameux paragraphe 4 de l'article 3 de cette Convention, dont le texte, à près de dix années de distance, ne peut pas ne pas apparaître comme une disposition aberrante.

Ce texte, rappelé à juste titre par l'Association française dans son rapport, est le suivant :

« Dans le cas d'un affrètement d'un navire avec remise de la gestion nautique, lorsque l'affrètement répond, seul, d'une créance maritime relative à ce navire, le demandeur peut saisir ce navire ou

tel autre appartenant à l'affréteur, en observant les dispositions de la présente Convention, mais nul autre navire appartenant au propriétaire ne peut être saisi en vertu de cette créance maritime. L'alinéa qui précède s'applique également à tous les cas où une personne autre que le propriétaire est tenue d'une créance maritime. »

On ne saurait dire que la disposition susmentionnée, bien qu'elle ait recueilli la majorité des voix, mérite un éloge particulier.

Il n'est pas concevable, en effet, qu'après avoir nettement précisé que le débiteur n'est point le propriétaire mais bien une personne différente, il soit permis au créancier de satisfaire ses créances — même, comme il convient de le souligner, pour les créances non munies d'un privilège — sur un bien appartenant à une personne diverse.

Même s'il fallait s'incliner devant le fait que cette Convention a été approuvée, on ne peut pas ne pas se rendre compte de ce qu'en y réglementant de manière spécifique les droits des tiers créanciers dans l'hypothèse d'un navire affrété *by demise*, il n'est pas possible de faire abstraction de la nécessité de fournir à ces tiers un moyen sûr pour vérifier si, oui ou non, ils se trouvent dans une telle hypothèse.

Cette nécessité était — et est — d'autant plus évidente lorsqu'on considère que le fait de l'affrètement *by demise* a été pris comme base de l'interdiction, pour le créancier, de saisir un *sistership* appartenant au même propriétaire.

Qu'il soit permis de rappeler ici les paroles que le Président de cette Commission a eu l'occasion de prononcer à cet égard, lors de la séance du 25 septembre 1951, à la Conférence de Naples :

«

Il se pose donc une question grave. Il y a un créancier d'un navire. Ce créancier ne peut pas saisir le navire qui a donné lieu à sa créance. Il attend qu'il arrive dans ce port un *sistership* du même propriétaire, mais lors de la saisie, le propriétaire dit : « Ah ! non ! La créance était une créance sur l'affréteur. Voici mon contrat d'affrètement; il y avait *demise*. » Qu'arrive-t-il alors ? Spécialement suivant la législation française, le seul fait qu'une saisie est révoquée parce qu'elle est injustifiée donne lieu tout de suite à des dommages-et-intérêts. Dès lors sera-t-il possible d'admettre la bonne foi du créancier ? Voilà pourquoi la délégation italienne avait proposé une solution tendant à donner satisfaction aux exigences de toutes les autres délégations et qui consistait à pouvoir opposer le *demise* aux tiers. Le tiers doit avoir connaissance du *demise*, de façon à empêcher au moins que, de mauvaise foi, lorsqu'on fait une saisie d'un *sistership*, le propriétaire saisi puisse montrer un contrat établissant que ce *sistership* était affrété en *demise* au moment où la créance est née. »

V

Etant donné ce qui précède, la Commission estime, à la majorité des voix, qu'il faudrait donner les réponses suivantes au questionnaire qui a été soumis aux différentes Associations nationales :

1. — *Question* : Y a-t-il lieu d'instaurer par une convention internationale un système dont le but est de porter à la connaissance des tiers, le fait qu'un navire n'est pas exploité par son propriétaire ?
Réponse : Oui.

2. — *Question* : Croyez-vous que l'on puisse utiliser pour la publicité envisagée au numéro 1 les registres d'immatriculation des navires et les lettres de mer ?
Réponse : Oui.

VI

Il n'est pas douteux que le projet préliminaire proposé par l'Association italienne de Droit maritime est susceptible d'améliorations. Par exemple, pour établir que la déclaration d'armateur est facultative et non obligatoire, et pour recommander, conformément à la proposition de l'Association de Droit maritime des Etats-Unis, qu'il soit tenu à bord un tableau, dans un lieu facilement accessible au public, indiquant le nom du propriétaire du navire et, si le navire est loué coque nue, le nom du *bare-boat charterer*.

Cet avant-projet peut donc faire dès maintenant l'objet d'une discussion au sein de la Conférence, où un Comité restreint pourrait être nommé pour l'élaboration d'un deuxième projet, meilleur et plus complet.

Giorgio BERLINGIERI

Vice-Président de l'Association italienne
de droit maritime

et

Président de la Commission Internationale.

PUBLICITE DE L'ARMATEUR

AVANT-PROJET DE CONVENTION INTERNATIONALE

présenté par le Président de la Commission Internationale

Art. 1. Celui qui désire exploiter un navire doit faire, au préalable une déclaration d'armateur au bureau maritime où le navire est immatriculé.

Art. 2. Lorsque l'exploitation n'est pas faite par le propriétaire et si l'armateur ne fait pas de déclaration d'armateur, celle-ci peut être faite par le propriétaire.

Art. 3. La déclaration d'armateur peut être faite sous acte privé signé devant notaire ou verbalement, mais dans ce dernier cas elle doit être reprise dans un procès-verbal rédigé par les autorités compétentes.

Art. 4. La déclaration d'armateur doit être inscrite dans le registre d'immatriculation du navire et annotée sur l'acte de francisation. Si le navire ne se trouve pas dans le port d'attache, le bureau maritime du port d'attache fait la transcription dans le registre d'immatriculation et envoie une communication télégraphique au bureau maritime ou au consulat du port où le navire se trouve ou vers lequel il se dirige pour que l'annotation nécessaire soit faite sur la lettre de mer.

Art. 5. Lorsque l'exploitation du navire n'est pas faite par le propriétaire la copie authentique du titre qui confère l'usage du navire doit être produite au moment de la déclaration.

Art. 6. La déclaration d'armateur doit contenir le nom, la filiation, la nationalité, le domicile ou la résidence de l'armateur et les éléments d'individualisation du navire.

Lorsque l'exploitation est faite par une personne autre que le propriétaire, la déclaration doit contenir le nom, la filiation, la nationalité, le domicile ou la résidence du propriétaire ainsi que l'indication du titre qui confère l'usage du navire.

Art. 7. Si aucune déclaration d'armateur n'est rendue publique dans les formes prévues, le propriétaire est présumé être armateur; les tiers intéressés sont toutefois admis à fournir la preuve contraire.

REGIME INTERNATIONAL DES NAVIRES DANS LES PORTS ETRANGERS

AVANT-PROJET DE CONVENTION INTERNATIONALE *présenté par le Président de la Commission Internationale*

Article premier

Dans la présente Convention, les mots suivants sont employés dans le sens précis indiqués ci-dessous :

a) *navire* signifie tout bâtiment de quelque type que ce soit, même d'Etat, y compris les embarcations en dotation à bord dudit bâtiment, pourvu que ce navire ne rentre pas dans la catégorie des navires de guerre selon les critères fixés au paragraphe 2 de l'article 8 de la Convention sur la haute mer du 29 avril 1958 ou qu'il ne s'agisse pas de navires affectés exclusivement, même temporairement, aux déplacements des Chefs d'Etat ou au transport d'une mission diplomatique se rendant au port appartenant à l'Etat auprès duquel cette mission est envisagée;

b) *port* signifie tout port(havre, baie, rade ou toute étendue d'eau (ayant accès à la mer), circonscrit par le territoire soumis à la souveraineté nationale d'un Etat contractant, équipé pour les opérations de chargement et de déchargement de personnes et marchandises, pour le ravitaillement et la réparation de navires ou pour certaines de ces opérations et habituellement fréquenté par des navires effectés au commerce avec l'étranger;

c) *Etat contractant* signifie un Etat dont la ratification ou l'adhésion à la Convention a pris effet et dont la dénonciation n'a pas pris effet.

Article 2

Tout navire, de par le fait même qu'il entre dans un port, est soumis dans la même mesure et sans exceptions, sauf celles dérivant d'accords internationaux particuliers, à la loi nationale de l'Etat auquel appartient le port et aux autorités nationales du dit port, notamment en ce qui concerne le régime douanier, les mesures sanitaires, le pilotage, le remorquage, le mouillage et tout autre service complémentaire, le chargement et le déchargement des marchandises et l'embarquement et le débarquement des passagers, le ravitaillement en eau, combustible et toute autre provision, les taxes et droits de port et les mesures de sûreté et de contrôle, y compris les visites à bord et le rapport du capitaine.

Article 3

Les navires forcés d'entrer dans un port pour y chercher refuge peuvent, sans violation du principe d'égalité de traitement, être exemptés des taxes et droits de port, ainsi que, s'ils n'effectuent pas d'opérations commerciales dans le dit port, des formalités et droits de douane. En général, les conditions de traitement ne doivent pas être de nature à paralyser par leur rigueur excessive l'exercice du droit de relâche forcée.

Article 4

Tout navire, de par le seul fait qu'il se trouve dans un port, est soumis à la juridiction pénale de l'Etat auquel appartient le dit port.

Les autorités de l'Etat auquel appartient le port ne doivent pas, sauf sur la requête et avec le consentement de l'autorité consulaire de l'Etat dont le navire bat le pavillon;

a) exercer une interférence quelconque sur ce qui se passe à bord du navire, sauf pour la préservation de l'ordre et de la tranquillité du port ou dans l'intérêt de la santé ou de la sécurité publique;

b) instituer des poursuites pénales à l'égard d'infractions commises à bord, sauf

1) si elles compromettent la tranquillité ou la sécurité du port ou s'il s'agit d'infractions tombant sous le coup de la loi de l'Etat auquel appartient le port et concernant la santé publique, l'immigration, la sécurité de la vie humaine en mer, les douanes ou toute autre matière analogue; ou

2) si elles ont été commises par des personnes autres que le capitaine ou les membres de l'équipage, ou commises au préjudice de ces personnes, ou bien par des ressortissants de l'Etat auquel appartient le port ou au préjudice des dits ressortissants; ou

3) si elles constituent des infractions graves....

Les faits commis à bord des navires dans un port, qui ne constituent que des infractions à la discipline et aux devoirs professionnels du marin, ne relèvent que de l'Etat du pavillon.

Article 5

Il est interdit d'accueillir à bord des personnes évadées d'un centre de détention ou qui font l'objet d'un mandat de capture.

Quiconque parvient à s'introduire, à l'insu du capitaine, à bord du navire se trouvant dans un port, peut-être expulsé dudit navire lorsqu'il y est trouvé et s'il est réclamé par l'autorité nationale du port, il doit être livré à la dite autorité.

Article 6

Les actes de l'état-civil relatifs aux personnes embarquées à bord du navire qui se trouve dans un port, sont rédigés dans les formes imposées par l'Etat auquel appartient le dit port et par le fonctionnaire compétent du dit Etat.

Le cas échéant, ce fonctionnaire doit être admis à bord aux fins indiquées à l'alinéa précédent.

Article 7

Les contrats, actes ou faits, stipulés à bord ou y ayant lieu, sont régis par la loi de l'Etat du pavillon toutes les fois où, s'ils avaient été conclus ou eu lieu à terre, ils auraient été soumis à la loi de l'Etat auquel appartient le port, sauf en cas de :

a) contrats conclus entre non ressortissants de l'Etat du pavillon ou entre ressortissants de l'Etat du pavillon entre lesquels l'application d'une loi déterminée aurait été stipulée;

b) contrats où est partie un ressortissant de l'Etat auquel appartient le port ou dont l'exécution doit commencer à s'accomplir sur le territoire du dit Etat.

Sont régis par la loi du pavillon les rapports entre l'équipage, le capitaine et l'armateur, y compris les questions relatives à la sécurité sociale et tous les différends s'y rapportant.

Les droits réels, les contrats ayant pour objet la propriété ou l'utilisation du navire, les hypothèques ou privilèges sur le navire, sont régis par la loi de l'Etat du pavillon sous réserve de l'application des Conventions internationales existantes.

Article 8

Les différends d'ordre civil ou commercial entre les personnes faisant partie du personnel du bord, ou entre elles et le capitaine, ou entre gens du bord de divers bâtiments battant le pavillon d'un même Etat dans le même port, à raison de rapports juridiques concernant exclusivement la navigation, ne sont pas de la compétence de l'autorité nationale du port, quelle que soit la nationalité de ces personnes.

Les différends d'ordre civil ou commercial entre les personnes ne faisant pas partie de l'équipage et le capitaine ou des membres de l'équipage sont jugés d'après les règles de compétence du droit commun.

Les contestations qui peuvent naître à l'occasion du règlement des frais et dépenses dans un port à la charge d'un navire étranger qui y est entré, que ce soit volontairement ou en relâche forcée, sont de la compétence de la loi de l'Etat auquel appartient le port.

Article 9

La saisie conservatoire et la saisie-exécution dans un port sont autorisées, dans les formes déterminées par la loi de procédure du lieu, par le juge de l'Etat auquel appartient le port, juge qui est également compétent pour connaître des demandes en dommages-intérêts.

Toute saisie et toutes mesures en résultant seront notifiées à l'autorité de l'Etat du pavillon.

Article 10

La responsabilité du chef d'abordage de navires dans un port est réglée par la loi nationale de ce port, sauf si les navires impliqués dans l'abordage battent le pavillon du même Etat, auquel cas il sera fait application de la loi nationale commune aux dits navires.

Article 11

Les fonctionnaires publics de l'Etat auquel appartient le port sont autorisés à monter à bord du navire se trouvant dans le dit port pour y procéder à toutes recherches ou enquêtes, significations, transmissions d'actes ou toutes procédures d'exécution conformément à la loi nationale du port.

Les officiers publics, officiers de l'Etat-civil, notaires et autres requis de procéder à des actes de leur ministère ou de leurs fonctions sur des navires étrangers se trouvant dans un port, sont tenus de prêter leur ministère dans la mesure où cette obligation existe pour eux d'après les lois, règles professionnelles et usages en vigueur, dans l'Etat auquel appartient le dit port.

Article 12

Toutes les fois où l'autorité nationale du port devra procéder à des visites, recherches, enquêtes ou perquisitions à bord du navire se trouvant dans ce port, pour faits survenus à ce bord, les autorités compétentes de l'Etat auquel appartient le port devront en informer immédiatement l'autorité consulaire de l'Etat dont le navire en question bat le pavillon. Cette autorité consulaire aura droit d'assister aux opérations susmentionnées et de faire verbaliser ses déclarations, sans que par là soit causé un retard à la procédure correspondante.

Article 13

L'admission de visiteurs à bord du navire se trouvant dans un port rentre dans le cadre des pouvoirs discrétionnaires du capitaine du dit navire, qui pourra soumettre la dite admission à certaines conditions que le visiteur sera tenu d'observer.

Le texte du présent article devra être affiché, sous une forme bien visible, dans les parties principales du navire auquel les visiteurs pourront avoir accès.

Article 14

Dans les cas prévus aux articles 3, 4, 5 et 10 de la présente Convention, le navire, même prêt à quitter le port, pourra être arrêté par l'autorité nationale du port compétent, pendant le temps nécessaire aux vérifications d'usage; dans les autres cas où la responsabilité du navire est apparente ou probable, le dit navire pourra obtenir l'occasion de quitter le port moyennant le versement d'une caution qui sera fixée par l'autorité nationale du port compétent, après avoir entendu l'autorité consulaire de l'Etat dont le dit navire bat le pavillon.

Est reconnu le droit à poursuite du navire qui aurait quitté le port pour se soustraire à l'application de la loi de l'Etat auquel appartient ce port, dans les cas prévus par la présente Convention ou par des accords internationaux, poursuite qui pourra être exercée dans les conditions fixées à l'article 23 de la Convention sur la haute mer du 29 avril 1958.

Article 15

Les navires exclusivement affectés à un service public civil ne peuvent pas faire l'objet de saisie, d'arrêt ou de détention par une mesure de justice quelconque ni par aucune procédure judiciaire « in rem ». Dans ce cas, l'Etat au service public duquel le navire se trouve, en est responsable.

Les navires exclusivement affectés par l'Etat aux transports postaux bénéficient des exceptions visées à l'alinéa précédent dans les ports entre lesquels ils ont l'obligation d'effectuer leur service.

Article 16

Les dispositions de la présente Convention ne portent pas atteintes aux Conventions ou autres accords internationaux en vigueur dans les rapports entre Etats parties à ces Conventions ou accords.

Giorgio BERLINGIERI,

Vice-Président de l'Association italienne
de Droit maritime,

Président de la Commission Internationale.

CONFERENCE OF RIJEKA

3

MINUTES

Sunday, 20th September 1959

INAUGURAL SESSION

Chairman : President Albert Lilar

The President opened the session and invited Mr. Vladislav Brajkovic to read a letter addressed by the President of the Federal People's Republic of Yugoslavia to the XXIVth Conference of the International Maritime Committee :

The President of the Republic

Milocer, 18th September 1959.

To the XXIVth Conference of the International Maritime Committee.

Not being able to attend your Conference personally, I wish to thank you for your invitation and to send in this message my cordial greetings to all participants of this Conference.

I am well acquainted with the work of your Committee, which, during the several decades of its existence, has reached great success in the development of international cooperation in the field of navigation and maritime law. Sea roads were the first ties binding together the Nations of the world; the importance of those ties grew with new technical achievements and with modern progress in ship building. Therefore today, with the spreading of the spirit of the indispensibility of peaceful active coexistence in international relations, one can only welcome further efforts to include more elements of equal and lively international cooperation into the field of shipping and maritime traffic.

The Peoples of Yugoslavia, who have been orientated for more than one thousand years towards the sea, pay special attention to maritime activity. Even though it was badly damaged and has greatly suffered in the Second World War, Yugoslavia was able to rebuild and develop further its merchant marine, which was almost completely destroyed; starting from the very bottom, our country has succeeded in bringing to a very high level its shipping industry, it has rebuilt its devastated ports and through them has opened attractive centers for international transit traffic.

It is therefore natural for the Peoples and Government of Yugoslavia to follow with great interest the work of your Committee, and to be happy that its 24th Conference is being held in Yugoslavia.

The new era, opened by the discovery of atomic energy, has now reached also the field of shipping and I am especially pleased to notice that the problem of nuclear propelled ships is on the agenda of the Rijeka Conference, in the aim of reducing the risks of sea travel and in accordance with the aspirations of whole humanity for security and further progress towards peace. I am convinced that your conference will fulfill its task concerning this and other problems, and that it will further contribute to the development of international cooperation in the field of shipping.

I wish your organisation many new successes in its work and I hope that all foreign participants of this Conference will enjoy their stay in our country.

TITO.

M. Peko Dapcevic, member of the Executive Council of the F.P.R. of Yugoslavia, Secretary for Transports and Communications :

Mesdames, Messieurs, Camarades,

Au nom du Conseil Exécutif de la R.F.P. de Yougoslavie, je salue la Conférence du Comité Maritime International en tant que manifestation importante de l'esprit de collaboration parmi les nations au sujet des problèmes importants de la coopération internationale, indispensable dans le monde d'aujourd'hui et de demain. Les relations assurées par le trafic de par sa fonction même, et particulièrement le trafic maritime qui relie les points les plus éloignés de la terre, sont un facteur d'extension et d'établissement de liens nouveaux et plus larges, contribuant au renforcement des relations économiques et autres entre les peuples et les pays.

L'organisation mondiale CMI, dirigée par l'honorable M. Lilar, vice-président du Gouvernement de Belgique, a beaucoup contribué à cela. Je salue les représentants et les membres du Comité que nous avons l'honneur et le plaisir d'accueillir dans notre pays, en estimant hautement les efforts et les résultats obtenus grâce à votre activité, ainsi que ceux que vous obtiendrez à l'avenir. Votre organisation a atteint ces résultats parce qu'elle a pris une voie correcte et parce qu'elle a contribué avec succès, par ses actions, à la concordance des intérêts limités en unifiant le droit pour lequel des conditions spécifiques et les intérêts de tous les pays sur un plan plus large, existaient. Tel est le droit maritime qui a depuis toujours reflété les aspirations et les intérêts communs de nombreux peuples et qui gouverne une des activités les plus importantes de l'état moderne — le transport maritime — et qui a, par son développement et sa codification,

contribué à l'échange général des marchandises et oriente toute son activité vers l'élargissement général social de cette importante branche économique.

Cette tendance devrait être développée universellement pour que la codification du droit maritime soit un stimulant et une aide constante à l'avancement des pays sous-développés, afin qu'ils trouvent la place qui leur appartient dans le progrès général, mais sans toucher à leur indépendance nationale et pour qu'elle élabore des solutions qui soient profitables à tous les pays. En jouant le rôle d'un intermédiaire entre les peuples, le droit maritime peut contribuer considérablement dans ce sens. C'est la seule voie bonne et utile qui facilitera la libération de nombreuses forces nouvelles et le renforcement de chaque pays et de l'économie maritime dans le monde en général. Nous nous laisserons guider par ses tendances à l'avenir comme dans le passé et ferons tout notre possible pour que notre contribution dans ce sens soit de plus en plus grande et désintéressée, dans les limites de nos possibilités.

Cet esprit anime les marins et l'économie maritime de la Yougoslavie et de ses peuples qui l'ont prouvé dans leur lutte pour la liberté et pendant la période de la reconstruction socialiste du pays quand ils ont, par d'énormes sacrifices et par les propres moyens de leur communauté, relevé et agrandi la marine de leur pays presque complètement détruite pendant la guerre. Ils le prouvent aujourd'hui encore en s'efforçant de développer, doubler et même tripler cette marine sur une base encore plus moderne afin de transformer notre pays en une grande puissance maritime en utilisant la position maritime favorable de la Yougoslavie. Ceci sera avantageux non seulement pour notre pays, mais aussi pour beaucoup d'autres pays et surtout pour ceux dont l'économie est orientée vers les routes qui, en traversant notre mer, mènent de l'intérieur de l'Europe à tous les coins du monde par les chemins les plus économiques. De cette façon la Yougoslavie fait une contribution de plus à la coexistence pacifique active, une des bases de sa politique étrangère. La Yougoslavie et ses représentants à cette conférence feront tout leur possible pour que nos efforts vers le développement de l'économie maritime et l'utilisation de la technique moderne y compris l'énergie nucléaire — dont la place doit être assurée pour des fins pacifiques et le bien-être de l'homme — portent leurs fruits. Notre pays, qui est dans son plein développement économique, s'intéresse vivement au progrès rapide de l'économie maritime et les efforts qu'elle fait chaque année dans ce but donnent des résultats sérieux. Si cette Conférence et les manifestations de ce genre peuvent faciliter ces efforts, le mérite en reviendra à nous tous.

Vos travaux sont indubitablement intéressants pour notre pays, auquel vous avez fait l'honneur de le choisir pour votre Conférence. En tant que membre du Gouvernement yougoslave responsable pour

le transport, j'estime hautement vos travaux et vous souhaite de tout mon cœur de passer un bon séjour dans notre pays et de conclure vos travaux avec succès.

Mr. Edo Jardas, President of the People's Committee of the District of Rijeka :

The city of Rijeka is greatly honoured to have been chosen as the seat of this CMI Conference. It thus joins the ranks of those other large cities and ports where Conferences of the International Maritime Committee have been held before. I believe that there are good reasons for such a choice.

Rijeka, situated as it is, on this southern coast of Europe, is not only Yugoslavia's most natural outlet for her exports and imports, but also the terminal point of two big trans-European highways : the classical « Jantar road » and the parallel Danube-Sava-Kupa waterways leading from the middle and lower Danubian basin. This makes it a communication point of international importance.

Rijeka suffered badly in the Second World War and its docks were completely destroyed. Our country had to make big efforts in its post-war reconstruction programme to ensure full capacity to Rijeka's natural position. A corresponding organization was required in order to enable this town not only to assume its functions as the biggest Yugoslav sea-port, but also to serve, as soon as possible, as a transit center for other countries trading through it.

The quick reconstruction and postwar development of Rijeka are evidence of the strength and progress of new Yugoslavia. This has also rendered possible the further development of this ancient port, geographically so conveniently situated, to meet the conditions of modern international exchange of goods.

On the other hand, this geographical position was also the cause of Rijeka's difficult periods, when the babble of trade and the voices of merchants and seamen were drowned by the clashing of arms and the sounds of guns in many fierce battles Rijeka had to go through up until very recently.

And many significant events, even decisive events for the development of trade in this port and on the continent itself, have taken place here. It is sufficient to mention the famous charter of Charles the Sixth, granted in 1717, regarding the right of free navigation. In this charter, the idea of freedom of the sea, based on the works of Grotius and his followers, was for the first time applied to practical life.

According to the important rule of the famous charter granted to Rijeka by Charles the VIth in 1717, that in navigation and trade

the law applies equally to foreigners and to natives, Rijeka, which had then already a long commercial and maritime tradition, received at the beginning of the XVIII century, the status of free city. Thus Rijeka obtained a basis for its future economical and political orientation, under the existing mercantile conditions for attraction of capital. This was true not only of surrounding regions, but also of far-away countries in South-Eastern Europe, which considered Rijeka convenient for successful investments. This fact started the construction of big warehouses, shipyards, industries and roads — the famous Caroline road —. Also enterprises for trade with overseas countries were founded, among which the well-known «Chartered Eastern Company», whose task was to maintain commerce with Turkey and other countries of the Near and Middle East.

Investments from all over Europe found their way to the free port of Rijeka. The part played by Belgian capital is of special interest, as it was used in 1750 for the establishment of one of the biggest sugar industries in Europe at that time. This comprised an important share of the economical life of Rijeka until the beginning of the 19th Century. On account of that industry, Rijeka's prosperous 18th Century when levers of many European trades industries were in the hands of businessmen of this city, received the name of the «sweet» period of Rijeka's economy.

It seems to me that the best way in which to greet this solemn gathering of eminent representatives of this meritorious International Organization for Maritime Law, whose seat is in the sister city of Antwerp, would be to repeat what was written down in 1770 by Belgian tradesmen, namely that Rijeka «par sa situation semble être tout exprès créé pour former une considérable ville de commerce.»

That prophecy has been realized. Rijeka has become an important center of economic activity, especially maritime activity and today it represents most explicitly Socialist Yugoslavia in all branches of that field. It was thus natural for such Rijeka, to establish through its lawyers quite early relations with the Comité Maritime International. As a matter of fact, those relations were started in 1904, that is immediately after the founding of the CMI. In new Yugoslavia this cooperation received its full sway — and the best proof of that cooperation is this conference.

In conclusion, as representative of the city of Rijeka, I am very happy and honoured to wish that the CMI Conference reaches its full success, for the success of this conference will also mean the success of Rijeka, which openheartedly welcomes all delegates and their escorts and hopes that besides successfully completing their serious work they will at the same time find time to enjoy the enchanting beauties of our Adriatic sea and its lush littoral.

Mr. Vladislav Brajkovic, President of the Yugoslav Maritime Law Association :

Mon Président, Mesdames, Messieurs, mes Camarades !

Je suis profondément sensible à l'honneur qui me revient d'exprimer à cette Assemblée les sentiments de fierté de l'Association Yougoslave de Droit Maritime d'accueillir une Conférence d'élite comme celle-ci et de formuler les paroles de bienvenue au nom de tous ses membres. Je le fais dans notre langue en deux mots, mais qui en disent plus que tout : Dobro dosli : — Soyez les bienvenus !

Soyez les bienvenus dans cette ville, dont la fortune et l'histoire sont étroitement liées à la vie maritime et au trafic international dont l'importance dès le XVI^e siècle est hautement documentée par la disposition significative du vieux Statut de cette cité, à savoir qu'une même loi doit être observée dans les rapports de commerce et de marine et entre nationaux et entre étrangers — « Et in causis mercationum et causis marinariae... idem jus... observetur... tam civium quam forensium ». C'est sous la devise de ce principe que se tient cette Conférence.

En optant pour Rijeka comme cadre de sa XXIV^e Conférence, le Comité Maritime International a, pourrais-je affirmer, apprécié la vieille tradition maritime de nos peuples, car le fait que cette tradition n'a pu trouver, après le XV^e siècle par suite d'un concours fâcheux des causes historiques, son expression sous la forme d'une indépendance politique, — à une exception près, celle de la République Ragusaine, — n'a jamais su porter un coup fatal à la vie maritime des peuples yougoslaves.

Faudrait-il plus que de mentionner l'existence de la plus ancienne confrérie des Marins de Kotor dès le IX^e siècle, ou la compétition des Ragusains avec les Vénitiens et les Génois, voire même au XVII^e siècle avec les Français lorsque les Provençaux se plaignaient à Sartine, lui demandant de faire cesser les effets de cette concurrence. Nous n'allons pas nous faire séduire par la légende de notre participation aux découvertes du Nouveau Monde, mais nous tenons à souligner la protection prêtée par les rois d'Angleterre et Cromwell à nos gens de mer et la provenance regusoise d'« argosy » dans la sublime langue de Shakespeare. Ce qui n'empêche pas que nous trouvons dans la flotte de Charles-Quint deux amiraux de Dubrovnik, qui à la même époque atteignait son zénith par sa marine marchande et occupait, après l'Espagne et la Hollande, la troisième place. En ajoutant que le premier amiral et fondateur de la flotte russe de la Baltique était de Perast, glorieuse ville maritime du Golfe de Kotor, à laquelle le Tsar Pierre le Grand confia la formation de ses boïars pour y apprendre l'art de la navigation — nous croyons avoir donné du moins une idée de cette histoire de plusieurs siècles d'expérience et de qualités mariti-

mes, qui a trouvé sa justification finale dans l'indépendance nationale de cette nation de navigateurs, qui depuis les temps les plus reculés devait toute son existence à la mer et formulait des coutumes et des règles issues des conditions de vie et de vocation, formant ainsi, à l'instar des autres, un riche patrimoine, qui la met à même d'assumer le rôle et l'honneur de réunir ici en ce moment solennel les représentants des plus nobles traditions maritimes du monde entier.

La conception de l'unité du droit maritime s'est fait de tous temps sentir sur ce littoral et les préjugés qui ont la tendance de transformer les sentiments régionaux en coutumes spéciales, n'y ont point réussi à prendre le dessus. Le développement des institutions de droit maritime y suivait l'évolution générale à partir des époques classiques de la civilisation méditerranéenne jusqu'à nos jours. La Yougoslavie prédestinée par sa situation géographique à recevoir le contact des peuples et consciente du fait que la cause initiale déterminante de l'unification se trouve dans la nature même des choses et dans ce caractère universel qui est le trait primordial de la navigation maritime, suit, — de concert avec les autres nations, — et à côté de tous ses efforts de redressement et de réédification économique et sociale, sur le plan juridique toutes les tendances d'unification en général et de celle du droit maritime en particulier.

Aujourd'hui c'est à travers le spectre de la teneur des Conventions de Bruxelles pour l'unification du droit maritime qu'il nous faut considérer l'attitude de la Yougoslavie envers les efforts d'unification menés par le Comité Maritime International.

Notons tout d'abord que la Yougoslavie a signé toutes les conventions sauf une, celle de 1957 concernant les passagers clandestins.

La Convention en matière d'Abordage et celle en matière d'Assistance et de Sauvetage maritimes de 1910 avaient été signées et ratifiées dès 1913 par l'Autriche-Hongrie; leurs dispositions avaient été même introduites dans le droit interne dès 1912. La Yougoslavie y adhéra, cependant, de son côté aussi, en 1931. Il est intéressant de noter que dans la loi mentionnée de 1912 ne figure pas l'Art. 14, qui précisément est un des problèmes qui occuperont notre Conférence — et d'après lequel « la Convention est sans application aux navires de guerre et aux navires d'Etat exclusivement affectés à un service public », — ce qui signifie que les règles de la Convention s'appliquent dans notre droit interne à tous les navires, quel que soit leur caractère juridique.

La Convention de 1924 concernant la Limitation de la Responsabilité des Propriétaires de Navires de Mer n'a pas été ratifiée. Elle a été cependant, comme on le sait, remplacée par la Convention de 1957, dont la ratification fait encore l'objet d'examen de notre Gouvernement et nous pouvons envisager avec confiance sa ratification, d'autant plus que dans notre droit interne est toujours en vigueur le système de

la limitation par abandon du navire, qui est moins approprié et ne va pas d'accord avec les principes du droit de gestion maritime moderne.

En ce qui concerne la Convention en matière de Connaissance, nous avons le plaisir de porter à la connaissance de cette Assemblée qu'elle a été ratifiée par la Yougoslavie cette année et que ses principes ont été adoptés entièrement par la Loi yougoslave sur les Contrats d'Utilisation des Navires de Mer du 13 juin 1959, qui va entrer en vigueur le 24 de ce mois. La loi yougoslave a même étendu la portée des dispositions de cette Convention en appliquant les règles impératives sur la responsabilité de la Convention à toute catégorie de transport de marchandises, indépendamment du fait qu'il soit constaté par un connaissance ou par un document similaire, du fait qu'il s'agisse de cargaisons commerciales ordinaires et même qu'il s'agisse du cabotage national.

Les dispositions de la Convention de 1926 relative aux Privilèges et Hypothèques Maritimes, quoique non ratifiée, sont en vigueur dans le droit yougoslave par le fait d'avoir été introduites dans le droit interne par une Ordonnance-Loi de 1939.

Le droit yougoslave ne reconnaît aucun titre d'immunité concernant les actions en justice et la procédure, et par conséquent les saisies conservatoires, aux navires d'Etat ou autres navires publics s'ils ne sont pas affectés à un service public, autrement dit s'ils font des actes non-gouvernementaux; par conséquent le droit yougoslave est d'accord avec les principes de la Convention concernant les Immunités des Navires d'Etat.

Des Conventions de 1952 la Yougoslavie a ratifié les deux Conventions relatives à la Compétence en matière d'Abordage, c'est-à-dire celle relative à la compétence Civile et celle relative à la compétence Pénale. Son droit interne est conforme aux dispositions de ces deux Conventions.

La Convention sur la Saisie Conservatoire des Navires de Mer n'a pas été ratifiée, quoique le problème qui en constitue le sujet ne soit rien moins important pour la Yougoslavie que pour les autres pays qui ne l'ont pas ratifiée non plus. En effet, la législation yougoslave ne connaît pas, non plus, d'exceptions pour les créances maritimes en ce qui concerne la saisie conservatoire.

Le fait que la Yougoslavie n'a pas signé la Convention sur les Passagers Clandestins ne doit pas faire conclure qu'elle n'apprécie pas la portée de ce problème, mais plutôt qu'elle n'est pas tout à fait d'accord avec certaines solutions proposées.

Pour achever cet aperçu sur l'attitude de la Yougoslavie vers l'œuvre d'unification, — résultat des instruments de Bruxelles, — nous ajouterons que la Yougoslavie a déjà adopté les principes du Projet de Convention en matière de Transport des Passagers en Mer de 1957,

en les introduisant dans la nouvelle Loi de cette année — mentionnée plus haut — sur les Contrats d'Utilisation des Navires de Mer. En adoptant ces principes avant même que le Projet ne fût consacré par la Conférence Diplomatique, la Yougoslavie a fait la meilleure preuve de ses tendances d'unification, celles-ci reflétant les exigences de la réalité et du progrès.

Le fait que cette nouvelle Loi yougoslave entre en vigueur dans quatre jours, c'est-à-dire en pleine activité de cette Conférence, n'est pas dû au hasard. En effet, la Yougoslavie a sciemment fait coïncider cet événement — si important dans l'élaboration de son nouveau droit maritime — avec cette grande manifestation internationale, voulant ainsi accentuer d'une manière significative le cas qu'elle fait de l'œuvre du Comité Maritime International et de son inlassable et brillante activité pour atteindre l'unification du droit maritime, un des chaînons substantiels pour l'intensification des échanges et la consolidation des rapports internationaux — éléments de la coexistence active des peuples.

C'est avec une foi inébranlable en l'efficacité de ces moyens que l'Association Yougoslave de Droit Maritime, qui rassemble les institutions et les entreprises maritimes du pays préoccupées de faire œuvre de progrès et de former l'opinion des intéressés dans les questions de droit et de rapports maritimes, se fait le protagoniste de l'idée d'établir un code unique sur toutes les matières de droit maritime en harmonie avec l'œuvre du Comité Maritime International.

En ce moment solennel qui voit inaugurer une Conférence du Comité Maritime International de la plus haute portée en ce qu'elle va entamer parmi d'autres un problème d'une envergure exceptionnelle et d'une importance indubitable, qui préoccupe aujourd'hui toute l'humanité, celui des risques atomiques, qui demande à être examiné avec la plus grande précaution sans que le progrès de l'humanité soit entravé, — l'Association Yougoslave de Droit Maritime apprécie avec une légitime satisfaction l'honneur que le Comité Maritime International lui a fait en choisissant Rijeka comme lieu de sa XXIV^e Conférence. Avec ces sentiments je forme, au nom de l'Association Yougoslave, les vœux les plus fervents de succès pour la Conférence en souhaitant qu'elle rencontre le fécond apport de ses éminents participants et obtienne des résultats qui marqueront de nouvelles victoires du Comité Maritime International.

The President :

La XXIV^{ème} Conférence Internationale de Droit Maritime se présente dans des conditions particulièrement favorables. Le Chef de l'Etat Yougoslave vient de nous adresser un message dont l'élévation de pensée et la confiance dans les travaux du Comité Maritime International, constituent pour nous le plus précieux des encouragements.

J'exprime au Président Tito les remerciements de tous nos participants et vous propose de lui adresser en remerciement de son message un télégramme de gratitude (applaudissements).

Je remercie également les nombreuses autorités qui accueillent notre Conférence. Qu'il me soit permis de citer parmi elles Monsieur Peko Dapèvcic, membre du conseil exécutif fédéral ainsi que Monsieur Edo Jardas, Président du Comité du Peuple du District de Rijeka qui, avec tant d'autres hautes personnalités, honorent de leur présence notre séance inaugurale.

Notre gratitude particulière va à l'Association Yougoslave de Droit Maritime, à son Président Vladislav Brajkovic et à ses collaborateurs (applaudissements). En 1951 nous avons accueilli avec joie la renaissance de l'Association Yougoslave de Droit Maritime groupant des personnalités appartenant aux affaires et au droit maritime de ce pays. Depuis cette date l'Association et son Président ont déployé une activité constante. Intervenant à nos travaux avec autorité, ses délégués ont suscité des projets et des idées nouvelles tels que l'élaboration d'une convention relative au statut des navires dans les ports étrangers et à l'extension de la convention sur l'assistance concernant des navires d'Etat. Une vaste encyclopédie du droit maritime sous la direction du Président Brajkovic est en cours d'élaboration et sera bientôt traduite en plusieurs langues. Un bulletin de droit maritime est publié; l'ancienne tradition maritime des régions de l'Adriatique est plus que jamais en honneur. La contribution de l'Association Yougoslave de Droit Maritime a contribué brillamment à la réalisation des objectifs de notre Comité Maritime International.

Aussi, est-ce avec une entière confiance que le Comité a confié à l'Association Yougoslave le périlleux honneur d'organiser sa 24ème Conférence Internationale. Il sait tous les efforts qui ont été dès à présent déployés pour cette organisation. L'affluence des délégations est une première récompense pour ses efforts. Elle consacre en même temps l'intérêt des sujets choisis pour nos travaux et l'attrait dans tous nos pays de l'hospitalité yougoslave.

Diverses grandes organisations internationales ont tenu à suivre les travaux de Rijeka et leur ont marqué un intérêt tout particulier : l'International Law Association; l'Institut International pour l'Unification du Droit privé; l'O.E.C.E.; l'Euratom; l'Agence Internationale pour l'Energie Atomique; la Chambre de Commerce Internationale; la Baltic and International Maritime Conference; le Bureau International du Travail. La Conférence de Rijeka aborde ses travaux sous les meilleurs auspices.

Il est de tradition qu'à chacune de nos Conférences — celle-ci est la 24ème depuis 1897 et la 5ème depuis la fin de la dernière guerre —

le Président rend compte des travaux accomplis depuis la Conférence précédente, fasse le point des questions à débattre et trace le programme des travaux à venir.

Nos Conférences ne sont pas des congrès; nous ne sommes pas ici des particuliers qui échangent des idées sur des sujets de nature scientifique ou professionnelle propres à les intéresser. Nous ne favorisons pas les intérêts d'une profession ou d'une branche de l'activité maritime; les marchands trouvent chez nous la même audience que les armateurs.

Nous sommes un groupe de 24 Associations Nationales, qui traduisent, chacune dans sa sphère, ce que sentent et veulent 24 nations maritimes les plus importantes. Elles sont composées d'experts dans les divers domaines maritimes. Elles s'expriment à la tribune du C.M.I. par la voix de délégués, qui engagent leurs mandants.

Nous avons un but précis, à la fois mesuré et ambitieux : contribuer à l'uniformité du Droit, en particulier du Droit International privé en toutes matières qui relèvent de l'industrie des hommes en relation avec la mer.

La technique choisie et mise au point par le Comité Maritime International est à la fois la plus ardue et la plus efficace en cas de réussite : c'est celle de l'élaboration de textes de projets de Conventions Internationales destinées à être sanctionnées, au niveau diplomatique, par la Conférence Diplomatique du Droit Maritime de Bruxelles.

Elle nous a permis depuis notre Assemblée de Madrid de 1955 de présenter à la Conférence Diplomatique de Droit Maritime de Bruxelles 1957 les projets relatifs à la limitation de la responsabilité des propriétaires de navires, au statut des passagers clandestins et à la responsabilité des transporteurs maritimes à l'égard des passagers.

Les deux premiers ont été consacrés par la Conférence Diplomatique.

En particulier la Convention nouvelle sur la limitation de la responsabilité, destinée à remplacer celle de 1924, a réuni un nombre impressionnant de signatures qui laissent augurer d'un succès dont la Convention ancienne a été privée.

Le fossé entre les conceptions anglo-saxonnes et continentales a été comblé; les obstacles d'ordre monétaire ont été surmontés; les anciennes limites ont été relevées de manière à satisfaire l'équité et les légitimes intérêts des victimes des catastrophes maritimes.

L'adoption d'un statut uniforme réglant le sort des passagers clandestins ainsi que la responsabilité des armements a été obtenue sans difficulté. Là aussi la Conférence Diplomatique, adoptant la position du Comité, a fait œuvre de justice et d'humanité.

Le problème relatif à la responsabilité envers les passagers n'a pu trouver une solution finale. Certaines divergences de vues qu'on a

essayé vainement de réduire au cours de plusieurs décades se sont ranimées à l'occasion des débats; la Conférence a dû ajourner sa décision finale.

Dans l'ensemble l'apport de la Conférence de 1957 à l'uniformité du Droit Maritime a été considérable.

Qu'il me soit permis, à cette occasion, d'insister sur la rapidité avec laquelle la Conférence Diplomatique de Droit Maritime de Bruxelles a pu résoudre des problèmes de grande complexité et de souhaiter, conformément au vœu émis par les 47 nations qui y étaient représentées en 1957 que les nouveaux projets élaborés par le Comité Maritime International puissent lui être soumis à l'avenir d'une manière continue.

Aujourd'hui nous abordons l'étude de nouvelles matières.

Si nous le faisons avec confiance, c'est que nous avons le sentiment que les travaux préparatoires effectués au niveau des associations, des commissions internationales et des organes exécutifs du Comité sont suffisamment avancés pour qu'il y ait une chance raisonnable de voir un texte positif, ralliant la grande majorité des associations, sortir d'une conférence générale.

Il nous a paru que nos travaux relatifs à la responsabilité des exploitants de navires mus par énergie nucléaire offraient cette chance. Le Bureau Permanent dès lors a décidé de mettre ce sujet à l'étude; sujet passionnant, nouveau, bouleversant les théories classiques, faisant appel aux facultés d'imagination de chacun dans le cadre des données scientifiques dûment éprouvées tant dans le domaine technique que celui des assurances. Le « Savannah » a été lancé. Premier bâtiment nucléaire conçu à des fins commerciales, il va bientôt sillonner les mers, visiter nos ports. D'autres viendront le rejoindre dans une course pacifique. Le temps est proche où l'énergie nucléaire se trouvera à portée des entreprises d'armement maritime. Une telle révolution dans les faits appelle nécessairement une évolution pareille dans le Droit.

Il est dans la tradition du C.M.I. de s'y consacrer. Il y a été encouragé par l'appel insistant des départements compétents des gouvernements de Grande Bretagne et des Etats Unis d'Amérique. Les travaux d'une commission internationale ont conduit à la rédaction d'un rapport et d'un avant-projet qui formeront la base de nos discussions.

En voici les idées directrices :

1. protection du public;
2. possibilité d'exploitation des navires nucléaires par des intérêts privés sur une base commerciale;
3. protection des navires traditionnels;
4. nécessité d'une loi universelle.

Ces projets, malgré leur caractère provisoire, ont déjà suscité un mouvement d'intérêt général.

Nous avons été consultés par les plus hautes instances internationales; nos délégués ont exprimé nos vues auprès de l'Agence Internationale de l'Energie Atomique de Vienne, organe de l'U.N.O.; l'Euratom a fait appel à leur collaboration. L'O.E.C.E. par ailleurs nous a consultés au sujet des problèmes relatifs au transport par mer de matières fissiles. A son invitation, une commission internationale de notre Comité a fait un rapport et rédigé un certain nombre de dispositions destinées à s'insérer dans une convention générale relative à la responsabilité des exploitants de réacteurs terrestres.

Indépendamment de ces deux matières clefs, d'autres sujets ont été étudiés qui seront discutés au cours de la Conférence de Rijeka : revision du champ d'application de la Convention sur les connaissances, extension de la convention sur le sauvetage et l'assistance aux navires d'Etat, le statut des navires dans les ports étrangers, la publicité des affrètements, les clauses marginales et les lettres de garantie; tous problèmes préoccupant les milieux maritimes et que nous nous efforçons de résoudre.

Depuis notre réunion de Madrid, nous avons perdu le plus brillant, l'un des plus écoutés parmi nous : le doyen Georges Ripert.

Sa « présence » était telle que nous parvenons difficilement à admettre qu'il n'est pas des nôtres aujourd'hui.

En fait, nous sentons qu'il est toujours là. Je le vois comme s'il était assis au premier rang de cette assemblée. Je crois entendre sa voix qui était claire, nette, mais vibrante, j'entends son discours dépouillé mais fort, sans réplique. Je le vois monter à la tribune, menu, discret, silhouette presque effacée, et la quitter imperceptiblement, laissant derrière lui l'écho d'une pensée noble empreinte d'humanité, pénétrée d'un sens moral qui de nos jours a été rarement égalé.

Il serait banal de dire que le vide qu'il laisse pourra être difficilement comblé. Je préfère, pour ma part, croire à sa survivance et à sa présence ininterrompue parmi nous.

Au nom du Comité Maritime International je réitère aux membres de sa famille et à l'Association française de Droit Maritime l'expression de notre douloureuse émotion.

L'an dernier Monsieur Charles Burlingham fêtait son centenaire. Il était le doyen en âge de notre Comité et certes un des plus anciens membres. Il y a quelques jours nous parvint l'annonce de son décès. Je n'ai pas eu le privilège de le connaître. Son grand âge l'empêchait d'effectuer les longs voyages que nécessitent nos fréquentes réunions en Europe, mais j'ai toujours entendu parler de lui, autant par nos anciens que par nos amis américains, avec une considération affectueuse.

Il était considéré comme le symbole des liens unissant nos Associations du Continent à la grande Association sœur de l'Amérique du Nord.

Depuis pas mal d'années, ceux qu'il déléguait à sa place pour prendre part aux délibérations de notre Bureau Permanent étaient porteurs de la même volonté de coopération que la sienne et nous voyons en eux, dans les Keating, Houston, Hecht, Boal, que j'ai le plaisir de saluer ici, ceux qui assurent ainsi la continuité des liens qu'il avait noués. A l'Association de Droit Maritime des Etats Unis d'Amérique j'adresse mes plus vives condoléances.

Last year Mr. Charles Burlingham celebrated his Centenary.

He was the great old man of the Committee and certainly one of its earlier members.

Some days ago we received the news of his passing away.

I have not had the privilege of having met him; his great age did not allow him to make the long journeys to come to attend our frequent meetings in Europe, but I have always heard from the earlier members as well as from our american friends how much affectionate appreciation they had for him.

He was considered as the symbol of the bonds which connect our European Associations with the great Association of North America.

Since many years those who came in his place to take part in the deliberations of our Bureau Permanent were inspired by the same will to cooperate as was his own. And we see in them the Keating, Houston, Hecht and Boal, whom I have the pleasure to congratulate here, the men who secure the continuity of the ties which he had fastened up.

To the American Association of Maritime Law I pray to accept my heart-felt sympathy.

Nous avons également à déplorer la perte de Monsieur le Bâtonnier Bonan, Président de la jeune Association Marocaine. Les circonstances n'ont pas permis qu'il prît à nos travaux la part active qu'il aurait souhaitée. Cette absence de contact personnel nous fait regretter d'autant plus la perte de quelqu'un que nous aurions aimé voir fréquemment parmi nous.

La liste hélas n'est pas close. Parmi les membres titulaires Mr. N.E. Kihlbom, membre éminent de l'Association Suédoise nous a été enlevé il y a quelque temps seulement.

Il n'a pas ménagé ses forces au profit du Comité. Je le verrai toujours comme un lutteur parlant d'une voix rauque comme s'il voulait arracher l'adhésion de son interlocuteur, très averti des problèmes de l'assurance maritime dont il était un technicien magistral. La perte éprouvée par l'Association Suédoise est la nôtre et je tiens à

assurer au Président de cette Association, Monsieur Pineus, nos sentiments de profondes condoléances.

Le comte de Ruisenada nous a été enlevé. Il avait contribué au succès de la Conférence organisée par l'Association Espagnole et nous avait reçus dans son domaine au cours d'une soirée qui restera gravée dans nos mémoires.

Sir Mac Kinnon de Grande Bretagne, Hawley Chester, membre de l'Association des Etats Unis qui avait pris une part marquée dans la réforme du Code de l'avarie commune, Monsieur Cosulich et Monsieur Giulio Ingianni de l'Association italienne ainsi que Monsieur Tybgerg de l'Association danoise sont décédés. Nous nous souviendrons de leurs mérites.

D'autres vides se sont produits.

Je cite :

Monsieur Edvin Alten, ancien Président de l'Association norvégienne, Monsieur Algot Bagge, ancien Président de l'Association suédoise, Monsieur Offerhaus, ancien Président de l'Association néerlandaise nous ont fait connaître leur démission.

Parler d'eux, c'est faire l'histoire du Comité Maritime International depuis sa fondation. Ils étaient véritablement des piliers de l'institution et à maintes reprises déjà j'ai eu l'occasion de vanter leurs exceptionnels mérites.

Je saisis cette occasion pour reconnaître publiquement l'immense dette que nous, qui leur succédons, avons contracté envers eux.

Alten et Bagge : deux noms de grands navigateurs, de grands pilotes qui ont pendant un demi siècle, avec leur ami Louis Franck, tracé la voie au Comité Maritime International.

De loin je leur dis notre gratitude et notre admiration pour leur œuvre.

Quant au Professeur Offerhaus, moins ancien qu'eux, il nous a rendu d'immenses services : c'est à lui que nous devons en grande partie la réforme du code de l'avarie commune qui s'est accomplie sous sa présidence.

Parmi ceux qui nous ont quittés je cite également avec regret Monsieur le Professeur Stödter, ancien Président de l'Association allemande et membre de notre Bureau Permanent ainsi que Monsieur Edmunds, membre du Bureau Permanent, qui s'est signalé au cours des travaux préparatoires à la réforme de l'avarie commune.

Et voici le moment de saluer la venue de ceux qui ont pris la relève.

Leur nombre est impressionnant et témoigne de la vitalité de nos associations et de notre Comité.

Beaucoup d'entre eux sont des familiers et ont pris avec autorité la place de leurs prédécesseurs.

L'accueil que nous leurs avons déjà fait leur aura appris à quel point nous apprécions leur collaboration.

Au Bureau Permanent nous avons ainsi pu accueillir avec sympathie : M.M. Braekhus, Pineus, Asser, Dettmers, Reading, Hermida, de Grandmaison, Boal, Matysik, Göknil.

Les Associations Nationales elles aussi augmentent en nombre. Depuis Madrid nous avons accueilli l'Association polonaise et l'Association turque dont nous saluons ici les Présidents Messieurs Matysik et Göknil.

D'autres sont en voie de constitution et le temps ne sera pas loin où toutes les grandes nations maritimes se trouveront groupées sous la bannière du Comité Maritime International.

Ce développement crée des devoirs nouveaux. Nous aurons peut-être à reconsidérer notre position dans le concert des grandes institutions internationales et supranationales. En attendant nous avons pensé que le moment était venu de nous affirmer d'une manière plus concrète et plus continue que ne le permettaient nos Conférences Internationales relativement espacées.

C'est dans cet ordre d'idées que le Bureau Permanent a décidé hier le principe d'une publication périodique rendant compte de la vie des Conventions Maritimes issues des travaux du Comité.

J'ai à vous faire part d'une dernière décision : celle d'accepter l'invitation de l'Association hellénique à tenir nos prochaines assises à Athènes dans le courant de l'année 1960 avec l'espoir que nos travaux entrepris ici pourront y être terminés et qu'une nouvelle session de la Conférence Diplomatique de Droit Maritime de Bruxelles pourra se réunir au début de 1961.

*
**

C'est le moment de constituer le bureau de la 24^{ème} Conférence. Par application de nos statuts je vous propose d'adjoindre aux membres du conseil de gestion qui sont d'office membres du bureau de la Conférence Monsieur Vladislav Brajkovic avec rang de Vice-Président et Monsieur Katicic avec rang de secrétaire général.

Je propose également que soient adjoints au bureau en qualité de secrétaire :

Messieurs : Kisic, Tambaca, Léo Van Varenbergh, Birch Reynardson.

Je forme le souhait que la Conférence de Rijeka soit désormais connue comme celle où a pris naissance la future Convention relative aux navires atomiques (applaudissements).

Monday, 21st September 1959

PLENARY SESSION

Chairman : Président Albert Lilar

ATOMIC RISKS

The President (translation): The agenda of our Conference mentioned to start our morning session with the problem of the atomic risks. Your Bureau Permanent met last Saturday night to specify the subject of our debates and after a long discussion between the delegates of all the Associations represented in the Bureau Permanent, it was decided to examine the problem of the nuclear vessels.

So this topic is on our agenda this morning.

We contemplated to start by asking the President of the Subcommittee which prepared the texts brought before you to give a survey of the topics by way of introduction to our debates.

Mr. Asser who presided over the Subcommittee has been willing to make that survey.

However, yesterday night a member of the Conference, Mr. Kruseman, informed me of his wish to formulate a preliminary question which might result in postponing the discussion.

I accepted Mr. Kruseman's request to introduce this preliminary question at the Assembly before starting our discussion.

As a consequence I will ask him to come to the platform and to put his preliminary question.

Mr. J.P. Kruseman, Netherlands : The question which the Chairman has graciously allowed me to put before this important meeting is : Is it or is it not premature to discuss today or tomorrow or the next day a special convention for reactor ships ? I may say that not only myself but the Dutch Delegation considers it definitely premature to discuss such a special convention. The reasons for that are mostly and primarily concerned with technical and with economic arguments, and I am going to try to put them as shortly as I can before you.

As regards the economics of the nuclear-fuelled ships, there are several most definite indications that the price of what is wrongly termed fuel — because it is not fuel in the normal sense of the word; it is fission material — may either remain at its present price or perhaps become more expensive. It seems that the veins of rich ore are more or less known now and what is to be found thereafter will probably be ore with a very small percentage of uranium. This might

tend at least to keep the price at its present level, which is far too high to enable it to compete with oil or coal in conventional propulsion units, for ships at least.

Apart from that, there is the so-called enriched fuel, which means that the percentage of fuel which can ensure a chain reaction is increased in percentage. The percentage which is normal in natural uranium is 0,7 %, and for enrichment it has to be increased to, say 1 ½ % or 2 % or even more. That is a very costly way of doing it. It can be done and it is being done on a large scale in the United States, but it is said that the price being charged is really below the economic basis. But if we would like to have a unit enriched fuel, purely on an economic basis, it would cost up to three times as much as the present price of enriched fuel in the United States. All this means that the fuel that is at present available for reactor ships is already very expensive and might perhaps be more expensive still in the near future.

It seems that the only possibility of using fuel as it is at present for a reactor and for a ship will be to have very large reactors of enormous horsepower, such as the United Kingdom is at present building ashore. These are so large, and so costly also in capital, that they must be units for so-called base loads which means that reactors will have to work twenty-four hours of the day and thirty days a month and twelve months of the year.

On the other hand, the majority of ships that do go to sea are only on the high seas for about fifty percent of the time and, therefore, it is not a base load unit but a peak load unit which would be needed. This means, especially on account of the capital involved, which is much higher than the capital involved in building normal, conventional ships, that the cost is so high that it is no more economic. This means that there is perhaps a small possibility of very large ships — very large tankers or passenger liners — using a reactor. However, even for very large tankers the economic studies I have seen predict that unless one goes to a tanker of 100.000 tons it will not be competitive.

There is another point. The type of British reactor which is so well known ashore in England, such as Calder Hall and all the other units that are being built, is of a kind that takes enormous space and weighs extremely heavily, which means that it can only be installed in very large ships where the deadweight of the ship — as we are shipping people we know what deadweight is — does not count. However, for tankers it has already been calculated that if the reactor itself does not weigh less than the normal conventional unit of propulsion and its fuel it will never be economic. We have to have a certain gain in deadweight by using the reactor before we can tell the ship-owners that the ship will be economical and an economical success.

There are other types of reactors, but all of these need enriched fuel which I have already mentioned, and moreover some of these other types of reactor have not yet passed the trial stage ashore. As you may know, the only type of reactor on a ship at present that is doing very well is the so-called pressurised water reactor in the « Nautilus » and in other submarines of the United States. The same kind of reactor will be installed in « Savannah », that has been launched and will be put to sea in the next few months.

The other types of reactor which, it is predicted in the United States and in England, will probably be the only ones to compete in the future are not the pressurised water reactors but are other types that have not yet left the trial stage and of which there is still no sufficient knowledge to appreciate whether they will really work as foreseen.

To sum up this part of my argument, at present I doubt at least whether reactors will quickly change the position ashore except in cases where conditions and conventional fuel prices are such as to be very favorable for the reactor. For ships' use it is not yet, by a long shot, competitive, so why should a private shipowner think about a reactor? He will certainly not do so for a freight liner or for all-round tramps or the majority of ships. He may not do so for a tanker except perhaps for a very large tanker or ore-carriers or for some very large passenger ships. But, even then, why use something that is quite untried in ships, untried as to its reliability and upkeep and other points of interest ?

I know that « Savannah » when she goes to sea will have a temporary installation of conventional type installed in one of her holds in order to be able for the first few months to get rid of what may be called the kinks and overcome the trials and teething troubles that everything new probably will have at the beginning. This ship is very much a trial ship, and in the beginning will need a wetnurse to push her along.

It is predicted that in the future we will have another kind of reactor, a breeder, such as that which is being installed at Dounreay. Here, however, we are not yet in the trial stage and are far removed from where it will be possible to use a reactor of that type in a ship.

I have so far tried to explain to you that what we are doing at present is studying a Convention for reactor ships and at best in the next few years there will be a few test ships or trial ships. I believe that it is hardly necessary to make a world-wide Convention for a few trial or test ships like the « Savannah » and probably one or two others.

There is still the question of national prestige. I am sorry to bring it into play, but it has to be mentioned. There is a possibility that a few very large passenger ships will have to be built and these ships may have a reactor if and when it proves to be desirable economically or for other reasons. Those very large ships will only call at a very

few countries in a few ports, so why should not these Governments make arrangements between themselves to allow these very large ships, if they come, to come into their ports, say France, England and the United States, or one or two more ? Do we need a world-wide Convention for such a few very special and very large ships ? I do not believe it.

There is another possibility that is being discussed which is to have tankers of a very high speed and large size because they might be valuable in certain circumstances. What I am hinting at is that such tankers will not be economical but will be auxiliary war tankers. Again I venture to ask whether we need a Convention to cover such ships, which are partly war ships, in our discussions.

I believe that what is being done at present may make it too expensive also from the juridical point of view, the insurance side of it, and it might possibly hamper the further exploitation and the possibility of having a reactor ship. It might prohibit steamship owners from interesting themselves at all with regard to ships of this special kind.

I think that what is behind all this pressure to have a convention and so on — and the word may be written in large capitals — is fear, fear of the atom bomb, fear of the great danger connected with the reactor and everything that is connected with that. I therefore venture to ask the following question : is there a real danger ? If so, what will then happen and can it have very widespread effects of a serious nature ? I think the question as to whether there is a real danger is a very important one. I feel sure that in the whole world, and even many people here in this meeting, many people instinctively are still afraid that a reactor can explode like an atom bomb. This is, as far as all the experts are concerned, and reliably so, — and experts are not always reliable I am afraid — considered to be absolutely excluded. But we have to convince Governments, Parliaments and people that this is really so. What might happen, however, is that a reactor might get what is called out of hand; it might run away, not in the normal sense of running away from the ship but running away technically. The chances of such a running away are very small because most types of reactors practically exclude the possibility. They are not only protected by all kinds of man-made devices, man-made safeguards, mostly double, but these reactors are inherently safe against such a runaway. If all the devices fail the reactor gets heated up too much, and the chain reaction by itself, for natural physical reasons, will break and stop. That is not the case for all kinds of reactors, and, therefore, I think one should see to it that only such kinds of reactor as have this self-regulating system should be installed in ships. That is one of the main reasons why I and the Dutch Delegation believe that we should not hasten to make a convention, and that is one of the im-

portant points which is going to be discussed in May/June of next year in London, when there will be a meeting to consider the Safety of Life at Sea Convention of London, 1948. One of the points to be discussed there will be reactor ships, and I think that the choice of reactor — the choice that makes it practically certain that the reactor cannot run away by itself — will be one of the important things to be discussed there.

Moreover, even if a reactor does run away — and you can always believe something might happen which you have not foreseen — then it will not explode but it will melt inside, it will break up inside and if there is some liquid inside then that might be evaporated, and you may consider that to be a real danger. However, every reactor that has so far been constructed has always been shielded, not only to keep away radio-active rays from the inside world — radio-active rays that are excited inside the reactor — but the shield is also made in such a way that if such a happening occurs then the pressure from the inside will never exceed such a pressure as can be held within that shielding. Therefore, if there is a runaway or if the reactor gets out of hand for whatever reason, then everything that is inside the shielding remains inside the shielding. What I think is the real danger, if there is a real danger, is not so much from the inside but from the outside. What is the danger that can happen ? What is the result that can happen if a ship has a collision or is stranded, sinking, or if there is a fire or an explosion of the cargo ? I think that is the main point of the discussions to be held in London in May of next year, because if there are sufficient safeguards in the construction of the ship, of the reactor and of the shielding then the chances of the escape of some radio-active substances from inside the shielding will be negligible. Therefore, again I think it will be premature to discuss this matter before we know what measures will be taken in London next year.

We do not yet know all the protective measures that are being taken, even so far as the « Savannah » is concerned. Last week I received a report from a gentleman over there for the Dutch reactor centre. A final report on the safeguards for the « Savannah » is not yet available, but it will be so within the next few months, and I think it would be better to wait for this report before we judge what all this means.

I would like to try and explain why, even if something untoward happens, this cannot be very dangerous, because if this shielding is broken up there still is the core of the reactor that prevents anything inside the reactor from escaping, and if the core is reached then there is the cladding, of the reactor fuel elements; then the fuel elements themselves must melt, because until they melt the radio-active waste inside of it cannot easily escape from it. Therefore, there is not only one thing to be broken by fire or by collision, there are successive layers,

you might say, of security to avoid any radio-active matter escaping inside the core.

The reactor of the « Savannah » contains 5.248 fuel cartridges — I think that is the word — and a large number of these would lose all their dangerous radio-active waste before a major danger occurred. I think the real danger is if a large tanker gets a conflagration or gets ignited with a fire not only for a few minutes but continuing for a long time, then I think the best solution will be simply to sink the ship, because then she would not do any further harm. You might say that sea water will enter into the core of the reactor and therefore dissolve all the radio-active matter. I do not think so, because I have been reliably informed that for the modern kind of reactor the uranium that is being used as fuel is a chemical compound, it is uranium oxide or uranium carbide that is being used and that does not dissolve into sea water quickly; it might dissolve very, very slowly but then it would take many years to dissolve. So if that is true, even if the sea water gets into contact with the inside of the reactor, then only very small quantities of radio-active waste will very slowly escape.

All that means is that the chances of a great danger are not there and even if something happens which should not happen, then I think the results will be much less dangerous than is mostly thought. That means, Mr. Chairman, that we ought to know what protective measures will be prescribed by the Convention to be held in London next year. I have been very reliably informed that it is not the intention to change the Safety of Life at Sea Convention in London by making a new part of it for reactors, but that only recommendations will be formulated, because it has been understood that if you do make a definite change in a Convention then you have a Convention and it is extremely difficult to change it afterwards. If, however, you only make recommendations you can change them and adapt them as might become necessary in the near future.

I think that here we have only a very flimsy and very unreliable basis for our work. I do not believe that it would be the correct answer to the present position if we drafted a Convention. I might say it in this way, it looks as if when the first steamship under its own power crossed the Atlantic — and I have been informed it was a Dutch vessel, I am very glad to say — we should have had a Convention, but we did not make a Convention for steamships; when the first tanker was contemplated to carry oil in bulk we did not make a Convention to regulate that; when the first motor-driven ship was launched we did not make a special Convention for motor ships. Why then should we make haste for the first trial ships of reactor ships when they are in the offing? We must have more basis and more facts before we can do so, and by facts I do not mean that we first must wait for a few disasters. I have been accused of being a cynic by

saying we must have a few disasters before we can make a Convention; I do not mean that, I mean we must have more facts about the safety, about the physical, technical and such-like aspects. We must await at least the outcome of the London Conference in May/June 1960; we must await the event of the « Savannah » on the sea and the American report. I think that we must hope that the unreasonable fear that now is rampant in the whole world will make way for a well-considered evaluation of chances and of scope of possible misadventures and then — but only then, Mr. Chairman — I consider it necessary that we should discuss whether a juridical convention is acceptable to the majority of States where reactor ships may drop anchor or that may have ships. A convention differing from our accustomed law of the sea might then still be required and if so we should discuss what it should embody.

Mr. Chairman, I fear I had to be very technical and « economical » — if I may use that word again — and I hope that here there are many gentlemen who know as much about reactors as I appear to do, but I am not quite sure about that. I have tried my very best to explain why the Dutch Delegation answered that question in this way, that we considered it definitely premature to discuss at present this kind of Convention and that we think we should wait at least until September/October next year for a more reasonable basis.

I wonder, Mr. Chairman, if you would have the kindness to ask whether there are any other delegations here who would like to join with this idea of the Dutch Delegation. If I may wind up by making a proposal as well, it is that we should have a not too large committee to keep this matter before us and to study it, because I am not at all convinced that in the end a convention may not be required. I think that that committee should get advice from experts. If I may make a suggestion, if you ask an expert to give you advice you probably will not understand it because he speaks quite a different language from our language. We need somebody to translate the expert's advice into our normal language; I have been trying to do that for ten years; I am very concerned about the whole matter and sometimes I have been able to translate what the experts said into what I consider normal language.

This is for the moment a short résumé — I hope I have not taken more than the ten minutes you allowed me — of the reasons that prompted the Dutch Delegation to say, « Please wait ».

The President (translation): I venture — and I ask the Netherlands Delegation not to resent the fact — to mention that if the Comité Maritime International is presently dealing with the topic which is on our agenda today, it is because the topic has been put before us by the very interesting work of the Netherlands Delegation which today consider that our meeting is premature (applause).

I ask the members who wish to support the Netherlands proposal of postponing the date, to come to the platform.

Mr. G. Berlingieri, Italy (translation): The Italian Delegation followed with great attention the very efficient arguments of the Dutch Delegation. It contemplates the problem from a different point of view and does not close the door to a new Convention but leaves it open for discussion. Here is the opinion of the Italian Delegation.

The draft introduced by the Comité Maritime International is based on the following main principles :

a) The principle of strict liability according to which a person designated liable has in fact, except exceptional cases of a mere theoretical application, no possibility of escaping liability by channelling at least a part of his liability, to somebody else.

b) Secondly the principle which has been presented as the channeling to the operator of a nuclear ship all liability for accidents even those caused by other persons. This liability puts on the operator all losses he suffers even against the person who has caused the accident.

c) The third principle concerns limitation and maintains liability under a certain limit covered by insurance.

It has to be observed that the first two principles disturb deeply the legal conceptions which have been accepted up to now as the basis of the laws concerning liability.

We do not ignore that as far as problems relating to liabilities covering nuclear activities in ground installations are concerned, new judicial principles are about to be changed as a consequence of practical needs; these principles have a tendency to disturb the traditional ones existing in these matters.

The question is to know whether such radical changes of traditional, judicial principles are necessary to the same extent in the field of maritime liabilities.

It can be first raised that in the present state of science the study relating to liabilities for nuclear facts has not made sufficient progress to allow quite clear ideas in this field, so that it might be hard to assert, in matters of maritime law, principles which might be in contradiction with those definitely adopted for a ground operator.

On the other hand it is difficult to assert that without hesitation the principle of strict liability and/or channeling should be introduced in the maritime field because the reasons which have determined such deviations in the field of liability of operators of ground nuclear installations might be less obvious in connection with maritime installations.

In nuclear ground installations it is possible to establish rules in order to avoid or limit eventual damage; if the operator does not comply with them he will be in a situation which might justify that complete liability is put on him.

The operator of a nuclear propelled ship is, because of the sole nature of the means of carriage, exposed to possible damages which cannot possibly be foreseen or avoided.

One might quote the case of a collision without fault on behalf of the operator or a sea peril in stranding the ship on the coast.

These are cases for which we shall be extremely unfair in putting any liability on the operator.

By these remarks, we do not wish to exclude the possibility of considering a new regime in matter of nuclear propelled carriage — in itself a new fact — but it might be useful to have a certain experience before establishing a code or even before fixing new principles.

The Italian Delegation considers that it might be extremely useful to adjourn the final examination to the next Athens Conference, in order to be in a position to proceed with the study of all the elements of the problem.

This would give also an opportunity to see how in the meantime the legal institution of the liability for atomic facts in general will develop and this in order not to preclude the further possibility which this new discipline might have.

The Italian Delegation suggests to the Conference, although it appreciates the valuable efforts made by the restricted Subcommittee dealing with the liability of operators of nuclear ships, to appoint an enlarged Subcommittee which should proceed with the examination of this question and prepare a report and a draft convention to be presented at the next Conference.

Mr. Arthur M. Boal, United States : I was very much interested in Mr. Kruseman's economic arguments, but I do not think we are here as economists and we are not here as experts on nuclear safety. We are here to consider in the maritime field a code governing liabilities, drawing out the operation of nuclear ships. This is a matter which I think is peculiarly within the province of the Comité. If the Comité has any reason for existence it is to meet a problem of this kind and, in our view, now is the time to meet it. There are a number of other projects proceeding parallel with us. Mr. Kruseman referred to the International Convention on Safety of Life at Sea which will deal with the safety features of atomic ships, and that is not our province and we cannot wait until that work is finished. We must go forward now or drop it.

I have just been informed of this information with reference to nuclear merchant ships. The first country is Japan. They have the basic designs for 23 nuclear vessels. Blueprints are in preparation for presentation for budgetary consideration. These designs include passenger ships, combination cargo and passenger ships, oil carriers, tankers, a submarine tanker, training ships and oceanographic ships. I also understand that a design has been completed in France for a 40.000-ton

tanker. In Sweden they are designing a 65,000-ton tanker which is scheduled for launching in 1965. In addition to the « Savannah » the Government of the United States has a number of merchant ships in operation and a number being built, so we are confronted with the fact that we have nuclear ships on the ocean and non-nuclear ships may be in collision with those nuclear ships. Therefore, it is important to have rules governing such collisions.

Even if there are only a few nuclear ships that is no reason for not going forward with the code, because this code covers not only the liabilities of the nuclear ships but the liabilities of the non-nuclear ships which may be in collision with a nuclear ship. If a non-nuclear ship is in collision with a nuclear ship, and is either wholly or partly at fault, it may have a tremendous liability. It may not be able to limit that liability in some jurisdictions. It may be a liability which would be difficult to insure and expensive to insure.

I think we are confronted here with two basic problems : to provide a code which will enable the construction and operation of nuclear ships and will reasonably protect the public in case of nuclear incidents and damages which they may sustain. We must keep those two objects in mind, and I hope that Mr. Kruseman is right when he says that the danger has been grossly exaggerated. But there is a danger. There is a danger against which a shipowner must be protected by either limitation of liability and insurance or in some matter of indemnity.

We are presented here not with theoretical but with very practical problems. They must be solved in a practical way, and I feel very strongly that we should go forward and do this work at this time and get our part of it finished so that we can give to the Governments of the world our recommendations as to what a code dealing with the liabilities of a nuclear ship should be. We are competent to do it, and if we do not do it someone else will. If the Comité fails now at this time it will lose its position which it may never regain.

Mr. Martin Hill, Great-Britain : Speaking for the British Delegation we entirely endorse everything that was said. I followed Mr. Kruseman's argument. It is that we should take this item off the Agenda altogether, partly because of the scientific aspects, about which we do not know enough, and partly because there are not enough nuclear ships. The probability was that there would be certain nuclear ships in the world within a measurable space of time. If that is so, all the problems which the Comité are competent to discuss are going to emerge, and the Comité should get down to them and discuss them.

There are other organizations at work on various nuclear aspects including maritime aspects. The Comité has always taken the lead in discussing international maritime legal questions of this kind, and we should take the lead now. We certainly should not imperil the very high reputation which it has got by sitting back and doing nothing

and, in our colloquial English phrase, finding it has missed the bus and that somebody else is doing what it ought to have done.

Mr. Kaj Pineus, Sweden : We of the Swedish Delegation believe that the work of preparing a draft Convention should be proceeded with. This sort of work is necessarily slow, and we think that to stop the work of the Comité Maritime on the subject at this stage would be unfortunate. We venture no date when the work of the Comité Maritime can be brought to an end. After the Comité Maritime comes the Diplomatic Conference and ratification, and I think there is no risk of a lightning speed ! It is up to the Belgian Government to fix the date of the Diplomatic Conference. The Belgian Government may thus take into account, when deciding on the date, all further experience gained in the field of nuclear-propelled ships. If we do nothing now what will be the position ?

There are two points I should like to raise in this connection. Do shipowners really believe that the 1957 Convention on Limitation will be accepted and acceptable by the Courts in the case of a nuclear catastrophe ? I am not so sure about that. Then we may have the strict liability and unlimited responsibility in through the back door. The second point I should like to raise is this. If the Comité Maritime International does not proceed with its work on the nuclear ships, then very likely the Governments or the United Nations will act on their own without asking the Comité Maritime International, and that would not be to the advantage of the shipping industry as a whole.

For these reasons, very briefly outlined, the Swedish Delegation holds the opinion that we should go on with the work of preparing a draft Convention on nuclear ships.

Mr. J. de Grandmaison, France (translation): The French Delegation supports the point of view of the American, British and Swedish delegations.

The French Delegation was not impressed by the arguments of Mr. Kruseman who is of the opinion that it is premature to make an international Convention on ships propelled by nuclear power because they are rare and not numerous, expensive and not competitive.

I think that Mr. Kruseman forgets that science is progressing quickly, that all the world is working on it and that tomorrow, ships propelled by nuclear power will plough the seas.

I think that Mr. Kruseman also forgets the lessons of the running past because this same speech has been delivered at the time the first steamships were launched. They were not, it was said, competitive because the winds did not cost anything. (Applause).

Alas, the shipowners who staked on sailing boats instead of staking on steamboats did face bankruptcy and failure.

Science is progressing quickly. Do not forget either that in 1939 it occurred to nobody to think that aeroplanes might compete with

passengers' ships. However, today we have to face aeroplanes which are the biggest competitors of passengers' ships.

As a consequence it is certain that science progresses continuously and that we cannot be satisfied with just being in tow; we have to follow as close as possible the progressing science.

It is said moreover — and Mr. Kruseman insisted much on this point — that in fact there is no great risk of accident.

I consider that this is mere fancy because we know that an accident should always be foreseen whatever the scientific formula applied or the care taken in building the mechanical engines may be. We have seen ships built under the supervision of the world's first classification offices, after satisfactory trials, break down in two pieces on their maiden trip. Why? Nobody will ever be able to give an answer. We have seen magnificent planes, the motor of which exploded on their first voyage. Why? Nobody will give ever an answer.

Here we have ascertained that we are playing a dangerous game. We are playing with atoms which may have their revenge. Let us be realistic. It is useful to remind you of an old French proverb which shows that everything can happen. In France they say that they have seen guns shooting without being loaded and kings marrying shepherdesses.

So there is a risk of accident, Mr. Kruseman is compelled to admit that.

Now there is a risk. Is it huge? May be. That is a sufficient reason to have a protection. We do not search for anything else than a sort of insurance cover for the protection of the public and for the normal commercial operations of ships propelled by nuclear power. We are looking also for protection of conventional ships.

Then if, when all is done, the risk is not important, the insurance premium will prove to be trifling, but if the risk is very big the premium will be high.

But the fact is unshaken, there is a risk. At this moment this risk might be considered by the public opinion to be bigger than it is. May be there is a tendency to consider a reactor as an atomic bomb. That is an error but it is nevertheless certain that there is a risk and that risk might have catastrophic consequences.

The public opinion is a lady, everybody has to reckon with.

I will resume in saying — it seems to be wise — that if we do not deal with this problem and if we do not find a way of doing something wise and reasonable emanating from practitioners, shipbuilders, shipowners, underwriters and maritime lawyers, who is going to do it?

All over the world, Parliaments will react upon the problems, pressed by the public opinion, may be erroneously overstimulated and doubtless they will do bad work but at that time it will be too late for us to act.

As a consequence, let us not be bypassed by events, let us do our work and let us do it in time (applause).

Mr. J. Van Rijn, Belgium (translation): I would like to say in a few words the reasons why the Belgian Delegation cannot, exactly as the French Delegation, be convinced by the objections made by Mr. Kruseman.

These objections cover two fields.

First Mr. Kruseman said that in the present state of technology it is unlikely that nuclear propelled vessels will soon be built in great numbers and that in any way the economical operation would not be contemplated because of the building price out of proportion with the operating costs.

Supposing that this is correct today, nobody, I think, after what we saw these last years can warrant that such situation will stay identical for several months or at least for several years.

The technical problems are developing with such a speed that today one can say that more time is necessary for putting into shape an international convention than for putting inventions into shape which are unknown today but which will be applied in a few months. So we cannot say that our present work is premature.

The second reason put forward by the Dutch Delegation is that the danger which has to be averted is illusory.

Nobody should dare, I think, express such a categoric opinion on this point.

Nobody should dare warrant that there is no danger in operating a nuclear ship.

If we were satisfied with the statement just made one might think that a nuclear ship is less dangerous than one built in conformity with the conventional methods.

Moreover, if we had only to face fancy or imaginary risks why should such a number of eminent international organizations deal straight now with what is called nuclear risks ?

We are allowed to think that if those risks are pure fancy they would not attract so much attention.

Why should we wait for what our eminent colleague, Mr. Berlin-gieri, calls experience before we start putting an international Convention into shape ?

Experience, i.e., if I understand correctly, the first accident or the first catastrophe.

In fact it seems to us that the Draft Convention which we are about to discuss might not be considered as aiming at the protection of one or another category of interests against new risks. The Convention is more than that. It has to constitute a notable contribution to the development of nuclear energy for a peaceful purpose. This

development is a boon, however it supposes that certain guarantees are supplied.

What sort of guarantees are concerned ? First of all persons and goods have to be protected against risks which are insufficiently known and some of which are very heavy and are certainly not imaginary. The protection has to be effected by other means than those supplied by the liabilities of common law.

Secondly, in order to enable the industry which operates nuclear energy for peaceful purposes to develop, the building and the operating of nuclear engines, and more particularly of nuclear vessels should not be hindered by crushing liabilities.

These are the two conditions we have to take into consideration here and which demand legal solutions.

We have to supply a new frame for new activities. We do not dispose of much time to do that and I think that if we wait for the first experience we will come too late. Today is the time to put a Convention into shape dealing with these very important questions.

In these circumstances, the Belgian Delegation invites you not to follow the preliminary objections developed before you a few minutes ago. (Applause).

Mr. N. Katicic, Yugoslavia (translation): The previous speakers have brilliantly developed the arguments opposing the adjournment of the examination of the atomic Draft Convention. I would add an argument which goes out of what has been said. It seems to me that one of the main reasons for drafting this new Convention is not only to apportion the atomic risk but to supply first a financial basis for covering the risk.

This question is an utmost practical one which has to be studied before one can speak about apportionment of risk.

As a member of a State which does not belong to the group of powers liable today for the development of the production of nuclear energy in matters of propulsion of ships, I think I am allowed to say that the interested parties are unanimous on the point to know who in the case of a risk will be the debtor and what will be the financial basis of insurance. This question seems to us to be of such utmost importance that we are of the opinion that it is necessary to proceed with our efforts and to avoid the difficulties which occur each time technology is developing. So I join the previous speakers who declared to oppose the adjournment. (Applause).

The President (translation): The Assembly has to take a decision on what I think to interpret exactly as the proposal made by the Netherlands' Delegation : should we or should we not postpone the examination of the proposal submitted to the Conference ?

I would like to mention to the Assembly that we must not lose sight — I think that the Netherlands' Delegation will join me on this point — of the fact that we may not behave as a Diplomatic Conference. This would be a big mistake. Our task is to prepare a Convention and we consider that those who assist us are the most qualified for this work which we will have to submit afterwards to those who take decisions.

So the problem put before us is the following : must we or must we not postpone this preparatory work which has been put on the agenda of our Conference ?

So I will ask the heads of delegations who are in favour of the adjournment of the question, i.e. are in favour of the opinion supported by Mr. Kruseman, to raise their hand.

Mr. Asser, the head of the Netherlands' Delegation, raises his hand.

The other heads of delegations are in favour of examining the question.

The President (translation): I am happy of being able to start examining this problem by making an observation, that contrary to what you might think, is not humoristical at all. I would like to start by paying a tribute to the President of the Netherlands' Delegation who has presided over the preparatory work preliminary to this Conference in connection with the subject we are going to examine.

Mr. Asser who has presided over the preparatory work with authority and with devotion, gives us today the possibility to have a report and a draft which have to be the basis of our debates. He will not refuse this tribute even if he is the President of the Netherlands' Delegation.

Moreover, I will ask him, not without satisfaction, to kindly open the debates.

The point of view of the Netherlands' Delegation — and I do say this quite seriously — is that in principle we had to postpone but that subsidiarily we had to examine the problem seriously.

I would ask Mr. Asser who presided over the preliminary work to open our exchange of views by a brief account on the subject and on the draft.

Mr. J.T. Asser, Netherlands (translation): First of all, Mr. Chairman, I would like to reply in a few words, to your observation and this in my capacity of member of the Netherlands' Delegation.

In fact, it was the Netherlands' Association which first introduced the topic we are about to discuss in pursuance of the vote which has just passed.

However, it seems to me that the opinion set forth by my friend, Mr. Kruseman, is not at all in opposition with the initiative taken by

our Association. On the contrary, the Netherlands' Association is of the opinion that the topic is so important and so serious that it is worth a comprehensive study, even if the Netherlands' Association is of the opinion that, at the present time, it is premature to prepare a Convention.

I will speak now not as a member of the Netherlands' Delegation, but in my capacity of member of the restricted Subcommittee which has prepared the Draft Convention and the report which you have before you and I will try to give you as briefly and as objectively as possible, an account of the main lines of this draft convention and of the reasons which led to it.

Before giving you this account, I would like to make some preliminary observations. These observations concern the international Draft Convention of the O.E.E.C. relating to the civil liability of operators of nuclear land installations.

This draft does not cover only the civil liability of the operator of a land reactor for damages caused by his installation; the draft deals also with civil liability for nuclear damages caused by radioactive materials during transport i.e. during their air, land or sea transport.

Because the liability for nuclear damages incurred during a sea transport of radio-active materials, implicates questions of maritime law, the European Agency of Nuclear Energy of the O.E.E.C. had invited this Comité Maritime International to give assistance to draft clauses concerning this liability. Replying to that invitation, our President appointed in September 1958 a restricted working group in order to study that problem and he appointed at the same time some members of that group to attend the meetings of the different committees of experts of the O.E.E.C. dealing with the elaboration of that Convention.

Moreover, the International Subcommittee of the Comité Maritime International entrusted with the study of the problem of the liability of owners of nuclear ships met at Antwerp on the 28th February and the 1st March 1959, under the chairmanship of our President.

This Subcommittee worked on the Draft Convention of the O.E.E.C. and amended it by inserting clauses concerning maritime transport.

On page 18 and following of the « Preliminary Reports » you will find the transport clauses drafted by the International Subcommittee and the text of the O.E.E.C. Draft Convention, amended by the said clauses as well as the report established at the same time by the International Subcommittee. All these documents have been sent to the European Agency of Nuclear Energy of the O.E.E.C. at the beginning of March.

The principles set forth by these transport clauses have been inserted in the last text of the O.E.E.C. draft although the draft has been slightly amended.

The present Draft Convention of the O.E.E.C. introduces new legal principles, which may be called revolutionary.

In the first place this draft sets forth the principle of objective and exclusive liability of the operator of a land reactor. This means that when it is proved that loss of life, personal injuries or loss of, or damage to goods belonging to third parties, originated from radio-active radiation coming from a nuclear installation, its operator is liable without proof of his fault or of that of his servants and without possible defence even if the loss or damage has been caused by the fault of the injured person.

The operator is only able to avoid his liability by proving that the nuclear accident from which the nuclear damage originates, has been caused by hostilities, an invasion, a civil war, an insurrection or a heavy natural disaster of an exceptional character.

As I just said to you, this liability is exclusive, in the meaning that no other person shall be liable for such damage.

Article VI of the Draft Convention says it « *expressis verbis* ».

This revolutionary principle has been admitted by the O.E.E.C. because of the exceptional seriousness of the risks which can result from exploitation of a nuclear reactor.

So the principle is mainly based on considerations relating to the protection of the public.

A second consideration of subsidiary importance which led to the exclusive liability of the operator, is that the acceptance of the eventual liability of third parties such as for instance the suppliers or builders of the reactor, would necessitate an insurance cover for the liability of all these persons whereas in the frame of the Convention only the operator has to obtain an insurance cover.

Besides the fact that the accumulation of these insurance covers might result in increasing the building and operating costs of the installation, it was feared that the international insurance market would not be capable of absorbing all these covers.

The second principle set forth by the O.E.E.C. Convention is the limitation of the civil liability of the operator of a land reactor; also this principle is contrary to common law. Until now, the principle of limitation of civil liability has only been admitted in sea and air law. On the other hand, the limit of liability mentioned in the O.E.E.C. Draft Convention is very high.

Furthermore, the O.E.E.C. draft obliges the operator of a nuclear installation to obtain an insurance cover or another financial guarantee up to the extent of the limit of his liability.

As far as nuclear damages occurring during transport are concerned, the O.E.E.C. Convention also admits the liability of the operator of the land reactor from which the radio-active substances originate or to which they are sent.

So the carrier and consequently the shipowner who carry these materials shall incur no liability.

In other words, using the expression of the O.E.E.C., all liabilities are channelled to the operator of the land reactor.

However, the O.E.E.C. had to face a difficulty in this matter. Its Convention, whilst adopted and ratified shall be applicable only to 17 countries, members of the organization. On the other hand, carriage of radio-active materials is occurring all through the world.

As the O.E.E.C. Convention is not able to modify either the already existing international Conventions or the national law of the Contracting States, Article VI of the O.E.E.C. Convention provides that all persons other than the operator liable, who has his principal place of business in a territory of a contracting State and who might be held liable in pursuance of an international Convention or of the law of a non-contracting State, for a nuclear accident occurred during transport of radio-active material, shall have a right of recourse against the operator of the nuclear installation, liable according to the provisions of the Convention.

You will ask me why it was necessary to linger so much on this O.E.E.C. Convention, keeping in mind that according to the decision taken by the Bureau Permanent in its meeting of last Saturday, we will not examine here the problem of the liability of operators of land reactors or the problem of the carriage of radio-active materials but only the problem of the liability of operators of nuclear ships. Here are the reasons.

Last June, our President entrusted a restricted Subcommittee with preparing a first Draft Convention relating to that last liability.

In preparing that draft it has been working on the lines of the main principles of the O.E.E.C. Convention. The Subcommittee was of the opinion that the nuclear ships which have floating reactors and which consequently are subject to all the perils of the navigation, offer, as to the possibilities of a nuclear accident, a much greater risk than the land reactors.

In fact, the Subcommittee admitted the presumption that no Government and no Parliament in the world is going to admit, when nuclear damages caused by a nuclear ship are concerned, rules giving less protection to the public than the O.E.E.C. Convention.

That is the reason why Article II of the first Draft Convention adopts the principle of objective and exclusive liability for the operator of a nuclear ship.

This principle departs not only from the international maritime law of all countries which generally admit only liability in case of fault but departs also from the 1910 International Convention on collisions at sea.

In the frame of the first draft in the case of collision between a nuclear ship and a conventional ship, when the collision is due entirely or partly to the fault of the conventional ship, only the operator of the nuclear ship shall be liable even for the nuclear damage caused to the guilty conventional ship.

Likewise, the operator of a nuclear ship shall only be entitled to have a claim against a third party in two cases: first the accident has been caused intentionally, thus criminally, and secondly in pursuance of a formal contractual provision.

On the other hand, article 8 of the first draft embodies the only case where the operator is exonerated from liability namely the case of war, of hostilities, of civil war and of insurrection.

The restricted Subcommittee was of the opinion that an International Convention in this field could only have useful effects if it has a worldwide application. Therefore, article 13 provides that the Convention shall be applicable to all nuclear damages wherever they take place.

If we follow these principles, it is not necessary to foresee the case of a conflict between the new Convention and the existing international Conventions.

Although the foregoing offsets suppose worldwide application of the Convention, the Subcommittee was of the opinion that the new Convention should prevail over all other Conventions and that, if necessary, the Diplomatic Conference should amend its Conventions in order to put them on the lines of the one we are preparing now.

The second important principle set forth in the first draft, concerns the limitation of the liability for the operator of a nuclear ship. Here too the restricted Subcommittee was of the opinion not to maintain the limit fixed by the 1957 International Brussels' Convention. This limit seems to be insufficient owing to the disastrous consequences which might result from a nuclear accident. So the first draft establishes a new system. It contemplates the necessity of creating a system of governmental licences which would allow the exploitation of a nuclear ship. In other words it advocates to promulgate new national laws according to which it is not authorized to operate a nuclear ship (which consequently shall not be allowed to enter or to leave a port), unless one of the contracting States called « licensing State », has granted a licence to the operator of the ship. This licence shall only be granted when the ship complies with all national and international safety conditions, unless also the operator has obtained an insurance

cover or another financial guarantee covering his liability up to the limit fixed by the Convention.

The Subcommittee thought best not to quote a figure for the limit of liability put on the operator; limit which should be applied to each accident and not fixed per voyage or during a certain period. The Subcommittee was of the opinion that this limit should represent the highest figure which might be covered by commercial insurance. Also this figure and this limit should be the same for every nuclear ship, disregarding their tonnage, as the study of the consequences of a nuclear accident will probably be out of proportion to the tonnage of the ship.

On the other hand the Subcommittee realized that the financial consequences of a nuclear incident might in a particular case exceed by far the figure which commercial insurance will possibly be able to cover. The Subcommittee is of the opinion that such eventual excess should be chargeable to the States. However the question to know whether and to what extent this obligation would be chargeable to the States, is out of the province of the Comité Maritime International but should be reserved for the Diplomatic Conference of maritime law where the Governments are represented. Therefore, the first draft does not contain any provision on this point.

I feel that presently it would be useless to speak about the other provisions of the Antwerp first draft.

I would like however to point out two more articles of some importance.

The first is Article V which provides that all claims for damage against the operator of a nuclear ship shall be barred if not introduced within 10 years from the date of the nuclear incident. This article however leaves to the national law the right to reduce the delay of time to a minimum of 2 years from the date at which the victim has knowledge or ought reasonably to have knowledge of the damage. The reason why the Subcommittee has proposed these provisions which moreover are the same as those provided by the O.E.E.C. Convention, must be found in the fact that in many cases the nuclear contamination does not appear immediately but only after some lapse of time.

Finally, Article XII contains a jurisdiction clause. The first point of this article leaves to the victim the choice of bringing the claim for damage either before the Court of the licensing State of the ship or before the Court of the State in the territory of which the nuclear damage occurred.

The most important provision of this article has been put in the second part where it is stated that a judgment given by a competent Court in pursuance of the first part, shall be recognized and given effect to by the competent authority of the licensing State of the ship; this authority shall be entrusted with the administration and the distri-

bution of the funds supplied by the insurance cover or the other financial guarantee.

These are the fundamental rules of the first draft which the restricted Subcommittee has the honour of submitting to your debates.

The President : In the name of the Assembly I thank Mr. Asser for the very interesting report he has just effected.

(Interruption)

The President : I would like to ask those who are going to speak this afternoon not to go into the details of the articles.

Mr. S. Matysik, Poland (translation): In the name of the Polish Delegation I have the honour to declare that we are in agreement with the principle of the first Draft Convention i.e. with the principle of objective liability and of exclusive liability for the operator of nuclear ships.

First of all we are of the opinion that the above-mentioned principles have to be expressed as clearly as possible. However, the drafting of certain articles might leave some doubts.

We take the liberty of reserving the right to come to the platform during the debates on the reading of certain special articles.

I would like to make some remarks of a general implication concerning important questions.

First concerning the meaning of the words « nuclear accident ». I would like to say that this expression has a completely traditional meaning according to which an accident covers an event coming from outside and interrupting the normal course of things.

It should be explained in the first draft that all damages resulting from the working, even normal working of the nuclear reactor are covered by the words « nuclear accident ».

As far as the possibilities of inculcation of the operator of a nuclear ship (Art. VIII) are concerned, we are of the opinion that the case in which inculcation is allowed, should be specified.

In our opinion even war may be considered as a case of inculcation for the operator but provided that the case has the character of « force majeure » in the circumstances.

Another point. We do not know yet how the subsidiary liability of the licensing State provided by Article III (iii) might benefit to an injured person. We are of the opinion that it should be reasonable to specify clearly how a victim can obtain the application of the rights against the licensing State (these are very difficult problems of competence and jurisdiction).

The last question of which I would like to speak concerns the delays provided by Article V. We think that these are minimum

delays. We are of the opinion that they should be extended to three years from the date when the individual or the injured person has known or could have had knowledge of a damage. This is our opinion on the general principles under discussions (Applause).

Mr. Martin Hill, Great-Britain : On behalf of the British delegation, I think I can be quite brief with the question of the principles involved in the Draft Convention.

The first one on which I want to touch is one that arises in certain articles of the Draft which indicate Governments' financial responsibility.

The C.M.I. as a commercial organization should regard its task at this Conference as one of producing a Draft Convention on commercial terms reasonably capable of acceptance as such by the Diplomatic Conference. That Convention should regulate the liability of private shipowners for nuclear damage and say on whom such liability should fall and to what maximum it should by law be limited. Having gone so far, the C.M.I. should not attempt to go further and make in its Draft Convention provision for any necessary additional liability for Government account. That is a matter for Governments. The C.M.I. can, if it wishes, and we think it should, make it clear in an addendum or statement to the Convention that the maximum liability which can possibly be imposed on the private shipowner must fall short, and indeed perhaps far short, of adequate compensation for the victims of a major nuclear disaster if one should ever take place. Commercially we can go so far and no further having regard to the amount of liability which can fairly be placed on the shoulders of the private owner, and to available facilities for insurance. Insofar as that amount falls short of adequate compensation in any particular case Governments must step in to bridge the gap insofar as they conclude it must be bridged in the circumstances of the disaster.

The principle I am enunciating here is that the C.M.I. should confine itself to the commercial aspect, calling the attention of Governments to the fact that there is a superimposed Governmental aspect, but leaving it to Governments, through the Diplomatic Conference, to say how they should do their own job. We should be wrong at this Conference and in this Draft Convention to attempt to regulate the liability of Governments.

Dealing with the matter on this commercial footing, the British Delegation accepts and approves the two main principles of the draft of the Subcommittee, namely, that of absolute liability on the nuclear shipowner and no liability on anyone else.

As to the licensing, we would suggest that there should be some form of compulsory insurance or other compulsory security and that we should approach it on a footing of what it is right and practicable to impose on the private shipowner who wishes to embark on this

means of propulsion. There are two main aspects to be regarded. There is the provision of a right degree of compensation insofar as private enterprise can be expected to provide it. At the same time, there is a need to ensure that the promotion and progress of a new scientific discovery shall not be blocked in the sphere of sea transport by making it impossible for those who for generations have provided that transport to take advantage of this new discovery in the interest and furtherance of international trade. Along these lines we suggest the Conference should consider this question of the limit of liability on commercial lines, leaving Government aspects to the Diplomatic Conference. First we say that those aspects must be left to the Governments. We shall, when we get to that point in the discussion, be critical particularly of Article III (iii) of the Antwerp Draft which brings Governments in really as reinsurers in certain circumstances. We should not, from the C.M.I. try and tell Governments what to do or how to do it. That is for them, and if we through our private organization purport to instruct them we are much more likely to hinder than to help the objects commercially in view.

One final point, some Nations represented here may hold the view that for them all this is completely remote from reality in the sense that they do not envisage ownership on their part of nuclear ships and, therefore, are largely disinterested or only interested in the thought that others will own nuclear ships and will create problems for them. I venture to suggest that that would be a shortsighted view and that the right view that this conference should take is that nuclear propulsion may develop, and develop much more quickly than might now appear possible, if science breaks through into one of the really far-reaching advances of mankind. In that event all countries will wish to take advantage of it and to all will it be of concern now that this aspect of maritime law that we are discussing, should, from the outset, be dealt with on the right lines.

Mr. R. P. Cleveringa, Netherlands (translation): The Draft Convention which is before you aims at finding a certain balance all over the world between two factors :

- a) the protection of the public (including conventional ships);
- b) the possibility of operating nuclear ships on a commercial basis.

With that view, it emphasizes the principle referred to in Article II: the operator of such a ship, and no other person, shall be absolutely liable for such nuclear damage, under the only condition that the damage has been caused by a nuclear accident.

Two other big problems are connected with that principle :

- a) should this Convention admit a limited liability of another kind than that of the 1957 Convention ? This is a very difficult question for those who try to reach the balance as I just mentioned;

b) should this Convention contain a special rule concerning the barring of claims and, if so, which rule ? At this moment I leave these problems aside.

The principle is more or less revolutionary and before accepting it, we should examine why it should be admitted. The only reason can be the exceptional danger inherent to the nuclear propulsion of a ship. If such danger really exists, the principle of the objective and absolute liability seems acceptable. Otherwise, there is no reason to abandon the status quo and to start a revolution.

Now, the Netherlands' Delegation is, as you understand, in a delicate and distressing position. As Mr. Kruseman explained this morning in relation to the preliminary question, upon which I will of course not come back, the exceptional danger which a nuclear ship presents is still difficult to appreciate presently. Even among experts, there are great divergences of opinion. Other delegations also did in their preliminary reports, insist upon this circumstance.

I venture to call upon the reports of the British and the Yugoslav Delegations in these matters.

Presently it is thus not proved that the reason why we should accept the revolutionary principle of Article II is beyond discussion.

In our views we should conclude, however unfortunate it may be, that the status quo should be maintained or that Article II should presently be rejected. It is still possible that science and experience in the near future or later on give the proof which presently fails, but we are not so far yet.

That is the reason why the Netherlands' Delegation has to oppose the principle of Article II, and also for another reason which you will kindly allow me to explain in a few words.

If we accept the principle under discussion in a Convention, the rule of exception, once admitted, is intended to be maintained.

Presently we are only thinking about one or very few exceptional ships propelled by nuclear power, but perhaps the world fleet will one day consist of more than 90 % of nuclear ships.

This morning Mr. de Grandmaison told us of the example of sailing ships which were nearly all converted into steam- or motor-ships and this can happen once more.

Shall we be prepared at that time to change the exceptional rules we have in view into a rule which de facto will be a general one, with all the consequences involved ?

The Netherlands' Delegation opposes presently an affirmative reply to this question.

In the report from the British Delegation I read relating to the question of limitation of liability : « We agree that carriage of nuclear substances may increase the normal hazards of ocean trading, but

submit that it is inverted thinking to rely upon this fact as proper grounds for increasing a shipowners' limit of liability ».

Well, we think it is « inverted thinking to rely upon this fact as proper grounds » for the objective and absolute liability of Article II. (Applause).

Mr. C. T. Miller, Great Britain : I hope you will forgive my intervention at this point. I do not propose to trouble the Conference by speaking at any length either now or at any time, but after what our friend. Dr. Cleveringa, has said and after what some other speakers have said ? It has been stated by Dr. Cleveringa that the primary principle of this Convention — namely, that the liability of the operator of a nuclear vessel for nuclear damage caused by the escape of harmful radiation from its reactor should be absolute — is revolutionary.

I think it is very dangerous for the Conference to fall into that error. Under the existing law certainly of our own country, and I strongly suspect of other European countries as well, it may well be that the owner of a nuclear vessel may have the strict liability imposed upon him without any Convention at all. We have a principle in our law that a person who brings a dangerous substance into his land and allows it to escape has a liability for any damage done thereby quite independent of any negligence on his part. That was decided some hundred years ago and since then that principle has been very widely extended by the decisions of our judges. I am now only expressing a personal opinion which may well be contradicted by more eminent lawyers in the British Delegation, but in my opinion it is open to our Courts under the Common Law of our country as it exists today to say that the owner of a floating reactor is liable for any damage done by the escape of harmful radiation from that reactor. So do not let us run away with the idea that the first principle, the principle of absolute — or more correctly in legal terms strict — liability is something revolutionary.

I understand also from business experience that it has been enunciated on several occasions by the French Supreme Court that someone who has the custody of a thing is absolutely liable quite independent of negligence for any damage done by that thing. That is another interpretation of the same principle.

I also understand that in some continental jurisdictions if your house collapses and you damage some unfortunate person who is walking along the pavement you are absolutely liable even though no negligence can be proved against you.

I only asked the President's permission to intervene in case some members of the Conference might be somewhat alarmed by the revolutionary aspect of what I call the primary principle of the Convention which we are now discussing. In my respectful submission it is not

revolutionary at all. Is is a result which might ensue under the existing law of many of our countries.

Mr. J. Van Ryn, Belgium (translation) : In the name of the Belgian Delegation I am glad to declare that we are completely in agreement with the principle on which the Draft Convention under discussion is based i.e. the principle of objective liability of the operator of a ship propelled by nuclear power.

I wish to specify that as far as we are concerned we do not have the impression that such a principle is revolutionary.

Our colleague and friend Mr. Martin Hill told you that such is certainly the opinion of the British lawyers.

I think that for the Belgian law too, it is not a revolutionary innovation to admit, in certain circumstances, objective liability without a fault committed by a person. For a long time the operator of a mine has been absolutely liable in our country for damages caused by his operating a mine and the liability for labour accidents is also based on the principle of strict liability.

Since a long time, it has been admitted in all countries in Europe that the liability based on fault, traditional fault originating from the Roman Law, has become insufficient in modern times, that it should be completed in certain cases by a liability based on other principles, especially on the principle of risk, which allows the victim to obtain in certain circumstances reimbursement of damages without supplying the proof, (which is often difficult and even impossible) that a fault was perpetrated against him.

This said, I am obliged to add that our opinion is slightly different, in relation to the second principle on which the Draft Convention is based; this second principle is also contained in Article II. The liability, according to the system proposed to us, should not only be strict but also absolute.

No other person beside the operator of the ship propelled by nuclear energy shall be held liable for nuclear damage originating from the reactor of the ship.

Here we have very serious apprehensions because, if the second rule is admitted we shall this time have to face a revolution of which the advisability can be seriously challenged.

Indeed, according to the conception prevailing in the different countries of Western Europe, the new liability, based on the principle of risk, has always been considered as an addition to the liability based on fault. The starting point was in fact that, if we only consider a fault, some damages will possibly not be reimbursed, some victims will not be indemnified, whereas in equity they should be.

The strict liability is thus a complement of the liability based on fault. Now, if we confine to the Draft Convention, something quite different will happen with the nuclear damages caused by the installa-

tion of a nuclear ship, because according to the rule of Article II, if such damage occurs, only the operator of the ship might be held liable. Supposing that, even in the case of an accident of such kind, the fault of a third party is strictly proved, this third party will escape, not only from all liability but from all recourse from the operator of the nuclear ship.

So according to the draft, the strict liability results in excluding liability for fault and in granting impunity to those who committed a proved fault.

This is a revolution, which, in our opinion is not advisable.

We can suppose that, in the future, although certain pessimistic opinions have been expressed on this subject this morning, nuclear vessels will be operated in fact and on an economical basis. If this occurs, and if the system of the draft is admitted, when an accident occurs involving two ships both propelled by nuclear energy, if one of them commits a fault, a guilty manoeuvre, but suffers no damages and goes on, if the other, consequently to that guilty manoeuvre, has a nuclear accident — I do not give more details because we know what that means — she only is liable.

So we arrive at this paradoxical situation, in the case contemplated, that only the owner operating the nuclear ship which has committed no fault, is liable whereas the owner of the other nuclear ship which has obviously committed a fault escapes all liability.

This result seems to prove *ad absurdum* that as far as the second principle admitted by the Draft Convention is concerned, very serious reservations should be made and we reserve to come back on the point during further discussions on the articles.

This being said, I hasten to say that the Belgian Delegation is completely in agreement with the principle of strict liability put forward by the different articles of the Convention. (Applause).

Mr. Hans Chr. Bugge, Norway : On behalf of the Norwegian Delegation I should like to say only this : we are in favour of the strict liability as it is proposed by the restricted Subcommittee. We also agree to the proposed channelling of this strict liability to the owner of the nuclear ship or the licensee to the effect that no other person shall be liable for such damage which we are talking about here — apart, of course, from those who intentionally cause damage.

We further support the proposal that the strict liability of the shipowner shall be limited. As to the amount of limitation we, in Norway, are interested in the amount being set high enough to give a reasonable protection for the public. However, the limitation amount should neither be set so high that the insurance of the shipowners liability cannot be covered by ordinary commercial insurance, nor so high that the using of nuclear ships will be reserved to those Nations only which are economically the strongest.

As to the relation to other Conventions, we think this is a question of legal technique which can be solved at a later stage of the proceedings in the C.M.I. Let us first get the Convention and let us get it as soon as possible.

Mr. F. Berlingieri, Italy : The Italian Delegation has already expressed its opinion in respect of the difficulties of introducing into maritime law the principles of the objective liability, which conflicts with traditional concepts of law. But since we understood the necessity of studying the problems arising out of the utilization of nuclear energy in ships, the recommendation was made to continue studying the problems involved on the basis of the draft which has been submitted, in order to be in a position to submit a final draft to the next Conference.

Anyhow, considering the decision reached this morning, and since we are desirous to give our best co-operation to the problems, we wish to recommend that should the objective liability be established, the right of recourse be admitted on a wider basis than that set forth under Article II (iv). The principle of objective liability is, in fact, quite distinct from that of the denial of a right of recourse against the person or persons liable for the nuclear incident, and such recourse — provided the objective liability be established — could in no way prevent or impair the rights of the innocent parties.

We are of the opinion that the right of recourse should be granted in favour of the operator liable in two different ways, namely : first, in an unlimited way against the suppliers of the reactor in case of nuclear incidents arising out of defects of such reactor, and, secondly, in a limited way against the owner of a conventional ship, in case a nuclear incident arises out of a collision between a nuclear ship and a conventional ship.

As to the first case, we see no reason why the supplier of the reactor be exonerated from liability in case the nuclear incident which might occur on board a nuclear vessel is due to technical defects of the reactor itself. We are quite aware that the principle of channelling the liability on to one person only is directly derived from the O.E.E.C. Draft; but we strongly feel that such principle should not be accepted in maritime law.

On the other hand, we do think that the operator could not possibly acquire such right of recourse by incorporating special provisions in the contract of supply in compliance with the rules set forth in Article II (iv). It is, in fact, doubtful that should the principle of the absolute and sole liability be accepted in an International Convention, no shipowner would succeed in obtaining better terms from the suppliers of a reactor.

Turning now to the second case, namely that of a collision between a nuclear ship and a conventional one, we do not see why the owner of the latter should be relieved from all his liabilities and, in addition,

should also be granted a right of recourse against the operator for possible nuclear damage. The objection has been raised that should the liability of the owner of the conventional ship be admitted it would be very difficult for him to find an adequate cover and in any case quite expensive. But we believe that such objection could easily be set aside by establishing the right of the owner of the conventional ship to limit his liability in compliance with the 1957 Convention.

We wish to add that the fact of the owner of the conventional ship not being previously aware of the nature of the colliding ship is not persuasive. In fact, there are other instances of great damages arising out of a collision on account of the nature of the cargo carried by one of the vessels; the example of a tanker and of a vessel carrying explosives springs to our mind. And in such cases, should the owner of such vessel be found blameless the owner of the vessel at fault would have to indemnify all the damage caused by such dangerous cargo.

The situation might not be so different in the case of a nuclear ship and, therefore, we recommend that the right of recourse be admitted within the limits of the 1957 Convention.

Mr. Kaj Pineus, Sweden : We of the Swedish Delegation accept the principle of the exclusive and absolute liability of the operator, but we can imagine cases where negligence shown by the counter party should modify the consequences of this principle. We think in this respect very much along the lines so well developed by Professor Van Ryn.

We further accept a higher limit of liability than the 1957 Convention gives. We accept the idea of a duty of the licensing State to see to it that suitable insurance or other adequate guarantee is available within the limits ultimately fixed in the Convention.

We accept the idea of an extension of the time limit of prescription compared with the 1957 Convention.

To inscribe into the Convention a supplementary liability of the licensing State for damage to a third party caused by a nuclear ship is, I understand, desired by our American friends. It is not for me here and now to declare the attitude of the Swedish Government on this particular question. From the contacts I have had, and from what I have heard about the discussions in Paris on the O.E.E.C. Draft Convention, I believe I am entitled to draw a personal conclusion, that is to say, I do not believe that to inscribe such a liability of the licensing State up to a specific figure would be acceptable to the Swedish Government.

However, all these problems — what the Governments and my Government will do or not do — are fortunately not things for the Comité Maritime International to solve here and now, and I believe that the Draft Convention will form a suitable basis for our further discussions.

Mr. N. Katicic, Yugoslavia (translation): In the name of the Yugoslav Association I declare that my delegation accepts the principles on which the draft and the report submitted to this Conference are based as well as the account of Mr. Asser.

For the special debate I reserve another remark concerning the clarification of the text on following points : definition of the operator Art. I (iii), fixing the amount of liability (Art. III (ii)) a question in connection with the national insurance system (Art. VI), and the questions relating to the amounts supplied for any indemnification (Art. XI).

Mr. J. T. Asser, Netherlands : I do not want to take up very much of your time, but I want to revert to what has been said this afternoon by my friend, Mr. Martin Hill, and by my friend, Mr. Pineus, with respect to the subsidiary liability of the States. I quite agree with those speakers. As a matter of fact, this was agreed upon by the restricted Subcommittee who worked on the draft, that this question cannot be decided upon by this Conference, that it would be a question for the Diplomatic Conference and not for the C.M.I. On the other hand, I believe within the framework of the rules, which we will be and have been discussing, the question of subsidiary Government liability will be of the greatest importance.

It is the custom of all Conventions passed by the Diplomatic Conference of Maritime Law of Brussels that they are open Conventions and, in the second place, especially on this subject, it is of the greatest importance that some measure of control should be added in order to ensure that all States who will be party to this Convention, will fulfil their international obligations arising from the Convention.

In the first place I am thinking of the obligations with regard to the licensing. No State should be able to license until it has seen that proper insurance or some other proper financial guarantee has been provided. However, in the second place — and here we touch on the subject of the subsidiary liability of the licensing States — it is absolutely essential if we want this Convention really to become a working instrument, that any ship which has caused a nuclear catastrophe in any specific case should be licensed by the Government and that the Government should pay whenever the damage exceeds the figure for which the shipowner or operator is liable.

In my opinion there is only one way in which this may be ensured, namely by setting up some kind of international agency. I am thinking aloud, 'Gentlemen; these are just my few, first thoughts. I am thinking of an international agency which will control and check that the respective Governments that license ships, will fulfil their obligations; an agency with which those Governments may, perhaps, put up sums required under the Convention to be passed by the Diplomatic Conference. I repeat that it is unthinkable that in this meeting we should

decide on this question. I would therefore make the following suggestion that in preparing the Draft Convention, which will be sent to the Belgian Government in Brussels, we should add to it a report in which those questions should be outlined as a proper basis for discussion between the Governments.

Mr. Arthur M. Boal, United States : I do not think that one of the basic principles of the Draft Convention of liability without fault is radical or revolutionary. In our country we have been approaching it by judicial decision with great rapidity. We would have in the case of a nuclear incident innocent people injured whose own negligence will not in any way have contributed to their difficulties, and it is one of the prices that should be paid for the use of this new energy, to provide that the victims of it shall be compensated for their injuries regardless of who is at fault.

Now, the question of making that liability exclusive is of great practical importance. We cannot have nuclear ships without it. Suppliers will not be willing to furnish supplies for the construction of a nuclear ship, its equipment or operation, unless they are protected from the possibility of liability for a nuclear incident. They just will not be interested in engaging in that type of business. Therefore, we are faced not with a theoretical problem, not with what the law has been in torts over the last years or centuries, but with what the law must be to enable nuclear ships to operate and also reasonably to protect the public or compensate them for the injuries they may sustain. So those two are tied together and when you take one you must take the other.

On the question mentioned here of rights against third parties and so forth, that should fall under the same head, we are in the position where it is necessary for practical reasons to channel this liability and keep it channelled in one spot, to have that liability insured and have whatever limit of liability is fixed in the Convention fully secured either by insurance or other means of payment. We are almost approaching that in our air travel today. You go into any airport and you have insurance offered to you at a reasonable figure. Nearly everybody buys it because they want to be assured of compensation in the case of an accident, no matter what it is. So that these rights of subrogation or rights of third parties are, I think, something we must relate to the past so far as nuclear liabilities are concerned. They are expensive to enforce and I have never found them very satisfactory in their results.

Mr. Martin Hill's statement on the question of limitation is a principle which we cannot quite follow or understand. We think that whatever limit of liability is imposed it should be imposed upon the owner, and if that is ensured up to a certain amount he is secured there. If he wants to rely upon a Government indemnity above that, that is all right, but it must be in one spot and he must have his

security either on his Government indemnity or his insurance, but the victim should not be asked to look to the State for his compensation.

But there is no doubt in our minds that the limitation provisions as to time in the Convention are sound. We cannot rely upon the ordinary period because injuries due to radio-activity may not appear for a long period of time.

We are in favour in principle of this Convention; it would require some refining, some improvement, but its basic principles we think are sound and should be approved and contained in whatever the final product is of this meeting here today.

Mr. F. Norrmen, Finland : As delegate for Finland I would like to say here that I will support the principles laid down in the Draft Convention before us. I can add that my opinion and the opinion of the Finnish Maritime Law Association very much coincides with that which has been expressed here so well and clearly by Mr. Pineus for Sweden. I do hope that we will have a good result of the work here because I think that it is necessary that these questions be solved internationally and as soon as possible.

The President (translation) : I would suggest to declare that the general discussion is closed and to take necessary steps for the examination of the articles of the Draft.

Two methods are open before us. Either we start together in the Plenary Conference, the examination and discussion of the Draft, article by article, or we adopt the method followed during previous Conferences. It is at this stage of the discussion that it is advisable to appoint a restricted working group composed of e.g. one to three delegates of each Association, which may form another important group because there are more than twenty Associations, in order to draft the report, article by article, afterwards to resume a short examination and eventually to take conclusion, in the Plenary Assembly.

Is the Assembly in agreement with the second suggestion ? (Numerous voices : Yes).

Mr. Arthur M. Boal, United States : I move that the President be Chairman of the Working Committee.

The President : I thank you for the honour. Mr. Boal, I appreciate your proposal very much. I am at the disposal of the Assembly.

We will now appoint the members of the working group dealing with the question of nuclear ships.

A certain number of delegations submitted following names to me :
Belgium : Mr. Van Ryn, Mr. A. Vaes, Mr. Baugniet.

Canada : Mr. Beauregard, Mr. Leavey.

Denmark : Mr. Gomard.

Finland : Mr. Norrmen.

France : Mr. Chauveau, Mr. de Grandmaison, Mr. M. Pitois.

Germany : Mr. Von Stritky, Mr. Roehreke, Mr. Dettmers.

Great-Britain : Mr. Martin Hill, Mr. Raynor, Mr. C. Miller.

Greece : Mr. Spiliopoulos, Mr. Potamianos.

Italy : Mr. Sandiford, Mr. Pasanisi, Mr. Francesco Berlingieri.

Japan : Mr. Homma, Mr. Tanikawa.

Netherlands : Mr. Cleveringa, Mr. van der Feltz, Mr. Schadee.

I consider that Mr. Asser, President of the International Subcommittee, is willing to join the working group.

Norway : Mr. Braekhus, Mr. Bugge, Mr. Poulson.

Poland : Mr. Matysik, Mr. Suchorzewski, Mr. Pawlikiewicz.

Spain : Mr. Garibi, Mr. Monfort.

Sweden : Mr. Pineus, Mr. Rudholm, Mr. Palme.

Switzerland : Mr. Walter Müller (Substitute : Mr. Sarasin).

Turkey : Mr. Göknıl, Mr. Arseven.

United States : Mr. Boal, Mr. Matteson, Mr. Seaver.

Yugoslavia : Mr. Katicic, Mr. Percic, Mr. Suc.

Tuesday, 22nd September 1959

PLENARY SESSION

Chairman : Vice-Président Vladislav Brajkovic

STATUS OF MERCHANT SHIPS IN FOREIGN PORTS

The President : Before starting the discussions I would like to say how grateful I am for having the opportunity to preside over this meeting.

Mr. E. Pallua, Yugoslavia (translation): On behalf of the Yugoslav Maritime Law Association I would like to say that we are of the opinion that it would be useful to adjourn the discussion of the Draft Convention relating to the international tatus of merchant ships in foreign ports until the next Conference in order to have a better chance of success.

Up till now eleven National Associations only replied to the questionnaire. In order to discuss properly the draft submitted to us by the President of the International Subcommittee we should dispose of comparative material which we have not yet and the debates should be prepared by a detailed examination by the International Subcommittee, taking into account the precious works of the Institut de Droit International and also the solution of the bilateral Conventions.

Anyway we think that we should continue examining this question if we wish to avoid that international regulations on the status of ships in foreign ports be settled in the more or less near future, without contribution of maritime lawyers.

In order to avoid that, it is necessary to keep this important question on the agenda of the C.M.I.

This disadvantage to be avoided is not mere theory as presently a Draft Convention concerning consular law, which closely touches our problem is on the list of matters to be codified by the Committee of International Law of the U.N.O.

The discussion should be based on the draft; in order to work efficiently we should appeal to the National Associations for kindly assisting us not only by means of reports they should be invited to draft, but also by the participation of their representatives in the work of the international Subcommittee.

Mr. G. Berlingieri, Italy (translation): The Italian Delegation submits following motion :

The Conference,

Considering that the study of the legal condition of merchant ships in foreign ports is useful and to be recommended, approves the dispositions taken by the Bureau Permanent on the suggestion of the Italian and Yugoslav Associations in order to reach an international regulation on this problem,

Ascertaining that a restricted number of National Associations have replied to the questionnaire,

Recommends to the National Associations to give more assistance in this matter and to appoint their members to the International Subcommittee in order to allow the Subcommittee to accomplish its tasks and

Decides to adjourn the examination of the Draft Convention on the international status of ships in foreign ports until the next Conference and invites the National Associations to submit their replies to the questionnaire and their observations and suggestions relating to the draft referred to.

Mr. A. Loeff, Netherlands : Mr. Chairman, speaking about this Draft Convention in the name of the Netherlands' Delegation, I am afraid that the members of this Conference will be induced to believe that our Delegation is very obstinate and conservative in rejecting proposals of the C.M.I. for, I am sorry to say, we are also against this draft. It is not because we do not support the aim of the C.M.I., on the contrary we believe that as soon as possible the C.M.I. ought to have its own statute and be heard on all matters of maritime law, otherwise the United Nations Organization will do what for many years the C.M.I. has done, without knowing us.

But this Draft Convention will in our opinion serve no useful purpose. On the contrary, we are afraid that facilities now granted to foreign vessels in foreign ports will be withdrawn if the port authorities have to comply with international rules which they do not like and which restrict their authority. On the other hand, every country which appreciates the value of international traffic will promote that traffic by all means. We in Holland know what Yugoslavia is doing to attract traffic to the port of Rijeka, inter alia from Indonesia, and they are right to do so.

Further, this Draft Convention is loaded with political questions. Take, for instance, the very first provision about ships to which it will apply, that is the vessels registered in a Contracting State and belonging mainly to subjects of such States. Does this exclude the *PanHonLib* States ? Must there be a genuine link not only between the ship and the State but also between the State and the owner of the ship ? Will,

for any measure in respect of a vessel, the consul of her State have to receive notice? Will the authorities be limited in their right to enforce payments due to them?

We do not believe that a Convention as drafted has any chance of general support, and certainly not of support by those countries for which it is intended.

Much more value must be attached for shipowners to a good agent in a foreign port with good public relations and to a very active consul.

Therefore, before taking on hand the subject the Netherlands' Delegation proposes that an international inquiry be held amongst shipowners as to whether they really have complaints about the regime in the foreign ports and in which ports. This would reveal that there is a need for a Convention. Then, and only then, there would be a reason to try to make a Convention on this subject.

The President : We appreciate the point of view of the Netherlands' Delegation but I think I understood that the real meaning of the resolution was not that the C.M.I. should abandon studying this problem but that we should study the question more thoroughly as many National Associations did not reply to the questionnaire.

Mr. J.P. Govare, France (translation): The French Association appreciates that a topic such as the one we are studying this morning will involve certainly rather difficult discussions because problems of State and sovereignty might arise.

So it is a matter which is worth very much thinking and we can only deal with it with great precaution and care if we wish that one day a draft prepared by us be ratified by a Brussels' Diplomatic Conference and if we wish to avoid a failure which would be a blame for us and contrary to the traditions of our C.M.I.

However this does not mean that we should abandon this question because it is difficult. On the contrary, it is a reason for our C.M.I. to deal with it because we have here the very technicians capable, I think, of finding a solution which is just, fair and acceptable by the States.

It is correct that few reports have been sent to the delegates so that a discussion today risks to be too long because everyone should have to express his point of view. We will have to think it over and perhaps to give proofs and to refute them.

As a consequence, when it is suggested to adjourn the question until another conference in order to enable the delegates to examine in the meantime the questions more carefully and to supply more material to the delegate who has to draft the report, the French Association supports it completely. (Applause).

Mr. F. Halvorsen, Norway : The main issue of the proposal is the question of whether the law relating to, and the practice of, ma-

agement of the ports in the majority of the countries of the world should be made uniform. It is likely that this will involve interminable difficulties and, therefore, it will hardly be worthwhile to take the matter up.

One of the chief reasons for the impracticability of this idea is that it will touch upon questions which the seaport powers consider vitally important for their situation. There seems to be so much one could do to simplify and standardise the practice of management, clearance, health control, customs clearance, etcetera. But these factors do not seem to be adapted for an International Convention. As a rule the seaport powers do not enforce these regulations by law but by administrative practice.

Although the content of some of the proposals which have been made — for instance, as regards the authority of the consuls — in principle is rather important; I think one may say it is not important in practice because, as far as is known, one never meets difficulties in such quarters.

On behalf of the Norwegian Delegation I, therefore, beg to suggest that a proposal for a uniform law in this respect be dropped.

The President (translation): Does anybody ask to come to the platform? As nobody asks to come to the platform I suggest to proceed as follows: we shall go on with our work and ask Mr. Berlingieri to appeal to the National Associations for appointing delegates to the Subcommittee because, if I understood rightly, this Subcommittee has not yet been completed.

May I ask Mr. Berlingieri to make a proposition for continuing the work?

Mr. G. Berlingieri, Italy (translation): I feel that the proposition to adjourn the discussion concerning the principles of the draft should have received a kindly disposed acceptance of the Assembly. I should like to say to the Dutch and the Norwegian Delegations that I do not understand how we might discuss this draft which nobody knows presently. I insist on the motion I had the honour to submit to you. (Applause).

The President: We are going to ask each delegation whether they agree to adjourn the works and to send them back to the Subcommittee.

Voted in favour: The Delegations of Germany, Belgium, Canada, Spain, the United States, France, England, Greece, Israël, Italy, Poland, Sweden, Switzerland, Turkey, Yugoslavia.

Voted against: the Delegations of Norway and the Netherlands.

The motion submitted by Mr. Berlingieri is adopted by 15 votes against 2.

REGISTRY OF THE OPERATOR

Mr. G. Berlingieri, Italy (translation): I wrote a very long report and I will now try to give you a summary.

When a ship in operation meets liabilities, — I apologize for this inaccurate expression because we know very well that a ship is not a subject but an object of law — these liabilities can be either contractual or extra-contractual. The third parties have always to presume with good reason that these liabilities fall on the owner of the ship because the owner is always presumed to be also the operator of the ship.

The same thing occurs even if the shipowner is not busy with maritime traffic and if he lets his ship. However, the third parties have always the right to presume that the owner is liable because they do not know the operator.

Now it seems to me that this position of the owner who is not operating the ship, has to be known by third parties who have the right to know who has to execute either the liabilities in tort or the contractual obligations.

The third parties shall always have the right to say: You are the shipowner, you are liable for what happened to this ship.

According to my poor knowledge the law has only one way to protect the owners against the risk of such liabilities i.e. the publicity of the declaration of operator.

The 1942 Italian Maritime Code settles these matters in a satisfactory way i.e. the shipowner is always supposed to be the operator. This conception is known by several other legislations.

If the shipowner fears such presumption, he must make a declaration of operator before the authorities of the port of registry who will mention it either in the registers of registry or in the act of nationality. So the third parties are supposed to know that any liability the ship can have to face shall not fall upon the owners but on the person who has been declared to be the operator and who has, as operator, operated the ship.

For the authenticity of this declaration the law gives precisions concerning the formalities to be accomplished. I should add that this form of publicity has only been established for the case where somebody who is not the owner becomes operator i.e. in the case of a charter by demise and consequently not in the case of an ordinary charter party, time charter or charter for several voyages where the owner is still the operator of the ship.

I should add also that in spite of the declaration of operator, the owner shall not be able to escape an action for privileged claim because, here, the third parties have a privilege on the ship (Convention of April 10th, 1926). Such anomaly cannot be avoided; it is inherent

to the privileges and makes the estate of the owner liable for damages for which the owner is not personally liable. This is a case of objective liability which has perhaps been forgotten by our friend Mr. Van Ryn when he said yesterday that this objective liability referred to in the draft is not revolutionary.

I have now to take into account the different objections raised by the reports of the different National Associations.

First I shall reply to the Belgian Delegation. A few explanation seems to be necessary in order to avoid misunderstanding :

I have to insist on the basic point that we have not to give publicity to charter parties but only to contracts of hire. The duration of charter parties has nothing to do with this question because the charterer will never be an operator. The question is not to record any contract but to make a choice between the clauses which might interest a transferring from the shipowner to the operator as person liable. It is then sufficient to make a declaration of operator which shall automatically and immediately put on the operator all the liabilities attached to the operation of the ship which does not concern the owner.

Our Belgian friends also point out that, according to the Belgian law, any shipowner is liable for the facts of the master and the crew and for the contracts the masters entered into the frame of their professional activities.

This is an obstacle which seems to be insuperable, one which might with greater reason be added to those of the objective liability. However, I rather doubt the cogency of this provision which was also contained in our Commercial Code but which was annuled by our 1942 Maritime Code. This disposition seems today to be antiquated, for the necessities of modern law make it suitable to attach liabilities to the operation of the ship rather than to the ownership.

I would like to say a few more words on the report submitted by the French Delegation.

We find in that report the following statement : So there is a certain interest for the shipowner that the third parties should know by an appropriate publicity the change in the liabilities concerning the ship and the name of the charterer-operator. The French Delegation emphasizes two difficulties to be faced in the Draft Convention : one concerns article 3 of the Convention of May 10th, 1952 relating to the arrest of sea-going ships according to which in the case of a charter by demise when the charterer is solely liable for the maritime liens concerning the ship and where the claimants can arrest the ship.

The second difficulty stressed by the report of the French Delegation concerns the fact that as the shipowner can, (according to the commercial code still in force), limit his liability by abandonment, if the charterer is liable for debts of the ship during a voyage, the charterer shall not be able to limit his liability. I think that this pro-

vision will not be kept long because France, having been the most valuable supporter of the 1957 Brussels' Convention, is certainly going to abandon the system.

We tried to avoid the difficulty by an agreement between owner and charterer, according to which the charterer has the right to oblige (when abandonment is advisable), the owner to abandon his ship provided of course guarantees which the agreement could stipulate are given.

The Netherlands' Association let me know that according to their present law there is already a possibility to make publicity of the declaration of operator. They stress that they see no necessity of such Convention because in practice, already other more satisfactory solutions were found. The report observes that the functions of the master are going to be more and more restricted where as the commercial activities are compulsory part of the activities of the land agents. The operator knows perfectly well for whose account he contracts liability.

We would reply, that in the case of a bare boat charter, not the operator but the charterer is dealing with the commercial operation of the ship and as a consequence the land-agents are agents of the charterer and not of the owner. These agents have no interest at all to inform third parties with whom they are entering into contract. They have always an interest in having people think that they are acting on behalf of the owner and that they meet with his obligations.

Before ending my statement, I would like to point out that the publicity of the operator gives not only a benefit to the owner but also to third parties which will in that way have the possibility of knowing the exact person for account of whom the master or the agents are contracting.

Mr. H. Schadee, Netherlands (translation): The Netherlands' Delegation is of the opinion that the proposed Convention offers no great utility. Its application field is extremely restricted and even in that restricted field its utility will be negligible.

On the other hand the Convention offers considerable risks for the certainty of law.

As far as the application field is concerned the Convention shall only apply to bare boat charters. Now, these charter parties are very rare. The first restriction on the application field, is so important that the Convention loses nearly all its practical utility.

In this so restricted application field there are three groups of interested parties and for each group the utility of the Convention is extremely weak.

The aim of the Convention is to have the public know the fact that the owner and the operator are different persons. After such publicity, the owner shall no longer be liable for the obligations of the operator.

So there are three groups : the third parties, the operator, the owner. The operator is not interested because he loses a joint debtor and that is all. The third party does not lose anything. He becomes a forewarned man and a forewarned man is forearmed. However this dual personality offers only little interest to him. He is only interested when 7 conditions are complied with :

- 1) When the claim is not privileged.
- 2) When the claim does not grant a right of seizure.
- 3) When the claim does not grant a right of detention.
- 4) When he has not been paid in advance.
- 5) When he has consulted the registers before contracting. Now, it is rather difficult to consult registers of ships registered in far away ports. Ships are presently manoeuvred in the port with such speed that nobody has practically time enough left to consult far away registers.

- 6) When the owner does not pay the claim. Owners generally pay their claims.

- 7) When a claim is concerned for which, according to the law applicable, the owner is liable although the operator entered into the contract.

The Convention is interesting, only when these 7 conditions are complied with. This interest is thus very weak.

The owner has an interest in not being the debtor of the obligations of the operator. So the new Convention offers only an interest to the owner as far as he is liable for the obligations of the operator; such is not always the case.

When the third parties are entitled to a right of seizure or a right of detention, or when their claim grants a privilege on the ship, the fact that he is not the debtor offers very few interest to the owner.

The Netherlands' Delegation is wondering whether there are really cases of apparent injustice caused by the fact that up till now we did not have such a Convention. Do we know in the jurisprudence cases where the third party has been the victim of the lack of Convention ?

For these reasons the Netherlands' Delegation does not visualize the utility of a Convention as the one which has been suggested.

On the other hand, we are quite aware of the risks.

There is no standard form for bare boat charters. So, in order to protect third parties the whole of the charter-party should be published. It is obvious that such publicity might prejudice the owner and the operator. They will be entitled to opposing this complete disclosure of their business relation. If a choice has to be made, who is going to make the choice ? The owner, the public notary or a civil servant ?

The disclosure will be not only a liberating but also an one-sided act made by the debtor, the owner. Who shall control its accuracy ? What shall be the value as proof ? What will happen to the third

party who places confidence in it and who sues the operator instead of the owner or the owner instead of the operator, and whose action is time-barred when he becomes aware of his error ?

At what time shall the disclosure become operative ? If disclosure has been made and afterwards the operator appoints the master, will the operator be liable for all the obligations of the master from the time the master is on board or only from the time the charter party becomes operative ?

What shall happen to the third party who places confidence in the disclosed contract to whom afterwards when his claim is time-barred it is opposed that the contract has been annulled beforehand owing to the failure of one of the parties ?

All these questions and many others should be studied very thoroughly and more closely than the time left to us allows us to do.

The object of the Convention is the disclosure of the fact that the owner and the operator are not the same person and that the owner is no longer liable for the debts of the operator.

However, the draft goes much further. Instead of stipulating that the owner shall no longer be liable for claims for which he would have been liable beforehand according to the national law applicable, the draft in fact puts great liabilities on him.

The last article goes much further and we would like to have a definition of the operator. Who is the operator ? Each national law gives a different definition. What is more serious is that each law imposes different liabilities. It is quite hazardous to hold the owner liable for obligations of a person erroneously defined, differently defined, having unknown obligations. This article makes the Convention unacceptable.

Furthermore for which debts will the poor owner become liable ? Will he also become liable for the personal debts of the operator ?

Shall the owner become liable against third parties who know or who might know and consequently should know, that the owner is not a contracting party ?

I mention here only a few objections and a few incertainties. There are many others. If we really want a Convention, the Netherlands' Delegation suggests to send the problem back to the international Subcommittee which, I think, did not meet up till now.

Mr. W. Koelman, Belgium (translation): The Belgian Delegation like Mr. Schadee, is of the opinion that there is no use in making a Convention on this subject which, I think, has a very restricted bearing especially since Mr. Berlingieri has restricted its application field.

The introductory memorandum did not refer to bare boat charters. It mentions charter party, which might mean voyage charters, time charters, which made the problem much more difficult.

We do not think it is advisable to organize by means of an international Convention the disclosure of charter parties. Such is indeed the proposal and by means of the disclosure proposed the liability of the owner shall disappear and shall be placed on the operator.

This presumes that beforehand an international Convention settles a lot of other questions and I refer to article 46 of the Belgian Maritime Law of which Mr. Berlingieri said quite easily that Belgium just had to change it.

In the advocated system the owner is presumably liable unless there is a declaration of operator stating that there is a charter party. So this declaration of operator has to change the liability.

It seems to me that in matters of liability in tort and of contractual obligations this will change nothing as long as the Belgian Law is unchanged. Now, article 47 of the Belgian Law, and I think that these provisions are contained in several other legislations, stipulates that the owner is liable for the facts of the master and the crew.

With or without declaration of operator, as long as this article is not changed in our law and in the laws of the countries which have similar legislations, the draft will not change anything.

Furthermore the memorandum does not give details concerning the way how disclosure will be made. Should we accept that? The draft refers to a declaration of operator but Mr. Schadee is right in asking what that means. An operator will state in Registry Office that he is liable. Should such statement be accepted?

Will the rights of third parties be encroached upon? Such shall not be the case for the bare boat charter but there may be a lot of particular clauses and I do not see what the duration of all that will be. So I do not see the possibility of having a declaration of operator with a certain bearing unless the whole charter is disclosed at the same time. Then, how shall the charter party be published? In Belgium we have a serious difficulty owing to the fact that registry is not compulsory. Should the charter be mentioned in the certificate of registry? There is no publicity of certificates of registry. So the third party will have to put confidence in a statement made by the operator.

Will the third contracting party have sufficient time left for examining the charter when he has to enter into a contract very quickly?

I have no intention to repeat the arguments put forward by Mr. Schadee but I support him fully and consequently we think that such Convention will be of very limited interest.

So the Belgian Delegation thinks that — and we do not agree with Mr. Schadee on that point — that we should not send the Convention back to the Subcommittee but that we should decide that such subject should not be examined by the C.M.I. and that we should not make a Convention along these lines.

Mr. P. Wright, Canada : I would like to say that the Canadian Association supports the principle of this proposed Convention, but supports it for a reason that has not been argued or discussed although part of it, I think, is found in the material of the Netherlands' Association. It is basically because there is now no world-wide system of recognition of bare boat charters from the point of view of priority, and this is very current in Canada, and I suspect in Britain, and I have some suspicion that it is so in the United States and in other countries where there is no provision at all for the registration of Bare Boat charters. The question that is raised is a very simple one : Is a prior long-term bare boat charter — that is prior in time — prior in law to a registered mortgage registered subsequently ? In Canada I venture the opinion that you cannot say with confidence that the one is prior to the other, and I suspect that the same position is true in the United Kingdom and in other jurisdictions.

Now this is a matter of practical importance because, as appears in the Netherlands' paper, particularly in the field of tanker construction, the bare boat charter is being used today to finance the very large expenses that are involved.

I think the principle behind it is to use the credit of the oil companies to provide the funds to build the ship; one way in which this is done is by two bare boat charters and then a time charter followed by a mortgage, and lawyers are being asked which is prior, is the oil company that has the security of one bare boat charter and the time charter secure against either action under the mortgage subsequently registered or a sale of the ship contrary to the covenants in the various documents ? It is this question which we cannot answer with assurance.

With this question is coupled another question which involves the other jurisdictions. What is asked is : « All right, this may be the situation in Canada, but what is the situation if the vessel is transferred to another registry ? What then will be the position of the bare boat charter as against the mortgage or as against a sale by the Court ? ». Here again it is quite impossible at the present time to give any answer.

So I would like to say, in reply to some of the remarks that have been made, that I think in this field there is an important problem to be faced, and it may well be an increasing problem. I do not think that the answer is that it may only be a few countries that are concerned with it, because I suspect that there are few shipyards in the world which would not like the privilege of building a tanker and would not like to have available to them all the finance and financial support that is made available by the procedure I have described. So I think that we are all potentially interested in it.

I would like to refer to one difficulty in this regard that was raised by the Netherlands' Delegation when they were pointing out the extreme

difficulty of operating a register which would provide for Bare Boat charters but also record when they had expired or when they had lost force. There are two answers to that : first, we do it now with regard to our ships mortgaged on most of our registers; secondly, I have been looking at the remarks about the Netherlands' Royal Decree of 6 August, 1948, and although I have not read that Decree it seems to me that what is there suggested would be satisfactory to meet the point that I have sought to make, namely, that international registration of Bare Boat charters would be a real solution of this priority problem.

Mr. P. Dreijer, Sweden : The Swedish Delegation does not feel convinced that there is any need for the proposed Convention. The Subcommittee has stressed the interests of the shipowner as well as of the claimant in having Bare Boat charters registered. As far as the interests of the owner are concerned, the Swedish Delegation cannot see that the owner would benefit in any way from the proposed Convention, at least according to Swedish law; as the owner does not run the ship he is, under our law, not personally responsible for the obligations the charterer may have entered into. He is completely disinterested in the liabilities the charterer may incur provided, of course, that these liabilities do not attach to the ship as a maritime lien. But in that case a registration of the charter would not have helped him.

As for the claimant's interests, we do not think he normally will have any difficulty in ascertaining the identity of the charterer should it not have been evident from the very beginning, and for the claimant it is just a question of identifying with whom he has contracted. Should the claim be secured by a maritime lien the question of who is personally liable is, in most cases, of no importance at all.

To summarize, the Swedish Delegations thinks that the registration of bare boat charters is not of such value to a third party that an adoption of a special registration system is called for, and we therefore suggest the proposal be dropped.

Mr. H. Arseven, Turkey (translation): The Turkish Delegation agrees with the draft of the Subcommittee. We are of the opinion that the publicity of the operator is not only useful at the time the contract is passed with third parties but also at the time when third parties have to sue for breach of contract or for liability in tort.

The publicity of the operator will be useful when the owner is personally liable without limit or has to meet with a personal limited liability exceeding a privileged claim.

According to the Turkish and German Law, if, for instance, the operating charterer operates ships, he is in certain circumstances personally liable in excess to the privileged claims of the owner.

The second category of liabilities is important in Turkey and I think it is the same in Germany. In this last case if the ship is operated

by the operator who is not the owner we can sue both i.e. an action against the limited liability of the «fortune de mer» and an action for personal liability against the operator who is not the owner.

If the claimant cannot possibly make a choice for a real personal liability, limited or not, he runs the risk of paying costs of proceedings which are important and even he risks that his right be time-barred as the time limit generally is very short.

As a consequence, we consider that the publicity of the operator will dispel doubts in maritime practice. However, we are of the opinion that there is a lack in the draft that should be made good. According to the draft, the presumption involved by the publicity of the operator can only be destroyed by third parties. The operator or the owner are not entitled to supply a contrary proof. However the draft does not mention the dates of validity of the hire contract of the bare boat.

If a Court admits in a judgment that the hire contract was valid at the time of registry or was annulled before its end, shall the publicity still involve a legal presumption? The decision of the Court concerning the validity of the hire contract might be known even after the proceedings of the third parties against the operator or the owner.

But for this objection, we are in complete agreement with the draft.

Mr. S. Holt, Norway: We fully appreciate the good idea on which this proposed Convention is based, but we wish to underline and stress all the difficulties already mentioned by our Dutch and Swedish colleagues. We cannot see how this suggested Convention can be carried through and brought into practice. We therefore have to regret that we cannot support it.

Mr. K. Spiliopoulos, Greece (translation): I think that all the speakers who argued in favour or against the draft have overlooked that the question of publicity of the operator is not as simple as appears from the draft; in the draft only the last stade of all the questions which have to be solved beforehand, is apparent.

I think we are not in agreement on these judicial problems which are amongst the most difficult in matters of maritime law. All the countries do not have the same rules and precisely because of this lack of identity there are different points of view.

I learned yesterday, as I was speaking to a member of the Italian Delegation, something I did not understand when I read the Italian Code and I was really astonished, probably because the point of view of the Italian Delegation considers the publicity of the operator from a quite different point of view than the members of the Belgian Delegation and perhaps than the membres of the French Delegation.

The Italian Delegation considers that we have, on the one hand, shipowners and, on the other hand, operators and we have perhaps

a third person, the charterer, we can call carrier. We can have three qualities shared amongst three different persons. Then the problem of publicity arises. If the three qualities are assumed by one single person who is owner, operator and carrier, there is no problem.

In the case where there is a clear difference between these three persons, if the master signs the bill of lading, the carrier is liable, according to the Italian Law, and not the operator or the owner.

I do not know the French point of view but if I remember correctly it is quite the contrary i.e. that when a bill of lading is signed by the master, the owner is always presumably liable except if the owner proves that there is an operator or if the holder of the bill of lading has an interest in proving that there is an operator and that the master has been acting in the name of the operator and not in the name of the owner.

According to the Italian Law it is quite the contrary. If the holder of the bill of lading sues the owner, the owner is entitled to say at any time that there is an operator or a carrier to be sued.

The second problem is the question to know whether we intend to protect the owner. This might be necessary in the laws where all liability is put on the owner. It might be unfair to say that the owner who let his ship is liable for the carriage or for the goods which have been carried. So the owner should be protected.

Or do we intend to protect the third party ?

In the second case we should point out what the interest of the third party is. The third party who gives his goods for carriage, who has passed a contract of carriage with a company or a private individual who has his domicile in his country, can more easily sue the carrier than the owner who might be a Panamean company.

These are, I think, the fundamental judicial questions which should first be clarified before we are able to take a decision as to know whether the Convention proposed by the Italian Delegation is useful or not.

Therefore the Greek Delegation suggests to send the Convention back to the International Subcommittee. (Applause).

Mr. J. D. Miller, United Kingdom : I must apologize first of all to the Meeting because the United Kingdom Delegation has not submitted a report on this subject. That comes from the opposition on this subject. We have not, I think, as yet fully appreciated the various points that have been raised and, therefore, have not been in a position to form any definite view.

I think we can say definitely that we would not like to continue with this subject if it is merely a question of tidying up an untidy point of law. There are many untidy points of law in maritime law, and just to try to do that I think would be a waste of time because

we would not get our various Governments to pay any attention to it at all. I would much rather look at it from a commercial point of view. This is a form of registration, a form of registering a fact, which will impose additional burdens on the various registrars of vessels. We think it is purely a question of assessing whether the extra labour involved is worth the advantage to the commercial world.

We have listened with great interest to the speeches that have been made by various delegations, and in particular that of Mr. Wright of Canada. Mr. Wright has raised a point which, even amongst my very able friends, is difficult to appreciate at the moment, and it is difficult to assess its full weight.

We would like to support the suggestion that this should go back to a small Committee of four or five people who could reassess this subject and then report back to the meeting.

Mr. I. Kisic, Yugoslavia (translation): In the name of the Yugoslav Delegation I have the honour of informing you that the Yugoslav Association considers that an International Convention on naval publicity is very useful but that the drafting of such Convention will also rise the difficulties referred to by the National Associations especially because of the fact that the National Associations give different definitions of the operator.

However, the Yugoslav Association considers that this difficulty would not exist if the international regulation concerning the registry of operators did not exceed one year. A charterer is always an operator and as a consequence assumes the entire liability for the operation of the ship except the real liabilities of the owner for the privileges on the ship.

That is the reason why the Yugoslav Association considers that the third parties have an interest, in such cases, to know not only the name of the owner but also the name of the operator and that by consulting the registers of the corporation, the certificates of registry and other documents which are stipulated by the Convention.

Mr. J. Potier, France (translation): From the beginning, the French Association has agreed that the Italian proposition offers an interest. Our opinion has not changed, notwithstanding some indictments we heard against the utility of the contemplated Convention.

Certainly we can discuss on the extent of the utility but we cannot deny, we feel, that this Convention offers a certain interest and is capable of giving valuable guarantees to the maritime world and to the business world.

So we support the suggestion made by Mr. John Miller proposing a restricted Subcommittee.

The President : The aim of the C.M.I. is the unity of law. Therefore we must reach an agreement. As the Committee brings eminent

people together who are dealing with maritime law, it seems to me that we have to study certain questions thoroughly.

We can see in the history and even in the evolution of the conception of operator that, at each period, this conception was different. In the Roman times the conception of operator existed. In the Middle-Ages the conception changed slightly and presently in the modern times we see that the operator appears again. Therefore I ask the entire Committee : is the owner the most important person ? Our Dean, Mr. Ripert, introduced a new conception in his third volume of the maritime operation.

Is it necessary that the owner who disregards the operation of the ship, should be liable for all the consequences of such an operating ? In a house which is hired, the owner is liable for certain things but not for all of them. We should examine whether it would not be useful to have the conception of owner precisely defined.

It has been said that in the English law doctrine there is no conception of operator but if there is no such appellation the fact exists nevertheless.

Of course, we have the problem of privileges which is unavoidable until we arrive at uniformity.

A few minutes ago somebody mentioned the carrier : I am afraid that if we add another conception this will make matters more complicated.

Therefore, in our law, we put all the liability on the operator, whether he is the owner or not.

I would like to insist on the importance of examining further all the questions of legislation and jurisprudence because I think that it is not necessary and even not advisable from an economical point of view to hold the owner always liable.

Therefore I venture to recommend to your eminent Assembly a thorough study of this problem. (Applause).

Mr. G. Berlingieri, Italy (translation): I intended to reply in a few words to the questions put by the Dutch representatives but after your intervention, Mr. Chairman, I admit that the question is very serious and involves serious difficulties.

I agree upon the proposition to send back the problem to the Subcommittee.

Mr. H. Schadee, Netherlands (translation): On behalf of the Netherlands' Delegation I support the proposition to send the question back to the Subcommittee. (Applause).

Mr. W. Koelman, Belgium (translation): The Belgian Delegation agrees to send the question back to the Subcommittee.

SUBCOMMITTEE ON ATOMIC RISKS

Chairman : President Albert Lilar

ARTICLE I

The President, (translation): As we have agreed upon yesterday, we are going to start examining the articles of the International Draft Convention relating to the liability of operators of nuclear sea-going ships.

We are now discussing article 1 which contains principally the definitions of the different terms used in the Convention.

Mr. J.P. Kruseman, Netherlands : Only a question, Mr. Chairman, does this include State-owned ships and war ships or does it not?

Mr. J.T. Asser, Netherlands (translation): I think that this is a much wider question which goes further than the definitions. It concerns the question to know whether the Convention should cover ships of war and Governmental ships exclusively appropriated to a public service. I think it will be useful to discuss this question later on.

The President (translation): We record Mr. Kruseman's observation and we shall have, when discussing the articles, to take a decision on the point to know whether it is advisable to make the Convention applicable to Governmental ships and to ships of war. So we have replied to your question.

Mr. Van der Feltz, Netherlands (translation): What does « sea-going » mean ? The sea-going ship under construction or the sea-going ship which is navigating ? Are Great Lakes' ships and river barges concerned ?

Mr. J.T. Asser, Netherlands (translation): Mr. Van der Feltz is asking whether the expression « sea-going ship » covers ships' navigating on the American Lakes. I think that river barges are not covered because it is unlikely that these will ever be equipped with a nuclear reactor.

Mr. Van der Feltz, Netherlands (translation): I do not think so.

Mr. J.T. Asser, Netherlands (translation): As far as sea-going ships are concerned I would like to point out that in all our previous conventions we used the same expression without dwelling upon it. It is an error to try now to give a definition of that expression.

Mr. Van der Feltz, Netherlands, (translation): I suggest to cross the words « de mer » in the French text and the words « sea-going » in the English one.

All ships equipped with nuclear fuel should be governed by the Convention.

I am wondering whether the word « navires de mer » is right because it is possible to have ships equipped with nuclear fuel which are not « sea-going » ships e.g. ships navigating on the Great American Lakes.

Is it possible that in a few years time, river barges will be equipped with nuclear fuel. We are making a Convention for the future and we should take into account all possibilities of science. For that reason I suggest to cross the words « de mer » in the French text and the word « sea-going » in the English text.

Mr. R. Seaver, United States : The American Delegation has no objection to that change.

The President (translation): Does the Subcommittee agree upon drafting the first point of article 1 as follows : "« nuclear ship » means any ship equipped for the utilization of nuclear fuel." (Agreement).

We come now to point 2 : "« licensing State » means the contracting State which has licensed, registered or otherwise given authority for the operation of a nuclear ship."

Mr. Cleveringa, Netherlands, (translation): In the name of the Netherlands' Delegation I suggest to delete in the English text the word «registered» and in the French text the corresponding words « qui a procédé à l'immatriculation » because if the State grants a licence, this State should take a decision concerning the acceptability of the ship as a nuclear ship. However the registry itself is something quite different and we cannot conclude that the registry is another way of granting a licence.

Therefore we suggest to delete the words « qui a procédé à l'immatriculation » and in the English text the word « registered ».

Mr. Pitois, France (translation): We have no objection to the proposed amendment but as soon as we delete the principle of registering which is an administrative formality, we should not insert the term « Etat d'immatriculation ». Which expression do you intend as a substitute for « Etat d'immatriculation » ?

Mr. Cleveringa, Netherlands, (translation): We can very well maintain the expression « Etat d'immatriculation » if we give a definition.

Mr. Pitois, France (translation): Or we could put anything (smiles); this seems very illogical to me.

Mr. Cleveringa, Netherlands (translation): I leave to the French Delegation to find another expression.

Mr. Pitois, France (translation): That seems very difficult to me.

The President (translation): The aim is clear. It is the State which has granted the licence which is concerned. That is the important point.

The question is to find an adequate French translation of the English expression « licensing State ».

Mr. de Grandmaison, France (translation): We are dealing in this Article I with the question of definition; we are asked to translate some words. Now, you suggest to translate the words « licensing State » by « Etat qui a accordé la licence ».

I agree but I draw the attention upon the fact that we shall have to define the words « l'Etat qui a accordé la licence ». What does that mean? Every State which granted a licence?

I read « l'Etat qui a accordé la licence signifie tout Etat qui a accordé la licence ». I humbly draw the attention of the Conference on the rather childish character of this definition.

The President, (translation): I think that we should not stick to this question. If, when we are studying this Convention, a definition or a more adequate word appears, we shall make use it. Of course if we leave « Etat d'immatriculation » this would be rather curious but it will involve no disadvantage.

I think we can leave the question in abeyance.

Mr. Pitois, France (translation): Mr. President, as it has been put forward by Mr. de Grandmaison, the State granting the licence is concerned. I looked at the text; once or twice the words « Etat d'immatriculation » are mentioned in the text. So I suppose it would be far easier to say simply and solely « Etat qui a accordé la licence » and to delete in the first article the definition which seems to me quite useless.

The President, (translation): I think there is no objection. Even the English text does not add anything.

Mr. J.P. Kruseman, Pays-Bas : Or otherwise.

The President : Is there a great difference ?

Mr. Katicic, Yugoslavia (translation): We deleted : « qui a procédé à l'immatriculation ou qui a autorisé d'une autre manière, l'exploitation d'un navire nucléaire ». Can each of the two cases imply the liability of the State in his capacity of licensing State. If a State grants a licence is it possible that another State gives otherwise authority for the operation of a nuclear ship. We might have two States at the same time; is that possible ?

The President, (translation): I ask those who took part in the works of the Subcommittee to think this question over for a moment.

Mr. J.T. Asser, Netherlands (translation): It seems that we considered only the possibility of one single licence, one single authority given by one single State.

Mr. Leonard J. Matteson, United States : That is right, Mr. Asser. We did not consider the possibility of joint licensing by two or more States. One of the reasons for that is that it would be very difficult to divide up the responsibility, and if that situation should arise we feel that it would be solved by one of the licensing States taking the position of the licensing State with an arrangement between the two States by which they would share the responsibility among themselves.

The President : May I ask if you do object to the last part of this Article, « ...otherwise given authority for the operation... », being omitted so that the Convention should only refer to the licensing State !

Mr. Leonard J. Matteson, United States : The reason for the additional language was that we were not entirely sure just what form the licensing authority might take, and we wanted to make the language broad enough to include the State which authorized the operation of the vessel whether by licensing or some other form.

The President, (translation): I think we can sum up the debates concerning the definition number (ii). I think we agree upon deleting in the French text the words « qui a procédé à l'immatriculation » and in the English text the words : « registered ».

I think we also agree on the point that the Drafting Committee added the words « or otherwise given authority... », to the words « has licensed » because, as explained by Mr. Matteson, a State might have given authority otherwise than by a licence. Therefore, I think that these words covering that possibility can be accepted.

I think also that the exchange of views showed that the Drafting Committee of this text has not contemplated by these words a double or a triple liability but only the liability of the State granting the licence, either under the form of a licence or otherwise.

I think that we have summed up the debates and that the only difficulty still to be solved, is the French wording.

I suggest to think it over thoroughly in the course of the debates for we cannot stay in this dead lock. Let us look for another word, if you like, during the Conference, and let us maintain the adopted word with the meaning just assigned to it, as long as nothing better comes out.

I would also like to ask especially our French friends to try to find a better solution during the session.

So we delete in the French text the words : « qui a procédé à l'immatriculation » and in the English text the word : « Registered », and we keep in suspense the translation of « licensing State ».

We proceed now with paragraph (iii).

« Operator » means the person designated or recognised by the licensing State as operator of a nuclear ship; if no such authority has been given or is in effect, the owner of the nuclear ship shall be considered the operator ».

Mr. Francesco Berlingieri, Italy : There are two questions here. There is one question of the wording because in paragraph (ii) we say, « licensing State » and we say, « otherwise given authority ». In paragraph (iii) we say « the person designated or recognized », the words are different.

Then there is the question of substance when we say that if no authority has been given or is in effect the owner of the nuclear ship shall be considered the operator. Now, are we to think that if no licence is given the Convention will apply ? Must we think that if no licence is given the limitation of liability will apply to somebody who will exercise a nuclear vessel without any licence at all ? I just want to call your attention here, because the question must be discussed again under Article IV.

The President : I propose that every point should be discussed. At the moment we are considering Article I as to the definition.

Mr. Francesco Berlingieri, Italy : There is only the first observation which must be considered here, that is that paragraph (ii) uses the words « licensed » and « given authority » and paragraph (iii) says, « operator » means the person designated or recognized but not « licensed ». I wonder whether some misunderstanding might arise out of that difference.

Mr. J.T. Asser, Netherlands (translation): I am afraid that this observation is immaterial. The text is perfectly clear, it means that the person who is designated in the licence is, according to the Convention, to be considered as the operator.

As far as the second observation of Mr. Berlingieri is concerned, I think that it relates to a principle which should be taken into consideration later on. It refers in particular to the application field of the Convention. I think I share Mr. Berlingieri's opinion according to which this question is not solved by the text presently put before us.

In the third place Mr. Berlingieri asked what should be done when the licence expires and the ship goes on ploughing the seas. This question should be reserved.

The President, (translation): Do not forget that article I concerns only definitions. We do not deal with principles in Article I.

I think there is no disadvantage in maintaining the present reading.

Are there amendments proposed to point 3 ?

Mr. O. Dettmers, Germany : May I put a question before Mr. Asser ? May I ask whether your committee has considered the ships under construction ? Is a shipyard also an operator of a nuclear ship ? I think so, as soon as the ship is completed and on trial. The shipyard does not stay operating the nuclear ship. However, what about the ship if it is not yet completed, which is still under construction but the reactor and the nuclear fuels have arrived on the shipyard and are intended to be used in the nuclear ship ?

Mr. J.T. Asser, Netherlands : I am afraid I am completely incompetent to answer your question because I do not know whether any nuclear fuel will be brought aboard the ship before it is afloat, and whether before the trial trips the reactor will work. If so, I think we should provide for that. I think also it is a question of substance which should be reserved for later.

Mr. C.T. Miller, Great-Britain : I should like to say just one word in support of Mr. Berlingieri. I do not want to take up time, but this is extremely important for us.

Mr. Berlingieri is quite right in saying why do you use different words in (iii) from what you use in (ii). Now, with us, if you go and use different words when you mean the same thing you certainly cannot get some judge, probably when he is in a bad temper, to say « they must have meant something different, otherwise why did they use a different phrase ? ». Therefore, our draftsmen would certainly want to say, « operator » means the person licensed or otherwise authorized by the licensing State. Why do you use different words such as « designated or recognized » ?

As I say I do not want to occupy time over drafting points, because there will be other ideas as to how this should go. I imagine you do not want a matter of pure drafting to be discussed.

As to the second point which Mr. Berlingieri made, we even more strongly support his view, but of course this is a question that goes *au fond*, as the President said. But I hope we delete ultimately the words « if no such authority » right down to the word « operator ». These words must come out of paragraph (iii), otherwise you are giving the benefit of the protection of the Convention to unlicensed operators, which no Government will allow.

Mr. J.P. Kruseman, Netherlands : With regard to the third point raised by Mr. Asser I think we certainly should provide for it. First of all, I think that as soon as a hull has been launched, at least in Holland, it has become a ship, but I am quite sure that no shipowner

will take delivery of the ship during the trial unless that reactor works. It has to be made critical beforehand, so there will most probably be quite some time between the installation of the reactor and the filling of the reactor with fuel and the moment when the ship is taken delivery of by the shipowners. That is a very long period.

Mr. J.T. Asser, Netherlands : That is not the point. The point is whether the fuel is brought into the reactor when the ship is still on the stocks.

Mr. J.P. Kruseman, Netherlands : No, but it is when she is launched. But then she is still under construction after launching. I do not think it will be done before she is launched.

Mr. Leonard J. Matteson, United States : Our Delegation would be quite satisfied with Mr. Miller's suggestion. But actually there is an omission in the present text from the draft we prepared at Antwerp, I believe. In that, following the word « registered » in the original draft there were the words « by the competent public authority of the licensing State », and I think it would be advisable to have those words in.

The President (translation): The American Delegation submits an amendment or a precision and proposes to draft the English text as follows :

« "Operator" means the person licensed or otherwise authorized by the competent public authority of the licensing State as operator of a nuclear ship; if no such authority has been given or is in effect the owner of the nuclear ship shall be considered the operator ».

Mr. R.P. Cleveringa, Netherlands : Does Mr. Matteson mean by the words he proposed to add that it is not possible for an operator to give back his licence to the State in order that the effect shall be that he is an operator no more. In my opinion, we must find a definition with the effect that if you are an operator you are not able to produce the effect of not being an operator any more. That must be the effect I gather, that once authorized you remain an operator and you can only give up your quality as an operator by an act of the State which gave you the licence. Is that your meaning ?

Mr. Leonard J. Matteson, United States : I think it can be safely assumed that no one will be permitted to operate a nuclear vessel except by the authority of the State.

The President, (translation): I would like to draw the attention of the members of the Subcommittee on the fact that we are presently only defining the expressions which will be used in the Draft Convention. Only that. When we shall be examining separate articles we

shall have the opportunity to consider the effects of the suggested text in the different circumstances of application.

Now, when we are examining only the definitions, I would like to ask you neither to open nor to start discussions on principles which we necessarily have to discuss again when we are discussing the following articles.

Mr. Francesco Berlingieri, Italy : I support Mr. Miller's proposal to eliminate the words « if no such authority » to the end of the phrase.

The President, (translation): Do we agree upon the definition proposed by the American Delegation ? I mean only from the point of view of a theoretical definition. (Agreement)

(iv) « Combustible nucléaire » (Nuclear fuel). Are there objections to this definition ?

Mr. Leonard J. Matteson, United States : Again there appears to be a difference between the text as it appears in this book and the text of the Convention coming from Antwerp as I have it.

We are now defining nuclear fuel and the words « material coming therefrom » do not appear in the text as we prepared it at Antwerp. I think the « material coming therefrom » is probably includable under the definition of radio-active products and waste rather than fuel.

Mr. C.T. Miller, Great Britain : Mr. Matteson is quite right. The addition of the words in sub-paragraph (iv) « material coming therefrom » was intended to cover radio-active waste but of course when the ship is being de-fuelled there will be radio-active waste for a short time in her and questions may arise as to up to what point the shipowner is liable for any radio-active damage done by that radio-active waste. But since this draft was made, of course, the I.A.E.A. have produced their Convention at Vienna. They have a definition which seemed to us much simpler, much clearer and which includes the point which Mr. Matteson has just made. Their definition, adapted to nuclear fuel, would read as follows : « "nuclear fuel" means any material which is capable of producing energy by a process of nuclear fission and which is used or intended for use in a nuclear ship ».

The great men at Vienna devised this, I am told, after a very long argument and careful consideration. It would seem to us in the British Delegation to be a neater and more comprehensive definition. You get the fuel coming in — I know it is said not to be dangerous at all but never mind, that will cover it — the fuel elements when the ship is being fuelled, the fuel elements in the reactor in the working ship, and you have the radio-active waste when the ship is de-fuelled. All that is comprehended in the simple definition.

Mr. Leonard J. Matteson, United States : We would be quite agreeable to substitute the definition suggested by Mr. Miller with one

exception. There is in the future a possibility of the production of power not only by fission but by fusion, and it would seem to us that this definition should be broad enough to last to the end of the period, when possibly we shall have nuclear fusion as well as nuclear fission. We would suggest adding the words « or fusion » after « fission ».

The President (translation): Mr. Matteson has just made a very sensible observation, I think, in order to extend the application field of the definition.

Does the Subcommittee agree upon Mr. Miller's proposal amended by Mr. Matteson ? This wording shall be substituted to paragraph (iv). (Agreement).

(v) « radio-active products or waste ».

Mr. Matysik, Poland (translation): Just one question. In paragraph (v) I read « process of utilizing nuclear fuel ». Is it only « utilizing » or also « handling » ?

The President, (translation): I think that we should maintain the text which is proposed. In fact the utilization of nuclear fuel is contemplated here. I do not see an advantage in adopting Mr. Matysik's amendment.

Mr. J.P. Kruseman, Netherlands : Utilizing includes the handling of it, otherwise you cannot utilize it.

The President, (translation): We proceed with point (vi), « nuclear damage ».

Mr. Matysik, Poland (translation): I beg to repeat my suggestion of yesterday i.e. that we should explain that all damages resulting from operation, even normal operation, of a nuclear reactor shall be covered by the words : « nuclear incident ».

The President, (translation): That is point (vii) and we are dealing with point (vi). Does anybody wish to make observations concerning the wording of (vi) ?

Mr. C.T. Miller, Great Britain : I am afraid that here as usual the British have got to be difficult. It is not my fault. It is a question of a basic principle of our law. I have two points, I hope of great substance, on this particular sub-article. The use of the phrase « infringements of any right » causes us considerable alarm because it raises this vexed question of *dommage moral* which we do not know in our law and which under the civil code, or under the civil law, rather, are awarded. If you put in the words « infringements of any right » we have to translate that into English statute, it is possible that all sorts of damages which are not at the present time liable under our law might be thought to be included. It is axiomatic that with these Conventions you cannot change a matter of procedure of which probably

the most important is the measure of damage awarded. All the Nations represented here probably have different ideas under their law of the measure of damage which should be awarded in any case. That is a matter with which we cannot deal unless we have a Convention which deals specifically with measure of damage, and I hope I shall not be in the Comité Maritime International when that happens.

Therefore, we feel that these words « infringements of any right » should be deleted because they are very dangerous to any one who has to deal with Anglo-Saxon jurisprudence.

The other point on this is a question of substance. I must raise it here just to state it so that we do not forget it. What about — and I put this in the interrogatory form — the cost of removal of wrecks ? We are now talking about nuclear damage but in many parts of the world harbour authorities have the right, the right of charging the owner of a ship with the cost of removing the wreck of his ship from their jurisdiction. Nearly all our harbour authorities and many harbour authorities on the continent have that right. The cost of removing the wreck of a nuclear ship is going to be at least five times the cost of removing the wreck of what is euphemistically called a conventional ship. That is a matter which is not included in the phrase « nuclear damage », nor in this definition. I am only mentioning it now so that we shall not forget it, because it is of extreme importance.

Therefore, I would say let us remember the cost of the removal of wrecks and in the excitement of considering the other Articles do not let us forget it. I would also say let us strike out the words « infringements of any right ».

Mr. Leonard J. Matteson, United States : I would say that the American Delegation is heartily in accord with what Mr. Miller has said. Actually, the term « infringements of any right » has been taken from the Brussels Convention of 1957 where it was used in an entirely different context. This Treaty will be conferring rights and if we included the words « infringements of any right » it would lead to the inference that we intended to give the broadest possible definition to damage. The words were used in the Brussels Convention to include within limitation damage to any rights that might be recognized by any Courts, and in that context the broad phrase was appropriate, but here, where we are conferring rights, I think it would be most dangerous to include these general words, « infringements of any right », which might lead to the recognition of damage to rights which would not be recognized in any other context.

My proposal is the same as Mr. Miller's, to delete the words « or infringements of any right ».

As far as the expense of removing wrecks is concerned, it would be my impression that the cost would be included within the phrase

« damage to any property ». In collision cases with which I have been familiar the cost of removing wrecks where this has been opposed on the part of the shipowner by statute or otherwise has been recognized as part of the damage flowing from the collision, and I think it would be under this Convention.

Mr. J.T. Asser, Netherlands : May I say a few words on this subject ? When we worked on this draft on a very hot Saturday and Sunday of July of this year at Antwerp, at least an hour was spent debating the question whether the words « infringement of any right » should go in or should be left out. They were put in for the following reason : in the first place, because they were in the 1957 Convention. Now, of course, Mr. Matteson is quite right in saying that the 1957 Convention does not confer any rights, it only allows those rights which are admitted by Courts to come within the application of the Convention. On the other hand, we decided to put those words in — and I believe with the agreement then of Mr. Matteson — because we were afraid if we left them out that immaterial damage would be excluded from the application of this Convention and we discussed the following case. Supposing that a nuclear ship comes into one of the ports, say, the port of London, it has a collision there or sinks and contaminates the whole port laying idle in the port for six months; that would create enormous damage which would not be loss of or material damage to property and we were afraid in Antwerp that if we left out the words « Infringement of any rights » certain European Courts might construe the Convention as applying only to material damage and not to this immaterial damage to which I have just alluded.

From the point of view of an European lawyer or rather of a continental lawyer I would very much urge you to leave the words in, but in order to satisfy the objections made by Mr. Miller and Mr. Matteson we might perhaps put into the Convention the clause similar to that which is, I think, in the O.E.C.E. Convention saying that measure of damage will be left to the national laws.

The President (translation): A proposal of the British Delegation is submitted to us as well as an amendment of the American Delegation in order to delete the words : « or infringements of any right » in the wording of paragraph (vi) of article 1.

Mr. Asser suggests other solutions for which I ask him to submit a text eventually.

I invite the assembly to submit other advices concerning suppression of the words : « infringements of any right » and in the French texte the words : « atteinte à tout droit ».

Mr. Van der Feltz, Netherlands : I would like to put a question to Mr. Miller about his proposal on the « infringements of any

right ». Does it mean that damage by delay is covered under the definition or not ? Does « Loss of or damage », mean loss by delay or loss of market or other immaterial damage ?

Mr. C.T. Miller, Great Britain : I am going to speak about our own law, our English law. The words « damage to any property » would include delay but, do they include, the loss which the owners of the property suffered by reason of that property being affected by nuclear damage, not physically ? For instance, if your house became irradiated owing to the sinking of a nuclear ship and you had to leave your house for six months or a year, there might be no physical damage but you would suffer a lot of damage by way of hotel expenses. In our law we consider that would be covered by the words « damage to property ». Of course, we can only speak of our own law. It may be that our American friends will tell us under the law of the United States that differences ensue, but this is a matter which was very fully discussed by our Delegation in O.E.E.C. and I am not quite certain whether that was in Vienna, and we came to the conclusion that that was right in our law.

Mr. J.T. Asser, Netherlands : May I put in a word regarding the proposal to leave out of the definition the words « infringements of any right »; I have seen something of this nature in Article 9 of the last O.E.E.C. draft. In the Convention we would say that the national law then we would have to define the national law. But I think this will give our American friends satisfaction and I think it would satisfy most of the Continental countries.

Mr. J. de Grandmaison, France (translation): The French Delegation is of the opinion that if we give satisfaction to the request of Mr. Miller and of the American Delegation in deleting the words : « or infringements of any right », we shall have a more restricted formula which should then be slightly amended.

We read : « damage means loss of life or personal injury to any individual, loss of or damage to any property or infringements of any right... »; in French : « pertes ou dommages matériels ».

You delete « matériels ». That is much too exclusive. We suggest that if you delete « infringements of any right » you delete also the words « matériels ».

You should give only and merely the word : « dommages » in the plural, if you like.

If this word is not convenient you could take the word : « préjudices ». But do not limit compensation only to material damages.

I think you will have in that way a happy solution which will satisfy everybody.

The President, (translation): The new proposition of Mr. de Grandmaison brings us to following reading : « dommage nucléaire

signifie perte de vie, lésion corporelle de tout individu, pertes ou dommages (au pluriel) causés par un accident nucléaire ».

Are our English friends satisfied with this reading ? I think that in French this is suitable for « dommages » can be interpreted as largely as the National Delegation likes especially in such countries which know material as well as moral damage.

That is how I see your proposal. (Unanimous agreement).

Mr. Leonard J. Matteson, United States : I think we are satisfied with the explanation there. Actually, the text « loss of or damage to any property » does accord with the O.E.E.C. Draft within the I.A.E.A. draft and the British nuclear installation Act, so I think no more is necessary.

Mr. J.T. Asser, Netherlands : May I put one more question to our English friends ? In most continental countries « dommage moral » is allowed by the Courts. This is covered by the French text but will it also be covered by the English text ?

The President : Mr. Miller, do you agree with the question of Mr. Asser ?

Mr. C.T. Miller, Great Britain : The best translation I can make of the French text would be : « nuclear damage means loss of life or personal injury to any individual, any loss of or damage to property caused by nuclear incident ».

Mr. Andrija Suc, Yugoslavia. On behalf of the Yugoslav Delegation I should like to put a question. As the English text will also be used in countries where the English right is not exercised I should like to know precisely the meaning of the words in the English text, « damage to any property ». Does there exist property without ownership, because I am thinking about the fish in the sea and wondering whether nuclear incident would be meant also for damages caused to the fish; if there is property without ownership that could also be understood. If there is none then the question remains open.

Mr. C.T. Miller, Great-Britain : There is some misunderstanding. I did not intend, when I read out the English translation, to include the word « property », but I am told that I did, if so, I apologize. I should read in English : « nuclear damage means loss of life or personal injury to any individual, or any loss or damage caused by a nuclear incident ».

The President : I think we can now pass to point (vii).

« "Nuclear damage" means loss of life or personal injury to any individual, loss or damage caused by a nuclear incident ».

The conception has been extended by deleting the words « matériels ».

The President (translation): We now start studying point (vii): « nuclear incident ».

Mr. Matysik, Poland (translation): My delegation suggest to add to the end of point (vii) that all damages resulting from operating, even normally, a nuclear reactor should be covered by the words : « nuclear incident ».

We think that even normal operating is dangerous even when no incident occurs and that is the reason why we wish to add this sentence.

Mr. J. P. Kruseman, (Netherlands): This is a question *au fond*. It is quite right that, for instance, if the reactor is not shielded sufficiently people ashore or in the dockyard alongside the ship when it is unloading or in a lighter might get too much radiation, and that is a very different, very urgent question whether or not this is included in the text in the meaning of this Convention.

So far we have been discussing nuclear incidents, but here is a matter of a normal reactor working normally and still giving off too much radiation without any incident; that is a question *au fond*. I will not try to answer it but I think it is correct that it has been raised.

The President : I think it is correct and I think we have to think of it in analysing this Convention. Are there other observations on point (vii) ?

Mr. C.T. Miller, Great Britain : I am very grateful to Mr. Matysik for raising the point of principle. As long as it is reserved, I will not say a word about that, but we must remember it.

There is a matter which has caused us considerable anxiety. What we are really getting at in paragraph (vii) is the damage of the nuclear incident itself, the right of action to anybody whatever, but a nuclear incident causing damage was what we wanted to define. If I may again borrow the definition which after very much thought — I believe months of thought about a nuclear incident — our friends in O.E.E.C. managed to devise we think that this is a much clearer exposition of what we really mean. Their definition of a nuclear incident is as follows:

« « A nuclear incident » means any occurrence or succession of occurrences having the same origin which causes damage, provided that such occurrence or succession of occurrences, or the damage, arises out of or results from the radio-active properties, or a combination of radio-active properties with toxic, explosive, or other hazardous properties of nuclear fuel or radio-active products or waste or with any of them. »

We shall leave out the words « radio-active products or waste » because we have defined nuclear fuel in such a way to cover that for the purposes of a nuclear ship. It would seem to me that if we strike out the words « radio-active products or waste » from the definition

contained in the latest version of the O.E.E.C. Convention, it would be, with respect, a much better definition than the definition we have at present in the draft of the Convention.

Mr. J.T. Asser, Netherlands (translation): I have just heard that the O.E.E.C. Convention which is before you has been slightly amended. On the 4th. line the words « other damage » have been replaced by « or any damage caused ».

The President (translation): Does the Assembly agree upon adopting under number (vii) the text of the O.E.C.E. Convention ?

Mr. J.T. Asser, Netherlands : Mr. Miller, why should one leave out the last words « or radio-active products or waste or of any of them » ? We have two definitions here, one relating to nuclear fuel and another to nuclear products or waste.

Mr. C.T. Miller, Great Britain : But you do not want to include radio-active products or waste carried with cargo.

I agree with you, Mr. Asser, that you want to include the radio-active waste from the reactor when the ship is refuelling, but you want to exclude radio-active waste which is being carried as cargo, because that comes under O.E.E.C. It is rather difficult to draft this in a large conference, but I imagine a Drafting Committee will be appointed and if it is made clear to the Drafting Committee that they are to devise words which include the radio-active waste coming from the ship's reactor but not the waste coming from the cargo then I am quite prepared to agree.

Mr. Suchorzewski, Poland (translation): I would like to ask the French Delegation kindly to explain to me whether the word : « occurrence » in English means in French « fait » or « événement ». I am convinced that the word « occurrence » means in French « fait » and not « événement ». It seems to me that it would be better to substitute to the word « événement » the word « fait » which is closer to the English meaning of « occurrence ».

The President (translation:) I understand that the members of the French Delegation are in agreement with Mr. Suchorzewski.

Mr. de Grandmaison (translation): Indeed I think that it might be better to use the word « fait » instead of the word « événement », although both have a very similar meaning but it is more correct to use the word « fait » than the word « événement ».

The President (translation): The Drafting Committee which have to draft a text should not overlook this.

Are there other observations on point (vii) ?

As nobody asks to come to the platform we proceed with point viii), « Persons ».

Mr. Leonard J. Matteson, United States : I have only one suggestion on point (viii) and that is that it should be made the first point. The reason for that is that we start talking about persons as early as paragraph (iii) and it would occur to me that it would be a good idea to have the « Persons » first.

The President (translation): I agree with you.

ARTICLE II

The President : If this is agreeable to you, we shall proceed now with Article II, which is a very important article from the point of view of the principles of the Convention.

The American Delegation asks to make a statement on this article in order to explain its point of view on the principles covered.

Mr. Leonard J. Matteson, United States : Beginning with Article II we come to the heart of this Convention, and I have been, and my colleagues have been, disturbed by the differences in points of view that were expressed yesterday in the general comments. There are a few general comments that we would like to make before we proceed with the detailed discussion of Articles II and III.

I think that we must face the facts of the situation. I think we must have clearly in mind the objectives of this Convention. It is, as of now, without any treaty an impractical thing to consider the profit operation of a nuclear vessel. I think no shipowner in his right mind would consider operating a nuclear vessel without a treaty or would send his ship to the ports of any country where the treaty was not in effect. It seems highly probable that the Courts of almost any country will visit absolute liability on the operator of the ship, and the theory of that will be that he is operating an inherently dangerous facility. I think there has been some misapprehension that the present limitation laws might be adequate to cover the operator of the ship, but all of the limitation laws with which I am familiar are conditioned on lack of privity and knowledge, and no one will know better than the operator of the nuclear ship what kind of ship he is operating. Consequently, I think there is very grave doubt that the existing laws on limitation of liability will be of any benefit to a ship operator who is operating such an inherently dangerous ship.

Consequently, if we are to have nuclear ships, and they are to be useful, it is going to be essential that we shall draft a treaty which will make the ships acceptable in the ports of the world. If you are not able to send your ship anywhere it will not be a useful ship.

Another very serious factor to consider is that if the liabilities arising out of the operation of a nuclear ship are not channelled, defined

and limited, thereby eliminating the liability of the designers, the builders of the reactors, the suppliers, the material men, the repair men, the service men and everyone else, you just cannot have the nuclear ships; they will not be built.

I can recite to you the fact that in the United States when the proposal for the building of the Savannah was inaugurated the Maritime Commission went to the leading architect in the United States, Mr. Gibbs, and asked him to design the ship. Mr. Gibbs said, « I will not put a pencil to paper, I will not start until I'm given an indemnity against any liability by the Government ». The Government was not in a position at that time to furnish that indemnity, and consequently Mr. Gibbs was not interested in designing the ship. Consequently, the Maritime Administration went to another leading naval architect of our country, who was not quite so tough, and he said, « I will design this ship provided you assure me that before this ship ever goes critical I will be supplied with an indemnity agreement ». That is the way the matter stands now.

The supply men, the builders and the designers risk a great deal in rendering services to a nuclear ship. There is the possible subsidiary liability for negligence in design or manufacture or repair which is a very serious matter for them to consider. As a matter of fact, I think you are probably aware of the agreement between the United States and the Euratom Nations which proposes to assist the Euratom Nations in the establishment of a considerable programme for producing nuclear energy from land-based reactors. That programme is stymied at the moment because of the failure of the O.E.E.C. to finalise a treaty which will provide for the channelling of liability on the operator and the exclusion of any liability on the suppliers, and until the O.E.E.C. finally comes up with the treaty which accomplishes that this program cannot go ahead.

The same thing applies with respect to nuclear ships. You cannot operate, you cannot build nuclear ships until you have a well nigh universal treaty which regulates and channels and limits the potential liabilities of the suppliers as well as the operators.

There is the other side to this picture which is this. It has been conceived that the operator of a nuclear ship might form a one-ship corporation whose only asset would be the nuclear ship, and consequently in that way could limit his liabilities to the assets of a corporation consisting of the ship. There you come to the opposite side of the picture. I cannot conceive of any nation permitting a nuclear ship to enter its ports with a potential of damage, which might result from a nuclear incident involving the ship, if the only guarantee they had for the payment of damages — if an incident occurred — were the assets of the shipowner.

Consequently, we must approach this drafting of the treaty with this objective in mind that we must produce a treaty which will make the ship's operating acceptable in the ports of the world. That means a treaty which will be readily acceptable and rapidly ratified by most of the Maritime Nations of the world; most of whom are interested not in the operation of the nuclear ships but in the protection of their Nation in the event of damage.

We have, therefore, got to produce a treaty which will not only channel liability on the operator and provide a party ready to be sued but also to provide adequate guarantees for the coverage of a substantial amount of damage.

There are two points which will make this treaty saleable to the nations of the world. One is the absolute liability, the definition and ready accessibility of a party to be sued; that is the ship operator plus an adequate guarantee for the payment of damages. As far as this guarantee is concerned, we, I think, all agree that the amount of insurance which can be provided by the world market for these ships will not be adequate to satisfy what I call Claimant Nations; that the amount must be substantially higher. The Claimant Nations will not be interested in whether that is provided by insurance or a Government indemnity. They will not want to be involved in any technicalities as to how much is covered by insurance and how much is covered by a Government indemnity. They will be interested in the total guarantee and that it is readily available.

Consequently, if we should draft a treaty here limiting the liability of the operator of a nuclear ship to approximately the amount of the insurance which we conceive could be obtained, we should have accomplished nothing. That treaty would certainly not be acceptable to the Nations of the world. When I speak of Claimant Nations I think every one of us should realize that while some nations might be considered potential operators of nuclear ships, those same Nations will be Claimant Nations when the nuclear ships of another Nation visit their ports. I have in mind particularly the Savannah. At present the Savannah is covered by an indemnity provided by the United States Government of \$ 500 million. That I conceive should make her an acceptable ship in almost any port of the world. But any treaty that we draft is going to be a two-way affair. While the Savannah may be acceptable in the ports of the world with a \$ 500 million indemnity, if by treaty we establish a limit of liability of a modest amount, I am quite sure the same would not be the case. I am sure that if a nuclear vessel of any nation wanted to visit the port of New York, and that the only protection in the event of a nuclear incident, nuclear damage, were a modest amount of possibly \$ 15 million, I, as a resident of the City of New York, would be violently opposed to the admission of that ship to the waters of the New York Harbour.

Consequently, I think we have got to think in terms of what will be acceptable to the Claimant Nations.

I would like to say just a word about the position of the United States Delegation. I think there has been a feeling that we have been inclined to set impossibly high standards, and frequent mention is made of the fact that there is a \$ 500 million guarantee backing the Savannah. Obviously the \$ 500 million figure would not be possible for most of the other Nations; some lower figure must be arrived at. The figure which has been mentioned is the \$ 100 million figure which has been put in the first draft of the Euratom Convention. That is only mentioned because that is a figure which has appeared in that way.

I think there may also be an inclination to feel that possibly the United States in advocating a high standard of responsibility for nuclear damage for nuclear ships may, in the back of its mind, have the idea of preempting the field of operation of nuclear ships for itself to the extent that no one else could meet. I can assure you that that is not the case. Actually, the developments in the field of the building of nuclear ships have stemmed from the policy announced by President Eisenhower about five years ago of encouraging the development of nuclear energy for peaceful purposes, and the intent of the United States to do everything that it can to assist in the development of that policy and encouraging other nations to proceed with the development of nuclear power.

However, all that the United States Delegation asks of you is to face the facts which are that a nuclear ship cannot be operated, cannot even be built for private operation, until a standard of responsibility for nuclear damage has been established by a treaty which will make the ship acceptable in the ports of the world. Whether that figure is \$ 100 million, whether it is \$ 50 million or whether it is more than \$ 100 million, is a question that only Governments can settle between themselves, but we must point the way.

I do not concur at all with Mr. Miller's suggestion yesterday that in this treaty we should not provide for Government responsibility. It is perfectly true that we cannot speak for Governments, but I think we can point the way and indicate to Governments what the essentials are. The question is not what would shipowners willingly provide or what would Governments willingly provide; the question is what provision will make the nuclear ship acceptable and operateable generally throughout the world.

It is said that the suggestions of a high level of responsibility will make it impossible for some Nations to operate nuclear ships. It may be that that is true, but it is certainly true that no Nation and no private interest can operate a nuclear ship under present conditions without a treaty. We have got to have a generally acceptable treaty before we can make a beginning on this programme.

It is an unfortunate fact that the provision against the possible maximum liability of nuclear ships may be expensive. It may cost a lot of money. It may call for substantial insurance premiums to be paid by the owner. It may call for substantial responsibilities to be accepted by Governments. But that is one of the things that has to be faced. There are many things which have to be faced in the decision before a nuclear ship can be undertaken : the costs of the fuel; the costs of the reactor; the life of the fuel; whether it is an economic possibility to operate the ship competitively or not. All these things must be taken into account by one who contemplates building and operating a nuclear ship, and the further fact must be taken into account of the cost of providing for the possible serious nuclear liability. It is not a matter of what we want to do, it is what we have got to do to make the ships acceptable in the ports of the world.

Consequently, it seems to me that in approaching the fundamental principle of the Convention we have got to bear principally in mind that our task is to produce a treaty which will satisfy all Nations, which will be readily acceptable and quickly ratified, so that we can get ahead with the programme of building nuclear ships. A lot of discouraging comments were made here yesterday about the possibility of competitive operation of nuclear ships. The advances in this field are starting. The Savannah will be largely an experimental ship. It is planned to use here more or less as a floating laboratory, to improve her constantly as she goes along. Actually, already the design for the second fuel charge of the Savannah, which will not be required for three to four years after she gets into operation, is on the drawing boards, and it is indicated that the efficiency will be improved by 25 to 50 per cent.

There are many predictions in the field of developments, and my own personal conviction is that nuclear ships, provided the way is cleared, will come a lot more rapidly than any of us are inclined to think at the moment.

There is just one more thing I want to say, and that is this. Some of us have hesitated about providing the indemnities that seem to be indicated, the possibilities, and so forth, but I can tell you that if we bog down here by producing a treaty which will not be generally acceptable, which will not accomplish the purposes which we must have in mind, the task of drafting this treaty will be undertaken by another agency. There is one which has its fingers itching to get ahead with the subject. I am quite sure that in the drafting of any treaty by any other body, the shipowners' position will not be treated nearly as sympathetically as it is likely to be in a Conference of this kind. Consequently, I think there is every reason why we must face the facts, produce a treaty with adequate indemnities, show the way to the Governments if necessary, and bear constantly in mind when any point is discussed not what we would like to do but what will make this treaty

acceptable to the Nations of the world so that the ship can go where it wants to go and be useful when it is in operation.

Mr. C.T. Miller, Great Britain : I thank you for this opportunity of addressing a few words on what is one of the most important aspects of the Convention in our view. We agree most heartily and sincerely with practically everything that Mr. Leonard Matteson has so forcibly put before you. We agree that the private operation of a nuclear vessel is not inconceivable without a Convention because in most countries of the world the operator of a nuclear ship in the event of a nuclear incident would be held to a strict liability by the local Courts. In my view he almost certainly would in ours and I apprehend that the same result might follow in any other maritime country. Further, we agree with Mr. Matteson that the present local laws of limitation of liability, together with the Limitation of Liability Convention in Brussel, 1957, would not help the British shipowner one iota. He would not be allowed to limit because it would be said he was guilty of a fault of privity, fault of privity being the knowledge that he was pushing a very dangerous thing about the oceans and ports of the world.

We agree also that suppliers and designers cannot safely undertake the task of designing and building nuclear ships unless there is a world-wide Convention protecting them. We also agree that the possibility of forming one ship company which might seem attractive to those who have done that in the past would not be permitted. We also agree that this Convention must fulfil two requirements. It must make the party who had brought the dangerous thing on to the oceans of the world, the operator of the ship, absolutely liable. He must also be readily accessible to the claimants who may be injured by the escape of radio-activity from the nuclear reactor. We also agree there must be adequate guarantee. We agree that it is possible that a nuclear incident might cause such damage as not private shipowner could be expected to bear. We agree that it is possible. We think, on the other hand, that the nuclear risk have been greatly exaggerated; the public mind has been unduly excited as to the potentialities, but it is quite clear that these ships will not be permitted to sail the ocean until the scientific knowledge available in our countries has bent its attention upon security measures.

Where, unfortunately, we find ourselves in profound disagreement with our friends of the American Delegation is upon a matter of procedure. Matters of procedure are usually denigrated but nevertheless they are extremely important. We, the Comité Maritime International, are a commercial body. We can deal with proposed Conventions which we think are to the general benefit of the maritime commercial community, those who sail the seas and carry the cargoes of the world. All that we can do here, in the view of the British Delegation, is to state

our opinion as to the amount of liability which the private nuclear shipowner — we are dealing with him primarily — can be expected to bear, having regard to insurance as one among many factors, as a result of a nuclear casualty.

It is quite obvious, from what Mr. Matteson has said and from what I am endeavouring to repeat, that it may be that a nuclear casualty will cause damage greater than what a private shipowner can bear in our view. If that is so it is perfectly obvious that some other form of guarantee — and there can only be a State guarantee — will have to be provided. But, Gentlemen, we feel most profoundly that if we in this Convention start dictating to Governments as to what they should do in that respect, that is to say, produce a Convention which binds them to provide a guarantee in excess of what we consider to be the commercial and proper guarantee, then we shall merely exacerbate things. We are not here to dictate to Governments. We are merely here to give a Convention to our respective Governments which we consider to be a fair and proper commercial Convention. I quite agree that when it comes to our accompanying report, which in our opinion must be made, we ought to state very clearly that unless the maritime States are prepared to enter into some form of implementation such as I have suggested, the thing will not work, but how that should be done and to what amount that should be done is a matter for Governments and not for us. If we want our Convention to be acceptable to Governments, in my opinion we should be very delicate in the manner in which we draft the actual Convention.

Now, really our disagreement with our American friends is this : they say our task is to produce a Convention which will cast a liability upon an operator of a nuclear ship which would reasonably satisfy the public mind so that they will not object to nuclear ships coming into their ports. Gentlemen, that is not our task at all. Our task is, as I have said, to produce a commercial Convention and then say that in our opinion the Convention must be further expanded, but by Governments. After all, the Comité Maritime produces conventions which have absolutely no effect at all until they come before the Diplomatic Conference in Brussels. The Diplomatic Conference in Brussels is a conference of Governments and it is our view that it is up to the Governments — no doubt prodded by suggestions which we shall make — to satisfy these requirements which Mr. Matteson has so clearly put before you, and with which we agree. If we attempt to do it here, our Convention will cause nothing but annoyance among Governments and when Governments get annoyed you do not get very far.

I will also add this : Mr. Matteson has said that the paramount question is not what shipowners could or will provide or even what certain Governments will provide but what will Claimant Nations accept? Technical advance in our age is sometimes unfortunately very rapid.

Our shipowners take the view that the present design of nuclear ship will have an operating cost of at least 2.8 beyond that of a tanker, taking a nuclear tanker against an oil-fired tanker or diesel. That is not going to last very long, and we must envisage that eventually this new discovery, which is said to be of such benefit to mankind, will enable ships, nuclear ships, to be run much more cheaply than they can be run upon conventional fuel, leaving coal out of it at the moment, though it is practically out of it already. If that is so, there may be many Nations sitting here, the Governments of which are now inclined merely to look upon this question from what I call the receiving end, namely, how much they can get out of the richer countries which can afford to operate nuclear vessels as a condition of allowing them into their ports, and that is a very great error. I predict that within the next ten years, scientific progress will have been such that most Maritime Nations will want to get on to the nuclear bandwagon. Therefore, let them not only think of the position that they will be in in accepting foreign nuclear ships into their ports; let them also consider that they themselves will very soon be wanting to operate nuclear ships under their own flags.

Gentlemen, I have expressed what we feel as clearly as I can. We think it would be a tremendous error for us to attempt to dictate to Governments by putting in a Convention a figure which they themselves would have to back in addition to what is commercially insurable, or rather, as I would prefer to put it, what a commercial shipowner, a private shipowner, can reasonably bear. We must leave that to them, although in our report we must point out that unless they come to some agreement on that point the thing will not work. That agreement will be expressed in the Brussels Diplomatic Convention, but that Convention will be a Convention made by Governments after a fairly lengthy consultation between Governments.

Finally, may I remind the Commission that the O.E.E.G. figure of \$100 million is now before the Council of Ministers. It is not for me to predict the Council of Ministers are going to accept that figure or not but it is a figure suggested which has at present no Government authority.

Mr. Van Ryn, Belgium (translation): We were all equally interested when listening to the two statements which have just been made. The Belgian Delegation feels that these statements confirm the point of view which we put forward yesterday, i. e. that it is essential to perfect a Draft Convention, within a short delay for the reasons which have been repeated here. This Convention should first of all confirm that eventual victims of the new risks, which will result from the nuclear propelled ships will certainly be indemnified. Consequently it is obvious that the principal of strict liability is essential and that there will be no

difficulties to have it admitted. It remains to be seen which rules the Draft Convention might contain concerning the extent of the indemnifications which have to be paid in permanence to the principle of the strict liability.

A liability in full, a complete indemnification of all damages, whatever their extent may be, which might result from serious incident cannot be put on the operators of a nuclear propelled ship. They cannot possibly bear such liability and it is neither possible that an insurance-cover will enable them to bear it indirectly. As a consequence, if an indemnification in full of the damages caused by nuclear incidents seems to be essential — and nobody seems to contest the necessity of providing an indemnification in full in one way or another for the victims of such casualties of such seriousness is useless to repeat — so a contribution has to be contemplated, perhaps very important, which should come from elsewhere, i.e. from one or more States. I think it is an essential conditions that the Draft Convention we are considering should be complete.

This problem of supplying a supplementary indemnity, which should be supplied to the victim by one or more States, goes without doubt behind the competence of the C.M.I. and it seems to us, as far we are concerned, that the arguments put forward by Mr. Miller are absolutely decisive and we will run counter to what we are aiming at by trying to include in the Draft Convention under discussion some provisions the aim of which is to put personal liabilities on the contracting States of the expected Convention. To my knowledge the previous Conferences have never prepared a Draft Convention providing something of this kind. If we do that we shall probably make the adoption of our Draft Convention more difficult, instead of making it more acceptable. As a consequence, it seems that we should be satisfied by pointing out only directions on these points not in the frame of a Draft Convention but by way of a wish, by way of indications which would be explanatory to the draft, but without making out of these directions articles or provisions for the draft itself.

One point is left, I think, which has not been dealt with by the two general statements which have just been made, i.e. the principle of exclusive liability.

After the principle of strict liability of the operator of a nuclear propelled ship has been accepted, should then be provided in the same Draft Convention that nobody else shall in no circumstances be contacted for the same incident, even if a fault is charged against another person than the operator.

I understand that it was Mr. Matteson's idea that, in practice, nuclear propelled ships could only be built and operated if the builders and repairers interested with the maintenance of the nuclear reactors are protected.

We share his opinion to a certain extent but does this mean impunity, if I may put it in that way, and a waiver of all right of recourse even in the case of negligence or fault.

This point is very important. It is difficult and delicate because if we deal with it I am under the impression that, this time too, we shall go behind our field.

Indeed, the utilization of nuclear energy, for peaceful purposes, is not contemplated presently in the field of Maritime transport. Reactors, engines of the same kind will be operated on land and the same problems will be faced on a much more general level. We may and we have to contemplate the special case of ships propelled by nuclear power because they raise particular problems. They are certainly within the field of this Conference. However, more general problems can be raised in fields which have nothing common with maritime carriage and the same problems will occur when land-industries are built in which nuclear reactors are used. Then the point will be to know whether strict liability has not been imposed on the operator of such reactor.

The answer will probably be yes, but the question will probably be raised also, to know whether the liability should be exclusive and whether it should be admitted from now that those who built or those who accept to repair and to maintain these engines shall be protected against any recourse action. They will be allowed to be negligent without running the risk of having to face the consequences of their negligence.

That is a problem which goes beyond the maritime field. That is the reason why one could be wondering whether on this particular point also it would not be more advisable, better than solving these points with the provisions of the Draft Convention itself, to foresee on this point recommendations or a wish which will be mentioned in a document attached to the Draft Convention. (Applause).

Mr. de Grandmaison, France (translation): The French Delegation would like to state that they are in complete agreement with the general contribution put forward by Mr. Matteson and with the necessity of producing a general Convention.

The French Delegation would like to say also that they support forcibly and with all their energy the point of view so brilliantly defended by our friend Mr. Miller concerning the impossibility — which we consider radical and absolute — to dictate to the different Governments a supplementary financial liability in the case of nuclear catastrophe.

I will not come back to the statement made yesterday by Mr. Miller because nothing can be added. I will say simply that we not only risk to make several Governments ill-disposed which will finally intervene at the Brussels Diplomatic Conference, and I have said that,

in certain countries, it would be considered strangely impertinent for the Comité Maritime International, to put « ex officio » on the Governments, a financial burden which they only can sovereignly appreciate and accept. In the case of a catastrophe, a Government can, in the case of tidal wave, eruption of volcano, excessive dryness, freely take over a financial participation in the general desolateness. But it is practically impossible to put in advance a liability on it. In the field of principles and law such as in the practical field, such things does not seem conceivable.

So we support entirely what has been said by Mr. Miller and Mr. Van Ryn.

I would like to add that we agree also on the presentation of Article II, relating to the necessity of providing a strict liability which moreover does not seem to us to be a revolutionary conception but a conception to which we are perfectly used. This strict liability is connected with the theory of risks. A person who creates a risk, who sends an engine in the world is liable without considering fault. I do not think that on this point the strict liability can be in question.

However, the draft goes further; it provides not only a strict liability but also an exclusive liability.

Our friend Mr. Van Ryn speaking on behalf of the Belgian Delegation has given on this point very interesting and very detailed explanations. In his view, this problem goes beyond the field of Maritime Convention and we touch there one of the most serious problems of the civil liability. He pointed out that the conception of exclusive liability is not a judicial one and results in a injustice.

Indeed, let us imagine the case of a nuclear ship being collided by a conventional ship which is only to blame, which is only at fault but which suffers no damage, damages being only suffered by the innocent nuclear ship. The owner of the nuclear ship will be exclusively liable and will have no recourse against the guilty party. If the nuclear damage or explosion has been caused by the fault, by the malpractice of a repairer or of an builder, I can hardly imagine why there would be no recourse against the party in fault.

It is true that this results in an injustice. It is shocking on a legal point of view.

I think that the solution of an exclusive liability is essential but mainly for practical reasons. We intend to produce a valuable Convention. Mr. Miller has reminded us that it is a commercial Convention. We wish to make possible and reasonable the operation of nuclear ships. Now, if we do not admit that this strict and channelled liability, shall be exclusive we shall create throughout the world a tremendous nuclear risk which practically results in extremely numerous liabilities. We shall have first the liability of the shipyards, the liability of the ship-repairers, the liability of all the companies supplying maintenance ser-

vice to the ship and finally and mainly the liability of all the conventional ships.

All those parties liable will be compelled to obtain an insurance-cover for that nuclear risk. If the limit of liability has been fixed up to \$ 20 million all these people, unless they are mad, will have to take an insurance cover against that nuclear risk. So the operator of a conventional ship will be compelled to cover all his fleet against that risk. It is obvious that, at the present time, this will present an enormous burden, a crushing one. So we see that the practical solution should be to accept what has been suggested, i. e. not only a strict liability but also an exclusive one.

I am not extremely worried by the questions of injustice and non conformality with legal principles which have been mentioned a few minutes ago, because all this is only a question of insurance.

If we accept the exclusive liability, the operator of a nuclear ship will know that the general expenses of a nuclear ship contains an insurance premium covering a strict and exclusive liability up to the limit fixed by the Convention without recovery. The underwriters will take it into account, the matter will be known, that's all. There will be no unjust; all will be right on the commercial field and we reach this essential result that the victims will have before them a liable operator duly insured and against whom they will be able to claim without any difficulty. That is why the French Delegation inform you that they are in agreement with Article II. (Applause).

Mr. Van Ryn, Belgium (translation): I would like to reply in a few words to Mr. de Grandmaison in connection with his statement on the exclusive liability.

Everything Mr. de Grandmaison has said, proves that an enormous problem is concerned because we have to decide that the insurance-cover shall be substituted to the liability and not only in the field of maritime-carriage but in the law in general.

If the argument which has just been so brilliantly explained by Mr. de Grandmaison is admitted not only for ships propelled by nuclear power but also for all industrial installations which will be built on land in the future and equipped with nuclear installations, we shall arrive at the situation that from now on, as the burden of liability is too heavy for the operator, an insurance-cover will be substituted to it.

Then we shall arrive at the situation explained to you yesterday when I gave the example of a collision between two ships not as has been said by Mr. de Grandmaison, one of which is propelled by nuclear power and the other one by conventional power, but which are both propelled by nuclear power. If we suppose that one of them is liable for the collision because she made a wrong manoeuvre and if she did not suffer any damage, and if the other ship, as a consequence of the

bad manoeuvre of the first one, has committed herself a bad manoeuvre involving a collision, a catastrophe, a nuclear incident, the second ship, the innocent one, shall be solely liable and the other ship which committed a definite bad manoeuvre shall escape from liability. So we arrive at the situation that the risks are apportioned somewhat arbitrarily and that the principle of liability based upon a fault has to disappear in a field which will be continuously extended, the field of industrial activities where nuclear energy will be used. It might be possible to plead this argument and to give very good reason to have it admitted that I repeat that it goes far beyond the field of our work.

Other international organizations are dealing with this question. So we should pay attention not to adopt this question of principles which touches civil liability in general and which tries to overrule what has been admitted in continental Europe for several centuries, a point of view which might be opposed to and not admitted. Therefore, I think that the principle of exclusive liability should not be incorporated in the Convention because as far as maritime carriers we have to take principally into consideration, are concerned, there is no problem. If a collision occurs today or in the near future between a ship propelled by nuclear power and one propelled by conventional power and if the second one is in fault she will have the benefit of the limitation of liability and consequently she will not have to face a crushing risk.

As a consequence, in the frame of the draft we should not contemplate the question relating to exclusive liability, but it might be advisable to stress the problem we face in connection with the builders and repairers and those interested with the maintenance of the nuclear installations. This problem should be stressed and may be a solution might be suggested but I do not think it should be the subject of a disposition of Article II of the Draft.

Mr. C.T. Miller, Great Britain : May I just say one short word in support of what M. de Grandmaison has said and in answer to M. van Ryn.

As an ex-lawyer, I, together with M. van Ryn, am profoundly shocked at the idea that someone who is negligent, should escape the liability for the damages caused by the negligence, but unfortunately in this Convention we have got to put aside our conventional legal ways in which we have been trained for many years and consider the thing, as M. de Grandmaison rightly said, from the point of view of the underwriters.

With regard to the case of two nuclear ships in collision, one a nuclear ship which is at fault but which is the ship that penetrates the reactor of the nuclear ship which is not to blame, M. van Ryn says, « Why should not the nuclear ship who is to blame share in the damage or even have to share the damage ? » The answer is this : we are providing here for compulsory insurance of the operator of a nuclear

ship. Insurance against what ? Insurance against the escape of harmful radiation from the reactor of that ship, however that escape may be caused, and insurance not against negligence at all. The guilty nuclear ship in Mr. van Ryn's example will be covered by underwriters who underwrite that I may call for the sake of brevity non-negligent but absolute risk. It will also be covered under the running down clause in the policy against auto-marine casualty. We cannot see why there should be any difference between a collision in which a guilty non-nuclear ship penetrates the reactor of the nuclear ship and a collision in which a guilty nuclear ship penetrates the reactor of an innocent ship. The two things are exactly the same from the insurance point of view.

Therefore, we think that if you are going to make an exception of this principle of exclusive liability in the event of a collision between two nuclear ships you are going to get into a frightful mess, both with regard to liability and also in regard to insurance. Therefore, I heartily support what M. de Grandmaison said.

Mr. Berlingieri, Italy (translation): The Italian Delegation listened with great attention to the general comments made this morning concerning the strict liability of the operators of nuclear ships. We are prepared to accept this principle, but only this one, and we oppose radically the principles of exclusive liability.

The arguments which have been put forward on this point, have not convinced us because, if it is true that a right of recourse is admitted in the case of damages caused by a nuclear ship, other parties might be obliged, as they are liable, to have an insurance-cover. It is true that the same principle applies also in the case of damages caused by a conventional ship.

Consequently, if we say that it is possible to find an insurance-cover, the same principle may apply to a conventional ship. We say that in the case of a nuclear ship the liability will be very important, and as a consequence, the right of recourse will result in obliging the others to have another important insurance-cover.

I venture to point out that in the case of collision, the fact that the operator of a conventional ship has the right of limiting his liability in pursuance of the 1957 Convention, the conventional owner can limit this danger in the way he did it previously. So, it is not an unknown liability. As far as the liability of the suppliers of nuclear engines concerned, I heard Mr. Matteson and Mr. Boal confirm that if we do not provide the complete exoneration of their liabilities, nobody will supply nuclear engines for the ship.

I venture to make the observation that from now on a recourse has been admitted by contract.

Consequently, we can reserve the situation, i.e. we can admit on the side of the builders and the suppliers the possibility of an exoneration of liability by contract but not the contrary. This inversion might

result in excluding in numerous continental systems, the possibility of exoneration of liability in cases of heavy fault or « dol ».

In that way it will be possible for the suppliers to have an exoneration by contract limited to the case of « faute légère ».

As a conclusion the Italian Delegation is prepared to accept the principle of strict liability provided that it does not involve the principle of exclusive liability.

Mr. Arthur M. Boal, United States : I would like to say a word about this exclusive liability. It was suggested that we keep in step with the other Conventions. They also provide for exclusive liability. Now, there is no question of principle involved. M. de Grandmaison put it very forcibly. This risk is being insured; insurance is available and the only question is, who pays the premium ?

Mr. F. Van der Feltz, Netherlands : The arguments put forward by my friend, Mr. Cyril Miller, about the insurance are not very convincing for various reasons, one of which I will mention. According to Article III, paragraph (ii), « the operator of a nuclear ship shall maintain insurance or other financial security... », so it is possible that there will be no insurance at all but only other financial security, which might be, for instance, State guarantee. I can imagine a case that in a certain country the State will say to a shipowner who wants to use a nuclear ship that the State will guarantee and give the necessary security to the shipowner for operating the ship. Under those circumstances in case of a collision between that nuclear ship and another ship which was to blame this State may have recourse or ought to have recourse against the ship at fault.

Mr. Leonard J. Matteson, United States : I would like to clear up one possible misapprehension. It was not my suggestion that in this Convention we should actually attempt to fix an amount of liability. I think there might have been some such impression. I think that would have to be left to the Diplomatic Conference and to the Governments, but I see no escape from the responsibility of Governments for the insurance or other financial security which they accept and approve. I can imagine many instances where a Government might approve financial security other than insurance or even some types of insurance that would not be generally acceptable. It seems to me that the Governments must accept responsibility for that, and it does seem to me that what we have to do is to leave the amount in the Convention blank but with the idea that it will be fixed at an aggregate amount which will include both the insurance or financial security required and the Government indemnity. So if the operator can be sued he will be protected by his insurance in the first place and by the Government indemnity up to the limit that is specified by the Diplomatic Conference.

Mr. Sandiford, Italy (translation): Before we start examining Article II, I would like to make a statement of general importance. I think it is my duty as an old member of the Committee to point out that we are mainly lawyers representing owners of sea-going ships.

Without doubt all along a tradition which was confirmed in the latest Convention approved at Brussels in 1957, we have asserted the principle of limitation of the liability of ship owners and ship operators.

In accepting here to apply to ships propelled by nuclear power, the principle of strict and exclusive liability we break into the principles of all previous Conventions concerning traditional ships.

The Italian Delegation will not be able to accept these new principles without making some reservation.

Mr. Kaj Pineus, Sweden : I believe I said yesterday on behalf of the Swedish Delegation that we could imagine cases where the negligence shown by the victim of a nuclear incident could and should bring about an exception to the exclusive liability of the operator as now set forth in Article II.

Let me take two examples. A person who has been exposed by gross negligence, to radiation of which he is aware, pays medical aid. Let us take another case of a nuclear-propelled ship grounded in the neighbourhood of a shore and the reactor starts emanating what it should not do, whatever that is, making the neighbourhood unsafe. The coastguard defends the access to the area but a fisherman comes along saying, « I have been fishing here for so-and-so many years, I have my nets out and I want to go and see if there are any fish in them ». He goes in and receives radiation. I think that neither of these two persons who are reckless — should be entitled to recover in full their damage. I think, if we have a rule which reduces their right of re-compensation, it will add to the safety and add to the respect of these sort of things.

We, therefore, suggest an amendment, in the present terms :

« If the nuclear damage is caused by a person entitled to compensation according to paragraph (i), wilfully or by gross negligence, the Court shall be entitled to reduce the compensation which should otherwise be recoverable from the operator ».

Mr. F. Berlingieri, Italy (translation): In the name of the Italian Delegation I suggest following amendments to Article II :

— to delete in paragraph (i) first and second line the words : « A l'exclusion de toute autre personne et de manière absolue »;

— to substitute paragraph (iii) by : « les actions en paiement d'indemnité pour dommage nucléaire ne pourront être exercées que contre l'exploitant »;

— to substitute paragraph (iv) by : « Le droit de recours éventuel de l'exploitant contre d'autres personnes est réglé par la loi nationale du tribunal saisi ».

Mr. R.P. Cleveringa, Netherlands (translation): You already know for we said it yesterday, that we are not enthusiastic about Article II, but we will not come back to all the difficulties we see in this Article; that is the reason why we are willing to support the Italian proposal.

Mr. S. Suchorzewski, Poland (translation): As a member of the Polish Delegation I would like to suggest to substitute in Article II paragraph (i) to the words « qu'il soit prouvé » the words « qu'il résulte d'un accident nucléaire... », leaving the rest of the sentence as it stands now. I think the words : « qu'il soit prouvé » might refer, without use, to the question of the burden of proof and of who bears that burden.

However, these words should only refer to a direct link between the damages and the nuclear incident causing the damages.

I think my suggestion will not change the meaning of the text under discussion but only clarify it.

Mr. H.G. Roehreke, Germany : The members of the German Delegation feel that the principles contained in Article II are very sound. We have listened carefully to what has been said here this morning, and we feel that we also should closely consider what has been said by Mr. Kruseman yesterday. We must face the situation that if within any given time most, or all, of the sea-going ships will be propelled by nuclear power, there will be complete objective liability for all owners. Whether that can be accepted or not will depend to a very large degree, we feel, on the limits of liability which will be set for the amount the owner will have to put up himself.

We further feel that at this Conference we should try to find out particularly as to which limits owners can go. We agree with what has been said by Mr. Miller that all the rest must be left to the discussions of the States. However, we feel it would be useful if we could make an effort here to try and find out as to which limits the owner can go in this respect.

With regard to what has been said on the objective liability, also as to the principle of exclusive liability, we truly regret still to have to refer the subject to our national bodies.

Mr. A. Suc, Yugoslavia : On behalf of the Yugoslav Delegation I should like to raise one more point concerning Article II paragraph (i) which is in close connection with Article III, paragraph (i). It seems to us that Article II is introducing a new concept into maritime law. We are speaking here of absolute liability, until now we did not have

objective liability in our maritime conventions and, therefore, if we want to state quite clearly the concept, on that of the objective liability it will have to be done in Article II paragraph (i) and not in Article III paragraph (i). Article III paragraph (i) had to occupy itself only with the amount of responsibility; therefore, we think that the second part of the sentence of paragraph (i) of Article III which reads, « notwithstanding the fact that the nuclear incident should have resulted from any fault or privity of that operator » has its right place in paragraph (i) Article II, because this is the place where we have to state that subjective liability will not come into consideration. Therefore, I should like to propose the following changes in Article II paragraph (i), to delete in the first line the words « solely and absolutely » and then to add a new sentence at the end of paragraph (i) which would read, « such operator shall be solely and absolutely liable notwithstanding the fact that the nuclear incident has resulted from any fault of that operator ». We think « that sole liability » as stated in Article III paragraph (i) is only a degree of fault and that does not cover the concept we want to have covered. Therefore, we should like to have in this Article quite clearly mentioned that whosoever the fault it will not influence the liability of the operator.

Mr. Leonard J. Matteson, United States : Article II is the Article which deals with liability. Article III is the Article which deals with limitation of liability, and the reason for putting the reference to « fault or privity of that operator » in Article III was to make it clear that limitation of liability would follow irrespective of privity and knowledge which is a condition of limitation of liability in other limitation statutes. Therefore, I think that those words are appropriate in Article III rather than in Article II.

There are two other things about Article II. In Article II, paragraph (iv), sub-paragraph (i), in the next to the last line the language is « right of recourse against the person acting or omitting to act with such intent »; the word « person » has given a great deal of difficulty and it is thought that it brings in the concept of a legal person who may be responsible for the acts of someone else on the theory of respondeat superior. The American suppliers have been very much disturbed by the use of the word « person » in the O.E.E.C. Treaty for that reason, and as a result in the latest draft of the O.E.E.C. Treaty the word « person » has been changed to « individual ». That is very important from the point of view of suppliers. It limits the right of recourse to the particular individual who commits the wilful act and eliminates the possibility of transferring that responsibility to his principal on the principle of respondeat superior. Therefore, we would propose at that point substituting the word « individual » for « person ».

There is another matter in Article II paragraph (iii) which I think might well be left to the Drafting Committee to straighten out. Article II, paragraph (iii), says « No other person shall be liable for nuclear damage for which the operator of a nuclear ship is liable under Section (i) and (ii) ». Under (i) the operator of a nuclear ship is liable for any nuclear damage, except nuclear damage to the nuclear ship; the way paragraph (iii) is worded that exception carries over and leaves it open for another party to be liable for the nuclear damage to the nuclear ship, and I am sure that that was not intended. I have an amendment that will straighten that out.

Mr. C.T. Miller, Great Britain : On the point which Mr. Leonard Matteson made on Article II paragraph (iii) he is, of course, perfectly right. The words « for which the operator of a nuclear ship is liable » would have the effect that he states, but we have never been able to understand why it is necessary to say that in Article II paragraph (i) the operator of a nuclear ship should be liable for nuclear damage, « except nuclear damage to the nuclear ship ». How on earth could he be liable for damage to his own ship ? If you struck out those words then, of course, Article II (iii) would not bear the interpretation which Mr. Leonard Matteson quite rightly puts on it.

Mr. C. Van den Bosch, Belgium (translation): I would only like to inform the Assembly about the evolution showed by the great international organizations dealing with the problem that is now put before us. I am specially thinking of the O.E.E.C. and of the International Atomic Energy Agency at Vienna.

The question of the recourse actions has been discussed by these organizations and if, at the beginning, everybody has in one way or in another been in favour of the principle of recourse actions, minds have changed so much, that in the latest reading of the texts it was said explicitly, and along the lines of the draft before us, that the operator shall have a recourse action only against the person who wilfully caused nuclear damages or against the person who accepted a recourse action by contract.

On the other hand, at the Atomic Agency of Vienna there is a tendency in favour of the same principle and the Subcommittee has presently to make a choice between two alternative texts, one in conformity with the old way of thinking and one closely repeating the words of our draft according to which the operator shall only have a recourse action in the two definite and limited cases provided for.

Mr. J.T. Asser, Netherlands (translation): I would like to say two words on Mr. Miller's amendment. I think we should be right in accepting it for two reasons : first, because of the arguments emphasized by Mr. Miller and secondly for the following reason : it is quite possible that the operator of a nuclear ship is not the owner; why should,

in such case, the operator not be liable for damages to a nuclear ship belonging to a third party ?

Mr. N. Katicic, Yugoslavia (translation): The question is to know who is liable. Article II says it is the operator. Who is the operator ? According to the definition of Article II the operator is the person licensed or authorized by the State. If such authorization has not been given, the owner is supposed to be operator.

This formula is not acceptable for certain States. It does not cover the existing legal situation. These States have a special regime of naval property, the national property, where the enterprise is not the owner but the manager. The ship is consigned to the enterprise which rules her and exercises nearly all the functions of an owner but it is not the owner. In order to cover the situation where the enterprise is not the owner, the Convention of the International Agency used a very good formula which I propose to accept.

It reads as follows : « the person in possession of a nuclear ship shall be considered.. ».

Furthermore, I would like to put a question in connection with Article II.

Article II determines at what time the liability of the operator ends. The text of the Atomic Agency defines that moment by the words : « from the time the nuclear fuel of the ship be taken in charge by the operator and until the delivery... ».

The question is this : is it prudent to fix such a decisive and important moment by a legal conception. Delay of delivery is a conception of law and not of fact. Would it not be better to introduce conceptions of facts rather than conceptions of law such as did the Atomic Agency in another situation but for the same principles by using the words : « loaded and unloaded ». In my opinion it would be better to substitute to the idea of delivery the idea of unloading.

The President : Let us go back to the Swedish amendment.

Were in favour : Sweden, Finland, Netherlands, Norway, Italy, France, Germany, Yugoslavia.

Voted against : Poland, U.S.A., Canada, Turkey, Great Britain, Japan.

The amendment was adopted by 8 votes against 6.

The President : The second amendment is that proposed by the Italian Delegation. In fact, there are three amendments but the Italian Delegation is of the opinion that they should be brought together.

Were in favour of that amendment : Italy, Netherlands.

Voted against : Canada, Denmark, Sweden, Great Britain, Norway, Finland, Poland, Turkey, Switzerland, France, Japan, U.S.A.

The amendment was rejected.

I put to your votes the amendment of the Polish Delegation.

Were in favour : Poland, Yugoslavia.

Voted against : Denmark, Canada, Sweden, Great Britain, Finland, Norway, Switzerland, Italy, Turkey, France, Japan, U.S.A.

The amendment is rejected.

The President : The Yugoslavian Delegation proposes following amendment :

— « To delete in the first line, the words « solely and absolutely ».

— « To add a second sentence : « Such operator shall be solely » and absolutely liable notwithstanding the fact that the nuclear incident should not have resulted from any fault of that operator » ».

The amendment is rejected by 12 votes against 2.

Voted in favour : Yugoslavia, Poland.

Voted against : Denmark, Canada, Sweden, Great Britain, Norway, Finland, Belgium, Switzerland, Turkey, France, Japan, U.S.A.

The President : We come now to the amendments presented by the American Delegation. The American Delegation proposes an amendment to Article II (iv) by substituting the word « individual » for the word « person ».

I put this amendment to your votes.

The amendment is adopted by 9 votes against 6.

Voted in favour : Yugoslavia, U.S.A., France, Switzerland, Norway, Finland, Sweden, Denmark, Great Britain.

Voted against : Netherlands, Poland, Spain, Italy, Japan, Turkey.

The President : So Article II has been amended according to the proposals of Mr. Pineus and of the American Delegation.

I put the amended Article to your votes.

The amended Article is adopted by 14 votes against 2, and 3 abstentions.

Voted in favour : Canada, Denmark, Sweden, Great Britain, Finland, Norway, Greece, Switzerland, Belgium, Turkey, Japan, U.S.A., Spain, France.

Voted against : Italy, Netherlands.

Abstained from voting : Yugoslavia, Poland. Germany.

ARTICLE III.

Mr. F. Berlingieri, Italy : I revert to the question I raised this morning about the advisability of having the limitation applying also in the case of a nuclear ship which has not been licensed or otherwise

authorized. Our delegation thinks that in such a case the limitation should not apply. We have proposed striking out the last part of Article I, sub-section (iii), in order to avoid any misunderstanding, but we think that we might leave Article I, section (iii), as it is now in order to apply the principle of absolute liability also in respect of operators who have not been licensed. However, we suggest that Article III, section (i), be amended as follows : « The operator of a nuclear ship duly licensed or otherwise authorized by the licensing State as operator of a nuclear ship shall in no circumstances be liable for more than... ».

Mr. A. Vaes, Belgium (translation): The Belgian Delegation suggests to substitute in the French text, in paragraph (i) Article III, « Tout acte ou faute quelconque » by the words « une faute personnelle ». I remind you that after arduous discussions at the Brussels Diplomatic Conference the final text of the Convention on limitation of liability admitted it as an adequate translation for the words : « actual fault or privity ».

We must take that French drafting again, in order to be in conformity with the drafting of the 1957 Convention and moreover the wording « faute personnelle de l'exploitant » corresponds exactly to what the American Delegation meant, when explaining why we should maintain the words « fault or privity » in the first paragraph of Article III.

Mr. A. Suc, Yugoslavia : I would oppose the idea of having in the French translation for « fault or privity », *faute personnelle*, for the following three main reasons.

First of all the idea is not that only in the case of a certain degree which represents the concept of fault and privity the operator should not be liable on the basis of objective liability. The idea is that any fault which occurred to the operator should have absolutely no influence on his liability. Therefore, it is not only fault or privity but any fault.

Secondly, the idea of fault or privity does not exist in many countries. Many judges would have very great difficulty in finding in their own legal concepts an adequate concept of the English fault or privity. *Faute personnelle* is also a concept which we do not know in Yugoslavia and I suppose that very many countries do not know it.

Thirdly, when we discussed in Brussels the Convention on Liability for the Transport of Passengers we eliminated the expression « fault or privity » and we found in the final draft in Article VII the following concept : « Damage which results from an act or omission of the carrier done with intent to cause damage or recklessly and in knowledge that damage would probably result therein ». With that I would like to

show only that in Brussels we tried to eliminate such a concept which would not be understandable to many Courts at least in Europe.

Nevertheless, I should like to stress once more that it is not a certain degree of fault which represents fault or privity which we have to mention here but it is every fault. The suggestion is that instead of « any fault or privity of that operator » we should have « any fault of that operator ».

Mr. C. T. Miller, Great Britain : Nobody sympathizes with the leader of the Yugoslavian Delegation more than I do in his attempt to understand what fault and privity means. We have a body of case law of judicial decisions stretching back well over 60 years as to what the phrase does mean and I am not certain that I know myself; but this I can say, it would be extremely dangerous to us to omit the word « privity ». To us fault is an act, a negligent act or a negligent omission, that is, not doing something which you have a duty to do, or doing something which you have a duty not to do. Privity means something quite different. To revert to the Limitation of Liability Convention, privity means that the shipowner knew of the particular defect in his ship. It may not be his fault that it is unseaworthy; it may not be something he has done or omitted to do, but he had knowledge of it and therefore he is deprived of the right of limiting his liability.

Therefore, to us it would be extremely dangerous to eliminate this concept which we have had for well over 60 years, probably more, in our law, that you cannot limit your liability if you have knowledge of the defect which caused the casualty. It is not fault, it is something wider than fault and I think that it would be an extremely dangerous precedent for us to omit that word. I believe our American friends have « neglect or design » and I should imagine that for them the mere use of the word « fault » would not do.

On the Main part of Article III, the British Delegation finds itself in considerable difficulty. I will repeat just once more that we are strongly against the policy of putting a figure in Article III which is the maximum figure which one could arrive at in considering a major nuclear casualty, because that in itself would obviously have to be supplemented by Governments. It could not be covered by commercial insurance. We are strongly against seeming to dictate to the Governments in the Convention that they should assume this liability, although we are going to report that unless they do we do not think the thing will work.

One cannot start talking about Article III unless one knows what the majority decision of the Commission on that extremely important point will be. That is why we feel ourselves in considerable embarrassment in reaching some conclusion. We would be prepared, I think, to leave the figure blank, that is to say, not put in a figure which we might all come to the conclusion could be fairly and squarely placed

upon commercial shipowners. I think myself and I think my colleagues agree with me that there are grave dangers in doing that, as was ably shown by the American Delegation, because if you fix the commercially insurable figure for ever and aye, and it is a figure which should remain flexible. We thoroughly appreciate the strength of their objection but, on the other hand, we are extremely allergic to putting into the Convention a provision which casts a liability upon Governments, as we feel that if we do so we shall be told that we have unwarrantedly interfered in matters which do not concern us. That is a really important point and until we know the feeling of the Commission about this we really cannot start suggesting draft amendments of Article III. As I say, I think that probably if this matter were postponed until tomorrow we could come to some formula which would satisfy the opposing views.

Mr. J. de Grandmaison, France (translation): We understand quite well that the British Delegation is willing to maintain in full the words « any fault or privity ». For the British two different things are concerned, for us it is quite the same thing. It is always a fault. Consequently, let us maintain « fault or privity » and let us look for an appropriate French translation. Here I would like to make a double observation. We should point out that a personal fault of the operator or of the shipowners is concerned. We are not talking about the fault of a servant. The operator of a nuclear ship should only be deprived of the benefit of limitation in the case of his personal fault. That is obvious.

Secondly, there is a conception that has always troubled us because our judges have a tendency to say, that, if the shipowner has committed a serious fault, he is deprived of the right to limit his liability. The Courts apply this principle in matters of limitation of liability in connection with bills of lading and in matters of limitation of shipowners' liability.

Therefore, we are quite in agreement with the proposition made by our friend Mr. Vaes in order to use the words « faute personnelle », and I would like to complete this and say : « faute personnelle quelconque » because this covers on the one hand a personal fault and on the other hand the question of degree of fault. In that way we shall be covered and I think it will hinder nobody.

This being said, we are completely in agreement with Mr. Miller's arguments relating to the reason why, in his opinion, it is necessary to leave in blank the amount of the limit of liability.

Finally, I add that, in paragraph (iii) we might admit that the following words and sanctions should be maintained. « L'Etat d'immatriculation sera responsable de l'absence ou de l'insuffisance d'assurance ou de garantie financière ».

I think that we have no competence at all to inflict a sanction of such a kind on the contracting States. It is up to them to say in Brussels at the Diplomatic Conference whether they accept to hold each other liable for the consequences of a lack or of a deficiency of the insurance-cover.

What we do know is that the contracting State granting a licence shall have to deal with the question to know whether there is an appropriate financial guarantee or whether there is an appropriate insurance-cover. It will then grant or refuse the licence.

That is all we can ask for but we, Comité Maritime International, cannot put in an International Commercial Convention that the States which do not maintain an appropriate financial guaranty, which do not check up whether the insurance-cover is still in force, shall be liable ad infinitum for the consequences of a nuclear catastrophe. This lays completely beyond our competence.

We shall have to face a new catastrophe if we maintain such a text.

The President : I propose this. Several suggestions have been put forward. The amendment made by Mr. Berlingieri, Mr. A. Vaes, Mr. Suc, and Mr. de Grandmaison.

We shall first deal with the amendment of Mr. Berlingieri made on behalf of the Italian Delegation. It suggests to substitute to the first words of paragraph (i) « the operator of a nuclear ship shall in no circumstances be liable for more than... » following text « the operator of a nuclear ship duly licensed or otherwise authorized by the licensing State as operator of a nuclear ship shall in no circumstances be liable... ».

Mr. Leonard J. Matteson, United States : May I suggest, with respect to this proposed amendment, that it is not necessary because « operator » is defined in the definitions as a person who is licensed or otherwise authorized to operate by the licensing State, and the definition carries over into this paragraph where it is unnecessary to repeat the definition and we use simply the word « operator ».

Mr. F. Berlingieri, Italy : I regret I cannot be in agreement with Mr. Matteson, because Article I paragraph (iii) considers the case of no authority being given, so in such a case there is no operator licensed or otherwise authorized.

So far as the amendment presented by our delegation is concerned, I should like to ask that the vote on such an amendment be postponed until after the vote on the amendment presented by the French Delegation.

The President : That is right, so we will postpone that vote.

I will now put to your votes the amendment drafted by the Belgian and French Delegations.

The amendment is adopted unanimously by the Delegations of : Spain, Great Britain, Norway, Netherlands, Poland, Belgium, Greece, Switzerland, Italy, France, Japan, U.S.A., Germany, Turkey.

The President (translation): I will move now the second amendment proposed by the French Delegation.

The amendment is adopted by 10 votes against 6.

Voted in favour the Delegations of : Denmark, Norway, Netherlands, Spain, Greece, Switzerland, Belgium, Italy, France, Japan.

Voted against the Delegations of : Poland, Germany, Yugoslavia, U.S.A., Turkey, Great Britain.

The President (translation): I put to your votes the amendment of the Italian Delegation.

The amendment is adopted unanimously.

The President (translation): Does the Yugoslav Delegation maintain its amendment ?

Mr. A. Suc, Yugoslavia : Although as we have heard that it would be very difficult to some anglo-saxon delegations to accept the concept of fault alone, nevertheless I think there could be quite a considerable number of countries to which the concept fault or privity in the context would be also very serious. Seeing that it is not only an English Convention to be considered by English lawyers and English Courts and American ones, but also on the part of a number of continental Courts, we should like to propose instead of a legal concept, which is not familiar to many Courts, a definition or a text which would replace the legal concept. That is just the text which we know from the final draft of the Brussels Convention for carriage of passengers. In that context the present text of the last line of Article III would read as follows : Instead of « any fault or privity of that operator », « any act or omission of the operator done with intent to cause damage or recklessly and with knowledge that damage would probably result therein ».

The President (translation): I will move now the Yugoslav amendment.

The amendment is rejected by 16 votes against 1 (Yugoslavia).

Wednesday, 23th September 1959

PLENARY SESSION

Chairman : Vice-President Vladislav Brajkovic

CO-ORDINATION OF THE CONVENTIONS ON LIMITATION AND ON PRIVILEGES AND MORTGAGES

Mr. J. Govare, France (translation): I am speaking on behalf of the French Maritime Law Association of which I am the President because our Association took a long time ago the initiative of putting the problem of co-ordination on the agenda — that is the name which was given.

Unfortunately, I am not going to submit a draft of final resolutions to you but to ask you to send the question before a Subcommittee for study.

Mr. Asser has been appointed a president of the Subcommittee but the Subcommittee never met, has never been really working so that we presently have only a report from the French Delegation. If really nothing had been done, we might still discuss the French draft but unfortunately — or fortunately — something has been done: the Diplomatic Conference met in Brussels in 1957.

The draft I signed myself with the French rapporteur, Mr Lureau, contemplated to modify the Convention on the limitation of shipowners' liability in order to put it into harmony with the Convention on privileges and mortgages. Now, since that time, the Brussels Diplomatic Conference has taken conclusions in 1957. It seems that it is not advisable to make now the slightest amendment.

Consequently, the French draft suggesting to amend the Convention on the limitation of shipowners' liability should be postponed but, now, on the contrary, I propose to admit the Convention of privileges and mortgages.

In order to do that, we would put the two Conventions side by side, and investigate what are the points of disagreement and how they can be adjusted and co-ordinated. As I am afraid that this would not be possible during a Plenary Session without having the texts before us and without working team preparing all these questions, I would ask you to send the question back for discussion to Mr Asser's Subcommittee. This topic could be put on the agenda of the next meeting. (applause).

The Chairman (translation): We have to deal with a formal proposition made by Mr. Govare. Does anybody ask to come to the platform ?

Mr. H. Schadee, Netherlands (translation): In the name of the Netherlands' Delegation I declare that I am in complete agreement with Mr. Govare's statement.

The Chairman (translation): I suggest to take a vote on Mr. Govare's proposition supported by the Netherlands' Delegation.

The proposition is adopted unanimously.

REVISION OF ARTICLE XIV ON THE ASSISTANCE AND SALVAGE CONVENTION

Mr. H. Schadee, Netherlands (translation): I am speaking on behalf of the international Subcommittee because its eminent President is presently presiding over our work.

At the request of the Yugoslav Delegation the international Subcommittee has examined the problem of the assistance rendered by State owned ships to privately owned ships and vice versa. The international Subcommittee received a great number of replies showing an almost unanimous agreement that, as far as assistance is concerned, no difference should be made between public owned and privately owned ships. Only the Danish, Morocco and Finnish Delegations are somewhat hesitating although they have not declared themselves opposed to the proposition made by the majority of the international Subcommittee.

The Subcommittee prepared the following text :

« Substitute to Article XIV of the International Convention for the unification of certain rules in matters of assistance and salvage Additional Protocol reading as follows : The provisions of this Convention shall apply even to services of assistance or salvage rendered by a private owned ship to a ship of war or another ship owned or operated by a State.

» The States will have liberty of asking for application of the Convention in the case that a war ship or another ship of which they are owner or operator has rendered assistance or salvage services to private owned ships or to other war ships or ships owned or operated by a State.

» Concerning claims for assistance or salvage services rendered to ships of war, State-owned yachts, auxiliary ships, supply ships and other vessels owned or operated by a State and employed exclusively at the time when the cause of action arises on government and non commercial service the claimants are entitled to apply to the competent courts of the State owning or operating the ship.

» The High Contracting Parties reserve themselves the right of fixing the conditions in which article 11 will apply to masters of ships of war or State-owned yachts. »

The discussions were guided by the following 4 reasons :

- 1) There is a right to an assistance award when private owned ships have rendered assistance service to public owned ships.
- 2) There is a possibility of applying the Convention when a public owned ship has rendered assistance service to private owned ships.
- 3) As to claims against the States recourse action shall always be legal in the State itself.
- 4) The State will be allowed to depart from Article XI of the Convention for their public ships.

Mr. N. V. Boeg, Denmark : You will see from the first page of our report that as far as the question of the obligation of the Government to pay usual salvage is concerned, there is no doubt that this will always be followed. Therefore, in all cases where State-owned vessels are salvaged in Denmark we pay the usual salvage money.

As far as the other question is concerned, that is to say, the question of the duty to pay when State-owned vessels give assistance to private or other vessels, there has been some doubt as to what the position would be, but there is no doubt at the present time that when the Danish State-owned vessels are giving assistance, salvage money also has to be paid then.

We have a special law in Denmark with regard to what I think we call ice-breakers. There it is written in the law that if an ice-breaker is concerned with the question of salvage, under such conditions ordinary law will apply, that in such a case salvage money goes to the State, to the Danish Government and not to the crew, etcetera.

This is the present position in Denmark and therefore we say that in our opinion it is not necessary to have any change in Article XIV of the Salvage Convention, but we are certainly quite prepared to assist in framing a completely new article on this matter, if that should be desired.

Mr. W. Newson, Great Britain : As has been shown in the report which the British Association submitted, the position with regard to Government-owned ships in Great Britain is now roughly on the same footing as that of private individuals, but there is one important distinction which, in the view of this Delegation, is not sufficiently brought out in the draft. It is that the Governments in the case of Government-owned ships which have received salvage services can only be sued in their own Courts. That we think is an important distinction because we feel that no Government will admit having claims against it for salvage remuneration decided in the Courts of another jurisdiction. Therefore, we suggest that if there is to be any alteration in Article XIV that should be made abundantly clear.

Mr. K. Selmer, Norway : The position in Norwegian law is very much the position in Danish law, as described by Mr Boeg. There has never been any doubt that the Norwegian State has to pay salvage remuneration when one of its ships has been salvaged by privately owned ships. The State may be sued in the ordinary Courts, though, of course, the character of the publicly owned ships will prevent the salvor from arresting the ship itself.

The other question of whether the State has the right to claim salvage remuneration when a publicly owned ship has rendered salvage services was not so at the time when our answers were given to the questionnaire. At that time a case was before the Court and in a judgment rendered at the end of last year our Supreme Court granted the State the right to claim salvage in the case where a warship had rendered salvage services to a privately owned ship. In its judgment the Court expressly stated that Article XIV of the Convention ought to be considered in the sense that it leaves it open to national legislation whether or not the State may claim that salvage remuneration. Consequently, in our law there is no distinction between public vessels and privately owned vessels as regards the question of salvage.

The Norwegian Delegation thinks this is a solution. This is not because we think the State should augment its income but we think that the master and the crew of a publicly owned vessel should have the same chance as other seamen of having their share of the remuneration when their vessel has to render salvage services to another vessel. As the question is thus satisfactorily solved in our law we have no special interest in a revision of the Convention, but we shall of course welcome any change of the Convention which will give our solution wider international application. On the other hand we will oppose the revision of the Convention which would contradict this solution.

Mr. Edward D. Ranson, United States : The United States Maritime Law Association favours the adoption of the new Article XIV and supports the draft of the Committee as proposed. We believe that the increase in the number of Government-owned and operated vessels since the original adoption of the Salvage Convention makes this change advisable in order to place Government ships, Government-owned or Government-operated ships, on essentially the same basis as that of private ships. We would however like to clarify one point which was in our answers to the questionnaire and which might otherwise be somewhat confusing. Under our internal law at the present time a foreign ship may not obtain remuneration for salvage or services to a United States Government ship unless the law of the Government which owns the salvaging ship grants in turn to the United States ships the right to salvage. The adoption of the proposed new Article XIV would therefore place all countries who are parties to this new Article

XIV on the same basis as regards salvage to United States Government ships as well as other Government ships.

I would like to suggest that perhaps the English translation which was put before us this morning has two inaccuracies. I believe that in the first sentence of the first paragraph of the proposal the last word should be « also » and not « even ».

I would also suggest that possibly the last word should more appropriately be « ships » than « yachts ».

Mr. H. Burchard-Motz, Germany : As you will have seen from our report, the position under German law is practically the same as it would be under the provisions proposed by the Committee now. For the sake of uniformity of maritime law we welcome an amendment to Article XIV of the Convention.

Mr. Sten Heden, Sweden : The Swedish point of view has been expressed in a letter from Dr. Grenander of the Swedish Shipowners' Association and sent to Professor Brajkovic on 18th August and I will take the liberty of reciting some sentences from that letter, more exactly regarding ice-breakers, a point which has already been raised by the representatives of Denmark and Norway. Dr. Grenander writes :

« I am doubtful as to the advisability of establishing a special Convention or a Additional Protocol, dealing with salvage services by public ships. Supposing we choose that way of solving the problem, your proposal seems to be acceptable. An amendment would, however, as far as I can judge, be required. The reason is the following : salvage and assistance services rendered for instance by a State-owned ice-breaker within the limits of its normal functions should not, according to our unanimous opinion, entitle to any salvage remuneration whatsoever. In our cases of assistance by public ships such service might or might not fall within the range of normal functions of the ship in question. In some countries it is held that there is, for example, an obligation on the part of ships of war to give assistance to merchant ships in distress. In such cases the amount of salvage remuneration ought to be fixed in a new Convention with due regard taken to the ship's capacity. »

The wording below to be inserted to the second paragraph is intended to cover such cases.

« Les Etats ont la faculté d'en demander également l'application lorsque leurs bâtiments de guerre ou des navires leur appartenant ou exploités par eux ont rendu des services d'assistance ou de sauvetage à des navires privés, *pourvu que les services d'assistance ou de sauvetage n'entrent pas dans leur service ordinaire.* »

In fixing the amount of the remuneration due to the public ship the judge has to take into consideration not only the circumstances referred to in Article VIII but also the public character of the salving ship.

Mr. J. P. Govare, France (translation): The question we are trying to solve today, originates from the fact that the 1910 Convention as well as all the Brussels Diplomatic Conventions of Maritime Law definitely drew aside everything relating the sovereignty of public powers whereas the Conventions only deal with commercial questions.

That is the reason why it is stipulated in Article XIV that the Convention is not applicable to war ships. The difficulty originated from that, when State-owned ships have rendered services and even perhaps have salvaged a merchant ship and were claiming for remuneration; Article XIV was being opposed to the State-owned ships and was interpreted as if the Convention forbade the States to claim for remuneration whereas the Convention has never forbidden anything to the State because, on the contrary, the Convention decided that : « this Convention does not apply to Government ships ».

As far as I am concerned, I should state — having had the honour of pleading for the French Ministère de la Marine — that I pleaded several times, always against foreign ships to which services had been rendered because as far as the French ships are concerned, these matters have always been settled amicably; however several cases have been pleaded in France against foreign shipowners and these have of course, supported that Article XIV forbids the English Government to claim for remuneration for rendered services.

The jurisprudence has definitely declared that the Convention is not applicable to the French Government but that it does not forbid the Government to claim for a remuneration. We should not forget that, before the 1910 Convention, remunerations were paid in pursuance of the general principle according to which all work is worth payment, any services rendered worth a remuneration and consequently, as the 1910 Convention is put aside, the general principle according to which a rendered service is worth a remuneration cannot be put aside. I do know that the report from the Morocco Association states that war ships being operated on account of the tax-payers have to render services without payment. This may be right for war ships rendering services to a ship of their own country but when foreign ships are concerned the principle referred to by the Morocco Association does not stand anywhere.

As a consequence, I ask the Conference to adopt the principle that is admitted in France according to which the 1910 Convention saying that it is not applicable to State-owned ships does not forbid the States from claiming a remuneration which they claimed before and which they still are entitled to claim.

But I think that we nevertheless should amend Article XIV not only in order to make it clear and to avoid possible contestation but also in order to reach unification of the Maritime Law in these matters.

Because, if we merely say that Article XIV forbids a State from claiming, we do not say under which form it is allowed to claim.

Now, I think that we should add : « les Etats ont le droit de réclamer, mais que s'ils réclament... »; so, it is not an obligation but a possibility because I heard someone saying a few minutes ago that for ice-breakers, such Government does not intend to claim, is not accustomed to claim; it has the right to do that but a private person who renders salvage services can claim nothing if he is generous. However, if a State avails itself the right of claiming, it can only do it within the limits of the international Convention so that in matters of claims made by one State to another the principles fixed in the 1910 Convention apply and so that a State is not allowed to say : « the Convention is not applicable to State-owned ships and so I claim in pursuance to my national law or to the general principles of international law. »

Now, maritime matters are essentially international and what we are interested in, is not the fate of one of our ships in our own country, in our ports or in our territorial waters but the fate of our ships abroad.

Therefore, if we receive assistance from a foreign State-owned ship we wish to be sure that that State shall not be obliged to claim a remuneration but if it claims, it should do it within the limits of the 1910 Convention.

Mr. J. Pluymers, Belgium (translation): The Belgian Maritime Law Association did not send any written reply to the questionnaire because we were of the opinion that because of the proportionally small importance of the Belgian State fleet it did not seem advisable that we should appoint a special Subcommittee dealing with these matters and that we should send a written reply.

However, it seems to me that it is useful to stress that, in Belgium, the National Law provides the possibility of introducing an action against the State in the case of a ship rendering assistance service to a State-owned ship.

Furthermore, the law provides that actions concerning private ships which have assisted Belgian State-owned ships are allowed to take proceedings in Belgium before the Courts competent for litigations occurred in pursuance of the 1910 Convention. This means that, if the draft supplied to you is accepted there will be no contradiction in our law and that, as a consequence, we are allowed to support the principles put forward in the draft. I stress that this also answers to an observation just made by the British delegate who insisted on the fact that only the Courts of the State which owns the ships would be competent.

Mr. Knut Selmer, Norway : Primarily I would like to say a few words on the proposal set forth by the Swedish Delegation that the State-owned vessels should not have the right to claim salvage when their services enter into the ordinary service. That proposal was aimed at the problem of ice-breakers in Swedish waters and I think that may be a solution for ice-breakers, but that text could go a little too far. For instance, when the Norwegian fishing vessels go to the waters of

Greenland or Iceland, the Norwegian State sends a war ship which has to assist those fishing vessels in every way, and of course if that war ship has to assist in salvaging one of those fishing vessels the State will not claim any salvage remuneration because it is the ship's duty to do so. But if, for instance, a British or Icelandic trawler becomes in danger in that water and the Norwegian war ship renders assistance to it, why should it do so without charge ? You may say that that is its ordinary service, to render assistance to fishing vessels in distress. So I think if we accept an exception aiming at excluding the claim for ice-breakers this should be said expressly and not by saying in general that the service must not enter into its ordinary service.

Mr. Peter Wright, Canada : I would like to say that the state of our law in this matter is substantially the same as that of Great Britain and our point of view, therefore, on the whole Convention is very much the same. So far as our internal matters are concerned it is not required in Canada but we are more than sympathetic to the principles which this enunciates.

There are several points, however, that I would like to make very shortly. The first is that I was very much impressed by what the French Delegation had to say. Bound up with that is the fact that I agree even more strongly with what the American Delegation had to say about the English text, and I would like to express the personal view that the form of the English text as it now stands is unsatisfactory from the point of view of English. In addition to the matters which have been raised by the Americans I would like to say that I do not think the phrase « private owned ship » is right, I think it should be « privately owned ship ». I think in the third line of the English text it should not be « another ship », it should be « any other ship », and that would be so in the second line of the second paragraph. I do not see why the words « ship » and « ships » are used, but in the third paragraph suddenly the word « vessels » appears and I do not see why it is necessary in the third paragraph to set out the detailed types of vessels such as « supply ships » or « auxiliary ships » when it was not necessary in the other clauses.

I would, therefore, suggest that some procedure be adopted under which the English version can be made more clear and satisfactory.

Mr. H. Schadee, Netherlands (translation): The Netherlands Delegation is in agreement with the principle and the form of the draft proposed by the international Subcommittee. However, we reserve the right to propose formal amendments and to take a final decision on the form which the protocol should take. So we ask the international Subcommittee to elaborate a draft protocol in conformity with the items of the present draft in order to submit that draft to the next meeting.

Mr. H. Schadee, Netherlands : Two amendments have been made by the Scandinavian countries, the first one was that no salvage remuneration for public vessels should be due for anything outside their ordinary work. This amendment was made with a view to the State's ice-breakers, which should not get remuneration for their ordinary services. I think that for this purpose this amendment is not necessary; up to now States' ice-breakers have not asked for any salvage remuneration when they did their ordinary work, although as I understood it according to a recent decision of the Norwegian Supreme Court they may be entitled to do so. If in former days they were able to ask for salvage remuneration and if they did not do it, they only have to stick to this praiseworthy attitude and not ask for any remuneration in the future and so it is not necessary to prohibit them by law from doing so.

On the other hand, the amendment may present some danger. I have often read in former minutes of the C.M.I. the Latin *abundantia nocet* and I think here too when you put in something which is superfluous you do something which is dangerous, you put in an element of uncertainty. When is a vessel doing its ordinary work ? When the ice-breaker is breaking the ice it certainly does do its ordinary work, but when at the same time it is towing a vessel, does it do its ordinary work ? And when it is not only breaking the ice but also piloting the vessel or giving assistance in any other way, who shall decide the difference between what is normal and what is not normal ? Moreover, when you say that the State-owned vessel being on its ordinary duties is not entitled to get any salvage remuneration, you would bar from remuneration those marine-owned tugs that already have given very good services to various vessels in distress. I therefore move that this amendment should not be accepted.

The second amendment was that the judge in fixing the remuneration due should also take into account the character of the vessel which rendered the assistance; I also think this amendment is superfluous. A judge can take into account everything he likes and also under the Convention as it now stands can take into account the character of the vessel. If in this case we stipulate that the judge should take into account the public character of the vessel, it is even dangerous because you will preclude from it that in other cases he should take it into account. I prefer to leave all judges of all countries as free as birds in the air, to take into account whatever they like to do.

Mr. H. Schadee, Netherlands (translation): The Netherlands Delegation wishes to thank very specially Mr Brajkovic who presided over the international Subcommittee for the great trouble he took in order to reach the aim of the Convention, for the great patience he had and for his knowledge in solving the difficulties (prolonged applause).

The Chairman (translation): I am really confused because I do not merit the flattering words Mr Schadee addressed to me. Without the

precious aid from his eminent colleagues in the Subcommittee, Brajkovic would have done nothing. I take this opportunity to express my gratitude to the members of the Subcommittee.

Mr. N.V. Boeg, Denmark (translation): I would like to make a minor remark. If I understood Mr Schadee correctly he referred to a proposition from the Scandinavian countries. You will allow me to inform you that Denmark is also a Scandinavian country and that this country has made no proposition.

Mr. J. P. Govare, France (translation): I come to the platform for a question of procedure. It seemed to me as I was listening to the different propositions, that in principle everybody supported the draft.

We heard that some countries do not claim anything when services are rendered by ships of war which accompany fishing ships in Norway, that other countries do not claim anything when ice-breakers are concerned which do their ice-breaking-work and which are not asked to assist or to salve.

I perfectly agree with that. I can tell you, for instance, in France we have always a war ship in the waters of New-Foundland in order to assist fishing-ships with a doctor and a surgeon on board, who render daily services to the fishers. Never did the French State claim anything.

We agree in saying that the French State has a right to do so and same prevails for the ice-breakers, just as the ships accompanying the Norwegian fishing-boats.

In my opinion we agree on the principle. I understood also that we agree in saying that when a remuneration is claimed from a war ship belonging to a State, proceedings should be taken before the Courts of that State in pursuance of the laws of that State.

I repeat that everybody seems to be in agreement with that point. The observations made are remarks concerning the drafting in order to make the text quite clear. That corresponds exactly to what we like to express.

Some are saying that this point is not useful, others are saying that it is useless, but nobody is saying that it is prejudicial. As a consequence, I think that it is advisable to appoint a Drafting Committee of 3 or 4 members speaking French and English who will meet immediately after the end of this session in order to have, when we resume our work this afternoon a written text on which we are able to make slight observations of detail.

The Chairman (translation): I think this proposition is accepted unanimously.

Now we have to appoint the members of the Drafting Committee.

Mr. Govare, Mr. Schadee, Mr. Newson and Mr. Ranson are appointed.

(Interruption).

The Chairman (translation): The Drafting Committee submits a new reading of Article XIV according to our decision taken this morning.

This new text reads as follows :

Article XIV

The provisions of this Convention apply to services of assistance or salvage rendered by a privately owned ship to a ship of war or to any other ship owned or operated by a State or any Public Authority.

When a ship of war or any other ship owned or operated by a State or any Public Authority has rendered assistance or salvage services to a privately owned ship, such State or Public Authority has liberty to claim remuneration but only in accordance with the provisions of this Convention.

Claims against a State for assistance or salvage services shall be brought only before the Courts of such State.

The High Contracting Parties reserve to themselves the right of fixing the conditions in which Article XI will apply to Masters of ships of war.

Mr. H. Burchard-Motz, Germany : I do not know if the wording which we have now before us means materially the same as the one we had this morning. In the third paragraph I read that « Claims against a State for assistance of salvage services shall be brought only before the Courts of such State », and as far as I can see this paragraph applies to all vessels owned by a State, not only vessels in public service but also in commercial service. In the wording of this morning there was an exception to bring a suit against the State before its own Courts and as far as I understood this exception was only meant for ships in public service but not for ships in commercial service; I think this is a material change which should be considered. I do not know if it is an improvement in comparison to the existing state of law.

Another point is : is it right to say in the second paragraph at the end « but only in accordance with the provisions of this Convention » ? Would it not perhaps be better to say « but not beyond the provisions of this Convention » ? in order that the State might be encouraged to claim remuneration on a sue or pay basis in any case.

Mr. Knut Selmer, Norway : There are a few minor points which I would like to ask the Drafting Committee.

My first question is this : this Article applies to services of assistance or salvage, but I just wondered whether if we include the word « assistance » we in a way widen the scope of the application of the Convention. Does the word « assistance » include more cases than have hitherto given rise to claims for salvage ?

I had a second question but it has already been raised by my German colleague. It was : what does the last phrase of the second paragraph mean « but only in accordance with the provisions of this Convention ». In my view it seems to be superfluous, but if it means anything I would very much like to be informed what it means.

Mr. Peter Wright, Canada : I have two small points of drafting. I think the word « also » which was used in translation for « même » has been omitted, and I think it is quite important that some words should be put in which make it clear that Article XIV is not limiting the Convention but extending it. I would suggest, therefore the words be « apply also » or « extends to services » in the first line. In the fourth line of the second paragraph I think we should say « may » instead of « has liberty to ».

The Chairman (translation): If I interpret rightly the proposition submitted to us we should amend the wording of the first paragraph of Article XIV as follows : « Les dispositions de la présente Convention s'appliquent *aussi* aux services d'assistance ou de sauvetage, etc... »

Should it be better to add : « aussi » ? Some fear that in introducing the word « extended », we start innovating and we have no need for that in these matters. If the Assembly agrees upon the French text, our English friends might help us to make a proper translation.

Secondly it is asked to delete the words « assistance or salvage ». I suggest to the Assembly not to try to find the exact meaning of these two words. We should take a decision on a problem which has been widely discussed during the preparatory Conference of the 1910 Convention. For this reason I should recommend to stick to the words used in the Convention itself.

Finally it is asked to precise in the second paragraph the meaning of the words : « mais seulement selon ». It seems to me that the words « mais pas au-delà » would be more appropriated but Mr. Govare might perhaps give complementary explanations.

Mr. J. P. Govare, France (translation): I agree with the rectifications suggested which are rather formal. However, more important problems have been put forward. First the word : « may » might raise difficulties. In French we say that the State « peut réclamer ». This is not an obligation. But according to the English jurisprudence the word « may » is understood by everybody in England as an obligation. Our English colleagues have suggested to use instead of « may » the expression « is at liberty ». We have added then that if the State claims for a remuneration it has to do it within the limits of the Convention.

The State is not allowed to say : I claim a remuneration but I am not going to follow the Convention and I am going to apply the general principle according to which all services rendered give right to a remuneration. I shall fix that as I like it without taking into account

the considerations of the Convention, or I will fix it according to my internal administrative law without taking the Convention into account.

Finally, the last clause refers to : « Claims against a State for assistance or salvage services shall be brought only before the Courts of such State ». We are wondering whether this provision is not too wide, too extensive. It is necessary to include it, if we wish that our Convention be accepted in Brussels and on the other hand it does not involve any amendment to the present general principle. No State is certainly going to admit to be sued before a Court of another State.

The question has been raised to know whether it is useful to speak always of assistance and salvage. This point has been solved during the Brussels Conference a long time ago owing to the divergencies between the decisions of the Courts in matters of assistance and salvage. Now, as the Convention has to be applied uniformly and as it was intended to avoid different decisions in the different countries, already so different, the words « assistance and salvage » have been used each time. The Convention should be applied both for the assistance and salvage. (applause).

Mr. J. Gorski, Poland (translation): The Polish Delegation is of the opinion that the second paragraph of this Article does not deal with the case where a State-owned ship renders services to another ship owned by the same State or by another State.

Mr. J. P. Govare, France (translation): That is right, but we did not deal with that problem because if we mention it the ambassadors at the Diplomatic Conference will immediately make objection. They are going to say : what are you dealing with ? A State-owned ship against another State-owned ship that is not your field ! !

Mr. J. Gorski, Poland (translation): That is clear, now.

Mr. H. Burchard-Motz, Germany : May I ask Mr. Govare for an explanation ? I think now with the existing Article XIV this Convention does not apply to ships of war and Government ships; it is limited exclusively to the public service and this difference was taken account of in the wording this morning. But now you say that any ships of State, even commercial ships are excluded from the ordinary jurisdiction. I think State ships in commercial service are under the ordinary jurisdiction.

Mr. Knut Selmer, Norway : I want to give the full support of the Norwegian Delegation to my German colleague and to what he said in his last remarks. Take, for instance, the third paragraph of the amended text which we have this afternoon « Claims against a State for assistance or salvage services shall be brought only before the Courts of such State ». Then you have a State-owned vessel which is designated for commercial service and carries goods like any other merchant ship. Let

us take a Norwegian tugboat, it salvages it, it brings it to a Norwegian port but then we are barred from arresting the ship and claiming for salvaging service in Norway. I do not think that would be a good solution.

(Interruption).

The Chairman (translation): In the name of the Drafting Committee Mr. Govare will read the new draft of Article XIV.

Mr. J. P. Govare, France (translation): If I understood correctly the difficulty which arises previously originated from the fact that a paragraph says : « claims against a State for assistance or salvage shall be brought only before the Courts of such State ».

Some people feared that certain States should take advantage of that clause and say even in commercial matters : « You sue me, State, owner of such a commercial ship and consequently I appeal to that clause ».

Article XIV of the present Convention provides : « La présente Convention est sans application aux navires de guerre et aux navires d'Etat, exclusivement affectés à un service public ».

So we had to repeat the same wording in our new Article XIV and to say : « Les actions contre un Etat pour services d'assistance ou de sauvetage rendus à un bâtiment de guerre ou exclusivement affecté à un service public, seront exclusivement portées devant les tribunaux de cet Etat ».

The American and Canadian Delegations asked to refer not only to the public services also to non-commercial services.

In fact, some Eastern countries consider that all the ships they own, carry goods and food for a public service, because it is food for their people.

We had to avoid this objection.

As only the third paragraph was under discussion I propose following wording :

« Claims against a State for assistance or salvage services to ships of war or to ships appropriated exclusively to public non-commercial service shall be brought only before the Courts of such State ».

I hope that this meets your wishes and disposes of the difficulty which was a real one.

Mr. R. Vaes, Belgium (translation): I would like to make a remark. In principle Article XIV, as it is submitted to us has to be substituted to the old Article XIV, which exonerated war ships and such States-owned ships as exclusively appropriated to a public non-commercial service.

We now are inserting into Article XIV war ships or ships exclusively appropriated to a public non-commercial service.

Nevertheless, the first two paragraphs deal with assistance and salvage rendered either by a war ship or State-owned ship, or the contrary.

The new basic conception is that of a ship operated by a State for commercial purposes.

The German delegate has already observed that we excluded the case of assistance or salvage rendered by a ship operated by a State to another ship operated by a State.

Now, let us contemplate, for instance, the case of a ship operated for commercial purposes by the Belgian State rendering assistance to a ship operated for commercial purposes by the Yugoslav State. I do not see why this case of assistance between two ships operated by States for commercial purposes should be excluded from the provisions of the new Article XIV.

In my opinion, there is a lack.

Voices : No !

Mr. Knut Selmer, Norway : I am very grateful for the proposition made by Mr. Govare. I think he has made a proposal of a very good text. We made a draft in the Norwegian Delegation, but I think his text is better. But we have had ten minutes to discuss this question which is of the greatest importance for maritime States into whose ports State-owned commercial vessels may be brought. We feel that this matter should be given a little more thought and a little more deliberation. At the moment the proposed text seems good but maybe our friends, the other members of our delegations who are at present discussing atomic risks, will not agree with it. I therefore propose that this matter be brought back to a Subcommittee which will redraft this Article XIV. I speak in behalf of the Norwegian Delegation and I know that the Swedish Delegation supports this proposal.

Mr. M. Chorzelski, Poland (translation): We ascertain that paragraph 3 of Article XIV presents many difficulties.

Therefore we feel that it is more advisable to leave the question of procedure open and to settle only the question of material law by the provisions of the draft.

We feel that this might be suitable to the delegations which might adopt the draft in that way and recommend to their Government to vote at the Diplomatic Conference. So, my suggestion is to adopt Article XIV without paragraph 3.

The Chairman (translation): That is difficult.

Mr. N.V. Boeg, Denmark (translation): I am rather impressed by the difficulties we have to face and I would like to suggest to this

Assembly not to take a definite decision but to adjourn the question until the next session.

Mr. Edward D. Ranson, United States : We have considered this language and a great deal of work has been done on this proposal by others than myself before coming to this meeting, and every proposal so far that has been suggested to this Convention has been tabled for future action. Now, I see no reason why we cannot have the opportunity for our delegations to consult with their colleagues who are sitting in on the atomic energy question, but I propose and I urge that we should get something done at this meeting and that we should really make some effort to arrive at a conclusion here rather than have all efforts merely tabled.

The Chairman (translation): A formal wish is submitted for adjourning the matter until a later session.

Before taking a decision concerning this suggestion I would like to give some explanations. It has been suggested not to add the words « *exploité par un Etat* » in the first paragraph because, when the 1910 Convention was voted, ships operated by the State in the modern and present meaning of the word were concerned.

By introducing these words, the intention was only to remind of the power of the State in 1910.

Secondly, as far as the objections relating to paragraph 3 are concerned, you will remember that there was a tendency to solve the problem of the immunity of ships along the lines of the 1926 Convention. This problem is still real although the Convention has never met the expected success.

Each time a ship operated by a State in a non-Governmental meaning, i.e. for a commercial purpose, is concerned the question arises which Court is competent to deal with such action.

In order not to have to face a delicate situation in applying the rules of this Convention to ships of war, to State-owned ships, whether or not exclusively appropriated to commercial purposes it was necessary to provide, when the first question was solved, before which Court claims for remuneration could be introduced.

It has been decided that for all other claims, except for services rendered by a ship of war or a ship exclusively appropriated to a non-commercial service, the Courts shall be competent.

Mr. L. Tricot, Belgium (translation): In fact, I think that the problem raised by the Belgian Delegation is not a problem of procedure. The situation is as follows :

We had an Article XIV excluding from the benefit of the Convention ships of war and other State-owned ships, not all State-owned ships but State owned ships exclusively appropriated to a public service.

Now, there are not only State-owned ships exclusively appropriated to a public service but also State-owned ships operated for commercial purposes.

According to the wording of Article XIV presently submitted to us, it is provided that the owners of such ships shall, eventually, receive, an assistance or salvage remuneration in the case the defendant is a private owned ship.

It is also provided that a private owned ship shall have the right to an assistance or salvage remuneration in the case the defendant is a State-owned ship operated for commercial purposes.

However, the old Convention provided also a salvage or assistance remuneration for the benefit of a State-owned ship operated for commercial purposes when the defendant was another State-owned ship also appropriated to commercial purposes.

This case is presently rejected and I do not see why. In other words, I think that in fact our Article XIV which as such is excellent, and we all agree upon that, should be slightly amended and that we should provide expressly that the provisions of this Convention shall apply also to assistance or salvage services rendered by a State-owned ship operated by a State for commercial purposes when the defendant is a State-owned ship operated by that State for commercial purposes, or I think we could even not provide this case because, in fact, it is already covered by the old Convention but anyway we should not exclude it « a contrario » by applying the two texts we have presently before us.

The first paragraph does not grant such remuneration in the case the defendant is a private person and the second paragraph obliges the State-owned ship to grant a remuneration only when the claimant is a private person.

The situation is a little paradoxical because in fact we restrict in this new Article what we obtained in the old Convention.

The question of procedure, I think, does not raise any difficulty. We are in complete agreement to admit that the actions against the State for assistance or salvage services rendered to a ship of war or to a ship exclusively appropriated to a public non-commercial service are still of the exclusive competence of that State. However, for actions against a State relating to assistance or salvage services rendered to a ship appropriated to commercial purposes I do not think that this exclusive competence is absolutely necessary because in the old Convention this competence has not been expressly provided for.

Mr. Le Clère, France (translation): In the name of the French Delegation I wish to say that we are in complete agreement with the Americans not to adjourn the present discussion.

You can see in the booklet which has been circulated that among the 19 Associations 14 have studied the question and have sent a written answer. So this point has been sufficiently studied.

We would like to ask simply to suspend the meeting for a quarter of an hour in order to allow to discuss the final draft once more and to take a vote afterwards.

The Chairman (translation): We have to take first a vote on Mr. Boeg's formal proposition for adjournment.

I put this suggestion to your votes.

The suggestion for adjournment is not adopted.

Voted in favour: the Delegations of Denmark, Norway, Sweden and Japan.

(Interruption).

Mr. J.P. Govare, France (translation): Before reading the new text I would like to thank you and more particularly those who were my opponents to the text proposed for having kindly discussed with me, approved the modifications suggested and, thank some of them, for having expressed their satisfaction now.

Here is the text of the new Article XIV :

« Les dispositions de la présente Convention s'appliquent aussi aux services d'assistance ou de sauvetage rendus à un bâtiment de guerre ou à un navire d'Etat ou exploité par un Etat ou par une personne de droit public.

Les actions contre un Etat pour services d'assistance ou de sauvetage rendus à un bâtiment de guerre ou à un navire exclusivement affecté à un service public non-commercial, ne seront portées que devant les tribunaux de cet Etat.

Quand un bâtiment de guerre ou tout autre navire d'Etat ou exploité par un Etat ou une personne de droit public a rendu des services d'assistance ou de sauvetage, cet Etat ou cette personne de droit public peut réclamer une rémunération, mais seulement selon les dispositions de la présente convention.

Les Hautes Parties Contractantes se réservent le droit de fixer les conditions dans lesquelles l'Article XI s'appliquera aux commandants de bâtiments de guerre ».

« The provisions of this Convention apply also to services of assistance or salvage rendered to a ship of war or to any other ship owned or operated by a State or any Public Authority.

Claims against a State for assistance or salvage services rendered to ships of war or to ships appropriated exclusively to public non-commercial services shall be brought only before the Courts of such State.

When a ship of war or any other ship owned or operated by a State or a Public Authority has rendered assistance or salvage services, such State or Public Authority has liberty to claim remuneration but only pursuant to the provisions of this Convention.

The High Contracting Parties reserve to themselves the right of fixing the conditions in which Article XI will apply to Masters of ships of war. »

Mr. W. Newson, Great Britain : Before the draft of Article XIV is put before the Meeting we feel out of courtesy to you all I should say something to explain the position of this Delegation. The addition of the words in the second paragraph « ships appropriated exclusively to public non-commercial services » conflicts with the present practice of our Government in regard to immunity. It is the practice at present of our Government to grant immunity to Government ships even if they are purely commercial. If it had not been those words I think we should have been able to agree the draft, but as it is it will not be possible for this Delegation to agree without further consultation with the Government. It is for that reason, to the surprise I think of some Delegations, I held my hand up in favour of the proposal to defer consideration of this Article. However, that motion was defeated and when this amended Article is put to the vote it will be necessary for this Delegation to abstain from voting for the reasons I have given

Mr. J.P. Govare, France (translation): In order to avoid misunderstanding I wish to point out that the French Delegation is going to vote in one way or in another, but that I do not intend to bind the French Government. As a consequence we are acting here as French Maritime Law Association. I am not the French Minister of Foreign Affairs !

The Chairman (translation): In any way no Governmental text is concerned here but on the contrary the wording can be amended by the Diplomatic Conference.

Mr. Walter Müller, Switzerland (translation): I will stress that the apprehension shown a few minutes ago by the British delegate is no longer prevailing. I remind you that during the Conference on the Law of the Sea held last year at Genova, the States signed a Convention on the high seas which contains the famous Article IX, reading as follows : « Les navires appartenant à un Etat ou exploités par lui et affectés seulement à un service gouvernemental non commercial, jouissent en haute mer d'une immunité complète de juridiction de la part de tout Etat autre que l'Etat du pavillon ». This rule establishing the difference between non-commercial Governmental ships and commercial Governmental ships has presently to be considered as accepted by the community of Nations.

I wished only to give this precision before voting. (Applause).

The Chairman : So I put to your votes by roll-call the new text of Article XIV which has been read before you

The text is adopted by 11 votes and 6 abstentions.

Voted in favour : the Delegations of : Germany, Belgium, Spain, United States, France, Greece, Italy, Netherlands, Switzerland, Turkey, Yugoslavia.

Abstained from voting : the Delegations of : Denmark, Great Britain, Japan, Norway, Poland, Sweden.

Were absent : the Delegations of : Canada, Finland, Israël.

The Chairman (translation): I would like to congratulate the Assembly for the happy ending of our work relating to the new Article XIV of the Convention on Maritime Assistance and Salvage. An Article of great importance is concerned and I thank heartily all those who collaborated to the drafting, especially the members of the Subcommittee and all the eminent delegates who assisted them in accomplishing a rather delicate task.

SUBCOMMITTEE ON ATOMIC RISKS

Chairman : President Albert Lilar

ARTICLE III (continued)

Mr. C. T. Miller, Great Britain : I think most of us are agreed that in the case of a major nuclear casualty, any sum obtainable by commercial insurance covering the operator's absolute liability would not be sufficient in the public mind to compensate the victims. Therefore it is obvious that that sum would have to be made up somehow. That « somehow » can only be in Governmental form.

Now that, I apprehend is the general view of the Commission. It certainly was the unanimous view of the Subcommittee which considered this matter in Antwerp.

Now, of course, we find ourselves with a difficulty as to how we express those, I will not say conflicting but somewhat delicate, views to Governments, because when we prepare a Convention we are making proposals to Governments that they should enter into a Convention by means of the Diplomatic Conference somewhat in the form which we propose.

The difference that we had with our friends from the United States was this : we thought that in the Convention we should not state the particular sum to which the operator should limit his liability, because if we did that, that immediately raised this issue : do you state the sum which can be obtained by commercial insurance, or do you state a very much larger sum which you think would be acceptable to all the Maritime Nations of the world in the sense of persuading them to allow other Nations' nuclear ships into their ports ? I am very grateful to our friends the delegates of the United States that they have consented to that view, that we should draft Article III so that the Governments can either insert in the Article the commercially insurable sum as to the size of which the Commission, after consideration, will make recommendations, or they can insert the much higher sum which, in their view, will make this Convention acceptable to all the Nations of the world. It is suggested that we say in our report that it is not for us to dictate to the Governments what sum they should insert, but it is apprehended that we could properly say that we do not think, if they insert merely the commercially insurable sum, there will be the slightest hope of general acceptance of this Convention among the Nations. I think we can properly say it has got to be a much higher sum and that if they do that they must in some form or

other, the licensing States, be prepared to make up the difference in the event of a serious nuclear casualty.

It is with that object in mind that we have very tentatively attempted a redraft of Article III in the sense that it is absolutely necessary that the Convention should state that the absolute liability of the operator should be limited. On the other hand, however, it should state that he is bound to maintain insurance to cover his liability. What that liability is, is a matter not for us but for the Governments who will ultimately consider this Convention.

We believe that we have so drafted Article III that it should not cause offence to the Governments who will ultimately receive it because whatever they decide on this vital point, Article III will fit their decision in sub-paragraph (i) if they decide to insert the commercially-insurable limit. We do not think they will ever get away with that, but if they do, good luck to them.

If on the other hand a much higher figure necessarily entailing an indemnity by Governments is decided upon, then Article III as redrafted also fits that scheme.

There is just one alteration in the draft which is made in deference to our Italian friends. In line one of sub-clause (i) after the words « The operator of a nuclear ship... » the words « duly licensed or otherwise authorized by the licensing State as operator of the nuclear ship ». I think that meets the proposal made by Mr. Francesco Berlinieri yesterday.

Mr. Robert Seaver, United States : The method of covering the problem of Government indemnification is probably one of the most serious matters before the Comité in connection with this Draft Convention.

I should like to speak to you very seriously about this matter in just a moment, and I should like to say that I am speaking as a devoted member of the Comité and not in my official capacity as a representative of the United States Government.

We have heard it said early in the meeting that it might annoy Governments if this draft Convention made some provision for Government indemnification of the owner of a nuclear-powered vessel whose vessel might cause a nuclear incident. As we see it in the Delegation of the United States, it would surely annoy these Governments just as much to refer this requirement in the report to be circulated with our draft as to cover this matter in the draft where we feel it certainly belongs. Everyone who has addressed himself to this subject during the course of this meeting has agreed that without Government participation in this new and large type of risk there cannot be a successful international Convention covering this subject. I can assure you that Governments are today quite aware of this problem. It would not come as news to them to have it incorporated in this Draft Conven-

tion. In any case, we cannot hide the problem; the problem just will not go away because we may act as though it is not there. We have to face the problem and we must, I think, in this Convention.

The American Delegation feels that the draft must mention the problem and we think that the way the proposer, Mr. Miller, has suggested this morning and described to you sets out the matter. Otherwise, we feel that the impression might be left that the Comité does not feel that Government participation in these risks is necessary and I am sure that none of us here would want to leave that impression. Actually, I should think that Governments would be annoyed if we did not mention this problem in the Convention.

Just consider this for a moment. Under the Brussels 1957 Convention on the limitation of shipowners' liability, the limitation fund that would have to be put up by some of our larger ships would be something over 15 million dollars. The present thinking in respect to the nuclear-powered ship is that the amount of insurance that will be available on the commercial market at the outset at least will be about 15 million dollars; perhaps less.

If we do not mention Government participation in this risk in the Convention then necessarily we have to say that the limit of owners' liability will be 15 million dollars, because we have agreed that the limit will be based on the amount of insurance that will be available.

In closing, I just want to suggest to you that we would be a laughing stock if we took home a Draft Convention covering the liability of nuclear-powered ships that has a limit of liability less than the limit of liability of certain conventional ships.

Mr. B. Gomard, Denmark : The position of the small European countries in those discussions was that, by necessity, they have to have land-based reactors, and that it was therefore their duty to see too that financial cover is established to the extent possible to cover disasters which might ensue from the operation of such reactors.

We have therefore been in favour of adopting the Paris Draft, which sets a limit for the liability of five to fifteen million dollars, and this figure has been chosen because that is the amount for which we think we can find insurance coverage. We are well aware that disasters might occur which cannot be covered in this amount. However, it has not been inserted in the Paris Draft that the Government should cover what is beyond the limit set out in the Convention, and the reason is this : that we have not felt that it is within the financial possibilities of our countries to cover a larger amount. This does not mean that it is the intention of our Governments not to cover damage which could not be covered by the insurance, but that the situation which would ensue if a disaster of that kind occurred is so exceptional, so unusual, that the Governments must have absolutely free hands in such a case to decide in what way they best can utilize the financial resources which

are at their disposal. The situation is analogous to what happens when a major natural catastrophe occurs; one has to get the resources from the sources available, such as the Red Cross, who will implement action taken by the Government. It is not possible beforehand to give rules for a situation which is so exceptional that the financial position of the Government as such is at stake.

We are now in this Organization faced with a problem of drafting provisions for nuclear ships. There the situation is a little different for the smaller countries. We do not at present have nuclear ships, and we might not get any for quite a while. However, we cannot rule out the possibility that some day in the future it will be possible for us to buy or build ourselves nuclear ships, and therefore we are not able today to subscribe to a solution which would in effect rule out the possibility for us to acquire such a ship. We can therefore not be in agreement with the draft which is before us, even though the two distinguished representatives from the major delegations have advocated it so eloquently, and the reason for that is this : it is true, as was pointed out by Mr. Miller, that the amount is left blank in sub-section (i) of Article III, but it is left blank only, as we understand it, in the sense that the amount which is ultimately put in, would be the amount for which the Government is legally responsible, because, as sub-paragraph (iii) is phrased : « the Government has a legal responsibility for the amount put in in sub-section (i) ». That means, as I say, that the Draft rules out the possibility that the Government intervention will be in terms not of legal liability, but in terms of the Government, when the disaster has occurred, can see what can be done with the resources available. We are not, therefore, in favour of the amendment, because even though the amount is left blank, it does bind the hands of our Government, namely, in the sense that the intervention in this field will have to be in the form of legal liability, that it cannot be made in the way that they, when the disaster has occurred and they know what they are up to, can decide in what form and under what circumstances they can best intervene with the money they do have. It may well prove they may not be able to intervene on a dollar-for-dollar basis, it may be done in some other way, and that possibility we cannot rule out.

Mr. J. de Grandmaison, France (translation): We fully realize that a Convention such as the C.M.I. is preparing, is a commercial Convention which cannot provide for a limitation of liability in the case of a nuclear catastrophe, which warrants an indemnification in full to the victims.

As a consequence, we fully realize that in one way or another the States will, at a certain moment, be obliged to intervene and to accept a partial liability for themselves. To-day the question is to know whether it is possible to insert in our Convention provisions to be submitted to

the Brussels Diplomatic Conference but which as we are bound to admit, we drafted in such a way, that the different States will feel offended and say : « you have been dealing with things which are out of your province ».

Indeed, we impose a liability on the States, to cover first of all, in a general way, the solvency of all insurance companies. The Governments which have delivered a licence shall be jointly liable with all the insurance companies covering the atomic risk.

That is something extraordinarily important. I do not know how our Governments will consider an engagement of that kind.

Furthermore the State shall not only warrant the solvency of the insurance companies but shall accept liability for the balance which may be extremely high, perhaps 100 million dollars, between the amount adopted under paragraph (i) of Article III and the compulsory insurance-cover imposed on the owner of a nuclear ship when he obtains the licence.

There is something which we feel we cannot possibly contemplate in the frame of our Convention and I have to say that, notwithstanding our wish to facilitate things, we prefer the solution, so brilliantly put forward yesterday by our friend Mr. C. Miller and which consists in attaching to the text of the Convention a report containing the propositions which should be made to the different Governments.

This report might emphatically mention that we feel it to be the only possible solution. However, as far as we are concerned we prefer that this should be achieved in that way, i.e. by means of a report and not in the Convention.

I will add a last observation which may not be very interesting but I should like to make it nevertheless : we are afraid that the system suggested in this amendment will doubtless involve, in all the States, the pure and simple suppression of all private insurance and an absolute nationalization of the insurance enterprise. As you wish that the States granting the licences should accept a personal liability for the total amount of limitation of liability and that they should warrant the insurance companies, it is practically certain that under those circumstances all these Governments will nationalize insurance and even may abstain from all insurance even State insurance and merely say : « We have accepted liability under the Convention and we will pay if necessary ».

They will just put on those who ask for a licence the burden of paying a more or less important amount.

I think that there is a practical danger for the future of private insurance business. Maybe it is immaterial to speak about this, but nevertheless I wish to explain our concern in this matter.

Mr. Arthur M. Boal, United States : The Convention which we adopt here is only a recommendation. It has no force because of our

action on it, except as an expression of our views, and we have no objection to putting paragraph (iii) into the report as a recommendation. I do not think though that we can rely upon voluntary action of Governments in paying claims for nuclear ships damage because in all probability it will not be their own nationals but nationals of other countries, and that will have quite a different effect on Parliamentary action.

Therefore, I will state that we have no objection to putting paragraph (iii) into the report as a recommendation of what we think should be done.

The President (translation): I think that this morning's exchange of views has really clarified the question. First of all because it appeared that, all things considered, most delegations are in agreement as to the principles but that some of them wish that the subject of Article III should be expressed as a recommendation.

Mr. Boal's contribution is very important and I think that we must be grateful to him. We should not be obstinate about a question of procedure.

As far as I am concerned, I should like to suggest, in order to meet the wish of the American Delegation, that we insert this provision as a general clause in the report but that we also draft it as a special recommendation from the Conference in order to give it more force, in order that the two points of view are still more close to each other.

We shall have a report which will introduce the whole of the draft and I wish that the Conference should mention this question in a special note and make a recommendation to the Governments. I think that in fact the position of the American Delegation brings us back to normal procedure. We decided yesterday to suppress Article III by 10 votes against 6. This vote remains as it is.

We wish, if you agree, according to the American suggestion that the content should be put as a particular recommendation from the Conference to the Governments. Is this in conformity with the feeling of the Subcommittee ?

Mr. Boal has just said that such was his feeling. I think that the British Delegation will also agree upon this.

Mr. C. T. Miller, Great Britain (translation): Yes.

The President (translation): I thank you. We will now deal with the other amendments introduced together by the United States and Great Britain.

Mr. Arthur M. Boal, United States : The amendments we propose to Article III (i) and (ii) are now withdrawn.

The President (translation): We have now to pass the amended Article III.

The amended Article is adopted unanimously, two delegations abstaining from voting.

Voted in favour : Canada, Denmark, Spain, Great Britain, Sweden, Finland, Norway, Netherlands, Belgium, Italy, Turkey, Greece, France, Japan, Germany, U.S.A.

Abstained from voting : Yugoslavia, Poland.

Mr. F. Van der Feltz, Netherlands : I would like to make two observations with regard to Article III which has been accepted by the Conference. The first point is — and I think it is a point which we can put before the Drafting Committee — that it is now said that the nuclear ship shall not be liable for more than a certain amount in respect of any one nuclear incident. However, it is possible that there will be nuclear damage and other damage arising out of the same nuclear incident. Is it the meaning of the Article we have just accepted, that also non-nuclear damage is limited to the amount that will be mentioned in Article III ? I think it would be better to say that in case of nuclear incident an operator of a nuclear ship shall in no circumstances be liable for more than so-and-so much.

The second point is about interest and costs awarded by the Court in actions for compensation. If you take Article VII, sub-section (c) of the O.E.E.C. Convention it says :

« Any interest and costs awarded by a Court in actions for compensation under this Convention shall not be considered to be compensated for the purpose of this Convention, and shall be payable by the operator in addition to any compensation for which he is liable in accordance with this Article ».

Is it not useful to put this sentence in the Article of the Convention or to state explicitly that interest and costs are included in the amount which will be mentioned in paragraph (i) of Article III ?

Mr. J. T. Asser, Netherlands : I want to revert to a point which I raised on Monday afternoon. Since we now are going to make certain recommendations to the Governments in connection with Article III, I propose that this Commission take a vote on the following point; namely, that our recommendations should include a strong recommendation for the setting up of international control. As I said already last Monday, the liability of the owner of a nuclear ship involved in a major casualty must be implemented by the licensing State. I think it is absolutely inevitable that some measure of control be ensured so that the licensing States will, in fact, carry out their international obligations in this respect once the Convention has been agreed upon by the Diplomatic Conference. This point is of great importance in my view because otherwise the Convention might well appear not to be workable at all. We cannot, of course, deal with this point in the draft we are now preparing, but I would strongly urge to have a

recommendation inserted to that effect, because the actual wording of the recommendation will have to be left to those who will draft the report which will eventually have to be approved by the plenary Conference.

Mr. Arthur M. Boal, United States : Do I understand that the vote on Article III includes the authorization to put that as a special recommendation ? I would like to ask Mr. Asser if he would explain to us a little more definitely what he means by control of an international agency.

Mr. J. T. Asser, Netherlands : I feel like a student who has to pass a *viva voce* examination and who has been asked a question to which he does not know the exact answer ! I do not know exactly what form this control should take, and I think it would be extremely impertinent on my part to suggest any more specific ideas than those which I have just outlined. As a matter of fact, I said on Monday that one might consider the possibility of a certain guarantee to be furnished by each licensing State. It might be done in this way or in another way. How it will be done I think is in the very first place a matter for Governments themselves, and I do not think that in this instance we should attempt to dictate, even by way of a recommendation to the Governments of the world, how they should in the final Convention give the assurance for the carrying out of their obligations, of their international obligations. There is, however, one point to which I should like to draw the attention of this Commission. It is said in the draft, if I am not mistaken, that all the moneys which will be available by way of insurance or other financial guarantees will be freely transferable from one country to another. Anyway, this must be said, otherwise the whole Convention would amount to nothing. The same principle would, of course, apply to the subsidiary liability to be assumed by the Governments.

We know of sufficient cases in the last 50 years where Governments with the best intention have been unable to carry out their international financial obligations because of lack of foreign exchange. This is a point which should be looked into and which should not be decided upon here and now, but something of this might be put in into the recommendations. This is the answer I would like to give to Mr. Boal.

Mr. C. T. Miller, United Kingdom : I would like to say a few words in support of what Mr. Asser has just said. We have a proverb in our language that fools rush in where angels fear to tread; Mr. Asser is the angel in this case. My Delegation feels great sympathy for the view expressed by Mr. Asser that there must be some form of international control because, as we have envisaged that there will have to be a measure of State support in the event of a major nuclear claim, it is important to ensure that if the maritime Nations do enter

into such an agreement they carry out their obligations. I am not suggesting that any Nation here represented would not do so, but there might be some Nations that would not. Therefore, what Mr. Asser says seems to us to be a real necessity.

I would suggest, of course, that since this is a financial matter there are certain international financial organizations such as the Settlements Bank and the International Monetary Fund which might be utilized. I throw this out merely as a suggestion without having thought it out.

Mr. J. T. Asser, Netherlands : May I suggest that no vote be taken on this point now, but that the Drafting Committee will be entrusted with working out something on these lines subject to approval by the Conference ? This means that the whole question will remain open, that no decision will be taken on this point but there will be something on paper before a decision can be taken.

The President (translation): Does anybody else ask to come to the platform and make some comments concerning Article III which has just been voted.

If not, I shall proceed with Article IV.

ARTICLE IV.

Are there observations to Article IV ? If there are no observations and no amendments I submit Article IV to your votes.

Article IV is adopted unanimously.

ARTICLE V.

Mr. Matysik, Poland (translation): Our Delegation is of the opinion that the delay provided for by the second paragraph of Article V should be extended to 3 years from the date when the individual or person suffering damages has knowledge of the damage. We thought that according to the law of several European countries — and if I am not wrong, such is the case in France — the time limit for actions against the person liable for damage is 3 years and not 2 years.

I am of the opinion that it is necessary that this privilege should be granted to the injured persons, i.e. that we should maintain the 3 years time limit. I suggest to substitute 3 years to 2 years.

Mr. F. Berlingieri, Italy : In the second paragraph of Article V, in the last line, it is stated, « provided that a period of ten years shall not be exceeded ». It is our submission that it would be better to add, after « provided that a period of ten years », « from the nuclear inci-

dent shall not be exceeded », in order to complete the connexion between the first and second paragraphs.

Mr. Van der Feltz, Netherlands (translation): I did not fully understand the Polish amendment, because paragraph (ii) of Article V says : « Toutefois, la loi nationale peut fixer un délai supérieur à 2 ans ». So, every State is free to fix a 2, 4 or 5 years time limit. The State is not free to fix a limit lower than 2 years. I do not see why it should be necessary to say in Article V, paragraph (ii), that there should be a 3 years period.

In the Brussels Bills of Lading Convention there is even a one year limit. In the collision Convention the period is 2 years. If I am right, in the Warsaw Convention it is 2 years. So I think we should maintain here the 2 years limit. If a contracting State is of the opinion that this is too short a delay, it is allowed to fix a longer one.

Mr. C. T. Miller, United Kingdom : There are two short points upon this Article which I would like to put forward for the consideration of the Commission. The first one is a point that is of some considerable importance to an Anglo-Saxon lawyer; I do not know whether the same distinction applies to those whose system of law derives from the Civil Law. You do not, for us at any rate, extinguish a claim for compensation. What you do extinguish under a limitation of time is the right of action, so that the legal right to sue has gone after a certain period. Therefore, to extinguish the claim is not really sufficient; it is not saying what you mean. What you mean is that his right to sue has gone if he does not bring legal process within ten years.

The second point I would mention, in answer to the proposal made by the Polish Delegation that the period of two years in paragraph (ii) should be extended to three, is that O.E.E.C., after very careful consideration of this problem, decided upon a period of two years, and personally I can see no good reason why we should dissent from the conclusion arrived at by O.E.E.C. in this matter.

Mr. Arthur M. Boal, United States : I think the amendment recommended by the Italian Delegation of adding, after the words, « ten years », « from the nuclear incident », could be adopted. It clarifies the language there and we are in favour of it. But I think that we should reject the proposal of changing the period from two years to three years.

Mr. J. de Grandmaison, France (translation): It is not the intention of the French Delegation to suggest an amendment concerning Article V or to oppose or support the amendments which have already been put forward. However, I should like to draw the attention of the Conference upon the words : « individual or person » in the English text.

We have been informed why these two words are of interest for our American friends; they have been translated in the French text of Article V by « l'individu ou la personne ».

I must say that this matter might have been settled simply and solely by the Drafting Committee but the Subcommittee may be of the opinion that it is competent. I would like to add that from the point of view of the French language we are reluctant to use the word : « individu » which has a rather pejorative meaning. Furthermore in our country an individual even a « sale individu » is a person.

As a consequence there is redundancy which we particularly dislike. I suggest and I will ask permission to have that following French translation : « à partir de laquelle la victime d'un dommage a connaissance ». I think this would greatly simplify things.

Mr. J. T. Asser, Netherlands (translation): I think there is a lack in the second paragraph of Article V. That second paragraph refers to the national law of the competent Contracting State. What does that mean ? Competent in what ? I think this paragraph should read as follows : « toute loi nationale du tribunal, ceci conformément à l'Article XII, peut fixer un délai supérieur ». Otherwise nobody will know which is the competent Contracting State and which national law is concerned.

Mr. B. Gomard, Denmark : In the O.E.E.C. Draft the Article dealing with the question of limitation of actions contained three paragraphs. The first two paragraphs are the ones which we have in the draft before us, but in the O.E.E.C. Draft there is a further, third, paragraph. In the draft as it stands at present, Article 8 (c) says that : « ...any person suffering damage caused by a nuclear incident who » has brought an action for compensation within the period provided » in this Article may bring supplementary proceedings in respect of any » aggravation of the damage after the expiry of such period provided » that final judgment has not been entered by the competent Court ».

This paragraph means that if legal proceedings for damage have been started within the ten-year period the victim is allowed to bring supplementary proceedings even though he is not able to bring these supplementary proceedings until after the expiry of the ten-year period.

This is a very small matter and I suppose it is not very important whether this sub-paragraph (c) from Article 8 of the O.E.E.C. Draft is carried into this field as well. But I think in this new atomic law which we are going to found there is no need to make it unnecessarily complicated by having different provisions in different drafts. As there is no reason — at least not any reason which is apparent to me — to make any difference in the two drafts I would recommend that a paragraph (iii) be added to the C.M.I. Draft which would read exactly as Article 8 (c) in the O.E.E.C. Draft.

The President (translation): We are now voting on the amendment made by the Polish Delegation and proposing to substitute in the second paragraph of Article V the words : « supérieur à deux ans » by « supérieur à trois ans ».

I put this amendment to your votes.

The amendment is rejected, two Delegations voting in favour, 14 voting against and one abstaining from voting.

Voted against : Netherlands, Denmark, Spain, Sweden, Great Britain, Norway, Finland, Belgium, Italy, France, Japan, United States, Germany, Portugal.

Voted in favour : Poland, Yugoslavia.

Abstained from voting : Turkey.

The second amendment is that proposed by the Italian Delegation.

Mr. F. Berlingieri, Italy (translation): It is merely a question of drafting.

The President : Shall we consider your amendment as a question left to the « Drafting Committee » ?

General agreement.

The President (translation): We are now examining the amendment of the Danish Delegation. The purpose of this amendment is to add to Article V the text of paragraph (c) of Article 8 of the O.E.E.C. Convention, reading as follows :

« Unless national law provides to the contrary, any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may bring supplementary proceedings in respect of any aggravation of the damage after the expiry of such period provided that final judgment has not been entered by the competent Court ».

Mr. C. T. Miller, Great Britain : I am sorry again to intervene on the text of this amendment, but it is a very important matter. I am referring to the words « bring supplementary proceedings ». That has been decided only recently by O.E.E.C. to be entirely wrong because it enables the claimant to evade the limitation time entirely. What you really mean to say is that if he has already brought proceedings within the limitation time and after the limitation time is over he finds he has suffered damage for which he has not already claimed, then he may amend his claim. Amending his claim providing that he has avoided the prescription by issuing a writ before the prescription has expired is certainly our law and I imagine it is the law of most countries. If you say « bring supplementary proceedings » you may as well not have the time limit at all. O.E.E.C. saw the danger of that and they have in their latest edition, published last week, of their Convention altered that to « may amend his claim ».

I am afraid we shall have to vote against the Danish amendment in its present form.

Mr. B. Gomard, Denmark : It is correct, as pointed out by Mr. Miller, that the exact wording of our amendment caused some difficulties in Paris due to the fact that the procedural laws of various countries are different. It is possible that the text as it stands at present might be misunderstood by a person versed in common law. I think that this matter should be brought to the attention of the Drafting Committee. The sense of the amendment is obvious to everyone reading the article, and if it is so that the common law might provoke misunderstanding then I think this matter could be left to the Drafting Committee.

I therefore respectfully request that the substance of the amendment is brought to the vote.

Mr. J. de Grandmaison, France (translation): Before voting on Article V, the French Delegation would like to obtain some explanation as to how this Article should be understood. We see in paragraph (i) a 10 years time limit. It is a uniform time limit and that is all right

The second paragraph provides that the national law of the State of the competent Court can fix a delay of at least 2 years for the extinction of the right from the date of which the « individual » or « person » suffering damage has knowledge or ought reasonably have knowledge of the damage.

I can understand this idea very well. We say « Here is a victim of a damage who has knowledge of it only after the limitation time of 10 years has expired ». The national law can grant an extension. However, the last paragraph proceeds with the words « pourvu que le délai de 10 ans ne soit pas dépassé ». So I do not understand that, because if a 10 years period has not expired why should the victim need an extension, a new period of 2 or 3 years. I do not understand why the second paragraph is necessary. Indeed, we have a 10 years time limit imposed on everybody to comply with it. If you have knowledge of a damage within the 10 years period start your proceedings; you do not need an additional period. It is on this point that we should be grateful if we could obtain some explanation before voting.

Mr. C. Van den Bosch, Belgium (translation): The intention is not, contrary to what Mr. de Grandmaison thinks, to grant the victim an additional limit. In any case a 10 years limit shall not be extended. However, if, inside the limit the victim has knowledge or should reasonably have knowledge of the incident and of the damage, it suffered, each State can say in these conditions : « the victim shall have the benefit of only a shorter time limit which however shall never be less than two years ». This means that, as soon as the victim knows the

incident and knows the damage it suffered, it shall have to comply with the short time limit if, of course, the State of which it is a national, takes such a decision.

The President (translation): I think that the observation has been met.

The Netherlands' Delegation made also an amendment reading as follows : Substitute the words « Each contracting State » to the words « National legislation ».

Mr. F. Van der Feltz, Netherlands (translation): We suggest to submit this amendment before the Drafting Committee.

The President (translation): I put Article V to your votes.

Article V is adopted unanimously, one delegation abstaining from voting.

Voted in favour : Denmark, Canada, Netherlands, Spain, Sweden, Great Britain, Finland, Norway, Belgium, Italy, Turkey, Japan, France, Germany, Yugoslavia, United States, Portugal.

Abstained from voting : Poland.

Mr. J. Van Ryn, Belgium (translation): I merely should like to draw your attention upon a question which I think should be solved but which does not seem to be solved in the present reading of the draft. Article V as we just adopted it, involves that the rules relating to time limitation might be different in the different contracting States.

Now, Article XII provides that the victims are entitled to start proceedings either before the Court of the competent jurisdiction of the licensing State, or before the Court of the competent jurisdiction of the contracting State within the territory where the nuclear damage occurred.

If the two States concerned, adopt different rules relating to time limit, are the victims to have a choice to bring their action before the Court with more favourable rules for them or must we exclude this possibility ?

I would merely wish to draw your attention upon this question which, I think, should be solved when we are examining Article XII.

ARTICLE VI

The President (translation): The delegate of the Bureau International du Travail, Mr. Pesic, has submitted to the Subcommittee of the Conference a memorandum of observations and asked the Conference to circulate this memorandum which suggests to the Conference to examine the possibility of deleting Article VI of the draft.

Mr. Kaj Pineus, Sweden : I suggest that we start by striking out the last part of it. It says in the first section that the rights of « les bénéficiaires seront fixés par la loi nationale de l'Etat contractant qui les a établies ». Then it goes on to say that we give a right of subrogation to the party who has the right to such compensation. We submit that the right of subrogation should be left to national legislation. It has been left to national legislation in other Conventions dealing with similar problems, and we submit that this should also be made here. I think the easiest way would thus be to strike out the second part of Article VI, the section beginning : « if such compensation is payable... »;

If we struck out the first part, we would not cry out either, but that, I submit, someone else should suggest.

Mr. E. Pasanisi, Italy (translation): I am going to make the same observation as the Swedish delegate, according to which it is not advisable to establish a right of recourse in favour of those who paid damages in pursuance of labor legislation.

However, we are of the opinion that instead of deleting the last part of Article VI we think that it is worth while to substitute in this part to the words after « la loi nationale » « qui règlera le recours éventuel ».

Mr. A. Vaes, Belgium (translation): After due consideration I think that it would be much more advisable to delete completely the text of Article VI.

The first part before the words « si pareille indemnisation » only confirms something which it is useless to say in the Convention, i.e. that the victims who have the benefit of a social security insurance covering nuclear damage, shall, in each country, have the benefit of such insurance.

As to the second paragraph, it is obvious that this should be left to the national law. In a country where legal subrogation is granted, subrogation shall apply and in a country where no legal subrogation is granted no legal subrogation shall apply.

As a consequence, all that is said in Article VI seems to me to be completely useless and I think that it is far more advisable to delete this text completely because it is a mere confirmation of a rule which will be applied even without a text.

Mr. N. Katicic, Yugoslavia (translation): I support the previous speaker but I like to add a few words in favour of the text of the Convention.

It is obvious that the beneficiaries of a national compensation system have the benefit of all the rights granted by such system. We might, perhaps, stress that this Convention does not prejudice the situation.

But it is important that we say whether we agree that the beneficiaries of social insurance do not lose any right provided for by the Convention, through the fact of social insurance, i.e. that it should be clear that in the case a victim receives compensation or assistance from the social security fund, his right against the operator shall not be altered and the existing subrogation rules should apply.

If the victim receives from the national insurance an amount below the amount the operator should pay, it should have the right to claim the balance from the operator.

That is what should be said. If we delete the Article completely it seems to me that this will go without saying but it might be better to say it explicitly.

Mr. B. Gomard, Denmark : Various formulas have been suggested with regard to the question of fitting in compensation under workmen's compensation schemes, and similar systems of social security. I do not think there is any real difference in substance in this matter; the question is to find a formula which is acceptable.

In this matter I would like, respectfully, to point to Section 6 (e) of the O.E.E.C. Draft, where it says :

« Where provisions of national health insurance, social security, workmen's compensation or occupational disease compensation systems include compensation for damages caused by a nuclear incident, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the national law of the Contracting Party having established such systems. »

Where provisions for national health insurance give compensation to workmen for damage caused by a nuclear incident, it is governed by national law, whether the social security system shall have a right of recourse against the operator or not.

This provision, I think, it has been found necessary to insert because in the O.E.E.C. Draft there is a provision in Article 10 (c) to the effect that the sums provided as insurance may only be drawn upon for compensation for damage caused by a nuclear incident. Therefore, without a provision like the one to be found in Article 6 (e), it might be doubtful whether it would not be necessary under O.E.E.C. Convention to amend the social security system. Therefore, I think we have a formula ready to solve the problem, and that we may be well advised to adopt the formula similar to the one in the O.E.E.C. Draft.

The substance of this proposal has the same effect as the proposal made by Mr. Pineus. There is not any difference in substance between the two proposals, but I think it is advantageous to take over the formula from the O.E.E.C. Draft, for the same reason that I pointed out before, that in a new field it helps to have as few different formulas as possible, especially when we agree — as I am sure we do — that there is no difference in substance between the various formulas.

Therefore, I would respectfully submit that Article VI in the Draft before us be substituted by a provision which is worded in exactly the same way as the provision to be found in the O.E.E.C. Draft, Article 6 (e). I am referring to the O.E.E.C. Draft which is dated 23rd June, 1959.

Mr. C. T. Miller, Great Britain : I wish to utter a word of warning on Article VI and the subsequent Articles that I believe are dealing with jurisdiction. We of the British Delegation would far rather see Article VI deleted, as ILO suggest, altogether from this Convention. If we have to have something, we would rather have O.E.E.C. than this.

The reason is this : under the social security insurance schemes in some States — like our own, for instance — there is under the local law no right of subrogation. If the State pays an injured man, the State cannot under law recover from the wrongdoer who injured him. Under other States — I believe France is one of them — in certain circumstances the State can recover from a wrongdoer who has caused the injury for which the State has paid compensation. I believe that is so if negligence is the cause, or something of that kind.

Now, supposing the scheme of jurisdiction which is propounded in this Convention, may entail a particular nuclear incident being tried in more than one Court, you are going to get into the most frightful difficulties if Article VI stands as it is. In one Court it may be that the local law is that there is a right of subrogation. In another Court, deciding upon exactly the same nuclear incident, there may not be a right of subrogation. What happens when the matter comes to jurisdiction where the fund is established, I simply do not know. Therefore, I think that if you put in this compulsory right of subrogation, you are going to find yourselves in the most frightful difficulties.

Later, we will suggest. Therefore, we should rather see the whole of Article VI deleted and the result of the action left to local laws.

Mr. Kaj Pineus, Sweden : To make things easier, I should like to say that the Swedish Delegation withdraws its proposition and will support the Danish one.

Mr. Leonard J. Matteson, United States : I think the statement of the ILO indicated that they felt that the first part of Article VI was unnecessary, and that the second part of Article VI should be qualified. I do not entirely agree that the first part is unnecessary. I think there should be some recognition of the fact that there is no intention on the part of this Convention to interfere with rights under national health insurance or social security or what-have-you. It is perfectly true that under some systems, the State has a right of subrogation and under other systems it may not have, and perhaps this Article as it

stands goes too far in that it would seem to establish the right of subrogation in any event. The matter could be cured by simply adding at the end of the paragraph the words : « if the law of the State establishing such system so provides ». However, the net result would be substantially that which is set forth in the O.E.E.C. Draft Convention, Article 6 (e), and it is not material to us which solution would be adopted there. We would be perfectly agreeable to substituting the text of sub-paragraph (e) of Article 6 of the O.E.E.C. Convention, or to the adding of the qualifying words at the end of Article VI « if the law of the State establishing such system so provides ».

The President (translation): Several amendments to Article VI are submitted to us. The most radical wants to delete Article VI and to substitute the provisions of the O.E.E.C. Draft submitted to you. Such is the suggestion made by the Danish Delegation more or less supported by the American, Swedish and British Delegations.

We had an amendment presented by the Belgian Delegation proposing to simply and solely delete Article VI. So we should take first the Danish amendment, of which a part is the amendment of the Belgian Delegation, and to have two votes, one of deleting Article VI and the second on substituting the O.E.E.C. provision.

The first point of the amendment is adopted by 15 votes against one.

Voted in favour : Denmark, Canada, Netherlands, Belgium, Spain, Sweden, Norway, Finland, Great Britain, Poland, Italy, Japan, Turkey, Yugoslavia, Portugal.

Voted against : U.S.A.

The President (translation): I put to your votes the second part of the amendment.

The second part of the amendment is adopted by 8 votes against 4 and 5 abstentions.

Voted in favour : Denmark, Canada, Sweden, Finland, Norway, Turkey, U.S.A., Portugal.

Voted against : Netherlands, Poland, Italy, Belgium.

Abstained from voting : France, Germany, Japan, Great Britain, Spain.

The President (translation): Your Subcommittee decide to substitute to Article VI the provisions of the O.E.E.C. Draft. I draw your attention upon the fact that it will be necessary to make a new text suitable to be inserted in the Convention.

This vote overrules the other less radical amendments.

ARTICLE VII

The President (translation): Does anybody ask to come to the platform and make a statement to Article VII ?

Mr. H. G. Roehreke, Germany : In this Article VII we deal with nuclear damage which is caused not by one but by various nuclear incidents. It is said that for such damage « those operators shall be jointly and severally liable ». At the end of this Article you find the words, « each being subject to the limitation provided in Article III ». It has been thought that these last words really refer to the liability of the operators which is cast on them jointly, so that no operator can be liable beyond the limits set out in Article III. On the other hand, if I read this Article in the correct way these last words really only refer to the division of the amount which may have been put up by one of the operators.

Therefore, we would be very grateful for some clarification of this matter because if these last words which refer to Article III only mean the division of the whole amount which is put up, then it may very well be that one operator will be liable beyond the amount which is set out in Article III.

Mr. C.T. Miller, Great Britain : In Article VII, line four, the words should be « reasonably separable », as used in Article IV, and not « reasonably ascertainable ». What you mean is that if you cannot separate the damages then you lump them altogether and everyone is liable. We prefer the words used in Article IV. We would like « reasonably separable » instead of « reasonable ascertainable ».

We are in the same state of confusion as Mr. Roehreke. We do not know quite what the last sentence means.

The President : Your suggestion will go to the Drafting Committee.

Mr. F. Berlingieri, Italy : The Italian Delegation raises the same point which has been raised by the German Delegation. We do not understand what the last words of this Article mean, because if you put these words « each being subject to the limitation provided in Article III » and so on, at the end of the Article it might be implied in the case of claimants who finally claim against one only of the various operators that no limitation would be applied. While the poor operator has a right of recourse he has to pay a great amount.

Our proposal is either to eliminate the last two lines or to add at line five of Article VII after the words « such damage » the words « each being subject to the limitation provided in Article III sub-paragraph (i) of this Convention » and then to eliminate the same words at the end of this Article.

Mr. J. T. Asser, Netherlands : I think the whole matter which has been raised by Mr. Berlingieri, Mr. Roehreke and Mr. Cyril Miller, is a matter of drafting. I think it is quite clear that primarily the liability of each operator is limited, and what the second point of the Article means is simply this : If there are recourse actions as between two or more operators, who are jointly and severally liable, those recourse actions should never lead to the effect that an operator should be liable for more than the amount of the limitation. However, I quite agree that the drafting is far from perfect, and this should go back to the Drafting Committee I think.

Mr. J. Van Ryn, Belgium (translation) : I think we are in complete agreement with Mr. Asser's statement, provided we first agree upon the meaning of Article VII which seems to us, such as to some of our colleagues, to be hard to understand. If the figure left in blank in Article III paragraph (i) and to which Article VII, *in fine*, refers, has to be according to us one single amount fixed once for all and if, as Mr. Asser has just stated, no operator can be held liable for that amount, I think we should say that, and I think that it is then useless indeed to repeat at the end of the Article that when the liabilities of the different operators are apportioned, each of them shall have to contribute up to the extent of the limit provided for in paragraph (i) of Article III, because such solution cannot possibly be excluded.

If this supposition is right we agree upon understanding this Article in that way and we agree upon saying that the rest is a mere question of drafting.

Mr. Leonard J. Matteson, United States : I heartily agree with what Mr. Asser has said. I think there is no difference of opinion among us whatever, and I think it is merely a matter of finding the proper words to express it. I think the entire matter should be left to the Drafting Committee.

Mr. F. Van der Feltz, Netherlands : In Article VII it is said « that the total amount of their liability for such damage is equally divided between them ». It is the old rule which we have had some experience with in collision cases before the 1910 Convention. It was the normal general rule that if there were a collision between two ships and they were both to blame, each ship had to bear its own damage. Afterwards we had that system, which is still the American system, that if both ships are to blame the damage is equally divided. However, after the Convention of 1910, which is adhered to by practically all maritime Nations with the exception of the United States, the damage is divided in proportion to the blame of each ship, and the Netherlands' Delegation does not see why we should go back to the old system of 50 per cent and not to the modern system that damage between the operators shall be divided in proportion to the blame of each operator.

Mr. Leonard J. Matteson, United States : This matter of equal division of the nuclear damage was carefully considered when the treaty was drafted at Antwerp, and the reason for the equal division is that the liability which is imposed by the Convention is not related to negligence, it is an absolute liability for nuclear damage. Each is absolutely liable for the entire damage, and since negligence is not a feature in determining that liability, it appeared to the drafters of the Convention that the only appropriate solution was that when there was joint liability there should be equal division between those who were absolutely liable for the damage.

Mr. J. de Grandmaison, France (translation) : We gather from the explanations supplied by Mr. Asser and Mr. Van Rijn that following Article VII we may be sure that the liability of each operator liable shall have the benefit of the limitation fixed by Article III.

But, we would like to have details on the following point : Article VII contemplates the case of several nuclear incidents. If those 2 or 3 nuclear incidents contribute to cause the nuclear damage, shall in such case the liability of several operators be involved ? We would like to know whether the victims will have the benefit of one single fund equal to the general limit or whether they will have the benefit of 2 or 3 limitation funds.

Mr. J. T. Asser, Netherlands (translation) : I would like to reply briefly to Mr. de Grandmaison's intervention. If in Common Maritime law, there was a collision involving three ships, two of which are to blame the third one being seriously damaged, the owner of the third ship has a right of action against the two others which are severally liable. The two guilty owners must each of them constitute a limitation fund and the third owner, whose ship is not to blame, shall be entitled to claim up to the complete amount, taking the sum of the limits into account.

That is the reason why we should abandon this principle in a case such as referred to by Article VII.

Mr. J. de Grandmaison, France (translation) : I thank Mr. Asser for his explanation but I am under the impression that he was speaking about one single incident. Article VII refers especially to several incidents involving the liability of several operators. We are wondering whether in such case there shall be one fund or a sum of two or three or four limitation funds. I think that, as far as I am concerned, there shall be one sum of limitation fund because there will be several incidents each of them involving the application of the limit of the Convention. I would like to have some precisions because the text does not seem very clear on this point.

Mr. J. T. Asser, Netherlands (translation) : If we have a collision between two nuclear ships both causing nuclear damage there will not

be one single incident in the ordinary meaning of the word but two nuclear incidents. It seems to me that it will be difficult to consider that there are several nuclear incidents when there is only one single source for these incidents. Well this is possible, but even in that case I think that Mr. de Grandmaison is right and that, if there are several incidents, there will be only one sum of limitations.

Mr. R. P. Cleveringa, Netherlands (translation): As far as I understood, Mr. de Grandmaison refers to the case where there are several incidents causing one single damage, but we can have the reverse, one incident and several parties liable.

In the case of a collision between two nuclear ships there is only one incident and I am wondering what will in that case happen to Article III. There will be two parties liable and Article VII will not apply.

Shall the two parties liable for the damage resulting from one single incident have to pay twice the amount referred to by Article III, or only once?

I cannot find a clear answer to these questions in the draft Convention under discussion.

Mr. C. Van den Bosch, Belgium (translation): I think I am entitled to confirm that the authors of Article VII of the draft had not the intention to solve the case of two incidents being involved but only the case of one incident for which several parties are liable. In my opinion there is no reason why we should establish rules for the case when several incidents occur because we adopted as a basic principle that the limit shall be fixed per incident.

After that we deal with the special provision for several incidents, for a succession of incidents. Each time there is more than one incident there is a new limit, a new limitation fund. As a consequence, we should not say that a special clause is necessary to solve the case when several incidents occurred.

What we should say is, which rule shall apply and what will be the limit in the case of one incident occurred for which several parties are liable. In these conditions, I will ask you not to place confidence in the *plura* mentioned in the text which moreover has to be redrafted.

The President (translation): It is obvious that the drafting of Article VII is not satisfactory.

Mr. E. Pasanisi, Italy (translation): It seems to me that a question is solved by paragraph VII of Article I giving a definition of the nuclear incident. Paragraph (vii) states that there is a nuclear incident each time a nuclear damage is caused by the nuclear fuel of a ship. So, we will have as much nuclear incidents and as much nuclear damages caused by the nuclear fuel of a ship. In the case of

a collision we must distinguish whether the two ships caused the nuclear damage and in that case we will face two incidents.

In the case of a collision where only one nuclear ship caused nuclear damage, we would have only one nuclear incident. Then the situation is quite clear. Article VII solves the case when several incidents occur and establishes in such case that all the parties liable for the incidents shall be severally liable and the total liability shall be equally apportioned.

The case of several parties liable for one single nuclear incident is to be solved, in my opinion, by Common law, a special clause not being necessary.

It seems to me that we should conclude that there will be as many nuclear incidents as damages caused by the nuclear installations of ships.

The President (translation): It results from Mr. Van den Bosch' statement that in the case of several incidents the solution is obvious and has not be settled by Article VII. In fact Article VII contemplates the case of several simultaneous incidents but this idea has been badly expressed by the present text.

So the text should be redrafted and it will not be a mere redrafting but a new text should be in conformity with the ideas of the Subcommittee. As soon as the Drafting Committee will have brought the text in conformity with the ideas which have just been expressed here, we will be able to take a final decision on this question. I think that is the only way to proceed because at the present time we cannot take a vote on Article VII.

Mr. J. Van Ryn, Belgium (translation): I think that before redrafting Article VII we should reach an agreement on its meaning and Mr. de Grandmaison has brought forward a relevant question when asking whether in the case of a nuclear incident involving the liability of two operators, the victims will be entitled to claim against both operators up to once or twice the limit. Do we agree that in such case, in the case two operators are involved, it shall be impossible to lodge the claim against the parties liable up to twice the limit. This seems to me the solution to be adopted.

The President (translation): This can be found suitable or not but it seems to me that it is the solution.

Mr. J. de Grandmaison, France (translation): Mr. Van Ryn put once again the question with very great clearness. I do not think that Article VII gives rise to confusion as it is drafted now, it is clear that it refers only to the case of several nuclear incidents.

In a second place, we cannot determine with certainty the damages caused by each incident. As a consequence, Article VII refers in fact

to several incidents; this seems to be obvious to me but I agree to make this completely clear.

I refer now to the object of our discussion; we contemplate the case of one single nuclear incident involving the liability of several operators but where it is not possible to determine definitely the real cause.

That case should be contemplated, otherwise we cannot have the question of the impossibility to determine with certainty whether there is one single party liable.

We have the absolute liability of the owner, the operator. If there are several operators, several liabilities are possible. That is the problem : one single incident, several operators separately liable; up to which amount? Several speakers, say that the limitation fund should be cumulated. We might be wondering whether this is fair because, although several parties are liable, the number of victims does not change. There is only one single incident; it is not the case of two reactors breaking down; there is only one single reactor causing one single incident.

Consequently, the victims of that single incident which is going to involve the liability of two operators have the benefit of twice a limitation of liability of the Convention. Something is not in order there : if we contemplate the possibility of victims in the case of an atomic catastrophe, we should hope that several operators are involved.

Mr. J. T. Asser, Netherlands (translation): I think the difficulty does not originate from Article VII but from the definition of the conception « nuclear incident ». That is all the problem. Personally, I understood that « nuclear incident » means any occurrence causing nuclear damage originating from one single nuclear ship. In the case of a collision between two nuclear ships, of which one causes nuclear damage, only one operator shall be liable up to one single limit but I think we should reexamine the text of Article I (vii), i.e. the definition of the conception « nuclear incident ». It is that text which gives rise to confusion.

Mr. J. P. Kruseman, Netherlands : I think I quite agree with Mr. de Grandmaison. Is there any reason why the group of victims should have twice the maximum amount at their disposal?

I would like to compare this with a ship having two reactors like the « Lenin », which has three, colliding with another ship and the two or three reactors of that same ship breaching. Will there then be double damage or triple damage? If there is small damage it may be due to large reactors, or if a large reactor or two small reactors breach at the same time there may be small damage. So if there is one accident causing nuclear damage there should be one time the amount

which is there to be divided between the reactors which are there. But I think there should be one and one only.

The President (translation): Does the Assembly agree upon the interpretation given a few minutes ago by Mr. de Grandmaison? We have a choice between several possible interpretations; we should adopt one now, and if we agree on the first one we may admit that the Drafting Committee is invited to redraft the text according to that interpretation.

ARTICLE VIII

Mr. S. Suchorzewski, Poland (translation): The rules of Article VIII are doubtless very important because they enable the owner of a nuclear ship to escape the liability established by our Convention.

Obviously, it is only fair and necessary to exonerate a nuclear ship-owner from all liability in given circumstances. However, we feel that such exoneration should only be drafted with great caution, i.e. as clearly and as precisely as possible. I am not convinced that the present reading of Article VIII is satisfactory from this point of view. Before all, the Polish Maritime Law Association feels that all these cases referred to in Article VIII, are covering war, hostilities, civil war and insurrection, and may give rise to possibilities of exonerating a nuclear shipowner only when the cause has a character of « force majeure »; so, the fact that a war is raging somewhere in the world is no sufficient reason to exonerate the operator of a nuclear ship. It is obvious that there should be a direct causality between the war and the incident originating from a ship propelled by nuclear power.

The same principle should apply in matters of civil war, hostilities, etc.

If this is so, then we must bear in mind that this is a very important thing and this matter should be pointed out very precisely; furthermore we feel that we should, as far as possible, avoid to introduce in the text « rules » having a general character and wordings with no precisely defined meaning and application field.

So the word « insurrection » allows a very large interpretation.

I think that for the needs of our Convention the word « hostilities » is sufficient to cover the circumstances exonerating the owner of a nuclear ship. Consequently, I would like to amend Article VIII and to suggest the following reading : « L'exploitant d'un navire nucléaire ne sera pas responsable en aucune façon des dommages nucléaires causés par des accidents nucléaires qui résultent d'une force majeure provenant de guerre, hostilités et guerre civile.

The President (translation): I put to your votes the Polish amendment.

The amendment is rejected, one delegation voted in favour 15 against and two abstained from voting.

Voted in favour : Poland.

Voted against : Denmark, Canada, Spain, Sweden, Great Britain, Finland, Norway, Belgium, Italy, Turkey, Japan, France, Germany, Yugoslavia, United States.

Abstained from voting : Netherlands, Portugal.

ARTICLE IX

Mr. F. Berlingieri, Italy: It is not quite clear to the Italian Delegation why Article IX states that nothing in this Convention shall apply to claims for salvage. What does it mean? As a consequence of a nuclear incident third parties might incur salvage expenses and such expenses should be included in the claim, especially considering the rule set forth under Article X. In addition, the salvors of a nuclear ship after a nuclear incident might suffer nuclear damages, and it seems fair to us that such salvors might be entitled to recover such damages under the Convention, availing themselves of the sums provided by assurance.

Mr. Leonard J. Matteson, United States : On these matters which occur subsequent to the nuclear incident, the question of salvage is part of the damage sustained by the operator. If the operator is the person who has to be salvaged the cost of that salvage is part of the operator's damage and therefore not a matter which comes within the precincts of the Convention. The matter of the general average is a question of adjustment of rights between the shipowner and the cargo. It is a matter of apportioning the damage which arose from a nuclear incident. It does not have any relation to the liability of the operator for nuclear damage.

Mr. F. Berlingieri, Italy : We are quite in agreement about the non-application of the Convention for contribution in general average. Our question concerns damage suffered by salvors, in case of salvage of a nuclear vessel. Should they look on their damage as a consequence of the nuclear incident? Are they entitled to avail themselves of that which is covered by insurance or not? If the claim for compensation must be governed by the general rules of the 1910 Convention the claim for nuclear damages should be allowed as a part of the claims to be filed against the operator of the nuclear vessel, otherwise, the salvor would not be entitled to avail himself of the sum set forth in Article III.

Mr. J. T. Asser, Netherlands : I do not think that claims for nuclear damage suffered by salvors are covered by this Article. This

Article only refers to claims for salvage, which is quite another thing. This answer applies also to Mr. Matteson. The reason why we said in Antwerp that the Convention would not apply for claims for salvage is that it was felt that those claims should be paid absolutely without any limitation, for the same reason we admitted the same principle in the 1957 Convention on limitation of liability. Really, the question of general average, I think, is entirely outside this Convention.

Mr. F. Van der Feltz, Netherlands : Article IX as far as general average is concerned, is not too clear. Is it only the intention to say that there will be no limitation for claims for contribution in general average, or does it mean that Article II (iii) is not applicable ? This section sets out, I believe, who is liable for any major nuclear damage. So, does Article IX mean that, if there is general average, this damage can always be claimed from the shipowner. Or, does Article IX mean that, notwithstanding Article II (iii), the shipowner has the right to ask from the cargo of the nuclear ship, to contribute in the nuclear damage which has arisen as a consequence of a general average act ? I should like to know what is the true construction of Article IX.

Mr. J. T. Asser, Netherlands : I think the answer is the following : Article II (iv) deals with recourse actions. Now, I have never heard in my life contribution to claim from general average qualified as a recourse action. It has an entirely different legal basis, and therefore I believe that any rights for contribution in general average are not affected by this Convention, under Article IX.

Mr. Martin Hill, Great Britain : In Article I (vi) as we have amended it, we say, « "Nuclear damage" means loss of life or personal injury to any individual or any loss or damage caused by a nuclear incident. » Assume a collision between a nuclear ship and a non-nuclear ship, as a result of which, the non-nuclear ship has to be salvaged, sustains salvage liability. Surely that salvage liability is one of the liabilities which the non-nuclear ship should be entitled to recover from the nuclear ship. I cannot see why, having paid salvage, the operator of the nuclear ship should not be liable to reimburse it.

Mr. J. T. Asser, Netherlands : The answer, Mr. Martin Hill, very shortly, is this : our position is that we have to distinguish between two things, the claims of the salvors — and those claims should not be limited and should not be affected, therefore, by the Convention — and the other kind of claim is a claim of the salvaged ship against the nuclear ship for repayment of the salvage money paid. I think that is one of the elements of the damage, of the nuclear damage, as defined in Article I. Therefore, I do not think we need be afraid of the possible consequences of an occurrence such as that outlined by Mr. Martin Hill.

The President (translation): I put to your votes Article IX.

Article IX is adopted by 12 votes against 2 and 3 abstentions.

Voted in favour : Canada, Denmark, Sweden, Finland, Norway, Belgium, France, Japan, Germany, Yugoslavia, United States, Portugal.

Voted against : Italy, Spain.

Abstained from voting : Netherlands, Poland, Turkey.

ARTICLE X

Mr. R. P. Cleveringa, Netherlands (translation): I have to face the difficulty which (to some extent) concerns the observations we made during the debates on Article V. In Article V we pointed out, up to what time a claimant keeps his claim. According to the draft under discussion, if we understand it rightly, a limitation fund is somehow constituted after a nuclear incident and finally the claims are paid out of that fund. At what time ? It is possible that a claimant becomes aware of his claim during the fifth year following the incident. He keeps all his rights and may present his claim for payment out of the fund. However, if he wishes to obtain a proper refund he will not wait until the passing of the tenth year because if he should do so he would risk to find the fund already distributed. The only thing left for us to say is, that, as the fund has been distributed, the claimant has a right but will not be paid because money is lacking.

If we want to avoid this eventuality we will be compelled to wait for the end of the tenth year, and then, and only then, to distribute the fund.

The aim of the Draft Convention is to protect the public. Is it real protection if we say that we should wait for ten years before knowing how much will be paid ? I admit that personally I do not see how we can solve that problem.

So the Netherlands' Delegation suggests to add to Article X : « les règles relatives à la constitution et à la distribution du fond éventuel et toutes les règles de procédure sont déterminées par la loi nationale de l'Etat où le fonds est constitué... ».

This text comes from the 1957 Convention.

Mr. Leonard J. Matteson, United States : It appears to me that this proposal belongs in Article XI which deals with the administration of a fund rather than in Article X.

The President (translation): I put to your votes the amendment of the Netherlands' Delegation, unless you agree to adjourn the vote until the discussion on Article XI.

Mr. R. P. Cleveringa, Netherlands (translation): I agree.

The President : I put to your votes Article X.

Article X is adopted by 10 votes against one and one abstaining.

Voted in favour : Netherlands, Canada, Denmark, Spain, Sweden, Norway, Great Britain, Finland, Belgium, Italy, France, Germany, Yugoslavia, Japan, United States, Portugal.

Voted against : Turkey.

Abstains from voting : Poland.

ARTICLE XI

Mr. R. P. Cleveringa, Netherlands (translation): This morning we made a statement on the meaning of our amendment. It is useless to do it again.

Mr. Leonard J. Matteson, United-States: With respect to Article XI, paragraphs (ii), (iii) and (iv), there are references to the amount of the insurance which is to be required. When this Article was drafted it was contemplated that the amount of the insurance would be the limitation of liability. We have now amended or adopted Article III (i) in a form which leaves it open to the licensing State, or leaves it open to the Diplomatic Conference, to fix an amount which may include the Government indemnity. The provisions with respect to the administration of the fund representing the limit of liability, should apply only in a case where the limitation of liability is involved, that is where it is apparent that the claims will approach or exceed the amount of the limitation. There should be no interference with the right of sue in the ordinary type of claim where the limitation is not involved. Consequently, we submit that the references in paragraphs (ii), (iii), (iv) and (v) of Article XI should not be under the present conception to the amount of insurance, but should be to the amount of the limitation of liability.

Accordingly we propose amendments striking out, in sub-paragraph (ii), « the sums referred to in the preceding section of this Article XI », and substituting the words, « fund representing the limit of liability set out in Article III (i) of this Convention », and corresponding changes in paragraphs (iii), (iv) and (v).

These proposals, of course, are submitted subject to any revisions that the Drafting Committee might consider advisable to make in them to carry out the sense.

There is a second proposal for an additional paragraph to be added to Article XI which, I think, is in accord with the spirit of the Article. It reads :

« In the event the established claims exceed the limit of liability, the Courts of the licensing State shall have exclusive jurisdiction with respect to the marshalling, apportionment and distribution of the

sums, provided for in Article III; and, in such cases, judgments rendered in accordance with this Convention, shall be enforceable only in the Courts of the licensing State. »

Mr. Berlingieri has raised the question as to whether the first words — « In the event the established claims exceed the limit of liability » — should be here. He points out that it will be a question in some cases as to whether the case is one in which the established claims do exceed the limit of liability. That is, of course, true. However, it appears to me that the licensing State which is entrusted with the jurisdiction of administering the limit of liability will set up procedures by which it will determine if the limit of liability is involved which gives it jurisdiction to administer the funds provided as security for claims.

In preparation for this meeting I did prepare a rather elaborate revision of the provisions of Article XI. It was intended to outline procedures rather in detail and it would have provided that, in the event that it appeared that the claims might exceed the limit of liability, the operator would file a petition or other appropriate proceeding in the Courts of the licensing State which would thereupon certify that the limitation of liability was involved and that the security required had been made available, whereupon the right to enforce judgments on claims in other jurisdictions would cease. But those judgments might be filed as evidence of the amount of claims in the Courts of the licensing State. It has seemed to me that it would be probably a mistake at this point for me to present those rather elaborate procedural provisions, but I would assume that the licensing State would provide procedures by which it would be determined whether or not the limit of liability would be involved, and that would be the determining factor in determining whether or not judgments obtained in other jurisdictions could be enforced.

So it appears to me that the amendment to Article XI which we propose will be adequate, but it will be based on the assumption that the licensing State will provide procedures by which it may be determined whether or not the limitation of liability is involved and, consequently, the right to enforce judgments in other jurisdictions curtailed.

Mr. J. T. Asser, Netherlands : In substance the new paragraph says the same as the clause proposed by the Netherlands' Delegation. There are two differences, namely, that the Dutch wording is unrestricted whereas the clause in the American proposal only applies when the established claims exceed the limit of liability, and frankly I do not see any reason for that restriction. The other difference is at the end of the clause proposed by our American friends where it says that « in such cases, judgments rendered in accordance with this Convention shall be enforceable only in the Courts of the licensing State ». I would ask the American Delegation why they thought it necessary to add those

words. Nothing is said in the present draft that any judgments rendered by the competent Courts of the licensing State shall be enforceable in any other country, and I am afraid that in adding those words one might create a certain confusion.

Mr. Leonard J. Matteson, United States : We have to consider two situations. The first is the situation of the isolated claim or claims which do not involve the limitation of liability at all, and I take it that probably by far the greatest amount of litigation or enforcement of claims that may take place under this Convention will involve claims arising from some incident that does not at all involve the limitation of liability. Now it appears to us that with respect to any claim where the limit of liability is not involved the claimant should have not only the right to sue but the right to enforce his claim according to ordinary procedures, and I am quite sure that if we do not so provide the Convention will not prove generally acceptable. In other words, for instance, a claimant sustaining damage in New York would certainly not want to be required to come to Great Britain or to any other country to sue or to enforce his claim, if the limitation of liability were not involved. Consequently, it is only where the limitation of liability is involved that there should be any interference with the right to enforce judgments on claims obtained in other jurisdictions.

Therefore, we put the qualifying phrase at the beginning of this clause making it clear that the clause applies only in a case where the limit of liability is involved. Then at the end we say that when that is the case, then and then only should the right to enforce judgments obtained in other jurisdictions cease. So we think the two things go together and that it is important to protect the claimants against any interference with their rights in any case except a case where the limitation of liability is involved.

Mr. J. T. Asser, Netherlands : Mr. Matteson's last words dealt with two questions. In the first place he referred to the case in which the limit of liability would not be involved. How will any claimant know at a certain moment whether or not the limit will be involved ? No one will know that until the aggregate total of all the claims is known. That is point one.

With regard to the question of jurisdiction, when we met in Antwerp we drafted Article XII which gave the choice of two exclusive jurisdictions : namely, the Courts of the licensing State or the Courts of the State in which the nuclear incident occurred. Therefore, I do not think this is different from what Mr. Matteson said, that is to say when the limit is not involved a New York claimant does not want to go to London if England is the licensing State.

I think there are two principles here which we must keep entirely apart. I do not think we should talk at this moment about the question of jurisdiction. The question of jurisdiction is a matter of Article XII.

Mr. Leonard J. Matteson, United States : May I say in reply to Mr. Asser that there are two types of jurisdiction which are involved here. One is jurisdiction of the claims of claimants and the places where they will be entitled to sue, and the second question of jurisdiction is the question of jurisdiction of administering the limitation fund. The two must be kept distinct, and I think the provisions of Article XI relate entirely to the jurisdiction of mere suit by claimants. What we have attempted to do in Article XI is to gather together the provisions which relate to the administration of the limitation fund.

Mr. Asser has raised again the question of how will anyone know when the established claims exceed the limit of liability. This is, of course, a problem, and I can only state again by assumption that the licensing State would be the one to determine when the limitation of liability was involved, and would establish satisfactory procedures for determining that. Of course, there cannot be any absolute adjudication of that until all of the claims are assessed, but if the licensing State certifies that it appears that the established claims will exceed the amount of limitation I would take it that that judgment would be respected, and that the licensing State would then have the jurisdiction to proceed with the administration of the fund even if it should eventually determine that the amount of the claims which were established were somewhat less than the limitation fund.

However, the one thing that I think must be guarded against is that there must be no interference with the right of suit by claimants and the right to enforce judgment in any case unless the limitation of liability is clear. It was not quite clear from Mr. Asser's remarks whether it was his idea that even in the isolated case where a claimant sustains damage in New York from a nuclear vessel of Great Britain whether, after having obtained jurisdiction and judgment in New York, he would be required to go to Great Britain to collect it in an ordinary case or not. However, I do not think that was the spirit of the drafting because you will recall that in Article XI (iv) it is provided that, « when the sums referred to..... shall be made available for the compensation of nuclear damage arising on any distinct occasion within the jurisdiction of the licensing State, no claimant shall thereafter be entitled to... » enforce a judgment or to have security or bails elsewhere.

It seems to me that the idea behind that was that the fund would be made available in the licensing State only in the case where the limitation of liability was involved. But if that is not the case, I am quite sure that any Convention that provided that in a case where limitation of liability was not involved a claimant in the United States would have to go to a foreign jurisdiction to collect his claim, it would be totally unacceptable to a large section of the American public opinion. Consequently, I have the impression that that might be true in many other places as well and would interfere very seriously with the

acceptability of this Convention. The acceptability of the Convention generally is the objective which we must drive at and without which any Convention will be completely useless.

Mr. J. T. Asser, Netherlands : May I ask a clarification from Mr. Matteson ? If I understood him correctly his intention is that whenever the total amount of the claims should not attain the limit of liability a claimant might sue in another jurisdiction and enforce judgment against other assets of the operator. I would like to remind you that in the 1957 Convention on Limitation of Liability we provided in Article II, paragraph (iv), that after the fund has been constituted no claimant against the fund shall be entitled to exercise any rights against any other assets of the shipowner in respect of his claim against the fund, if the limitation fund is actually available for the benefit of the claimant. Why did we do this ? Let us take the example of Mr Matteson. A nuclear ship licensed by the British Government causes nuclear damage in New York Harbour and a New York claimant sues in the New York jurisdiction, which he can do under Article XII, paragraph (i) (b) of this draft. If he then obtains a judgment and could enforce this judgment against American assets of the operator while the same operator had put up, or the British Government had put up, the entire limitation fund in Great Britain, the operator, or the British Government, as the case may be, may be made to pay twice, or anyway more than the amount of the limitation. This raises a very difficult and delicate point of substance here, anyway of jurisdiction and enforcement of judgments.

What Mr. Matteson proposes is entirely contrary to the result we arrived at in the 1957 Convention. I do not know whether I repeated clearly what he said or whether I misunderstood him, but I would like Mr. Matteson to give an explanation on this point.

Mr. Leonard J. Matteson, United States : I think that our proposed amendment would be improved if we made it read in the first line as follows : « In the event that it appears that the established claims will probably exceed the limit of liability ». I do not quite know how to answer Mr. Asser's other question other than to say, as I think I said before, that in an isolated claim, we will say of an individual suffering damage from a British nuclear ship, who has the right to sue in New York, he obtains jurisdiction in New York, obtains a judgment in New York, and should be able to enforce his claim against the assets of the operator in New York. I am quite sure that, if the rights were taken away from him in any case except a case in which the limitation of liability was indicated to be probably involved, he would be in serious trouble and fast. There happens to be among the members of our Delegation an attorney who represents labour unions in New York and who would be very seriously concerned if there were any

limitation on that right to enforce a claim with the ordinary principle of jurisdiction in any case except the case where the limitation of liability were involved, and in that case I think that even he would recognize that it was necessary that the licensing State should administer the fund or the limit of liability. However, short of that, I think you must leave to claimants their rights to proceed according to the established principles of jurisdiction and law.

Mr. J. de Grandmaison, France (translation): The French Delegation wishes mainly to obtain some information. The Netherlands and the American amendments refer, for the first time here, to the conception of limitation fund. The 1957 Convention referred to a limitation fund. That was necessary because the limitation of the shipowner's liability was concerned; no fund was constituted before that and there was no compulsory insurance. When the operator is sued, the owner of a ship is sued and when he wishes to limit his liability, he has to constitute a fund by paying the maximum amount for which he can be held liable. However, I cannot see off-hand what the constitution of a fund means here, because the fund is necessarily constituted by the compulsory insurance or by the special financial security which the licensing State has imposed on the owner of a nuclear ship.

The nuclear ship is not allowed to take the sea without a licence and that licence will not be granted to him unless he supplies a fixed insurance-cover of which the amount is fixed or without a special financial guarantee instead of that insurance-cover.

As a consequence, the fund is already constituted and I am wondering what the constitution of a fund really means here. Does it mean that the underwriters have to deposit the amount of the fund? This seems to be possible. However, if not an insurance-policy but a State guarantee is concerned, do you really intend to ask the State supplying the security to deposit the funds?

I should say that, in France anyway, the French State has never admitted to be asked for a security of such kind. The French State has never admitted that its solvency be called into question, that it is obliged to supply a bail or to deposit the funds.

To put it more clearly, we are speaking now of a limit and we are thinking of a commercial limit which the nuclear shipowner may have to insure on the market, for instance for 15 Million Dollars. However, if on the line left in blank on Article III we put a limit of 100 Million Dollars the fund is constituted first by the amount insured by the nuclear shipowner (the 15 Million Dollars), the amount coverable by the international market, and secondly the 85 Million Dollars covered by the State security, but who is going to deposit that fund? How will this fund be constituted?

Finally, a last point; should this fund be constituted for all payments consequently to a nuclear incident? It has been said that such

fund shall be constituted only in the case the amount of the established claims exceeds the limit of the Convention. But, who is going to know that, as the victims dispose of a ten years' delay for introducing their claims? This will lead to the fact that in the case of a minor nuclear incident — for we must hope never to face a gigantic catastrophe but only minor nuclear incidents — that no damages will be paid without constituting the fund and without depositing 100 Million Dollars in the hands of a trustee.

Here we touch once more a naughty question, the question how to constitute the fund?

I know that we leave that to the national law, but each national law should organize special proceedings for the constitution, the administration and the distribution of the fund, i.e. something similar, in practice, to a winding up procedure, e.g. the intervention of a trustee, a manager of the fund who obtains fees in proportion with the amount of the fund. If the fund amounts to 100 Million Dollars it is obvious that these fees will be particularly heavy.

We would be very obliged for obtaining some details concerning the exact meaning of the constitution of such fund.

Mr. R. P. Cleveringa, Netherlands (translation): Mr. de Grandmaison put a very difficult question, but he will allow me to come back to what I said this morning concerning the amendment we suggested, I would like to point out that we did submit this amendment only in order to have a basis for discussion concerning the difficulties we have to face.

According to the draft Convention presently under discussion, if nobody knows before the sixth year who is really a claimant, nobody is allowed to act before that time. If furthermore somebody else acts before, for instance during the second year, it is possible that the claim should exceed the amount of Article III. That is the amount I called fund. If the first claimant obtains a judgment which condemns the operator to pay, there may be no more money.

That is the difficulty you ask me to answer, but it is not possible for me to do that presently and I referred to the national law, as a last resource, and, in order not to make things more complicate, I accepted the wording of the 1957 Convention.

It is quite natural that you should want to discuss that amendment.

Mr. Martin Hill, Great Britain: The major difficulties here seem to me to arise because we do not know what figure is going to be inserted in Article III. Mr. Matteson as I understood him said that in any case in which it appears that the limit will not be exceeded the ordinary processes of law should apply, the ordinary processes of jurisdiction, the ordinary rules of getting judgment and enforcing it, and seizing assets and all that kind of things. If the limit in Article III were going

to be what I might call the shipowners' limit, for which we have been talking of a sum of £ 5 million, I think one would agree. However, if the limit in Article III were going to be the aggregate limit of 100 million dollars, then you could have a situation in which it appeared that the established claims would not exceed 50 million dollars or 80 million dollars, whichever you like. Does Mr. Matteson then suggest that the ordinary processes of law should apply, that the shipowners' assets should be seized all round the world wherever his ships may be or wherever he is carrying out his business ? In this event, what it comes down to is that the Government should be capable of being sued all round the world, because it is the Government which has got to find the difference between the £ 5 million and the 80 million dollars. I cannot think that Governments would put themselves in that kind of a position : being capable of being sued indirectly by the shipowner in every part of the world where the particular shipowner can go.

Mr. Leonard J. Matteson, United States : I think that we are gradually coming to common ground, but one of the points I would make is that in this Convention we have got away from the conception of the constitution of a fund. I think that we should, especially if a Government indemnity is to be involved.

All that is required in sub-paragraph (iv) for the release of security in other States is the amount of the limitation made available in the licensing State. I do not take it that that necessarily means that it is all made available in the form of a fund in cash.

I think there is something in the amendment which has been proposed which is valuable and in order to answer one of the questions which has been raised my proposal would be further to amend the American proposal so that it would read :

« In the event that it appears that the established claims will probably exceed the limit of liability and the Courts of the licensing States shall so certify, the Courts of the licensing States shall have exclusive jurisdiction with respect to the marshalling, apportionment and distribution of the sums provided in Article III according to the rules of procedure established by the national law of the licensing State. And in such cases, judgment rendered in accordance with this Convention shall be enforceable only in the Courts of the licensing State. »

This will create a situation which I think would protect the situation which Mr. Martin Hill has in mind. In any case, where it appeared that there was any likelihood that the claims on which suits might be brought in various jurisdictions would in the aggregate exceed the amount of the limitation, the shipowner would apply to the Courts of the licensing State and ask the Courts to certify under the appropriate showing that it appeared that the established claims would probably exceed the amount of the fund. If that Court were satisfied that that

were the case, and should so certify, then there would be no further right to enforce judgments obtained by other jurisdictions. But in any case where it does not appear from certification of a valid authority that the limitation of liability is involved, I think you have to leave to the claimants the right according to established principles of jurisdiction and law.

Mr. Asser referred to the 1957 Convention as authority for the proposition, that in certain cases it is proper to require claimants to sue in other jurisdictions. That actually is one of the very serious problems involving the 1957 Convention which, as you know, has not been ratified in the United States, and to which there is very substantial opposition which is very substantially based on that very ground : that it contains the possibility for enforcing claimants to sue in other jurisdictions.

It seems to me that if we have the machinery set up where the Courts of the licensing State have authority to certify by order, directive, or whatever, their procedure calls for, that the limit of liability is probably involved, and that then the right to enforce judgments and other jurisdictions is curtailed, that the shipowner has adequate protection. However, if the fund consists not only of insurance but Government indemnity, I do not think it is necessary that that should all be established in the reports of the licensing State as a fund, but if the Courts of the licensing State certify that the funds are available, which is all that this Convention calls for, then the specification would be respected by all other Courts of all other nations.

Mr. R. P. Cleveringa, Netherlands (translation): In order to reply to the difficulties raised by Mr. de Grandmaison we might, perhaps, change our amendment as follows :

« Les règles relatives à l'administration, à la répartition et à la distribution des sommes visées par l'Article III et toutes les règles de procédure sont déterminées par la loi nationale de l'Etat d'immatriculation ».

Mr. Arthur M. Boal, United States : I am afraid we are getting into a good deal of confusion here, and I propose that we decide the extent to which we want to give jurisdiction. One, do we want a claimant to sue at any place in the world where he can get jurisdiction in addition to sue at the Courts of the licensing States or in the Courts of the territory where the damage occurred ? And then, having decided those questions, I think we should decide the question of concours, and send a man up to the Drafting Committee for drafting.

The President : For the jurisdiction, competent jurisdiction, it is Article XII, is it not ?

Mr. Arthur M. Boal, United States : Yes.

The President (translation): We have to take a vote now on the amendment to Article XI, presented by the Netherlands' Delegation.

I will read it in order to avoid misunderstanding. It is drafted as follows :

« Les règles relatives à l'administration, à la répartition et à la distribution des sommes visées à l'Article III et toutes les règles de procédure sont déterminées par la loi nationale de l'Etat d'immatriculation ».

I put the amendment to your votes.

The amendment is accepted unanimously, except 3 abstentions.

Voted in favour : Netherlands, Canada, Denmark, Sweden, Finland, Norway, Belgium, Italy, Turkey, France, Japan, Germany, United States, Portugal.

Abstained from voting : Great Britain, Poland, Yugoslavia.

The President : I will put to your votes the first amendment of the United States.

Mr. F. Berlingieri, Italy : The proposal made by the American Delegation, under sub-paragraph (ii), refers to « fund », representing the limits. I suggest the substitution of the word « sums » for the word « fund ».

The President (translation): The amendment of the American Delegation is modified now, the word « sums » having been substituted to the word « funds ».

I put the amendment of the American Delegation to your votes.

The amendment is adopted unanimously except 4 abstentions.

Voted in favour : Netherlands, Canada, Denmark, Sweden, Norway, Finland, Great Britain, Belgium, Italy, Japan, Germany, United States, Portugal.

Abstained from voting : Poland, Yugoslavia, Turkey, France.

The President : I put to your votes Article XI, modified according to the Netherlands and American amendments.

The amended Article is adopted unanimously, except 4 abstentions.

Voted in favour : Netherlands, Canada, Denmark, Sweden, Norway, Finland, Great Britain, Belgium, Italy, Germany, Japan, United States.

Abstained from voting : Yugoslavia, France, Turkey, Poland.

ARTICLE XII

The President : The delegate of the United States proposes that Article XII be amended by striking out paragraph (ii).

Mr. Kaj Pineus, Sweden : I should like to put a question to Mr. Asser as to the exact meaning of the words with which this Article begins, « Without prejudice to the rules of jurisdiction of the national law of the Contracting States, jurisdiction for nuclear damage... » and so on. It has been said, when we read it at home, that those words might have a wider and, perhaps, sinister meaning. I thought myself when we put them in that they just wanted to say that this Convention should not go into any question of which a Court in a Contracting State had the jurisdiction. If this, my view, is confirmed by Mr. Asser, perhaps we might just as well strike them out. But perhaps Mr. Asser will explain to us what meaning we should put into those words.

Mr. J. T. Asser, Netherlands : I think the answer to that is yes.

Mr. Leonard J. Matteson, United States : I thought the question was directed to Mr. Asser, but it has been my conception that the reason for the words preceding the letter (a), were to preserve to claimants any jurisdiction that would be available to claimants under normal principles of jurisdiction, and in addition, to provide jurisdiction in the Courts designated under (a) and (b). There may be, and probably is, a certain amount of overlapping between the « Without prejudice » position and the provisions (a) and (b). But my conception was that it was intended to make clear to claimants that they would not be deprived of conventional rights of jurisdiction in any event, and that the provisions (a) and (b) were merely supplemental to that. I think that this is a very important matter from the point of view of the acceptability of the Convention, and I think we have got to be able to say to Nations who are interested in payments that we are taking nothing away from them, we are providing them with two additional jurisdictions, subject only to the provisions for limitation for liability. I think if we are in the position of curtailing the right of payments, serious questions will be raised as to the general acceptability of the Convention.

Mr. J. T. Asser, Netherlands : I think the question raised by Mr. Matteson is of extreme importance, and concerns one of the vital matters relating to this Convention. It was my understanding when we drafted Article XII that we were restricting jurisdiction and not adding jurisdiction to already existing jurisdictions. If I remember correctly we worked on the lines of the O.E.E.C. Draft, which contains similar provisions to those of Article XII. Now, why is it necessary to restrict jurisdictions ? We have to deal here with two kinds of liabilities, one which I would call the shipowners' liability, and then the liability of the licensing State. Now, it is quite inconceivable that in this Convention we should add Articles relating to the immunity or, rather, to the repeal of immunity, jurisdictional immunity, of Governments of States. That is the reason why we gave Article XII two

exclusive jurisdictions, that of the Courts of competent jurisdiction of the licensing States, and secondly the Courts of the competent jurisdiction of the Contracting State within the territory of which the nuclear damage occurred. But as a necessary corollary we added the second paragraph stating that any final judgment given by the Courts of the country where the incident occurred, in case this country is a different country, a country other than the licensing State, then those judgments would be what you might call enforceable, and be recognized, and as the English text says, « given effect to by the competent Authority of the licensing State ». In fact, the victims, when they sue in other jurisdictions than that of the licensing State, must be certain that the sums made available by the licensing State shall in fact be paid to them. That is to say, that the judgment given by the other Court, the Court of the country where the incident occurred, will be given recognition and will be given effect to by the competent authority of the licensing States.

Now, if you are going to give to the claimants other jurisdictions, it will be impossible to make provisions as the second paragraph of Article XII. I think that was the main reason for the contents of Article XII.

Mr. F. Van der Feltz, Netherlands : In his speech Mr. Asser referred several times to the Courts of the country in which the nuclear incident occurred. According to the text it is « the Contracting State within the territory of which the nuclear damage occurred ». That would mean that there will be several Courts which will be competent, because it is always possible that from one nuclear incident nuclear damage will occur in various States. For that reason I think it is much better to say that there must only be Courts with competent jurisdiction in the Contracting State in which the nuclear incident occurred. Then we have only two extra, the Court of the licensing State and the Court of the State in which the nuclear incident occurred.

Mr. Leonard J. Matteson, United States : As far as the subsidiary liability of the State is concerned I will take it that the State is merely in the position of an indemnitor of the operator. There would be no question of suit against the State; there would be no embarrassment to the State if it were called upon to indemnify the operator for a liability adjudicated in another jurisdiction.

Mr. J. de Grandmaison, France (translation): We would like to have an explanation, a precision concerning the first paragraph of Article XII.

First of all we would like to have the meaning of the first words of this Article clarified to us. We would like that should clearly be said whether we are right in thinking that this means : whatever the national law may be, whatever its provisions may be, these shall not be taken

into account. Is that really the intention? If such is the case we should, of course, change the French reading because as it is presented it seems to point out, without any prejudice to the present national laws, that the victim shall be entitled to sue before such or such a Court of his choice, i.e. before the Courts either of the licensing State or of the State where the incident occurred. I think that the idea was to allow to oppose the draconian provisions of certain States which reserve, in every case, to their nationals the possibility of suing an alien before their own Courts.

I think that this point should be clearly precised and I would like to know whether we are not wrong in saying that we should interpret this text in the way I just pointed out.

My second point concerns perhaps the Drafting Committee but if, as we feel, we do not intend to give the victims a choice between two competent Courts we should adopt another reading than that before us. We should read : « qu'il ne pourra porter son action que devant l'un ou l'autre de ces deux tribunaux ».

I should like to say that in my opinion this is essential because, if you do not adopt this rule, you will have no uniformity. We should try, as far as possible, to apply the same rule of procedure in every case. You reserve to the victim an option between the Court of the licensing State and the Court of the place of the incident.

This provision does not take a lot of problems into account because, for instance, if an incident occurs on the high seas and consequently out of the territory of any State, it seems, at first sight, that the choice of the victim shall be reduced and that he shall only be allowed to sue before the Courts of the licensing State.

Nevertheless, I think we should maintain this double jurisdiction.

Mr. Berlingieri, Italy (translation): The Italian Delegation is in favour of the exclusive jurisdiction and supports completely Mr. de Grandmaison's suggestion.

However, I ask the Subcommittee whether such amendment would mean that each State shall apply the rules in force in each State. We know that in certain States these rules are very complicated and I am wondering whether it is not possible to apply the rule which has been proposed in the beginning of the O.E.E.C. Convention, i.e. that the judgment might be executed simply upon proof of its authenticity.

Mr. Arthur M. Boal, United States : I would like to speak briefly on our motion to strike out sub-paragraph (ii) of Article XII. The question of the enforcement of foreign judgments is very complicated and it is going to run into conflict with many national laws; in our country it runs in conflict with fifty others now because we have different laws on judgments in different States. I think this should be left

to the laws of the licensing State to handle these judgments as they handle any foreign judgment. Therefore we move that this paragraph be deleted.

Mr. Martin Hill, Great Britain : If I might deal first with a drafting question which Mr. de Grandmaison put. If we mean in Article XII that jurisdiction should be confined to two Courts the opening words would be wrong, the opening words say exactly the opposite, and leave the rules of jurisdiction, the national laws of Contracting States, wide open. What we mean in English, I think if we mean it that way round, is :

« Notwithstanding the rules of jurisdiction of the national law of the Contracting States; jurisdiction for nuclear damage for which the operator of a nuclear ship is liable in accordance with the provisions of the Convention shall only lie... ».

As I see it, there are three propositions : these is Mr. Mattessons's proposition that all the existing jurisdictions under the existing maritime law shall be open, in which event you can sue where you like, you have got to go to the licensing State to collect your judgment; the alternative is that you can sue in two places, again going to the licensing State to collect your money; and finally there is the proposition which O.E.E.C. I think has propounded in which you can go to only one place. I do not know what the right answer is. On the whole I think Article XII should stand. But O.E.E.C. has been dealing with this very difficult proposition for I think two years whereas I have been thinking about it for two months, and they may be right. However, at the moment I would be prepared on behalf of the British Delegation to accept Article XII amended in the way that I have suggested.

Mr. Taborda Ferreira, Portugal (translation) : I should like to make a minor remark on paragraph (ii) of Article XII which seems to raise a very important question. We consider that in these matters we should have great uniformity. In order to arrive at such uniformity it is intended to refuse revising the judgment. According to Mr. Berlingieri's speech it seems that the question is not completely solved and that paragraph (ii) of Article XII can be interpreted as admitting the possibility of revising the judgments. I would like this point to be precised because it is of a very great importance, owing to the necessity of having a uniform jurisprudence.

The President (translation) : Several amendments concerning Article XII are put before us. As you have just heard one of these amendments introduced by the American Delegation intends to delete paragraph (ii) so we shall have to deal separately with the two paragraphs of Article XII.

We shall first deal with the amendments concerning the first paragraph. Several amendments have been introduced.

The amendment of the Netherlands' Delegation proposes only to substitute in the first line the words « accident nucléaire » to the words « dommage nucléaire ».

The second amendment which has just been introduced by the Italian Delegation proposes to delete at the beginning of the Article, the words « without prejudice ».

Furthermore, the Italian Delegation suggests to add to sub-paragraph « a » and « b » the words « either » and « or ».

We are also in possession of an amendment from the French Delegation proposing to start Article XII with the words : « toute action en dommages-intérêts pour dommages nucléaires devra être portée au choix du demandeur soit... ».

In fact the Italian and the French amendments have the same object. The two delegations are prepared to agree upon a text ?

Mr. Berlingieri, Italy (translation): As my amendment has the same aim as the French one, I withdraw it.

The President : I put to your votes the amendment concerning the beginning of Article XII, proposed by the French and Italian Delegations.

The amendment is adopted unanimously except one abstention.

Voted in favour : Netherlands, Denmark, Sweden, Spain, Norway, Finland, Great Britain, Poland, Belgium, Italy, Turkey, Japan, France, Germany, Portugal, United States.

Abstained from voting : Yugoslavia.

The President : I put to your votes the Netherlands amendment proposing to substitute the words « accident nucléaire » to the words « dommage nucléaire ».

The amendment is adopted by 12 votes against 6.

Voted in favour : Netherlands, Denmark, Great Britain, Spain, Belgium, Italy, Turkey, France, Japan, Germany, United States, Portugal.

Voted against : Canada, Sweden, Finland, Norway, Poland, Yugoslavia.

The President : I put to your votes the first paragraph as it has just been amended.

The amendment of the first paragraph is adopted by 13 votes against one and one abstention.

Voted in favour : Netherlands, Denmark, Sweden, Norway, Finland, Great Britain, Belgium, Italy, Turkey, France, Japan, Germany, Portugal.

Votes against : United States.

Abstained from voting : Yugoslavia.

The President : We come to paragraph (ii) which the American Delegation suggests to delete.

I put this suppression to your votes.

The suppression of paragraph (ii) is rejected by 11 votes against 3 and 5 abstentions.

Voted in favour for this suppression : Canada, United States, Belgium.

Voted against : Netherlands, Denmark, Great Britain, Spain, Poland, Italy, Turkey, Japan, Portugal, Yugoslavia, Germany.

Abstained from voting : France, Norway, Finland, Sweden.

Mr. Robert Seaver, United States : I respectfully would like to ask that before you take up the next proposition with respect to this sub-paragraph the American Delegation be permitted to propose a re-writing of the entire second paragraph for this reason : The United States has a very particular problem with respect to the enforcement in its Courts of foreign judgments. The United States has never ratified a Convention that requires absolute enforcement of foreign judgments, and it is unlikely that it will ever for this reason. We proposed that this Article be stricken and that has failed. Now we have an alternative proposal that may prove to be acceptable to the entire group.

The President (translation) : I agree. Your amendment will be circulated in a few minutes. In the meanwhile we will continue our discussions and examine Article XIII.

ARTICLE XIII

Mr. H. G. Roehreke, Germany : We rather wonder if there has been any particular meaning for putting the contents of Article XIII in this special Article. If there has been any particular meaning we would be grateful if that could be explained because otherwise we feel that by devoting a special Article to this subject it may be open to doubt as to what is really meant. Therefore, may we suggest that if there is no particular meaning behind this Article that the contents be included in Article I, sub-paragraph (vi) ?

Mr. J. T. Asser, Netherlands : Article XIII deals with the scope of the Convention. The restricted Subcommittee thought it necessary to put in a specific clause saying that this Convention would have world-wide application in this sense : that it would apply to all nuclear damage occurring wherever in the world. It is of extreme importance to state an important clause. I for once, speaking for myself, would have thought it better to have put this into a separate article than in Article I of the Convention. I think that is the answer to Mr. Roehreke's proposal and question.

Mr. Martin Hill, Great Britain : I agree with what Mr. Asser has said. I have only come up to raise a very small point : it is really only a drafting point, but to keep in order perhaps I had better raise it. « Occurring wherever in the world » is not very good English. It would be better to say « Occurring in any part of the world » in the English text.

The President (translation): As nobody asks to come to the platform I will submit Article XIII to your votes.

Article XIII is adopted unanimously.

ARTICLE XIV

The President (translation): The American Delegation proposes a new article, reading as follows :

« No State which has not ratified this Convention, and no national or resident thereof, and no owner (or charterer) of a vessel licensed or registered thereby in respect of such vessel, shall be entitled to the benefit of any of the provisions of this Convention ».

Mr. Arthur M. Boal, United States : I think the proposed Article XIV is such that it provides that no other nation shall get the benefit to the benefits of this treaty unless they adhere to it. I think it is essential that we provide this so that we get them to ratify.

Mr. B. Gomard, Denmark : The new Article XIV which has been proposed concedes this discrimination clause to the effect that non-Contracting States or their citizens should not enjoy the benefits of this Convention. I do not quite understand from the text which is proposed whether this applies irrespective of residence, whether it is felt that a foreigner who comes to a non-Contracting State who is resident in a Contracting State is to be discriminated against as well as foreign citizens resident in non-Contracting States under this Article XIV. This, however, is a small matter. More important is that I think that this question of whether the Convention should contain a discrimination clause is not really a question which should be reserved for experts in maritime law. As far as I see it, this is a political question and it should therefore be discussed and resolved at the Diplomatic Conference in Brussels. The C.M.I. Conference is not, to my mind, the right forum for discussing a question like this. We are therefore not in favour of this new Article XIV.

The President (translation): Now I put to your votes Article XIV proposed by the American Delegation.

The Article is not adopted. 6 delegations having voted in favour and 6 against.

Voted in favour : France, United States, Portugal, Turkey, Great Britain, Canada.

Voted against : Denmark, Sweden, Norway, Finland, Poland, Yugoslavia.

Abstained from voting : Netherlands, Belgium, Italy, Germany, Spain.

ARTICLE XV

Mr. Arthur M. Boal, United States : We propose a new Article. « The provisions of this Convention shall apply exclusively with respect to claims for nuclear damage for which the operator of a nuclear vessel is liable thereunder, and shall supercede the provisions of any other Convention, International Agreement, or provision of law, with respect thereto ».

This is to make this the sole rule and that the other Conventions will not apply to nuclear damage.

Mr. C. T. Miller, Great Britain : We very much sympathize with the thought behind this amendment, but we would venture to point out that this is just what we cannot do here. We cannot provide in this Convention that it shall supercede the provisions of any other Convention or International Agreement because you have got to summon to the Brussels Diplomatic Conference the signatories to these Conventions and ask them if they will agree that they should be amended. They will have to be amended if this Convention goes through, but we here who do not represent the same nations and certainly not the Diplomatic Conference, cannot possibly put in this Convention that this Convention shall supercede the others. It is quite true that if at the Diplomatic Conference it is agreed that this Convention shall be agreed, the other Conventions will be amended, but they can only be amended at the Diplomatic Conference.

Mr. Arthur M. Boal, United States : I agree with Mr. Miller that nothing can be done except at a Diplomatic Conference, but neither can this Convention be adopted except at a Diplomatic Conference. I think we ought to make it clear that this Convention will be the only one that applies to nuclear damage.

The President (translation): I put to your votes Article XV.

Article XV is adopted by 10 votes against 7 and one abstention.

Voted in favour : Denmark, Spain, Sweden, Finland, Norway, France, Turkey, United States, Japan, Germany.

Voted against : Netherlands, Great Britain, Canada, Poland, Belgium, Italy, Yugoslavia.

Abstained from voting : Portugal.

ARTICLE XII (continued)

The President (translation): We are now in possession of a new amendment of the American Delegation to Article XII, reading as follows :

« (ii) A final judgment of a Court of competent jurisdiction within one of the Contracting States in accordance with sub-paragraph (b) of the proceeding section may be recognized and given effect by the competent Authority of the licensing State which is entrusted with the administration and distribution of the sums referred to in section (ii) of Article XI of this Convention in accordance with its own substantive and procedural rules governing the enforcement of such foreign judgments, except that no such Authority shall refuse to recognize or give effect to such judgment on the ground that the judgment is considered contrary to the public policy of any Contracting State, provided that the appropriate governmental indemnity provided for in Article III is deemed by such Authority to be available to satisfy such judgment at the time enforcement is sought. »

Mr. J. T. Asser, Netherlands (translation): I would like to point out respectfully that I feel the American amendment is not admissible. Indeed, it clearly eliminates the contents of the second paragraph of the original reading of Article XII. Indeed, the judgment can be enforced. It is not necessary to say that and Mr. Seaver pointed out that he tried to maintain it in order to obtain enforcement in the United States. Such is not the case in numerous European countries where an enforcement of a foreign judgment can only be asked for in pursuance of an international Convention. The plaintiff has to start his proceedings again before the European judge, for instance, in the Netherlands. In the case a foreign Court has given judgment in pursuance of a jurisdiction clause, our judges generally refuse to re-examine the merits of the case but this shall not be the case with this provision.

Personally I prefer to delete this provision rather than to accept the one suggested by our American friends.

Mr. Robert Seaver, United States : I see that the last three lines of this proposal do not comport with the decision already made at the Conference here. Therefore, I request that the last three lines of this proposal be eliminated. Otherwise, I can only repeat that we feel that it would be unfortunate to adopt a provision with respect to the enforcement of foreign judgment that would be altogether inimical to the law of any State which in pursuance of the present subparagraph (ii) of Article XII might be the United States. This proposal, does not absolutely require enforcement in the Courts of State (A) of judgments rendered in State (B), pursuant to the terms of this Convention. However, it does prohibit any State from refusing to

enforce such a judgment on the grounds that the judgment was not rendered in accordance with the public policy of the State to which the judgment is taken, and the Courts where a judgment is sought to be enforced could not re-examine the substance of a case that has already been tried in the first jurisdiction.

Mr. Taborda Ferreira, Portugal (translation): I would like to say that the Portuguese Delegation supports Mr. Asser's suggestion. Furthermore, this amendment has been adopted by the American Delegation. It would be better to delete the second paragraph.

The President (translation): I put to your votes the American proposal which, I repeat, intends to substitute a new text to paragraph (ii).

*The amendment is rejected by 10 votes against 2 and 7 abstentions.
Voted in favour : Canada, United States.*

Voted against : Netherlands, Denmark, Spain, Great Britain, Poland, Turkey, Germany, Portugal, Yugoslavia, Japan.

Abstained from voting : France, Italy, Belgium, Norway, Finland.

Mr. Arthur M. Boal, United States : There have been a good many people who have been concerned about the extent of this Convention, and I would like to ask that we have put in the Draft Report clear statements that we are only dealing with liabilities, that we are not dealing with questions of inspection of merchant ships or naval ships, or questions of attachment, so that no one will be confused as to the extent that we intend to go in the Convention.

The President (translation): I will put now to your votes Article XII as it has been amended.

The amended Article XII is adopted unanimously, except 7 abstentions.

Voted in favour : Netherlands, Denmark, Great Britain, Belgium, Italy, Turkey, Japan, France, Germany, Portugal.

Abstained from voting : Poland, Yugoslavia, Norway, Sweden, Finland, Canada, Spain.

ARTICLE VII (continued)

The President (translation): We have to come back to the discussion we had this morning on Article VII.

Mr. J. Van Ryn, Belgium (translation): We suggest following amendment :

« Whenever nuclear damage is caused by a nuclear incident for which more than one operator is liable under the provisions of this

Convention, and it is not possible definitely to allocate the damage between the operators, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph (i) of Article III, and each shall have a right of contribution against the others so that the total liability shall be borne in equal parts. Similarly whenever nuclear damage is caused or contributed to by more than one nuclear incident, involving the liability of more than one operator under the provisions of this Convention, and the damage caused by each nuclear incident is not reasonably separable, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph 1 of Article III, and each shall have a right of contribution against the other so that the total liability shall be borne in equal parts. »

The text you have before you is the result of an exchange of views which took place this morning and which stressed that Article VII should be completely redrafted because it does not clearly state what we intend to say and moreover because two cases which should be distinguished seem to be mixed.

These two cases are, on the one hand, the case where one single nuclear incident occurs but where the liability of several operators is involved, and, on the other hand the case where several nuclear incidents occur causing one single damage.

That is the reason why the text before you contains two paragraphs. The first concerns the case we have mainly been dealing with this morning and which concerns the collision between two nuclear ships. One incident is concerned which involves in pursuance of the provisions of this Convention, the liability of several operators provided the nuclear installations of both ships did cause the damage.

The case we contemplate in the text is the case where we cannot find out with certainty which damage is ascribable to each of the nuclear installations. If it is possible to prove the existence of a link there is no problem for the damages due to the nuclear installation of ship « A » shall only involve the liability of ship « A » and the same thing shall happen to the damages which are proved to be only ascribable to the nuclear installation of ship « B ».

If it is proved that the damage results at the same time from an incident occurred to the nuclear installation of ship « A » and from an incident occurred to the nuclear installation of ship « B » there is no difficulty either. Two liabilities are involved and as a consequence the victims shall have a claim against both operators.

However, we had to contemplate the case which, in practice, might occur rather often and where it would not be possible to prove a link of causality between the damage and the nuclear installations.

We felt that in such cases, the victims should be protected. Without

this provision it might occur that the victims' claim fails because of the lack of proof they have to supply : the proof of a link of causality between the nuclear damage and the nuclear reactor of one of the ships. In other words we should extend to the case where such proof cannot be supplied, the solution applied by the common Law when it is proved that the damages are due to both ships.

If there is a doubt it will be considered that the damages were due to both ships and as a consequence both operators shall be held liable.

But, as provided for by the text, each operator shall be liable only up to the limit of Article III (i), and we added that between the operators the liabilities shall be equally apportioned; this solution has already been suggested in the old reading of Article VII.

To be complete, one other case ought to be contemplated, that of several nuclear incidents. For instance the case where, in two ports close to each other, two nuclear incidents occur in a few day's time. The consequence might be that the same difficulties might appear concerning the damages. It is obvious that the same solution, should be adopted if it is not proved that the damages are due to one or to both nuclear incidents. Here too, the suggested solution is to apply the same solution as in the case where it is proved that the damages are due to both nuclear incidents. That is paragraph (ii). The same thing shall happen, i.e., both operators shall be separately and equally liable if it is established that several nuclear incidents involving the liability of several operators in pursuance of this Convention caused or contributed to cause some nuclear damage with no possibility of determining with certainty, which damages are due to each incident.

Mr. J. P. Kruseman, Netherlands : I am afraid I have to repeat part of what I said this morning but I will do it in a different way. In case there is a large damage caused by two reactors the total amount available would be double the amount mentioned in Article III, which means that if it is certain that one of the two ships which caused the damage is responsible the victims will get the maximum of only once the amount of Article III. But if there is doubt, and no one can find out who is at fault, then the victims can get the double amount. I have said this morning that I cannot see any difference between two ships colliding and the two reactors being breached, or a large ship having two reactors, or the « Lenin » which has three, and all the three reactors starting to give nuclear damage, because then all these victims only get once the total maximum amount. I thought in short, that this Convention was made to safeguard the interests of the people who have been or might have been damaged, but it now looks to me as if it is a Convention to satisfy the money of the shipowners.

If I may, I would like to put in as an amendment to the English text instead of, « ...but the liability of each shall not exceed... », and

so on, the words, more or less, « and the liability of these operators jointly or together shall not exceed... », and so on.

Mr. Arthur M. Boal, United States : In the amendment of the new Article VII thus submitted, I would suggest in line six of the English text striking out the words, « of each », and inserting the words, « of both in the aggregate ». It means for this one incident that it reduces the limit to one instead of two.

Mr. J. de Grandmaison, France (translation): The French Delegation has to oppose with energy the draft presented by our colleague and friend Professor Van Ryn and to support the arguments of Mr. Kruseman and if I understood correctly, of Mr. Boal.

It seems to us that the text proposed by Mr. Van Ryn is the most clear negation of the basic ideas of this Convention. This Convention provides a limitation for each nuclear incident. Now, paragraph (i) of this Article VII offers following solution : one single incident and two cumulated limitations. When there are two nuclear incidents causing nuclear damage there shall be two limits but in the case where there is only one incident we require that the text proposed by Mr. Boal be accepted.

Mr. J. Van Ryn, Belgium (translation): No doubt one single incident is concerned, but it is one single incident for each ship. That is what qualifies the contemplated case.

Let us imagine that Article VII does not exist and let us imagine that we drafted it as has just been suggested : a collision occurs between two nuclear ships; damages resulting from the incident, occur to both nuclear installations. In fact, nobody knows very well where the damages come from, to which reactor they are ascribable.

That is the only contemplated case. If we drafted the text as just has been suggested, i.e. that the victim shall only have the benefit of one limit what will the judges do when both operators, which are both in the conditions provided for by the Convention, come to their Court ? The judges, you may be sure of that, will easily find a means to say : here are the damages due to ship « A » involving the liability provided for by the Convention, and here are the damages due to ship « B » to be covered by the liability of ship « B » up to the limit provided for by the Convention.

As a consequence I think that the solution we proposed by Article VII is the solution which will prevail in practice, but in the case I just put before you in a more arbitrary way, because there are two judges facing two persons liable who will have a natural tendency to apply the liability to both of them up to the limit fixed by the Convention.

I repeat it : only one incident, only one collision is concerned. It has been said that the Convention is based on the idea that

there is a limit of liability for each incident. I think this should be contemplated : one limit per single incident and per single operator. However, when there are two operators, which is the case we contemplated in Article VII, nobody can refer to that rule. If there are two operators involved in the same incident, there is no reason to diminish the limit because such would be the result as each of them is only liable for 50 % and that is serious of course, for we should presume that, in the case of collision of such kind the damage will be especially important and that is precisely the reason why the liability put on each operator for the damages should be applicable up to the limit of the Convention not beyond but up to the limit and not up to 50 % of the limit.

Now I would like to say a word concerning Mr. Kruseman's observation. He said that he did not see a big difference between the contemplated case and the case of an incident occurred to a ship having 2 or 3 reactors. It seems to me that there is a basic difference between the two cases; indeed, in the case of one single ship having 2 or 3 reactors and having caused an incident, there is only one single operator liable and there is no reason why in such case the limit of liability should be exceeded. But when several operators are liable the situation is quite different and the liability of each of them has to be applied fully. I repeat, I think that the interpretation or the proposition made by Mr. de Grandmaison results in practice, in the contemplated case in allowing each operator to limit his liability up to 50 % of the amount fixed by the Convention.

I do not think that this is advisable and I think as a consequence that the text should not be amended.

Mr. F. Berlingieri, Italy (translation): I am wondering whether in the case put forward by Mr. Van Ryn, say a collision between two nuclear ships where two reactors are damaged, there are one or two nuclear incidents. I come back to the wording of Article I paragraph (vii) reading : « accident nucléaire signifie tout événement ou succession d'événements ayant la même origine... ».

In my opinion if two reactors are damaged there are two nuclear incidents.

The President : I think we should now take a decision on one of the suggestions. In fact, I think everybody agrees upon substituting to Article VII the text which has been circulated. There is one special point : the point to know whether the double limitation should be maintained.

I suggest to vote on this principle, i.e. one or two limitations, provided that in any way the rule referred to in paragraph (ii) shall not be changed.

Voted in favour of one single limitation : Netherlands, Denmark, Sweden, Norway, Finland, Italy, Turkey, France, United States, Portugal.

Voted in favour of a double limitation : Canada, Great Britain, Poland, Japan, Germany, Yugoslavia.

Abstained from voting : Belgium.

The principle advocated by Mr. Boal and Mr. Kruseman is adopted by 10 votes against 6 and one abstention.

ARTICLE I (iii) (continued)

The President (translation): The Yugoslav delegation reminds us quite rightly of an amendment which has been reserved and which has not yet been submitted to your votes. This amendment concerns Article I (iii).

Mr. N. Katicic, Yugoslavia (translation): I would like to explain in a few words the meaning and the object of this amendment. Up to now, Article I (iii) provides that the person of the operator is designated and recognized. If I understood rightly, these words have been changed into the person licensed and authorized by the State for operating a nuclear ship. If such a person does not exist then the owner is supposed to be the operator. I have said that this wording is not acceptable for States where a special regime of maritime property is in force, where the ships are national property. Therefore, in Vienna a wording was accepted which is suitable to these States and allows them to adhere to the Convention. It is said that, in the case where there is no operator and in the case the law of the State is so drafted, the person who is the possessor of the ship shall be the operator. I submit to you an amendment along these lines repeating exactly what has been said in the mentioned draft.

Therefore, we suggest this amendment and I stress that this shall not change anything in the present situation.

The President (translation): I put to your votes the amendment of the Yugoslav Delegation.

This amendment is not adopted by 5 votes against 7 and 6 abstentions.

Voted in favour the Delegations of : Netherlands, Great Britain, Poland, Turkey, Yugoslavia.

Voted against the Delegations of : Portugal, United States, France, Norway, Finland, Sweden.

Abstained from voting the Delegations of : Denmark, Canada, Italy, Japan, Germany.

Thursday, 24th September 1959

*Draft of International Convention
Relating to*

THE LIABILITY
OF OPERATORS
OF NUCLEAR SHIPS

*Prepared by
the Drafting Committee
(24th September 1959)*

ARTICLE I

In this Convention the following words shall have the meaning hereby assigned to them :

(i) « nuclear ship » means any ship equipped for the utilizing of nuclear fuels.

(ii) « licensing State » means the Contracting State which has licensed, or otherwise given authority for the operation of a nuclear ship.

(iii) « Persons » includes individuals, partnerships, associations of persons and Bodies corporate, Governments, their Departments and Public Authorities.

(iv) « operator » means the person licensed or otherwise authorized by the competent public Authority of the licensing State as operator of a nuclear ship; if no such licence or authority has been given or is in effect, the owner of the nuclear ship shall be considered the operator.

*Projet de Convention Internationale
relative à*

LA RESPONSABILITE
DES EXPLOITANTS
DE NAVIRES NUCLEAIRES

*Elaboré par la Commission
de Rédaction
(24 septembre 1959)*

ARTICLE I

Dans la présente Convention les expressions suivantes auront le sens qui leur aura été attribué ci-après :

(i) « Navire nucléaire » signifie tout navire équipé pour l'utilisation de combustible nucléaire.

(ii) « Etat dont émane la licence » signifie tout Etat contractant qui a soit accordé la licence soit autorisé de quelque autre manière que ce soit l'exploitation d'un navire nucléaire.

(iii) « Personnes » comprend des personnes physiques, des sociétés, des associations, des personnes juridiques, des Gouvernements, leurs départements et leurs autorités publiques.

(iv) « Exploitant » signifie la personne bénéficiaire de la licence ou autorisée de toute autre manière par l'autorité publique compétente de « l'Etat dont émane la licence » en qualité d'exploitant du navire nucléaire; si aucune licence ni autorisation n'ont été accordées ou si elles ne sont pas valables le propriétaire du navire nucléaire sera considéré comme étant l'exploitant.

(v) « nuclear fuel » means any material which is capable of producing energy by a process of nuclear fission or fusion and which is used or intended for use in a nuclear ship.

(vi) « radio-active products or waste » means any radio-active material produced in or made radio-active by exposure to the radiation incidental to the process of utilizing nuclear fuel.

(vii) « nuclear damage » means loss of life or personal injury to any individual and any loss or damage caused by a nuclear incident.

(viii) « nuclear incident » means any occurrence causing nuclear damage and which arises out of or results from the radio-active properties, or a combination of radio-active properties with toxic, explosive, or other hazardous properties of nuclear fuel or radio-active products or waste except when carried as cargo.

ARTICLE II

(i) The operator of a nuclear ship shall be solely and absolutely liable for nuclear damage upon proof that such nuclear damage was caused by a nuclear incident involving nuclear fuel on such ship or radio-active products or waste produced in such ship.

(ii) Such liability of the operator shall be confined to nuclear incidents occurring during the period between the taking in charge of the nuclear fuel by the operator and the redelivery thereof, or of any radio-active products or waste

(v) « Combustible nucléaire » signifie toute matière susceptible de produire de l'énergie par un processus de fission ou de fusion nucléaires et qui est utilisée ou destinée à l'être dans un navire nucléaire.

(vi) « Produits ou déchets radioactifs » signifie toute matière radioactive produite ou rendue radioactive par exposition à la radiation qu'implique le processus d'utilisation de combustibles nucléaires.

(vii) « Dommage nucléaire » signifie la perte de vie, les lésions corporelles et toutes autres pertes ou dommages causés par un accident nucléaire.

(viii) « Accident nucléaire » signifie tout fait qui a causé un dommage nucléaire, pour autant que ce dommage résulte des propriétés radioactives ou d'une combinaison des propriétés radioactives avec des propriétés toxiques, explosives ou autres propriétés dangereuses d'un combustible nucléaire ou des produits ou déchets radioactifs sauf si ceux-ci sont transportés comme cargaison.

ARTICLE II

(i) L'exploitant d'un navire nucléaire est responsable à l'exclusion de toute autre personne et de plein droit, de tout dommage nucléaire pour autant qu'il soit prouvé que ce dommage nucléaire a été causé par un accident nucléaire, mettant en jeu le combustible nucléaire de ce navire ou les produits ou déchets radioactifs provenant de ce navire.

(ii) Cette responsabilité de l'exploitant sera limitée aux accidents nucléaires survenus depuis la prise en charge du combustible nucléaire par l'exploitant du navire jusqu'à la remise de ce combustible ou de tous produits ou dé-

therefrom, to another person duly authorized by law to take charge of the same and required by law to accept responsibility for any nuclear damage caused thereby.

(iii) If the nuclear fuel of the nuclear ship or radio-active products or waste therefrom are redelivered or discharged in any other manner or are lost or abandoned, the operator shall remain liable for nuclear damage caused thereby subject to the provisions of this Convention.

(iv) No other person shall be liable for nuclear damage for which the operator of a nuclear ship is liable under Sections (i) and (ii) of this Article.

(v) If the nuclear damage is wilfully caused by a claimant otherwise entitled to compensation under this Convention the Court having jurisdiction may refuse or reduce the compensation recoverable by such claimant from the operator.

(vi) The operator shall have a right of recourse only :

- (a) if nuclear damage results from a personal act or omission done with intent to cause damage in which event the operator shall have a right of recourse against the individual acting or omitting to act with such intent; or
- (b) if so provided by contract.

ARTICLE III

(i) An operator of a nuclear ship, provided that he is duly licensed or otherwise authorized by the competent Public Authority of the licensing State

chets radioactifs en provenant, à une autre personne légalement autorisée à en prendre charge et légalement obligée d'assumer la responsabilité de tout dommage nucléaire causé par eux.

(iii) Lorsque le combustible nucléaire du navire nucléaire ou les produits ou déchets radioactifs en provenant ont été délivrés ou déchargés de toute autre manière, ou perdus ou abandonnés, l'exploitant demeurera responsable du dommage nucléaire causé par ceux-ci, dans les termes de la présente Convention.

(iv) Aucune autre personne ne sera responsable d'un dommage nucléaire dont l'exploitant est tenu par application des paragraphes (i) et (ii) du présent article.

(v) Si le dommage nucléaire éprouvé par le demandeur en dommages-intérêts a été provoqué par son fait volontaire les tribunaux compétents pourront refuser ou réduire l'indemnité à laquelle il aurait eu droit à charge de l'exploitant, en vertu de la présente Convention :

(vi) L'exploitant ne disposera d'un recours que :

- a) si l'accident nucléaire a été provoqué par un fait personnel ou volontaire dans l'intention de causer un dommage; dans ce cas l'exploitant dispose d'un recours contre celui qui a agi ou qui a omis d'agir dans une telle intention.
- b) si pareil recours a été expressément prévu par convention.

ARTICLE III

(i) L'exploitant d'un navire nucléaire, à condition d'avoir une licence ou toute autre autorisation valables délivrées par l'autorité publique compétente

as operator of the nuclear ship shall in no circumstances be liable for more than in respect of any one nuclear incident, notwithstanding the fact that the nuclear incident resulted from any fault or privity of that operator.

(ii) The operator of a nuclear ship shall be required to have and maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and on such terms as the licensing State shall specify.

ARTICLE IV

Whenever damage is caused or contributed to by a nuclear incident and by one or more other occurrences and the damage from such separate causes is not reasonably separable, the entire damage shall for the purpose of this Convention be deemed to have been exclusively caused by the nuclear incident.

ARTICLE V

(i) Rights for compensation against the operator of a nuclear ship under the Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident.

(ii) In the cases referred to in Article II (iii) the period for the extinction of the rights shall be ten years from the date of the redelivery, discharge, loss or abandonment, as the case may be.

(iii) Each Contracting State may, however, establish a period of not less than two years for the extinction of

de l'Etat dont émane la licence, n'est en aucun cas responsable des dommages nucléaires au delà d'une somme de au maximum, par accident nucléaire, même si cet accident nucléaire a été causé par une faute personnelle quelconque de l'exploitant.

(ii) L'exploitant du navire nucléaire devra souscrire et maintenir en vigueur une assurance ou toute autre garantie couvrant sa responsabilité pour dommage nucléaire, à concurrence du montant et selon le type et les conditions déterminées par l'Etat dont émane la licence.

ARTICLE IV

Lorsqu'un dommage est causé à la fois par un accident nucléaire et par un ou plusieurs autres événements, sans qu'il soit possible de déterminer avec certitude quel est le dommage attribuable à chacune de ces causes, l'intégralité du dommage est considéré pour l'application de la présente Convention comme ayant été causé uniquement par l'accident nucléaire.

ARTICLE V

(i) Le droit d'indemnité contre l'exploitant d'un navire nucléaire dans le cadre de la présente Convention est éteint après dix ans, à compter de la date de l'accident nucléaire.

(ii) Dans les cas prévus à l'Article II (iii) le délai de dix ans sera compté de la date de la délivrance, du déchargement, de la perte ou de l'abandon, suivant le cas.

(iii) Toutefois chaque Etat contractant peut imposer un délai d'extinction du droit, prenant cours à la date à la-

the rights from the date of which the individual or the person suffering damage has knowledge or from the date when he ought reasonably to have known of the damage provided that the said period of ten years shall not be exceeded.

(iv) Any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the damage after the expiry of the appropriate period referred to in paragraphs (i), (ii) and (iii) above provided that final judgment has not been entered by the competent Court.

ARTICLE VI

Where provisions of national health insurance, social security, workmens compensation or occupational disease compensation systems include compensation for damage caused by a nuclear incident, rights of beneficiaries of such systems and rights of recourse by virtue of such systems shall be determined by the national law of the Contracting State having established such systems.

ARTICLE VII

Whenever nuclear damage is caused or is contributed to by a nuclear incident for which more than one operator is liable under the provisions of this Convention, and it is not possible definitely to allocate the damage between the operators, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph 1 of Article III.

quelle la victime d'un dommage a eu connaissance ou aurait pu avoir raisonnablement connaissance de ce dommage, pourvu que le délai ne soit pas inférieur à deux ans et que le délai de dix ans prévu au paragraphe précédent ne soit pas dépassé.

(iv) Toute personne ayant souffert un dommage causé par un accident nucléaire, et qui a introduit une action pour dommages et intérêts dans le cours des délais respectifs prévus aux paragraphes précédents, pourra modifier sa demande, du chef de l'aggravation du dommage, même après l'expiration des dits délais, à condition qu'un jugement définitif n'ait pas encore été rendu par les tribunaux compétents.

ARTICLE VI

Lorsque les dispositions législatives nationales relatives à l'assurance-maladie, à la sécurité sociale, aux accidents de travail et aux maladies professionnelles, prévoient l'indemnisation du dommage causé par un accident nucléaire, les droits des bénéficiaires de ces dispositions et les recours qu'elles accordent sont déterminés par la loi nationale de l'Etat contractant qui a promulgué ces dispositions.

ARTICLE VII

Lorsqu'un accident nucléaire a causé ou contribué à causer des dommages nucléaires et engage, en vertu des dispositions de la présente Convention, la responsabilité de plusieurs exploitants, sans que l'on puisse déterminer avec certitude les dommages imputables à chacun d'eux, ces exploitants en sont tenus solidairement mais chacun à concurrence de la limite prévue par l'Article III, paragraphe 1.

Similarly whenever nuclear damage is caused or contributed to by more than one nuclear incident involving liability of more than one operator under the provisions of the Convention, and the damage caused by each nuclear incident is not reasonably separable, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph 1 of Article III.

In any of the above cases each of the operators jointly and severally liable shall have a right of contribution against the others so that the total liability shall be borne in equal parts.

ARTICLE VIII

No liability shall attach to an operator of a nuclear ship in respect of nuclear damage caused by nuclear incidents due to war, hostilities, civil war or insurrection.

ARTICLE IX

Nothing in this Convention shall apply to claims for salvage or to claims for contribution in general average.

ARTICLE X

The sums provided by insurance or other financial security under this Convention shall be exclusively available for compensation of the nuclear damage, for which the operator is liable.

ARTICLE XI

(i) The Contracting States shall enact legislation such as to ensure that the

Lorsqu'il est établi que plusieurs accidents nucléaires, engageant la responsabilité de plusieurs exploitants en vertu des dispositions de la présente Convention, ont causé ou ont contribué à causer certains dommages nucléaires sans que l'on puisse déterminer avec certitude quels sont les dommages attribuables à chacun de ces accidents, ces exploitants en sont tenu solidairement, mais chacun à concurrence de la limite prévue par l'Article III paragraphe 1.

Dans tous les cas prévus au présent article la répartition des indemnités payées par les divers exploitants solidairement responsables se fera entre eux par parts égales.

ARTICLE VIII

L'exploitant d'un navire nucléaire n'est pas responsable des dommages nucléaires causés par des accidents nucléaires résultant de guerre, hostilités, guerre civile ou insurrection.

ARTICLE XI

La présente Convention ne s'applique ni aux indemnités de sauvetage ni aux contributions en avarie commune.

ARTICLE X

Les indemnités d'assurance et les autres garanties financières prévues par la présente Convention sont affectées exclusivement à l'indemnisation du dommage nucléaire dont l'exploitant est responsable.

ARTICLE XI

(i) Les Etats contractants prendront les dispositions législatives propres à

sums provided by insurance or other financial security shall be made available for the compensation referred to in the preceding Articles within the jurisdiction of the licensing State.

(ii) The rules relating to the marshalling, apportionment and distribution of the sums representing the limit of liability set out in Article III (i) of this Convention shall be governed by the national law of the licensing State.

(iii) The administration and distribution of the sums representing the limit of liability set out in Article III (i) of this Convention shall be done without discrimination based upon nationality, domicile or residence.

(iv) The sums referred to in Article III of this Convention shall be freely transferable between the monetary areas of the Contracting States.

(v) When the sums referred to in Article III of this Convention shall be made available for the compensation of nuclear damage arising on any distinct occasion within the jurisdiction of the licensing State, no claimant shall thereafter be entitled to exercise any right against any other assets of the operator of the nuclear ship involved in respect of his claim for nuclear damage and any bail or other security given by that operator in other Contracting States shall be released.

(vi) If before the sums referred to in Article III of this Convention have been distributed, the operator has paid in whole or in part any of the claims for nuclear damage, he shall be placed in the same position, in relation to

assurer que les indemnités d'assurance et les autres garanties financières soient effectivement disponibles dans le ressort de l'Etat dont émane la licence, pour l'indemnisation prévue par les articles précédents.

(ii) Les règles relatives au recouvrement, à la répartition et à la distribution des sommes correspondant à la limite de responsabilité prévue à l'Article III, paragraphe 1 de cette Convention sont déterminées par la loi nationale de l'Etat dont émane la licence.

(iii) La répartition et la distribution auront lieu sans discrimination d'après la nationalité, le domicile ou la résidence.

(iv) Les sommes prévues par l'Article III de la Convention seront librement transférables entre les zones monétaires des Etats contractants.

(v) Lorsque les sommes prévues à l'Article III de la présente Convention ont été rendues effectivement disponibles dans le ressort de l'Etat dont émane la licence, pour l'indemnisation du dommage nucléaire provenant d'un seul et même accident nucléaire, aucun droit ne peut plus être exercé pour les mêmes indemnités sur d'autres biens de l'exploitant et les garanties ou autres sûretés fournies par l'exploitant dans un autre Etat contractant, seront libérées.

(vi) Si, avant que les sommes prévues à l'Article III de la présente Convention n'aient été distribuées, l'exploitant a indemnisé intégralement ou en partie une des victimes d'un accident nucléaire, il est autorisé à prendre à due

those sums as the claimant for nuclear damage, whose claim he has paid.

(vii) Where the operator establishes that he may at a later date be compelled to pay in whole or in part any claim for nuclear damage, the Court or other competent Authority of the licensing State may order that a sufficient part of the sums referred to in Article III of this Convention shall be provisionally set aside to enable the operator at such later date to enforce his claim against those sums in the manner set out in the preceding paragraph.

ARTICLE XII

(i) Actions for compensation for nuclear damage must be brought in the option of the claim either —

(a) in the Courts of the licensing State; or

(b) in the Courts of the Contracting State within the territory of which the nuclear incident occurred.

(ii) Final judgments of a Court of competent jurisdiction within one of the Contracting States in accordance with subparagraph (b) of the preceding section shall become enforceable in the territory of the licensing State as soon as the formalities required by the law of the licensing State have been complied with.

ARTICLE XIII

This Convention applies to nuclear damage occurring in any part of the world.

concurrence les lieux et places de celle-ci dans la répartition des dites sommes.

(viii) Lorsque l'exploitant établit qu'il pourrait être ultérieurement contraint de payer en tout ou en partie une indemnité quelconque pour dommage nucléaire, le tribunal ou toute autre autorité compétente de l'Etat dont émane la licence, peut ordonner qu'une partie suffisante des sommes prévues à l'Article III de la présente Convention sera réservée provisoirement afin de permettre à l'exploitant de faire ultérieurement valoir ses droits sur cette somme aux conditions indiquées dans le paragraphe précédent.

ARTICLE XII

(i) Toute action en dommages-intérêts pour dommage nucléaire doit être portée au choix du demandeur

a) soit devant les tribunaux de l'Etat dont émane la licence

b) soit devant les tribunaux de l'Etat sur le territoire duquel l'accident nucléaire s'est produit.

(ii) Un jugement passé en force de chose jugée rendu par un tribunal de la juridiction compétente d'un des Etats contractants conformément au sous-paragraphe (b) du paragraphe précédent, sera rendu exécutoire dans le territoire de l'Etat dont émane la licence, dès que les formalités requises par la loi de cet Etat ont été accomplies.

ARTICLE XIII

La présente Convention s'applique à tout dommage nucléaire, quel que soit le lieu où il s'est produit.

ARTICLE XIV

The provisions of this Convention shall apply exclusively with respect to claims for nuclear damage for which the operator of a nuclear vessel is liable thereunder, and shall supersede the provisions of any other Convention, International Agreement, or provision of law, with respect thereto.

Recommendations

I — ARTICLE III

The limit of the operator's liability in Article III (i) has purposely been left in blank.

The Conference was unanimous upon the following points : —

a) that the absolute and exclusive liability cast by the Convention upon the operator must be subject to some limit.

b) that the amount of this limit must be sufficient to make nuclear ships acceptable in all the ports of the World.

c) that the limit required for this purpose will be far beyond the capacity of the Operator to provide by commercial insurance even utilizing all the resources of the international insurance market.

d) that, therefore, the insurance commercially available must be supplemented by some form of State indemnity. In the view of the Conference such indemnity must in practice be given by the licensing State.

ARTICLE XIV

Les dispositions de la présente Convention sont seules applicables aux actions en indemnité du chef d'un dommage nucléaire dont l'exploitant d'un navire nucléaire est responsable dans les conditions qu'elle prévoit, et, en cette matière, elles l'emportent sur les dispositions de toute autre Convention ou de tout accord international, ainsi que sur toutes autres dispositions légales.

Recommendations

I — ARTICLE III

La limite de la responsabilité de l'exploitant, dont il est question à l'Article III (i), a été à dessein laissée en blanc.

La Conférence a été unanimement d'accord au sujet des considérations suivantes :

a) la responsabilité absolue et exclusive mise à charge de l'exploitant par la Convention, doit comporter une limite;

b) cette limite doit être suffisamment élevée pour que les navires nucléaires puissent être accueillis dans tous les ports du monde;

c) la limite requise à cette fin dépassera de loin la possibilité, pour l'exploitant, d'y faire face par une assurance commerciale, même en recourant aux ressources du marché international des assurances;

d) dès lors, les assurances commercialement obtenables doivent être complétées par quelque forme d'indemnisation par l'Etat. Selon les vues de la Conférence, cette indemnisation doit en principe être procurée par l'Etat dont émane la licence.

The Conference, however, was of opinion that it was not its function to insert in the draft Convention the means by which this should be achieved as this is essentially a matter for the Governments concerned.

It is for this reason that the amount of the limit of liability has been left in blank in Article III (i). It is for Governments to decide whether this amount should represent the commercial insurance obtainable by the Operator — which in the opinion of the Conference would certainly not be acceptable — or should represent the aggregate of such insurance and the State indemnity. In either event the Conference is of the view that it will be necessary for the Convention in its final form expressly to provide that the licensing States shall assume responsibility for the financial security which they will approve as a condition of granting their licences.

Since agreement upon such a provision must necessarily be made between Governments, the Conference has not attempted to insert it in Article III but has so drafted that Article that, with the addition of an appropriate clause, it will cover either of the alternatives stated above.

II

In view of the international obligations which it will obviously be necessary for the States to assume under treaty, the Conference also suggests that some form of international machinery should be agreed upon to facilitate and ensure the carrying out of these obligations.

La Conférence a cependant été d'avis qu'il ne lui appartenait pas d'insérer dans le projet de Convention les moyens par lesquels ce résultat pourrait être obtenu, et que cette question est essentiellement du ressort des Gouvernements intéressés.

C'est pour cette raison que la limite a été laissée en blanc à l'Article III (i).

Il appartient aux Gouvernements de décider si cette limite correspondra au montant de l'assurance que l'exploitant est commercialement en mesure de contracter — ce qui, suivant l'opinion de la Conférence, ne serait certainement pas acceptable — ou si elle doit représenter l'ensemble formé par cette assurance et par l'indemnité procurée par l'Etat. Dans l'un et l'autre cas, la Conférence est d'avis que la Convention devra nécessairement, en sa forme définitive, prévoir en termes exprès que les Etats dont émanent les licences répondront de la garantie financière qu'ils institueront comme condition de l'octroi de leurs licences. Comme un accord au sujet d'une telle disposition doit nécessairement intervenir entre les Gouvernements, la Conférence n'a pas essayé de l'insérer dans l'Article III, mais elle a rédigé cet article d'une manière telle que, après l'insertion d'une clause appropriée, l'article pourra être appliqué dans chacune des hypothèses envisagées ci-dessus.

II

Considérant qu'il paraît inévitable que les Etats seront conduits à contracter des obligations internationales par voie de traité, la Conférence suggère aussi la mise en place d'un mécanisme international propre à faciliter et à assurer l'exécution de telles obligations.

III

ARTICLE XII (ii)

The Conference appreciates that this provision may cause difficulties in certain jurisdictions, in which the enforcement of foreign judgments is already subject to certain procedural or even constitutional rules. Unless, however, the Convention is to provide that the jurisdiction shall lie solely with the Court of the licensing State to which there are grave objections, the Conference sees no alternative to this provision with, of course, such safeguards as the Governments may see fit to agree.

IV

The Conference has considered whether the Convention should include a provision to the effect that each of the Contracting States should have the right to exclude from the benefits of the Convention owners or operators of vessels licensed or registered in a non contracting State and victims of a nuclear incident who are nationals of or resident in a non contracting State. The Conference came to no conclusion upon this point as it was considered to be essentially a matter for Governments to decide.

V

The Conference desires to make it clear that nothing in the draft is intended to authorize or require the inspection of military vessels or auxiliaries, nor to create the right to attach such vessels. The matter of inspection of other types of vessels will undoubtedly be considered at the Conference on the Safety of Life at Sea Conventions.

III

ARTICLE XII (ii)

La Conférence s'est rendu compte que cette disposition peut susciter des difficultés dans certains pays, dans lesquels l'exécution des jugements étrangers est déjà soumise à certaines règles de procédure ou même à des règles constitutionnelles. Toutefois, à moins que la Convention ne dispose que seront seuls compétents les tribunaux du pays dont émane la licence, ce qui donne lieu à de sérieuses objections, la Conférence n'aperçoit aucune solution autre que cette disposition — complétée, évidemment, par les garanties que les Gouvernements jugeraient convenables.

IV

La Conférence s'est demandé s'il fallait prévoir, dans la Convention, que chaque Etat contractant aurait le droit d'exclure du bénéfice de la Convention les propriétaires ou les exploitants de navires munis d'une licence d'un Etat non contractant ou immatriculés dans un Etat non contractant, ainsi que les victimes d'un accident nucléaire ressortissants ou résidents d'un Etat non contractant.

La Conférence n'a pris aucune décision à cet égard, considérant que ces matières relèvent essentiellement de la compétence des Gouvernements.

V

La Conférence désire préciser qu'aucune disposition du projet n'a pour effet ni d'autoriser ou de rendre obligatoire l'inspection de navires de guerre ou auxiliaires, ni de créer le droit de saisir ces navires. Le problème de l'inspection d'autres genres de navires sera certainement pris en considération par la « Conference of the Safety of Life and Sea Conventions ».

Friday, 25th September 1959

PLENARY SESSION

Chairman : President Albert Lilar

ARTICLE X

The President (translation): The agenda calls our attention to the draft amendments to Article X of the Bills of Lading Convention.

The International Subcommittee elaborated a report on these matters and its President, Mr Pineus, asked to come to the platform.

Mr. Kaj Pineus, Sweden : As you all know, the 1924 Convention on Bills of Lading has a rule in Article X which says that the Convention shall apply to bills of lading issued in a Contracting State.

What is the situation today ? The 1924 Convention has been adopted by the English-speaking world, by most of the European countries and by Japan. On the other hand, there are some maritime countries who are still not members of this distinguished club, the South American States amongst others.

Those countries which have adopted the Convention have used one of the methods for applying it laid down in the signatory protocol, that is to say, some have given it the force of law as it stands while others have embodied it in their national legislation in the form best suited to this legislation.

As to the field of application of the Convention, various solutions obtain. Certain enactments based on the 1924 Convention have gone one step further than Article X appears to warrant. The Convention, or to be more precise, the law based on the Convention, has been made applicable to both outward and inward cargoes in international traffic. In other words, they do not attach any importance to the question whether the bill of lading is issued in a contracting State or in a non-contracting State.

Again, certain enactments based on the 1924 Convention have not carried out the minimum rule of Article X because they have been made to apply only to outward bound cargo in international traffic. There are other variations in the methods used as to the field of application of the Convention, but I had better not go into too much detail just now.

You realize, of course, that under the present conditions, which I have just briefly outlined, the question as to which legislation based on

the 1924 Convention is to be applied in a case can lead to serious complications. When, therefore, it was suggested that the intention of Article X ought to be made quite clear by revising or modifying the text it was perfectly natural that this task should be given to the Subcommittee of the C.M.I. dealing with Conflicts of law, and it is this Committee which is now presenting its report to the C.M.I. This report is based upon the answers received to the 1958 questionnaire and — by no means least — upon the subsequent deliberations in the Committee.

I imagine everybody agrees that it is highly desirable that the 1924 Convention should be adopted and implemented by as many States as possible. But I believe there is little a Subcommittee of the C.M.I. can do to achieve this aim by direct action. However, the desire to extend the field of application of the Convention is a matter which your Subcommittee has found marked with international unity and one on which it has set its heart. To this end, so it was felt, the 1924 Convention should be made applicable whenever the transport in its initial or final stage has a connection with a Contracting State. The nationality of the persons involved in the transport should be entirely disregarded and ignored. The geography of the case should, it was felt, be taken as the sole criterion of whether the 1924 Convention should apply. A new Article X embodying these principles has been drawn up by your Subcommittee and is submitted for your discussion and we hope your approval.

However, it soon appeared that the whole problem was much more complicated than this. You will appreciate the fact that the question of the field of application of the Convention is closely attached to the problem of a uniform application of the Convention in the different Contracting States. If a case comes under the 1924 Convention then it ought, of course, to be entirely unimportant whether it is dealt with according to the Convention as it is enforced in the port of loading, the port of discharge or elsewhere. And it is true — as you will know — that the passing of the 1924 Convention has, in fact, ironed out several differences between the laws of various maritime Nations. Nevertheless, many differences still remain. Let me mention two. Firstly, the rules concerning the burden of proof may be stricter and less flexible in one country than in another. Secondly, the limitation figure the authors of the 1924 Convention had in mind — namely 100 pounds in gold set out in Article IX (2) of the Convention — has been allowed to vary in a most remarkable way. Some of the variations are illustrated in the printed report of your Subcommittee. Every variant is not included, but the figures are interesting enough as they stand.

The Subcommittee felt it would be wrong not to face up to these difficulties. It would not have been in keeping with the moral courage traditionally ascribed to the C.M.I. had your Subcommittee put the

telescope to its blind eye. It is in our opinion right to remind you that both the Warsaw Convention of 1936/1955 and the 1957 Limitation Convention solved the problem of international uniformity in the case of the limitation figures by using the Poincaré francs.

Many wise people with considerable experience of maritime law and the practical side of maritime affairs take part in the work of the C.M.I. During the work of your Subcommittee on the present problem it has been said, in answers received from the National Associations, and also by a number of the Subcommittee members, that the world is moving on and it may well be that the time has come to discuss whether there are any other aspects of the law of maritime transport which are ripe for regulation at an international level. Several have been named :

1. « Pro rate and invoice value clauses ».
2. Limitation as to value and as to time for action in matters concerning indirect damage (by delay and delivery to a person not entitled).
3. Liability for acts committed by a preceding carrier on a through bill of lading.
4. Validity of both-to-blame clause.
5. Unseaworthiness and deck cargo.
6. Liability before loading and after discharging.

These questions have arisen in connection with the work which the C.M.I. instructed this Subcommittee to carry out and, as you will see presently, your Subcommittee invites you to express your view whether the C.M.I. should prepare a draft Convention regarding such questions in connection with bills of lading, which are now ripe for an international regulation.

In this connection I should like to draw your attention to two factors. Any alteration to the 1924 Convention — even the proposed addition to Article X and the possible review of the gold clause in Article IX (2) — involves summoning a Diplomatic Conference on Maritime Law. Even allowing for the well-known hospitality of the Belgian Government it is unlikely that the complicated machinery of such a conference would be set in motion simply for the sake of one or two articles of the 1924 Convention. Moreover, in addition to this somewhat technical consideration it is my opinion, shared I believe by the majority of the Subcommittee, that the delicate balance and compromise achieved in the formation of the 1924 Convention ought not to be disturbed. The new problems which it may be agreed should be tackled at international level, ought to be put in the form of a new Convention, a supplementary Convention, which can be adopted in addition to the Convention of 1924.

Perhaps at this stage I had better try to meet a possible objection to what I have just said. If it is right that care should be taken not to disturb the compromise expressed in the 1924 Convention, how is it that such an attitude — tenable in itself — can be in keeping with the Committee's own proposal, for this proposal contains, among other things, a revised version of Article X of the 1924 Convention. Such an objection is of course understandable and certainly logical. I believe that I can nevertheless justify the proposed amendment. Article X in its present form is intended to define the limits of application of the Convention. Which bills of lading are subject to the 1924 Convention? That is what Article X seeks to clarify. It is not concerned with any material regulation. An adjustment of conflicting interests in respect of the field of application of the Convention does not exist in the 1924 Convention even though it does contain adjustments for other issues with which the Convention deals. On the contrary, as I see it, the men who drew up the Convention entertained the hope that their formulation of Article X would ensure the widest possible application of the 1924 Convention. They had, you might say, the same intention as your own Subcommittee with its present proposal for Article X, formulated on the basis of considerable experience gained in the last 35 years. And those States which will adopt Article X more or less in the form the Subcommittee suggests will in so doing take up the same position as the U.S.A. and Belgium. Both these countries have made the 1924 Convention applicable to import as well as to export bills of lading. And surely no one can seriously contend that the U.S.A. and Belgium, in doing so, have rocked the boat.

You will have noted that our report ends with a questionnaire. We have tried there to sum up the problems we have met.

This somewhat unorthodox method has been forced upon us by the fact that it was not possible to discharge our task by elaborating a draft Convention in the usual way adopted by your Subcommittees.

The first question deals with the proposed new text of Article X which, it is submitted, should replace the present one in the Convention.

I have given you briefly, and the report does it more fully, the reasons why we hope the proposed text will lead to a wider application of the 1924 Convention than at present.

Do you accept this text? That is our first question.

In the second part of the questionnaire your Subcommittee asks for directives for its future work. You will have noted from what I have already said that we met with various problems during our preparatory work. We have felt that we could not very well try to solve them entirely on our own.

The report therefore goes on to ask the next question which is this :

In view of experience gained after 1924 and taking into account the success of the Warsaw Convention and the hopes attached to the 1957 Convention on limitation, do you think the time has come to try again to tackle the Gold Clause in connection with Bills of Lading ? Your Subcommittee submits that this is so but it should like to know that you agree before we attack this subject.

The 1924 Convention has met with two types of objections. The first that the Convention is incomplete and the second that certain rules no longer are satisfactory. The Subcommittee is of opinion, as you will have understood, that you cannot and should not alter the compromise of 1924, but that it would be possible and we think desirable to elaborate an additional draft Convention dealing with such questions as are not covered by the Convention of 1924 but ripe for an international regulation. Do you agree ? That is our question under the letters b) and c).

And then I come to the last question, the one under the letter d) dealing with conflicts of law. And you will no doubt say : at last. Here is the acting chairman of a Subcommittee on Conflicts of Law appointed by the C.M.I. taking up the Conference's valuable time to introduce his Committee's report and he still has not said a word about how conflicts of law should be settled. What is the idea ?

You have my sympathy. But may I remind you that it is the task of the C.M.I. to achieve international uniformity in respect of maritime law. And the C.M.I. has done a great deal in this direction. But it would be a sad day for the C.M.I. if it were driven to find methods for solving conflicts of law concerning one of its own Conventions — and perhaps one of the most important at that — when such conflicts come up between States who have adopted the Convention. That would be to accept a deplorable situation, to resign in the face of difficulty and to contribute to the prolongation of an unhappy state of affairs for international uniformity. To my mind it would be directly contrary to both the traditions of the C.M.I. and to the well-being of the entire shipping world if your Subcommittee by putting forward a concrete proposal for the solving of conflicts of law, were to introduce the C.M.I. to a new and hard discipline of which it has no previous experience, namely conflicts of international private law.

Perhaps you are now better able to understand the Committee's final question to the Conference. May I put it another way ?

Does the Conference, bearing in mind all that has been said and written, really wish the Committee to draw up rules concerning conflicts of law connected with maritime transports controlled by bills of lading ? Should we not concentrate our efforts on the creation of positive rules which may prove acceptable to all maritime Nations ?

Mr. John C. Moore, United States : We appreciate very much the careful consideration which has been given to this subject by the

International Subcommittee on Conflicts of Law. However, we must respectfully disagree and recommend that the Comité should not go into the various questions which have been raised by the Subcommittee.

As a matter of conflicts of law, it appears that the only question that could raise a conflict is the question of the limitation of amount for which the shipowner can be liable per package or per freight unit, which was originally one hundred pounds, and has since resulted in some divergencies among the various Contracting States. It is an interesting theoretical question, but so far as we have been able to determine, it has not caused any commercial difficulty.

The position of the United States was stated in our Report. It is simply that the Hague Rules should be made applicable both inwards and outwards to all shipments involving a Contracting State.

On the other hand, our Delegation is strongly opposed to the opening up of any of those other questions. It appears from the various papers submitted to the Comité that the French and Italians have a special problem in that their Courts have interpreted their enactments of the Hague Rules so that the question of the nationality of the parties creates difficulties. We would be willing to assist the French and the Italians in the solution of their problems. We have also learned just recently, that the British have a special problem, which perhaps can be explained more clearly by the British delegate i.e. that their Courts do not apply the Hague Rules of a port of shipment, if a shipment inward to the United Kingdom is covered by British law. We would be willing to assist the British in the solution of that problem.

We drafted a resolution with the collaboration of some other Delegations. The resolution is this :

« Resolved that the Comité Maritime International invites the Diplomatic Conference of Maritime Law to replace the present text of Article X of the International Convention for the unification of certain rules relating to bills of lading signed at Brussels, 25th August, 1924, with the following :

« The provisions of this Convention shall apply to every bill of lading issued in respect of any shipment to or from any of the Contracting States whatever may be the law governing such bill of lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other person interested in the goods. »

That resolution would make the following changes in the Brussels Convention as it exists at the present time :

First of all, it would make the Convention applicable to any shipment inward or outward to or from a Contracting State.

Secondly, it would make it applicable regardless of the law governing the contract, the bill of lading. That solves the British problem.

Thirdly, it would be applicable regardless of the nationality of the parties. That is to solve the French and Italian problem.

Finally, it would be applicable regardless of the place of issue of the bill of lading.

Now, the Hague Rules at present in Article X merely provide that the provisions of this Convention shall apply to all bills of lading issued in any of the Contracting States. That would raise a question which I think would be a theoretical one only, but it would make the Hague Rules inapplicable to a shipment from a Contracting State where the bill of lading was issued in a non-Contracting State. And by the reverse, it would make the bill of lading subject to the Hague Rules if it was issued in a Contracting State for transportation from a non-Contracting State. It seems to us at least unnecessary and undesirable to make the law applicable to be governed by the place of issue of the bill of lading, because there are times when, for very good reasons of commercial importance, it is desirable to issue a bill of lading in a Contracting State for shipment to or from another State, and conversely it would give the moving party, normally the consignee, an opportunity to affect the law applicable — by, I must say, a little mis-statement — by issuing a bill of lading outside of a Contracting State.

There is one thing I would like to say in regard to Mr. Pineus' remarks. He made a serious point, and a well-taken one, of the fact that we could hardly ask that a Diplomatic Conference be assembled to make such a relatively simple change in the Hague Rules; however, I would suggest that it should not be difficult to have such a change put forward to the Diplomatic Conference for action at the next Conference, which may be called to deal with one or more other subjects.

Mr. A. Loeff, Netherlands : Speaking on behalf of the Netherlands Delegation, I should like to make two points.

The first is, to secure as much as possible the adherence of as many States as possible, and the second is to get some amendment of the Convention itself. I think we must be careful not to mix up those two objects. I think the main object of the Netherlands Delegation is to obtain the agreement of as many States as possible. But if we want to go in this direction, then I think it is desirable to keep the Convention as simple as possible. For that reason, the Netherlands Delegation thinks that this is not the moment — it may be desirable at another time, but this is not the moment — to amend the Convention, except as regards Article X.

Now, we have before us the report of the International Commission, and this Commission has made a proposal for the alteration of Article X and, as a matter of fact, extending the scope of it. We are in full agreement with the general idea of extending the scope of Article X, but we must keep this Article as simple as possible and we must bear in mind

that of course no injustice must be done to any shipowner — for example, if at a certain moment he becomes aware that the carriage of the goods in question is subject to the Hague Rules and he could not have suspected that when the goods were loaded.

We accept fully the idea that a Convention ought to be applied to outward cargo and to inward cargo; but if neither the port of loading nor the port of discharge is situated in a Contracting State, then it would be a grave injustice to the shipowner if, in the case of an accident to the ship, the goods were discharged in a port of a Contracting State and if he was suddenly faced with the fact the cargo was subject, *post factum*, to the Hague Rules.

Then we have another extension of the scope of the Convention as far as the optional ports are concerned. It may happen, of course — it happens very often — that the bill of lading does not give the name of one port of discharge but gives an option. But starting with the idea that we want to extend the scope of the Convention as much as possible, our idea is that the Convention would apply as soon as one of the optional ports is situated in a Contracting State.

We have proposed a last amendment, and that is this : the Convention now provides that the Convention applies when the bill of lading is issued in a Contracting State. We think we ought to add to this that the Convention also applies if in fact the loading takes place in a Contracting State. We agree that it would be a rather rare case if the bill of lading was issued in another place than where the loading took place, but nevertheless, because of the idea that we ought to extend the scope of the Convention as much as possible, we think we ought to insert that.

As for the further suggestions of the International Commission, we think that as far as Article IX sub-paragraph (ii) is concerned, for the moment we had better leave that alone.

We think the further points that have been raised created such difficult questions that they would cause the loss of considerable time if we went into them. Some of them have been solved by the national Courts in a certain direction. For instance, the question of through bills of lading are so complicated we had better leave them alone.

Therefore, the proposal of the Netherlands Delegation is that with certain slight amendments to the proposed amendment of Article X of the Convention of 1924 we should not do anything further. Of course, the Comité Maritime International in itself cannot do much in the direction of getting other States to agree to the Convention. We must leave that to the Diplomatic Conference.

Mr. J. Gorski, Poland (translation): Taking into account that the Convention on bills of lading has as a whole given satisfaction to International Trade we fully support the works of the Comité Maritime

International aiming at an extension of the application field of this Convention and at modifying certain provisions which are presently not uniformly interpreted.

It seems to us that the solution of the problem put forward by the Subcommittee might be considered as the best one. (Applause).

Mr. E. Floystad, Norway : During the thirty five years which have elapsed since the Hague Rules were drafted ample time has been given for the interested parties to gain sufficient experience to judge whether, and to which extent, the remedies hoped for have been achieved, and simultaneously to determine what defects attaching to the Rules have prevented the desired uniformity to be reached.

In its reply to the questionnaire the Norwegian Maritime Law Association has positively supported a revision of Article X, and as will be seen from the conclusions of our reply we also desire to go somewhat further than the proposal of the Subcommittee aims at. We are, however, prepared to accept the Subcommittee's proposal.

The primary object should be to have as much as possible of all ocean transports covered by roughly identical provisions, and a secondary object is to decide which Hague Rules enactment shall apply in each individual instance. It is undoubtedly important to agree on a compulsory choice of law rule, and in our opinion the Hague Rules enactment of the agreed port of discharge should be primarily applicable.

If the port of discharge be in a non-Contracting State the Hague Rules enactment in the country of loading should apply. In respect of transports between non-Contracting countries the Hague Rules enactment in the country where the carrier is domiciled should be governing. The suggested compulsory system of applicability would make it necessary to revise the existing Hague Rules enactments accordingly, at the same time omitting the former national requirements of specific reference to national law.

Even though the Hague Rules have, broadly speaking, succeeded in fulfilling the expectations hoped for, it is nevertheless an acknowledged fact that they suffer from inherent weaknesses with regard to legal technicalities, and that they are lacking in precision and definitions.

The Norwegian Delegation is, therefore, of the opinion that the recognized desirability to amend Article X represents a welcome opportunity also to consider, if the time is now ripe for a revision of the amendments, the main issues which have constantly been a source of litigation and/or dubious interpretations.

To save time I confine myself to refer to our reply to the questionnaire where we have enumerated the chief items which, in our opinion, require revision and/or elucidation. Uniformity should in our opinion above all be sought as regards the unit limitation.

We do not share the fears that a revision of the Convention would increase the difficulties in having non-Contracting States join the Convention. On the contrary, we feel convinced that our suggestions, if adopted, would result in evident improvements tending to bring the Convention a long step forward on the road to perfection, thereby making it much more tempting for non-Contracting States.

Mr. R. Sandiford, Italy (translation): We have to face two problems. The first one concerns the interpretation of Article X. The Courts of a certain number of countries, such as Italy, started the discussion on the application field of an article which, if logically interpreted, would not be subject of any discussion. In fact the rules of internal law have influenced the decisions of the Courts. However, in a certain number of countries, the laws and the decisions of the Courts have not given rise to different interpretations. Nevertheless it seems to be logic to fix in a diplomatic document an interpretation which avoids any discussion in this matter. For this purpose, the extension of the application field of the Convention — as far as we are able to obtain such extension — seems to be useful.

The second problem concerns the methods of unification. We think it is not advisable to include in the draft of our International Subcommittee rules intend to solve conflicts of laws. On the other hand it might be advisable to ask our Subcommittee to study a possible revision of Article IX (2) which has given rise to difficulties of application. The Subcommittee might be requested to study all questions concerning bills of lading which have not been solved by the 1924 Convention.

As far as the American suggestion is concerned the Italian Delegation is prepared to accept the new reading of the article. (Applause).

Mr. F. Nordborg, Sweden : The Subcommittee which has dealt with this problem submits that Article X of the Hague Rules shall be re-worded as to make the Rules applicable irrespective of the nationality of the vessel, the shipper, the carrier or those entitled to delivery of the goods. The Rules should apply to shipments where the port of shipment or the port of destination is situated in a Contracting State. If no port of destination is mentioned in the Bill of Lading the port of discharge, being situated in a Contracting State, shall make the Rules applicable. Besides, the Rules shall apply if the Bill of Lading is issued in the Contracting State irrespective of the fact that neither the port of shipment nor the port of destination is so situated. The Swedish Delegation is prepared to accept this broadening of Article X.

There are many different systems applying to the maximum liability. One is gold without any reservations. I do not think there are any more countries now which still stick to that. Next comes gold as a general rule and paper against States with paper as a general rule. One

such country is Sweden. Thereafter comes paper as a general rule but gold in case of reciprocity. Such countries are, for instance, Norway and Finland. So we have paper but in double the amount; such a country is England. Lastly we have only paper and such a country is Denmark.

It may seen at first sight that there is not a very great difference between a country which applies gold as a general rule and a country which applies paper as a general rule but has this reservation about the gold value in case of reciprocity. But it is of rather great importance, for gold as a general rule means that gold is applicable if the carrier and the claimant belong to the same country, whereas if paper is the general rule, paper applies in such a case.

Whether the amendment of Article X is decided upon or not, conflicts of law do not seem possible to avoid, but it would not be of any great importance whether one or other of the Hague Rules enactments were made applicable if the Contracting States fulfilled their obligations according to the Brussels Convention concerning Bills of Lading, that is to apply gold. For then we should eventually get the monetary unit which the Convention lays down.

The Swedish Delegation submits that the Contracting States fulfil this obligation to make gold applicable as a general rule when fixing their maximum liability.

Mr. J. P. Govare, France (translation): The ideal of the C.M.I. is to achieve the unification of maritime law all over the world.

Unfortunately even if all countries had plainly and simply introduced in their legislations the wording of the 1924 Convention, divergencies in interpretation would have appeared when applying some clauses, such as, the Gold Sterling Clause.

Today we have to solve difficulties originating from the fact that Article X of the Convention disposes that the provisions apply to any bill of lading issued in one of the Contracting States. Now in a few countries it did not seem normal to submit to an International Convention carriages from one port of that country to another port of the same country. It has not been easy to understand that in the case all parties concerned are French and that a carriage from Dunkirk to Bordeaux is concerned such carriage is subject to the International Convention only because France ratified that Convention. In France the Convention has been incorporated in the national legislation by the law of the 2nd April 1936 which is similar to the Convention on many points but is not the same on all points.

Those concerned with maritime trade do not wish to know in the first place which law is applicable to carriages from one country to the same country. Indeed coastwise trade may be excluded according to the terms of the Convention, the National Law being authorized to

solve litigation between nationals. However, the important point for the shipowner as well as for the shipper and the underwriter is to know which law to apply to international transport. On this point Article X has given rise to confusion because it did not allow the application of the Convention.

We are of the opinion that it is sufficient to add an amendment to Article X; such is the conclusion of the French Association. Following amendment should be added to the article : « provided that a carriage from another State, contracting or not, is concerned » without taking into consideration the nationality of parties.

The French Association maintains the conclusions put forward in its report. However, it is in agreement with the American proposal provided the word « shipment » means effective shipment and not the issue of the bill of lading. For instance, it is not admissible that a bill of lading issued in Paris for goods loaded at Antwerp should be in a position of avoiding the difficulty whereas actual loading for carriage is concerned.

There is another point already raised by the Netherlands Delegation : the case of bills of lading mentioning optional ports. Goods can be loaded in Continents far away for conveyance to Bordeaux-Hamburg Range which means that they can be landed either in France or Belgium, or Holland or Germany. I feel we should support the Netherlands suggestion according to which it will be sufficient — for the application of the Convention — to have amongst the optional ports one port situated in a country which did ratify the Convention.

As I said before, it is important, from an international point of view in matters of maritime commerce and carriage, to know without doubt from the beginning, which law governs the carriage. Consequently, it is essential to know the port of loading or eventually, as the Americans say, the port of destination. But as the latter can in some circumstances be an optional port, it is essential that the Convention should be applicable as far as possible because that is the surest, and undoubtedly the quickest way to achieve the unification of maritime law. (Applause).

Mr. J. Honour, Great Britain : I am speaking on behalf of the British Delegation, and I want to say at the outset that we support the United States Delegation in the amendment which they have suggested to Article X. We also support them — and the Netherlands Delegation — in saying that we do not think there should be any further revisions undertaken.

Before I actually deal with the proposals, I would just like to stress one or two general matters. I believe it has already been said but I think it should be said again, that what perhaps is the most important in this is to try and obtain more signatures to the Convention rather

than to attempt a uniformity of legislations which already incorporate the Convention. However, there is no doubt that there is room for uniformity in the application of the Convention. It is for that reason that if any amendment is to be made we agree that it should be limited to Article X. However, I think one must bear in mind that any amendment to a Convention which has worked, generally speaking, satisfactorily for some thirty-five years, must be looked into with extreme care, because we may well start on a road which may lead the Parliaments of Contracting States to interfere with aspects of the Convention with which no one here has any intention of interfering.

With those preliminary remarks, I come to the actual conclusions of the Subcommittee and the alternative proposals put forward by the other delegations. Mr. Moore kindly suggested that I might be able to explain the particular difficulty which we have under English law in greater detail than he has done. That may be so, but I must confess that he described it admirably in as concise a manner as I have ever heard.

However, briefly speaking our difficulty is that under English law the first question which the Court has to determine is what is the proper law of the contract, or in other words what is the law which governs the contract. Once it has done that it then looks to see whether or not under the proper law of the contract the Hague Rules shall compulsorily apply. Thus, if a Bill of Lading is issued in a foreign country for a shipment to England, and that country has Hague Rules legislation but the bill of lading is nevertheless governed by English law, the English Court will not apply the Hague Rules because under our law, the Hague Rules only apply compulsorily outwards from the United Kingdom.

It is for that reason that the United States Delegation have inserted in their proposal the words « whatever may be the law governing such Bill of Lading » and as far as we are concerned, if we are to agree to any amendment to Article X, those words must be in.

I entirely agree with what Mr. Moore has said in criticism of the present draft of the Subcommittee. It agrees with what he has said concerning the irrelevancy of the place of issue of the bill of lading. There is one more irrelevancy in my view which has not been referred to, and that is the irrelevancy of the port of destination. As most of us know, the port of destination may in fact be an inland port or a port which has nothing to do with the main carriage by sea from the port of shipment to the port of discharge. That may exist under a direct bill of lading, or more generally under a full bill of lading. The port of destination may be a port to which the goods are eventually forwarded after discharge from the ship, and I think it would be illogical that because that port were in a Hague Rule country the Hague Rules should necessarily apply.

It is for that reason, in addition to other reasons which Mr. Moore has given, that we do not think that the proposal of the Subcommittee is appropriate.

Turning to the second conclusion of the Subcommittee, again I want to support the United States Delegation in saying that we do not want further to revise the Convention. What we are afraid of in particular is that if we start to try and obtain uniformity, say, in regard to the limit of liability, it is extremely possible that the Parliaments of Contracting States will look at the limit a good deal more closely than before and say to themselves, « If this limit were £100 in 1924 what should it be today ? ». I do not think any of us here want Parliaments to have that opportunity. We in our country are quite satisfied with the arrangement as it exists today. We do not have any particular problem in that direction. We have a gold clause agreement under the terms of which the concerned parties have agreed that the limit of £100 be treated as £200. We have found this is a compromise which all parties have agreed to and which has worked extremely satisfactory, and we commend it to those other countries which may find difficulties in this direction.

Mr. Govare mentioned that there might be difficulty if there were optional ports of discharge. In my view, it is not necessary to produce an amendment on the lines suggested by the Subcommittee, even with alteration, because if the amendment proposed by the United States is adopted, then no such difficulty will arise.

For those reasons, the British Delegation is prepared to support the United States in their suggested amendment to Article X but we vigorously oppose any further revisions.

Mr. K. H. Necker, Germany : On behalf of the German Delegation I should like to make the following observations as to the conclusions reached by the Subcommittee.

The history of the Hague Rules shows that the authors of the Convention have based their conclusions on three assumptions which have not held good. Firstly, not all the shipping nations have become parties to the Convention. Secondly, in those countries which have adopted the Hague Rules there is no uniform interpretation of their contents. Thirdly, in some of the countries which have adopted the Hague Rules the full text of the Rules has become part of the national law, whereas in other countries national law has been amended according to the sense of the Rules, a situation which was not thought of at the time the Convention was first signed.

It therefore appears that it has never been the intention of the authors to make Article X a rule by which conflicts of law should be solved, otherwise the adoption of the additional protocol would have been caused to alter Article X. For these reasons, we definitely feel

that Article X has been conceived as a rule to urge Contracting States to make the Hague Rules a matter of public policy.

At this point, the question arises as to whether we need a conflict rule or not. Would the problem be solved by amending the Hague Rules by way of adding new rules and changing old provisions? We feel that such a procedure would, unfortunately, be of no help because it seems impossible to stop the different interpretations of the Rules as influenced by the various national systems of law. For these reasons, it seems obvious that there is no alternative between solving the conflict problem and amending the rules. Therefore, we have to go both ways, if we think it necessary, to amend the Hague Rules.

A new rule must fulfil two conditions: it ought to be practicable; it must ensure that the scope of application of the Rules be as wide as possible.

The German Delegation has participated in the preparatory work of the Subcommittee. The proposal of the Subcommittee confines itself to some clear rule for the scope of application. It remains open, however, as to which national law containing the Hague Rules shall be applied to individual cases. With respect to the differences in interpretation, some conflict rule therefore ought to be drafted. In our opinion such a rule should be based on the *lex fori*, for which reason we respectfully suggest that we should add to the Subcommittee proposal the following draft rule, as we have already mentioned in our national report:

« The International Convention on Bills of Lading is to be applied in the Court of the place where the dispute is to be decided. The Courts of the Contracting States have to apply contractual agreements only where they are meant to imply the interpretation of the Convention. The Courts applied to by the parties are deemed to have extreme jurisdiction. »

Such a rule would have the following advantages. Firstly, it would make it unnecessary for the Courts to apply themselves to the interpretation of the Hague Rules in foreign countries. Secondly, it would put the parties to the contract in the position to choose the law to be applied by choosing the place of jurisdiction. It is understood here that jurisdiction agreements are not to be considered valid.

As to the advantages last mentioned, it is assumed that the Courts in all contracting countries will recognize as valid jurisdiction clauses which have been drafted *bona fide*. In principle, we could even agree with the resolution put before us by the delegation of the United States, but we still feel that the conflict of law question has not been solved.

Furthermore, the scope of application of the Convention in consequence of the American proposal would not be as wide as the Subcommittee's new proposal.

As a result we would not agree with paragraph 2 (d) of the proposals put before us by the Subcommittee.

Mr. F. Norrmén, Finland : In Finland we had a law in 1939 which brought into force the Hague Rules, and this law states that the Hague Rules should apply to any transport from Finland to any other country and to Finland from any country where the Convention is in force. We think that Article X should not give rise to any difficulties as bills of lading are usually issued in the ports of loading and there will not be any problem as to whether the port of loading is in a Contracting State or not. If it is issued in other States this is a practice that could be modified and anyway I think it is an exception. Consequently, I do not think that the rewriting of Article X of the Bills of Lading Convention would make any improvement at all.

As regards the different limitation values that are now used in different Contracting States, the problem is probably deeper than that. However, I would recommend on behalf of the Finnish Maritime Law Association that those States who ratified the 1924 Convention and other States which may ratify it should use the gold value which was the original intention.

Further I would say that we in Finland are always prepared to support a gold value when a new Convention relating to international shipping problems is going to be worked out. So I would say that we would co-operate with the Comité Maritime International should they think it advisable to start work on a supplementary Convention that would solve some problems in connection with bills of lading that are not yet solved.

Mr. S. Braekhus, Norway : Mr. Pineus, the Chairman of the International Subcommittee was, as far as I could understand of the opinion that it would be contradictory to introduce conflict of laws rules into the Bill of Lading Convention of 1924. The Convention itself should secure international unity and make choice of law rules unnecessary. The fact is, however, that there is at the present moment no absolute international uniformity. It is sufficient to give one clear example, the liability per unit in Article IV (5). I think that the British two hundred pounds agreement, in our opinion at least, does not give a satisfactory solution to the problem. What, in my opinion, is still much more important is that there will never be such absolute uniformity even if the Convention is revised. The Hague Rules must, as you are all aware, be construed against the background of the national law — for example, the carrier's liability for incorrect description of the goods in the bill of lading. The Convention has, in Article III (4) the so-called *prima facie* rule; the bill of lading is only *prima facie* evidence, but this rule is, it seems, supplemented with the rules of the national law. In the Common Law countries we are adopting this principle, and in the continental countries, or at least in some of them,

they are making the bill of lading a guarantee for the correctness of the description of the goods.

The choice of law problem, as far as the Hague Rules are concerned, is therefore a very practical problem. There should be quite a number of bills of lading which at the same time give a choice of law rule.

It is the opinion of the Norwegian Delegation that this choice of law problem should be solved internationally and most practically in the Convention itself. In any case, in our opinion, even if you have not touched the choice of law problem, there should be a general revision of the Convention. We think that the general principles of the Convention are very sound and should not be touched. What we want is a technical revision. I have mentioned one rule of law, that is the liability per unit rule, and I shall give just one other example, namely the rule in Article III (6) which deals with the duty of the receiver of the goods with regard to damage to the goods. This rule is at the present moment giving us quite a lot of trouble because, to be quite honest, we do not understand it. On this point I think we are in good company; one of the recent English text books on the subject gives the following commentary on this Article : « The first paragraph of this rule appears to have little, if any, meaning. »

The proposal of the Norwegian Delegation is, therefore, that the international Subcommittee should be asked to go on with its work in order to prepare a more general revision of the Bills of Lading Convention.

Mr. Andrija Suc, Yugoslavia : Speaking on behalf of the Yugoslav Delegation, I would like to state that we fully agree that the present situation concerning the Bills of Lading Convention is not satisfactory.

It seems to us that there are two main ways to get out of the present difficulties. One is to establish such substantive rules or to fix the existing rules in a manner which would exclude the possibility of different interpretations. The other is to establish rules of conflict of laws. The second solution is the easier, but it does not lead to a unification; it leads to the acceptance of various national laws which is contrary to the policy of the Comité Maritime International.

The Yugoslav National Association is of the opinion that we have to try to get uniform substantive rules. We therefore sponsor the first of the two ways mentioned which is, that we should try to find solutions without reaching out for conflict rules.

It seems to us that if we want to follow this way, we have to face the fact there are some problems which are hindering such uniformity, and which have to be, and can be, dealt with as early as possible. We must equally face the fact that there are problems which require a longer study and which do not seem to us to be so urgent.

The Bills of Lading Convention has two important deficiencies. One is the question of transports coming from non-Contracting States; the other is the lack of uniformity of the limitation figures, Article IX (ii). These two questions seem to be the greatest obstacle to a uniform application of the Convention, and they seem to merit our immediate attention.

Our principal aim would be reached only if both of them could be solved. I should therefore like to propose that we should make an effort to try to find and put before the Conference the wording of a new clause which would replace the obsolete one concerning the gold £, and which would enable us to have the same limitation figure in each Contracting State, only expressed in its own currency. If it should turn out to be impracticable to find a suitable new wording for that clause at this stage, let us have at least an exchange of views on the subject which could serve usefully for future work of the International Subcommittee.

The first is the problem which concerns the curious position leading to the fact that Courts of Contracting States do not apply the Convention if a transport comes from a non-Contracting State, and is discharged in a Contracting State. We entirely agree with the idea which is the basis of the suggestion of the Subcommittee in this connection. We would perhaps have some drafting suggestions in relation to this, but I would not like to speak about them now.

We cannot therefore agree to the proposals of delegations which are in conformity with the first conclusion of the Subcommittee. For this reason, we cannot agree with the Delegation of the Netherlands. We rather feel that if there exists a possibility for option between a port of a Contracting and a non-Contracting State, we have to envisage also the situation where neither the port of loading nor that of discharge is in a Contracting State, where the Convention would, in such case, apply also, according to the Netherlands proposal. If the place of issuance is a place different from the port of loading, and from the port of discharge, and both ports are in a non-Contracting State, the Convention would also apply.

There is only one step further, and that is, to accept the application of the Convention if the port of discharge as shown on the bill of lading, is not in a Contracting State, but the actual port of discharge is. If we want the Bills of Lading Convention to be extended, and if we agree that its rules are to be more or less standard maritime law, we do not see why this extension should not be agreed upon too.

I should like to turn now to the second conclusion of the Subcommittee. We think that this question had to be approached, taking as a basis an abstract monetary unit, as it was done in many other Conventions. I should like you to remember that we had solutions along these lines in the Warsaw Convention of 1929, Article XXII and in

the Hague Protocol of 1955, Article XI, paragraph 5, both relating to air transport; in the Convention for Limitation of Responsibility of Shipowners, Brussels, 1957, Article 3, paragraph 6, and in the final draft of the Passengers Transport Convention, Brussels, 1957, Article 6, paragraph 3, both relating to maritime questions. We have similar solutions in other fields of transport. I should like to mention the draft Convention for the Transport of Goods in International Navigation, C.M.N., Geneva, 1959, Article 20 paragraph 3; the Railway Convention C.I.M. and C.I.V. Bern, 1952, and the Convention for the Transport of Goods by Road, C.M.R., Geneva, 1956, Article 23, paragraph 3. Each of these Conventions relates to one of two kinds of gold monetary units, one unit fixing the weight of gold at 65 1/2 milligrams, the other at 10/31 grams, both with a fineness of 0,900.

We do not think that we should avoid this problem only in order to prevent our Parliaments from going into the subject. We have to help our Parliaments to find the solution by which they may achieve a unified law, a uniformity which does not exist today.

To conclude, the amendments which are considered at present as practicable might not be introduced in the form of a new Convention, because they are not numerous enough, and because they are very limited concerning their scope. A protocol seems to be more adequate for the said purpose, and I should like to remind you that the Warsaw Convention has been also amended by a Protocol — The Hague Protocol, 1955. Even if all the present Contracting States were not to ratify the new Protocol, that would not create more difficulties. The present position would remain unchanged for those States which did not accept the Protocol, and the improved one for those which would accept it.

Mr. J. Van Ryn, Belgium (translation): The Belgian Delegation is completely in favour of substituting to the old text of Article X of the Convention the new provision which shall result in giving to the rules adopted in 1924 a much wider application field. Moreover, this position is quite normal because since 1928, when the Belgian Parliament was invited to ratify this Convention, it tried in the frame of its powers to extend the field of application as far as possible. It decided to incorporate into the Belgian law, putting into force the rules of the Convention, a provision making the 1924 rules applicable, not only for a carriage to a Belgian port but also for a carriage from a Belgian port.

We can only be happy if, today, your Conference accepts to give a worldwide application to a rule that has seemed useful to us from that moment.

We feel that the text proposed this morning by the American delegation offers, regarding the draft introduced by the Subcommittee

an advantage as far as it stipulates that the rule shall be applicable without taking the law applicable to the contract into consideration.

We are of the opinion that this amendment which has not been put in the draft of the Subcommittee will result in avoiding still more completely all difficulties.

If the amendment is adopted, the Courts shall no longer have to investigate first, as they still often do in several countries, whether the 1924 rules are really applicable considering the nationality of the shipment and considering also the place of the contract.

I feel that in stating that the rules are to be applied whatever the law applicable to the contract may be, the Conference affirms the most clearly that the rules of law which it elaborated and which it intended to make applicable to bills of lading have to overrule all provisions of National Laws. This result is certainly very happy.

We feel, however, that the suggestion of the American Association does not deal with one point, which although of detail, should however not be neglected. This point is the subject of an amendment proposed by the Netherlands Delegation : it is the particular case when a bill of lading mentions two or several optional ports of discharge. We feel that it would be easy to combine both suggestions in one single.

As for the other points, which have been set for before the Conference by Mr Pineus, it seems to us that the experience which is presently lasting nearly 50 years since the Convention for the unification of certain rules in matters of bills of lading has been elaborated has revealed unquestionable lacks. The contrary would have been surprising. The experience has proved too that in several countries where the rules have been applied, they have often been interpreted in very different ways and sometimes even in complete opposite ones.

As a consequence, the unification of maritime law, which is the main object of our work, has not been completely reached in this field and it appears to us that the C.M.I. may not ignore such a situation simply and solely.

Without any doubt, it would be prudent not to reconsider such a sensible compromise obtained those days by discussing a draft of a complementary Convention or by reexamining in one way or another, certain questions which have been debated in 1924.

Nevertheless we should not state now that the task is accomplished when the facts show definitely that such is not the case, notwithstanding the disadvantage which may arise if we return to a task, taken up previously.

Mr. Peter Wrigth, Canada : This Convention is one in which the Canadian Association is very deeply interested. We have been busy for the last four years in Canada trying to induce our national Parliament to enact legislation in accordance with the principles that are now being discussed. We therefore find ourselves very much in sup-

port of the principles, and specifically in support of the American text which completely suits and fits the problems in Canada.

So far as the other matters which have been raised by the Committee are concerned, we do not think that they should be pursued now. So far as we are concerned in Canada we think that if the present text of Article X were amended a good number of the conflict of laws difficulties which oppress us in Canada would cease. Our conflict of laws difficulties are perhaps a little different from some that you have on the Continent of Europe because in almost every case where the Convention is material with us we are many thousands of miles and many centuries of language away from the text that falls to be determined by Canadian law. We are therefore very much in favour of the amendment of Article X in the terms of the American amendment.

Mr. Potamianos, Greece (translation): The Greek Delegation is in agreement with the extensions of the field of application of the International Convention of 1924 but only in the way suggested by the American Delegation.

Furthermore we feel that, in principle, we should reply in the affirmative the question put before us by the report of the Subcommittee concerning the elaboration by the Committee of a draft Convention relating to different questions which have not been dealt with by the 1924 Convention. Nevertheless, any revision of Article IX of this Convention should be excluded.

The President (translation): As nobody else asks to come to the platform I would like to submit two proposals to the Assembly. In fact two questions are introduced by the Subcommittee.

The first one concerns the question to know whether the Assembly proposes a new reading of Article X and which will be the new reading. In this connection two texts have been introduced, one by the Subcommittee presided over by Mr. Pineus and one by the American delegation. The Netherlands Delegation introduced also certain amendments.

I would suggest that we appoint immediately a small drafting Committee, under the direction of Mr. Pineus, which would be composed f.i. (it is merely my suggestion) of Mr. Moore, Mr. Honour, Mr. Govare, Mr. Van Ryn and Mr. Loeff, taking only speakers who have more especially been dealing with the drafting of this text. We might ask the small Committee to examine the possibility of presenting the text at the preliminary meeting of this afternoon.

Does the Assembly agree with the suggestion ?

The suggestion is adopted.

The further point on which we have to take a decision is to know whether, apart from the text proposed for Article X, we wish to extend — and to what extent — the future task of the Subcommittee we shall

appoint, or of the existing Subcommittee, in order to examine whether a draft of a complementary Convention to the 1924 Convention should be established, in order to find a remedy for the lacks and defects which are proved to be in this Convention.

I suggest that, on both the first and second point, a final decision be taken this afternoon, in order to allow each of us to think it over. Does the Assembly agree with this suggestion ?

The suggestion is adopted.

(Interruption)

Mr. Kaj Pineus, Sweden : After we had finished with the subject in the Plenary Session we worked on the draft of Article X.

The text we have before us has undergone some improvement, so will you please take the English text of Article X and try to follow it. I will read it very slowly :

« The provisions of this Convention shall apply to every Bill of Lading for carriage of goods (from one State to another) when the port of loading, the port of discharge or one of the optional ports of discharge is in a Contracting State, whatever may be the law governing such Bill of Lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee or any other interested person. »

You will have noticed that some words are in brackets, we wanted in that way to draw your attention to the problem involved. If we have those words in brackets put into the text, the Convention does not become applicable also for coastal trade, whereas if we have them in the text it does. You know, of course, that the Convention permits a State to reserve the cabotage to national legislation and that some States have availed themselves of this opportunity and created several regimes for that type of transport.

Mr. J. Van Ryn, Belgium (translation): The only question which this Conference is still considering in connection with Article X concerns I understand, the words between brackets in the text before you.

In fact these words are, I think, the expression of an amendment of the French Delegation, I would say an amendment which dared not say its name but which has been incidentally proposed by Mr. Govare.

I must say that personally I was a little surprised and — with the permission of our French friends — discouraged by seeing they were trying to restrict the application field of the Convention.

In order to put it clear before you in a few words I would like to remind you of our starting point.

The International Subcommittee which had been appointed to examine this question has worked for a long time in order to solve a very serious difficulty which had appeared during the application of the

Convention. Article X — everybody is in agreement with that — has been rapidly drafted and that bad drafting has resulted in various countries in different systems applicable to negotiable bills of lading whereas the 1924 Convention intended to establish a uniform rule. You will remember that the very complete report which Mr. Pineus commented this morning gives a very good summary of the disadvantages of the situation.

The origin of the differences about the system between the Contracting States is to be found in the way the States have made use of the possibility offered by the Protocol of Signature permitting to put the Convention into force and the reform appropriated to the particularities of the legal system of each Contracting State. Now the drafting of such appropriated form resulted in introducing divergencies of substance of which the system of proof of damages ascertained at the port of discharge, is one of the most frequent.

The fact that certain Contracting States apply their National Law to litigations arising in matters of international carriage between their nationals whereas other Contracting States apply the Convention to the same cases is resulting from the fact that the Convention in general and Article X in particular do not give a precise definition of the application field of the Convention. So there was a lack, the result of which was felt in the way showed in the report.

The Subcommittee after carefully considering the possible solutions unanimously came to the conclusion that the only way to solve the question was to extend the application field of the Convention. In other words it was necessary to substitute to Article X, a provision extending and not restricting the field of application of the Convention. That is what we are trying to do.

And now it is proposed to insert in the new text of Article X a provision which was not covered by the old reading and which results in a new restriction in the field of application of the Convention because if the French amendment were adopted, the provision of the Convention would only be applicable to bills of lading relating to carriage of goods from one State to another.

Some argue that it is necessary to put aside the application of the Convention to coastwise trade and that is the reason why the Convention should contain a provision, saying that it is not applicable to carriage from one port of one State to another port of the same State.

I think that this is an error. The question of coastwise trade which has been reminded of by Mr. Pineus a few minutes ago, is covered by the 1924 Convention which reserves expressly to the State the right of not applying the uniform system to coastwise trade but, what is aimed at in fact, is something else : it is the permission to establish legally a system different from that of the Convention. That is what

happened in several countries. That is the awkward situation which is a source of confusion; it is the situation which is described in the report. The amendment which is proposed to you, aims, to a large extent, at going back to that situation, which it was intended to avoid.

So, I think that the amendment is in direct opposition with the meaning of the work of the Subcommittee. The Subcommittee has conceived that its task was to widen as much as possible the field of application of the Convention. It has submitted to you a draft Article X which was so intended and would have given such results. It is proposed to insert a restriction in the new formula which not only shall lessen the field of application of the suggestion which is made but which involves a regression if we compare it with the text of 1924.

Gentlemen, I apologize for ending by making a comparison. In our neighbour country, the Grand Duchy of Luxemburg, there is a famous procession : the procession of Echternach where pilgrims make three steps forwards and two steps backwards and, if I am right, I think we cannot seriously invite this Conference to behave like the pilgrims of this procession.

Mr. J. Govare, France (translation): We are very surprised that our Belgian friend is surprised about the French report dated 7th June 1957 and the formal proposition mentioned in the same report aimed at maintaining Article X and adding : « provided a carriage for another State is concerned ».

Coming back to what I said this morning, the important thing in the International Maritime Conference as well for shipowners as for Clubs, Underwriters, Bankers, is to know which law will be applicable to the carriage.

Now, this is of vital importance when international carriage is concerned; this is of no importance, although I dare not say of no importance at all, when a national carriage from one port of one country to another port of the country is concerned.

As a consequence the provision we shall adopt has no importance unless we deal with international commerce, because only in these matters has our Conference a real role and I add that if by this Convention we intend to prevent the States from regulating in their own way carriages between their own nationals in their own ports we run the heavy risk to have to meet with the opposition of the Governments when we go to Brussels because we are interfering in a field which is not ours. We have to deal with international questions, which have only a vital, active and primordial interest when they are international and as a consequence I ask the Assembly to ratify the French draft approved by the drafting Committee which means to add the words « a carriage of goods from one State to another ».

Mr. John C. Moore, United States : As I understand the Belgian remarks they do not like the proposal that the application of the Convention be restricted to international trade on the grounds that the Convention should be given the widest possible application. Many countries specifically exclude the application of the Convention from their coastwise trade, including the United States and quite a number of others. We would not be able to agree to the extension of the Convention to our own coastal commerce and, undoubtedly, our Government would make a reservation. The proposal as put forward including the bracketed material would leave it open to any State to extend the Convention to its own trade, and in that way we would have a Convention which would be accepted by everyone without reservations.

Mr. A. Loeff, Netherlands : On behalf of the Netherlands Delegation I should like to make two points. The first is that we quite agree with what has been said by Mr. van Ryn as to the fact that in the draft now submitted to the Conference there is really a restriction of the application of the Convention. The Convention as it stands now, dated from 1924 — the Convention itself — is applicable to coastwise shipping, to cabotage. In the protocol there is a possibility for the adherent States to exclude that shipping. We are now doing just the contrary. We are excluding the principle of cabotage or coastwise shipping from the Convention and I think as a matter of principle that is the best way of drafting.

The second point is that this morning when addressing you I said that we objected to making the Convention applicable to carriage when the port of discharge, without any restriction, would be situated when the Contracting State then the Convention would have to be applied even in the case of a port of refuge, if that were in a Contracting State, while the port of loading and the port of discharge would both be situated in a non-Contracting State. If you replace those words « under which (Bill of Lading) » in the English text by « when » it is quite possible to construe the sentence this way : that the port of discharge mentioned here is the port where the goods are discharged, and that was not the intention of the Drafting Committee.

I do not see any reason why we should not maintain those words « under which (Bill of Lading) the port of loading, the port of discharge... », then it is clear that we only mean the port of discharge where the discharge actually takes place and which from the beginning has been intended as the port of discharge.

The proposal of the Netherlands Delegation therefore is to strike out those words in brackets « for transportation of goods from one State to another ». I may add in this connection that those words, « one State to another » may give rise to great difficulties. For instance, the Kingdom of the Netherlands consists of Holland in Europe, Surinam and the Netherlands Antilles. So that carriage from Holland there,

for instance, would not be a carriage, from one State to another, so it would be outside the scope of the Convention, and that is really what we do not want. As far as the United States is concerned I do not see exactly why, for instance, carriage from the State of New York to the State of Florida or California would not be carriage from one State to another. I think we had better leave out those words but nevertheless make an express provision to this effect : that the reserve made possible in the protocol may be made again in connection with the new text of Article X.

Our second proposal is that we leave the text so that we have the words « under which (Bill of Lading) » and do not replace those words by « when ».

Mr. J. Honour, Great Britain : On behalf of the British Delegation I want to say that we have no objection, if certain countries wish it, to putting in the words « from one State to another ». As far as we are concerned in Great Britain the point is an academic one, because under our Act if a bill of lading is issued the Hague Rules apply, if it is not issued in the case of coastal trade then it does not apply; but when it is issued it does apply whether coastwise or not and, therefore, it would not affect our law in the slightest if these words in brackets were put in.

As I understand it, if these words are put in certain countries which have difficulties at the moment are going to be assisted and, therefore, from our point of view we will support it if necessary.

There is just one further point that I would like to mention. Mr. Loeff did just raise a point, for which I am extremely grateful, in saying that he preferred the words « under which ». When Mr. Govare suggested the word « when » which he said was a little more appropriate for translation into French, I did not appreciate that it might make the difference to which Mr. Loeff has referred. In point of fact I think it does make a rather subtle difference because what we want to convey is the idea of the port of discharge named in the bill of lading and not an actual port of discharge which might well be a port of discharge to which the ship is diverted, for example, under a Caspiana Clause.

The President (translation): Does anybody else ask to make a statement on Article X ?

If nobody asks to come to the platform I will submit to your votes the text proposed by the Subcommittee.

I suggest to pass it first without the amendment of the French Delegation and to pass the amendment afterwards.

Mr. Kaj Pineus will read the text submitted to your votes.

Mr. Kaj Pineus, Sweden : The text without the controversial words, if I may say so, those words which Mr. Govare wants to include

as do some others, would be the following; that is the text without the French addition and taking into account the objection made by Mr. Loeff :

« The provision of this Convention shall apply to every Bill of Lading under which the port of loading, the port of discharge or one of the optional ports of discharge is in a Contracting State, whatever may be the law governing such Bill of Lading and whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person. »

Are we agreed that that is the first text on which you will be invited to vote ?

The second text on which the Chairman probably will invite you to vote is the version which will include the words submitted by the French Delegation and the American and the British. If it is accepted, it would then read :

« The provision of this Convention shall apply to every Bill of Lading for carriage of goods from one State to another, under which Bill of Lading the port of loading... »

The President (translation): We are going to vote now on the text just read by Mr. Pineus. In order to avoid misunderstanding I will read the French text : « Les dispositions de la présente Convention s'appliqueront à tout connaissement sous l'empire duquel le port de chargement, le port de déchargement, ou l'un des ports à option de déchargement se trouve dans un Etat contractant quelle que soit la loi régissant ce connaissement et quelle que soit la nationalité du navire du transporteur, du chargeur, du destinataire et de tout autre intéressé ».

The first vote will concern this text. Immediately after that vote, I will ask you to vote once again in order to decide whether the text I have just read, is to be amended by the words : « relatif à un transport de marchandises d'un Etat à un autre », in English : « for carriage of goods from one State to another ». That is thus the French amendment.

— The new text of the Convention is adopted by 19 votes.

Voted in favour : Denmark, Canada, Great Britain, Japan, Turkey, Italy, France, Poland, Israël, Netherlands, Switzerland, Belgium, Yugoslavia, Portugal, Germany, Spain, Norway, Sweden, United States.

Abstained from voting : Finland, Greece.

The President (translation): Now we will vote on the amendment of the French Delegation, which consists in adding to the text we have just adopted : « relatif à un transport de marchandises d'un Etat à un autre ». In English : « for carriage of goods from one State to another ».

— The amendment is adopted by 13 votes against 6 and 2 abstentions.

Were in favour : Canada, Denmark, Spain, Great Britain, Sweden, France, Italy, Japan, Norway, United States, Greece, Portugal, Germany.

Were against : Belgium, Netherlands, Yugoslavia, Turkey, Switzerland, Poland.

Abstained from voting : Finland, Israël. /

The President (translation): Now we have to take a decision on a second question relating to the same Convention that is to know, whether besides the modification of Article X, we entrust our special Subcommittee to examine the other amendments which might be made to other provisions of the Convention on Bills of Lading or whether, on the contrary, we are going to limit our action to Article X.

I submit to your votes the proposition of entrusting the Subcommittee with studying the other modifications or adaptations to the provisions of the Convention.

— The proposition is adopted by 16 votes against 5.

Voted in favour : Denmark, Spain, Finland, Sweden, Norway, Italy, Turkey, Switzerland, France, Israël, Poland, Belgium, Netherlands, Yugoslavia, Portugal, Germany.

Voted against : Canada, Great Britain, Japan, United States, Greece.

The President (translation): As nobody else asks to come to the platform we will start with the problem of letters of indemnity and I ask immediately Mr. Gyselynck, President of the Subcommittee to come to the platform.

LETTERS OF INDEMNITY

Mr. L. Gyselynck, Belgium (translation): The international Subcommittee on marginal clauses and letters of indemnity has examined the draft resolution presented by the Maritime Law Association of the United States. It has also examined the remarks of some National Associations to which the draft resolution has been submitted. During the examination it has appeared that new elements have been added to the debates since the drafting of the draft resolution of the Maritime Law Association of the United States. It has appeared also to be advisable to continue to examine the problem, taking into account amongst others the new elements. Amongst these, I can mention on the one hand progress made recently in defining minor reservations which, in agreement with all parties concerned, must not influence the negotiability of Bills of Lading and on the other hand the necessity of harmonizing the American Draft resolution with Article III, 5° of the Hague Convention of 25/8/1924.

In these circumstances the International Subcommittee is unanimously of the opinion that it has to ask the Comité to be authorized to continue to study the question in order to accept the request of the representative of the Maritime Law Association of the United States who wishes to complete his draft resolution and to present a report for the next meeting of the C. M. I.

As a consequence we ask you to accept the following resolution :

« The Conference, having examined the report presented by the President of the International Subcommittee, invites the Conseil de Gestion to ask the International Subcommittee to continue the examination of this problem and to address a new report to the Conference. »
(Applause).

The President (translation): I suppose that it is not necessary to vote and that the Assembly agrees to follow his Subcommittee and to decide to proceed with the study of this problem. (Unanimous agreement).

(Interruption)

The President (translation): Our Vice President, Mr. Brajkovic will read now the resolutions which have been passed Wednesday by the Plenary Sessions.

Mr. V. Brajkovic, Yugoslavia :

REVISION OF ARTICLE XIV OF THE CONVENTION ON ASSISTANCE AND SALVAGE (1910)

The Plenary Conference of the Comité Maritime International requests its President to submit to the Belgian Government the resolution of the Comité Maritime International for inviting the Brussels Diplomatic Conference for Maritime Law to substitute in an appropriate manner to Article XIV of the International Convention on Assistance and Salvage the following text :

« The provisions of this Convention apply also to services of assistance or salvage rendered to a ship of war or to any other ship owned or operated by a State or any Public Authority.

« Claims against a State for assistance or salvage services rendered to ships of war or to ships appropriated exclusively to public non-commercial services shall be brought only before the Courts of such State.

« When a ship of war or any other ship owned or operated by a State or a Public Authority has rendered assistance or salvage services, such State or Public Authority has liberty to claim remuneration but only pursuant to the provisions of this Convention.

« The High Contracting Parties reserve to themselves the right of fixing the conditions in which Article XI will apply to Masters of ships of war. »

INTERNATIONAL STATUS OF SHIPS IN FOREIGN PORTS

« The Conference having taken note of the draft Convention prepared by the President of the International Subcommittee, Mr. G. Berlingieri, and being of the view that the problem requires a comprehensive study, asks the Conseil de Gestion to direct the International Subcommittee to continue the study of the problems and to submit a new report to the Conference. »

REGISTRY OF OPERATORS OF SHIPS

The President (translation): Mr. Brajkovic has kindly read before this Assembly the text of the resolutions which have been adopted the day before yesterday by the plenary session.

We will put them as such on our records.

Saturday, 26th September 1959

PLENARY SESSION

Chairman : President Albert Lilar

ATOMIC RISKS

Mr. J. T. Asser, Netherlands (translation): The International Subcommittee discussed the whole of the draft and adopted some amendments. However, we maintained the main principles on which the Antwerp draft was based.

This enlarged Subcommittee appointed a Drafting Committee which established a new draft Convention in which the amendments adopted are incorporated

First of all, in the first paragraph of Article I dealing with the definitions, the word « de mer » in the French text and the word « seagoing » have been deleted. This means that the Convention shall apply to all ships without any exception, even to war ships or Governmental ships exclusively appropriated to a public service.

In paragraph (ii) of the same article we say : « l'Etat dont émane la licence », the draft Convention does not refer to the registry of ships but only to licences and other Governmental authorizations allowing to operate the ship.

For the same reason we deleted also in the second paragraph the words « qui a procédé à l'immatriculation » and in the English text « registered ».

After paragraph (ii) of the Antwerp text you will find the original paragraph (viii). Paragraph (viii) has not been modified.

Paragraph (v) of the new draft, i.e. paragraph (iv) of the old draft, contains a text coming from what is called the Vienna draft. This text is more simple and allows no interpretation.

In paragraph (vii) in the new draft — paragraph (vi) in the old one — the word « matériel » after the word « dommage » has been deleted as well as the words « atteinte à tout droit ».

According to the French and Belgian lawyers, who are members of our Assembly, this expression covers all immaterial damage including eventual « dommages moraux ». So, in the States where the national law grants damages for « dommages moraux » the Courts shall be entitled to grant such damages.

So, the new text of paragraph (viii) contains the definition of the nuclear incident. You will observe that the definition has been substantially changed. We say : « tout fait qui a causé un dommage nucléaire, pour autant que ce dommage résulte etc... ». And we add : « sauf si ceux-ci sont transportés comme cargaison. »

The reason of these additional words is to stress clearly that the Convention does not apply to damages occurred during the carriage of radio-active materials. The O.E.E.C. Convention covers this subject and that is not our concern.

The present definition means that even the breaking of a reactor has to be considered as a nuclear incident without considering the cause from which the break originates. Mr. Cyril Miller will give you later on when we examine Article VII, more details on the reasons which brought us to modify paragraph (viii) of Article I.

In Article II we have divided the paragraph (ii) of the Antwerp text in two parts. Furthermore, a further paragraph (v) of this Article contains a new provision, i.e. the old Article V. This paragraph says that if the damage suffered by the claimant has been caused by his wilful act the competent Courts shall be entitled to refuse or to reduce the indemnity the claimant was entitled to claim from the operator, in pursuance of this Convention.

Let us consider the case where the claimant is a company and where the nuclear damage has not been caused by its servants but by its Board. This case is very unlikely. The Drafting Committee thought especially of a case where the Board of a shipowning company orders the master of one of its ships to collide wilfully with a nuclear ship. If in that case the guilty ship has suffered nuclear damage the Court is entitled to refuse an indemnity to the owner or, to reduce it. This solution is apparently quite fair.

Finally, in paragraph (vi) dealing with the recourse action of the operator against third parties, the word « individual » has been substituted to the word « person » in the English text. To admit the word « person » might result in holding a company liable in pursuance of the principle of *respondio superior* and if a servant of a company had wilfully caused a nuclear damage a recourse action against the company would be possible. The enlarged Subcommittee which accepted that amendment, felt that this would be an inadmissible consequence and that the possibility of recourse action, in the case the nuclear damage has been wilfully caused, should be limited to a recourse action against the individual who caused the nuclear incident.

I now come to Article III, stating that the liability of the operator is limited provided there is a licence or an appropriate authorization given by the competent authority of the licensing State.

These words have been added because, when in a specific case there is no valid licence the owner of the nuclear ship is considered to

be the operator in pursuance of Article I, paragraph (iv). But, it seems not very fair that the owner of a nuclear ship without a licence might prevail himself of any limitation. The owner should be liable without limit. That is the reason why the first paragraph decides that only the licensed operator shall have the benefit of the limitation of liability. I add, in my personal name that I think that we should insert in this paragraph a new provision according to which the operator or the owner who has no licence, shall not either have the benefit of the limitation of liability provided by the 1957 Brussels Convention.

No important changes have been made to the second paragraph, but the third paragraph of Article III of the Antwerp draft has been completely deleted : the Subcommittee felt that the Comité Maritime International whose task it is to prepare commercial draft Conventions should not introduce in its draft under what-ever form provisions imposing financial obligations on the Governments. The question to know whether and in the affirmative to what extent and how the Governments will be willing to execute a financial burden is a question to be solved by the Governments and by the Governments only.

The same reasons brought the Subcommittee into inserting no figure in the first paragraph of Article III, but the Subcommittee suggested to attach to the draft Convention, which will be sent to the Belgian Government, a restricted number of recommendations. The first of these recommendations deals with the problem I am just putting before you.

Nothing special is to be mentioned in connection with Article IV, or in connection with Article V, except a few corrections in the wording. You will find a new paragraph (iv) which broadly corresponds to Article 8 (c) of the O.E.E.C. draft Convention.

Article VI has been completely redrafted. Indeed, the text of Article VI has been replaced by a text of the O.E.E.C. draft.

I will not speak about Article VII because Mr. Cyril Miller is dealing with it and I come straight to Article XI because Articles VIII, IX and X have not been amended.

Except for a few modifications only in the wording, you will find only a new paragraph (ii) which repeats, to a certain extent, what has been said in the 1957 Brussels Convention on limitation of liability.

This paragraph (ii) provides that the rules relating to recovery, apportionment and distribution of the sums, representing the limit of liability, set out in Article III, paragraph (i), shall be governed by the national law of the licensing State.

I think that always we admitted that principle in our previous Conventions, i.e. that we do not deal with questions of procedure. This is primarily a question of procedure although some basic questions might be covered. But we are referring such questions to the national laws.

In Article XII, there is a slight amendment to the first paragraph in order to stress still more clearly than the Antwerp text had done the exclusive character of the jurisdictions provided for in this paragraph. This means that the victims shall have a choice only between the Courts of the licensing State and the Courts of the State within the territory of which the nuclear incident occurred.

I draw your attention upon the fact that the words « dommage nucléaire » mentioned in the Antwerp text have been modified in conformity with a decision taken by the enlarged Subcommittee and replaced by the words « accident nucléaire ». So it is the place of the nuclear incident which determines the competence of a judge in the case provided for under Sub-Paragraph (b).

The second paragraph of Article XII has been slightly amended and it repeats a part of the text of Article 13, paragraph b. of the O.E.E.C. draft.

A new Article XIV has been introduced in consequence of an amendment proposed by the American Delegation. The main object of this Article is to say that this Convention shall absolutely overrule all other existing international Conventions when nuclear damage caused by a nuclear ship is concerned.

The Drafting Committee has established five recommendations which in the mind of that Committee should be attached to the draft and submitted together with it to the Belgian Government for the next Diplomatic Conference.

I will say nothing more concerning the first recommendation; I told you already about it.

The second recommendation states that it seems unavoidable that the States should be directed to assume some obligations and that the Diplomatic Conference should consider the elaboration of an international system appropriated to ensure the compliance with these obligations. The suggestion contained in this recommendation is necessarily rather vague because we cannot suggest to the Governments a system ensuring the execution of their international obligations set out in the Convention.

The third recommendation concerns the second paragraph of Article XII, i.e. the paragraph providing that judgments rendered by the Courts of the State where the nuclear incident occurred, in the case such State is not the licensing State, shall be recognized by the licensing State.

Especially the American Delegation made very pertinent objections relating to the application of this law. It seems that this provision is in opposition to certain rules of the Constitution of the United States. It is possible that the same thing occurs in other countries. That is the reason why we ask the Governments to re-examine this point more specially.

The fourth recommendation refers to an amendment of the United-States Delegation, which has been rejected by the enlarged Subcommittee. The amendment provides that each Contracting State should be entitled to exclude from the benefit of the Convention the owners or the operators of a nuclear ship having a licence granted by a non-Contracting State and also the victims who are nationals of a non-Contracting State.

The Drafting Committee was of the opinion that the principle was so important that it would be wise and advisable to draw the attention of the Governments on this point.

The fifth recommendation has also been introduced at the request of the United-States Delegation. I do not think it is necessary to give details on this recommendation, the text is very clear.

Mr. C. T. Miller, Great Britain : You will see from Article VII that the Drafting Committee has reverted to the original text contrary to the resolution taken by the Commission, I think late on Wednesday night, which may be significant, and which gave the Drafting Committee a quite impossible task.

The first part of Article VII relates, to nuclear damage caused by one nuclear incident for which more than one operator is liable. The only conceivable occasion upon which such a situation might arise — at least the only occasion of which I can conceive — is where you have two nuclear ships in collision and both reactors are penetrated or disturbed, so that both reactors emit ionising radiation which is harmful. The Commission decided — I repeat late on Wednesday night — that in that event the operators should be jointly and severally liable, but there should only be one limitation fund, namely the one limitation fund in Article III, whatever that fund may be decided to be.

I ask you, Gentlemen, to speculate what would happen in a concrete case if that was so. Imagine a French nuclear vessel and a British nuclear vessel in collision in the Channel. Both reactors are so disturbed or injured that both emit ionising radiation and there is widespread damage. The victims, because the operators are jointly and severally liable, can sue either the Frenchman or the Englishman, or may sue both. In that event, in the first place how does the Frenchman or Englishman know what part of the single sum they have to put up ? It is quite impossible. Secondly, the first part of Article VII only comes into play when it is not possible definitely to allocate the damage between the operators. That is a matter that probably will have to be decided by a Court.

Reverting to the case I have given you, supposing the English Court decides that it is possible definitely to allocate the damage between the operators so that the first part of Article VII does not apply at all, and supposing the French Court decides it is not possible definitely to allocate the damage between the operators, so that in the French

view the first of Article VII does come into play, the position is an impasse; it will not work. Therefore, the Drafting Committee felt that rather than put on paper something that would enable those outside the Comité Maritime to point the finger of scorn at it, we would have to revert to where there is more than one nuclear operator liable there must be two limitation funds. There are many technical difficulties in the way of only one limitation fund, but the two illustrations I have given you I hope will convince the Conference that however much they may desire as a matter of principle to have only one limitation fund, the thing simply will not work. For that reason, after at least an hour's discussion we came to the conclusion that in spite of the resolution of the Commission we should have to draft the first part of Article VII so that there were two limitation funds.

May I also add this : if you look at the matter and the merits from the point of view of the victims, if there are two nuclear operators whose nuclear reactors emit these noxious radiations, it seems a little unjust that the victims should not have two limitation funds, although that is not a matter for us in the Drafting Committee. All that is a matter for us is that it is quite impossible to draft an intelligent provision in which only one limitation fund is provided for.

The President (translation): I should like to call the attention of the plenary Assembly, for a few minutes, in order to explain how, in my opinion, the important vote we are going to take today has to be contemplated.

I make that suggestion because I am aware of the considerable efforts which were required from the members of this Conference in connection with the question we are now examining.

All this work should not be lost and should not be considered at a certain time as a purely academic work on which nobody agrees in the future and which stops here.

It would be extremely overweening to imagine that the vote we are going to take is going to fix in a definite way and *ne varietur* the feeling of the Committee on the solution to be given to the problem of nuclear propulsion.

Furthermore, I am convinced that between the time we are fixing our text and the time when it is studied by the Governments and submitted to the Brussels Diplomatic Conference, a lot of things may change.

The studies made along the same time, the evolution itself of a problem which is essentially moving should allow us, even after fixing our position today, to be continuously informed of all that is happening in this field and eventually to express our opinion on such or such an aspect of the problem.

At the beginning of this discussion I would like to submit to your thoughts a suggestion which seems to meet the rightful desire not only

of those who wish that our Conference should elaborate a real suggestion for solving the atomic problems but also of those who are more or less reluctant and who wish to postpone the date of a final solution.

As far as I am concerned, I belong to the first category because I think that, if we decide to postpone the decision to a later date, it would be particularly difficult to select that date for I think that as long as the atomic problem is developing we shall always be in the same situation and that therefore we should fix today the result of our works in the present state of affairs.

The solution I would like to submit to your thoughts is as follows : our work would end today, but our work would end today by the adoption of a text which can be considered as our present contribution to the important problem we are studying and which can be submitted, as such, to the Governments and after closing this Conference we shall not hesitate to go back with the same realism to the problem and to say that it is not because we voted a text that the question was solved for ever.

Consequently, I suggest that we vote today on the draft but that simultaneously we decide that the international Subcommittee previously entrusted with the study of the problem should continue its work in the future and follow the atomic problem and the work of the other international organizations dealing with the question, that it should inform the Comité Maritime International and the participating associations so that between the time we take our decision today and the time when the Governments have studied our draft and have met to take a decision on the problem, we are always informed of all the elements which eventually need to be adopted, revised, adjusted in certain aspects of the problem.

So we are going to prove, today, that our work is not fruitless that we reached a conclusion which cannot be final because the question is moving but we are going to show the meaning of the works of the Comité Maritime International and its preoccupation to contribute to this problem, and we are going to prove at the same time that we are open for anything science and the evolution of thought in this field can bring in order to allow us to make additional recommendations if necessary at the time when the Governments have to take a decision. (prolonged applause).

Mr. Arthur M. Boal, United States : On behalf of the American Delegation I wish to endorse everything that the President has said. We are in a changing world. It used to be said that there were only two certain things in the world : one was death and the other taxes. We must now add to that change. We have always had change but the pace has been very rapid in recent years and it is getting more rapid. It is up to us in this changing world to get a Convention that will deal

with the atomic ship because our law as it stands today is not adequate for that purpose.

We are particularly qualified to give advice to Governments on particular phases of atomic liabilities. It is our desire to do it. It is our duty to the profession of which we are a part. It is our duty to the world in general. We should meet that duty by getting our advice on this matter to the Governments as soon as we can.

In so doing we must keep in mind our main objective : to get a code or Convention which will permit the development, the building and the operation of nuclear ships if they are competitive and at the same time will reasonably protect the public against a nuclear incident if one may or does occur. In the work here there have been very many views expressed. The debate has indicated that every Delegation has studied the text of the draft, has studied the subject and has intelligently presented a point of view. The Convention which has come from the Drafting Committee is not the view of any one man or any one Delegation, it is a composite view and it must be seen a composite view. Every Delegation here in one way or another has made a contribution. That contribution should be recognized.

We must always keep our main objectives in mind and not forget them. When we first looked over this draft as it came from the Drafting Committee we wanted to make some reservations in it. Then we wanted to make some amendments. After further consideration, in view of our objectives, we decided it was a good Convention. Thinking about it still more we saw it was a very good Convention. Finally, we came to the conclusion that it was an excellent one and we dropped all idea of making any reservations in it or asking for any amendments because we did not want to get begged down in detail to the extent that we would lose sight of our objectives.

This reminds me of a story which illustrates the point. On a winter's day there was new falling snow and two boys made a bet with each other as to which could walk the straightest line. So each selected a tree as his objective and a starting point, and they started out. Each used a different method. One boy put one foot down very carefully in front of the other and never took his eyes off his feet. The other boy adopted a different method, he put his eyes right on the tree which was his objective and never once looked at his feet. When they had completed their walks the boy who kept his eyes on the tree had walked a very straight line; the boy who had kept his eyes on his feet had walked a very crooked line.

So I say to you here, please forget details, amendments dealing with details, consider this as a fundamental Convention, a great contribution to the maritime law of the world.

It is our recommendation that it be accepted as one that meets our objectives.

Mr. O. Dettmers, Germany : Although the discussion regarding Article II has been closed and the Article has been accepted, I beg you to allow me to utter a few words on behalf of the German Delegation.

The German delegation has not taken part in the general discussion regarding the principles laid down in Article II. Our friend, Mr. Roehreke, has explained the reasons why at the beginning of the Conference the German Delegation felt unable to accept the Committee's draft of Article II without further consideration of the consequences which might arise, especially from the introduction of the main principle of absolute liability.

In the meantime, having had ample opportunity to study the draft and the explanations given by various members of the drafting Committee, and bearing in mind that the main principle of absolute liability without regard to fault, negligence or inevitable accident is not unfamiliar to our German law in various respects, though not in shipping, we do not feel it necessary to uphold the afore-mentioned reservations to Article II any longer. Hence the vote of the German Delegation will be in favour of Article II in its present draft.

Mr. President, I should like to take the opportunity to add that we shall support your proposal made this morning, to which we have just listened.

Mr. R. P. Cleveringa, Netherlands (translation): The Netherlands Delegation is wondering whether it is not better to go not quite so far as just proposed.

We feel that the draft Convention, as it will come out of the debates of this Conference, is not quite ripe to be submitted to the Belgian Government, especially for following reasons.

The draft prepared at Antwerp last July is based on a double liability of the operator as far as he can be covered by commercial insurance and another of the licensing State.

It might be advisable for the National Associations to obtain some views as to the attitude of their Governments on this point. Unfortunately, we did not have enough time to go further into the question. If one or more Governments appear to have special ideas on this question, it seems to be more advisable that the Comité Maritime International, through one of its agents, for instance, through the international Subcommittee, examines same in order to decide whether it would follow entirely or partially these views before submitting its final draft to the Belgian Government.

If we neglect to do that it might happen that our draft Convention be rejected *ab ovo* and that the Governments will not take into account the work of the Comité Maritime International and this, as we fear, will prejudice considerably the prestige of the Comité Maritime International in the future.

Such procedure as we suggest must not necessarily take a long time. It opens, we feel, a much larger possibility for the work of the Comité Maritime International to obtain a positive result and furthermore it offers the advantage of allowing the international Subcommittee to adjust in the meantime some details and of improving in that way the draft prepared by this Conference.

Briefly, we suggest to send the draft back to the international Subcommittee authorizing it to submit it to the Belgian Government with or without improvements.

The President (translation): I hope that Mr. Cleveringa who knows how much I appreciate his interventions, will allow me to make two objective observations.

First, the preparatory work of this Convention has certainly not been made in a rush. I gather that the Netherlands Association has also been dealing with that work for a long time. The international Subcommittee which met in Antwerp during 48 hours without interruption, in order to adjust the text, was presided over by another eminent personality of the Netherlands Delegation, Mr. Asser, and in these circumstances I am somewhat surprised to learn that the text of these deliberations has apparently been brought to the knowledge of the Netherlands Association only lately.

My second observation is more important because I think it is my duty, in my capacity of the president of this Comité, to draw the attention of the Assembly on the danger contained in the suggestion made by Mr. Cleveringa.

He suggests to send back the draft to the international Subcommittee and to allow, if I understood correctly, the Subcommittee to assume the responsibility of submitting the draft to the Governments with or without amendment.

I venture to draw the attention of the Assembly on the resignation of the General Assembly which should ask the Subcommittee to assume the responsibility of the required decision. This would be a rather dangerous precedent for our Comité to leave the responsibility of such an initiative to a Committee when we are meeting here to take a decision.

If nobody asks to come to the platform we will continue the work we started this morning.

The Netherlands Delegation proposes following amendment (to Article I, paragraph (i) :

« Replace « fuels » by « fuel ».

This suggestion can be accepted because it is in conformity with the French text.

The amendment is adopted.

The Netherlands Delegation suggests following amendments to paragraph (viii) of Article I :

« Delete the words « causing nuclear damage and ». »

The amendment is adopted.

The Netherlands Delegation proposes also :

« Paragraph (viii), Article I : substitute « as cargo » by « under a contract of carriage ». »

Mr. C.T. Miller, Great Britain : We think that it might be dangerous to delete the words « except when carried as cargo » and to substitute for them « under a contract of carriage ». Now, that might be taken to mean to a layman, certainly, that there would be some well-known form of contract of carriage covering a bill of lading or charter party, whereas in fact it may very possibly occur that radio-active products or waste will not be carried under a wellknown form of marine contract of transport. It is perfectly true that a lawyer would say, «Well, if anybody takes on board radio-active products or waste, agreeing to carry them from « A » to « B », there is a contract by implication », but this Convention is not going to be read only by lawyers. I think any layman would think that means that you except radio-active products or waste when they are carried under a bill of lading or a charter party. Therefore, I am afraid we must oppose that amendment.

The President (translation) : Does the Netherlands Delegation wish to have a vote on this amendment ?

Mr. R. P. Cleveringa, Netherlands (translation) : No.

The President (translation) : The amendment is thus withdrawn. We come now to Article II.

Here we have also an amendment of the Netherlands Delegation to paragraph (i) : « Substitute on line 4 « on » by « of » (such ships).

The amendment is adopted.

On paragraph (ii) of the same Article, the Netherlands Delegation suggests to substitute « required by law to accept responsibility » by « made responsible by law ».

Mr. C.T. Miller, Great Britain : I hate to be meticulous at this stage of the proceedings as we are coming up the straight towards the winning post, but I think the amendment of our Netherland's friends does not quite express what the Drafting Committee meant. Under certain systems of law already in existence, and ours is one of them, a person is allowed to take charge of nuclear material only on condition that he voluntarily assumes responsibility. It is not the law in the strict sense which says he is the responsible man, the law says that unless you enter into an undertaking to be responsible it will not let you touch the

stuff. It is required by law to accept the responsibility precisely and exactly. To express that type of legislation, I think it would be a little unwise — not necessarily fatal, I am not pretending that — to alter the phraseology in this connection.

Mr. F. Van der Feltz, Netherlands : I thank Mr. Miller for his clarification, and we withdraw the amendment.

The President (translation): The Netherlands Delegation suggests in paragraph (iii) of the same Article II :

« Substitute to « nuclear damage caused thereby » the words « nuclear damage caused by a nuclear incident arising out of or resulting from such nuclear fuel or radio-active products or waste ».

The amendment is adopted.

The Netherlands Delegation suggests on paragraph (iv) of Article II, following amendment :

« After « sections (i) and (ii) » add « and (iii) ». »

The amendment is adopted.

The Netherlands Delegation suggests also on paragraph (vi) :

« Substitute to « acting or omitting to act » « having acted or having omitted to act ».

The amendment is adopted.

Now, we have also an amendment of the Swedish Delegation on Article II in order to modify paragraph (v) as follows :

« If the nuclear damage is wilfully or recklessly and with knowledge that nuclear damage would probably result, caused by a claimant otherwise entitled to compensation under this Convention, the Court having jurisdiction may refuse or reduce the compensation recoverable by such claimant from the operator ».

Mr. S. Rudholm, Sweden : Article II (v) in the new draft contains a provision that the competent Court may refuse or reduce the compensation if the claimant has wilfully caused the nuclear damage. This provision goes back to a Swedish amendment which was adopted by our meeting, and I would like to stress that point : the competent Court would have power to reduce compensation if the damage were caused by the claimant wilfully or by gross negligence. I now understand that the expression « gross negligence » is one which is not specially favoured by lawyers from common law countries, and that this fact only has been the reason for the dropping of the expression « gross negligence » in the new draft.

To meet the difficulties referred to the Swedish Delegation now proposes a slightly different wording of their former amendment. In the new amendment which has been circulated the wording is in essen-

tial taken from provisions in the Warsaw Convention as amended by the Hague Protocol and the Draft Passenger Convention of 1957. Thus the expression « gross negligence » has been substituted by the expression « recklessly and with knowledge that nuclear damage would probably result ».

Mr. J. T. Asser, Netherlands : I do not want to create any difficulty, but I am afraid that the text of the Swedish amendment will not do under our law. In the case of a person being killed through the fault of somebody else, his dependants have under Dutch Law an action which is separate from that of the person killed. Consequently, if we accept the Swedish amendment this right of action of the dependants would not be barred, which we intend to do, and which action is barred under the draft of the Drafting Committee.

The President : Does the Swedish Delegation want a vote ?

Mr. S. Rudholm, Sweden : The Swedish Delegation wants this to be put to the vote. I would like to stress that this amendment has, in fact, already been adopted by our meeting; it is just a new, slightly different, wording.

The President (translation) : I submit the Swedish amendment to your votes.

The amendment is rejected by 11 votes against 6 and 3 abstentions.

Voted in favour : Denmark, Finland, Norway, Sweden, Switzerland, Belgium.

Voted against : Spain, Canada, Great Britain, Japan, Italy, France, United States, Greece, Poland, Netherlands, Turkey.

Abstained from voting : Germany, Portugal, Yugoslavia.

The President (translation) : The Netherlands Delegation proposed an amendment to Article III. This amendment suggests to substitute to paragraph (ii) of Article III a new paragraph reading as follows :

« Only such operator shall be licensed or otherwise authorized by the competent public authority of the licensing State who has taken out insurance or other financial securities covering his liability for nuclear damage in such amount or such type and on such grounds as the licensing State shall specify ».

Mr. F. Van der Feltz, Netherlands : We have understood from the discussion in the special Commission that it was the intention that there should not be a duly licensed operator if he had not insured or given other financial security. We are afraid that the present text where it says : « The operator of a nuclear ship shall be required to have and maintain insurance or other financial security » is not quite clear. In order to protect the public, we think it must be clearly stated in this Convention that only such operators shall be licensed who have taken

out an insurance, and not that they « shall be required to have and maintain insurance. » What would be the case if an operator had taken out insurance and did not maintain it ? Then he would not be a duly licensed operator and so he would be liable with no insurance cover.

I think the protection of the public makes it absolutely necessary that such a case cannot occur. For that reason we think it is much better to draft the second paragraph of Article III in the way we have proposed.

Mr. Leonard J. Matteson, United States : This treaty which we are considering is a treaty relating to the liability of operators. We have not up to this point put into it any provisions restricting the rights of States to license, and I do not think that is a part of this Convention at all. I think it would be a mistake to put in this Convention dealing with liability anything relating to the duty of States in respect of licensing. We think it is foreign to the subject matter of the Convention and we are opposed to it.

The President (translation): I submit to your votes the amendment of the Netherlands Delegation.

The amendment is rejected by 14 votes against 4 and 2 abstentions.

Voted in favour : Spain, Turkey, Poland, Netherlands.

Voted against : Canada, Denmark, Finland, Great Britain, Japan, Norway, Switzerland, Italy, France, Sweden, Belgium, United States, Greece, Germany.

Abstained from voting : Portugal, Yugoslavia.

The President (translation): The Netherlands Association suggests to paragraph (i) of Article V following amendment :

« Substitute « under the Convention » by « under this Convention ». »

The amendment is adopted.

There is also an amendment to paragraph (ii) of Article V, reading as follows :

« Delete paragraph (ii) ».

Mr. F. Van der Feltz, Netherlands : Section (i) of Article V says :

« Rights for compensation against the operator of a nuclear ship under the Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident. »

On the other hand, the second section of this Article says that it is not the nuclear incident which is of importance as the point from which to start the ten-year period, but the date on which there is a « redelivery, discharge, loss or abandonment ». It will then be possible that a nuclear ship is sunk, say, on 1st January, 1960 and nothing

happens, but in 1968, there will be a nuclear incident with the reactor, and then the victims have only two years in which to sue the operator for the damage they will suffer. It is for that reason that we do not need, in order to protect the public, the special period in cases where there is only loss of nuclear fuel or waste without a nuclear incident. I think both cases should be brought under the same paragraph and that the right of compensation will be extinguished within ten years from the date of the nuclear incident.

Mr. C. T. Miller, Great Britain : May I point out that Article II (iii) envisages a special case — and necessarily envisages a special case — where there is a redelivery to an unauthorized person or a loss or abandonment which, in ninety-nine cases out of a hundred, will occur when a nuclear ship herself is sunk and cannot be salvaged.

Article II (iii) quite rightly goes on to say that « the operator shall remain liable ». But if you do not put anything in Article V he will remain liable for ever, which is quite impossible.

Now that will be the effect of the Dutch amendment as it stands. But I understand that what our friends from the Netherlands propose is that the rights of compensation in such cases shall only be extinguished if the action is not brought within ten years from the date of the nuclear incident. I appeal to all those who are underwriters or have underwriting interests in this Assembly just to think what that means. A nuclear ship is sunk and she cannot be salvaged. We are told that reactors are so well built that they can withstand practically everything; but the action of the sea is inexorable, as those of us who are practically concerned with ships know, and eventually the reactor may well break up, maybe fifteen years later. In that event, if the substitution proposed by the Netherlands is adopted, the period of extinction of the rights would be twenty-five years. Now many of us have thought that ten years is a bit long for insurance purposes, but twenty-five years is quite impossible. The operator's liability in that respect would be completely uninsurable; no underwriters could possibly, upon the loss of a nuclear ship, set aside sums to meet a possible claim within twenty-five or thirty years or whatever the period may be, and it might be much more than that. First of all they would not be allowed to do so by their taxation authorities and, secondly, it would be quite impossible commercially for them to do so.

Therefore, I would urge you strongly to resist this. I would also point out that if it is the system devised by the O.E.E.C. Convention, you have got to set some limit in the case of the sinking or abandonment of this noxious stuff. I am only afraid that the limit which can be devised is the limit of ten years from the date of the incident.

The President (translation): I submit to your votes the amendment of the Netherlands Association aiming at deleting paragraph (ii) of Article V.

The amendment is rejected by 18 votes against 1.

Voted in favour : Netherlands.

Voted against : Denmark, Spain, Canada, Finland, Great Britain, Japan, Sweden, Norway, Switzerland, Turkey, Italy, France, Belgium, Poland, United States, Yugoslavia, Portugal, Germany.

The President (translation): The Netherlands Delegation proposes an amendment to Article VII. paragraph (i) reading as follows :

« Substitute to « but the liability of each shall not exceed the limit set out in paragraph (i) of Article III » the words « provided that the total limit of liability of such operator shall not exceed the sums set out in paragraph (i) of Article III ». »

Mr. J. P. Kruseman, Netherlands : In accordance with Article VII (iii), the total liability shall be borne in equal parts. The only question I am asking is why in accordance with the third paragraph something can be borne in equal parts, and why in the case of the first paragraph is it not possible to bear once the total limit also in equal parts ?

Mr. C.T. Miller, Great Britain : The Drafting Committee rejected the one limit principle for damage caused by the same nuclear incident but with more than one operator liable because it would be quite impossible if the operators were of different flags for either of them to know what limit to put up in the jurisdiction of their respective licensing States, and also because the Courts of those respective licensing States might make conflicting decisions upon it.

On the contrary, the contribution in equal part is quite simple. When the two limits have been put up and the victims have taken all they can get, say out of one or the other or both, then, if one operator has paid more than half the total damages awarded, he has a right of contribution against the other. He may have to sue in a foreign country, probably will, but that is a question of mechanism. There is no difficulty about that, whereas the one limit principle presents the most appalling difficulties which we were quite unable to surmount.

Mr. J. de Grandmaison, France (translation): The French Delegation wish to explain why they are going to vote in favour of the text presented by the Drafting Committee. Because, two days ago, we discussed this question here and because the French Delegation supported the principle of a single limit in the case of a single incident caused by two reactors causing nuclear damage when it was impossible to separate reasonably the causes of the damages. Our conception was admitted and the vote was carried. However, practical objections were raised at the Committee and we have been convinced provisionally that our conception leads to inextricable difficulties. At the Drafting Committee it has not been possible to find, at once, a solution to these difficul-

ties and we thought it was wise to join the suggestion of the drafting Committee and consequently to adopt the solution of two limits.

On the other hand, we also thought finally that this question concerns much more the Governments themselves, than the operators because finally, if the limit is to be extremely high, it is up to the Governments to take a final decision at the Brussels Diplomatic Conference as to know whether one or two limits should be adopted. (applause).

Mr. J.T. Asser, Netherlands (translation): The Netherlands Delegation withdraws its amendment. (applause).

The President (translation): The Netherlands Delegation proposes following amendment to paragraph (ii) of Article VII : « Delete the word « similarly ».

These words do not appear in the French text.

The amendment is adopted.

The President (translation): The Polish Delegation proposes to add in Article VIII the word « directement » after the word « résultant ».

The amendment is adopted.

The President (translation): We are coming now to the amendment to Article XI proposed by the Netherlands Delegation, reading as follows :

« Substitute the word « apportionment » to the word « administration ».

Mr. A. Suc, Yugoslavia : Paragraph (ii) of Article XI contains the words « marshalling, apportionment and distribution », it seems to us that we should have the same words in paragraph (iii) also.

Mr. A. Vaes, Belgium (translation): We should make a distinction between the rule of paragraph (ii) and the rule of paragraph (iii) in Article XI. The object of paragraph (ii) is to say that the rules relating to marshalling apportionment and distribution have to be determined by the national law of the State.

The object of paragraph (iii) is to avoid all discrimination concerning nationality,, domicile and residence. It is obvious that this discrimination has no influence in matters of marshalling. Marshalling is done with the underwriters, there is no problem of discrimination.

Consequently, three words have to be taken in paragraph (ii) but only two have to be mentioned in paragraph (iii). (Applause).

The President (translation): Does the Assembly agree upon substituting the word « apportionment » to the word « administration » ?

The amendment is adopted.

The President (translation): The French Delegation proposes to add to Article XII : « the merits of the case shall not be subject to reexamination. »

Mr. J. de Grandmaison, France (translation): If we made this amendment it is only to ask to put again into the text of paragraph (ii) of Article XII the few words which should be there. We are convinced that these words have been omitted owing to a simple material error.

Mr. Robert Seaver, United States : We agree with the proposal that you have just heard M. de Grandmaison support there, provided that what we think is simply a clarifying amendment be made to the present text of sub-paragraph (ii) of Article XII as follows : in the next to last line, are deleted the words « formalities required by » and substituted the words « requirements of » « the law of the licensing State. »

We have trouble with the word « formalities », namely, that if it appears, that the rights of the defendant were completely ignored, and there was not what we call due process in one respect or another in the Courts where the judgment was rendered, then that judgment is enforced as a matter of course in any nations, as it is now proposed. Now, we think that what is really intended is that the words should be inserted « requirements of the law of the licensing State » and we very seriously propose that that amendment be made in addition to the amendment of the French Delegation that you have just heard proposed.

The President (translation): The American Delegation supports the amendment introduced by the French Delegation, provided the words « requirements of the law » be substituted to the words « formalities required by the law ».

If there is no objection I consider that we can vote on the French amendment, amended along the lines of the American amendment.

I submit this amended amendment to your votes.

The amended amendment has been adopted unanimously.

Voted in favour : Canada, Denmark, Spain, Finland, Great Britain, Japan, Norway, Sweden, Switzerland, Italy, Turkey, France, Poland, Belgium, United States, Portugal, Germany, Greece, Netherlands, Yugoslavia.

The President (translation): Besides the amendments to the text, there are also amendments to the recommendations.

The first amendment is introduced by the Scandinavian Delegations.

Mr. B. Gomard, Denmark : The Scandinavian Delegations regard recommendation I as a piece of what may be called « journalism ». We have seen that various delegations have different views. Some are prepared today to give definite recommendations, and we think, as a matter of correct reporting, as a matter of honest journalism, it could

be said that some are prepared to make recommendations whereas other delegations are not prepared today to give any recommendation on this question. It is not always possible to have the opportunity to listen the opinions of experts as to the possibility of nuclear risks and possible catastrophes. Neither, perhaps, have we had the opportunity to listen to our Ministers of finance. We think, therefore, it would be honest to say that some delegations today do not want to express any opinion in this matter.

Mr. C. T. Miller, Great Britain : I understand that this Scandinavian amendment is supposed to replace entirely recommendation I, I should have thought it was necessary to state — and it is a fact — that the Conference was unanimous, certainly upon point one and point two. If the Scandinavian Delegations wish to incorporate their recommendation, say, in paragraph three, that would be a different proposition. I do not think we should object to some modification of the language in the penultimate paragraph, but certainly, I am afraid, we should have to object to the complete deletion of recommendation I and the substitution, *in toto*, of the Scandinavian amendment.

Mr. Kaj Pineus, Sweden : We are prepared to do it in this way : to insert our recommendation instead of the next but last paragraph of the recommendation I.

The President (translation): Consequently, the Scandinavian Delegations propose to delete the two last paragraphs of the first recommendation and to substitute thereto the following text :

« The possibility that the nuclear damage caused by a nuclear incident may in extraordinarily unfortunate circumstances surpass the cover obtainable in the commercial insurance market cannot be totally ignored. It is therefore possible, that States may find insufficient a Convention which limits itself to impose upon the operators the liability for which insurance is available. Some Delegations, therefore, wish to recommend that the Contracting States undertake an obligation to indemnity those who have suffered nuclear damage in an amount beyond that for which insurance can be found.

» Other delegations did not venture at this stage to express any opinion in this matter ».

I submit this amendment to your votes reserving the Italian amendment.

The amendment is adopted by 9 votes against 7 and 4 abstentions.

Voted in favour : Denmark, Great Britain, Finland, Norway, Sweden, Spain, Netherlands, Portugal, Germany.

Voted against : Turkey, Italy, France, Poland, United States, Yugoslavia, Belgium.

Abstained from voting : Canada, Switzerland, Japan, Greece.

The President (translation): The Italian Delegation proposes following amendment :

« Strike out in the first and second line of paragraph (c) : « will be far beyond » and insert « may be beyond ».

« Strike out in the first line of paragraph (d) « therefore » and insert « in such a case ».

« In the last but one paragraph strike out the words « which in the opinion of the Conference would certainly not be acceptable ». »

Mr. F. Berlingieri, Italy : The Conference has decided that the question of the amount of limitation and the amount of additional compensation cannot be decided now. Consequently, in our submission, it is not advisable in the recommendation to state that the limit will be far beyond the capacity of the operator to provide by commercial insurance, but only to envisage such possibility.

The Scandinavian amendment, which in part has already met our requirements, makes our last proposal unnecessary.

Mr. F. Van der Feltz, Netherlands : The Conference has just accepted the Scandinavian proposal, and the consequence of that proposal is that what is said in the recommendation under (c) and (d) must go out, because in the Scandinavian proposal it is said : « The possibility that the nuclear damage caused by a nuclear incident may in extraordinarily unfortunate circumstances exceed the cover obtainable in the commercial insurance market cannot be totally ignored. » If we have accepted that, we cannot accept «the limit required for this purpose will be far beyond the capacity of the operator to provide by commercial insurance», and the same applies for the next paragraph.

Mr. Arthur M. Boal, United States : We think that paragraphs (c) and (d) in the recommendations are very important — that they are vital and when this matter of Article III was under discussion, we agreed to withdraw Article III from the text of the Convention on the condition that this very recommendation would be made in the Report.

The President (translation): The American Delegation proposes to keep in the report the paragraphs which Mr. Van der Feltz proposes to be deleted.

We have to take a decision on the two Italian amendments.

The amendments were adopted.

Mr. J. T. Asser, Netherlands : We have considered the proposal and since the Italian amendment has been adopted we wish to withdraw the proposal to strike out (c) and (d).

The President (translation): We are at the end of the examination of these texts.

So, we have to take a decision on the whole, covering the Convention and the text of the recommendations.

If you agree, we might take one single vote.

The text of the Convention as a whole and the recommendations are adopted unanimously, except 3 abstentions.

Voted in favour : Canada, Denmark, Spain, Great Britain, Finland, Japan, Sweden, Norway, Switzerland, Turkey, France, Belgium, United States, Portugal, Greece, Yugoslavia, Germany.

Abstained from voting : Netherlands, Italy, Poland.

CLOSING SESSION

The President (translation): The vote you have just taken closes this Conference.

I consider that, replying to the suggestion I made in the beginning of this session, you agree upon maintaining the International Subcommittee with the request to keep us informed of all matters concerning the topic on which we have just finished our work. (prolonged applause).

I thank you.

This is our last session. I wish to thank all the members of this Assembly, without exception, for the contribution to our work. Our task was difficult because we were acting in a field where the ideas are still moving on several points. Your contribution to our work is worth the gratitude of the Comité, without exception. When I say all of you, I do not except anybody, namely not those I venture to call, by a parliamentary deformation, which you will forgive me, the opposition. This opposition has been very strong and the contribution of the members of the delegations of the opposition, has been very efficient. I am happy to pay them a tribute, at this moment when we are leaving each other.

I would like, also, to pay a double tribute first to those who attended our work with great attention without taking part in it because they were not members of the Comité Maritime International, I am speaking of the observers of the great international organizations which, by sending their delegates in order to follow our work have proved how interested they are, in it. I consider that their presence here has to be emphasized. In the work each of us tries to accomplish in his own field, it seems essential to me that the great organizations which have common or parallel preoccupations should act in concert with each other, know each other, and appreciate each other.

I am glad to greet here the observers from these great organizations, who have kindly followed our work, both in the Subcommittee

and in the plenary session and I thank them for their presence. (prolonged applause).

Finally, I would like to thank the vice-President of this Conference Mr. Brajkovic. (prolonged applause).

Not only has he with great authority presided over a part of our work during this Conference, but, owing to the conscience he always puts when he is collaborating in or directing this Conference, he deserves our thanks and our gratitude. (prolonged applause).

I trust that he will kindly convey to his friends and colleagues of the Yugoslav Maritime Law Association our sympathy to them.

Gentlemen, we are about to leave. Each time the Comité Maritime International separates, a certain number of its members have a feeling of melancholy because, they meet again during the Conference friends with whom they are happy to work once more.

What distinguishes this meeting and also the preceeding one is that no divergencies of opinion — and I stress that point for the Rijeka Conference — have altered our desire for collaboration and our friendship, which unite most of the members of our delegations. I am happy in ascertaining this once more.

I hope, we shall meet again very soon. I wish you will be all as numerous and as efficient in your work, as during this meeting.

I can assure you of the constant devotion of the Bureau of the Comité Maritime International to go on with the work we started together.

I thank you for the collaboration you brought during this Rijeka Conference. (prolonged applause).

Mr. Arthur M. Boal, United States : On behalf of the American delegation I should like first to pay a tribute to the Secretariat for the excellent work they have done to facilitate our deliberations here. I wish to state also that we appreciate greatly the co-operation and the frank discussion which has taken place between the various delegations, and we particularly wish to thank our President for the wonderful job he has done in keeping this organization co-ordinated, keeping it functioning, without any loss of time. I think he deserves a great tribute from us all. (prolonged applause)

Mr. V. Brajkovic, Yugoslavia (translation): Mr. President, eminent colleagues, as I had no opportunity to do it at the opening of the Conference, I wish, at the closing of the Session, to express my sincere thanks for the honour the Conference did to our country in appointing me, in my capacity of President of the Yugoslav Maritime Law Association, as Vice-President of the Conference.

I consider it my duty to emphasize here that I should not have been able to accomplish rightly this delicate task without the precious aid of all the members of this distinguished Assembly and I assure you that my gratitude is great.

You will allow me to express, in the name of the Yugoslav Association, to our distinguished President, to our secretaries general, to all the members of the « Comité de gestion » to all the heads of delegations and to all the members of the delegations that you have the merit of this very successful Conference of the Comité Maritime International which had an exceptional and historical character. Its memory will be linked with the history of this country, which is proud to have been your host.

I can assure you that this Conference will stimulate our association in continuing its efforts with the other member associations of this dear and still larger family called the Comité Maritime International in order to proceed our works and reach our common aim which is the unity of the law of the sea.

Once more, thank you to all of you hoping you decide to come back to Yugoslavia where you will always be welcome. (prolonged applause).

The President (translation): I declare closed the XXIVth Session of the Comité Maritime International.

CONFERENCE OF RIJEKA

4

RESOLUTIONS
AND
INTERNATIONAL
DRAFT CONVENTION
RELATING TO THE LIABILITY OF OPERATORS
OF NUCLEAR SHIPS

RESOLUTIONS

REVISION

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

BILLS OF LADING

Signed at Brussels on August 25th, 1924.

A. Draft of new article X

« The provisions of this Convention shall apply to every bill of
» lading for carriage of goods from one State to another, under which
» bill of lading the port of loading, the port of discharge or one of the
» optional ports of discharge, is situated in a Contracting State, what-
» ever may be the law governing such bill of lading and whatever may
» be the nationality of the ship, the carrier, the shipper, the consignee
» or any other interested person ».

B. Resolution of the Plenary Conference voted at Rijeka on September 25th, 1959

« The Plenary Conference instructs its International Subcommittee
» to study other amendments and adaptations to the provisions of the
» International Convention for the unification of certain rules relating
» to bills of lading ».

LETTERS OF INDEMNITY AND MARGINAL CLAUSES

Resolution of the Plenary Conference voted at Rijeka on September 25th, 1959

« The Conference having examined the report presented by the
» President of the International Subcommittee, invites the Conseil de
» Gestion to ask the International Subcommittee to continue examining
» the problem and to address a new report to the Conference ».

RÉSOLUTIONS

REVISION

DE L'ARTICLE X DE LA CONVENTION INTERNATIONALE POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE CONNAISSEMENT

signée à Bruxelles le 25 août 1924

A. Projet de nouvel Article X

« Les dispositions de la présente Convention s'appliqueront à tout »
» connaissance relatif à un transport de marchandises d'un Etat à un »
» autre, sous l'empire duquel le port de chargement, le port de déchar- »
» gement ou l'un des ports à option de déchargement se trouve dans »
» un Etat contractant, quelle que soit la loi régissant de connaissance »
» et quelle que soit la nationalité du navire, du chargeur, du desti- »
» nataire et de tout autres intéressé ».

B. Résolution de la Conférence Plénière votée à Rijeka le 25 septembre 1959

« La Conférence Plénière donne mandat à sa Commission interna- »
» tionale d'étudier d'autres modifications ou adaptations aux disposi- »
» tions de la Convention Internationale pour l'unification de certaines »
» règles en matière de connaissances ».

LETTRES DE GARANTIE ET CLAUSES MARGINALES

Résolution de la Conférence Plénière votée à Rijeka le 25 septembre 1959

« La Conférence ayant pris connaissance du rapport présenté par »
» le Président de la Commission Internationale, prie le conseil de gestion »
» de charger la Commission Internationale de poursuivre l'étude du »
» problème des lettres de garantie et des clauses marginales et d'adresser »
» un nouveau rapport à la Conférence ».

REVISION
OF ARTICLE XIV OF THE INTERNATIONAL CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES OF LAW RESPECTING

ASSISTANCE AND SALVAGE

AT SEA

Signed at Brussels on September 23rd, 1910.

Resolution of the Plenary Conference voted at Rijeka on September 25th, 1959

« The Plenary Conference of the Comité Maritime International » requests its President to submit to the Belgian Government the » resolution of the Comité Maritime International for inviting the » Brussels Diplomatic Conference of Maritime Law in order to substitute in an appropriate manner to Article XIV of the International » Convention on Assistance and Salvage, the following text :

« The provisions of this Convention apply also to services of » assistance or salvage rendered to a ship of war or to any other ship » owned or operated by a State or any Public Authority.

» Claims against a State for assistance or salvage services rendered » to ships of war or to ships appropriated exclusively to public non- » commercial services shall be brought only before the Courts of such » State.

» When a ship of war or any other ship owned or operated by a » State or a Public Authority has rendered assistance or salvage » services, such State or Public Authority has liberty to claim remuneration but only pursuant to the provisions of this Convention.

» The High Contracting Parties reserve to themselves the right of » fixing the conditions in which Article XI will apply to Masters of » ships of war ».

INTERNATIONAL STATUS OF SHIPS
IN FOREIGN PORTS

Resolution of the Plenary Conference voted at Rijeka on September 25th, 1959

« The Conference having examined the draft Convention established by the President of the International Subcommittee, Mr. G. » Berlingieri, and recognizing that the problem submitted requires » further study, requests the Conseil de Gestion to instruct the International Subcommittee to continue the study of the problem and to » submit a new report to the Conference ».

REVISION
DE L'ARTICLE XIV DE LA CONVENTION INTERNATIONALE POUR
L'UNIFICATION DE CERTAINES REGLES EN MATIERE D'
ASSISTANCE ET DE SAUVETAGE MARITIME

signée à Bruxelles le 23 septembre 1910

Résolution de la Conférence Plénière votée à Rijeka le 25 septembre 1959

« La Conférence Plénière du Comité Maritime International prie
» son Président de bien vouloir faire part au Gouvernement belge du
» vœu du Comité Maritime International d'inviter la Conférence Di-
» plomatique de Droit Maritime de Bruxelles à remplacer d'une ma-
» nière appropriée l'article XIV de la Convention Internationale sur
» l'Assistance et le Sauvetage (1910) par le texte que voici :

« Les dispositions de la présente Convention s'appliqueront aussi
» aux services d'assistance ou de sauvetage rendus à un bâtiment de
» guerre ou à un navire d'Etat ou exploité par un Etat ou par une
» personne de droit public.

« Les actions contre un Etat pour services d'assistance ou de sauve-
» tage rendus à un bâtiment de guerre ou à un navire exclusivement
» affecté à un service public, non commercial, ne seront portés que
» devant les tribunaux de cet Etat.

« Quand un bâtiment de guerre ou tout autre navire d'Etat ou
» exploité par un Etat ou une personne de droit public a rendu des
» services d'assistance ou de sauvetage, cet Etat ou cette personne de
» droit public peut réclamer une rémunération, mais seulement selon
» les dispositions de la présente Convention.

« Les Hautes Parties contractantes se réservent le droit de fixer
» les conditions dans lesquelles l'Article XI s'appliquera aux comman-
» dants de bâtiments de guerre ».

REGIME INTERNATIONAL DES NAVIRES
DANS UN PORT ETRANGER

Résolution votée par la Conférence Plénière à Rijeka le 25 septembre 1959

« La Conférence ayant pris connaissance de l'avant-projet de Con-
» vention établi par le Président de la Commission Internationale,
» M. G. Berlingieri, et constatant que le problème soulevé nécessite
» une étude approfondie, prie le Conseil de Gestion de charger la
» Commission Internationale de poursuivre l'étude du problème et
» d'adresser un nouveau rapport à la Conférence ».

REGISTRY OF OPERATORS OF SHIPS

Resolution of the Plenary Conference voted at Rijeka on September 25th, 1959

« The Conference having examined the draft Convention prepared » by the President of the International Subcommittee, Mr. G. Berlin- » gieri, and recognizing that the problem submitted requires further » study, especially in connection with the aim of the Convention and » the appropriate means for reaching that aim, asks the Conseil de » Gestion to instruct the International Subcommittee to continue the » study of the problem and to submit a new report to the Conference ».

PUBLICITE DE L'ARMATEUR

Résolution votée par la Conférence Plénière à Rijeka le 25 septembre 1959

« La Conférence ayant pris connaissance du rapport et de l'avant-
» projet d'une Convention établie par le Président de la Commission
» Internationale, M. G. Berlingieri, et constatant que le problème néces-
» site une étude plus approfondie, notamment en ce qui concerne le
» but de la Convention et les moyens propres à arriver à ce but, prie le
» Conseil de Gestion de charger la Commission Internationale de
» poursuivre l'étude du problème et de faire rapport à la Conférence ».

DRAFT OF INTERNATIONAL CONVENTION
RELATING TO THE LIABILITY OF OPERATORS OF
NUCLEAR SHIPS

Article I

In this Convention the following words shall have the meaning hereby assigned to them :

(i) « nuclear ship » means any ship equipped for the utilisation of nuclear fuel.

(ii) « licensing State » means the Contracting State which has licensed or otherwise given authority for the operation of a nuclear ship.

(iii) « persons » includes individuals, partnerships, associations of persons and bodies corporate, Governments, their Departments and public Authorities.

(iv) « operator » means the person licensed or otherwise authorized by the competent public Authority of the licensing State as operator of a nuclear ship; if no such licence or authority has been given or is in effect the owner of the nuclear ship shall be considered the operator.

(v) « nuclear fuel » means any material which is capable of producing energy by a process of nuclear fission or fusion and which is used or intended for use in a nuclear ship.

(vi) « radioactive products or waste » means any radioactive material produced in or made radioactive by exposure to the radiation incidental to the process of utilizing nuclear fuel.

(vii) « nuclear damage » means loss of life or personal injury to any individual and any loss or damage caused by a nuclear incident.

(viii) « nuclear incident » means any occurrence which arises out of or results from the radioactive properties, or a combination of radioactive properties with toxic, explosive, or other hazardous properties of nuclear fuel or radioactive products or waste except when carried as cargo.

Article II

(i) The operator of a nuclear ship shall be solely and absolutely liable for nuclear damage upon proof that such nuclear damage was caused by a nuclear incident involving nuclear fuel of such ship or radioactive products or waste produced in such ship.

PROJET DE CONVENTION INTERNATIONALE
RELATIVE A LA RESPONSABILITE DES EXPLOITANTS DE
NAVIRES NUCLEAIRES

Article I

Dans la présente Convention les expressions suivantes auront le sens qui leur aura été attribué ci-après :

(i) « navire nucléaire » signifie tout navire équipé pour l'utilisation de combustible nucléaire.

(ii) « Etat dont émane la licence » signifie tout Etat contractant qui a soit accordé la licence soit autorisé de quelque autre manière que ce soit l'exploitation d'un navire nucléaire.

(iii) « personnes » comprend des personnes physiques, des sociétés, des associations, des personnes juridiques, des Gouvernements, leurs départements et leurs autorités publiques.

(iv) « exploitant » signifie la personne bénéficiaire de la licence ou autorisée de toute autre manière par l'autorité publique compétente de « l'Etat dont émane la licence » en qualité d'exploitant du navire nucléaire; si aucune licence ni autorisation n'ont été accordées ou si elles ne sont pas valables, le propriétaire du navire nucléaire sera considéré comme étant l'exploitant.

(v) « combustible nucléaire » signifie toute matière susceptible de produire de l'énergie par un processus de fission ou de fusion nucléaires et qui est utilisée ou destinée à l'être dans un navire nucléaire.

(vi) « produits ou déchets radioactifs » signifie toute matière radioactive produite ou rendue radioactive par exposition à la radiation qu'implique le processus d'utilisation de combustibles nucléaires.

(vii) « dommage nucléaire » signifie la perte de vie, les lésions corporelles et toutes autres pertes ou dommages causés par un accident nucléaire.

(viii) « accident nucléaire » signifie tout fait qui provient ou résulte des propriétés radioactives ou d'une combinaison des propriétés radioactives avec des propriétés toxiques, explosives ou autres propriétés dangereuses d'un combustible nucléaire ou de produits ou déchets radioactifs sauf si ceux-ci sont transportés comme cargaison.

Article II

(i) L'exploitant d'un navire nucléaire est responsable à l'exclusion de toute autre personne et de plein droit, de tout dommage nucléaire pour autant qu'il soit prouvé que ce dommage nucléaire a été causé par un accident nucléaire, mettant en jeu le combustible nucléaire de ce navire ou les produits ou déchets radioactifs provenant de ce navire.

(ii) Such liability of the operator shall be confined to nuclear incidents occurring during the period between the taking in charge of the nuclear fuel by the operator and the redelivery thereof, or of any radioactive products or waste therefrom, to another person duly authorised by law to take charge of the same and required by law to accept responsibility for any nuclear damage caused thereby.

(iii) If the nuclear fuel of the nuclear ship or radioactive products or waste therefrom are redelivered or discharged in any other manner or are lost or abandoned, the operator shall remain liable for nuclear damage caused by a nuclear incident arising out or resulting from such nuclear fuel or radioactive products or waste, subject to the provisions of this Convention.

(iv) No other person shall be liable for nuclear damage for which the operator of a nuclear ship is liable under Sections (i), (ii) and (iii) of this Article.

(v) If the nuclear damage is wilfully caused by a claimant otherwise entitled to compensation under this Convention the Court having jurisdiction may refuse or reduce the compensation recoverable by such claimant from the operator.

(vi) The operator shall have a right of recourse only;

(i) if nuclear damage results from a personal act or omission done with intent to cause damage in which event the operator shall have a right of recourse against the individual having acted or having omitted to act with such intent; or

(ii) if so provided by contract.

Article III

(i) An operator of a nuclear ship, provided that he is duly licensed or otherwise authorised by the competent public authority of the licensing State as operator of the nuclear ship shall in no circumstances be liable for more than in respect of any one nuclear incident, notwithstanding the fact that the nuclear incident resulted from any fault or privity of that operator.

(ii) The operator of a nuclear ship shall be required to have and maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and on such terms as the licensing State shall specify.

Article IV

Whenever damage is caused or contributed to by a nuclear incident and by one or more other occurrences and the damage from such separate causes is not reasonably separable, the entire damage shall for

(ii) Cette responsabilité de l'exploitant sera limitée aux accidents nucléaires survenus depuis la prise en charge du combustible nucléaire par l'exploitant du navire jusqu'à la remise de ce combustible ou de tous produits ou déchets radioactifs en provenant, à une autre personne légalement autorisée à en prendre charge et légalement obligée d'assumer la responsabilité de tout dommage nucléaire causé par eux.

(iii) Lorsque le combustible nucléaire du navire nucléaire ou les produits ou déchets radioactifs en provenant ont été délivrés ou déchargés de toute autre manière, ou perdus ou abandonnés, l'exploitant demeurera responsable du dommage nucléaire causé par un accident nucléaire provenant ou résultant d'un tel combustible nucléaire ou des produits ou déchets radioactifs, dans les termes de la présente Convention.

(iv) Aucune autre personne ne sera responsable d'un dommage nucléaire dont l'exploitant est tenu par application des paragraphes (i), (ii) et (iii) du présent article.

(v) Si le dommage nucléaire éprouvé par le demandeur en dommages-intérêts a été provoqué par son fait volontaire, les tribunaux compétents pourront refuser ou réduire l'indemnité à laquelle il aurait eu droit à charge de l'exploitant, en vertu de la présente Convention.

(vi) L'exploitant ne disposera d'un recours que :

- a) si l'accident nucléaire a été provoqué par un fait personnel et volontaire dans l'intention de causer un dommage; dans ce cas l'exploitant dispose d'un recours contre celui qui a agi ou qui a omis d'agir dans une telle intention; ou
- b) si pareil recours a été expressément prévu par convention.

Article III

(i) L'exploitant d'un navire nucléaire, à condition d'avoir une licence ou toute autre autorisation valables, délivrées par l'autorité publique compétente de l'Etat dont émane la licence, n'est en aucun cas responsable des dommages nucléaires au delà d'une somme de..... au maximum, par accident nucléaire, même si cet accident nucléaire a été causé par une faute personnelle quelconque de l'exploitant.

(ii) L'exploitant du navire nucléaire devra souscrire et maintenir en vigueur une assurance ou toute autre garantie couvrant sa responsabilité pour dommage nucléaire, à concurrence du montant et selon le type et les conditions déterminées par l'Etat dont émane la licence.

Article IV

Lorsqu'un dommage est causé à la fois par un accident nucléaire et par un ou plusieurs autres événements, sans qu'il soit raisonnablement possible de déterminer quel est le dommage attribuable à chacune

the purpose of this Convention be deemed to have been exclusively caused by the nuclear incident.

Article V

(i) Rights for compensation against the operator of a nuclear ship under this Convention shall be extinguished if an action is not brought within ten years from the date of the nuclear incident.

(ii) In the cases referred to in Article II (iii) the period for the extinction of the rights shall be ten years from the date of the redelivery, discharge, loss or abandonment, as the case may be.

(iii) Each Contracting State may, however, establish a period of not less than two years for the extinction of the rights from the date of which the individual or the person suffering damages has knowledge or from the date when he ought reasonably to have known of the damage, provided that the said period of ten years not be exceeded.

(iv) Any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in this Article may amend his claim in respect of any aggravation of the damage after the expiry of the appropriate period referred to in paragraphs (i), (ii) and (iii) above provided that final judgment has not been entered by the competent Court.

Article VI

Where provisions of national health insurance, social security, workmens compensation or occupational disease compensation systems include compensation for damage caused by a nuclear incident, rights of beneficiaries of such systems and rights of recours by virtue of such systems shall be determined by the national law of the Contracting State having established such systems.

Article VII

Whenever nuclear damage is caused or is contributed to by a nuclear incident for which more than one operator is liable under the provisions of this Convention, and it is not possible definitely to allocate the damage between the operators, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph (i) of Article III.

Whenever nuclear damage is caused or contributed to by more than one nuclear incident involving liability of more than one operator under the provisions of this Convention, and the damage caused by

de ces causes, l'intégralité du dommage est considéré pour l'application de la présente Convention comme ayant été causé uniquement par l'accident nucléaire.

Article V

(i) Le droit d'indemnité contre l'exploitant d'un navire nucléaire dans le cadre de la présente Convention est éteint après dix ans, à compter de la date de l'accident nucléaire.

(ii) Dans les cas prévus à l'article II (iii) le délai de dix ans sera compté de la date de la délivrance, du déchargement, de la perte ou de l'abandon, suivant le cas.

(iii) Toutefois, chaque Etat contractant peut imposer un délai d'extinction du droit, prenant cours à la date à laquelle la victime d'un dommage a eu connaissance ou aurait dû avoir raisonnablement connaissance de ce dommage, pourvu que le délai ne soit pas inférieur à deux ans et que le délai de dix ans prévu au paragraphe précédent ne soit pas dépassé.

(iv) Toute personne ayant souffert un dommage causé par un accident nucléaire, et qui a introduit une action pour dommages et intérêts dans le cours des délais respectifs prévus aux paragraphes précédents, pourra modifier sa demande, du chef de l'aggravation du dommage, même après l'expiration des dits délais, à condition qu'un jugement définitif n'ait pas encore été rendu par les Tribunaux compétents.

Article VI

Lorsque des dispositions législatives nationales relatives à l'assurance-maladie, à la sécurité sociale, aux accidents de travail et aux maladies professionnelles, prévoient l'indemnisation du dommage causé par un accident nucléaire, les droits des bénéficiaires de ces dispositions et les recours qu'elles accordent, sont déterminés par la loi nationale de l'Etat contractant qui a promulgué ces dispositions.

Article VII

Lorsqu'un accident nucléaire a causé ou contribué à causer des dommages nucléaires et engage, en vertu des dispositions de la présente Convention, la responsabilité de plusieurs exploitants, sans que l'on puisse répartir avec précision les dommages entre les exploitants, ces exploitants en sont tenus solidairement mais chacun à concurrence de la limite prévue par l'article III, paragraphe (i).

Lorsqu'il est établi que plusieurs accidents nucléaires, engageant la responsabilité de plusieurs exploitants en vertu des dispositions de la présente Convention, ont causé ou ont contribué à causer certains

each nuclear incident is not reasonably separable, those operators shall be jointly and severally liable for such damage, but the liability of each shall not exceed the limit set out in paragraph (i) of Article III.

In any of the above cases each of the operators jointly and severally liable shall have a right of contribution against the others so that the total liability shall be borne in equal parts.

Article VIII

No liability shall attach to an operator of a nuclear ship in respect of nuclear damage caused by nuclear incidents directly due to war, hostilities, civil war or insurrection.

Article IX

Nothing in this Convention shall apply to claims for salvage or to claims for contribution in general average.

Article X

The sums provided by insurance or other financial security under this Convention shall be exclusively available for compensation of the nuclear damage, for which the operator is liable.

Article XI

(i) The Contracting States shall enact legislation such as to ensure that the sums provided by insurance or other financial security shall be made available for the compensation referred to in this Convention within the jurisdiction of the licensing State.

(ii) The rules relating to the marshalling, apportionment and distribution of the sums representing the limit of liability set out in Article III (i) of this Convention shall be governed by the national law of the licensing State.

(iii) The apportionment and distribution of the sums representing the limit of liability set out in Article III (i) of this Convention shall be done without discrimination based upon nationality, domicile or residence.

(iv) The sums referred to in Article III of this Convention shall be freely transferable between the monetary areas of the Contracting States.

(v) When the sums referred to in Article III of this Convention shall be made available for the compensation of nuclear damage arising on any distinct occasion within the jurisdiction of the licensing State, no claimant shall thereafter be entitled to exercise any right

dommages nucléaires sans que l'on puisse raisonnablement déterminer quels sont les dommages attribuables à chacun de ces accidents, ces exploitants en sont tenus solidairement, mais chacun à concurrence de la limite prévue par l'article III paragraphe (i).

Dans tous les cas prévus au présent article la répartition des indemnités payées par les divers exploitants solidairement responsables se fera entre eux par parts égales.

Article VIII

L'exploitant d'un navire nucléaire n'est pas responsable des dommages nucléaires causés par des accidents nucléaires résultant directement de guerre, hostilités, guerre civile ou insurrection.

Article IX

La présente Convention ne s'applique ni aux indemnités de sauvetage ni aux contributions en avarie commune.

Article X

Les indemnités d'assurance et les autres garanties financières prévues par la présente Convention sont affectées exclusivement à l'indemnisation du dommage nucléaire dont l'exploitant est responsable.

Article XI

(i) Les Etats contractants prendront les dispositions législatives propres à assurer que les indemnités d'assurance et les autres garanties financières soient effectivement disponibles dans le ressort de l'Etat dont émane la licence, pour l'indemnisation prévue par la présente Convention.

(ii) Les règles relatives au recouvrement, à la répartition et à la distribution des sommes correspondant à la limite de responsabilité prévue à l'article III, (i) de la présente Convention sont déterminées par la loi nationale de l'Etat dont émane la licence.

(iii) La répartition et la distribution auront lieu sans discrimination d'après la nationalité, le domicile ou la résidence.

(iv) Les sommes prévues par l'article III de la présente Convention seront librement transférables entre les zones monétaires des Etats contractants.

(v) Lorsque les sommes prévues à l'article III de la présente Convention ont été rendues effectivement disponibles dans le ressort de l'Etat dont émane la licence, pour l'indemnisation du dommage nucléaire provenant d'un seul et même accident nucléaire, aucun droit

against any other assets of the operator of the nuclear ship involved in respect of his claim for nuclear damage and any bail or other security given by that operator in other Contracting States shall be released.

(vi) If before the sums referred to in Article III of this Convention have been distributed, the operator has paid in whole or in part any of the claims for nuclear damage, he shall be placed in the same position in relation to those sums as the claimant for nuclear damage, whose claim he has paid.

(vii) Where the operator establishes that he may, at a later date, be compelled to pay in whole or in part any claim for nuclear damage, the Court or other competent Authority of the licensing State may order that a sufficient part of the sums referred to in Article III of this Convention shall be provisionally set aside to enable the operator at such later date to enforce his claim against those sums in the manner set out in the preceding paragraph.

Article XII

(i) Actions for compensation for nuclear damage must be brought in the option of the claimant either.

(a) in the Courts of the licensing State; or

(b) in the Courts of the Contracting State within the territory of which the nuclear incident occurred.

(ii) Final judgments of a Court of competent jurisdiction within one of the Contracting States in accordance with sub-paragraph (b) of the preceding section shall become enforceable in the territory of the licensing State as soon as the requirements of the law of the licensing State have been complied with. The merits of the case shall not be subject of further proceedings.

Article XIII

This Convention applies to nuclear damage occurring in any part of the world.

Article XIV

The provisions of this Convention shall apply exclusively with respect to claims for nuclear damage for which the operator of a nuclear vessel is liable thereunder, and shall supersede the provisions of any other Convention, International Agreement, or provision of law, with respect hereto.

ne peut plus être exercé pour les mêmes indemnités sur d'autres biens de l'exploitant et les garanties ou autres sûretés fournies par l'exploitant dans un autre Etat contractant, seront libérées.

(vi) Si, avant que les sommes prévues à l'article III de la présente Convention n'aient été distribuées, l'exploitant a indemnisé intégralement ou en partie une des victimes d'un accident nucléaire, il est autorisé à prendre à due concurrence les lieux et places de celle-ci dans la répartition des dites sommes.

(vii) Lorsque l'exploitant établit qu'il pourrait être ultérieurement contraint de payer en tout ou en partie une indemnité quelconque pour dommage nucléaire, le tribunal ou toute autre autorité compétente de l'Etat dont émane la licence, peut ordonner qu'une partie suffisante des sommes prévues à l'article III de la présente Convention sera réservée provisoirement afin de permettre à l'exploitant de faire ultérieurement valoir ses droits sur cette somme aux conditions indiquées dans le paragraphe précédent.

Article XII

(i) Toute action en dommages-intérêts pour dommage nucléaire doit être portée au choix du demandeur.

(a) soit devant les tribunaux de l'Etat dont émane la licence.

(b) soit devant les tribunaux de l'Etat sur le territoire duquel l'accident nucléaire s'est produit.

(ii) Un jugement passé en force de chose jugée rendu par un tribunal de la juridiction compétente d'un des Etats contractants conformément au sous-paragraphe (b) du paragraphe précédent, sera rendu exécutoire dans le territoire de l'Etat dont émane la licence, dès que les prescriptions requises par la loi de cet Etat auront été observées, sans que le litige puisse faire l'objet d'un réexamen au fond.

Article XIII

La présente Convention s'applique à tout dommage nucléaire, quel que soit le lieu où il s'est produit.

Article XIV

Les dispositions de la présente Convention sont seules applicables aux actions en indemnité du chef d'un dommage nucléaire dont l'exploitant d'un navire nucléaire est responsable dans les conditions qu'elle prévoit, et, en cette matière, elles l'emportent sur les dispositions de toute autre Convention ou de tout accord international, ainsi que sur toutes autres dispositions légales.

RECOMMENDATIONS

I

Article III

The limit of the operator's liability in Article III (i) has purposely been left in blank.

The Conference was unanimous upon the following points :

a) that the absolute and exclusive liability cast by the Convention upon the operator must be subject to some limit.

b) that the amount of this limit must be sufficient to make nuclear ships acceptable in all the ports of the World.

c) that the limit required for this purpose may be beyond the capacity of the operator to provide by commercial insurance even utilising all the resources of the international insurance market.

d) that, in such case, the insurance commercially available may have to be supplemented by some form of State indemnity. In the view of the Conference such indemnity must in practice be given by the licensing State.

The Conference, however, was of opinion that it was not its function to insert in the draft Convention the means by which this should be achieved as this is essentially a matter for the Governments concerned.

The possibility that the nuclear damage caused by a nuclear incident, may in extraordinary unfortunate circumstances surpass the cover obtainable in the commercial insurance market, cannot be totally ignored. It is therefore possible, that States may find insufficient a Convention which limits itself to impose upon the operators the liability for which insurance is available. Some delegations, therefore, wish to recommend that the Contracting States undertake as obligation to indemnify those who have suffered nuclear damage in an amount beyond that for which insurance can be found.

Other delegations did not venture at this stage to express any opinion in this matter.

II

In view of the international obligations which it may be necessary for the States to assume under treaty, the Conference also suggests that some form of international machinery should be agreed upon to facilitate and ensure the carrying out of these obligations.

RECOMMANDATIONS

I

Article III

La limite de la responsabilité de l'exploitant, dont il est question à l'article III (i), a été, à dessein, laissée en blanc.

La Conférence a été unanimement d'accord au sujet des considérations suivantes :

a) la responsabilité absolue et exclusive mise à charge de l'exploitant par la Convention, doit comporter une limite;

b) cette limite doit être suffisamment élevée pour que les navires nucléaires puissent être accueillis dans tous les ports du monde;

c) la limite requise à cette fin pourrait dépasser la possibilité, pour l'exploitant, d'y faire face par une assurance commerciale, même en recourant aux ressources du marché international des assurances;

d) dans ce cas, les assurances commercialement obtenables doivent être complétées par quelque forme d'indemnisation par l'Etat. Selon les vues de la Conférence, cette indemnisation doit en principe être procurée par l'Etat dont émane la licence.

La Conférence a cependant été d'avis qu'il ne lui appartenait pas d'insérer dans le projet de Convention les moyens par lesquels ce résultat pourrait être obtenu, et que cette question est essentiellement du ressort des Gouvernements intéressés.

La possibilité que le dommage nucléaire causé par un accident nucléaire puisse dans des circonstances exceptionnellement malheureuses dépasser la couverture susceptible d'être obtenue sur le marché commercial des assurances, ne peut pas être complètement ignorée. Pour cette raison il est possible que certains Etats puissent trouver insuffisante une Convention qui se borne à imposer aux exploitants la responsabilité pour laquelle il est possible de s'assurer.

Certaines délégations pour ce motif souhaitent de recommander que les Etats contractants assument une obligation ayant pour objet l'indemnisation de ceux qui ont souffert un dommage nucléaire d'un montant qui dépasse celui pour lequel une assurance peut être obtenue.

D'autres délégations se sont abstenues au stade actuel d'exprimer une opinion sur ce point.

II

Considérant qu'il paraît possible que les Etats seront conduits à contracter des obligations internationales par voie de traité, la Conférence suggère aussi la mise en place d'un mécanisme international propre à faciliter et à assurer l'exécution de telles obligations.

III

Article XII Paragraph (ii)

The Conference appreciates that this provisions may cause difficulties in certain jurisdictions, in which the enforcement of foreign judgements is already subject to certain procedural or even constitutional rules. Unless, however, the Convention is to provide that the jurisdiction shall lie solely with the Court of the licensing State to which there are grave objections, the Conference sees no alternative to this provision with, of course, such safeguards as the Governments may see fit to agree.

IV

The Conference has considered whether the Convention should include a provision to the effect that each of the Contracting States should have the right to exclude from the benefits of the Convention owners or operators of vessels licensed or registered in a Non Contracting State and victims of a nuclear incident who are nationals of or resident in a Non Contracting State. The Conference came to no conclusion upon this point as it was considered to be essentially a matter for Governments to decide.

V

The Conference desires to make it clear that nothing in the draft is intended to authorise or require the inspection of military vessels or auxiliaries, nor to create the right to attach such vessels. The matter of inspection of other types of vessels will undoubtedly be considered at the Conference on the Safety of Life at Sea Conventions.

III

Article XII, par. (ii)

La Conférence s'est rendu compte que cette disposition peut susciter des difficultés dans certains pays, dans lesquels l'exécution des jugements étrangers est déjà soumise à certaines règles de procédure ou même à des règles constitutionnelles. Toutefois, à moins que la Convention ne dispose que seront seuls compétents les tribunaux du pays dont émane la licence, ce qui donne lieu à de sérieuses objections, la Conférence n'aperçoit aucune solution autre que cette disposition - complétée, évidemment, par les garanties que les Gouvernements jugeraient convenables.

IV

La Conférence s'est demandée s'il fallait prévoir, dans la Convention, que chaque Etat contractant aurait le droit d'exclure du bénéfice de la Convention les propriétaires ou les exploitants de navires munis d'une licence d'un Etat non contractant ou immatriculés dans un Etat non contractant, ainsi que les victimes d'un accident nucléaire ressortissants ou résidents d'un Etat non contractant.

La Conférence n'a pris aucune décision à cet égard, considérant que ces matières relèvent essentiellement de la compétence des Gouvernements.

V

La Conférence désire préciser qu'aucune disposition du projet n'a pour effet ni d'autoriser ou de rendre obligatoire l'inspection de navires de guerre ou auxiliaires, ni de créer le droit de saisir ces navires. Le problème de l'inspection d'autres genres de navires sera certainement pris en considération par la « Conference on the Safety of Life and Sea Conventions ».

REPORT OF THE SECRETARIES GENERAL

1. Before undertaking the task of preparing the Draft Convention the Conference had the advantage of studying the following projects and reports dealing with nuclear liabilities :

(i) A Convention which the Organization for European Economic Co-Operation (O.E.E.C.) is preparing for application to O.E.E.C. Countries (23rd June 1959 — C (59) 154) together with the recent amendments to that Convention, circulated on the 27th July 1959 — (SEN. (59) 61).

(ii) A Convention which the International Atomic Energy Agency of the United Nations (I.A.E.A.) has under consideration, intended ultimately to be of world-wide application.

(iii) A Convention under preparation by Euratom which is intended to be complementary to the O.E.E.C. Convention and to apply only to Euratom Countries.

(iv) The Report and Draft Convention prepared at Antwerp in July 1959 by the Subcommittee of the Comité Maritime International, specially appointed by the President for that purpose.

2. The first two Conventions deal primarily with the liability of Operators of land reactors, and subsidiarily with the extension of their liability during the transport of radio-active materials or waste to and from their nuclear installations. The Euratom Convention, as a complement to the O.E.E.C. Convention purports to establish a system of State guarantees of the land Operator's liability. The Report and Draft Convention prepared by the Subcommittee of the Comité Maritime International represents, so far as is ascertainable, the first study of the problem of the incidence of liability which should be cast upon the Operators of floating reactors, viz; the Operators of nuclear powered ships. The Conference were further greatly assisted by the fact that representatives of the Comité Maritime International had, upon invitation, attended certain of the meetings of the O.E.E.C. Committee during their discussion of transport problems, and of the I.A.E.A. in Vienna.

During its own session the Conference derived great benefit from the presence of Mr. Peter Koenz, representing the I.A.E.A., and Mr. J. L. Weinstein, Counsellor of the O.E.E.C., European Nuclear Energy Agency.

3. The Conference were not unanimous as to the necessity for preparing at the present time a Convention dealing with the liability of Owners of nuclear vessels, although there was a remarkable measure

EXPOSE DES MOTIFS DES SECRETAIRES GENERAUX

1. Avant d'entreprendre l'élaboration du Projet de Convention, la Conférence a eu la possibilité d'étudier divers projets et rapports traitant des responsabilités nucléaires à savoir :

(i) Une Convention que l'Agence Européenne de Coopération Economique (O.E.C.E.) prépare pour être appliquée aux pays de l'O.E.C.E. (23 juin 1959 — C (59) 154), ainsi que les amendements récents à cette Convention, communiqués le 27 juillet 1959 (SEN. (59) 61.).

(ii) Une Convention que l'Agence Internationale de l'Energie Atomique des Nations-Unies (A.I.E.A.) examine et qui est destinée à recevoir finalement une application mondiale.

(iii) Une Convention en voie d'élaboration à l'Euratom et qui est destinée à compléter la Convention de l'O.E.C.E. et à s'appliquer uniquement aux pays de l'Euratom.

(iv) Le rapport et le projet de Convention rédigés à Anvers au mois de juillet 1959 par la Commission du Comité Maritime International spécialement désignée à cet effet par son Président.

2. Les deux premiers documents traitent principalement de la responsabilité des exploitants de réacteurs terrestres et, subsidiairement, de l'extension de cette responsabilité au transport de matières ou de déchets radioactifs en provenance et à destination de leurs installations nucléaires. La Convention de l'Euratom, en tant que complément de la Convention de l'O.E.C.E., a pour objet d'établir un système de garanties d'Etat destinées à couvrir les responsabilités des exploitants terrestres. Le rapport et le projet de Convention élaborés par la Commission du Comité Maritime International constituent, semble-t-il, la première étude consacrée au problème de la responsabilité qui devrait être mise à charge des exploitants de réacteurs flottants, c'est-à-dire des exploitants de navires à propulsion nucléaire. En outre, la Conférence a été largement aidée par le fait que des délégués du Comité Maritime International ont été invités et ont pu assister à un certain nombre de réunions du Comité de l'O.E.C.E. consacrées aux discussions relatives aux problèmes du transport, ainsi qu'aux réunions de Vienne de l'A.I.E.A.

Pendant sa propre session, la Conférence a largement profité de la présence de M. Peider Kőnz, représentant l'A.I.E.A., et de M. J. L. Weinstein, Conseiller de l'O.E.C.E., Agence Européenne de l'Energie Nucléaire.

3. Si la Conférence n'a pas été unanime quant à la nécessité immédiate d'une Convention traitant de la responsabilité des propriétaires de navires nucléaires, elle a pourtant réalisé une très large entente

of agreement upon the principles which should be applied by such a Convention when ultimately drawn. The great majority of the Conference, however, felt the urgency of producing as soon as possible a draft Convention for the consideration of Governments upon this topic. A number of nuclear ships, at present all Government-owned, are already in service : among the maritime Countries there are in existence projects, some far advanced, for the construction and operation of a much larger number of nuclear ships. So rapid is the advance of technical development in modern times, that it would be imprudent to assume that the present high differential in construction and fuel costs of nuclear ships as opposed to conventional ships will not in the foreseeable future be reduced and ultimately reversed, in which event all Maritime Countries will wish to avail themselves of this new source of power for their Merchant Navies.

For these main reasons the Conference decided to produce a draft Convention in this Session so that, through the traditional medium of the Belgian Government, it could be presented to Governments for their consideration at the Diplomatic Conference, at an early date.

4. The Conference were agreed upon the following main points of principle, which are in accordance, in the main, with the principles applied by the other draft Conventions mentioned above, and are set out in the succeeding paragraphs.

5. The Operator of a nuclear ship should be absolutely liable for nuclear damage caused by or arising out of the operation of the reactor in that ship, or by the penetration or other disturbance of the reactor whereby ionizing radiations may be emitted.

It was appreciated from the many technical reports available that the explosion of the fuel elements in a marine reactor was so unlikely an occurrence as to be almost discountable, but that there is the possibility (however remote it may be owing to the recent progress in the technique of shielding reactors) of a marine reactor being so penetrated or disturbed as the result of a marine casualty that harmful ionizing radiations are emitted from the fuel elements therein. In such event widespread damage of a catastrophic nature could conceivably be caused to persons and property. The Conference felt that the dangers inherent in the operation of marine reactors have probably been exaggerated, but that nevertheless the possibility of such a catastrophe cannot be ignored and must be taken into account in determining the principles of this Convention.

By «absolute» liability the Conference intend to convey the concept of liability (more correctly termed in law «strict liability») independent of negligence and subject to no exemptions other than those specifically

sur les principes dont une telle Convention devrait s'inspirer, si elle prenait ultérieurement corps.

De même, la Conférence a estimé, à une forte majorité, qu'il était urgent d'établir, le plus rapidement possible, un projet de Convention destiné à être soumis aux Gouvernements. Un certain nombre de navires, actuellement tous propriété d'Etat, sont déjà en service, tandis que certains pays maritimes projettent de construire et d'exploiter un nombre beaucoup plus considérable de navires nucléaires; certains projets sont déjà très avancés. A l'époque actuelle, le progrès technique est si rapide qu'il serait imprudent de considérer que la grande différence actuelle dans le prix de la construction et dans celui des combustibles de navires nucléaires par rapport aux navires conventionnels, ne sera pas réduite dans un avenir prévisible et finalement renversée dans quel cas tous les pays maritimes entendront profiter de cette nouvelle source d'énergie pour leur marine marchande.

Telles sont les raisons principales pour lesquelles la Conférence a décidé de rédiger un projet de Convention pendant la présente session afin qu'à une date rapprochée, celui-ci puisse être soumis à l'examen des Gouvernements réunis en Conférence Diplomatique à l'intervention traditionnelle du Gouvernement belge.

4. La Conférence a marqué son accord sur les principes de base qui sont conformes, en général, à ceux appliqués par les autres projets de Convention sus-mentionnés et qui sont détaillés dans les paragraphes ci-dessous.

5. *L'exploitant d'un navire nucléaire doit être objectivement responsable des dommages nucléaires causés par ou résultant de l'exploitation d'un réacteur dans son navire ou par le bris ou une autre panne du réacteur provoquant l'émission de radiations ionisantes.*

La Conférence s'est rendue compte, à la suite des nombreux rapports techniques mis à sa disposition, que l'explosion des éléments de combustible contenus dans un réacteur marin est peu probable au point qu'elle est quasi négligeable mais qu'il y a une possibilité (aussi problématique qu'elle puisse être grâce aux progrès récents de la technique relative au blindage des réacteurs) que des réacteurs marins soient éventrés ou perturbés à la suite d'un accident maritime, et que des radiations ionisantes nuisibles soient émises par les éléments de combustible. Dans pareil cas, des dommages largement répandus, d'un caractère catastrophique, pourraient éventuellement frapper des personnes et des biens. La Conférence a été d'avis que les dangers inhérents à l'exploitation de réacteurs marins ont probablement été exagérés mais que néanmoins la possibilité de pareille catastrophe ne peut pas être ignorée et qu'il doit en être tenu compte dans la fixation des principes de la Convention.

Par responsabilité objective, la Conférence a voulu entendre une responsabilité indépendante de toute négligence et non susceptible

stipulated namely war, hostilities, civil war and insurrection directly causing a nuclear incident.

It was appreciated that this type of liability cast upon those who create an abnormal danger, whereby others suffer damage, is by no means a novel doctrine in many existing systems of law.

6. *The absolute liability of the Operator should also be exclusive.*

By this it is meant that those injured as to person or property by a nuclear incident in which a marine reactor was involved should be able to pursue their remedies only against the Operator, even though the incident was caused or contributed to by the negligence of a third party or even by the negligence of the Claimant himself. The classic case in which such a situation would arise is that of a collision between a nuclear and non-nuclear vessel, or even another nuclear vessel, in which the latter vessel is wholly or partly to blame, but the reactor of the former is damaged so that a nuclear incident occurs.

However contrary to existing legal concepts it may be that a party should escape the consequences of his own negligence, or that of his employees, insurmountable difficulties arise unless the sole legal liability is cast upon the Operator from whose marine reactor the ionizing radiations emanated. As an example, the third party liability of the Owners of non-nuclear ships would become incapable of insurance if they had to share their proportion of blame for nuclear damage caused by a collision between their vessels and nuclear ships.

It is also to be observed that the victims of a nuclear accident would not be benefited by additional rights of action against parties other than the Operator, against which parties the victims would have the burden of establishing negligence without the security of the compulsory insurance provided by the Convention.

7. This view is in accordance with that formed by O.E.E.C. and by I.A.E.A. But the separate question under what circumstances the Operator himself should have a right of recourse, for the damages which he has been compelled to pay to third parties under the Convention, against the person by whose negligence the nuclear incident occurred presented greater difficulty.

After much discussion the Conference came to the conclusion that such right of recourse should be confined to those exceptional cases in which either the nuclear damage resulted from a personal act or omission done with intent to cause damage or the Operator had a contractual right of indemnity. The first exception was inserted at the request of certain of those Countries whose legal systems are based on

d'une exonération quelconque à moins qu'elle ne soit stipulée expressément, à savoir guerre, hostilités, guerre civile et insurrection provoquant directement un accident nucléaire.

On s'est rendu compte que ce type de responsabilité mise à charge de ceux qui créent un danger anormal susceptible de causer des dommages aux tiers, n'est nullement une doctrine nouvelle et qu'il est appliqué dans beaucoup de systèmes juridiques existants.

6. La responsabilité objective de l'exploitant devrait également être exclusive.

On veut dire par là que ceux qui subissent des dommages corporels ou matériels par suite d'un accident nucléaire dans lequel un réacteur marin est impliqué, devraient être à même de poursuivre la réparation de leur dommage uniquement contre l'exploitant même si l'accident a été causé, en tout ou en partie, par la négligence d'un tiers ou même par la négligence du réclamant lui-même. Le cas type dans lequel pareille situation pourrait se présenter est celui d'une collision entre un navire nucléaire et un navire non-nucléaire ou même un autre navire nucléaire, où ce dernier est entièrement ou partiellement coupable mais où le réacteur du premier navire est endommagé et provoque un accident nucléaire.

Encore que l'on puisse heurter des systèmes juridiques existants en faisant échapper une partie aux conséquences de sa propre négligence ou de celle de ses préposés, des difficultés insurmontables commandent d'organiser une responsabilité légale exclusive à charge de l'exploitant dont le réacteur marin émet des radiations ionisantes. A titre d'exemple, la responsabilité civile du propriétaire d'un navire non-nucléaire deviendrait inassurable si les armateurs non-nucléaires devaient supporter leur part de responsabilité dans le dommage nucléaire causé par leurs navires à la suite de l'abordage d'un navire nucléaire.

Il faut remarquer que les victimes d'un accident nucléaire ne trouveront aucun bénéfice dans les droits additionnels d'une action contre une personne autre que l'exploitant puisqu'elles auront le fardeau de prouver que cette autre personne a commis une négligence et qu'en outre, elles n'auront pas la garantie de l'assurance obligatoire prévue par la Convention.

7. Ce point de vue est en accord avec celui formulé par l'O.E.C.E. et par l'A.I.E.A. Toutefois, la question particulière de savoir dans quelles circonstances l'exploitant lui-même devrait avoir un droit de recours pour les indemnités qu'il a été obligé de payer à des tiers en vertu de la Convention, contre la personne dont la négligence a provoqué l'accident nucléaire, présente une difficulté plus grande.

Après de longues discussions, la Conférence est arrivée à la conclusion que pareil droit de recours devrait être limité aux cas exceptionnels où le dommage nucléaire résulte d'un acte ou d'une omission personnels

the Civil Law, under which such a provision is necessary for reasons of public policy. The conditions under which it might apply are almost inconceivable. The second exception would cover cases in which the Operator has been in a position to exact an indemnity against his liabilities under the Convention as a condition of his operating the nuclear ship — as, for example, from the registered Owner.

8. It is finally to be noted that the Convention does not deprive a person through whose negligence, personal or vicarious, a nuclear incident has been caused, from recovering his own nuclear damage from the Operator. There is indeed a strong equitable argument in favour of the opposite view, but the Conference was not prepared to make this exception.

The Conference was only willing to deprive a Claimant of his right to recover compensation for nuclear damage in the remote case of that damage having been wilfully caused by him.

The principle discussed in paragraphs 5 to 8 is set out in Articles II and VIII of the Draft Convention.

9. The absolute and exclusive liability of the Operator must be subject to some defined limit both in amount and in time.

This principle is defined in Articles III and V of the draft Convention.

10. The Operator of a nuclear ship should obtain and maintain insurance or other financial security to cover the amount of his liability.

Article III (ii) of the Draft Convention.

11. No-one should be permitted to operate nuclear ships except under licence of a Government authority.

This principle is not specifically enunciated in the Convention as it is a matter entirely for Governments; but the combined effect of Article I (iv), Article II and Article III (i) is that the Operator of an un-licensed nuclear ship will incur the absolute and sole liability for nuclear damage laid down by the Convention but without the right to limit his liability.

12. The last three principles must be taken together as they each entail the consideration of the same points, which were those upon which the Conference experienced the greatest difficulty. These principles are either declared or inherent in the O.E.E.C. and I.A.E.A. Draft Conventions and indeed can be accepted as axiomatic. It is upon their application to the present Convention that divergent opinions were expressed.

commis dans l'intention de causer un dommage ou au cas où l'exploitant s'est fait contractuellement attribuer un droit de recours. La première exception a été insérée à la demande de ceux des pays dont le système légal rend une telle disposition nécessaire pour des raisons d'ordre public. Les conditions dans lesquelles cette éventualité pourrait se présenter sont quasi inconcevables. La seconde exception devrait couvrir les cas où l'exploitant a été à même d'obtenir conventionnellement une couverture pour ses responsabilités comme condition à l'exploitation d'un navire nucléaire; ainsi, par exemple, de la part du propriétaire qui a fait immatriculer le navire.

8. Finalement, il faut noter que la Convention ne prive pas la personne dont la négligence personnelle ou civile a causé un accident nucléaire, du droit d'obtenir un dédommagement de ses propres dommages nucléaires de la part de l'exploitant. En fait, il y a un puissant argument d'équité en faveur du point de vue opposé mais la Conférence n'a pas été disposée à accepter cette exception.

La Conférence n'a cru devoir priver le réclamant de son droit de dédommagement pour des dommages nucléaires que dans le cas particulier où le dommage a été causé intentionnellement par lui.

Le principe discuté dans les paragraphes 5 à 8 est précisé dans les Articles II et VIII du projet de Convention.

9. La responsabilité objective et exclusive de l'exploitant doit être soumise à quelque limite, tant en ce qui concerne le montant qu'en ce qui concerne la durée.

Ce principe est défini dans les Articles III et V du projet de Convention.

10. L'exploitant d'un navire nucléaire doit obtenir et maintenir une assurance ou une autre garantie financière pour couvrir le montant de sa responsabilité.

Article III (ii) du projet de Convention.

11. Personne ne pourra exploiter un navire nucléaire sans la licence d'une Autorité gouvernementale.

Ce principe n'a pas été énoncé explicitement dans la Convention étant donné que ce problème ne peut être tranché que par les Gouvernements; mais les dispositions combinées des Articles I (iv), II et III (i) conduisent au résultat que l'exploitant d'un navire nucléaire non-licencié encourra une responsabilité objective et exclusive pour les dommages nucléaires spécifiés par la Convention sans droit à la limitation de sa responsabilité.

12. Les trois derniers principes doivent être pris ensemble étant donné qu'ils aboutissent chacun à la considération des mêmes points qui sont ceux à propos desquels la Conférence a éprouvé les plus grandes difficultés. Ces principes sont exprimés, explicitement ou implicitement, dans les projets de l'O.E.C.E. et de l'A.I.E.A. et peuvent

13. The Conference were agreed that the main objects of the Convention must be two, which, however, could be mutually conflicting : —

(a) to provide such security for the claims of victims of a nuclear incident (that is in such an amount and in such a manner as to be readily available) that nuclear ships will be acceptable in all ports of the World. However advanced may be the technology of protecting marine reactors, however stringent may be the safety regulations which are already being devised upon an international scale, no Government can ignore the possibility, if it permits nuclear ships to operate in its ports or territorial waters, of a nuclear casualty which might cause damage to person and property on a scale hitherto unknown in marine disasters. On the other hand a nuclear merchant vessel will be quite useless unless it can trade world-wide.

yet (b) to adjust the financial burden which can fall upon the Operator of a nuclear ship by reason of a nuclear casualty to a supportable limit; otherwise no merchant nuclear ships will be constructed or operated. Some limit of liability must, therefore, be provided; for marine purposes such limit must be universal and not variant among flags.

14. It would seem that the first pre-requisite to the free access of nuclear ships to world ports and territorial waters is that they should be licensed by a responsible Government Authority; it is apprehended that no such licence would be granted to a vessel which did not conform in design, construction and maintenance to international safety regulations.

15. The second pre-requisite must be that the amount of the Operator's limit of liability — whatever limit may ultimately be decided — is adequately secured.

Both the O.E.E.C. and I.A.E.A. draft Conventions, which deal primarily with the liability of Operators of land reactors, and the recent United States and British legislation, envisage commercial insurance for this purpose. It was upon this point that a divergence of views was expressed in the Conference, although fundamentally the difference was one of procedure rather than of principle.

16. The maximum commercial insurance against liability for nuclear damage which would be available to the Operator of a nuclear ship has been the subject of much discussion, during the preliminary work upon this Draft Convention, in the Comité Maritime International, to which the advice of its Underwriters Members, both Market and

être acceptés en fait comme des axiomes. C'est sur leur application à la présente Convention que des opinions différentes ont été émises.

13. La Conférence a été d'accord qu'il y a deux objectifs principaux à la Convention qui peuvent néanmoins être réciproquement en conflit :

(a) fournir une garantie telle pour les réclamations des victimes d'un accident nucléaire (c.-à-d. une garantie d'une importance et d'une nature telles qu'elle soit promptement et aisément disponible) que les navires nucléaires puissent être admis dans tous les ports du monde. Indépendamment du degré d'avancement de la technique de la protection des réacteurs marins, indépendamment de la rigueur des règlements de sécurité qui ont déjà été esquissés sur un plan international, aucun Gouvernement ne peut ignorer la possibilité, s'il permet l'entrée d'un navire nucléaire dans ses ports ou ses eaux territoriales, d'un sinistre nucléaire qui peut causer des dommages à des personnes et à des biens de dimensions inconnues jusqu'à présent en matière de désastres maritimes. D'autre part, un navire marchand nucléaire serait tout à fait inutile s'il ne pouvait pas naviguer dans toutes les parties du monde.

(b) fixer la charge financière qui peut être imposée à l'exploitant d'un navire nucléaire du chef d'un accident nucléaire jusqu'à une limite supportable; sinon aucun navire nucléaire ne sera construit ou exploité. C'est la raison pour laquelle une certaine limite de responsabilité doit être prévue; pour les besoins de la navigation maritime pareille limite doit être universelle et ne peut pas varier suivant les pavillons.

14. Il semble bien que la première condition préalable d'un libre accès des navires nucléaires aux ports du monde et aux eaux territoriales doive être qu'ils soient munis d'une licence délivrée par une Autorité gouvernementale responsable. On présume que pareille licence ne sera accordée qu'à un navire dont la conception, la construction et l'entretien sont conformes aux règlements internationaux sur la sécurité.

15. La seconde condition préalable devrait être que le montant de la limite de responsabilité de l'exploitant — quelle que soit la limite qui sera ultérieurement fixée — soit garanti d'une manière appropriée.

Tant le projet de Convention de l'O.E.C.E. que celui de l'A.I.E.A. qui traitent principalement de la responsabilité de l'exploitant d'un réacteur terrestre, ainsi que les lois américaines et britanniques récentes, envisagent une assurance commerciale à cet effet. C'est sur ce point qu'une différence de vues s'est manifestée à la Conférence quoique la divergence principale portât plutôt sur la procédure que sur le principe.

16. Le maximum de l'assurance commerciale contre la responsabilité pour un dommage nucléaire qui serait à la disposition de l'exploitant d'un navire nucléaire, a donné lieu à beaucoup de discussions pendant le travail préliminaire de ce projet de Convention au sein du Comité Maritime International qui a disposé des avis de ses membres

Protection & Indemnity Underwriters, is readily available. It is notoriously difficult to predict the maximum amount which can be covered upon any risk, until a concrete insurance is placed. But the consensus of opinion is that, at the present time, utilizing the resources of the international insurance Market, it would not be prudent to envisage a higher maximum than \$ 15.000.000 or, say, £ 5 million.

17. Strong views were expressed by a number of Delegations at the Conference that such a sum would not be sufficient to fulfil the essential requirement of the Convention, namely that the Operator's limit of liability should be of such an amount as to make nuclear ships generally acceptable in the ports of the world. Recognizing again that nuclear hazards at sea may well have been greatly exaggerated, this view was based upon the apprehension that, *if*, in spite of all the technical safeguards, a marine nuclear reactor were so damaged in a casualty as to emit ionizing radiations, the consequent damage to person and property might far exceed the commercially insurable maximum. If this be the correct view then, obviously, that maximum must be supplemented aliunde, in which event the Conference could devise no other supplementation than that of some form of State indemnity. Once that conclusion is reached it would appear that the appropriate State for such purpose is the Licensing State.

18. On the other hand, a number of the other Delegations felt unable to express a definite opinion upon this vital matter.

This attitude was prompted by the view, which was held by the majority of the Conference, that it is not the function of the Comité Maritime International to include in any draft Convention, which is ultimately to be presented to Governments for their consideration at the Diplomatic Conference, provisions which cast obligations, financial or otherwise, upon States. It was recognized that that is entirely a matter for Governments themselves. Under the Constitution or Parliamentary Practice of a number of States such an obligation could not be incurred under a Convention intended to be ultimately embodied in the local Statute law. The result could be achieved by other means, but the Conference was unanimous that it is not for the Comité Maritime International to make suggestions on such a matter.

Yet those Delegations which expressed definitely the views detailed in paragraph 17 were anxious that their opinion should be recorded that, unless States were prepared to supplement, in case of need, the maximum cover obtainable by commercial insurance, the Convention would not be acceptable on a world-wide basis.

assureurs, assureurs ordinaires et assureurs-club. Il est notoirement difficile de prévoir le montant maximum qui peut être couvert pour un risque quelconque aussi longtemps qu'une couverture concrète n'est pas placée. Mais l'opinion prévaut qu'à présent, en utilisant les ressources du marché international des assurances, il serait imprudent d'envisager un maximum dépassant \$ 15.000.000 ou £ 5.000.000.

17. Un certain nombre de délégations ont défendu avec force que pareille somme ne serait pas suffisante pour répondre à l'exigence essentielle de la Convention à savoir que la limite de la responsabilité de l'exploitant atteigne un montant propre à rendre les navires nucléaires généralement acceptables dans les ports du monde. Constatant une fois de plus que les risques nucléaires en mer pourraient avoir été largement exagérés, ce point de vue a été basé sur la crainte que si en dépit des mesures techniques de sécurité, un réacteur nucléaire marin était endommagé par un accident au point d'émettre des radiations ionisantes, le dommage en résultant pour des personnes ou des biens pourrait dépasser largement le montant commercialement assurable. Si ce point de vue est exact, il est évident que ce maximum doit être relevé; dans ce cas, la Conférence ne peut envisager qu'une augmentation fournie par une indemnité gouvernementale. Une fois arrivé à cette conclusion, il apparaît que l'Etat le plus indiqué pour intervenir est l'Etat qui a accordé la licence.

18. D'autre part, un certain nombre d'autres délégations ont estimé qu'elles n'étaient pas à même d'exprimer une opinion définitive sur ce point crucial.

Cette attitude a été dictée par la considération partagée par la majorité de la Conférence, suivant laquelle il n'appartient pas au Comité d'inclure dans un quelconque de ses projets de Convention qui doit finalement être présenté aux Gouvernements pour examen à la Conférence Diplomatique, des dispositions qui mettent des obligations financières ou autres à charge des Etats. Il a été admis que la solution de ce problème appartient complètement aux Gouvernements eux-mêmes. Suivant les pratiques constitutionnelles et parlementaires d'un certain nombre de pays, pareille obligation ne peut être acceptée dans une Convention qui doit finalement être incorporée dans une loi nationale. Le même résultat pourrait être obtenu par d'autres moyens mais la Conférence a été unanime pour dire qu'il n'appartient pas au Comité Maritime International de faire des suggestions en cette matière.

Cependant les délégations qui ont exprimé les vues détaillées dans le paragraphe 17, ont tenu à ce que le compte-rendu mentionne leur opinion suivant laquelle la Convention ne serait pas acceptable sur une base universelle, si les Etats n'étaient pas disposés à fournir un supplément en cas de besoin, au delà du montant maximum pouvant être fourni par le marché des assurances.

19. In these circumstances it was decided to draft Article III in its present form, but to attach a recommendation, in the terms of Recommendation I, to the Convention itself.

The limit of liability in Article III (i) has, therefore, deliberately been left in blank.

If, when the Convention is considered at the Diplomatic Conference, Governments agree to accept the commercially insurable figure, then that will be the figure included in Article III (i). If, on the other hand, agreement can only be obtained upon a higher figure, and that is to be inserted in Article III (i), it will no doubt be appreciated that no Shipowner would operate a nuclear ship, thereby risking a liability higher than can be commercially insured, unless an unimpeachable supplementary indemnity is available to him up to whatever that limit may be.

20. A cognate question was discussed by the Conference which resulted in Recommendation II. If the ultimate agreement between States involves their assuming obligations under treaty or otherwise with regard to securing the limit of liability and if, as is assumed, the Convention is to be an « open » Convention to which all States may adhere, it may well fall for consideration by States whether international machinery for ensuring that such obligations are fulfilled is not desirable.

21. The limitation of the Operator's liability in time presented much less difficulty. The Conference were prepared to accept, with certain modifications, the solution of this problem devised by O.E.E.C. (Draft Convention C (59) 154 - Article 8).

This is expressed in Article V of the Draft Convention. It is perhaps desirable to draw attention to sub-paragraph (ii) of this Article, which is absolutely necessary to enable the Operator's liability in case of the loss or wreck of a nuclear ship to be insurable.

22. The second main point of debate in the Conference was that of jurisdiction, upon which the conclusions of the Conference are expressed in Article XII. It was appreciated, however, that the solution there proposed may lead to grave difficulties in practice.

Article XII confers jurisdiction at the option of a Claimant upon two Courts, namely, the Court of the Licensing State and the Court of the Contracting State within whose territory the nuclear incident occurred. It is to be noted that the Convention does not deprive a Claimant of the traditional right in rem, provided that such right is exercised in one or other of these two jurisdictions; it is apprehended, however, that the exercise of this right will scarcely be necessary in

19. Dans ces circonstances il a été décidé de rédiger l'Article III dans sa forme actuelle mais de formuler une recommandation dans les termes de la Recommandation I annexée à la Convention elle-même.

C'est la raison pour laquelle la limite de responsabilité a été délibérément laissée en blanc dans l'Article III (i).

Si, lors de l'examen de la Convention par la Conférence Diplomatique, les Gouvernements étaient d'accord d'accepter le montant commercialement assurable, ce chiffre devrait être inséré dans l'Article III (i). Si, cependant, un accord ne pouvait être obtenu que sur un chiffre plus élevé et que ce chiffre soit inséré dans l'Article III (i), il est certain qu'aucun armateur ne voudra exploiter un navire nucléaire; en effet, le propriétaire subirait une responsabilité plus élevée que celle qui peut être commercialement assurée à moins qu'une couverture supplémentaire ne soit mise à sa disposition jusqu'à concurrence de la limite qui sera acceptée.

20. Une question connexe a été discutée par la Conférence et a donné lieu à la Recommandation II. Si l'accord final entre les Etats implique leur acceptation d'une obligation en vertu d'un traité ou autrement concernant la garantie de la limite de responsabilité et si, comme il est supposé, la Convention doit être ouverte à tous les Etats qui y peuvent adhérer, les Etats pourront envisager l'opportunité de créer un mécanisme international pour assurer l'exécution de ces obligations.

21. La limitation de la responsabilité de l'exploitant dans le temps présentait beaucoup moins de difficultés. La Conférence s'est ralliée, moyennant certaines modifications aux solutions préconisées en ces matières par l'O.E.C.E. (projet de Convention C (59) 154 — Article 8).

C'est le contenu de l'Article V du projet de Convention. Il pourrait être opportun d'attirer l'attention sur le sous-paragraphe (ii) de cet Article qui est absolument nécessaire pour rendre la responsabilité de l'exploitant assurable dans des cas d'abandon d'un navire nucléaire.

22. Le deuxième point principal du débat de la Conférence concernait la juridiction; les conclusions de la Conférence sur ce point sont exprimées dans l'Article XII. Toutefois, la Conférence s'est rendu compte des difficultés graves auxquelles les solutions qui y sont proposées, peuvent aboutir dans la pratique.

L'Article XII accorde au réclamant un choix entre deux tribunaux à savoir le tribunal de l'Etat dont émane la licence et le tribunal de l'Etat contractant dans le territoire duquel l'accident nucléaire a eu lieu. Il faut noter que la Convention ne prive pas le réclamant de son droit traditionnel à une action « in rem » pourvu que pareil droit soit exercé dans l'une ou l'autre de ces deux juridictions. Toutefois, la Conférence a appréhendé que l'exercice de ce droit ne soit nécessaire en pratique, compte tenu des dispositions de l'Article XII (ii) relatives à l'exécution des jugements devant le tribunal de l'Etat ayant accordé la licence devant lequel l'exploitant pourra être assigné « in personam ».

practice having regard to the provisions of Article XII (ii) with regard to the enforcement of judgments in the Court of the Licensing State in which the Operator will of course be suable in personam.

23. The reason for which the Conference decided upon this dual jurisdiction is the hardship which might be inflicted on the victims of a nuclear accident in a particular locality, if they were to be compelled to establish their claims only in the Courts of the Licensing State. The establishment of such claims might entail the proof of causation as well as of the quantum of damage, either of which must involve the presentation of evidence to the Court, with the consequent trouble and expense to the Claimants of producing witnesses possibly at great distances from the locality in which the nuclear incident occurred.

24. Nevertheless the practical difficulties involved in conferring jurisdiction upon more than one Court to determine liability and quantum under the Convention are serious.

As an example, Article VII, second paragraph, deals with the event of nuclear damage being caused by more than one nuclear incident, involving the liability of more than one Operator, in such circumstances that it is not possible to determine what proportion of the damage was separately caused by each incident. In this event the Convention provides that the Operators involved are jointly and severally liable for the whole of the damage, but the liability of each is limited as provided in Article III; there will, therefore, in such a case be as many limitation funds as there are Operators. This appears to be an obviously just provision in the interests of the victims and the interests of the Operators are to some extent protected by the right of contribution inter se conferred in the last paragraph of this Article.

But if the Operators involved are each licensed by different States, there will then be as many Courts of jurisdiction as there are Operators, in addition to the Courts of the State in which the nuclear incidents occurred. The Courts, not being of course bound by each others decisions, may well differ upon the vital point whether the damage caused by each nuclear incident is in fact reasonably separable. Serious confusion would then arise because according to the determination of some of the Courts having jurisdiction Article VII second paragraph would apply, whereas according to the determination of others it would not. A further grave consequence of multiplicity of jurisdiction would be that vastly different awards might be made in the various jurisdictions for precisely the same type of damage : no doubt Claimants would seek to enforce their claims in that jurisdiction, of those available to them, in which the Courts customarily awarded the highest damages.

25. Indeed difficulties arising out of the multiplicity of jurisdiction compelled the Conference to draft Article VII paragraph 1 in the same

23. La raison pour laquelle la Conférence a accepté cette double juridiction est la difficulté que peuvent éprouver les victimes d'un accident nucléaire dans un endroit déterminé, si elles étaient obligées d'introduire leur réclamation uniquement devant les tribunaux de l'Etat dont émane la licence. L'introduction de pareille réclamation pourrait être influencée par les moyens de preuve nécessaires à établir la relation de cause à effet et l'importance du dommage; dans les deux cas des preuves doivent être fournies devant le tribunal ce qui implique des difficultés et des dépenses à charge des réclamants pour produire des témoignages éventuels à des distances très éloignées de l'endroit où l'accident nucléaire a eu lieu.

24. Néanmoins des difficultés pratiques sérieuses résultent du fait de conférer une compétence à plus d'un tribunal pour déterminer la responsabilité et le montant des dommages en vertu de cette Convention.

Ainsi le second paragraphe de l'Article VII traite des dommages nucléaires causés par plus d'un accident nucléaire impliquant la responsabilité de plus d'un exploitant et se présentant dans des circonstances telles qu'il n'est pas possible de déterminer la proportion des dommages qui a été causée séparément par chaque accident. Dans pareil cas la Convention dispose que les exploitants impliqués sont solidairement responsables de l'entière des dommages mais la responsabilité de chacun est limitée suivant les dispositions de l'Article III; c'est la raison pour laquelle il y aura dans pareil cas autant de fonds de limitation qu'il y a d'exploitants. Cela paraît une disposition manifestement équitable dans l'intérêt des victimes et les intérêts des exploitants sont protégés dans une certaine mesure par le droit de recours entre eux accordé par le dernier paragraphe de cet Article.

Mais, si les licences ont été accordées aux exploitants par des Etats différents, il y aura autant de tribunaux compétents que d'exploitants. En outre, les tribunaux de l'Etat où l'accident nucléaire a eu lieu, seront également compétents. Comme les tribunaux ne sont pas tenus par des décisions qu'ils n'ont pas prononcées, il pourrait y avoir une différence sur le point capital de savoir si les dommages causés par l'accident nucléaire sont en fait séparables. Une confusion sérieuse pourrait se présenter dans pareil cas puisque conformément à la décision de certains tribunaux compétents, le paragraphe 2 de l'Article VII pourrait être applicable, alors que d'autres tribunaux, également compétents, pourraient ne pas partager ce point de vue. La pluralité des compétences pourrait avoir une autre conséquence grave, à savoir que les différentes juridictions pour un même genre de dommage, pourraient accorder des indemnités très différentes; il n'y a pas de doute que les réclamants s'efforceront de faire approuver leur réclamation par la juridiction compétente qui habituellement accorde les plus fortes indemnités.

25. En fait, la difficulté résultant de la pluralité des juridictions a obligé la Conférence à rédiger l'Article VII paragraphe 1 dans la même

form as paragraph 2. Paragraph 1 deals with the case in which there is only one nuclear incident, but the liability of more than one Operator is involved, and again it is not possible to allocate the nuclear damage between those Operators. An obvious example is that of a collision between two nuclear vessels in which both reactors are so damaged that each emits ionizing radiations.

In such event the majority of the Conference felt strongly that it was just that the Operators should be jointly and severally liable, but that the aggregate of their liability should not exceed the limit provided in Article III (i). But upon consideration it appeared that, in addition to the difficulties mentioned above, the further complication would arise that, if the Operators involved were each licensed in different States, none could possibly calculate how much of his share of the total limit of liability he must make available in his Licensing State.

Accordingly, with great reluctance, the Conference decided that the same principle must be applied to the circumstance envisaged in paragraph 1 as to those dealt with in paragraph 2.

26. It is not proposed to deal in this Report with the many questions of drafting with which the Conference had to concern itself, important as many of them were. These will no doubt be reconsidered at the Diplomatic Conference.

There are, however, five further points which should be mentioned.

27. The Convention does not make any specific mention of liability for removal of wreck. This omission was deliberate: the Dock & Harbour Authorities were not personally represented at the Conference, and it was felt that this important question will need to be considered by Governments at the Diplomatic Conference after consultation with those concerned.

In some Continental jurisdictions it appears that this liability, where it exists under local law, would be comprehended in the definition of « nuclear damage » in Article I (vi). In other jurisdictions, such as the United Kingdom, liability for the cost of removal of a nuclear wreck would not be covered by this definition. Such liability arises solely under the local Statute of the Dock or Harbour Authority in whose waters the wreck is situate. The result would be that, in addition to his liability for nuclear damage under the Convention, the Operator would also be saddled with the cost of removal of the wreck, which in the case of a nuclear vessel would probably be very great. At present this liability is unlimited in the United Kingdom.

28. When liability arising out of a conventional marine casualty is limited under the law of most maritime Countries, the limit does not include interest and costs awarded by the Court.

forme que le paragraphe 2. Le paragraphe 1 traite de cas où il y a un seul accident nucléaire mais où la responsabilité de plus d'un opérateur est impliquée. Une fois de plus, il n'est pas possible de répartir les dommages entre ces opérateurs. Un exemple typique est celui d'une collision entre deux navires où les deux réacteurs sont avariés et émettent chacun des radiations ionisantes.

La majorité de la Conférence a été formellement d'avis que dans pareil cas, il était équitable que les exploitants soient solidairement responsables, mais que leur responsabilité cumulée ne dépasse pas la limite prévue par l'Article III (i). Toutefois, après réflexion, il est apparu que, en plus des difficultés mentionnées ci-dessus, une complication additionnelle surgirait à savoir que, si les exploitants impliqués ont obtenu une licence dans des Etats différents, personne ne pourrait calculer l'importance de sa quote-part dans la limite totale qui doit être fournie dans l'Etat qui lui a accordé la licence.

Par conséquent, la Conférence a décidé, avec beaucoup de réputation, que le même principe doit être appliqué aux cas envisagés au paragraphe 1 et aux cas envisagés au paragraphe 2.

26. On n'envisage pas de traiter dans le présent rapport les nombreuses questions de rédaction que la Conférence a dû trancher quoique plusieurs eussent été très importantes. Cela fera sans doute l'objet d'un réexamen à la Conférence Diplomatique.

Toutefois, il y avait cinq autres points qui doivent être mentionnés.

27. La Convention ne mentionne pas spécifiquement la responsabilité pour l'enlèvement d'épave. Cette omission a été faite à dessein. Les Autorités Portuaires n'étaient pas représentées à la Conférence; aussi a-t-on pensé que cette question importante devrait être réexaminée par les Gouvernements à la Conférence Diplomatique après consultation des intéressés.

Il est apparu que dans certaines juridictions continentales, cette responsabilité existe dans la loi nationale, celle-ci sera couverte par la définition de dommage nucléaire dans l'Article I (vi). Dans d'autres juridictions telles que celle du Royaume-Uni, la responsabilité pour les frais d'enlèvement d'une épave nucléaire ne serait pas couverte par cette définition. Pareille responsabilité se présente uniquement sous la loi locale des Autorités Portuaires dans les eaux desquelles l'épave a sombré. Il en résultera qu'en plus de sa responsabilité pour les dommages nucléaires en vertu de la Convention, l'exploitant aura également à faire face à des frais pour enlever l'épave, frais, qui, dans le cas d'un navire nucléaire, seront probablement très élevés. Actuellement cette responsabilité n'est pas limitée en Grande-Bretagne.

28. Lorsqu'une responsabilité résultant d'un accident maritime conventionnel est limitée par la loi de la plupart des pays, cette limite ne couvre pas les intérêts et les frais accordés par le tribunal.

The Conference was of opinion that, as regards costs, the same rule should be applied to nuclear limitations. The Conference failed to reach agreement, however, upon the question of interest. In conventional limitation actions the rule that the Shipowner claiming limitation must pay such interest as the Court may award as well as the amount of the limitation has been sanctioned by long practice, but in complex cases in which the collation and assessment of the claims is a necessarily lengthy affair, sometimes lasting over many years, hardship can undoubtedly be inflicted on the Shipowner. In a nuclear limitation this hardship may well be greatly enhanced having regard to the higher sums and longer time which may well be involved.

On the other hand, Claimants in a nuclear limitation may have to wait a long period before the distribution of the limitation fund.

29. Article XI, which deals with the marshalling, apportionment and distribution of limitation funds makes no provision for priorities.

In a conventional limitation under the law of most maritime Countries, life and injury Claimants do, by varying means, receive a preference over property Claimants.

The Conference after discussion felt that this was a matter peculiarly for Governments to decide.

30. A number of Delegations were of opinion that each of the Contracting States should be entitled to exclude from the benefits of the Convention Owners, Operators and nationals and residents of non-Contracting States.

If such a provision were inserted, Owners and Operators of nuclear ships not licensed by a Contracting State would be subject to the absolute and exclusive liability under the Convention in any of the jurisdictions of the Contracting States, but would not be entitled to limit such liability. Victims of a nuclear incident, who were not nationals or residents of a Contracting State, would be left to their normal legal remedies, such as they might be, without the benefit of the jurisdiction or the enforcement provisions of Article XII.

It was generally felt that such an Article would go far to achieve the desired result of inducing a world-wide acceptance of the Convention.

Again, however, the majority of the Conference were of opinion that this was a matter peculiarly for Governments to decide; accordingly it was raised as a recommendation only in Recommendation IV.

31. Finally it was recognized that the adoption of a Convention on the lines of this Draft Convention must entail the amendment of a

La Conférence a émis l'opinion que, en ce qui concerne les frais, la même règle devrait être appliquée aux limitations nucléaires. Toutefois, la Conférence n'est pas arrivée à un accord sur la question des intérêts. Dans des procès de limitation conventionnelle la règle suivant laquelle le propriétaire du navire invoquant la limitation doit payer les intérêts que les tribunaux accordent ainsi que le montant de la limitation, a été sanctionnée par une longue pratique mais dans des cas complexes dans lesquels la collation et l'évaluation des réclamations est nécessairement une question de longue durée, parfois de plusieurs années, cette charge peut difficilement être imposée au propriétaire du navire. Il est probable que dans une limitation nucléaire cette charge sera considérablement augmentée en raison des sommes plus élevées et des délais de prescription plus longs.

Par ailleurs, les créanciers, en cas de limitation nucléaire peuvent être obligés à attendre longtemps la distribution du fonds de limitation.

29. L'Article XI qui traite du recouvrement, de la réparation et de la distribution du fonds de limitation ne contient pas de disposition concernant les privilèges.

Dans un cas classique de limitation, les dommages corporels obtiennent, suivant la loi de la plupart des pays maritimes, de diverses manières une préférence sur les dommages matériels.

La Conférence, après en avoir discuté, a estimé qu'il s'agissait d'une manière spéciale à trancher par les Gouvernements.

30. Un certain nombre de délégations ont émis l'opinion suivant laquelle chaque Etat contractant devrait être autorisé à exclure du bénéfice de la Convention les propriétaires et les exploitants qui sont des nationaux ou des résidents d'Etats non-contractants.

Si pareille disposition était insérée, des propriétaires et des exploitants de navires ne disposant pas d'une licence délivrée par un Etat contractant, seraient soumis à une responsabilité objective et exclusive en vertu de la Convention devant les juridictions des Etats contractants mais ne seraient pas autorisés à limiter leur responsabilité. Les victimes d'un accident nucléaire qui ne seraient ni des nationaux ni des résidents d'un Etat contractant devraient se contenter de leur action ordinaire telle qu'elle existe sans avoir le bénéfice de la juridiction ou des dispositions d'exécution de l'Article XII

L'opinion a prévalu que pareil Article contribuera considérablement à atteindre le résultat désiré à savoir celui d'amener une acceptation mondiale de la Convention.

Toutefois, une fois de plus, la majorité de la Conférence a été d'avis que c'était un problème particulier à trancher par les Gouvernements; par conséquent, ce point a été soulevé uniquement sous forme de recommandation dans la Recommandation IV.

31. Finalement on a constaté que l'adoption d'une Convention suivant les termes du projet, doit impliquer un amendement à un certain

number of existing maritime Conventions, notably the Brussels Collision Convention 1910 and the Brussels Limitation of Liability Conventions 1924 and 1957.

Such amendments could only be lawfully made at the Diplomatic Conference and with the consent of all the Signatories of the earlier Conventions. For this reason a number of the Delegations urged that this matter also should be raised as a recommendation appended to the draft Convention. The majority of the Conference, however, decided to insert a special provision to this end in the Convention itself. Accordingly Article XIV was drafted.

32. The discussions upon the Draft Convention in Plenary Conference, International Commission and Drafting Committee occupied the whole of the week of the Rijeka Conference. In its final form the Draft Convention was submitted to the Plenary Conference at the closing Session on Saturday, 26th September; the Draft Convention was adopted by 17 votes in favour, none against and 3 abstentions.

nombre de Conventions maritimes existantes notamment la Convention de Bruxelles sur les abordages de 1910 et les Conventions de Bruxelles sur la limitation de la responsabilité de 1924 et de 1957.

Pareils amendements ne peuvent être apportés valablement que par la Conférence Diplomatique et avec l'assentiment de tous les signataires des Conventions antérieures. C'est la raison pour laquelle un nombre de délégations ont insisté pour que cette question soit également soulevée sous forme de Recommandation devant être annexée au projet de Convention. Toutefois, la majorité de la Conférence a décidé d'insérer une disposition spéciale à cette fin dans la Convention elle-même. C'est ainsi que l'Article XIV a été rédigé.

32. Les discussions relatives au projet de Convention au sein de la Conférence Plénière, de la Commission Internationale et du Comité de Rédaction, ont pris toute la semaine qu'a duré la Conférence de Rijeka. Dans sa forme finale le projet de Convention a été soumis à la Conférence Plénière à la séance de clôture du samedi 26 septembre; le projet de Convention a été adopté par 17 voix; aucune délégation n'a voté contre; 3 délégations se sont abstenues.

INDEX

I.

INTERNATIONAL MARITIME COMMITTEE

Pages

Constitution	7
Titulary Members	12
Ratifications of Maritime Conventions	
Collision	22
Assistance and Salvage at Sea	24
Limitation (signed at Brussels on August 24th, 1924)	26
Bills of Lading	27
Liens and Mortgages	28
Immunity of State-owned Ships	29
Civil Jurisdiction	31
Penal Jurisdiction	31
Arrest of Seagoing Ships	32
Limitation (signed at Brussels on October 10th, 1957)	33
Stowaways	33
Brussels' Conventions 1957	
Limitation of the Liability of the Owners of Seagoing Ships	34
Stowaways	51
Unification of certain Rules relating to the Carriage of Passengers by Sea	60

II.

CONFERENCE OF RIJEKA

1. Attendance

Sponsoring Committee	71
Officers of the Conference	73
Yugoslav Organizing Committee	74
List of Attendance	75
Observers	79

2. Preliminary Reports

<i>Revision of the International Convention for the Unification of certain Rules of Law respecting Assistance and Salvage at Sea.</i>	
Preliminary Report of the Hon. President of the International Subcommittee	83
<i>Atomic Risks.</i>	
<i>Liability for Damage caused by nuclear incidents in the course of carriage by sea.</i> — Report of the C.M.I. to the European Nuclear Energy Agency of the O.E.E.C.	91
<i>Third Party Liability in the field of Nuclear Energy.</i> — O.E.E.C. Draft Convention	97
<i>C.M.I. Amendments to O.E.E.C. Draft Convention on third Party Liability in the field of nuclear energy</i> — — —	106
Provisional Report of the restricted Subcommittee relating to the <i>Liability of Operators of Nuclear Ships</i>	113
Draft of International Convention relating to the <i>Liability of Operators of seagoing nuclear ships</i>	118
Projet de Convention Internationale relative à la <i>Responsabilité des Exploitants de Navires de mer nucléaires</i>	119
<i>Letters of Indemnity</i>	
Draft Resolution proposed by the Maritime Law Association of the United States	128
Proposed Form of shipper's supplemental indemnity	130
Projet de formule de garantie supplémentaire du chargeur	131
<i>Conflicts of Law.</i> — Report of the International Subcommittee	131
<i>Coordination of the Texts of the Conventions on Limitation and on Mortgages.</i> — Report of the Introductory French Maritime Law Association	141
<i>Registry of Operators of Ships</i>	
Draft Report of the Hon. President of the International Subcommittee (<i>Conclusions</i>)	144
Projet de Rapport du Président de la Commission Internationale	145
Avant-Projet de Convention Internationale	166
<i>International Status of Merchant Ships in Foreign Ports</i>	
Avant-Projet de Convention Internationale du Président de la Commission Internationale	167

3. Minutes

Sunday, 20th September 1959 :

INAUGURAL SESSION	175
---------------------------	-----

Monday, 21st September 1959 :

PLENARY SESSION

Atomic Risks	191
----------------------	-----

Tuesday, 22nd September 1959 :

PLENARY SESSION

Status of Merchant Ships in Foreign Ports	224
Registry of Operators of Ships	228

SUBCOMMITTEE ON ATOMIC RISKS

Article I	240
Article II	255
Article III	275

Wednesday, 23rd September 1959 :

PLENARY SESSION

Co-ordination of the Conventions on Limitation and on Privileges and Mortgages	281
Revision of Article XIV of the Convention on Assistance and Salvage	282

SUBCOMMITTEE ON ATOMIC RISKS

Article III (continued)	301
Article IV	309
Article V	309
Article VI	314
Article VII	319
Article VIII	325
Article IX	326
Article X	328
Article XI	329
Article XII	338
Article XIII	344
Article XIV	345
Article XV	346
Article XIII (continued)	347
Article VII (continued)	348
Article I (continued)	353

Thursday, 24th September 1959 :

Draft of International Convention relating to <i>The Liability of Operators of Nuclear Ships prepared by the Drafting Committee</i>	354
---	-----

Projet de Convention Internationale relative à <i>La Responsabilité des Exploitants de Navires Nucléaires</i> , élaboré par <i>La Commission de Rédaction</i>	354
---	-----

Friday, 25th September 1959 :

PLENARY SESSION

Article X	365
Letters of Indemnity	392
Revision of Article XIV of the Convention on Assistance and Salvage at Sea (1910)	393
International Status of Merchant Ships in Foreign Ports	394
Registry of Operators of Ships	394

Saturday, 26th September 1959 :

PLENARY SESSION

Atomic Risks	395
Closing Session	415

4. Resolutions and Draft Convention

<i>Revision</i> of Article X of the International Convention for the Unification of certain rules of law relating to <i>Bills of Lading</i>	420
<i>Letters of Indemnity and Marginal Clauses</i>	420
<i>Revision</i> de l'Article X de la Convention Internationale pour l'unification de certaines Règles en matière de <i>Connaissements</i>	421
<i>Lettres de Garanties et Clauses Marginales</i>	421
<i>Revision</i> of Article XIV of the International Convention for the Unification of certain rules of law respecting <i>Assistance and Salvage at Sea</i>	422
<i>International Status of Ships in foreign Ports</i>	422
<i>Revision</i> de l'Article XIV de la Convention Internationale pour l'Unification de certaines Règles en matière d' <i>Assistance et de Sauvetage Maritimes</i>	423
<i>Régime international des navires dans un port étranger</i>	423
<i>Registry of Operators of Ships</i>	424
<i>Publicité de l'Armateur</i>	425
Draft of International Convention relating to the liability of Operators of <i>Nuclear Ships</i>	426
Recommendations	436
Report of the Hon. Secretaries General	440
Projet de Convention Internationale relative à la Responsabilité des Exploitants de <i>Navires nucléaires</i>	427
Recommandations	437
Exposé des motifs des Secrétaires-Généraux	441