

INTERNATIONAL MARITIME  
COMMITTEE

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XXVI<sup>th</sup> CONFERENCE

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STOCKHOLM

1963

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INTERNATIONAL MARITIME COMMITTEE

CONSTITUTION

MEMBERS

BRUSSELS MARITIME CONVENTIONS

RATIFICATIONS - ACCESSIONS

# STOCKHOLM

CONFERENCE

REPORTS & AMENDMENTS

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DRAFT CONVENTIONS

1963

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

# I

INTERNATIONAL MARITIME COMMITTEE

CONSTITUTION

MEMBERS

CONFERENCES

RATIFICATIONS

OF THE MARITIME CONVENTIONS

# CONSTITUTION

of the International Maritime Committee

## Article 1.

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

## Article 2.

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

## Article 3.

The Comité Maritime International shall consist of :

### I. *National Associations.*

The number of National Associations is unlimited.

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

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

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

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

## 2. *Titulary Members.*

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

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

### Article 4.

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

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

A. The Bureau Permanent shall consist of :

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

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

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

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

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

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

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

#### **Article 5.**

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

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

The decisions of the Bureau Permanent shall be final and binding within the limits of its authority; they shall be made upon a majority of the votes of Members present or validly represented. In case of equality of votes the President shall have a casting vote. Each Member shall have one vote. In case of inability to attend a Meeting, a Member may, with the consent of the Administrative Council, appoint as his substitute a Titulary Member, provided that he shall not be entitled to delegate his voting right to a Member of a National Association other than that which he himself represents.

#### **Article 6.**

The functions of the Administrative Council are to conduct the day to day business of the Comité Maritime International; to assist the Bureau Permanent in carrying out the duties which fall upon it; to prepare in the right time the matters that will be submitted to the Bureau Permanent, especially the choice of the subjects to be examined, the National Associations being consulted previously; to carry into effect the decisions of the Bureau Permanent and of the International Conferences; to effect the coordination of work and the transmission of information and of documents; to ensure that it is regularly kept informed by the National Association of every matter of interest to the Comité Maritime International and to take all necessary steps to achieve this result; to supervise the work of the International Commissions whose duty it is to report progress from time to time

to the Administrative Council and to transmit to the Administrative Council their commentaries and drafts with prompt dispatch, so that these can be studied by the National Associations well in advance of the International Conferences; to prepare the balance sheet and present the account not later than the 31st December in each year; to edit and publish the reports of the International Conferences and to take care of all other publications of interest; and to represent the Comité Maritime International in Government circles prior to and upon the actual convening of Diplomatic Conferences.

#### **Article 7.**

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

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

Each Association shall have one vote, but the delegates shall not have individual votes. The right to vote cannot be delegated. The decisions of the International Conferences shall be made upon the majority vote of the National Associations present provided the case of 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	:	Cyril MILLER Antoine FRANCK
Hon. Secretary-General	:	Carlo VAN DEN BOSCH
Hon. Treasurer	:	Léon GYSELYNCK
Administrative Secretary	:	Firm Henry VOET-GENICOT
Members	:	Argentina, Atilio MALVAGNI Belgium, Jean VAN RIJN Brasil, N. Canada, Peter WRIGHT Denmark, N.V. BOEG Finland, Herbert ANDERSSON France, James Paul GOVARE. Germany, Hans Georg RÖHREKE Great-Britain, E.W. READING Greece, Kyriakos SPILIOPOULOS India, Nagendra SINGH Ireland, N. Israël, N. Italy, Giorgio BERLINGIERI Japon, Teruhisa ISHII Mexico, N. Morocco, N. Netherlands, J.T. ASSER Norway, Sjur BRAEKHUS Poland, Stanislav MATYSIK Portugal, Taborda FERREIRA Spain, Luis HERMIDA Sweden, Kaj PINEUS Switzerland, Walter MÜLLER Turkey, M.N. GÖKNIL United States, Arthur M. BOAL Uruguay, N. Yugoslavia, Vladislav BRAJKOVIC

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(\*) on July 1st. 1963 - The members of the Bureau Permanent being Titulary members of the I.M.C. their address has been mentioned in the list hereafter.

# NATIONAL ASSOCIATIONS

## ARGENTINA

### ASOCIACIÓN ARGENTINA DE DERECHO MARITIMO

(Argentine Maritime Law Association)

Avenida Roque Saenz Pena 615-esc. 607, Buenos Aires

*Established* : 1905

#### *Officers*

*President* :

Mr. Atilio MALVAGNI, Advocate, Professor of Maritime Law at the Faculty of Law of La Plata, Director of « Empresa Lineas Maritimas Argentinas » (ELMA).

*Vice-President* :

Mr. José BARES, Ships' Agent.

*Secretary* :

Mr. José D. RAY, Advocate, Professor of Maritime Law at the Faculty of Law of Buenos Aires.

*Treasurer* :

Mr. Alberto CAPPAGLI, Advocate.

*Membership* : 23

# BELGIUM

## ASSOCIATION BELGE DE DROIT MARITIME

(Belgian Maritime Law Association)

c/o Firm HENRY VOET-GENICOT, Borzestraat, 17, Antwerp

*Established : 1896*

### *Officers*

#### *President :*

Mr. Albert LILAR, Advocate, Professor at the University of Brussels, Président of the International Maritime Committee, 33, Jacob Jordaensstraat, Antwerp.

#### *Vice-President :*

Mr. Henry VOET, Hon. Advocate, Average Adjuster, President of the International Association of European G/A Adjusters, 17, Borzestraat, Antwerp.

#### *Hon. Secretaries :*

Mr. Antoine FRANCK, Advocate, Vice-President of the International Maritime Committee, 30, Schermersstraat, Antwerp.

Mr Jean VAN RYN, Advocate at the Cour de Cassation, Professor at the University of Brussels, 62, Avenue du Vert-Chasseur, Brussels.

#### *Secretary :*

Mr. Carlo VAN DEN BOSCH, Advocate, Lecturer at the University of Brussels, Member of the « Commission Bancaire », Hon. Secretary of the International Maritime Committee, 30, Schermersstraat, Antwerp.

#### *Treasurer :*

Mr. Léon GYSELYNCK, Hon. Advocate, Hon. Professor at the University of Brussels, Treasurer of the International Maritime Committee, President of the Association Belge de Banques, 48, Meir, Antwerp.

### *Membership*

Corporations : 25

Personal members : 77

# BRAZIL

## ASSOCIAÇÃO BRASILEIRO DE DIREITO MARITIMO (Brazilian Maritime Law Association)

a/s do Dr. Pedro Calmon Filho, Rua Uruguaiana, 104-106, Rio de Janeiro

*Established* : 1961

### *Officers*

*President :*

Mr. Amaro SOARES DE ANDRADE.

*First Vice-President :*

Mr. José Candido SAMPAIO LACERDA.

*Second Vice-President :*

Mr. Jorge DODSWORTH MARTINS.

*Third Vice-President :*

Mr. João Vicente CAMPOS.

*Secretary General :*

Mr. Heitor DA CUNHA PESSOA.

*First Secretary :*

Mr. Pedro CALMON FILHO.

*Second Secretary :*

Mr. Aloysio LOPES PONTES.

*First Treasurer :*

Mr. Armando REDIG DE CAMPOS.

*Second Treasurer :*

Mr. Luiz Cesar MELO.

# CANADA

## CANADIAN MARITIME LAW ASSOCIATION

St. James Street West, 620, Sixth Floor, Montreal 3, Quebec

*Established : 1951*

### *Officers*

*President :*

Mr. Peter WRIGHT, Q.C., Barrister, Yonge Street 67, Toronto, Ontario.

*Vice-Presidents :*

Hon. J.V. CLYNE, Company Director, c/o MacMillan & Bloedel Ltd, Vancouver, British Columbia.

Mr. A.L. LAWES, President, Lawes Shipping Ltd, Coristine Building, Montreal, Quebec.

*Joint Secretaries :*

Mr. Paul BECK, Company Director, 620, St. James Street West, Montreal, Quebec.

Mr. Roland CHAUVIN, Barrister, 620, St. James Street West, Montreal, Quebec.

*Treasurer :*

Mr. John STAIRS Q.C., Barrister, c/o Senecal, Turnbull, Mitchell, Stairs, Kierans & Claxton, 901, Victoria Square, Montreal, Quebec.

*Membership : 103*

# DENMARK

## DANSK SØRETSFORENING

(Danish Branch of Comité Maritime International and  
International Law Association)

*Established* : 1899

*President* :

Mr. N.V. BOEG, Councillor at the Court of Appeal, Ceresvej, 9, København V.

*Treasurer and Secretary* :

Mr. Axel KAUFMANN, Barrister, Taarbaek Strandvej 26, Klampenborg.

*Members* :

Mr. Dan BJØRNER, Director, Axelborg, Copenhagen K.

Mr. Oscar A. BORUM, Professor, Dr. Jur. Ehlersvej 17, Hellerup.

Mr. Per FEDERSPIEL, Barrister, Godtherggade, 109, K.

Mr. Bernhard GOMARD, Professor, Dr. Jur., Hille Stradvej 18 C, Hellerup.

Mr. Herbert P.A. JERICHOW, Director, Helleruplandalle 15, Hellerup.

Mr. Niels KLERK, Barrister, Amaliegade, 4, Copenhagen K.

Mr. Peter LETH, Director of the Private Assurandører A/S, Palae-gade 2, Copenhagen.

Mr. Allan PHILIP, Professor, Dr. Jur., Strandvej 149, Hellerup.

Mr. C. Rasting, Professor, Dr. Jur., Mynstervej 3, Copenhagen V.

Mr. Alf ROSS, Professor, Dr. Jur. & Phil., I.H. Mundtsvej 10A, Kgs. Lyngby.

Mr. Kjeld RØRDAM, Barrister, Bredgade 41, Copenhagen K.

Mr. André M. SØRENSEN, Director, Barrister, Frederiksborggade 15, Copenhagen K.

Mr. Max SØRENSEN, Professor, Dr. Jur., Højagervej 9, Riisskov, Aarhus.

Mr. Niels TYBJERG, Average Adjuster, Højbro Plads, 21, Copenhagen K.

Mr. V. WENZEL, Director of the Danmarks Rederiforening, Amalie-gade 33, Copenhagen K.

*Membership* : about 100

# FINLAND

## COMITE MARITIME INTERNATIONAL SUOMEN OSASTO - AVDELNING FINLAND

(International Maritime Committee - Finnish Branch)

c/o Mr. Bertel APPELQVIST, Finland Sydamerika Linjen Ab, Södra Kajen, 8,  
Helsinki

*Established : 1939*

### *Officers*

*President :*

Mr. Rudolf BECKMAN, Doctor of Laws, Westendallen, 12B, Westend/  
Helsinki.

*Vice-President :*

Mr. Sigurd VON NUMERS, Doctor of Laws, Head of the Legal Department of the Ministry of Foreign Affairs, Topeliusgatan, 9A, Helsinki.

*Secretary :*

Mr. Bertel APPELQVIST, Lawyer of the Finland-Southamerica Line Ltd, Finland-Sydamerika Linjen Ab, Södra Kajen, 8, Helsinki.

*Members :*

Mr. Eric CASTREN, Professor of Law, Wecksell.t., 4, Helsinki.

Mr. Herbert ANDERSSON, Director of the Finnish Steam Ship C° Lawyer, F.A.A., Södra Kajen, 8, Helsinki.

Mr. Christian ZITTING, Advocate, Glog. 3, Helsinki.

Mr. Heikki MAATTA, Lawyer of the Pohjola Insurance Company Pohjola Vakuutus Oy, Aleksant,k., 44, Helsinki.

*Treasurer :*

(not member of the Board) Mr. Nils-Gustav PALMGREN, Lawyer of the Finnish Steam Ship C°, F.A.A., Södra Kajen, 8, Helsinki.

### *Membership*

Firms : 23

Private persons : 27

# FRANCE

## ASSOCIATION FRANÇAISE DU DROIT MARITIME

(French Maritime Law Association)

Boulevard Hausmann, 73, Paris 9<sup>me</sup>

*Established : 1897*

### *Officers*

#### *President :*

Mr. Marcel PITOIS, President and General manager of the « Compagnie Navale Afrique du Nord », Doctor of Law, avenue Paul Doumer, 35, Paris, 16<sup>me</sup>. Personal address : Rue de la Pompe, 107, Paris 16<sup>me</sup>.

#### *Vice-Presidents :*

Mr. Raymond BOIZARD, General Manager of the « Association Technique d'Assurances Maritimes & Transports », Doctor of Law. Personal address : Rue de Francqueville, 10, Paris, 16<sup>me</sup>.

Mr. Jacques POTIER, Manager of the « Compagnie Maritime des Chargeurs Réunis », Doctor of Laws, Boulevard Malesherbes, 3, Paris 8<sup>me</sup>.

#### *Secretary General :*

Mr. Jean WAROT, Advocate, Doctor of Law, Boulevard Raspail, 71, Paris 6<sup>me</sup>.

#### *Assistant Secretaries-General :*

Mr. Pierre LATRON, Doctor of Law, Comité Central des Assureurs Maritimes de France, Rue St. Marc, 24, Paris 2<sup>me</sup>

Miss Claire LEGENDRE, Doctor of Law, Secretary to the Comité Central des Armateurs de France, Boulevard Hausmann, 73, Paris 8<sup>me</sup>.

#### *Treasurer :*

Mr. Ménélas PRODROMIDES, Juridical Councillor of the Comité Central des Assureurs Maritimes de France, Doctor of Law, Rue St. Marc, 24, Paris 2<sup>me</sup>. Personal address : Boulevard Beauséjour, 17, Paris 16<sup>me</sup>.

#### *Members :*

Mr. Claude BOQUIN, Armement « Louis Dreyfus & Cie », Rue Rabelais, 6, Paris 8<sup>me</sup>.

Mr. Pierre BOULOY, Advocate, Rue Jean Goujon, 3, Paris 8<sup>me</sup>.

- Mr. Pierre CLOSSET, Secretary General of the Comité Central des Armateurs de France, Doctor of Law, Boulevard Hausmann, 73, Paris 8<sup>me</sup>.
- Mr. GUILLIBERT DE LA LAUZIERE, Marine surveyor, Chaussée d'Antin, 2, Paris 9<sup>me</sup>.
- Mad. Marguerite HALLER, Doctor of Law, Magistrate, Rue d'Orléans, 22, Neuilly-sur-Seine (Seine).
- Mr. JAMBU-MERLIN, Professor at the Faculty of Law of the University of Caen, Avenue Reine Mathilde, 2, Caen (Calvados).
- Mr. Michel PIERRON, Secretary of the Comité des Assureurs Maritimes de Bordeaux, Doctor of Laws, Bourse Maritime, Place Lainé, Bordeaux (Gironde).
- Miss France PIETRI, Advocate, Rue Lauriston, 129, Paris 16<sup>me</sup>.
- Mr. Paul REMBAUVILLE-NICOLLE, Underwriter, Rue Euler, 1, Paris 8<sup>me</sup>.
- Mr. André SIMONARD, Professeur at the Faculty of Law, Advocate, Rue Henri-Heine, 17, Paris 16<sup>me</sup>.
- Mr. Alain TINAYRE, Advocate, Rue Blanche, 31, Paris 9<sup>me</sup>.
- Mr. Jacques VILLENEAU, Advocate, Rue Scheffer, 39, Paris 16<sup>me</sup>.

*Membership* : 300

# GERMANY

## DEUTSCHER VEREIN FÜR INTERNATIONALES SEERECHT

(German International Maritime Law Association)

4. Stock, 86, Neuer Wall, Hamburg 36

*Established* : 1898

### *Officers*

*President* :

Dr. Hans GRAMM, Judge at Hanseatisches Oberlandesgericht, 39, Heilwigstrasse, Hamburg 20.

*Vice-President* :

Dr. Otto DETTMERS, Barrister, Börsenhof C, 3, Marktstrasse, 3, Bremen.

*Members* :

Mr. J. Alfred EDEYE, Shipowner, Baumwall, 3, Hamburg 11.

Dr. Hans Georg ROHREKE, Manager of the German Shipowners Association, Neuer Wall, 86, Hamburg 36.

Mr. Oscar von STRITZKY, Manager of the Nord-Deutsche Versicherungs-Gesellschaft, Alter Wall, 12, Hamburg 11.

Dr. Reinhart VOGLER, Vice-president of Hanseatisches Oberlandesgericht, Lindenstrasse, 10, Aumühle b. Hamburg.

*Secretary* :

Mr. Eberhard v. dem HAGEN, Neuer Wall, 86, Hamburg 36.

*Membership* : 250

# GREAT BRITAIN

## BRITISH MARITIME LAW ASSOCIATION

14/20 St. Mary Axe, London, E.C. 3

*Established : 1908*

### *Officers*

#### *President :*

Patrick Arthur DEVLIN, The Rt.Hon., The Lord Devlin, P.C., Lord of Appeal in Ordinary, House of Lords, London, S.W. 1.

#### *Vice-Presidents :*

Sir William Lennox McNAIR, The Hon. Mr. Justice McNair, Judge of the Queen's Bench Division, Royal Courts of Justice, Strand, London, W.C. 2.

Sir Kenneth DIPLOCK, The Rt. Hon. Lord Justice Diplock, Lord Justice of Appeal, Royal Courts of Justice, Strand, London, W.C. 2.

#### *Hon. Secretary :*

Mr. Cyril MILLER, Manager of the United Kingdom Mutual Steamship Assurance Association and of The Standard Steamship Owners' Protection & Indemnity Association Ltd., Barrister at Law, 14-20, St. Mary Axe, London, E.C. 3.

#### *Treasurer and Secretary :*

Mr. William BIRCH REYNARDSON, Manager of the United Kingdom Mutual Steamship Assurance Association Ltd., Barrister at Law, Former legal adviser to the Chamber of Shipping of the United Kingdom, 14-20, St. Mary Axe, London, E.C. 3.

### *Membership : 37*

#### *Bodies being represented :*

Lloyd's Underwriters Association  
Institute of London Underwriters  
Liverpool Underwriters' Association  
Association of Average Adjusters  
Liverpool Steamship Owners' Association  
British Liner Committee  
Chamber of Shipping of the United Kingdom  
British Shippers' Council  
London Chamber of Commerce  
Birmingham Chamber of Commerce  
Dock & Harbour Authorities Association  
Protecting & Indemnity Associations

# GREECE

## HELLENIKI ENOSSIS NAFTIKOU DIKAIΟΥ

(Hellenic Maritime Law Association)

1, Rue Vissarionos, Athinai

*Established : 1908 - Reestablished : 1950*

### *Officers*

#### *President :*

Prof. Kyriakos SPILIOPOULOS, Rector of the Commercial High School, President of the Industrial Development Organisation, Advocate, 1, Rue Visarionos, Athinai.

#### *Vice-President :*

Mr. Stephanos MACRYMICHALOS, Managing director of Insurance Companies.

#### *Hon. General Secretary :*

Mr. Phocion POTAMIANOS, Professor at the Commercial High School, Advocate, 19, rue Lykavitou, Athinai.

#### *Secretaries :*

Mr. Theodoros KARATZAS, Advocate, 6, rue Homirou, Athinai.

Mr. Eustratios STRATIGIS, Doctor of Law, Advocate, 98, rue Solonos, Athinai.

#### *Treasurer :*

Mr. Christos ACHIS, Underwriter, 2, rue Chr. Lada, Athinai.

*Membership : 50*

# INDIA

## THE MARITIME LAW ASSOCIATION OF INDIA

Tughlak Crescent, 30, New Delhi

*Established : 1960*

### *Officers*

*President :*

Sir A. Ramaswami MUDALIAR, D.C.L. (Oxon) K.C.S.I., India  
Steamship House, Old Court House Street, 21, Calcutta.

*Vice-President :*

Dr. Nagendra SINGH, M.A., LL.M. (Cantab); LL.D. (Dublin), D.  
Litt., D. Phill. (Cal), Barrister at Law, Director-General of the  
Shipping and Additional Secretary of the Transport Ministry, Go-  
vernment of India, Tughlak Crescent, 30, New Delhi.

*Executive-Secretary :*

Miss K.P. SAROJINI, B.Sc., B.L. (Madras), LL.M. (New York  
University). 2<sup>nd</sup> Floor 9.10/3 Asaf Ali Road, New Delhi 1.

*Treasurer :*

Mr. Shri V.V. ACHARYA, B.A.

# IRELAND

## IRISH MARINE LAW ASSOCIATION

c/o Irish Shipping Ltd., Aston Quay, 19/21, Dublin 2

*Established : 1963*

### *Officers*

*President :*

Mr. Justice John KENNY, Judge of the High Court of Justice, Nutley Lane, 69, Donnybrook, Dublin 4.

*Vice-President :*

Mr. P.W. REDMOND, A.C.A., President of the Irish Institute of Marine Underwriters & Asst. Gen. Manager of the Insurance Corporation of Ireland Ltd., 14, Granville Road, Stillorgan, Co. Dublin.

*Secretary :*

Mr. J. Niall Mc. GOVERN, Barrister-at-Law, Claims Dept. Manager, Irish Shipping Ltd., 10, Holyrood Park, Ballsbridge, Dublin 4. (home address), Aston Quay, 19/21, Dublin (business address).

*Treasurer :*

Lieut. Col. J.E. ARMSTRONG, President, Assn. of Chambers of Commerce of Ireland, Director John Jameson & Son Ltd., 27, Ailesbury Road, Ballsbridge, Dublin 4, (home address), Bow Street Distillery, Dublin 7 (business address).

# ISRAEL

## HA-AGUDA HA ISRAELIT LE MISPHAT YAMI

(Israel Maritime Law Association)

P.O.B. 4993, Haifa

*Established* : 1955

### *Officers*

*President :*

Dr. Rudolf GOTTSCHALK LL.M. (London), Barrister-of-Law, Advocate, Haifa, 26, Ibn Sina Street, P.O.B. 4993.

*Honorary President :*

Mr. Yaacov CASPI, President of the Chamber of Shipping, Old Business Centre, Haifa.

*Vice-Presidents :*

Mr. Yaacov SASSEVER, Managing Director Sassover Ltd., Haazmuth Road, 37, Haifa.

Mr. Abba BEN-EPHRAIM, Advocate, Ramchalstreet, 4, Tel-Aviv.

*Treasurer :*

Mrs. M. MEYERSTEIN, Company Director, Bankstreet, 5, Haifa.

*Honorary Secretary :*

Mr. M. HASAN c/o Shoham Ltd., Haazmuth Road, 9, Haifa.

*Members :*

Mr. Y. MINTZ, Advocate, Legal Adviser, Ministry of Transport, Jerusalem.

Captain M. EKDISH, Ministry of Transport, Haifa.

Mr. R. WOLFSON, Advocate, Haazmuth Road, 63, Haifa.

Mr. A. TOVBIN, Advocate, 8, Hassan Shukristreet, Haifa.

Mr. A. YANOVSKI, Advocate, 31, Haazmuth Road, Haifa.

Mr. A. MEYERSTEIN, Company Director, 5, Bankstreet, Haifa.

Mr. M. EDER, c/o Zim Navigation Ltd., Haifa.

Mr. K. KIESLER M.E., Assessor & Surveyor, P.O.B. 448, Haifa.

*Membership* : 70.

# ITALY

## ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO

(Italian Maritime Law Association)

Piazza Firenze, 27, Roma

*Established* : 1899

### *Officers*

*President* :

Prof. Avv. Giorgio BERLINGIERI, Advocate, Via Roma, 10, Genova.

*Vice-President* :

Dott. Francesco MANZITTI, Average Adjuster, Via C.R. Ceccardi, 4/25, Genova.

*Vice-President and Secretary General* :

S.E. Prof. Roberto SANDIFORD, Hon. President of the Council of State, Via G. Mercalli, 31, Roma.

*Councillors* :

S.E. Antonio AZARA, Senator, Piazza Capponi, 3, Roma.

Dott. Giovanni BORRIELO, Ship's Agent, Secretary of the Committee of the A.I.D.M. of Naples, Via Depretis, 62, Napoli.

Avv. Placido CIVILETTI, Advocate, Via Ippolito d'Aste, 85, Genova.

Avv. Bruno FORTI, Advocate, President of the Committee of the A.I.D.M. of Trieste, Via Caroneo, 4, Trieste.

Prof. Antonio LEFEBVRE D'OVIDIO, Professor at the University of Naples, Advocate, President of the Committee of the A.I.D.D. of Rome, Via del Nuoto (Due Pini) II, Roma.

Avv. Emilio PASANISI, Managing Director of the Assicurazioni d'Italia, Via Tibullo, 16, Roma.

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*Membership* : 219

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*Established* : 1901

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*Membership* : 79.

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ASOCIACION MEXICANA DE DERECHO MARITIMO  
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Apartado Postal 20926, Admon. 32, Mexico 1, D.F

*Established* : 1961

*President* :

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# NETHERLANDS

## NEDERLANDSE VERENIGING VOOR ZEERECHT

(Netherlands' Maritime Law Association)

Willemsparkweg, 136 Amsterdam Z.

*Established* : 1905

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# NORWAY

## DEN NORSKE SJØRETTS-FORENING

(Norwegian Maritime Law Association)

Rådhusgt, 25 IV, Oslo

*Established* : 1899

### *Officers*

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### *Membership*

Company members : 66

Personal members : 396

# POLAND

## POLSKIE STOWARZYSZENIE PRAWA MORSKIEGO

(Polish Maritime Law Association)

Wyzsza Szkoła Ekonomiczna, Katedra Prawa  
Armii Czerwonej, 101, Sopot

*Established: 1957*

### *Officers*

#### *President :*

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*Membership: 49*

# PORTUGAL

## COMISSAO PERMANENTE DE DIREITO MARITIMO INTERNACIONAL

(Permanent Committee of International Maritime Law)

Ministerio de Marinha, Lisboa

*Established* : 1924, reestablished in 1928

### *Officers*

#### *President* :

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Comod. at « Administracão Naval da R.A. » Ilidio DE OLIVEIRA BARBOSA.

#### *Secretary* :

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*Membership* : 18.

## SPAIN

### ASOCIACION ESPAÑOLA DE DERECHO MARITIMO

(Spanish Maritime Law Association)

Avda. José Antonio, 1,2º, Madrid

*President :*

Mr. Luis HERMIDA HIGUERAS, Manager of the « Union & Fenix Español », Alcalá, 39, Madrid.

*Secretary :*

Mr. Fernando RUIZ GALVEZ.

# SWEDEN

## SVENSK FÖRENING FÖR INTERNATIONELL SJÖRÄTT

(Swedish Association of International Maritime Law)

1, Wahrendorffsgatan, Stockholm C.

*Established* : 1900

### *Officers*

#### *President* :

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#### *Vice-President* :

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*Membership* : 139

## SWITZERLAND

ASSOCIATION SUISSE DE DROIT MARITIME  
SCHWEIZERISCHE VEREINIGUNG FÜR SEERECHT  
(Swiss Maritime Law Association)

Rittergasse, 21, Basel

*Established* : 1952

### *Officers*

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*Membership* : 30.

## TURKEY

DENIZ TICARETI HUKUKU TURK DERNEGI  
(Turkish Maritime Law Association)

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# UNITED STATES OF AMERICA

## THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

27, William Street New York, City 5, New York

*Established : 1899*

### *Officers*

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### *Membership*

Active Members : 1575

Hon. Members and Associate Members : 163.

## URUGUAY

### ASOCIACION URUGUAYA DE DERECHO MARITIMO

(Uruguayan Maritime Law Association)

Colon 1486 - Peso 3º, Montevideo

*President :*

Mr. R. MEZZERA ALVAREZ.

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## YUGOSLAVIA

### JUGOSLAVENSKO UDRUZENJE ZA POMORSKO PRAVO

(Yugoslav Maritime Law Association)

Opaticka, 18, Zagreb

*Established :* 1924; and reestablished : 1954

#### *Officers*

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*Treasurer :*

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#### *Membership*

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Private persons : 120

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# CONFERENCES

## OF THE INTERNATIONAL MARITIME COMMITTEE

### I. BRUSSELS - 1897

*President* : Mr. Auguste BEERNAERT.

*Subjects* : Organization of the International Maritime Committee — Collision. — Shipowners' Liability.

### II. ANTWERP - 1898

*President* : Mr. Auguste BEERNAERT.

*Subjects* : Liability of Owners of sea-going vessels.

### III. LONDON - 1899

*President* : Sir Walter-PHILLIMORE.

*Subjects* : Collissions in which both ships are to blame. — Shipowners' liability.

### IV. PARIS - 1900

*President* : Mr. LYON-CAEN.

*Subjects* : Assistance, salvage and duty to tender assistance. — Jurisdiction in collision matters.

### V. HAMBURG - 1902

*President* : Dr. Friedrich SIEVEKING.

*Subjects* : International Code on Collision and Salvage at sea. — Jurisdiction in collision matters. — Conflict of laws as to ownership of vessels. — Mortgages and Liens on ships.

### VI. AMSTERDAM - 1904

*President* : Mr. E.N. RAHUSEN.

*Subjects* : Conflicts of law in the matter of Mortgages and Liens on ships. — Jurisdiction in collision matters. — Limitation of Shipowners' Liability.

### VII. LIVERPOOL - 1905

*President* : Sir William R. KENNEDY.

*Subjects* : Limitation of Shipowners' Liability. — Conflict of laws as to Maritime Mortgages and Liens. — Brussels Diplomatic Conference.

### VIII. VENICE - 1907

*President* : Mr. Alberto MARGHERI.

*Subjects* : Limitation of Shipowners' Liability. — Maritime Mortgages and Liens. — Conflict of laws as to Freight.

**IX. BREMEN - 1909**

*President* : Dr. Friedrich SIEVEKING.

*Subjects* : Conflict of laws as to Freight. — Compensation in respect of personal injuries. — Publicity of Maritime Mortgages and Liens.

**X. PARIS - 1911**

*President* : Mr. Paul GOVARE.

*Subjects* : Limitation of Shipowners' Liability in the event of loss of life or personal injury. — Freight.

**XI. COPENHAGEN - 1913**

*President* : Dr. J.H. KOCH.

*Subjects* : London Declaration 1909. — Safety of Navigation. — International Code of Affreightment. — Insurance of enemy property.

**XII. ANTWERP - 1921**

*President* : Mr. Louis FRANCK.

*Subjects* : International Conventions relating to Collision and Salvage at sea. — Limitation of Shipowners' Liability. — Maritime Mortgages and Liens. — Code of Affreightment. — Exonerating clauses.

**XIII. LONDON - 1922**

*President* : Sir Henry DUKE.

*Subjects* : Immunity of State-owned ships. — Maritime Mortgages and Liens. -- Exonerating clauses in bills-of-lading.

**XIV. GOTHENBURG - 1923**

*President* : Mr. Eliel LÖFGREN.

*Subjects* : Compulsory insurance of passengers. — Immunity of State-owned ships. — International Code of Affreightment. — International Convention on Bills-of-Lading.

**XV. GENOA - 1925**

*President* : Dr. Francesco BERLINGIERI.

*Subjects* : Compulsory Insurance of passengers. — Immunity of State-owned ships. — International Code on Affreightment. — Maritime Mortgages and Liens.

**XVI. AMSTERDAM - 1927**

*President* : Mr. B.C.J. LODER.

*Subjects* : Compulsory insurance of passengers. — Letters of indemnity. — Ratification of the Brussels Conventions.

**XVII. ANTWERP - 1930**

*President* : Mr. Louis FRANCK.

*Subjects* : Ratification of the Brussels Conventions. — Compulsory insurance of passengers. — Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933

*President* : Mr. Edvin ALTEN.

*Subjects* : Ratification of the Brussels Convention. — Civil and penal jurisdiction in matters of collision on the high sea. — Provisional arrest of ships. — Limitation of Shipowners' Liability.

XIX. PARIS - 1937

*President* : Mr. Georges RIPERT.

*Subjects* : Ratification of the Brussels Convention. — Civil and penal jurisdiction in the event of collision at sea. — Provisional arrest of ships. — Commentary on the Brussels Conventions. — Assistance and Salvage of and by aircraft at sea.

XX. ANTWERP - 1947

*President* : Mr. Albert LILAR.

*Subjects* : Ratification of the Brussels Conventions, more especially of the Convention on Immunity of State-owned ships. — Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills-of-Lading. — Examination of the three draft-conventions adopted at the Paris Conference 1937. — Assistance and Salvage of and by Aircraft. — York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM - 1949

*President* : Prof. J. OFFERHAUS.

*Subjects* : Ratification of the Brussels international Conventions. — Revision of the York-Antwerp Rules 1924. — Limitation of Shipowners' Liability (Gold Clauses). — Combined Through Bills of Lading. — Revision of the draft-Convention of provisional arrest of ships. — Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951

*President* : Mr. Amedeo GIANNINI.

*Subjects* : Brussels international Conventions. — Draft-convention relating to Provisional Arrest of Ships. — Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses). — Revision of the Convention of Maritime Hypothecations and Mortgages. — Liability of Carriers by Sea towards Passengers. — Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID - 1955

*President* : Mr. Albert LILAR.

*Subjects* : Limitation of Shipowners' Liability. — Liability of Sea Carriers towards passengers. — Stowaways. — Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959

*President* : Mr. Albert LILAR.

*Subjects* : Liability of operators of nuclear ships. — Revision of Article X of the International Conventions for the Unification of certain Rules of law relating to Bills of Lading. — Letters of Indemnity and Marginal clauses. — Revision of article XIV of the International Convention for the Unification of certain rules of law relating to assistance and salvage at sea. — International statut of ships in Foreign ports. — Registry of operators of ships.

XV. ATHENS - 1962

*President* : Mr. Albert LILAR.

*Subjects* : Damages in Matters of Collision. — Letters of Indemnity. — International Status of Ships in Foreign Ports. — Registry of Ships. — Coordination of the Conventions on Limitation and on Mortgages. — Demurrage and Despatch Money. — Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963

*President* : Mr. Albert LILAR.

*Subjects* : Bills of Lading. — Passengers Luggage. — Ships under construction.

STATEMENT OF THE  
RATIFICATIONS - ACCESSIONS

OF THE  
INTERNATIONAL MARITIME CONVENTIONS

(List submitted by the Ministère des Affaires Etrangères de Belgique  
the 15th October 1963)

INTERNATIONAL CONVENTION FOR THE UNIFICATION  
OF CERTAIN RULES RELATING TO

COLLISIONS

BETWEEN VESSELS

Signed at Brussels on September 23rd, 1910

RATIFICATION :

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

## ACCESSION

Argentine	February 28th, 1922
Australia	September 9th, 1930
Canada	September 25th, 1914
Ceylon	February 1st, 1913
Danzig	June 2nd, 1922
Dominican Republic	July 23rd, 1958
Egypt	November 19th, 1943
Spain	November 17th, 1923
Esthonia	May 15th, 1929
Finland	July 17th, 1923
Great Britain	February 1st, 1913
East-Africa	
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
Indian Union	February 1st, 1913
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
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  
ASSISTANCE AND SALVAGE

AT SEA

Signed at Brussels on September 23rd., 1910

RATIFICATION :

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

ACCESSION :

<b>Argentine</b>	February 28th, 1922
<b>Australia</b>	September 9th, 1930
<b>Canada</b>	September 25th, 1914
<b>Ceylon</b>	February 1st, 1913
<b>Danzig</b>	October 15th, 1921
<b>Dominican Republic</b>	July 23rd, 1958
<b>Egypt</b>	November 19th, 1943
<b>Spain</b>	November 17th, 1923
<b>Estonia</b>	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).

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

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

**ACCESSION :**

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

**DENUNCIATION**

<b>Denmark</b>	June 30th, 1963 (*)
<b>Finland</b>	June 30th, 1963 (*)
<b>Norway</b>	June 30th, 1963 (*)
<b>Sweden</b>	June 30th, 1963 (*)

(\*) These denunciations will be effective as from the 1st of July, 1964.

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 :

Belgium	June 2nd, 1930
France	January 4th, 1937
Germany (*)	July 1st, 1939
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
Spain	June 2nd, 1930
United States of America	June 29th, 1937
Yugo-Slavia	April 17th, 1959

ACCESSION :

Argentina	April 19th, 1961
Australia	July 4th, 1955
Papua and Norfolk	July 4th, 1955
Nauru and New Guinea	July 4th, 1955
Ceylon	December 2nd, 1930
Côte d'Ivoire	December 15th, 1961
Denmark	July 1st, 1938
Egypt	November 19th, 1943
Finland	July 1st, 1939
Great Britain	
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 1953 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).

<b>Federated Malay States</b>	December 2nd, 1930
<b>Unfederated Malay States</b>	December 2nd, 1930
<b>Mauritius, Nigeria</b>	December 2nd, 1930
<b>St-Helena</b>	November 3rd, 1931
<b>Salomon</b>	December 2nd, 1930
<b>Sarawak</b>	November 3rd, 1931
<b>Seychelles, Sierra-Leone, Somaliland,</b>	
<b>Straits Settlements, Tobago, Tonga,</b>	
<b>Trinidad, Windward (Grenada, St-Lu-</b>	
<b>cia, St-Vincent)</b>	December 2nd, 1930
<b>Zanzibar</b>	December 2nd, 1930
<b>Ireland</b>	January 30th, 1962
<b>Israel</b>	September 5th, 1959
<b>Monaco</b>	May 15th, 1931
<b>Netherlands</b>	August 18th, 1956
<b>Norway</b>	July 1st, 1938
<b>Portugal</b>	December 24th, 1931
<b>Overseas Territories</b>	February 2nd, 1952
<b>Sweden</b>	July 1st, 1938
<b>Switzerland</b>	May 28th, 1954
<b>Tanganyika</b>	December 3th, 1962
<b>Turkey</b>	July 4th, 1955

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INTERNATIONAL CONVENTION FOR THE UNIFICATION  
OF CERTAIN RULES RELATING TO MARITIME

**LIENS AND MORTGAGES,**

Signed at Brussels on April 10th, 1926

**RATIFICATION :**

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

ACCESSION :

<b>Argentine</b>	April 19th, 1961
<b>Finland</b>	July 12th, 1934
<b>Monaco</b>	May 15th, 1931
<b>Portugal</b>	December 24th, 1931
<b>Switzerland</b>	May 28th, 1954
<b>Syrie</b>	February 14th, 1951
<b>Turkey</b>	July 4th, 1955

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INTERNATIONAL CONVENTION FOR THE UNIFICATION  
OF CERTAIN RULES CONCERNING THE

**IMMUNITY OF STATE-OWNED SHIPS,**

Signed at Brussels on April 10th, 1926

RATIFICATION :

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

ACCESSION :

<b>Argentine</b>	April 19th, 1961
<b>Greece</b>	May 19th, 1951
<b>Switzerland</b>	May 28th, 1954
<b>Turkey</b>	July 4th, 1955
<b>United Arab Republic</b>	February 17th, 1960

(\*) *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 28th 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 :

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

## ACCESSION :

Argentine	April 19th, 1961
Greece	May 19th, 1951
Switzerland	May 28th, 1954
Turkey	July 4th, 1955
United Arab Republic	February 17th, 1960

## 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 :

<b>Belgium</b>	April 10th, 1961
<b>Egypt</b>	August 24th, 1955
<b>France</b>	May 25th, 1957
<b>Great Britain and Northern Ireland</b>	March 18th, 1959
<b>Holy Seat</b>	August 10th, 1956
<b>Portugal</b>	May 4th, 1957
<b>Spain</b>	December 8th, 1953
<b>Yugoslavia</b>	March 14th, 1955

ACCESSION :

<b>Argentine</b>	April 19th, 1961
<b>Bermudes</b>	May 30rd, 1963
<b>Cambodia</b>	November 12th, 1956
<b>Costa Rica</b>	July 13th, 1963
<b>French Overseas Territories</b>	
<b>Republic of Togo and Cameroons</b>	April 23rd, 1958
<b>Great Britain</b>	
<b>British Guiana, Fidji, Gibraltar,</b>	
<b>Hong-Kong, Isle Maurice, Northern</b>	
<b>Borneo, Seychelles</b>	March 29th, 1963
<b>Sarawak</b>	August 28th, 1962
<b>Switzerland</b>	May 28th, 1954
<b>Virgin Island</b>	May 29th, 1963

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 :**

<b>Belgium</b>	April 10th, 1961
<b>Egypt</b>	August 24th, 1955
<b>France</b>	May 20th, 1955
<b>Great Britain and Northern Ireland</b>	March 18th, 1959
<b>Holy Seat</b>	August 10th, 1956
<b>Portugal</b>	May 4th, 1957
<b>Spain</b>	December 8th, 1953
<b>Yugoslavia</b>	April 21st, 1956

**ACCESSION :**

<b>Argentine</b>	April 19th, 1961
<b>Bermudes</b>	May 30th, 1963
<b>Burman Union</b>	July 8th, 1953
<b>Cambodia</b>	November 12th, 1956
<b>Costa Rica</b>	July 13th, 1955
<b>French Overseas Territories</b>	
<b>Republic of Togo and Cameroons</b>	April 23rd, 1958
<b>Great Britain</b>	
<b>British Guiana, Fidji, Gibraltar,</b>	
<b>Hong-Kong, Isle Maurice, Northern</b>	
<b>Borneo, Seychelles</b>	March 29th, 1963
<b>Haiti</b>	July 17th, 1954
<b>Sarawak</b>	August 28th, 1962
<b>Switzerland</b>	May 28th, 1954
<b>Republic of South Vietnam</b>	November 26th, 1955
<b>Virgin Island</b>	May 29th, 1963

INTERNATIONAL CONVENTION FOR THE UNIFICATION  
OF CERTAIN RULES RELATING TO THE

**ARREST**

OF SEA-GOING SHIPS

Signed at Brussels on May 10th, 1952

RATIFICATION :

<b>Belgium</b>	April 10th, 1961
<b>Egypt</b>	August 24th, 1955
<b>France</b>	May 25th, 1957
<b>Great Britain and Northern Ireland</b>	March 18th, 1959
<b>Holy Seat</b>	August 10th, 1956
<b>Portugal</b>	May 4th, 1957
<b>Spain</b>	December 8th, 1953

ACCESSION :

<b>Bermudes</b>	May 30rd, 1963
<b>Cambodia</b>	November 12th, 1956
<b>Costa Rica</b>	July 13th, 1955
<b>French Overseas Territories</b>	
<b>Republic of Togo and Cameroons</b>	April 23rd, 1958
<b>Great Britain</b>	
<b>British Guiana, Fidji, Gibraltar,</b>	
<b>Hong-Kong, Isle Maurice, Northern</b>	
<b>Borneo, Seychelles</b>	March 29th, 1963
<b>Haiti</b>	November 4th, 1954
<b>Sarawak</b>	August 28th, 1962
<b>Switzerland</b>	May 28th, 1954
<b>Virgin Island</b>	May 29th, 1963

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

Signed at Brussels on October 10th, 1957

**RATIFICATION :**

<b>Great Britain and Northern Ireland</b>	February 18th, 1959
<b>France</b>	July 7th, 1959
<b>Spain</b>	July 16th, 1959

**ACCESSIONS :**

<b>Isle of Man</b>	November 18 th, 1960
<b>Signapor</b>	April 17th, 1963
<b>Ghana</b>	July 26th, 1959

(This Convention has not yet entered into force)

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INTERNATIONAL CONVENTION RELATING TO  
**STOWAWAYS**

Signed at Brussels on October 10th, 1957

**RATIFICATION :**

<b>Italy</b>	May 24th, 1963
<b>Norway</b>	May 24th, 1962
<b>Peru</b>	November 23th, 1961
<b>Sweden</b>	June 27th, 1962

**ACCESSION :**

<b>Morocco</b>	January 22nd, 1959
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(This Convention has not yet entered into force)

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

signed at Brussels on the 29th April 1961

RATIFICATION :

Nil

ACCESSION :

**Cuba**

January 7th, 1963

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INTERNATIONAL CONVENTION  
RELATING TO THE LIABILITY OF OPERATORS OF

NUCLEAR SHIPS

signed at Brussels on the 25th May 1962

RATIFICATION :

Nil

ACCESSION :

Nil

# II

CONFERENCE OF STOCKHOLM

PRELIMINARY REPORTS

AND

AMENDMENTS

## 1

BILL OF LADING CLAUSES

# REPORT OF SUB-COMMITTEE ON BILL OF LADING CLAUSES

## I. INTRODUCTION

In May 1959 the Sub-Committee on Conflicts of Law of the International Maritime Committee (I.M.C.) issued a report in which was said i.a. the following :

« 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 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 report also said that the studies of the Sub-Committee showed that certain provisions in the 1924 Convention were unsatisfactory.

The report concluded by recommending an amendment of Article X of the 1924 Convention and asking the I.M.C. whether the I.M.C. wanted that the Sub-Committee should continue to study certain other points of the 1924 Convention raised by members.

At the Plenary Conference of the I.M.C. (Rijeka 1959) the following Resolutions were adopted :

### a) *Revision of 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, of discharge or one of the optional ports of discharge, is situated 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. »

b) *Future work of Sub-Committee*

« The Plenary Conference instructs its International Sub-Committee to study other amendments and adaptations to the provisions of the International Convention for the unification of certain rules relating to bills of lading. »

Acting under these instructions the Sub-Committee, which adopted as its name the Sub-Committee on Bill of Lading Clauses, undertook this study and now begs to submit its report.

## II. MEMBERSHIP

The following persons have participated in the work of the Sub-Committee by submitting opinions in writing and attending the meetings of the Sub-Committee :

<i>Chairman :</i>	Kaj Pineus (Sweden)
<i>Belgium :</i>	L. Gyselynck (Representing Sub-Committee on Marginal Clauses) J. Van Ryn
<i>France :</i>	M. Prodromidès
<i>Germany :</i>	H. Burchard-Motz K.H. Necker
<i>Greece :</i>	Ph. G. Potamianos
<i>Great Britain :</i>	M. Hill J. Honour W. Birch Reynardson
<i>The Netherlands :</i>	J.A.L.M. Loeff S. Royer H. Schadee J.C. Schultsz
<i>Italy :</i>	Fr. Berlingieri R. Sandiford
<i>Norway :</i>	S. Braekhus P. Gram
<i>Sweden :</i>	E. Hagbergh C. Palme
<i>U.S.A. :</i>	J.C. Moore

*Yugoslavia* :           A. Suc  
*Secretary* :            L. Van Varenbergh (Belgium)  
*A.D.C. of*  
*Chairman* :            H.G. Mellander (Sweden)

The Secretaries General of the I.M.C., Maitre C. van den Bosch and Mr. C. Miller have received all documents and working papers of the Sub-Committee.

### III. PROCEDURE

#### *Preliminary work.*

The Sub-Committee organised its work in the following way. Various problems, among them those figuring in the report to the I.M.C. dated May, 1959, were set out in Report no. 1 circulated on December 29th 1959 and the members were invited to express their views and comments in writing. On the basis of the replies received a summary and classification of them were made and certain new points raised and examined. The results were embodied in Report no. 2 dated September 2nd 1960. The Sub-Committee then met in London on November 4th-5th 1960 with The British Maritime Law Association acting as very capable and generous hosts. The results of the meeting were set down in a protocol and in a summary of the debates which were circulated to the members. The decisions and the outcome of the discussions in London were embodied in Report no. 3 dated May 29th 1961 which was also circulated. The comments which were received from some of the members on this Report necessitated the preparation of a Report no. 4 dated October 21st 1961. The Sub-Committee then met again on the 27th-28th October, 1961, in Paris, the French Association of Maritime Law this time acting as most charming hosts. At the Paris meeting the Sub-Committee took final decisions and resolved that a report should be prepared for submission to the I.M.C. and subsequent circulation to the various National Associations.

#### *Personal responsibility.*

It has been the understanding within the Sub-Committee that those who have taken part in its work have done so as private experts. While they have been in touch with the opinions and views held in shipping circles at home and have been able to inform the Sub-Committee of the general attitude held, the views expressed in writing to the Sub-Committee or verbally at its meetings do not necessarily tie their

National Associations to the views expressed. The associations are at liberty to judge the final report of the Sub-Committee entirely on its own merits.

*Method of presenting conclusions.*

The Sub-Committee discussed various subjects. On some of these the Sub-Committee decided to make positive recommendations to the I.M.C.. These subjects are dealt with first under the heading : Positive recommendations.

The Sub-Committee took the general attitude that no recommendation should be made unless the amendment was held to be of sufficient importance. Many subjects were examined where it was felt that no action should be taken and the status quo retained. These subjects are dealt with below under the heading : Other subjects examined.

The Sub-Committee has also gone into the question whether — notwithstanding the fact that some amendments, additions of clarifications of the 1924 Convention might seem appropriate — any action at all should be undertaken by the I.M.C. and if so what form would appear most suitable. This problem will be discussed under the heading : Future action.

## IV. POSITIVE RECOMMENDATIONS

### 1. **Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2) ).**

Under a contract of carriage of goods by sea loading and/or stowage of the goods may not be performed by the carrier, his servants or agents but by the shipper and the discharge of the goods may be performed by the consignee. Is the carrier in such cases liable for loss or damage occasioned by negligence of the shipper or consignee in performing these operations? The answer should be sought in the construction of Article III (2) which provides that the carrier shall properly load, handle, stow, carry, keep, care for and discharge the goods carried.

These words may mean, either that the carrier is obliged to perform these operations and to perform them properly and carefully or, they may mean that the carrier should perform these operations properly and carefully in so far as he has not entrusted them to the shipper or consignee.

In the early decisions on this provision the Courts inclined towards the stricter construction obliging the carrier to perform the loading,

stowage and discharge but lately there appears to be a change of attitude. Nevertheless there is clearly a difference of opinion on the construction of Article III (2) which may be harmful to the attainment of international uniformity on a rather important point.

For this reason the Sub-Committee considered the proposal that an express provision be inserted in Article III (2) authorizing the carrier to entrust the loading and stowage of the goods to the shipper and the discharge of the goods to the consignee.

This it was thought could be done by redrafting Article III (2).

It should be pointed out that for lack of time the discussions of the Sub-Committee on this point have had to be carried out by correspondence only.

#### DECISION :

The majority of the Sub-Committee is of the view that the text set out below might serve as a solution, subject always to the possibility of its improvement by a drafting committee :

“ (2) *In so far as these operations are not performed by the shipper or consignee* the carrier shall, subject to the provisions of Article IV properly and carefully load, handle, stow, carry keep, care for and discharge the goods carried. »

#### Reservations :

1. A minority of the Sub-Committee prefers the retaining of the status quo on this point.

2. One member of the Sub-Committee, while accepting the idea of the majority, points out that the text of an amendment must take care of the possibility that the carrier might find a means of avoiding their responsibility for cargo carried under berth terms by providing for instance that the cargo shall be discharged for the account of the consignee by stevedores to be selected by the owner. The question should also be studied whether or not the carrier should be liable for the shipper's negligent

loading in a case where the B/L is presented by a bona fide purchaser for value.

## 2. Notice of Claim (Art. III (6) first para).

Article III (6) provides i.a. that, if the loss or damage to the goods at the port of discharge is not apparent, notice of claim should be given within 3 days of their removal into the custody of the person entitled to delivery and that « such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading ».

The Sub-Committee examined the question of the effect on the parties when the 3 days period of Article III (6) is allowed to lapse before a notice of claim is submitted.

If a claim is brought against the carrier after the 3 days' period, is the carrier then free from the presumption of having committed a fault, that is to say, is it for the claimant to show that the carrier is at fault? The Sub-Committee has been able to establish that this question is answered differently in different countries.

### DECISION :

The majority of the Sub-Committee regards the present position as unfortunate and recommends that to Article III (6) first paragraph should be added the words appearing in italics below :

« Unless ... (no change) ... within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading *but shall have no other effect on the relations between the parties.* »

### Reservation :

Two members of the Sub-Committee felt that although the suggested amendment gave some clarification they would prefer a rule with a more effective sanction to a claim when notified too late.

One of these members also declared that he could not accept the view of the majority as it ran contrary to the legal position of his country.

### **3. Time limit in respect of claims for wrong delivery Art. III (6) third para).**

Article III (6) third para of the 1924 Convention provides that « in any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered ».

The Sub-Committee discussed at some length whether and to what extent the expression « the liability in respect of loss or damage » also covers the carrier's liability for wrong delivery. Whereas it was felt that in some countries wrong delivery caused by mere negligence on the part of the carrier's servant falls within the terms of the Convention it was generally agreed that intentional delivery of the goods to a person who is not the bearer of the B/L is not covered by the Convention. Therefore, it is held in most countries that neither the limitation amount nor the time limit for action provided for in the Convention applies when the carrier has delivered the goods to a person not entitled to them.

Were the Convention to contain a rule laying down that a time limit should operate also in respect of claims based upon wrong delivery of the goods such a rule would solve a recurrent practical problem : How long should a person who has received the goods without producing the B/L and who therefore has had to put a bank guarantee be obliged to keep the guarantee running ? If a time limit for the claim is definitely fixed this would also determine the necessary duration of the bank guarantee. The Sub-Committee felt that it would be useful and practical to have a rule on this particular point. One great advantage would undoubtedly be that a bank guarantee given against claims for wrong delivery would be reduced to more reasonable periods and would thus actually operate to the benefit of consignees as well as carriers.

The Sub-Committee considered whether the 1 year time limit should be made to apply also in cases of wrong delivery. However the Sub-Committee believed that the carrier should not have the benefit of such a short prescription period in that case and that a 2 years limit would be fair to both the carrier and the consignee who has put up a bank guarantee. A period of 2 years would also appear fair in respect of a person who might actually hold the B/L but fails to produce it. In

order to fix the date when the two years should start running the Sub-Committee recommends that the date of the Bill of Lading be taken as the point of departure for the 2 years period.

The attention of the Sub-Committee was also drawn to the distinction between goods being lost or damaged, on the one hand, and goods not being delivered — though neither lost nor damaged — on the other. The Sub-Committee accepted that a technical distinction could be drawn but the majority were of the opinion that this was not really a major practical issue and that, indeed, to introduce this distinction into the Convention would necessitate amendments of many provisions in it.

#### DECISION :

The majority of the Sub-Committee makes the following recommendation to the I.M.C. in respect of Article III (6) third paragraph (new text in italics) :

“ In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; *provided that in the event of delivery of the goods to a person not entitled to them the above period of one year shall be extended to two years from the date of the Bill of Lading.* ”

When coming forward with this recommendation the Sub-Committee wishes to state that in formulating this amendment it is not intended to give the impression that the Sub-Committee has expressed an opinion upon whether and to what extent wrong delivery may be covered by the Convention. In fact the Sub-Committee has passed a formal resolution to that effect reading thus :

“ This amendment does not imply that the Sub-Committee expresses its view on the question whether delivery to a person not entitled to the goods is covered by the expression «loss or damage» in the Convention. ”

## Reservation :

1. A minority of the Sub-Committee feels that, in order to preserve the distinction pointed out above, the words « or non delivery » should be put in after the words « in respect of loss or damage » in the second line of the paragraph quoted above, so that the sentence would read : « ... in respect of loss, damage or non-delivery unless suit... »).

2. One member of the Sub-Committee is of the opinion that, if this paragraph is to be amended at all, it should be clearly stated that, in case of *dolus* or *culpa lata* by the carrier, his servants or agents, the prescription period should start from the moment when the person entitled to the goods acquired knowledge of the delivery to a person not entitled to them and that the carrier's liability should then be unlimited.

## 4. Gold Clause, Rate of Exchange, Unit Limitation (Art. IV (5) and IX).

Article IX of the 1924 Convention reads thus :

« The monetary units mentioned in this Convention are to be taken to be gold value.

Those contracting states in which the pound sterling is not a monetary unit reserve to themselves the right of translating the sums indicated in this Convention in terms of pound sterling into terms of their own monetary system in round figures.

The national laws may reserve to the debtor the right of discharging his debt in national currency according to the rate of exchange prevailing on the day of the arrival of the ship at the port of discharge of the goods concerned. »

### a) Gold Clause.

There can be little doubt that the 1924 Convention intended there to be a uniform limit of liability representing the equivalent of £ 100.- in gold. The liberty given in Article IX to convert the limitation figure into national currencies has contributed to the present situation of widely different limitation figures as set out in the report presented to the I.M.C. in September 1959.

To-day £ 100.- in paper currency represent roughly some \$ 280:70 whereas £ 100.- in gold are worth £ 293.11.- in paper or \$ 824:— or

in Poincaré francs 12,421:35. It can also be expressed this way that £ 100.-- in paper currency represent only about £ 34.1.4 in gold.

A system which allows the limitation figures to depreciate and to vary in various countries seems due for overhaul. If one and the same figure can be applied in all the Contracting States this would greatly reduce the importance of which COGSA is applicable.

In order to achieve uniformity and as far as possible avoid fluctuations in currencies to interfere with the result the Sub-Committee recommends that the use of the Poincaré franc, now appearing in the 1957 Convention on Limitation of Shipowners' liability and in the 1961 Convention on The Carriage of Passengers by Sea, should be adopted. The Poincaré franc can very well be defined in the first paragraph of Article IV (5) which would mean that the first paragraph of Article IX could be struck out.

In order fully to achieve this end the Sub-Committee also recommends that Article IX paragraph 2, granting liberty to the Contracting States to translate the limitation amount into terms of their own monetary system in round figures, should be struck out.

As for the figure that should appear the Sub-Committee agreed that 10.000 Poincaré francs was fair and reasonable. This figure represents, at the rate of exchange on the 6th November 1961. about \$ 662,—, £ 235.--, N.Frs. 3,255:—, Fl. 2,385:—, DM. 2,650:— and Sw.Kr. 3,432:—.

## b) Rate of Exchange.

It is obvious that as the Poincaré franc is only a way of expressing a certain amount of gold, no Court of Law will give a judgement merely for this or that amount of Poincaré francs without indicating a date for the rate of conversion, nor would an agreement between a carrier and a claimant as to payment be realistic unless a date of conversion from Poincaré francs into an existing currency were agreed upon.

For this purpose the Sub-Committee considered whether it should make any recommendation as to the date of conversion. The following dates were discussed a) the date of judgement, b) the date the amount becomes due, c) the date of payment or d) various combinations of these dates.

While the Sub-Committee is well aware that the present rule that conversion shall take place at the date of arrival of the vessel might prove highly unsatisfactory the very full debates the Sub-Committee has had on this particular point show that it is not possible to find a new solution for the date of conversion which would prove acceptable to all systems of law represented within the Sub-Committee. The result of the exchange of views is therefore that a) the last paragraph of Article IX should be struck out and b) the date of conversion should be left to national law to decide.

If a subject matter is not expressly dealt with in the Convention it follows that it will be for the applicable national law to govern the subject. For this reason the view was put forward that it was not necessary expressly to refer this matter to national law. However in view of the protracted debates held on this particular point the Sub-Committee feels it would be advisable to make a special reference to national law in this respect which could be put as a new paragraph in Article IV (5).

c) Package and unit.

As was bound to happen the Sub-Committee found that its agreement on the 10,000 Poincaré francs was in some respects linked with the question of the definition of « package and unit ».

In order to obtain greater clarity of meaning of the expression « package or unit » the following possible solutions were examined.

1. Only « package » as a general rule and as a subsidiary « freight unit » to cover bulk cargoes;
2. Only « freight unit »;
3. « Actual freight unit » as a general rule and as a subsidiary « customary freight unit » in lumpsum cases;
4. Only « shipping unit »;
5. Only « trade unit »;
6. Only « weight/volume unit »; the limitation amount should apply to a certain rate per ton or per 40 cubic feet whichever produces the higher limitation figure.

The Sub-Committee examined this problem very carefully and discussed each of the suggested solutions. As a result of its investigations, however, the majority of the Sub-Committee found that no better basis for the limitation amount than the « package or unit » exists and that no general definition of the said words to cover every contingency can be made. The majority felt that no serious problems have arisen regarding the construction of the words « package or unit » in those Contracting States who have adopted the text of the Convention without any alteration on this particular point.

DECISION :

The majority of the Sub-Committee recommends that :

- 1) Article IX be struck out
- 2) Article IV (5) should read as follows :

« Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading. »

This declaration ... (no change) ... on the carrier.

By agreement ... (no change) ... above named.

Neither the ... (no change) ... of lading.

« The date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seised of the case. »

3) the status quo be retained in respect of « package and unit ».

#### Reservations :

1. One member of the Sub-Committee feels that the proposed last paragraph of Article IV (5) might be unnecessary as national law would become applicable even without any special provision and that anyhow the provision recommended by the majority is incomplete in that it does not take into account the cases where a payment is based on an agreement between the parties.

2. One member of the Sub-Committee is of the opinion that in order to achieve the necessary unification the basic unit to which the limitation sum shall apply should be more clearly defined in the Convention. Therefore the limitation sum should be made to apply as a general rule to « the actual freight unit » and, in cases of lumpsum freight, to « the customary freight unit ». The expression « package » now appearing in the Convention should be struck out.

## 5. Liability in tort, the Himalaya » problem.

The Sub-Committee was aware that attempts have been made — and often successful ones — to get around the limitations and exemptions of the B/L Convention in different ways.

Thus in some countries a contracting party may sue not only in contract but also in tort. Therefore, if sued in tort, the carrier may find himself deprived of the benefit of limitation and of the one year prescription period etc. Or the plaintiff may gain his end by suing in tort others than the carrier (e.g. the master, the agent, a member of the crew etc.).

The draftmen of the 1957 Convention on Limitation of Shipowners' liability were aware of this practice and in Article 6 (2) they introduced a rule to stop it.

### DECISION :

In order to avoid the possibility of by-passing the contract and the legislation based on the convention the Sub-Committee recommends to the I.M.C. that the following new Article be adopted :

- “ 1) Any action for damages against the carrier, whether founded in contract or in tort, can only be brought subject to the conditions and limits provided for in this Convention.
- 2) If such an action is brought against a servant or agent of the carrier or against an independent contractor employed by him in the carriage of goods, such servant, agent or independent contractor shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
- 3) The aggregate of the amounts recoverable from the carrier, his servants, agents and independent contractors in the employment of the carrier, in that case, shall not exceed the limit provided for in this Convention.

4) Nevertheless, the servant, agent or independent contractor shall not be entitled to the benefits of the above provisions if it is proved that the loss or damage resulted from an act or omission of such servant, agent or independent contractor done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result. »

The provisions of sub-paragraph (4) of the proposed new Article will be noted. In order to ensure that the position of a carrier is the same as a servant in such circumstances the Sub-Committee further recommends that to Article IV be added a new provision which would have no. 7 and would read thus :

« Neither the carrier nor the ship shall be entitled to the benefit of the defences and limits of liability provided for in this Convention if it is proved that the loss or damage resulted from an act or omission of the carrier himself done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result. »

Reservations :

1. One member is of the opinion that the following words should be added at the end of the text appearing in point no. (4) « ... provided that the fault recklessly committed by the servant with knowledge that loss or damage would probably result was not done in the navigation or in the management of the ship.

2. One member proposes the following wording of point no. (4) :

« (4) Nevertheless, the servant, agent, or independent contractor shall not be entitled to the benefits of the above provisions if it is proved that the loss or damage resulted from an act or omission of such servant, agent, or independent contractor done with *unlawful* intent to cause loss or damage. *If the act or omission*

*from which the loss or damage resulted was not done in the navigation nor in the management of the ship, the afore-mentioned persons shall, furthermore, not be entitled to the above provisions if it is proved that their act or omission was done recklessly and with knowledge that loss or damage would probably result.*

3. While the general principles set out above meet with the approval of the full Sub-Committee a minority wishes to put on record that they cannot adhere to these provisions as far as independent contractors are concerned. In their view a contractor who is independent of the carrier should not, by the mere fact that he performs duties which might have been performed by the carrier himself, become entitled to avail himself of the limitation and exceptions of the Convention. A distinction should be drawn between, on the one hand the carrier, his servants or agents and on the other, the independent contractor. The servants and agents should be protected for social reasons and should have the benefits of the Convention whereas, in the view of the minority, these reasons do not apply to the independent contractor who should thus not have this benefit.

Additional problem :

This problem is connected with the much larger problem of the responsibility of the employer for his servant, or, as some put it, the legal identity. In the discussion the point was raised whether the fact that a stevedore or a longshoreman acted with intent to cause damage, would deprive his employer, the stevedore firm, of the right to avail itself of the limitation and exceptions of the Convention. The Sub-Committee agreed that this certainly was a point which well might come up in practice. The view was expressed by some members that the concept of identifying the employer with his servant would lead to the result that when the servant could not avail himself of the benefits and limits of the Convention neither should his employer be entitled to do so.

The Sub-Committee does not feel inclined, however, formally to commit itself as to the interpretation of the new rule in this respect.

## 6. Nuclear damage.

Following the precedent of the 1961 Convention on Carriage of Passengers by Sea the Sub-Committee recommends that a new provision be introduced on the lines of Article XIV of the Passenger Convention to read as follows :

“ This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage. ”

A provision to this effect could be incorporated in Article VIII of the 1924 Convention.

## 7. Both to Blame.

Under the law of the USA when there is a collision and both vessels are found to blame they are held equally to blame. The cargo carried in the vessel « CAM » may sue the other ship, the « MAC », for the damaged sustained and the « MAC » may then include 1/2 of the amount made good to cargo onboard the « CAM » as a counter-claim against the « CAM ». The effect of this is that the « CAM » makes good 1/2 of the damage to her own cargo, whereas the « CAM » would have had nothing to pay for damage to her own cargo had she been held solely to blame.

To circumvent this result a clause has been introduced in bills of lading which allows the « CAM » to recover from her cargo the amount she has had to pay to the « MAC » in respect of damage to cargo onboard the « CAM » (and included in the claim put forward by the « MAC »). If this bill of lading clause were held valid the result would be that in the USA the position in respect of cargo damage would become the same as elsewhere. However, the Supreme Court of the USA has held such a clause invalid.

The Sub-Committee discussed this problem.

### DECISION :

The Sub-Committee decided that the following extract from its protocol for November 4th and 5th 1960 (the London meeting) should figure in the report :

“ *Both to Blame clauses.* ”

The Sub-Committee held that the present position was highly unsatisfactory. The Sub-Committee una-

nimously declared it would regard it as a great progress towards the unification of Maritime Law if the United States would accept and adopt the same rules about collisions as the rest of the maritime world and authorized this view to be made fully known to interested parties in the United States. »

## V. OTHER SUBJECTS EXAMINED

### 8. Unseaworthiness and deck cargo (Art. 1 (c) and Art. III (1) ).

By virtue of Article I (c) of the Convention « live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried » is excluded from the definition of « goods ». Live animals and deck cargo therefore fall outside the ambit of the Convention and the carrier may contract out of liability even in cases where damage to such cargo is due to want of due diligence to (the following quoted from Article III (1) ) :

- « a) Make the ship seaworthy;
- b) Properly man, equip and supply the ship;
- c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation. »

The question posed before the Sub-Committee was whether animals and deck cargo should be covered by the Convention provided it was made clear that the carrier was under no obligation to equip the ship in any special way and that he should not be liable for loss or damage to the deck cargo due to washing overboard or due to other risks inherent in the carriage of live animals or deck cargo.

#### DECISION :

The Sub-Committee examined the position but in view of the general attitude that no recommendations should be made unless in matters of sufficient practical importance the Sub-Committee does not feel that there is a case for coming forward with any recommendation on this particular point.

## 9. Liability before loading and after discharge (Art. 1 (e) and Art. VII).

According to the definition in Art. I (e) « Carriage of goods » covers the period from the time when the goods are loaded on to the time they are discharged from the ship ».

Article VII provides i.a. the following :

« Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement ... as to the responsibility and liability of the carrier ... for the loss or damage to ... goods prior to the loading on, and subsequent to, the discharge from the ship ... ».

Two problems were examined by the Sub-Committee under this heading :

- a) Should the carrier be made liable for any period before loading and after discharge ?
- b) Could a clearer line of demarkation be drawn as to when the carrier's liability begins and when it ends than the one now appearing in Article I (e) and Article VII ?

a) When the Hague Rules were drafted it was held to be a fundamental principle that the period during which the international rules were to govern the carrier's responsibility should begin with the loading on the ship and end with the unloading from her and that the rights and obligations attaching to the periods before the goods were loaded and after they were discharged should be governed by the law of the nation within whose jurisdiction the said operations were performed. To this end an express provision was inserted in the 1924 Convention (Article VII) granting complete freedom of contract for the periods before loading and after discharge. The Sub-Committee was unable to find sufficient reason to alter this fundamental principle of the Convention.

b) The original text of the Hague Rules defined the period of carriage as being « from tackle to tackle ». This text was, however, modified in order to apply equally to goods which cannot be handled by tackle. The text therefore became less precise, but it was certainly not intended that the modification should alter the « tackle to tackle » principle.

It is, however, true to say to-day that, although the tackle to tackle principle is upheld in most countries, the Supreme Courts in some of the Contracting States have gone beyond this principle and extended carrier's liability under the Hague Rules.

While the Sub-Committee feels that it might well be of great assistance to the commercial world if a clear definition could be evolved

covering the period of the carrier's liability the Sub-Committee has reached the conclusion that this problem is not suited for a renewed international discussion.

**DECISION :**

The Sub-Committee recommends the retaining of the status quo on these points.

**10. *Liability when goods are transhipped.***

In the preliminary report to the Rijeka Conference page 78 this problem is called « Liability for acts committed by a preceeding carrier on a through Bill of Lading ». The Sub-Committee examined the problem in a somewhat wider setting under the above title. This examination led the Sub-Committee to the following

**DECISION :**

The Sub-Committee is well aware that persistent efforts have been made to arrive at a solution of the through bill of lading problem. These efforts have met with vehement opposition, which so far has led the I.M.C. to regard this question as unsuited for international regulation. The Sub-Committee feels that the question of carrier's responsibility in connection with transhipment should not be pressed at this stage and therefore recommends that the status quo be maintained.

**11. Due diligence to make ship seaworthy (Art. III (1) and IV (1) ).**

Article III (1) provides that :

« The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to (a) Make the ship seaworthy; ... »

Article IV (1) provides that « Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence by the carrier to make the ship seaworthy ... ».

In a decision given in February 1961 The House of Lords held that a shipowner had not exercised due diligence in the required manner by putting his ship in the hands of competent repairers who should have done a particular job competently but who failed to do so with the result that cargo damage occurred because the particular job had not been properly done (The « Muncaster Castle », (1961) - Lloyd's Rep., pages 57/91).

This case was brought to the attention of the Sub-Committee in order that it might consider whether the position created by the judgement had made an amendment of Article IV (1) desirable.

The Sub-Committee found the position rather complicated. It would appear that under the B/L Convention the carrier has what in French legal terminology is called an « obligation de moyens » whereas the decision of the House of Lords implies an « obligation de résultat ».

The Sub-Committee believes that the interpretation of the Hague Rules by the courts in the United Kingdom and the United States places a very much heavier burden on the carrier than is the case in other countries.

Why this is so even in a case where the Hague Rules apply may perhaps to a certain extent be explained by the different wording used in the English and French version of the B/L Convention. In the English version appears the words « due diligence » whereas in the French the term is « exercer une diligence raisonnable ».

The Sub-Committee reached the conclusion that efforts made to create a uniform rule of interpretation on this point would come up against the fundamental difference of opinion briefly set out above, that is to say the Convention in its original French version and compared with the attitude of Anglo-Saxon law.

#### DECISION :

The discussion held within the Sub-Committee showed that it would not be possible to reach a solution which would be acceptable everywhere and for this reason the Sub-Committee recommends the retention of the status quo.

Nevertheless the Sub-Committee feels that an investigation of the actual position in the various countries on this particular point would be practical and useful. One of the members of the Sub-Committee M. Le Doyen van Ryn volunteered to carry out such an investigation and some other members of the Sub-Committee undertook to supply M. Le Doyen with the necessary documentation on the position in their countries. The result of this investigation when completed will be published separately.

## 12. Received for shipment bills of lading (Art. III (3) and (7) ).

The Sub-Committee examined the question whether the carrier is obliged to issue a received for shipment B/L and if, when such a document is issued, it is subject to all provisions of the B/L Convention. Article III (3) says : « After receiving the goods into his charge the carrier ... shall, on demand of the shipper, issue to the shipper a bill of lading » and (7) in the same Article provides : « After the goods are loaded the bill of lading to be issued by the carrier ... to the shipper shall ... be a « shipped » bill of lading .. », other documents of title previously taken up to be surrendered against the B/L.

It seemed to the Sub-Committee that Article III (3) compared with Article III (7) made it clear that the carrier has to issue a received for shipment B/L if the shipper asks for such document. Such a document when issued would in principle be covered by the Convention provided, of course, that the Convention is applicable on the transport contemplated, either because of a Paramount clause in the B/L or because the Convention is compulsory. Most Bs/L generally contain a clause laying down that the carrier has no responsibility for the goods prior to the loading on and subsequent to the discharge from the vessel. It follows from Article VII of the Convention that the carrier is entitled to make such reservation as to his responsibility.

### DECISION :

The Sub-Committee cannot see the necessity of coming forward with any recommendations on this particular point.

## 13. Statements in B/L as evidence (Art. (4) and (5) ).

The following problems were raised before the Sub-Committee :

1. What is the exact meaning of Article III (4) : « such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c) ? »

2. Is there a contradiction between Article III paragraph 4 and Article III paragraph 5 ?

3. Should a marginal clause in order to be valid state the reason why the carrier cannot verify a statement made by the shipper in the B/L in respect of number, quantity or weight ? If this question is answered in the affirmative should the Article be clarified accordingly ?

## DECISION :

With regard to question no. 2 above the Sub-Committee reached the conclusion that there is no contradiction between Article III paragraph 4 and Article III paragraph 5. For this reason the Sub-Committee has no recommendation to make on this particular point.

With regard to the questions raised under no. 1 and 3 above the majority of the Sub-Committee found that there is no need for amending the Convention to meet the points raised. The Sub-Committee thought, however, it advisable to bring the matter before the I.M.C. Sub-Committee on marginal clauses and the Chairman of the said committee attended the meeting of the Sub-Committee and gave the Sub-Committee the benefit of his advises.

## Reservation :

A minority of the Sub-Committee is of opinion that the problems raised under no. 1 above should be solved by amending Article III paragraph 4. This should read :

“ Such bill of lading when transferred to a third party who is acting in good faith shall be conclusive evidence of the receipt by the carrier of the goods as therein described in accordance with 3 (a), (b) and (c). ”

In support of the amendment one member submits the following views : According to Art. III (4) in its present form the carrier is entitled, without any restrictions, to prove the inexactitude of statements appearing in the B/L. The establishment of such an unrestricted right constitutes a deviation from the general principles concerning negotiable documents which is hardly justifiable. In particular it disregards the rights normally conferred by such documents to the bona fide holder.

It has been submitted that in many countries the courts have succeeded in interpreting or applying the rule expressed in Art. III (4) in such a way that in practice it remains without effect in respect of the bona fide holder

and that in relation to such a B/L holder the carrier was deprived of the possibility of submitting proof against the statements in the B/L. In such cases it amounted in fact to conclusive evidence.

Unfortunately in Belgium — and perhaps in other countries as well — neither doctrine nor jurisprudence has been able to find a way to avoid the application of the rule as it is clearly expressed in Art. III (4).

The situation would probably have been the same in France had not a provision of the French law of 1936 expressly laid down the rule that the carrier may not rely on inaccurate statements made by the shipper as a defense in dealings with persons other than the shipper.

The amendment proposed by the minority has certainly neither the effect nor the aim to modify the scope of the rule but to express with greater precision and exactitude its real significance. After all it is a question on how to express in a clear and exact way the solution actually adopted in most countries. It would thus appear that this solution, which would be highly desirable in Belgium, should not produce any inconveniencies in other countries where it is already accepted by the application of the principles of the law in force in those countries.

#### **14. Time limit for recourse action (Art. III (6) ).**

The Sub-Committee discussed whether it should recommend a special time limit in respect of recourse actions.

An example will illustrate the point :

When the goods reach their destination some of them are found to be damaged. The consignee puts forward a claim against the carrier. The claim is, however, presented near the end of the one year prescription period. The carrier pays damages (or refuses to pay and is sued just before the one year period comes to an end). The carrier feels satisfied that the damage to the goods actually occurred while they were in the hands of another carrier who performed one part of the transport. He therefore tries to recoup the amount he has paid (or for which judgement has meanwhile been delivered against him) from that carrier.

Irrespective of the merits of his case he fails to obtain recovery because his claim against the said carrier has meanwhile become time barred.

Article 487 of the Netherlands Commercial Code deals with this problem and provides i.a. :

« if the carrier on his part is party to a contract with another carrier, the former's claim against the latter shall not become barred until three months have elapsed after he himself has paid or has been sued, provided one of these events has taken place within the said term of one year. »

The French Maritime Law Association has discussed various formulas and in February 1961 declared itself in favour of the following text :

« Dans tous les cas, l'action contre le transporteur à raison de toutes pertes ou dommages, ainsi que les actions récursoires, sont prescrites un an après la livraison des marchandises et, si la livraison n'a pas eu lieu, un an à dater du jour où elles auraient dû être livrées.

Si l'action principale est intentée dans le dernier mois du délai, les actions récursoires ne seront prescrites qu'un mois après l'exercice de l'action contre le garanti » — 2<sup>o</sup> Article 433 : « ... sont prescrites : Toute demande en délivrance de marchandises ou en dommages-intérêts pour avarie ou retard dans leur transport ainsi que les actions en garantie qui pourront être formées sur lesdites demandes, un an après l'arrivée du navire. Dans les matières visées au paragraphe précédent, si l'action principale est intentée dans le dernier mois du délai, les actions récursoires ne seront prescrites qu'un mois après l'exercice de l'action contre le garanti. »

#### DECISION :

The members of the Sub-Committee do not regard this problem as a very important one. Many of them are not aware that any difficulties have made themselves felt in practice. The Netherlands Code has dealt with the problem and any other country which feels this problem to be of sufficient magnitude might of course do the same. As already stated the Sub-Committee took the view that recommendations for action should be restricted to those points where this appears essential. In these circumstances it does not feel inclined to recommend any action on this particular point.

## 15. Time limit in respect of claim for indirect damage through delay (Art. III (6) ).

Article III (6) paragraph 3 of the 1924 Convention reads :

« In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. »

Physical damage to the goods caused by delay is apparently covered by this Article.

The Sub-Committee discussed whether this is true also for other (i.e. indirect) damage caused by delay. If the answer is in the affirmative it would follow that claims for such damage would become time barred within one year. Many members of the Sub-Committee were inclined to think that the Convention did not apply to this type of claims and the question was therefore raised whether to recommend the introduction of a time limit in respect of claims based on delay.

It was pointed out within the Sub-Committee among other things that under English law a delay might well become the equivalent to deviation and prescription period would then be extended to 6 years. It was argued that as the case was not covered by the Convention the parties had freedom of contract and that the B/L could be amended in a way which would settle this problem.

### DECISION :

After a full discussion the Sub-Committee decided not to recommend the introduction of a provision of a time limit in respect of claims for indirect damages due to delay.

## 16. Prescription (Art. III (6) ).

The Sub-Committee considered whether the period of one year appearing in Article III (6) paragraph 3, cited under nr. 15 above is, to use the French terminology, a mere « prescription » or a « délai de déchéance ». If it constitutes a prescription this would, under the concept of some laws, mean that the one year period can be extended by an agreement between the parties, whereas if the period is intended to constitute a « délai de déchéance » nothing but a court action brought within one year could make the claim survive more than a year, not even an agreement between the parties or an acceptance of the claim or part payment of it by the carrier. The Sub-Committee was advised that the courts in different countries deal with this problem in different ways.

The Sub-Committee concluded that this problem springs from the different concepts of legal doctrine held in various countries. It was not a problem which has a bearing on the B/L Convention only but on all the Maritime Law Conventions where a time limit is imposed. The B/L Convention having existed for more than 30 years, the people who deal with the claims emanating from a B/L were by now probably acquainted with the steps they should undertake in this or that Contracting State in order to avoid the time limit from expiring and experience indicated that the present position had not brought about particular difficulties.

#### DECISION :

The considerations briefly outlined above led the Sub-Committee to the conclusion that the question of prescription affected other conventions as well as the 1924 Convention and that for this reason the Sub-Committee would welcome the study of this problem.

#### 17. Invoice value clause (Art. III (8) ).

The Sub-Committee examined the question whether a clause in a B/L, stipulating that claims for which the carrier may become liable shall be adjusted on the net invoice value plus disbursements, should be made expressly valid under the Convention.

There are two main types of invoice value clauses :

- a) The «strict» type which states that all claims for which the carrier may become liable shall be calculated by reference to the net invoice value of the goods plus disbursements.
- b) The «alternative» type which states that claims shall be settled either on the net invoice value plus disbursements or on the certified market price at the port of discharge on the day of the vessels' arrival, whichever is the less.

The strict type of clause is valid under the United States Harter Act. But this may not be the case under the 1924 Convention and in some countries it has been held that these clauses are contrary to Article III (8) of the Convention which says that « any clause ... relieving the carrier or the ship from liability for loss or damage ... or lessening such liability otherwise than as provided in this Convention, shall be null and void ... ». There is little doubt that the alternative type of clause (which is more favourable to the carrier) would also be held invalid.

The Sub-Committee was much attracted by the proposal that the Convention should contain a provision laying down that notwithstanding Article III (8) the « strict » type of invoice value clause should be valid in a B/L.

**DECISION :**

The Sub-Committee weighed and considered the arguments for and against this suggestion. The exchange of views led the Sub-Committee to the conclusion that there is no case for coming forward with any special recommendation on this subject.

**18. The pro rata clause (Art. III (8) ).**

By virtue of Article III (8) of the 1924 Convention « Any clause ... relieving the carrier or the ship from liability ... or lessening such liability otherwise than as provided in this Convention, shall be null and void ». A pro rata clause provides that if goods are damaged to a certain percentage — say 50 % — the carrier, if responsible, shall pay 50 % of his statutory maximum liability. If the effect of such a clause is to reduce the carrier's liability below the sum laid down in the Convention, then it is contrary to Article III (8) and is invalid.

The Sub-Committee discussed whether a provision should be inserted in the Convention which laid down specifically that a pro rata clause is invalid.

**DECISION :**

Whilst a provision which specifically laid down that a pro rata clause which reduces the carrier's liability below the sum laid down in the Convention might be useful in making further litigation on the subject unnecessary the Sub-Committee does not see that the need for such a provision is really warranted and recommends no action on this particular point.

**19. Fire (Art. IV (2) b).**

Article IV (2) b) of the Convention exempts the carrier from liability for « Fire unless caused by the actual fault or privity of the carrier ». The Sub-Committee examined the following questions :

1. Should the exception in respect of fire appearing in Article IV (2) be maintained ?

2. If the answer is yes :

a) on whom should rest the burden of proof, is it for the claimant to establish that the carrier is at fault, or is it for the carrier to show that he is not at fault ?

b) is the establishment of the *personal* fault of the carrier the only way to break the exception or would also the establishment of the fault of his servants bring about the same result ?

c) is the carrier responsible if the fire is caused by the default of the servants in the navigation or management of the ship ?

d) is the carrier responsible if the fire is caused by a default of the servants other than in the navigation or management of the ship ?

DECISION :

In view of the general attitude that no recommendations should be made unless in matters of sufficient practical importance the Sub-Committee does not feel that there is a case for coming forward with any recommendations on these particulars points.

## 20. The reservation appearing in Protocol of Signature under nr. 1 (Art. IV (2) c) to p) ).

The Protocol of Signature to the Convention stipulates that any of the contracting parties may reserve the right (official translation by the U.S. State Department) :

« 1. To prescribe that in the cases referred to in paragraph 2 (c) to (p) of Article IV the holder of the bill of lading shall be entitled to establish responsibility for loss or damage arising from the personal fault of the carrier or the fault of his servants which are not covered by paragraph (a); »

The Sub-Committee took note of the fact that a number of countries have made such reservation which means that under their domestic law it is possible to establish responsibility as set out the reservation.

The questions put before the Sub-Committee in this connection were as follows :

1. Should the Sub-Committee recommend that this rule should be put in the Convention itself ?

2. What proof should the carrier establish in order to escape liability when invoking any of the exceptions enumerated under Article IV (2) c) - p) ?

In order to find the answer to question no. 1 the debates of the Diplomatic Conference were studied and the reasons for the Protocol

ascertained. From this it appears that practically none of the delegates favoured a solution denying the receiver the right to prove negligence on the part of the carrier relying on para 2 (c) to (p) of Article IV. It was suggested that either the whole series of exceptions laid down in these provisions be deleted or an express provision be inserted entitling the receiver to establish negligence on the part of the carrier relying on these exceptions.

The idea of striking out the exceptions met, however, with strong opposition. It was pointed out that they figured in the Bs/L without causing any trouble, that they had been devised by the interested parties themselves, and were perfectly clear to them. Article IV was the outcome of a compromise arrived at after painstaking negotiations. It should not be tampered with at the risk of upsetting the whole compromise. After various proposals to find a way out of the conflict had been examined it was finally suggested to adopt a provision under which the High Contracting Parties could reserve the right to prescribe that in the cases referred to in para 2 (c) to (p) of Article IV the receiver would be entitled to establish negligence on the part of the carrier. This led to the present wording of the first reservation in the Protocol of Signature. (\*)

As regards question no. 2 formulated above even a superficial study of the practice of the courts in some of the contracting states showed that this was not indetical. A full documentation on this particular point would be welcome.

#### DECISION :

##### Question 1.

The majority of the Sub-Committee holds that it should not recommend that the reservation be inserted in the Convention itself.

##### Reservation :

A minority of the Sub-Committee favours the idea of having the reservation inserted in the Convention itself. The objections to such a line of action appearing from the debates at the Diplomatic Conference might well have disappeared during the intervening decades.

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(\*) Vide : « Procès-Verbaux des séances de la Conférence Internationale du Droit Maritime, Réunion de la sous-commission Bruxelles 1923, Ledeberg 1924 », pages 57 - 63 et pages 91 - 92 et S. Royer : Hoofdzaken der Vervoerdersaansprakelijkheid in het Zeerecht, pages 268 - 271.

DECISION :

Question 2.

While a full documentation on the practice of the courts in different maritime countries in respect of the question of proof to be established by the carrier would be most welcome the Sub-Committee is not inclined to recommend any alteration of the Convention to lay down any rules on this subject nor is it inclined to give any ruling on the question itself.

**21. Limitation as to value for indirect damage by delay (Art. IV (5) ).**

Article IV (5) paragraph 1 of the Convention reads : « Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100 Pounds Sterling per package or unit ... ».

Physical damage to the goods caused by delay is apparently covered by this Article (Cf. above under nr. 15). The Sub-Committee discussed whether an express rule to the effect that the same should apply with respect to indirect damage by delay would be desirable in order to bring about international uniformity.

DECISION :

The discussion in the Sub-Committee showed that some members felt a certain sympathy for such a recommendation but the outcome of the debates was, however, that the Sub-Committee decided not to make any recommendation on this point and leave matters as they are.

**22. Exceptional cargo (Art. VI).**

Article VI of the Convention provides that special agreements may be made between the carrier and the shipper as to the former's liability in regard to exceptional cargo. The last paragraph of the English version of the Article states that such agreements shall not be made to apply to ordinary commercial shipments but only to « other shipments where the character *or* condition of the property to be carried *or* the circumstances ... under which the carriage is to be performed are such as reasonably to justify a special agreement ».

The French text differs from the English in that the word « and » is used instead of the word « or » in the English text.

In what circumstances can the carrier invoke freedom of contract : This was the question considered by the Sub-Committee. Can he do so only when a) the cargo is of an exceptional nature *and* b) the circumstances, terms and conditions of the carriage are exceptional (Cf. the French text), or is he entitled to invoke freedom of contract already when one of the conditions a) *or* b) is at hand (Cf. the English text) ?

DECISION :

In view of the general attitude that no recommendation should be made unless in matters of sufficient practical importance the Sub-Committee does not feel that there is a case for coming forward with any recommendation on this particular point.

### 23. Paramount Clause.

The Sub-Committee discussed the suggestion made that the Paramount Clause be made compulsory. It was pointed out that other conventions in the field of non-maritime transport contain such provision and that some national enactments of the B/L Convention do. (See e.g. Br. COGSA Section 3 and U.S. COGSA Section 13).

The Sub-Committee felt that it would look rather odd to have the Paramount Clause made compulsory now in the rather long life of the B/L Convention. The Convention has a certain value of its own which has in fact led to its being applied throughout a large part of the maritime world. The liner B/L has already gone a long way towards introducing the Paramount Clause. In 1959 the I.M.C. adopted an amended version of Article X which is intended to widen the field of application of the Convention.

DECISION :

The Sub-Committee recommends the retaining of the status quo on this point.

### 24. Jurisdiction.

a) The Sub-Committee discussed the suggestion made that a rule should be recommended by which the court of a Contracting State could exercise jurisdiction notwithstanding the fact that the B/L might contain a jurisdiction clause which, if allowed to stand, would bring the action outside the scope of the Convention or before some Court where the Convention would not be respected. The idea here is to upset certain jurisdiction clauses which might otherwise enable a party to contract out of the Convention.

b) It was also suggested that the Sub-Committee should recommend a rule by which the Contracting States would be obliged to accept as binding jurisdiction clauses in Bs/L which «seem to be reasonable», especially if by such clauses jurisdiction would be given to a court in a Contracting State.

The Sub-Committee is aware that the maritime conventions sponsored by the I.M.C. do not usually contain rules about jurisdiction but merely material rules as to the liabilities of the parties. The majority of the Sub-Committee wants to express the view that a convention designed to regulate the relationship of the carrier and the holder of the B/L is hardly the ideal vehicle for a special provision about conflicts of law laying down what jurisdiction is acceptable.

#### DECISION :

The Sub-Committee feels it hardly necessary to propose a rule about jurisdiction at the present ripe stage in the life of the Convention.

#### Reservation :

One member of the Sub-Committee does not accept this view. He submits that in practice choice of jurisdiction has become tantamount to choice of law. The new version of Article X (Vide introduction pages 5-7) accepted by the I.M.C. has the effect of making invalid any agreement about choice of law which might allow the parties to escape from the Convention. To ensure that a choice of jurisdiction is not converted into a choice of law, the new Article X should be amended to provide that jurisdiction or arbitration clauses stipulating a court outside the territories of the contracting states are invalid and not binding for any party.

## VI FUTURE ACTION

It will be seen from the foregoing that the Sub-Committee has examined numerous questions and has discarded most of them, recommending that the status quo be retained.

On some points, however, the Sub-Committee unanimously or by a majority has recommended that the I.M.C. should take action to amend the Convention, either by altering the present text or by making additions to it.

It has been the understanding throughout the discussions that members would be entirely free to say whether in their view it would be advisable for the I.M.C. to take any positive steps towards the amendment of the Convention. Naturally the Sub-Committee is well aware that this question of policy is one for the I.M.C. and not for the Sub-Committee. The Sub-Committee has, however, had several exchanges of views about the future of its recommendations. These can be briefly summarized as follows.

A. A number of members feel that it would be unwise to attempt to amend the 1924 Convention in any way. The Convention is widely accepted to-day and on the whole it works well. The Convention represents a compromise between carriers and cargo interests and the parties know the position. Would not an amendment have the effect of upsetting this balance ?

And, even if, as is the case, the Sub-Committee has discarded what it regards as non essential points and has made positive recommendations only in respect of the more important matters, what guarantee has the shipping world that at a Diplomatic Conference this cautious line would be followed and the amendments contained within the limited sphere recommended by the I.M.C. ? There is no way in which the I.M.C. can limit or tie down the right of action of the Diplomatic Conference once the 1924 Conference is placed on its agenda.

But even if the Diplomatic Conference were to consider only the limited recommendations of the I.M.C. would there still not be grave consequences ? Should the 1924 Convention be denounced and the States start from scratch ? Or should an additional protocol be made which might well create a situation where some States have ratified both the Convention and the additional protocol, some only the Convention ?

For the reasons set out above these members think it would be unwise for the I.M.C. to take any action in respect of the B/L Convention.

B. Other members hold an entirely different view. In the first place they point out that the period in which the Convention has been in force has shown that something must be done to remedy deficiencies which have become apparent during the life of the Convention. It was and is a very good Convention but it does not represent the final and so to say eternal solution of all problems in respect of bills of lading. Some have even been so bold as to say that it is high time an entirely new Convention were established in the light of experience gained, such Convention to be formulated in a more precise way. But if this is held to be too bold a step one could at any rate hardly do less than give effect to the positive recommendations of the Sub-Committee.

It should be observed that if members of the I.M.C. become hesitant of submitting subjects discussed by them to Diplomatic Conferences merely because it is thought that the results may be unfortunate, then surely it is time that a thorough reassessment should be made of the existing relationship between the I.M.C. and the Diplomatic Conference.

A way to meet the risks of upsetting the present Convention might be to have all the recommendations of the Sub-Committee embodied in an additional protocol. To avoid the risks that the Diplomatic Conference might reopen entirely the whole Convention it might be possible to stipulate that the amendments of the Additional protocol will permit no reservation in respect of Article X and the Article on the 10,000 Poincaré francs. In this way it would be possible for the signatories of the 1924 Convention to defend themselves against any other and undesirable amendment voted by the Diplomatic Conference.

As for the technical way to go about the work it was also suggested to the Sub-Committee that where the Sub-Committee recommends alterations in the text of the present articles of the Convention these should be introduced in the Convention itself whereas additions should form part of an additional protocol.

C. Finally some members think that the Sub-Committee should send its report to the I.M.C. without any advice to the I.M.C. about procedure as this is a matter for the Conference of the I.M.C. to decide.

D. As to the idea of having all or some of the positive recommendations of the Sub-Committee embodied in an additional protocol, which would follow the precedent of the Hague Protocole to the Warsaw Convention it was pointed out that the report of the Sub-Committee would be put on the agenda of the I.M.C. Conference in Stockholm 9th - 15th June, 1963. The 1924 Convention is widely known as the Hague Rules because of the debates which took place at the Hague and which led to the results embodied in the 1924 Convention. Could an equally striking name be found for the additions? The members were much attracted by a proposal that should the « Positive Recommendations » be adopted by the I.M.C. at the 1963 Conference it might be possible for the Chairman of the I.M.C., the Secretaries General and those members of the I.M.C. who so desire to take the plane from Stockholm to the Island of Gotland in the Baltic (a trip of one hour) and sign the recommendations in the old and beautiful city of Visby. The recommendations would then be known as the Visby rules thus forging a link with the Visby Sealaw of Mediæval times. Perhaps the sense of tradition to which this name appeals might make the innovations of the Sub-Committee easier to accept? The whole set of rules in respect of Bills of Lading sponsored by the I.M.C. might in this way become known as the Hague/Visby Rules.

DECISION :

The Sub-Committee decided that the different views held within the Sub-Committee on the question of future action should be contained in the report and put before the conference.

Antwerp and Gothenburg, 30.3.1962.

THE SUB-COMMITTEE ON BILL OF LADING CLAUSES

*Hon. Secretary :*  
Leo Van Varenbergh

*Chairman :*  
Kaj Pineus

VII. ACKNOWLEDGEMENTS

The Honorary Secretary Mr. Leo Van Varenbergh has given the Sub-Committee the full benefit of his well-known capacity for work, his perspicacity and gift of succinct drafting. For all this the Sub-Committee wishes to record its sincere appreciation.

Before concluding this report the Chairman of the Sub-Committee wishes to avail himself of the opportunity of thanking all the members of the Sub-Committee for the very keen interest they have shown in the work of the Sub-Committee which has been essential to bring about the result embodied in this report. To my personal aide, Mr. H.G. Mellander, my special thanks are due for his indefatigable and able assistance rendered throughout the life of the Sub-Committee.

Gotenburg, 30.3.1962.

*Chairman :*  
Kaj Pineus

## FINNISH MARITIME LAW ASSOCIATION

**BILL OF LADING CLAUSES**  
**COMMENTS ON THE REPORT**  
**OF THE INTERNATIONAL SUBCOMMITTEE**

## I. INTRODUCTION

**Revision of Article X.**

Although we understand that the wording of this Article was approved at Rijeka, we would like, in case this Article comes up for discussion in Stockholm, to make the following comments.

According to the proposed wording the Convention shall apply to every Bill of Lading for carriage of goods — — — if the *port of loading*, the *port of discharge* or an *optional port of discharge* is situated in a contracting state. An *optional port of discharge* becomes a *port of discharge*, if the option to discharge is exercised. If, on the other hand, such option is not exercised, then it is irrelevant what the legislation of the optional port is. In our opinion, therefore, there should be no reference to an optional port.

According to the wording of this Article the Convention applies to every *Bill of Lading* for carriage of goods from one state to another. Then that implies that the nationality of the ship is not relevant and the reference to the nationality of the ship is therefore only confusing.

The Convention contains stipulations as to the obligation of the Master to issue a Bill of Lading, to the contents of this Bill of Lading, to the obligation of the Master to bring the cargo to the port of discharge in good order. It also contains stipulations about certain facts, which relieve the Master from these obligations, but also of the damages he has to pay in case of non-fulfilment. There can therefore hardly be any other Law governing the Bill of Lading, and the words « whatever may be the Law governing such Bill of Lading » seem to be superfluous.

## Chapters II and III

No comments.

#### IV. POSITIVE RECOMMANDATIONS

On page 11, *in fine*, it is contended that on certain occasions Courts have taken a standpoint as to who should carry out loading, stowing, discharging, etc. We have had no such cases in Finland, and we know that ever since the Convention came into existence Carriers have had loading, stowing, discharging, etc. effected by Stevedores, in most cases engaged by the Carriers themselves, but in many cases appointed by the Shippers, Charterers, etc., without the Courts interfering. A different thing is, of course, that in relation to a *bona fide* Bill of Lading holder, the Carrier is liable as if he himself had carried out the loading, stowing, etc.

If to Art. III (2) are added the words « in so far as this operation is not performed by the Shipper or Consignee », then, if the Shipper carries out loading, stowing, etc., is it the intention that this should in any way lessen the liability of the Carrier? This could be the case only if the Bill of Lading holder were aware of the fact that the Shipper would be liable for faults in loading, etc. How should the fact that the Shipper has carried out loading, stowing, etc. be brought to the knowledge of the Bill of Lading holder? Presumably by inserting in the Bill of Lading a Clause to the effect that the Shipper has carried out loading, stowing, etc. We would then have a new set of Marginal Clauses, which would give rise to all the same difficulties as we now have with the other such Clauses.

The difficulties which arise if the Shipper carries out loading, stowing, etc. do not exist if the Consignee carries out discharging. In our opinion, however, a corresponding stipulation in the Rules would not benefit the Carrier. As the Law is now, where the discharging is the task of the Carrier, if he delegates this to the Consignee, who is identical with the Bill or Lading holder, then, if the Consignee carelessly carries out the discharging, he would have to take the consequences, as he could not then fall back on the Carrier as regards damages for his own faults.

For these reasons we would prefer to retain *status quo* on this point.

#### Notice of Claim Art. III (6). First para.

If, as is the case according to the present wording, the removal shall be *prima facie* evidence of the delivery by the Carrier of the goods as described in the Bill of Lading, then the removal constitutes such *prima facie* evidence and nothing more. We are therefore of the opinion that the addition to the Rule is of no practical value and is in itself no reason for going to the trouble of having the Convention altered.

### Art. III (6). Third para.

The carrier now and then delivers goods to a person who has not the relevant Bill of Lading in his possession. The Carrier often does this to accommodate a customer and in most cases the customer will be able to produce the Bill of Lading within a very short time. However, there are cases which are not so simple as this. A Bill of Lading may have gone astray while in transit from the Shipper to the Consignee, or the Shipper may have heard that the person to whom the goods originally were to be consigned has got into financial straits and has sent a Bill of Lading to a third person, e.g. « stoppage in transitu ». Finally, a person may fraudulently claim goods, stating that the goods have been consigned to him.

Whenever the Carrier delivers goods without the Bill of Lading being produced, he requires a guarantee, or should do so for his own safety. This guarantee usually constitutes a financial burden on the Consignee. He is therefore anxious to get rid of this burden, and, if he is *bona fide*, he will without loss of time make arrangements to produce the Bill of Lading. If again the goods have been delivered to a third party, who is not a *bona fide* Consignee, then there is no reason to make things easier for such third party.

Should in such cases e.g. the Shippers' claim against the Carrier have become time-barred, then it would seem unreasonable to cause an economic loss to the proper proprietor of the goods, merely for the sake of accommodating a third party who has — perhaps fraudulently — got the goods into his possession.

Notwithstanding the above we are prepared to support the recommendation made by the majority of the subcommittee, namely that in the event of delivery of goods to a person not entitled to them, the period of one year otherwise stipulated for claims against Carrier shall be extended to two years.

### Gold Clause. Art. IV (5) and IX.

We have no objection to the proposals under this heading.

### Liability in tort. The « Himalaya » problem.

We are in full agreement with the efforts to have the Convention so amended that cases of the « Himalaya » type will not arise again.

On the proposed draft we would make the following comments.

Para. (1) saying that action for damages against the Carrier can only be brought subject to the conditions of the Convention seems to us to be superfluous. The Convention stipulates when and what actions can be taken against the Carrier, and it does not help the Carrier to have these stipulations repeated as proposed.

A different thing is, of course, that actions over and above what is stipulated in the Convention can be taken against the Carrier who, to the detriment of the Bill of Lading holder, has caused damages with criminal intent. In such cases the ordinary Law and not the Convention will apply.

If, as is suggested above, Para. (1) is left out, then Para. (2) will have to be redrafted. In doing this guidance can be found in the wording of Art. 6 of the International Convention relating to the Limitation of Liability of Owners of Sea-going Ships (1957) or Art. 12 of the International Draft Convention for the Unification of Certain Rules relating to the Carriage of Passengers by Sea (1961) or Art. 12 of the Preliminary Draft International Convention for the Unification of Certain Rules relating to the Carriage of Passengers Luggage by Sea.

**Both to Blame.**

We have no comments to make under this heading.

**Other Subjects Examined and Future Action.**

We have no comments to make under these headings.

*Helsinki/Helsingfors, November 9th, 1962.*

*Rudolf Beckman*

*Bertel Appelqvist*

## SWEDISH MARITIME LAW ASSOCIATION

## BILL OF LADING CLAUSES

COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

The Swedish Association of International Maritime Law appointed a subcommittee to examine the report mentioned above (Mr. K. Grönfors, chairman, B. Barth-Magnus, L. Hagberg and H. G. Mellander). The subcommittee has submitted its unanimous opinion to the Association. In the light of what has been said and after further considerations the Swedish Association would like to express the following views :

## REVISION OF ARTICLE X

Our Association supports the proposed amendment.

**1. Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2) ).**

It is perfectly true that in principle the carrier should not be held responsible for faults of the shipper or consignee committed at the loading or the discharge of the goods. Nevertheless the text proposed in the report presents some difficulties. It is hardly well suited for the transport of general cargo and would moreover weaken the value of the B/L as a negotiable document. The carrier should be able to cope with the problem by using a c/p as suitable base and stick to the c/p in typical f.i.o. situations.

In the circumstances the majority of our Association prefers the status quo on this point.

**2. Notice of claim (Art. III (6) first para).**

Our Association supports the reservation appearing pages 14/15 in which is said :

« ...that although the suggested amendment gave some clarification they would prefer a rule with a more effective sanction to a claim when notified too late. »

During the preparatory work of the International Subcommittee the Norwegian Association proposed the following formula :

« Any liability of the Carrier under these Rules shall cease unless notice of the claim has been given to the Carrier or his agents without undue delay, but no notice shall be required if it is proved that the Carrier or any one for whose acts he is responsible acted recklessly or with intent. »

This appears to us on the whole a satisfactory formula.

If it is felt, however, that the words « undue delay » convey too vague a meaning it would probably be possible to combine them with an outside time limit of say seven days, or to use a seven days' limit only which in most cases probably would be ample (Cfr. for air transport Warsaw Convention Art. 13 (3) and for road transport C.M.R. Convention 1956 Art. 30).

The time should start from the moment the goods were actually received or placed at the effective disposal of the consignee. In this respect it must be noted that goods very often are discharged and stored at the quay long before the consignees have been notified of the arrival of their goods. Further it is often difficult for the consignees to arrange survey of the goods before they are cleared through the customs. Thus the time should not commence to run before the goods are placed at the *effective* disposal of consignees.

### **3. Time limit in respect of claims for wrong delivery (Art. III (6) third para).**

Our Association believes it important to have a rule about time limits inscribed into the Convention which would dispose of the need for consignees to put up long and costly bankguarantees. The resolution appearing in the report page 19 is, however, not an ideal one. Already the need to add a special declaration (bottom page 19) goes to show that the majority has hardly found the best possible solution.

Our Association would prefer a uniform time bar applicable to all types of claims on B/L. This would dispose also of the question of time limit in respect of claims for indirect damage through delay (Vide report point 15, page 53), which indeed would be a great advantage.

We would favour a uniform one year time limit to be introduced covering the whole field of possible claims. We submit that Art. III (6) third para of the Convention be amended to read as follows :

« In any event *all rights under the Bill of Lading shall cease* unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. »

**4-7. Gold Clause, The Himalaya Problem, Nuclear Damage and Both to Blame.**

Our Association supports the suggestions of the Report in respect of these questions.

8-10 (no comments)

**11. Due diligence to make ship seaworthy (Art. III) (i) and IV (i) ).**

Our Association is not inclined at this stage to accept the status quo recommended in the report. While the decision in the « Muncaster Castle » is an English one it might well in the long run have repercussions elsewhere. Should it constitute a different solution than would have been adopted under other jurisdictions it might have a bearing on the wish of the parties to have the British COGSA apply or not. Notwithstanding the new Article X, which is already adopted by the I.M.C., the « Muncaster Castle » decision might incite to disputes as to what COGSA should apply owing to the fact that the stern view adopted might well lead to a conflict of interests between the Carrier on the one side and the consignee on the other.

Our Association should therefore welcome that renewed efforts be made to try to find a solution to the difficulties caused by the « Muncaster Castle » decision.

Some members, however, do not share this view and should like the « Muncaster Castle » decision to prevail.

12-24. (no comments)

## FUTURE ACTION

To have the amendments which will be eventually adopted embodied in a additional protocol of the type used for the Haag protocol of 1955 to the Warsaw Convention is we believe the best solution in this case.

Our Association should appreciate were the I.M.C. decision to contain a suggestion that the Belgian Government invite to the Diplomatic Conference which will deal with such protocol those Governments which ratified the 1924 Convention or afterwards have acceded to it.

*Stockholm, 14th December, 1962.*

*Kaj Pineus*

*Claës Palme*

BRITISH MARITIME LAW ASSOCIATION

BILL OF LADING CLAUSES

COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

INTRODUCTION

It is thought appropriate to commence our comments on this Report by conveying to those responsible for drafting it our appreciation of its comprehensive and clear nature. We believe that the studies of the International Subcommittee have been most useful and that the conclusions set out in the Report will serve as a really satisfactory basis for the future work of the Comité Maritime International. In commenting on the Report we have thought it desirable to go into some detail as to the reasons for the views expressed on the various points. This has necessitated reference to some decisions by the Courts in the United Kingdom which, we hope, will not unduly weary members of other Associations.

The paragraph numbers appearing against our comments refer to those contained in the Report. As will be noted, we have also followed the pattern of the Report by dividing our comments under three headings namely, (a) Positive recommendations, (b) Other subjects examined and (c) Future action.

We should add that, although the content of the Report has received detailed study by this Association and the comments have been carefully considered, the Association reserves the right to amend these comments either before the Stockholm Conference or at the Conference itself.

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(\*) *amendments are printed this way.*

## POSITIVE RECOMMENDATIONS

### 1) Carrier's liability for negligent loading, stowing or discharge of goods by shipper or consignee. (Article 3 (2) ).

It is suggested in the Report that there is uncertainty about the extent of the carrier's liability in this paragraph. Is the carrier obliged to perform the whole operation properly and carefully or is the carrier bound to do this only to the extent that he has himself undertaken to do so.

This question was considered in *Pyrene Co. Ltd. v. Scindia Navigation Co. Ltd.* 1954 2 *Queen's Bench Division*, when it was decided that the carrier is only responsible for that part of the operations which he has undertaken to carry out. The reasoning upon which this decision was based was clearly expressed by the Judge (Devlin J., as he then was) in the following words :

« The object (of the Rules) is to define not the scope of the contract service but the terms on which that service is to be performed. The extent to which the carrier has to undertake the loading of the vessel may depend not only upon the different systems of law, but upon the custom and practice of the port and the nature of the cargo. It is difficult to believe that the Rules were intended to impose a universal rigidity in this respect, or to deny freedom of contract to the carrier. The carrier is practically bound to play some part in the loading and discharging so that both operations are naturally included in those covered by the contract of carriage. But I see no reason why the Rules should not leave the parties free to determine by their own contract the part which each has to play. On this view, the whole contract of carriage is subject to the Rules, but the extent to which loading and discharging are brought within the carrier's obligations is left to the parties themselves to determine ».

This interpretation of the Act was subsequently approved in a decision of the House of Lords given in 1956 (*G. H. Renton & Co. Ltd. v. Palmyra Trading Corporation*), and it may, therefore, be accepted that under English law, the carrier is not *obliged* to perform the operation of loading and discharging, but that, if he does undertake so to do, his liability is regulated by the Act.

*In view of the fact that English law is clear on this point, the Association does not feel very strongly about the amendment which is proposed by the International Subcommittee. Nevertheless, it appreciates that, as there is uncertainty in some countries about the meaning of the paragraph as at present appearing in the Hague Rules, it is desirable in the interests of international uniformity, to attempt to clarify the matter by suitable amendment.*

## 2) Notice of Claim (Article 3 (6), first paragraph).

As is indicated in the Report, the three-day period for notice of claim is of varying importance in different countries.

In England, whether notice is given or not, the onus of proving loss or damage always lies upon the claimant. But in some countries it appears that, provided notice of claim is lodged within three days, the carrier is presumed to have been at fault, i.e. the burden of disproving loss or damage is on the carrier.

In these circumstances it will be appreciated that the point is of somewhat academic interest in this country. Nevertheless, the Association takes no objection to the words recommended as an amendment to this sub-paragraph.

## 3) Time limit in respect of claims for wrong delivery. (Article 3 (6) third paragraph).

The question raised in the Report is whether the expression « loss or damage » in this paragraph covers liability for wrong delivery and thus entitles the carrier to limit liability under the Rules. As far as the law of the United Kingdom is concerned, a distinction is drawn between the negligent performance of a contract and a fundamental breach which goes to the root of the contract. In the former case the carrier is liable, even though the goods have suffered no physical loss or damage (see *Anglo-Saxon Petroleum Co. Ltd. v. Adamastos Shipping Co. Ltd.* 1957 1 L.L.R.) but such liability is limited under the Rules and the claim against him is time barred after one year. In the latter case the carrier might well lose the protection of all the exceptions under the Rules, including the time limit and he remains liable in full within the 6 year period of our Statute of Limitations (*Spurling v. Bradshawe* 1956 1 W.L.R. 461).

*The Association supports the view expressed in the Report that the Convention should contain a rule laying down that a time limit should operate in respect of claims based upon wrong delivery. This would allow consignees, who have received goods with out producing bills of lading, to obtain Bank guarantees for a fixed (and probably shorter) period. It is not, however, considered desirable that varying time limits should be introduced, i.e. one year in the case of loss or damage and two years in the case of wrong delivery. It is also considered important that any amendment should be without prejudice to the provisions of the Gold Clause Agreement. In these circumstances the Association wishes to suggest a text different to that appearing on page 19 of the Report and which is as follows :*

### Article III (6).

*(a) Unless notice of loss of or damage to or non-delivery of goods and the general nature of such loss, damage or non-delivery be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss, damage or non-delivery be not apparent, within three days, such removal shall be prima facie evidence of delivery by the Carrier of the goods as described in the Bill of Lading.*

*Notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.*

*(b) The Carrier and the ship shall, subject to the provisions of sub-paragraph (c) of this paragraph, be discharged from all liability resulting from loss of or damage to or non-delivery of goods unless suit is brought within one year of the date on which the goods were delivered or should have been delivered.*

*In the case of any actual or apprehended loss, damage or non-delivery the Carrier and the receiver shall give reasonable facilities to each other for inspecting and tallying the goods.*

*(c) The time for bringing suit will be extended by the Carrier for a further year beyond the period of one year laid down in sub-paragraph (b) above upon the request of any party representing the Cargo (whether made before or after the expiry of the said one year period) unless :*

*(i) notice of claim with the best particulars available has not been given within the period of one year,*

*or (ii) there has been undue delay on the part of Consignees, Receivers or Underwriters in obtaining the relevant information and formulating the claim.*

### 4) Gold Clause (Article IV (5) and IX).

The effect of the proposed amendment is to clarify this question by adopting the Poincare franc as the basis for the limitation figure, as was done in the Passenger and Nuclear Conventions. The sterling equivalent is about £ 235. The Association supports the recommendation which will avoid past uncertainty in this sphere.

### 5) Liability in Tort.

In the recent case of *Midland Silicones Ltd. v. Scruttons Ltd.* (1961) 2 Lloyd's List Law Reports, certain stevedores, who by their admitted negligence had damaged a valuable package of goods during discharge in the Port of London, sought to limit their liability to the

sum of \$ 500, upon the ground that the Bill of Lading was subject to the U.S. Carriage of Goods by Sea Act 1936 (the Act incorporating the Brussels Convention 1924). It was held that the stevedores could not rely upon this provision, because English law knows nothing of a « jus quaesitum tertio » arising by way of contract, and consequently one who is not a party to a contract can derive no benefit from it. The Court of Appeal had earlier arrived at a similar decision in the case of *Adler v. Dickson and Another* 1954 2 Lloyd's List Law Reports, in which it was decided that the Master and Boatswain of a ship who had injured a passenger by their negligence were not entitled to rely upon a clause in a passenger ticket which exempted the Ship-owners from liability for negligence.

The Association fully supports the principle behind this recommendation. It must, however, be stressed that merely to amend the Hague Rules in the manner suggested would not, so far as the law in the United Kingdom is concerned achieve the object of the amendment, namely to give that protection to servants, agents and independent contractors as is at present afforded to carriers under Article 4 of the Rules. As has already been mentioned (see the Midland Silicones case quoted above) a person who is not a party to a contract cannot derive any benefit under such contract. Consequently whatever provision may be inserted in the Rules to protect servants etc. this in itself will be of no avail without a supplementary provision (possibly by way of a specific Section in an Act of Parliament) which lays down that servants, agents and independent contractors may, notwithstanding that they are not parties to the Contract of Carriage, benefit from the defences and limits of liability set out in such contract. *Apart from this consideration, the Association has come to the conclusion that it cannot support the proposal that independent contractors should also be brought within the sphere of protection afforded in the Hague Rules. It, therefore, wishes to be associated with the minority view expressed in paragraph 3 of page 33 of the Report.*

#### 6) Nuclear damage.

The Association supports this recommendation.

#### 7) Both to Blame.

The Association supports this recommendation.

### OUTWARD BILLS OF LADING — ARTICLE X

Apart from the recommendations made in paragraphs 1 to 7 of the Report, note has been taken of the Resolution adopted at Rijeka in 1959 regarding the amendment of Article X of the Rules, as mentioned in the Report on pages 5 and 6.

As at present drafted the provisions of the Convention apply only to Bills of Lading issued in any of the Contracting States i.e. to « outward » Bills of Lading.

Under the United Kingdom Carriage of Goods by Sea Act, therefore, the provisions apply only to Bills of Lading relating to the carriage of goods from any port in the United Kingdom. The Act does not apply to the carriage of goods from any port outside the U.K. to any other port whether in or outside the U.K.

This has given rise to a conflict of judicial opinion as to the position when goods are shipped from a port outside the U.K., in a country which is a Contracting State to the Hague Rules, to a port within the U.K., but the Bill of Lading, contrary to the law of the country of origin of the contract of affreightment does not contain an express provision that it is subject to the rules of the Convention.

In the « *TORNI* » 1932 p. 78, Bills of Lading issued in Palestine for carriage of goods to England did not incorporate the Hague Rules, though Palestinian law required that they should. They did, however, contain a provision that they were to be construed according to English law. The Court of Appeal held that the Bill of Lading should be interpreted as if Palestinian law had been complied with. In *Vita Food Products v. Unus Shipping Co.* 1939 page 277 Appeal Cases, the Privy Council came to an opposite decision in a similar case. This conflict cannot be resolved until a similar case comes before the House of Lords or unless the Carriage of Goods by Sea Act is amended to apply to both inward and outward Bills of Lading in the manner recommended by the amendment to Article X.

In these circumstances, the Association confirms that, in its view, the Article should be amended as proposed.

## OTHER SUBJECTS EXAMINED

### 8) Unseaworthiness and deck cargo (Article 1 (c) and Article III (1)).

*It was strenuously urged by the cargo interests represented in the Association that carriers should assume a limited measure of liability for loss of or damage to cargo carried on deck. This proposition was accepted and, in the result, the Association desires to propose that consideration be given to the adoption of an amendment on the following lines :*

*« In respect of cargo which by the contract of carriage is stated as being carried on deck and is so carried, all risks of loss or damage arising or resulting from perils inherent in or incident to such carriage shall be borne by the Shipper and/or Consignee but in other respects the custody and carriage of such cargo shall be governed by the terms of this Convention ».*

## NOTE

*The above amendment would be inserted as a new paragraph 7 to Article IV.*

*Article I (c) would be amended by deleting all words after the words « except live animals » appearing in the existing text.*

### 9) Liability before loading and after discharge (Article 1 (e) and Article VII).

Whilst appreciating the difficulties of clarifying the point raised under subparagraph (b) of the Report, it is thought by some members that *whilst it would not be appropriate to discuss the matter at the Stockholm Conference, further consideration should be given to evolving a clear definition of the period of the carrier's liability.*

### 11) Due diligence to make ship seaworthy (Article III (1) and IV (1)).

The Association is of the view that since the decision in the « Muncaster Castle », the burden of liability resting upon Shipowners is unreasonably heavy. In these circumstances it is thought that further serious efforts should be made to reach agreement on an amendment which, while lessening the Shipowners' present liability, would constitute a fair compromise with cargo owners. With this in mind the Association tentatively suggests that Article III (1) should be amended somewhat as follows :

*« Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the Carrier has taken care to appoint one of repute as regards competence, the Carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents (including any independent sub-contractor and his servants or agents) in respect of the construction, repair or maintenance of the ship or any part thereof or of her equipment. Nothing contained in this proviso shall absolve the Carrier from taking such precautions by way of supervision or inspection as may be reasonable in relation to any work carried out by such an independent contractor as aforesaid ».*

#### *Note*

*The Association is of the view that the position of this paragraph in the Rules is a matter of drafting. Most members think that it would be most appropriate for it to appear directly after sub-paragraph (c) of Article III (1).*

**12) Received for Shipment Bills of Lading (Article III (3) and (7) ).**

The Association is inclined to accept the decision reached in this matter. Nevertheless it would ask for further time to consider the point.

**17) Invoice Value Clause (Article III (8) ).**

There exists support within the Association that this subject should be further considered. Furthermore, it should be mentioned that certain members are of the view that the market value of the goods should be the basis for calculating liability and that no choice should be given to carriers as under the « alternative » type of clause set out in subparagraph (b) of the Report. *It is felt that this question should not be raised at the Stockholm Conference but that it should be the subject of discussion thereafter.*

### FUTURE ACTION

In view of the comments which have been made above, it will be understood that the Association believes that there are a number of points upon which the Hague Rules could usefully be amended and which would give justice to both cargo and Shipowners. In these circumstances the Association supports the general principle that steps should be taken to implement such amendments.

But we feel strongly that the manner in which this is done should be somewhat as follows :

1) When the amendments have been settled within the C.M.I. a Diplomatic Conference should be called and which should be restricted to delegates from those countries which have signed and ratified the Hague Rules or which have taken positive steps so to do.

2) The amendments should be incorporated into a Protocol to the Hague Rules, thus avoiding the amendment of the Rules as a whole.

*30th April 1963*

NETHERLANDS MARITIME LAW ASSOCIATION

BILL OF LADING CLAUSES

COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

I.

The Conference of the Comité Maritime International which met in September 1959 at Rijeka, adopted two resolutions with respect to the Convention mentioned above.

In the first of the two resolutions a new text of article X of the Convention was adopted.

In a second resolution the International Subcommittee was entrusted with the task to study other amendments and adaptations to the provisions of the Convention.

The undersigned wishes to express its sincere admiration for and great appreciation of the manner in which the International Subcommittee acquitted itself of its task. Its terms of reference being wide, the International Subcommittee rightly undertook to review a considerable number of the provisions of the Convention and to examine such proposals for amendments of these provisions as were submitted to it by one or more of its members. The results of its discussions and the conclusions at which it has arrived have been laid down in its final report of the 30th March 1962.

II.

Before entering in discussion of the recommendations and conclusions presented by the report of the International Subcommittee, the undersigned wishes to make the following observations of a more general nature :

a) the proposed revision of the Convention raises the problem if and to what extent such revision will be desirable or opportune. It should be remembered that the Convention owes its existence to a compromise reached between shipowners and cargo interests. Moreover the

Convention, as it now reads, has been ratified or adhered to by a large number of maritime nations. In fact, it has led to an almost worldwide unification of the law on the liability of the carrier of goods under bills of lading. Although the wording of the Convention may in certain respects be open to criticism — this wording has been described as containing typical bill of lading language —, on the whole the application of the Convention has proven to be satisfactory to all parties concerned. Although the Convention applies only to carriage of goods under bills of lading, yet more and more charterparties are incorporating the principal provisions of the Convention as part of the contract of affreightment which is embodied in such charterparties. On the whole the divergences in the application of the Convention by the Courts of different countries have been so small, that it may be stated that the almost worldwide unification of the law referred to above has brought about an almost worldwide uniformity of that law.

Any attempt to bring about a revision of the Convention which would encroach on its principles, might disturb this compromise and endanger this uniformity. Even if the Diplomatic Conference should decide to incorporate such revision in a separate protocol which, for reasons which are selfexplanatory, would seem to be the most useful method to effect such revision, there would always be the danger that a number of countries now being parties to the Convention, would refrain from signing or ratifying such Protocol. It need not be stressed that the ensuing situation would be, if not chaotic, at any rate highly undesirable from the point of view of international uniformity. It might lead to a situation in which cargoclaims relating to the same ship and the same voyage, if brought in the Courts of different countries, would be decided upon either the « old » or the « new » Hague Rules, depending on whether the country of the Court, in which proceedings were instituted, did or did not ratify the Protocol.

When dealing with the amendments proposed, the Stockholm conference should bear the above considerations in mind. In other words : in respect of each of these proposals the conference should investigate whether or not the amendment proposed would be of a nature to directly or indirectly modify the principles underlying the Convention and therefore to disturb the existing compromise. In that case the amendment should only be carried, if it should appear to be absolutely indispensable. Should a particular amendment constitute a real improvement as compared with the actual text — and certain of the amendments may be considered as such —, but should the amendment not be found to be indispensable. then for the reasons set out above it might be better policy to refrain from adopting the proposed change. Sometimes « le mieux est l'ennemi du bien ».

b) Subject to what is stated in subpar. (a) above, the undersigned believes that the Stockholm Conference should not extend its

labours beyond the « Positive recommendations » made by the International Sub-Committee. In fact, this Report shows that in respect of all the « other subjects examined », the International Subcommittee decided to refrain from making proposals for amendments. In case the Conference should decide that one or more of those subjects should be investigated more fully, then such subjects should be referred once more to the International Subcommittee.

In this connexion the undersigned would point out that the existing Convention merely contains « certain rules » « relating to bills of lading ». The authors of the Convention never intended to make a uniform law encompassing a complete set of rules governing all the aspects of the contract of carriage and this intention is fully borne out by the Convention as it now stands. As in the other fields of maritime law, the C.M.I. should be wary of endeavouring to arrive at completeness and what may be termed perfectionism. Such endeavours would probably prove not only to be impossible, but might also very likely disturb and endanger the compromise referred to above.

c) The undersigned wishes to stress that none of the above observations is intended to imply any criticism as regards the remarkable work done by the International Subcommittee and the excellent report prepared by its Chairman. On the other hand it is up to the Plenary Conference to see that the C.M.I. does not « rush where angels fear to tread ».

### III.

In formulating the « positive Recommendations » the International Subcommittee followed the order in which the articles of the Convention concerned appear therein. In discussing these Recommendations, the undersigned will follow the same method.

#### **1) Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2) ).**

With regard to Article III (2) the practice followed by the Courts of a great many countries seems to show a similar tendency which moreover seems to give satisfaction. In the opinion of the undersigned this tendency should not be disturbed and therefore endangered by the revision of this particular provision of the Convention.

It is further to be noted that article III (2), contains a reference to article IV. This illustrates how an apparently unsubstantial change of one of the provisions of the Convention may have a bearing on other provisions. On the other hand it may be asked whether the consequences thereof have in every case been fully considered.

For all these reasons the undersigned does not think the amendment proposed desirable.

## **2) Notice of claim (Art. III (6) first para.).**

The undersigned regrets that it has not been able to discover what would be the effect of the change (or rather the addition) proposed as no need therefore seems to exist. It is therefore suggested not to accept this recommendation.

## **3) Time limit in respect of claims for wrong delivery (Art. III (6) third para.).**

This proposal raises the highly important question whether the expression « loss or damage » within the meaning of the Convention does or does not include so called « wrong delivery ».

At present this question is generally answered in the affirmative. However, should the amendment proposed be adopted, it would necessarily follow that in future the answer would be negative.

It will not be impossible to prevent this consequence by means of a resolution such as the one which was adopted by the International Subcommittee, even although this Subcommittee stated that it did not wish to solve the problem.

Considering that the words « loss or damage » have a special meaning in other articles of the Convention, this resolution in itself provides an argument for not attempting to amend Article III (6), third para.

The proposal to fix a period of prescription (or of extinction) of the action in case of « wrong delivery » at two years not only might serve as an argument that « wrong delivery » is to be considered as a special category of loss and is therefore to be distinguished from « loss or damage », but might also encourage those who wish to strive for the adoption of a longer period of prescription (extinction) of the action than the one year's period of Article III. The one year's period, however, is one of the elements of the compromise referred to above, which compromise might thus be disturbed with all the serious consequences resulting therefrom.

Apart from the foregoing the Undersigned suggests that at any rate the words « unless suit is brought » be replaced by « unless a writ is served » as it seems that under the law of procedure of certain countries suit is brought by issuing a writ, whilst such writ may be served on the defendant at a later date.

## **4) Gold Clause, Rate of Exchange, Unit Limitation (Art. IV (5) and Art. IX).**

The undersigned agrees in principle to the proposals submitted by the International Subcommittee. The undersigned would, however, prefer that the Convention should determine the date of conversion. As such should be taken the date of payment, as done in Art. VI of the Brussels International Convention on Passengers.

As regards the amount of the limit, the undersigned would prefer to reserve its final opinion until the views of all parties interested, especially those of Underwriters, be known.

#### IV.

#### LIABILITY IN TORT, THE « HIMALAYA »-PROBLEM

The problem raised in connection with this recommendation is one which arises from English law. On the other hand there seems to be no special international need for a provision of this nature.

#### V.

#### NUCLEAR DAMAGE

The undersigned agrees to a provision of this nature, although the wording may be open to improvement. In the opinion of the undersigned it would be better to state that the Convention does not apply to nuclear damage. The expression « nuclear damage » should then be defined in the same way as has been done in the 1962 International Convention on the Liability of Operators of Nuclear Ships, namely as « loss or damage which arises out or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel (i.e. any material which is capable of producing energy by a self-sustaining process of nuclear fission) or of any material, including nuclear fuel, made radioactive by neutron irradiation. »

#### VI.

#### BOTH OF BLAME

The undersigned agrees with the conclusion arrived at by the International Subcommittee.

*Amsterdam, January 1963.*

ITALIAN MARITIME LAW ASSOCIATION

BILL OF LADING CLAUSES  
COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

I. INTRODUCTION

Before submitting our views on the various positive recommendations contained in the report, we wish to express our sincerest congratulations for the valuable work done by the International Subcommittee under the able chairmanship of Mr. Kaj Pineus. The report which has been prepared by the Chairman is crystal clear and has made our work comparatively easy.

We wish to add at this stage that we have considered all the recommendations of amendments to the Convention with a very open mind, since we do not think that the Convention is something which should not be touched in any case. By so thinking, we would misinterpretate the functions of the C.M.I.

Thirty eight years have elapsed since the time of signature of this Convention, many things have changed, the experience has shown that there are many points which are not clear, and particularly, that there are many rules which have received a different interpretation in the various countries, owing to the different legal systems in force, so that sometimes uniformity is only in the words, but not in their interpretation.

It is our feeling that we must take this into account, and try to achieve a substantial uniformity, namely try to use words and phrases such as to assure to the best possible extent a uniform interpretation of the rules agreed upon. None of us should consequently object to a request of amendment or of addition by stating that for him the words are clear : they may be clear to him, they may be clear to the Judges of his nation, but they may not be clear at all to other people, to the Judges of other nations.

We must therefore re-consider the Hague Rules with the experience of these thirty eight years, amend them where necessary for

assuring a uniform interpretation, delete what has appeared superfluous, add what has been left out and it is felt advisable to regulate, without, anyhow, touching upon what has proved satisfactory, only because some improvements of secondary importance can be made.

## II. POSITIVE RECOMMENDATIONS

### 1. Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. 3 (2) ).

Although the question of the liability of the carrier when the goods are loaded and stowed by the shipper, has received during the past years a negative solution by our courts, we thoroughly agree on the advisability of amending this paragraph in order to assure a uniform interpretation of the rule.

We wish anyhow to draw the attention of the other Associations on the possible misleading effect of the wording which has been suggested. In fact, whilst the carrier may be relieved from his responsibility only in so far as the loading, stowing and discharging of the goods are concerned, if the words « in so far as these operations are not performed by the shipper or consignee » are inserted at the beginning of the sentence, it might be implied that the carrier may be relieved from liability also with respect to the carrying, keeping and caring for the goods.

We therefore suggest to amend the phrase as follows ;

« The carrier shall, subject to the provisions of Article IV, properly and carefully carry, keep and care for the goods carried. He shall also in so far as such operations are not performed by the shipper or consignee, properly and carefully load, handle, stow and discharge the goods carried ».

We also suggest that, in order to better coordinate this provision with Article IV, at paragraph 2 (i) reference be expressly made to the consignee.

We believe anyhow that, as regards the bona fide holder of the bill of lading, the carrier is entitled to exclude his liability for the loading, stowing and discharging of the goods, provided that the performance of these operations by the shipper (and consignee) is clearly evidenced in the bill of lading itself. Otherwise the liability of the carrier would be limited by a fact which does not appear in the bill of lading. In order to avoid this consequence, which would diminish the value of the bill of lading as document of title, we suggest to add under paragraph 4 of Article 3 that there shall be a conclusive evidence of the loading and stowing of the goods having been performed by the carrier, unless the contrary is evidenced in the bill of lading.

## **2. Notice of claim (Art. III (6) First paragraph).**

With two exceptions, it has been agreed that, whether notice is given or not, the onus of proving loss or damage always lies upon the claimant. It may therefore be argued why this rule has been incorporated in the convention, and in fact it has sometimes been maintained, at least in Italy, that in order to give it a meaning, this clause should be interpreted in such a way as to shift into the consignee, when notice has not been given within the three days time limit, the burden of proving that the loss or damage has been caused by a negligence of the carrier.

This interpretation, which, we believe, is contrary to the intention of the people who have drafted the convention, has now been rejected by our Courts, but, in order to avoid the danger of it coming up again, we agree that it would be advisable to avoid any doubt as to the meaning of this clause.

We have anyhow some doubts as to whether the words « shall have no other effect on the relations between the parties » are clear enough. To us they look a little bit too vague and we should therefore very much welcome a more clear wording, such as, for instance, the following : « but it (the rule) shall not affect the provisions of Article IV, paragraphs 1 and 2 ».

## **3. Time limit in respect of claims for wrong delivery (Art. III (6) third paragraph).**

We understand that the question whether the expression « loss or damage » in this paragraph covers liability for wrong delivery and thus entitles the carrier to limit liability in time and amount under the Rules has received different solutions in the various Countries. We therefore support in principle the amendment suggested in the Report, with the two following sub-amendments :

a) that the two years time limit run from the date of delivery of the goods or the date when the goods should have been delivered;

b) that the wording be changed, so that to make clear that the two years limit is applicable only in favour of the holder of the bill of lading, and not also in favour of the person who has taken delivery of the goods without being in possession of the bill of lading : in fact the present wording could also be interpreted in such a way as to cover the person not entitled to the goods;

c) that the wording be changed, in such a way as to eliminate the « proviso » and avoid any reference to an « extension », which we believe is not correct and might be misleading.

To such effect we venture to suggest the following text :

« In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within

one year after delivery of the goods or the date when the goods should have been delivered; *provided that in the event of delivery of the goods to a person not entitled to them the carrier and the ship shall be discharged from all liability in respect of loss or damage claimed by the holder of the bill of lading unless suit is brought within two years from the date when the goods should have been delivered.* »

#### 4. Gold Clause, Rate of Exchange, Unit Limitation

##### a) *Gold Clause*

We support the proposal of adopting the Poincaré Franc as the basis for the limitation figure.

##### b) *Rate of exchange*

The system suggested, namely that the date of conversion into national currencies is to be regulated in accordance with the law of the court seized of the case, would undoubtedly create confusion and fail to create uniformity in a field where uniformity should be very much welcome. And this is far from being understandable, when in three recent International Conventions (the Warsaw Protocol of 1956, the Passengers Convention of 1961 and the Nuclear Convention of 1962), the principle of the conversion at the date of payment has been adopted.

##### c) *Package and unit*

The suggestion to retain the status quo overlooks entirely the difficult interpretation problems which have arisen as regards the concepts of « package » and « unit » in many national legislations. It has recently been maintained in Italy that the package limitation cannot apply when a package is of great volume and value, since the intention of the draftsmen of the convention has only been to protect the carrier for damages to small packages of great value, in cases, therefore, in which the value could not be ascertained. We understand that similar problems have arisen in the United States where a partly cased tractor has been held not to be a package and the limitation per unit has applied. In so far as this second system of limitation is concerned, many doubts have arisen as to the proper unit to be taken into account.

We wish therefore to stress the utmost importance of amending the present text and of adopting a rule, whatever it may be, which can assure a uniform interpretation in all the contracting States. A very clear and exhaustive picture of the various possible solutions has been made at page 25 of the Report of the International Subcommittee. We believe that this can be taken as the basis of a discussion and are of the view that the easier and clearer solution might be that of adopting the criterium n° 6, namely a limitation based on a weight/volume unit.

Article IV (5) could therefore read as follows :

« Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of                      francs per ton or per 40 cubic feet at the option of the claimant, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading.

This declaration ..... (no change) ..... on the carrier.  
By agreement ..... (no change) ..... above named.  
Neither the ..... (no change) ..... of lading.

« Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment. »

#### 5. Liability in tort.

Our Association is aware of the problems which have arisen, special in Anglo-Saxon countries, with respect to the liability in tort and therefore fully supports the recommendation made by the Subcommittee. We only wish to point out that the reference in paragraph (2) to the « carriage of goods » raises the problem of the interpretation of Article I (c) on which we shall revert later, under (9).

#### 6. Nuclear damage.

We support this recommendation

#### 7. Both to blame.

We support this recommendation.

### III. OTHER SUBJECTS EXAMINED

#### 8. Unseaworthiness and deck cargo (Article I (c) and Article III (1) ).

Our Association is in favour of retaining the status quo unless it be proved beyond any doubt that an amendment is really necessary or advisable.

#### 9. Liability before loading and after discharge (Article I (e) and Article VII).

The definition given by Article I (e) is not in fact very clear, since it is not known what is exactly meant by « the time when the goods are loaded » and by « the time when they are discharged from the ship ». Is the process of loading and unloading included in such time or not ? The « tackle to tackle » rule could have solved the

problem when the loading and unloading was performed by means of the ship itself, but cannot be of any use when other means are used.

We wonder whether, whilst enabling the carrier to contract out his liability as per Article VII, the rules of the Convention could not apply to the whole period of the carrier's liability, namely from the time of delivery of the goods to him for transportation to the time of their re-delivery to the consignee. At present in fact it may happen that a contract of carriage be governed by three different laws, namely one for the period running from the delivery to the carrier of the loading, one (the International Rules) from the loading to the discharge and one from the discharge to the re-delivery.

The applicability of various national legislations to a single contract of carriage seems to us illogic and contrary to the ordinary rules in the matter of conflict of laws.

We believe that no doubt should arise as to the fact that the contract of carriage covers the period between the delivery of the goods to the carrier and their re-delivery to the consignee, irrespective of the possibility for the carrier to contract out his liability as regards losses and damages suffered by the goods, prior to the loading or after discharge.

**10. Liability when goods are trans-shipped.**

We support this recommendation.

**11. Due Diligence to make the ship seaworthy (Article III (1) and Article IV (1) ).**

We should like, before expressing our views in this matter, to know the result of the investigation referred to in the Report. We believe in fact that it will prove very helpful in reaching a decision on this very important matter.

**12. Received for shipment bills of lading (Article III (3) and (7) ).**

We feel that the view expressed by the Subcommittee is sound and we support it.

**13. Statements in bills of lading as evidence (Article III (4) and (5) ).**

1) First question : what is the meaning of Art. III (4) ?

It is stated in the Report that the majority of the members of the Subcommittee found that there is no need for amending the Convention to meet the points raised. It does not appear from the Report which is the interpretation of this paragraph according to the views of such members.

But we wish to inform the other National Associations that this paragraph has raised a great deal of discussion and of conflicting judg-

ments in Italy, since it has been held sometimes that the bill of lading being a prima facie evidence only, it is open to the carrier to prove that the quantity, weight, measurement, etc. of the goods are different from those indicated in the bill of lading and such view has recently been acquiring strength.

We think that the bill of loading should, as against a bona fide holder, be a conclusive evidence of the receipt by the carrier of goods as described therein and, in order to assure a uniform interpretation of this paragraph, we support the amendment proposed by a minority of the subcommittee, namely :

« Such bill of lading when transferred to a third party who is acting in good faith, shall be conclusive evidence of the receipt of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). »

2) Is there any contradiction between Article III paragraph 4 and article III paragraph 5 ?

If the above amendment be accepted, we believe that no contradiction exists between these two paragraphs.

**14. Time limit for recourse action (Article III (6) ).**

The problem raised by the French Association exists in our Country and is of a certain importance. We therefore support the proposal made by the French Association, namely to have a new article incorporated in the Convention for the purpose of covering this problem.

**15. Time limit in respect of claim for indirect damage through delay (Article III (6) ).**

We share the view expressed by the Subcommittee.

**16. Prescription (Article III (6) ).**

We share the view expressed by the Subcommittee. This is a problem that should receive a uniform solution in all the Maritime Conventions.

**17. Invoice value clause (Article III (8) ).**

We share the view expressed by the Subcommittee.

**18. Pro rate clause (Article II (8) ).**

We share the view expressed by the Subcommittee.

**19. Fire (Article IV (2) b).**

We do not see why the fire should be governed by a rule which is different from those applying with respect to other excepted perils. This might have had some reason many years ago, when fire was a

danger much greater than all other dangers, but not now. We consequently suggest to delete the words « unless caused by the actual fault or privity of the carrier ».

**20. Reservation appearing in the Protocol of Signature**

The reservation appearing under n° 1 of the Protocol of Signature is a problem of considerable importance, and therefore recommend that this provision be incorporated in the text of the Convention.

**21. Limitation as to value for indirect damage by delay (Article IV (5) ).**

We share the view expressed by the Subcommittee.

**22. Exceptional cargo (Article VI).**

**23. Paramount Clause.**

We support the recommendation made by the Subcommittee.

**24. Jurisdiction.**

We share the view expressed by the Subcommittee.

#### IV. FUTURE ACTION

We believe that a higher degree of uniformity would be reached if the amendments proposed by the Subcommittee and perhaps some additional ones could be made at the earliest possible date.

Action should therefore be immediately taken in order to implement such amendments and hope that this will prove possible at the next Conference of the C.M.I. at Stockholm, so that a set of amended rules might be approved by the Stockholm Conference.

We believe that then a Diplomatic Conference should be called for the purpose of having the amendments incorporated in a Protocol to the 1924 Convention, but that such Diplomatic Conference should anyhow be restricted to the countries which have ratified or adhered to the 1924 Convention.

## NORWEGIAN MARITIME LAW ASSOCIATION

## BILL OF LADING CLAUSES

COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

*(Reporters : Mr. Per Gram and Mr. Annar Poulsson)*

The Board of our Association have considered the Report and this is a summary of their views.

## REVISION OF ART. X

The amendment passed at Rijeka (1959) is an improvement, but as suggested previous to that plenary Conference (our comments dated 27th February 1958, marked «Con 6.6 - 58») it does not go far enough. By this amendment the Convention will apply more generally, and the « Geographical holes » may be reduced, but we still think that this Article ought also to solve the problem of choice of applicable HR-enactment instead of leaving this to national conflict rules which are neither uniform nor easy to ascertain. Much space could also be saved in liner bills of lading, where lengthy paramount clauses must now regulate this question, if it could be uniformly solved in the enactments.

If permitted we would therefore like to revive our proposal that the Rijeka amendment be followed by this addition :

« The Rules of this Convention shall take effect as enacted in the country of the agreed port of discharge.

If no such enactment is in force, then the Rules of this Convention shall take effect as enacted in the country of the port of loading.

If no such enactments are in force, then the Rules of this Convention shall take effect as enacted in the country where the carrier has his principal place of business.

It shall not be permissible to contract out of the above provisions. »

**1. Carrier's liability for negligent loading etc. (Art. III (2) ).**

Our Board support the recommended amendments. It is a sound idea that the carrier should not be held liable for faults committed by

the shipper or consignee when they perform the loading, stowing or discharging. The proposed text clearly covers the cases where these operations are performed by shippers' or consignees' own labour. We are uncertain, however, whether the proposed text covers the cases where the shippers or consignee use and pay for independent stevedores. We take it that this point is deliberately left open.

## **2. Notice of claim (Art. III (6) first paragraph).**

We cannot see that the proposed amendment will bring any meaning or real effect into this rule which is devoid of any sense as it stands at present.

If nothing better can be done about it the present rule might preferably stand as it is, or better still, be taken out of the Convention.

The words now proposed added can only have the intention that no real sanction to a late claimant shall be permissible by national legislation. Also the language chosen seems too sweeping when it suggests that the removal of the goods shall have no other effect between the parties than as evidence of their state when delivered. The delivery itself has indeed some other quite distinct effects, such as putting an end to the seller's right to « stoppage in transits ».

We still find that a too late claimant should be estopped from claiming, and are glad that our Swedish colleagues have taken up our proposal to this effect in their comments dated Dec. 14, 1962. We can also agree with them that « undue delay » is a vague term, and that 7 days, to run from the effective placing at consignee's disposal, seems a reasonable time limit.

## **3. Time limit in respect of claims, for wrong delivery (Art. III (6) third paragraph).**

We are glad that a new rule in this matter is proposed by the majority of the International Subcommittee. As we have pointed out before, the object should be to fit the rules to the normal rather than the abnormal cases. The far greater number of deliveries to persons not in the possession of an original B/L are of course deliveries to the right persons — these are now suffering from the burden of the bail expenditure — for too long. Therefore we can still not see the necessity to extend the period to two years. We beg with respect to disagree with our Finnish friends who suggest that it is always easy to bring the missing B/L forward within a short time.

We would also here support the Swedish proposal of one uniform rule covering all claims under a bill of lading. We agree that there is a need for covering also the claims for delay in delivery because in some countries such claims are held not covered by the expression « loss or damage ».

Further, the Swedish proposal would have the much more important advantage of covering also the liability for the correct description

as to amount and quality of the goods in the bill of lading — a liability not covered by the expression « loss or damage », which we assume only refers to liability arising during the actual transport.

#### **4. Gold Clauses etc.**

We support the amendments for the reasons stated by the Pineus Committee.

#### **5. Liability in tort, the « Himalaya » problem.**

We consider such an enactment important and desirable, in order to bring the HR in line with the Liability Convention and the Warsaw Convention.

As to the details, we think (1) of the amendment necessary to establish clearly that any suit in tort is also covered by the conventional limitations.

As to the present n° (4) and new n° (7) of Art. IV we consider it hardly necessary to make any exception for intentional acts — these rare cases can as suggested by our Finnish colleagues be taken care of without express words. We are in doubt as to the proviso for recklessness (*faute lourde*). In the cases where we would want this exception it would probably be covered by the criminal intent rule which needs no expression. As to the rest we are concerned about the dividing line towards ordinary negligence and would fear frequent litigation of cases where the negligence is actually only quite ordinary. If there is a fault, it can always be pleaded that it was reckless. Thus we fear that this exception can do more harm by defeating the object of the main rule than is warranted by the thought that a reckless servant should not be relieved of liability for his recklessness.

However, we would for the sake of unity with the other conventions be prepared to accept the principle of point (4) and the proposed n° 7 of Art. IV, however provided that exception should be made when the fault committed is in the navigation or in the management of the ship (see Reservation n° 1 at page 31 of the Report). We would need this qualification here of the rule in the Warsaw Convention, because that Convention does not know the distinction of nautical faults. Such faults should be absolutely exempt — and in this field it is particularly easy to argue that any fault is recklessly committed.

#### **6. Nuclear damage.**

We agree to the proposal.

#### **7. Both-to-blame.**

The resolution of the Subcommittee was passed because it was felt that this problem only arises because the US is out of step with all other countries.

The Chairman of the Subcommittee has brought our attention to the fact that as a result of a debate in the US Congress it must now be held unlikely that any changes of US law will be made in the field of limitation in the near future. Mr. Pineus then suggests that the question should be reopened whether the Convention should after all be amended for instance by adding the words « *directly or indirectly* » to the beginning of Article IV.

These words may seem helpful, but are of course unnecessary everywhere else in the world. The question remains whether they would be given the desired effect by the US Supreme Court — in a case based on a foreign enactment with this amendment.

As to US law it seems no more likely that the US would accept such an amendment than a revision of their limitation rules.

Reluctantly we therefore consider that this still is a problem which can best be solved nationally in the US.

## OTHER SUBJECTS EXAMINED

The Norwegian Association agree to the Report.

One member of our Board representing the cargo interest (Mr. Arne Bech) feels that the Convention should be amended on two points which have been turned down in the Report (N<sup>os</sup> 9 and 10).

### **Liability before loading and after discharge**

The development particularly in the liner service has made the « tackle to tackle »-principle inadequate as the goods today frequently have to be delivered to the carrier or his agents some time prior to the actual loading. Further the consignee is often not allowed to collect his cargo on unloading but will have it delivered from the carrier or his agents some time afterwards. The convention should in the opinion of the dissenting member cover the whole period in which the goods are in the actual possession of the carrier or his agents.

### **Liability when the goods are transhipped**

In the case of a through bill of lading which presents itself as such an amendment is not called for. If however the bill of lading does not state that the goods are going to be transhipped, the carrier should not be allowed to contract out of liability for oncarriage relying on a general transshipment clause or liberty clause. Such transshipment for the carrier's convenience should in the opinion of the dissenting member not reduce his liability until the goods are properly delivered to the receiver.

The dissenting member accordingly suggests the following amendments to Art. I and Art. VII of the convention :

Article I.

.....

e) « Carriage of goods » covers the period from the time when the goods are *received for shipment by the carrier or his agent until they are delivered at a contractual port of discharge.*

Article VII.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, condition, reservation or exemption as to the responsibility and liability of the carrier of the ship for the loss or damage to, or in connexion with, the custody and care and handling of goods *during a period when the goods are in the custody and care of another carrier provided however that it is expressly stated in the bill of lading or must be implied that the carrier should totally or for a specific part be performed by another carrier. »*

FUTURE ACTION

The Norwegian Association have so far advocated the form of amendments in the Convention.

It seems to us that the choice between an additional protocol and such amendments should better be decided when the final scope of the revision has been agreed.

*Oslo, 26th February 1963.*

*Sjur Brækhus*  
*Chairman*

*Per Gram*  
*Hon. Secretary*

## YUGOSLAV MARINE LAW ASSOCIATION

COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

The Yugoslav Maritime Law Association has received the Report of the International Subcommittee on B/L Clauses. After having discussed it our Association wants to make the following remarks :

We wish, first of all, to pay our tribute to the excellent work performed by the Subcommittee and his able President in dealing with this rather complicated matter. The assembling of facts, the exposition of the problems and the presentation of different points of view have been made in a very efficient way.

Our Association accepts most of the majority proposals, that is those under Part IV, items 2, 6 and 7, and under Part V, items 8, 9, 10, 11, 12, 15, 17, 18, 19, 21, 22, 23 and 24 in the Report. There remain, nevertheless, certain matters where we could not agree with the majority opinion.

## PART IV :

**ad 1. Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2)).**

The wording of the majority decision (p. 13 of the Report) goes too far inasmuch as it mentions also « handle, stow, carry, keep, care for » as being operations which could be performed by the shipper or the consignee. Obviously the operations consisting in « carry, keep, care for » are never performed by the shipper or the consignee, being exclusively operations performed by the carrier. As for the operations of handling of the goods, they can be performed also during the carriage itself. In such case they are always performed by the carrier. Whereas if they are performed during loading or discharging, these operations are already covered by the terms « load » and « discharge ».

As for the stowage, even in cases where operations of stowage are performed by the shipper himself, they are, in our opinion, so closely connected with the duties of the carrier relating to the maritime

security of the vessel that these operations should also remain the responsibility of the master (i.e. the carrier).

On the other hand we quite agree that the modern conditions and facilities (e.g. in cases of loading or discharging of cargo — especially bulk and liquid cargo or heavy lifts — by elevators, conveyers and other technical means) of loading and discharging justify a change in the attitude taken by the 1924 Convention which does not allow in any case to shift the responsibility for loading and discharging from the carrier to the shipper or consignee (art. 3, paras 2 and 8, art. 7). We are therefore of the opinion that *if there exists an agreement* between the shipper or consignee and the carrier that loading or discharging operations of determined goods shall be performed by the shipper or consignee himself and in case they *are actually performed by them*, the carrier should not be held liable for loss or damage to the goods resulting from such operations.

Subject to possible drafting changes we suggest the following :

« Subject to the provisions of Article 4, the carrier, shall properly and carefull load, handle, stow, carry, keep, care for, and discharge the goods carried, *but he will be exempted from the duty to properly and carefully load respectively discharge the goods if these operations under the agreement between the parties have to be and actually are performed by the shipper or consignee.* »

**ad 3. Time limit in respect of claims for wrong delivery (Art. III (6) third para.).**

There should be no changes in the present wording of art. III under which the one year time limit applies also in cases of delivery to a wrong person. The position of the consignee is namely substantially the same whether there is a non-delivery, a cross-delivery or a wrong delivery. In all these cases the carrier did not fullfil his essential obligation to deliver the goods under the B/L. It is understood that, as in all other matters covered by the Convention, in case of *dolus* of the carrier or of his servants and agents acting within the scope of their employment, the carrier is not protected by the said time limit.

**ad 4. Gold Clause, Rate of Exchange, Unit Limitation (Art. IV (5) and IX).**

A. In relation to the decision concerning art. IV, we only dissent with the last para i.e. para 5 (p. 27 of the Report) relating to the *date of conversion*.

The day of payment seems to provide the most suitable solution. This criterion was also accepted by the Passengers Convention (Brussels 1961) and thus ensures uniformity of Maritime Law (the Passengers

Convention is besides a « pendant » to the B/L Convention). It has the advantage that the Poincaré francs representing a mere abstract monetary unit amount will be converted into existing national currency on the day of payment. In this way the risk of the devaluation of the currency will not be borne by the person who suffered damage.

Should the above solution prove unacceptable to the majority of the International Maritime Committee, what we would sincerely regret, the most suitable solution of the problem would be the conversion at the date of the final judgment.

B. As to the question of « *package and unit* », our Association supports the reservation made under point n° 2 on p. 27 of the Report.

The liability of the carrier according to the system of the B/L Convention can be established only by two elements : a) the sum which will as a maximum be applied, and b) the basis (the basic unit) to which this sum will be applied. If we do unify only the first element and leave the second ununified, no unification has been achieved at all, because the final amount up to which the carrier will be liable may vary according to the basis to which the sum (the first element) is applied. From the many cases where the amount to be paid depends of the mere fact whether a cargo item carried was packaged or not, we would refer to the case *Middle East Agency v. The John B. Weterman*, 86 F. Supp. 487, 1949 A.M.C. 1403 (S.D.N.Y. 1949) where a tractor machine, unpackaged was divided — in contemplation of law — into units of 40 cu. ft. valued at \$ 500,— each. If packaged the amount would obviously been merely limited to \$ 500,—. (Cf. *Gilmore Black, Law of Admiralty*, 1957, p. 167). Therefore in order to get unification it is not enough to find a solution or replacement to the ominous obsolete gold clause, but also to the very unhappy formula of « *package or unit* ».

It is obvious that each solution concerning the unification of the second element has its negative sides. But the present state of affairs means complete uncertainty. The carrier cannot know in what country his ship might be arrested and suit brought against him, so he does not know what basis will be applied to the sum representing the first element mentioned above. He might be liable concerning the same goods up to 10.000 Poincaré francs or up to ten times 10.000 Poincaré francs. Even if sued in the USA he can not know it in advance, the result may depend in some cases on the fact how the court will treat the wrapping of the goods, whether it will consider that a package is in question or not.

Any solution whichever may be chosen can be criticized. Therefore we should choose the solution which has the least disadvantages. Of course, also, in that case there shall be anomalies. But the parties to the contract of carriage will be aware of them, and therefore will be able to face them and take the necessary steps in order to avoid them.

As to the question of the concept of « package and unit » it seems that the concept of « package » could be eliminated without harm. This notion is uncertain and vague, it creates difficulties, and therefore the Convention should concentrate on the notion of « unit ».

But, there are various units.

« Commercial (trade) or shipping unit » is not a suitable notion because it is too vague, and there is too great a variety of possibilities which could be subsumed.

« *Freight unit* » seems to be a more suitable notion. Such units are not very numerous, as their basis is : a) weight, b) volume, c) piece (including package), d) standard (for wood).

Taking the freight unit as a starting point, we have to differentiate two possible basis : 1) the customary freight unit and 2) the actual freight unit.

The customary freight unit has the advantage that the judge can establish it irrespective of the fact whether the actual freight is mentioned in the B/L or not. Its disadvantage is that the contracting parties have not the necessary certainty (« customary » in what place ? at the port of shipment, or discharge ?). Practice has shown that where the courts are applying this criterium they also like, whenever it is possible, to take account of the actual freight unit.

*The actual freight unit* presents the great advantage to enable the contracting parties to choose for the basis of the carrier's liability the unit they want : the piece regardless of the fact whether it is wrapped, unwrapped or partly wrapped, or the weight or the volume of the goods, etc. — if the result concerning the carrier's liability could lead to abnormal results (e.g. in the case of carriage of Swiss watches) the shipper, knowing of it in advance, would have the possibility to take the necessary steps in order to avoid the results which would prove unfavourable (he will declare the value). The actual freight unit can be always easily established by the judge (whether mentioned in the B/L or not, by requiring, if necessary, the presentation of the pertaining documents).

For the above mentioned reasons the actual freight unit should be taken as the usual basis for establishing the carrier's liability whenever this should prove possible.

Such possibilities do not exist in cases where the freight is contracted on a lumpsum basis. In such cases the customary freight should be applied.

The last category of cases to be dealt with are the cases of *carriage in containers*. But it seems they do not present any special problem requiring a special treatment, because the above principles can be applied also in these cases without difficulties (of course the case where the carrier himself loads the goods of more shippers into one container is excluded, because this case does not differ from the loading

into a ship's hold, so it is not to be considered as a container carriage) : a) if the freight is calculated per container as a unit (piece weight or volume of the container itself) then the actual freight unit may be applied, b) if the goods in the container (their number, weight, volume, etc) have been taken as the basis for the calculation of the freight — the actual freight unit is also applicable, c) if a lumpsum freight is agreed for the carriage of more containers — the customary freight unit should be applied.

Our Association is aware of the fact that the suggested solution is far from being perfect, but it considers it to be the best among the various imperfect solutions.

**ad 5. Liability in tort, the « Himalaya » problem.**

We fully support the minority opinion under point n° 3 (p. 33 of the Report).

**PART V**

**ad 13. Statements in B/L as evidence (Art. III (4) and (5)).**

Our Association fully supports the reservation of the minority as stated on pp. 47-49 of the Report.

**ad 14. Time limit for recourse action (Art. III (6)).**

We agree that no action should be taken on this particular point, not for the reasons put forward in the decision (p. 51 of the Report), but for the fact that such cases are outside the scope of the B/L Convention.

**ad 20. The reservation appearing in the Protocol of Signature under nr. 1 (Art. IV) 2 (c) to (p).**

*Question 1* : We support the minority reservation (p. 61 of the Report) for the following reasons :

The clause under n° 1 of the Protocol of Signature should be made mandatory. Thus when the carrier has established the causal connection between the excepted case and the loss or damage, the receiver should always be allowed to prove that the loss or damage of the goods were caused by fault of the carrier or his agents or servants in the cases of Art. 4 Para 2, Subparas c)-p) if they are not covered by Subpara a) of the Convention. This burden of proving the fault rests on the receiver (holder of the B/L). It is a very heavy burden, so the carrier is still favoured very much even if such a clause would be made mandatory. It seems only fair that the carrier should be held liable in case such a fault is proved.

*Question 2* : No special rule as to the question of proof to be established by the carrier seems to us to be necessary.

## PART VI

Concerning the future action, the Yugoslav Maritime Law Association maintains its position such as it is reflected in para 2 on p. 71 of the Report, namely, that all the amendments to be agreed upon (new rules and interpretative rules) should be entered in a protocol. Nevertheless a difference should be made between the rules which are considered to be absolutely essential when accepting the protocol and those which are not.

Concerning the essential rules no State should be allowed to make reservations, as for the others such reservations should be rendered possible.

*Rijeka, January 27th, 1963.*

*Vladislav Brajkovic*  
*President of the Yugoslav Maritime*  
*Law Association*

*Anđrija Suc*  
*Rapporteur*

## FRENCH MARITIME LAW ASSOCIATION

COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE  
ON BILL OF LADING CLAUSES (\*)

## PRELIMINARY REMARK

As for procedure about the eventual amendment of the 1924 Convention on Bills of Lading, the French Maritime Law Association (F.M.L.A.) shares the view expressed by the International Subcommittee (Chapter VI of the report, under the heading « *Future action* ») whereby « this question of policy is one for the I.M.C. » and consequently, that it is not advisable, at present, to make any recommendations in this respect.

However, whatever the procedure may be, it is to be expected that the coming into effect of the amendments which might be adopted, will take a rather long time.

Now the F.M.L.A. feels that it is utterly pressing that the text adopted in 1959 at Rijeka to amend Article X of the 1924 Convention (field of application of the Convention) may be put into operation within the earliest possible time.

The F.M.L.A. therefore expresses the wish that a meeting of the Diplomatic Conference be held very soon in order to adopt the Rijeka text, without waiting for the end of the studies relating to the other amendments of the Convention.

Here follow the views of the F.M.L.A. on the 24 questions dealt with in the report of the International Subcommittee :

**I. Question n° 1. - Negligent loading, stowage or discharge of the goods by the shipper or consignee. (Art. III (2)).**

The F.M.L.A. feels that it is not advisable to bring any amendment to Article III (2) to that effect, as it is to be feared that a clause whereby the loading, handling, stowage or discharge be cast upon the shipper or consignee (when these operations normally fall on the carrier), would become a clause of commun form, perhaps even aggra-

(\*) P.S. The original French text has been published in the French Edition under number Conn. C - 8.

vated by a further provision whereby even when these operations are performed by the carrier, the latter would be considered to perform them on behalf and as authorized agent of the shipper or consignee. This might be the source of serious abuse.

However, in the event of the passage of the amendment suggested by the International Subcommittee, the F.M.L.A. which expressed an opposing view, brings forward the two following comments :

1° It does not seem to be advisable to commence Article III (2) with the words : « In so far as these operations are not performed by the shipper or consignee », as this second paragraph not only aims at the hereabove enumerated operations, but also at those referring to the carrying, keeping and care of the goods.

2° A new paragraph (para 2<sup>bis</sup>) should be inserted in Art. III whereby good care would be taken to lay down that, in the contemplated assumption, the carrier would only be exempted from his normal liability on the double condition :

a) that the loading, discharge, etc... have actually been performed by the shipper or consignee, without the carrier, if he has performed these operations himself, being possibly considered as their authorized agent for the above operations;

b) that the Bill of Lading specifically provides and in a very obvious way that the loading, stowage etc. have actually been performed by the shipper and that the consignee is the one who must discharge the goods, this in order to avoid unpleasant surprises to a third party holder of the Bill of Lading, which document is essentially circulatory.

## II. Question n° 2. - Notice of claim. (Art. III (6)).

Article III (6) provides unambiguously that the lack of notice given at destination within the required time (at the time of delivery for apparent damage; within three days of the delivery if the damage is not apparent) has merely the object of being prima facie evidence of the delivery of the goods as described in the Bill of Lading and thus, could not have any other effect.

The F.M.L.A. feels therefore that no amendment should be brought to that text.

The recommendation to add the words : « but shall have no other effect on the relations between the parties » does not seem to bring any clarification or any additional precision to the text and the F.M.L.A. feels that the above words would even render the text difficult to understand.

At the utmost, the following remark could be passed :

The first line of para (6) (in case of immediate notice) refers to the delivery of the goods « into the custody of the person entitled to delivery thereof under the contract of carriage ».

The second line of said para (6) (in case of notice given within three days) refers to « the delivery », nothing more. It would perhaps be advisable to define more accurately that, there again, it is a matter of delivery to the rightful claimant. It would then be possible to insert in the second line :

« ...within three days of the delivery to the person mentioned in the preceding line ».

### III. Question n° 3. - Time limit in respect of claims for wrong delivery. (Art. III (6) third para.)

It is put forward to lay down a two years time limit from the date of the Bill of Lading in case of wrong delivery, but the report of the International Subcommittee abstains from considering the question of the extent of the carrier's liability in this respect : is this liability complete or is it subject to the legal limitation ? In other words, does the Convention apply or not to the case of wrong delivery ?

The F.M.L.A. feels that it would not be logical to deal in this Convention with the term of limitation in this respect without dealing at the same time with the question of the extent of the carrier's liability.

The F.M.L.A. is of opinion that no amendment should be brought to Art. III (6) in this respect.

### IV. Question n° 4. - Rate of exchange, Unit Limitation. (Art. IV (5) and IX).

The F.M.L.A. agrees with the International Subcommittee :

- a) to maintain the expression « package or unit »;
- b) to replace the existing £ 100,-,- in gold by 10.000 Poincaré francs;
- c) to strike out Article IX.

However, in the new text of Art. IV (5), we must avoid to use the term « Poincaré franc » which is only a current appellation without any official capacity.

It will be enough to refer in the first line of para 5 to 10.000 francs and add to this paragraph a second line worded as follows :

« The franc mentioned in this paragraph is understood to be referring to a unit consisting of 65.5 milligrams of gold of millesimal fineness 900. The conversion into national currencies shall be regulated in accordance with the law of the court seised of the case ».

## V. Question n° 5. - Liability in tort, the « Himalaya » problem.

The F.M.L.A. agrees with the motions of the International Subcommittee on the following points :

1° Whatever the nature of the suit brought against the carrier may be (in contract or in tort), the latter shall be entitled to the benefits of the provisions of the Convention.

2° The carrier's servants sued personally, shall also be entitled to the benefits of the above provisions.

3° The aggregate of the amounts recoverable from the carrier and his servants shall not exceed the limitation sum provided for in this Convention.

4° Neither the carrier nor his servants shall personally be entitled to the benefits of the provisions of the Convention in respect of acts or omissions of such carrier or servants done personally with intent to cause damage or with knowledge that damage would probably result. In this respect, it would be more advisable to take pattern by the formula of the Hague Protocol to the Warsaw Convention : « act or omission done, whether with intent to cause damage, or recklessly and with knowledge that damage would probably result ».

5° There is no need to deal specifically with those acts or omissions of serious offence in respect of nautical faults.

But on the other hand, the F.M.L.A. feels :

a) That when these acts or omissions of a particular character have been done by the carrier's servants, it is recommended, as far as these acts or omissions have repercussions on the liability of the carrier himself, to make a distinction : the carrier would still be personally entitled to the benefit of the limits of liability in respect of acts or omissions of his servants done recklessly and with knowledge that damage would probably result; he would lose the benefit of limitation in respect of acts or omissions of his servants done with intent to cause damage.

b) That there is no need to refer to the carrier's « independent contractors » (sous-traitants indépendants) and servants at the same time. These independent contractors are governed either by common law or by a bye-law of their own, and the Convention does not have to deal with them.

The above views as a whole could be put in concrete form by adding the succeeding new paragraphs to Article IV :

Para 7. — « The carrier is entitled to avail himself of the defences and limits of liability provided for in this Convention, whether the action for loss or damage be brought against him in contract or in tort ».

Para 8. — « When the liability of a servant or agent of the carrier, who has acted in the discharge of his duties, is implicated otherwise than by contract, this person is also entitled to avail himself of the defences and limits of liability of the carrier provided for in this Convention, the aggregate of the amounts recoverable from the carrier and from this person not exceeding the limits provided for in this Convention. However, this person will not be entitled to avail himself of the above provisions if the loss or damage result from an act or omission of such person, either done with intent to cause loss or damage, or recklessly and with knowledge that loss or damage would probably result ».

Para 9. — « Neither the carrier nor the ship shall be entitled to avail themselves of the defences and limits of liability provided for in this Convention when the loss or damage results from an act or omission of the carrier himself, whether done with intent to cause loss or damage, or recklessly and with knowledge that loss or damage would probably result. Neither will they be entitled to avail themselves of the above provisions when the loss or damage results from an act or omission of their servants or agents, done by them, or by one of them, with intent to cause loss or damage ».

#### VI. Question n° 6. - Nuclear damage.

The F.M.L.A. agrees with the text moved by the International Subcommittee.

#### VII. Question n° 7. - « Both to Blame clause ».

The F.M.L.A. feels that this clause should not be dealt with in the Convention, merely justifiable by a peculiarity of the Law of the U.S.A.

#### VIII. Question n° 8. - Live animals, cargo carried on deck and making the ship seaworthy. (Art. I (c) and Art. III (1)).

The F.M.L.A. approves of the decision moved by the International Subcommittee to make no recommendation on this particular point.

#### IX. Question n° 9. - Liability before loading and after discharge. (Art. I (e) and Art. VII).

The dividing up of the contract of carriage by sea into three parts (before loading, during the carriage by sea properly so called and after discharge) with application of a different law to each part, creates difficulties sometimes inextricable, — specially when one is unaware of the accurate spot where the damage occurred, — and this,

as much in respect of the extent of the carrier's liability as in respect of pleas in bar and of the prescription to be applied.

The F.M.L.A. feels that it would be of great assistance to the users, as to the carriers, if the Convention was applicable to the contract of carriage as a whole, i.e. from the time the goods have been received into the carrier's charge on to the time they are delivered to the consignee.

The F.M.L.A. expresses the wish that a decision be reached to this effect.

X. The F.M.L.A. agrees with the International Subcommittee that no recommendation whatsoever should be made in respect of the following questions :

- 1°. Question n° 10. - **Transhipment.**
- 2°. Question n° 11. - **Due diligence.**
- 3°. Question n° 12. - **Received for shipment bills of lading.**

XI. **Question n° 13. - Statements in Bills of Lading as evidence.**  
(Art. III (4) and (5)).

The F.M.L.A. feels that the grouping of para 4 and 5 of Article III implies that the contrary proof referred to in para 4, can only be applied to the shipper and not to a third party holder of the Bill of Lading. The French jurisprudence entertains no further doubt about the above.

However, in order to avoid any ambiguity, it would be useful to add to para 4 in fine the following sentence (patterned by the formula or para 5) :

« However, the contrary proof cannot be applied to any person other than the shipper ».

It would also be possible to express the same idea in para 4 by adding the following sentence :

« Such a Bill of Lading shall be prima facie evidence to the sole shipper, of the receipt... etc. ».

XII. **Question n° 14. - Time limit for recourse action.** (Art. III (6)).

Contrary to the view of the International Subcommittee, the F.M.L.A. feels that this question is an important one. The carrier who might be sued the day before the one year period comes to an end, should have the time to sue in his turn his guarantor, the latter not being allowed to put forward the one year prescription, to the benefit of which the carrier himself shall be entitled.

The carrier's action in guarantee against his guarantor must therefore be declared admissible, even if it has been brought after the one

year period has come to an end, provided it has been brought (let's say) within one month from the date the carrier was himself sued.

The above idea could be expressed by the following formula :

« The recourse actions may be exercised even after the expiry of the periods provided for by the rules which govern the aforesaid actions, if they are presented within one month from the date the persons who exercise actions have themselves been sued ».

XII. The F.M.L.A. agrees with the International Subcommittee that no amendments should be recommended on the following questions :

- 1°. Question n° 15. - Time limit in respect of delay (Art. III (6)).
- 2°. Question n° 16. - Legal character of the one year prescription. (Art. III (8)).
- 3°. Question n° 17. - Invoice value clause. (Art. III (8)).
- 4°. Question n° 18. - The pro rata clause. (Art. III (8) & Art. IV (5)).
- 5°. Question n° 19. - Fire. (Art. IV (2) b).

XIV. Question n° 20. - The reservation appearing in Protocol of Signature under nr. 1. (Art. IV (2) c) to p).

In most countries, the claimant is entitled to establish the proof of the fault of the carrier or of his servants, other than a nautical fault, in the exceptions enumerated in Article IV (2) c) to p), either because it is specifically stipulated under their law (as in Article IV « in fine » of the French Law of the 2nd April, 1936), or because this solution has been accepted by their jurisprudence.

It being a normal and equitable solution, the F.M.L.A. feels that it would be advisable that the rule stipulated in the Protocol of Signature under nr. 1 should figure in the text of the Convention.

A new para 2 (bis) drafted as follows, could be inserted in Article IV :

« The proof by the carrier that the loss or damage results from one of the exceptions enumerated in para 2 c) to p), does not prevent the claimant to prove the fault of the carrier or of his servants or agents, other than a fault covered by line a) of para 2 ».

XV. The F.M.L.A. agrees with the International Subcommittee that it is advisable to retain the status quo in respect of the following questions :

- 1°. Question n° 21. - Limitation of responsibility in respect of delay. (Art. IV (5)).

2°. Question n° 22. - Exceptional cargo. (Art. VI).

However, in the last line, the English text (« ...*or* condition... *or* the circumstances ») should be put in concordance with the French text (« ...*et* la condition... *et* les circonstances »).

3°. Question n° 23. - Paramount clause.

XVI. Question n° 24. - Jurisdiction.

The F.M.L.A. feels that it would be useful to insert in the Convention a provision prohibiting any jurisdiction clause to the Courts of a non-contracting State.

It might also be advisable to consider whether it would not be advisable to put in force in every contracting State, without new consideration of the bottom of the case, any award made in the last resort in another contracting State.

*Paris, 17 th December, 1962.*

*The President,*  
*M. Pitois*

*The Rapporteur,*  
*M. Prodromidés*

## ARGENTINE MARITIME LAW ASSOCIATION

AMENDMENTS TO THE BRUSSELS CONVENTION  
RELATING TO CERTAIN CLAUSES IN THE  
BILLS OF LADING OF 1924 (\*)

The Argentine Association of Maritime Law, after considering the report of the International Subcommittee on Bill of Lading Clauses presided by Mr. Kaj Pineus, comments thereupon as follows.

## I. POSITIVE RECOMMENDATIONS.

## 1. Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2) ).

The Argentine Association considers that the amendment put forward by the majority of the Subcommittee is not admissible, as this amendment may be inconsistent with the master's obligation whereby he is responsible for the proper stowage of the goods with regard to the vessel's safety. This obligation of public policy cannot be abrogated by the will of the parties. It must also be observed that even if the loading and discharging operations are performed by the shipper or consignee, it is not admissible that the carrier be released from his liability to keep, carry and care for the goods. Moreover, we should maintain the principle of the carrier's liability in order to avoid difficulties which could arise when actions are entered, in case several persons would be held responsible.

The Argentine Association considers that it would be advisable to remove the broad complexion of the proposed amendment and to add a new paragraph drafted, more or less, in the following form :

*« Where the loading or discharging operations are performed by the shipper or consignee, respectively, this person will suffer the damage or loss of goods which result from the aforesaid operations ».*

(\*) P.S. The original French text has been published in the French Edition under number Conn. C - 10.

## **2. Notice of claim (Art. III (6) first para).**

The Association considers that the amendment proposed by the majority of the Subcommittee relating to the consequences of the lack of notice of loss or damage is obscure as this amendment can give rise to various conflicting constructions. Neither is this amendment appropriate considering the Subcommittee's purpose and we venture to conclude that it does not add anything to the meaning of the provision.

The Argentine Association suggests that we should rather insert a provision which intends to comply with the methods of loading and discharging operations existing in the various ports of the world. In our country, the goods unloaded from the vessel are stored in the Custom's warehouses, from which they are taken out of bond by the consignees. This means that there is no direct delivery from the carrier or his agent to the consignees, like in Europe.

We suggest to add to the second paragraph of Art. III (6) the following sentence :

*« The above notice, as the one mentioned in the preceding paragraph, shall be given according to the methods of the port of discharge ».*

## **3. Time limit in respect of claims for wrong delivery (Art. III (6) third para).**

Our Association thinks that the amendment proposed by the majority is not acceptable, as we consider that the delivery of the goods to a person not entitled to them must be similar to the cases of damage or loss which are covered by the one year time limit. The third paragraph should rather be amended by the insertion of the precise matter at issue, as follows :

*« In any event the carrier and the ship shall be discharged from all liability in respect of loss, damage or non delivery... ».*

## **4. Gold Clause, Rate of Exchange, Unit Limitation (Art. IV (5) and IX).**

The Association completely agrees with the amendment put forward by the Subcommittee.

## **5. Liability in tort, the « Himalaya » problem.**

As regards this liability in tort, our Association is of opinion that it is suitable that the carrier may protect himself against such actions within the meaning of the Convention. But our Association entertains doubts regarding the exemptions and limitations of liability, as certain Courts might consider them as not applicable to this type of responsibility. However, the cases of exemption should not be applicable to the master and other servants of the Shipowners in respect of personal faults they are liable to make.

6. Nuclear damage.

7. Both to Blame clause.

The Association agrees with the conclusions of the Subcommittee.

*5th March, 1963.*

*Atilio Malvagni, President*

*José D. Ray, Secretary*

## DANISH MARITIME LAW ASSOCIATION

COMMENTS ON REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

*Prepared by Mr. André SØRENSEN*

The Danish branch of Comité Maritime International is strongly of opinion that C.M.I. should *not* take any action to amend the Bill of Lading Convention of 1924 in any respect.

On page 69 of the report a number of members of the Subcommittee have stated what we think is a very important and heavy argument against taking any action to alter the Convention, namely the following :

« The Convention is widely accepted to-day and on the whole it works well. The Convention represents a compromise between carriers and cargo interests and the parties know the position. Would not an amendment have the effect of upsetting this balance ? »

Even if C.M.I. would only try to carry through some amendments, it is most likely that further suggestions would be advanced for discussion and, successively during the negotiations so many alterations would be adopted that you would get quite a new convention which might not work as well in practice as the present one.

However, with a view to a possible action for alteration of some of the provisions of the 1924 Convention — or perhaps a greater part of the Convention — we would make our comments on the positive recommendations and further examinations made by the Subcommittee as follows :

**1. Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2) ).**

We agree to the proposal of adding the words :

« In so far as these operations are not performed by the shipper or consignee ».

This addition is not unreasonable towards the consignee who ought to know the Rules and who should, therefore, also know that the shipper has possibly performed the loading so that the carrier is not responsible

for loss or damage occasioned by negligence of the shipper (or his stevedore).— In our opinion it is not necessary to state in the bill of lading that the loading has been performed by the shipper.

**2. Notice of Claim (Art. III (6) first para).**

We do not agree the proposed addition and are of opinion that Art. III (6), first paragraph, should be left as it is.

**3. Time limit in respect of claims for wrong delivery (Art. III (6) third para).**

Also with respect to this paragraph we feel that the wording of the 1924 Convention ought to be maintained.

**4. Gold Clause, Rate of Exchange, Unit Limitation (Art. IV (5) and IX).**

Having regard to the fact that prices of goods, insurance premiums, freight, loading and discharging costs as well as compensation for loss of or damage to cargo are most often — not to say nearly always — fixed in pounds sterling or dollars we are of opinion that the amount of limitation should not be abstract Poincaré francs but sterling or dollars and we suggest that the amount of limitation be fixed at £ 200.- per unit in accordance with the British gentleman's agreement which is now being used in practice.

**5. Liability in tort, the « Himalaya » problem.**

We can agree to a new article providing as suggested on page 29 of the report, (Nos. 1), 2), 3) but not to No. 4). The contents of No. 4) might be used as a remedy to create a new « Himalaya » decision and thereby make null and void the good ideas laid down in Nos. 1), 2) and 3).

We do not agree to the Subcommittee's new provision proposed to be added to Article IV, No. 7.

**6. Nuclear damage.**

The Subcommittee's recommendation is acceptable.

**7. Both to Blame.**

We quite agree that the U.S.A. should adopt the same rules about collisions as the rest of the maritime world and we, therefore, also agree to the Subcommittee's decision on this subject.

**8. Unseaworthiness and deck cargo (Art. 1 (c) and Art. III (1) ).**

The Subcommittee's decision is in our opinion absolutely justified. The Convention should not be altered with respect to live animals or deck cargo.

**9. Liability before loading and after discharge (Art. 1 (e) and Art. VII).**

we agree that status quo should be maintained.

**10. Liability when goods are transhipped.**

The Subcommittee's decision should be adopted.

**11. Due diligence to make ship seaworthy (Art. III (1) and IV (1) ).**

The question as to whether a shipowner has « exercised due diligence » by putting his ship in the hands of competent repairers is of great importance and, if C.M.I. really intends to alter the Convention, C.M.I. should adopt an article which establishes a clear protection for the shipowner who has employed competent repairers.

**12. Received for shipment bills of lading (Art. III (3) and (7) ).**

We agree with the decision of the Subcommittee.

**13. Statements in B/L as evidence (Art. III (4) and (5) ).**

The decision of the Subcommittee that there is no need for amending the Convention to meet the point raised is right.

The suggestion made by the minority is in our view not acceptable.

**14. Time limit for recourse action (Art. III (6) ).**

If the 1924 Convention be altered, it would be appropriate to add an article regarding time limit for recourse action to avoid that a recourse be lost solely on account of time bar, just because the receiver institutes a lawsuit at the last moment to avoid the one year prescription.

**15. Time limit in respect of claim for indirect damage through delay Art. III (6).**

Should it be decided to alter the present Bill of Lading Convention, it might be recommendable to enlarge the stipulation of time limit in article III (6) to cover also indirect damage, for instance damage caused by delay.

**16. Prescription (Art. III (6) ).**

The question as to whether the time limit in article III (6) constitutes a « prescription » or a « délai de déchéance » is very interesting and important. It ought to be discussed and clearly decided if the 1924 Convention be altered.

**17. Invoice value clause (Art. III (8) ).**

We are of opinion that in case the present convention should be altered, it should be discussed whether the new convention should contain a provision to the effect that both types of invoice clauses (the « strict » one and the « alternative » one) are valid in a bill of lading.

**18. The pro rata clause (Art. III (8) ).**

No action should be taken as to the question of pro rata clauses.

**19. Fire (Art. IV (2) b).**

In a possible new convention there should be a provision to the effect that the burden of proof as to actual fault or privity of the carrier rests on the claimant.

The present article IV (2) b should absolutely not be altered to the effect that the carrier should be responsible for fire caused by default of his servants — whether in the navigation or management of the ship or howsoever else.

**20. The reservation appearing in Protocol of Signature under nr. 1 (Art. IV (2) c) to p) ).**

It is our view that the decisions of the Subcommittee are right.

**21. Limitation as to value for indirect damage by delay (Art. IV (5) ).**

In case the 1924 Convention be altered, it should be provided that the limitation as to value shall also apply with respect to indirect damage by delay.

**22. Exceptional cargo (Art. VI).**

If the Convention be altered on several points, the last paragraph of the English version with respect to exceptional cargo ought to be maintained. That means that the word « or » should be used instead of the French « et ».

**23. Paramount Clause.**

In our opinion the Paramount Clause should not be made compulsory.

**24. Jurisdiction.**

A possible new convention should not embody any provision as to jurisdiction clauses.

We wish to express our appreciation of the excellent and great work done by the Subcommittee — and our thanks for the clear and concentrated report which contains also a good deal of extraordinarily valuable and useful information.

Copenhagen, March 25th, 1963

*N.V. Boeg, President*

JAPANESE MARITIME LAW ASSOCIATION

MEMORANDUM

Our opinion on said problems is only next one concerning your positive recommendation 1.

Art. III (2) should be amended alternatively as follows :  
Alternative A :

« The carrier shall, subject to the provisions of Article IV, properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried, provided that the loading, stowage and discharge are prescribed to be performed by the shipper or consignee in a bill of lading and are so performed. »

Alternative B. :

« The carrier shall, subject to the provisions of Article IV, properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried, provided that the loading, stowage and discharge are performed by the shipper or consignee. »

*Teruhisa Ishii, President*

*Tsuneo Ohtori, Secretary*

GERMAN MARITIME LAW ASSOCIATION

COMMENTS ON THE REPORT  
OF THE INTERNATIONAL SUBCOMMITTEE

The German Maritime Law Association after having carefully studied the report of the International Subcommittee on Bill of Lading Clauses should like to submit the following remarks (the numbers and paragraphs refer to those used in the report of the Subcommittee) :

POSITIVE RECOMMENDATIONS

**1. Carrier's liability for negligent loading, stowage, or discharge of the goods by shipper or consignee.**

In our opinion the problem discussed here has not enough practical importance to give sufficient reason for altering the Hague Rules. Therefore, the status quo should be retained.

**2. Notice of claim.**

There exists, besides the supposition of the Hague Rules that the goods are delivered as described in the bill of lading, a second supposition in some national laws. According to this supposition it is deemed that, if a damage is proved, yet there is no fault on the part of the carrier. This second supposition is a special rule of the national laws mentioned and not of the Hague Rules. Therefore, any alteration in this field should be left to national law.

**3. Time limit in respect of claim for wrong delivery.**

This problem has, in our opinion, no serious practical importance. If an alteration of article III (6) third paragraph is desired one should clarify that the expression « loss or damage » covers the case of wrong delivery, too. If such a clarification is inserted the period of one year seems to be sufficient.

**4. Gold clause, rate of exchange, unit limitation.**

We share the Subcommittee's view that article IX is to be deleted. Furthermore, we agree to the opinion that the monetary unit used in

the Hague Rules should be the Poincaré Franc and that the conversion into national currency should be undertaken in each single case. The date of conversion should be laid down in the Convention and one should try to find a date of conversion which cannot be influenced by the parties concerned (for example the date of discharge).

The limit of liability is in our opinion not a problem of law but a question of compromise between all interested parties. Therefore, the limit of liability should be discussed between shippers, shipowners, insurance companies etc. In this respect, we are of the opinion that the limit of 10.000 Poincaré Francs as proposed by the Subcommittee should be the utmost which could reasonably be agreed upon.

As far as the definition of « package and unit » is concerned we share the view that the status quo should be retained. A satisfying definition will hardly be found.

#### **5. Liability in tort, « Himalaya »-problem.**

The Hague Rules are a Convention dealing with contractual liability. Therefore, the problem of liability in tort is in our opinion outside the scope of this Convention. It is rather a general problem of civil law. The danger that a plaintiff bases his claim on a tort alleged to be committed by the defendant can arise in each contractual relation. Therefore, a Convention dealing with one special kind of contract should not give rules on liability in tort.

Furthermore, there is in our opinion no practical need for having special rules on liability in tort in the Hague Rules. It is possible to restrict this liability by suitable bill of lading clauses, both for the carrier and for his servants and agents. The majority of all liner bills of lading already contains such clauses.

#### **6. Nuclear damage.**

We agree with the Subcommittee that the Hague Rules should not interfere with any national or international regulation concerning liability for nuclear damage.

#### **7. Both to blame.**

We share the view of the Subcommittee.

### **OTHER SUBJECTS EXAMINED**

#### **Nos. 8 - 15, 17 - 21, 23, 24**

As far as these numbers of the report are concerned we agree with the Subcommittee that no alteration of the Hague Rules should be proposed.

## **16. Prescription.**

We agree that this problem should be studied. We recommend a clarification that the period mentioned in article III (6) can be prolonged after mutual agreement to this effect between the parties concerned.

## **22. Exceptional cargo.**

In our opinion the French text is the only official one. Therefore, there exists no difference between two official texts but a wrong translation from the official text into the English language. Having this in mind the problem seems to be settled.

## **23. Future Action.**

We are of the opinion that a revision of the Hague Rules brings about the danger that the complete system which, on the whole, works satisfactorily would be set up. In so far we share the view of the Dutch association (Conn. C 4) and of the members of the Subcommittee, who expressed their view in that way (p. 68/69). Even if only an additional protocol would be agreed upon in order to prevent an upset of the whole Convention this would lead to a dissipation of law as it can already be observed in connection with the Warsaw Convention. If the plenary meeting — contrary to our opinion — should decide upon a revision of the Hague Rules by a Diplomatic Conference we suggest that only those states should be invited which have already ratified the Hague Rules (article XVI Hague Rules).

*Hamburg, 10th April 1963.*

## THE CANADIAN MARITIME LAW ASSOCIATION

### REPORT ON PROPOSED AMENDMENTS TO THE HAGUE RULES

The Canadian Maritime Law Association takes the general view that the Hague Rules have been a successful example of private international law and as such should only be amended if the amendment clarifies or alters some important matter. Even then the amendment should only be supported if it is likely to be adopted as law by the vast majority of the Hague Rules nations of the world.

Our report is the result of many meetings of our committee, and opinions by a number of groups and individuals. For brevity we provide only our conclusions with the barest argumentation.

#### **Revision of Article X**

We agree with the amendment to Article X (see page 5 of the Report of the International Subcommittee on Bill of Lading Clauses), and for our own purposes will recommend that the Canadian Water Carriage of Goods Act 1936 be amended by adding to Section 2 the words « and notwithstanding any stipulation, agreement or undertaking to the contrary » after the words « Subject to the provisions of this Act ».

#### **1. First Positive Recommendation**

The first positive recommendation is to be found on page 11 of the Report and is a proposed amendment to Article III (2). We believe that the addition of the words « in so far as these operations are not performed by the shipper or consignee » is unnecessary, in the light of the present jurisprudence, and in the light of Article IV (2) (i). The amendment would also cause difficulties for the following reasons :

a) A holder in due course of the bill of lading would never know who had loaded and who was responsible, and a clean bill of lading would lose its value as a document of commerce.

b) The occasion rarely arises when shippers load or discharge, and when they do a charter-party is almost always the form of contract. A notated bill of lading can be issued by the carrier, in any event.

c) Under the change it would be extremely difficult to know who had the burden of proving that the damage was done during the loading or during the voyage. As the Rule now stands the Master's responsibility is clear.

## **2 Second Positive Recommendation**

The second new recommendation is to be found on page 15. We do not support this recommendation as it adds, as we see it, nothing to the Act.

## **3. Third Positive Recommendation**

The third new recommendation is to be found on page 17 of the Report. Here again we do not recommend this change because we believe the Act is clear.

## **4. Fourth Positive Recommendation**

The fourth new recommendation is to be found on page 21 of the Report.

a) We support the change to the Poincaré Franc and the limitation at 12,421.35 Poincaré Francs. (see page 21)

b) The date of conversion should be left to the national law.

c) We do not believe that the Act should be modified in this respect, and believe that « per package or unit » is now clear. (see page 25)

## **5. Fifth Positive Recommendation**

The fifth new recommendation is to be found on page 5 of the Report. We believe that the intention of the proposed amendment arising from the Himalaya decision is good in so far as the Master, the crew, and the stevedores are concerned, and that the Master, the crew, and the stevedores should be protected under the Act. We do not believe other independent contractors should be protected. We question the suggested Article IV on page 31, and believe it would cause more confusion than clarity.

## **6. Sixth Positive Recommendation**

We support the Subcommittee's recommendation re nuclear damage to be found on page 35 of the Report.

## **7. Seventh Positive Recommendation**

We support the Subcommittee's recommendation as found on pages 35 & 36 of the Report.

## 8. Seventeenth Subject Examined

As to the recommendation to be found on page 55 concerning invoice value clauses, we are of the opinion that it is important to have a fixed and easily determinable figure for each claim. In this regard we believe bill of lading clauses should be permitted if they were to fix damages at some such sum as invoice value plus 10 %.

Submitted by the Bills of Lading Committee of the Canadian Maritime Law Association :

*William Tetley (Chairman)*

*Roland Chauvin*

*A. Stuart Hyndman*

*Léon Lalande, Q.C.*

*L. S. Reycraft, Q.C.*

*John F. Stairs, Q.C.*

*14 March, 1963*

## BILL OF LADING CLAUSES

### SUMMARY OF REPLIES

RECEIVED UP TO APRIL 17th 1963 FROM NATIONAL ASSOCIATIONS  
TO THE REPORT OF THE INTERNATIONAL SUBCOMMITTEE

#### Revision of Article X

The text accepted by the Plenary Conference at Rijeka 1959 reads as follows :

« 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, of discharge or one of the optional ports of discharge, is situated 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.»

#### *Comments :*

*British Maritime Law Association (Britain) :* The Association confirms that, in its view, the Article should be amended as proposed.

*Canadian Maritime Law Association (Canada) :* We agree with the amendment to Article X.

*Finnish Maritime Law Association (Finland) :* In our opinion there should be no reference to an optional port. The reference to the nationality of the ship is only confusing. The words « whatever may be the law governing such bill of lading » seem to be superfluous.

*L'Association Française du Droit Maritime (France) :* Emet le vœu que la Conférence Diplomatique se réunisse très prochainement pour adopter le texte de Rijeka, sans attendre l'issue des travaux relatifs aux autres modifications de la Convention.

*Deutscher Verein für Internationales Seerecht (Germany)* : No comments.

*Associazione Italiana Di Diritto Marittimo (Italy)* : No comments.

*The Netherlands Maritime Law Association (Netherlands)* : No comments.

*Norwegian Maritime Law Association (Norway)* : We propose that the Rijeka amendment be followed by this addition :

« The Rules of this Convention shall take effect as enacted in the country of the agreed port of discharge.

If no such enactment is in force, then the Rules of this Convention shall take effect as enacted in the country of the port of loading.

If no such enactments are in force, then the Rules of this Convention shall take effect as enacted in the country where the carrier has his principal place of business.

It shall not be permissible to contract out of the above provisions. »

*Swedish Association of International Maritime Law (Sweden)* : Supports the proposed amendment.

*The Maritime Law Association of the United States (U.S.A.)* opposes a conflict of law rule.

## Positive recommendations

1. **Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2) ).**

*The Subcommittee's recommendation :*

« (2) *In so far as these operations are not performed by the shipper or consignee* the carrier shall, subject to the provisions of Article IV properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried. »

*Comments :*

*Asociacion Argentina de Derecho Maritimo (Argentina)* proposes the following text :

« Dans le cas où le chargeur ou le destinataire prend à sa charge certaines opérations de chargement ou de déchargement, respectivement, il subira les dommages ou pertes des marchandises résultant ou provenant des susdites opérations. »

*L'Association Belge de Droit Maritime (Belgium)* : Est hostile à toute modification de l'Article III (2).

*Britain* : Subject drafting the following wording illustrates what we have in mind :

« *Insofar as these operations are undertaken by the carrier, the carrier shall properly and carefully load, handle, stow ...* »

*Canada* : Believes the proposed addition is unnecessary and would also cause difficulties.

*Danish Branch of Comité Maritime International and International Law Association (Denmark)* : Subject to general reserve expressed under « Future action » we agree to the proposal.

*Finland* : We would prefer to retain the status quo on this point.

*France* : Estime qu'il n'y a pas lieu d'apporter sur ce point une modification à l'art. 3 § 2.

*Germany* : The problem has not enough practical importance to give sufficient reason for altering the Hague Rules. The status quo should be retained.

*Italy* : Suggests to amend the phrase as follows :

« The carrier shall, subject to the provisions of Article IV, properly and carefully carry, keep and care for the goods carried. He shall also in so far as such operations are not performed by the shipper or consignee, properly and carefully load, handle, stow and discharge the goods carried. »

« We also suggest that, in order to better coordinate this provision with Article IV, at paragraph 2 (i) reference be expressly made to the consignee.

We suggest to add under paragraph 4 of Article 3 that there shall be a conclusive evidence of the loading and stowing of the goods having been performed by the carrier, unless the contrary is evidenced in the bill of lading. »

*The Japanese Maritime Law Association (Japan)* submits that Art. III (2) should be amended alternatively as follows :

Alternative A :

« The carrier shall, subject to the provisions of Article IV, properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried, provided that the loading, stowage and discharge are prescribed to be performed by the shipper or consignee in a bill of lading and are so performed. »

Alternative B :

« The carrier shall, subject to the provisions of Article IV, properly and carefully load, handle, stow, carry, keep care for and dis-

charge the goods carried, provided that the loading, stowage and discharge are performed by the shipper or consignee. »

*The Netherlands* : We do not think the amendment proposed desirable.

*Norway* : Our board supports the recommended amendments.

*Sweden* : Our Association prefers the status quo on this point.

*U.S.A.* : disapproves this amendment but that the Association's delegation to the Stockholm Conference is instructed to support an amendment to Art. III (2) substantially in the following form :

« Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried, provided, however, that if the shipper or consignee performs any of such operations and the bill of lading so states, the carrier shall not be liable for loss or damage to that shipper's or consignee's goods due to the negligent performance of such operation. »

*Yugoslav Maritime Law Association (Yugoslavia)* proposes the following text :

« Subject to the provisions of Article 4, the carrier, shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried, *but he will be exempted from the duty to properly and carefully load respectively discharge the goods if these operations under the agreement between the parties have to be and actually are performed by the shipper or consignee.* »

## 2. Notice of Claim (Art. III (6) first para).

*The Subcommittee's recommendation* :

« Unless ... (no change) ... within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading *but shall have no other effect on the relations between the parties.* »

*Comments* :

*Argentina* proposes the following text :

« Cet avis, ainsi que celui mentionné au paragraphe antérieur, devront être donnés selon les modalités du port de déchargement. »

*Belgium* : Appuie la réserve exprimé par 2 membres de la Commission qui « préféreraient une règle comportant une sanction plus efficace en cas de réclamation tardive ».

*Britain* : The Association takes no objection to the words recommended as an amendment to this sub-paragraph.

*Canada* : We do not support this recommendation.

*Denmark* : We do not agree to the proposed addition and support the status quo.

*Finland* : We are of the opinion that the addition to the Rule is of no practical value.

*France* : Est d'avis de n'apporter aucune modification à l'art. 3 (6) premier paragraphe. As to the second paragraph of Art. III (6) France suggests following addition :

« Si les perte ou dommage ne sont pas apparent, l'avis doit être donné dans les trois jours de la délivrance à la personne indiquée à l'alinéa précédent. »

*Germany* : There exists, besides the supposition of the Hague Rules that the goods are delivered as described in the bill of lading, a second supposition in some national laws. According to this supposition it is deemed that, if a damage is proved, yet there is no fault on the part of the carrier. This second supposition is a special rule of the national laws mentioned and not of the Hague Rules. Any alteration in this field should be left to national law.

*Italy* : We should very much welcome a more clear wording, such as, for instance, the following : « but it (the rule) shall not affect the provisions of Article IV, paragraphs 1 and 2 ».

*The Netherlands* : It is suggested not to accept this recommendation.

*Norway* : We cannot see that the proposed amendment will bring any meaning or real effect into this rule which is devoid on any sense as it stands at present. We still find that a too late claimant should be estopped from claiming, and are glad that our Swedish colleagues have taken up our proposal to this effect in their comments. We can also agree with them that « undue delay » is a vague term, and that 7 days, to run from the effective placing at consignee's disposal, seems a reasonable time limit.

*Sweden* : The proposal of the Norwegian Association during the preparatory work appears to us on the whole a satisfactory formula :  
« Any liability of the Carrier under these Rules shall cease unless notice of the claim has been given to the Carrier or his agents

without undue delay, but no notice shall be required if it is proved that the Carrier or any one for whose acts he is responsible acted recklessly or with intent. »

*U.S.A.* approves this amendment.

*Yugoslavia* supports the proposed amendment.

**3. Time limit in respect of claims for wrong delivery (Art. III (6) third para).**

*The Subcommittee's recommendation :*

« In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; *provided that in the event of delivery of the goods to a person not intitled to them the above period of one year shall be extended to two years from the date of the Bill of Lading.* »

*Comments :*

*Argentina* proposes the following text :

« En tout cas le transporteur et le navire seront déchargé de toute responsabilité, pour pertes, dommages, ou non délivrance ... »

*Belgium* : Est d'accord en principe, sous réserve de certaines modifications de pure forme, et approuve également la première réservation c'est-à-dire que les mots « ou non délivrance » soient ajouté de sorte que la phrase sera libellée « ... pour pertes, dommages ou non délivrance à moins que ... ».

*Britain* : Without prejudice to the provisions of the Gold Clause Agreement, the Association supports the amendment.

*Canada* : We do not recommend this change because we believe the Act is clear.

*Denmark* : We feel that the wording of the 1924 Convention ought to be maintained.

*Finland* : We are prepared to support the recommendation.

*France* : Est d'avis de n'apporter, à ce sujet, aucune modification.

*Germany* : This problem has no serious practical importance. If an alteration is desired one should clarify that the expression « loss or damage » covers the case of wrong delivery too. If such a clarification is inserted the period of one year seems to be sufficient.

*Italy* : We venture to suggest the following text :

« If any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; *provided that in the event of delivery of the goods to a person not entitled to them the carrier and the ship shall be discharged from all liability in respect of loss or damage claimed by the holder of the bill of lading unless suit is brought within two years from the date when the goods should have been delivered.* »

*The Netherlands* : Their Association seems mostly inclined to favour the status quo.

*Norway* : We support the Swedish proposal on one uniform rule covering all claims under a bill of lading.

*Sweden* : We would favour a uniform one year time limit to be introduced covering the whole field of possible claims. We submit that Art. III (6) third para of the Convention be amended to read as follows :

« In any event *all rights under the Bill of Lading shall cease* unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. »

*U.S.A.* disapproves this amendment.

With regard to the proposal the following text is submitted :

« In any event the carrier and the ship shall be discharged from all liability in respect of *the goods* unless suit is brought within one year after delivery of the goods or the date when the goods have been delivered. »

*Yugoslavia* favours the status quo.

#### 4. Gold Clause, Rate of Exchange, Unit Limitation (Art. IV (5) and IX.

*The Subcommittee recommends that :*

- 1) Article IX be struck out.
- 2) Article IV (5) should read as follows :

“ Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65.5 milligramms of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading. ”

This declaration ... (no change) ... on the carrier.

By agreement ... (no change) ... above named.

Neither the ... (no change) ... of lading.

“ The date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seized of the case. ”

3) The status quo be retained in respect of package and unit. ”

### *Comments :*

*Belgium :* Est d'accord sur le montant proposé et pour maintenir les mots « colis et unités » mais désire qu'il soit précisé que la conversion en monnaie nationale devra se faire à la date du paiement.

*Britain :* The Association supports the recommendations.

*Canada :* We support the recommendations « and the limitation at 12,421.35 Poincaré Francs. » Vide report of Subcommittee on B/L Clauses pages 21/23.

*Denmark :* Subject to general reserve expressed under « Future action » we suggest that the amount of limitation be fixed at £ 200.- per unit in accordance with the British gentleman's agreement which is now being used in practice.

*Finland :* We have no objection.

*France :* L'A.F.D.M. est d'accord avec la Commission Internationale : .

a) pour maintenir l'expression « colis ou unité »;

b) pour remplacer les 100 £ or actuelles par 10.000 francs Poincaré;

c) pour supprimer l'art. 9.

However, the French Association wants to avoid the expression « franc Poincaré » and says : « Il suffira donc de parler, au 1er alinéa du § 5, de 10.000 francs, et d'ajouter, à ce paragraphe, un dernier alinéa, ainsi conçu :

« Le franc mentionné dans le présent paragraphe 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. La conversion en monnaie nationale est effectuée d'après la loi du Tribunal saisi. »

*Germany* : We share the view that article IX should be deleted. We agree that the monetary unit used should be the Poincaré Franc and that the conversion into national currency should be undertaken in each single case. The date of conversion should be laid down in the Convention. One should try to find a date of conversion which cannot be influenced by the parties concerned (for example the date of discharge).

The limit of liability is not a problem of law but a question of compromise between all interested parties. Therefore, the limit of liability should be discussed between shippers, shipowners, insurance companies etc. We are of the opinion that the limit of 10.000 Poincaré Francs as proposed by the Subcommittee should be the utmost which could reasonably be agreed upon.

As for « package and unit » we share the view that the status quo should be retained. A satisfying definition will hardly be found.

*Italy* : Suggests the following text :

« Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of francs per ton or per 40 cubic feet at the option of the claimant, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading.  
This declaration ... (no change) ... on the carrier.  
By agreement ... (no change) ... above named.  
Neither the ... (no change) ... of lading.  
Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment. »

*The Netherlands* : The Association agrees in principal to the proposals submitted. The date of payment should, however, be taken as the date of conversion. Further, the Association would prefer to reserve its final opinion as to the amount of the limit.

*Norway* : We support the amendments.

*Sweden* : Our Association supports the suggestions.

*U.S.A.* :

The proposed figure acceptable. The reservation with regard to the date of conversion being harmless and, in fact, meaningless. recommends not to object to the inclusion or exclusion of this provision.

No action in respect of « unit ».

*Yugoslavia* :

- a) supports the proposed amendment.
- b) favours « the date of payment » or if this proves unacceptable the « date of final judgement ».
- c) proposes that « package » be struck out and instead « actual freight unit » be used as being « the best solution among various perfect solutions ».

#### **5. Liability in tort, the « Himalaya » problem.**

*The Subcommittee's recommendation :*

- « 1) Any action for damages against the carrier, whether founded in contract or in tort, can only be brought subject to the conditions and limits provided for in this Convention.
- 2) If such an action is brought against a servant or agent of the carrier or against an independent contractor employed by him in the carriage of goods, such servant, agent or independent contractor shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
- 3) The aggregate of the amounts recoverable from the carrier, his servants, agents and independent contractors in the employment of the carrier, in that case, shall not exceed the limit provided for in this Convention.

4) Nevertheless, the servant, agent or independent contractor shall not be entitled to the benefits of the above provisions if it is proved that the loss or damage resulted from an act or omission of such servant, agent or independent contractor done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result. »

The provisions of sub-paragraph (4) of the proposed new Article will be noted. In order to ensure that the position of a carrier is the same as a servant in such circumstances the Subcommittee further recommends that to Article IV be added a new provision which would have no. 7 and would read thus :

« Neither the carrier nor the ship shall be entitled to the benefit of the defences and limits of liability provided for in this Convention if it is proved that the loss or damage resulted from an act or omission of the carrier himself done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result. »

### *Comments :*

#### *Argentina* considers

« qu'il est convenable que le transporteur puisse se défendre contre les actions de ce genre, dans le cadre de la Convention. Mais elle exprime ses doutes en regard des exonérations et limitations de responsabilité, parce que certains tribunaux pourraient les considérer non applicable à ce type de responsabilité. Tout de même, en regard du capitaine et d'autres préposés de l'armateur, les cas d'exonération ne devraient pas leur être applicable pour les fautes personnelles qu'ils peuvent commettre. »

*Belgium* : Est d'accord sur les points 1 - 4 et sur la disposition destiné à porter le nr. 7 mais prendre ultérieurement position sur les cas des sous-traitants indépendants.

*Britain* : Whatever provision may be inserted in the Rules to protect servants etc. this in itself will be of no avail without a supplementary provision (possibly by way of a specific Section in an Act of Parliament) which lays down that servants, agents and independent

contractors may, notwithstanding that they are not parties to the Contract of Carriage, benefit from the defences and limits of liability set out in such contract. Apart from this consideration, the Association wishes to reserve its position regarding the actual text suggested as an amendment because it is somewhat doubtful that the words employed will in fact achieve the object as set out on page 29 of the Report.

*Canada* : Believes the intention of the proposed amendment is good in so far as the Master, the crew and the stevedores are concerned. They should be protected under the Act but not other independent contractors. The suggested provision nr. 7 would cause more confusion than clarity.

*Denmark* : Subject to general reserve expressed under « Future Action » we can accept nos 1), 2) and 3) but not nr. 4) and nr. 7).

*Finland* : We are in full agreement with the efforts to have the Convention so amended that cases of the « Himalaya » type will not arise again. The Finnish Association then comments on the proposed draft.

*France* : The French Association suggests to add to Article IV the following new paragraphs :

« § 7. Le transporteur peut se prévaloir des dispositions de la Convention qui excluent ou limitent sa responsabilité que l'action introduite contre lui pour pertes ou dommages le soit sur une base contractuelle ou sur une base quasi-délictuelle.

§ 8. Lorsque la responsabilité d'un préposé ou agent du transporteur, ayant agi dans l'exercice de ses fonctions, est mise extra-contractuellement en cause, cette personne peut également se prévaloir des dispositions de la Convention qui excluent ou limitent la responsabilité du transporteur, le montant total des indemnités dues par le transporteur et par cette personne ne pouvant pas dépasser les limites prévues par la Convention. Toutefois, elle ne pourra pas se prévaloir desdites dispositions si les pertes ou dommages ont pour cause un acte ou omission commis par elle, soit avec l'intention de les provoquer, soit téméairement et avec connaissance que des pertes ou dommages en résulteraient probablement.

§ 9. Ni le transporteur ni le navire ne peuvent se prévaloir des dispositions de la Convention qui excluent ou limitent leur responsabilité, lorsque les pertes ou dommages ont pour cause un acte ou omission commis par le transporteur, soit avec l'intention de les provoquer, soit téméairement et avec connaissance que des pertes ou dommages en résulteraient probablement. Ils ne peuvent pas non plus se prévaloir desdites dispositions, lorsque les pertes ou

dommages ont pour cause un acte ou omission de leurs préposés ou agents, commis par ceux-ci, ou par l'un d'eux, avec l'intention de les provoquer. »

*Germany* : The Hague Rules deal with contractual liability. The problem of liability in tort is in our opinion outside the scope of this Convention and is rather a general problem of civil law. The danger that a plaintiff bases his claim on a tort alleged to be committed by the defendant can arise in each contractual relation. A Convention dealing with one special kind of contract should not give rules on liability in tort.

There is no practical need for having special rules on liability in tort in the Convention. It is possible to restrict this liability by suitable B/L clauses, both for the carrier and for his servants and agents. The majority of all liner B/L already contains such clauses.

*Italy* : Supports the recommendation.

*The Netherlands* : The problem raised in connection with this recommendation is one which arises from English law. On the other hand there seems to be no special international need for a provision of this nature.

*Norway* : We consider such an enactment important and desirable, in order to bring the Hague Rules in line with the Liability Convention and the Warsaw Convention. As to the details various proposals are put forward.

*Sweden* : Supports this suggestions.

*U.S.A.* : The vote in U.S. Association was inconclusive.

*Yugoslavia* supports « the minority opinion under point no. 3 » (page 33 of the report).

## 6. Nuclear damage.

### *The Subcommittee's recommendation :*

« This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage. »

### *Comments :*

Subject drafting there seems to be no objections from any Association to this recommendation.

## 7. Both to Blame.

### *The Subcommittee's recommendation :*

#### *" Both to Blame clauses.*

The Subcommittee held that the present position was highly unsatisfactory. The Subcommittee unambiguously declared it would regard it as a great progress towards the unification of Maritime Law if the United States would accept and adopt the same rules about collisions as the rest of the maritime world and authorized the view to be made fully known to interested parties in the United States. »

### *Comments :*

The recommendation is supported by the Associations. The U.S. Association supports an amendment of the Hague Rules to make valid a both-to-blame clause or otherwise eliminate the difficulties of the U.S. both-to-blame rule, preferably as above proposed, with the understanding, however, that the C.M.I. in reporting the proposed amendments should point out to the Diplomatic Conference that the, both-to-blame amendment deals solely with a problem of U.S. law, and that it should be abandoned if, before the clause of the Diplomatic Conference which deals with the proposed amendments of the Hague Rules the problem is cured by U.S. legislation. »

## **Other subjects examined.**

*(Regarding all these subjects the International Subcommittee recommends the retention of the status quo.)*

## **8. Unseaworthiness and deck cargo (Art. 1 (c) and Art III (1) ).**

*Britain :* Certain members of the Association are of the view that further consideration should be given to the desirability of covering deck cargo in terms similar to those mentioned in the Report.

## **9. Liability before loading and after discharge (Art. 1 (e) and Art. VII).**

*Britain :* It is thought by some members that further consideration should be given to evolving a clear definition of the period of the carrier's liability.

*France* : Estime qu'un grand service serait rendu aux usagers, comme aux transporteurs, si la Convention était applicable à l'ensemble du contrat de transport, c'est-à-dire depuis la prise en charge de la marchandise par le transporteur jusqu'à sa livraison au destinataire. Elle émet le vœu qu'une décision soit prise dans ce sens.

*Italy* : Wonders whether, whilst enabling the carrier to contract out of his liability as per Article VII, the rules of the Convention had not better be made to apply to the whole period of the carrier's liability, namely from the time of delivery of the goods to him for transportation to the time of their delivery to the consignee.

*Norway* : In the opinion of one dissenting member, representing cargo interest, the Convention should cover the whole period in which the goods are in the actual position of the carrier or his agents, vide further under 10) below.

**10. Liability when goods are transhipped.**

*Norway* : The dissenting member representing cargo interest suggests the following amendments to Article I and Article VII of the Convention :

« Article I.

.....  
.....

- e) « Carriage of goods » covers the period from the time when the goods are *received for shipment by the carrier or his agent until they are delivered at a contractual port of discharge.*

Article VII.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, condition, reservation or exemption as the responsibility and liability of the carrier of the ship for the loss or damage to, or in connexion with, the custody and care handling of goods *during a period when the goods are in the custody and care of another carrier provided however that it is expressly stated in the bill of lading or must be implied that the carriage should totally or for a specific part be performed by another carrier.* »

**11. Due diligence to make ship seaworthy (Art. III (1) and IV (1)).**

*Britain* : The Association tentatively suggests that Article III (1) should be amended somewhat as follows :

- « Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the carrier has taken reasonable care to appoint one of repute as re-

gards competence and has taken all other reasonable precautions, the carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents (including any independent sub-contractor and his servants or agents). »

*Denmark* : If the C.M.I. really intends to alter the Convention (vide attitude on this point under « Future Action ») the C.M.I. should adopt an article which establishes a clear protection for the shipowner who has employed competent repairers.

*Sweden* : Should welcome that renewed efforts be made to try to find a solution to the difficulties caused by the « Muncaster Castle » decision.

*U.S.A.* : The U.S. Association seeks international uniformity on this point, preferably on the basis of amendment of the Hague Rules to assure that the jurisprudence of all countries will be brought into accord with the jurisprudence of the U.S. and England.

*Monsieur le Doyen J. van Ryn*, Member of the Subcommittee, who accepted the task to investigate the actual position in the various Countries in respect of « due diligence » has kindly submitted the following report, dated Brussels the 31st March, 1963.

« La Commission internationale m'a chargé de recueillir des renseignements au sujet de l'interprétation donnée dans les principaux Etats contractants à la disposition de l'article III (1) de la Convention de 1924.

Le but de cette enquête est notamment de rechercher si la décision en 1961 par la Chambre des Lords (*The Muncaster Castle* (1961), *Lloyd's Reg.* pp. 57/91) est en concordance ou non avec la jurisprudence des autres pays. En cas de divergence, il pourrait être utile de tenter d'élaborer une règle interprétative permettant d'assurer l'uniformité du droit maritime sur ce point.

Le cas tranché par l'arrêt précité peut être résumé comme suit : le propriétaire d'un navire, pour mettre celui-ci en état de navigabilité, le confie à un chantier de réparations navales de premier ordre; en fait, les réparations n'ont cependant pas été exécutées dans toutes les règles de l'art, et ces réparations défectueuses entraînent l'avarie de certaines marchandises transportées. Le propriétaire peut-il être considéré comme ayant exécuté son obligation d'exercer une diligence raisonnable pour mettre le navire en état de navigabilité ? L'arrêt de la Chambre des Lords donne à cette question une réponse négative. Le propriétaire répond donc, non seulement de ses défaillances personnelles, mais aussi de celles du réparateur auquel il s'est adressé.

Je résumerai ci-après les renseignements recueillis au sujet de la solution donnée à cette question ou à des questions analogues dans les différents pays dont les Associations ont bien voulu me documenter.

### 1. — *Suède.*

Bien que la question n'ait pas été expressément tranchée par les cours et tribunaux (le seul cas où elle aurait pu se poser ayant donné lieu à un règlement amiable), on admet que le transporteur n'échappe pas à sa responsabilité, relativement à la navigabilité, par le seul fait que le navire est régulièrement inspecté et vérifié par une société de classification, ni par le seul fait de demander à un tiers (un chantier naval, un ingénieur naval indépendant, etc.) d'examiner (look after) le navire. L'agrément du navire par une société de classification ou par une autorité officielle fera néanmoins considérer, en principe, que le transporteur n'a pas manqué à son obligation d'exercer une diligence raisonnable. D'autre part, en cas de négligence ou de faute dans l'exécution des réparations par le chantier naval, il faudrait appliquer la règle générale du droit suédois selon laquelle un contractant n'est pas responsable de la négligence commise par un sous-traitant indépendant.

L'absence de toute décision judiciaire laisse planer, semble-t-il, une incertitude assez grande sur l'état actuel du droit suédois en la matière.

### 2. — *Pays-Bas.*

Avant l'introduction des Règles de La Haye (en 1956), la jurisprudence considérait que le transporteur est responsable de la mauvaise qualité des réparations ou de l'inspection, même si ces tâches ont été exécutées par un chantier ou par une société de classification de premier ordre désignés par le transporteur — à moins qu'il ne s'agisse d'un défaut pratiquement impossible à découvrir sans procéder au démontage complet des installations du navire.

La doctrine est favorable à l'opinion consacrée par la décision en cause du *Muncaster Castle* (voy. notamment S. Royer, *Hoofdzaken der vervoerders aansprakelijkheid in het Zeerecht*, 1959, p. 234; Schadee, étude dans *Nederlands juristenblad*, 1952, p. 732).

### 3. — *Italie.*

Il n'y a pas de décision judiciaire sur la question.

Mais elle devrait, semble-t-il, être résolue par l'application du droit commun, selon lequel (art. 1228 du Code Civil), le débiteur est en principe — sauf dérogation conventionnelle — responsable des fautes commises par ceux auxquels il recourt pour exécuter ses obligations.

### 4. — *France.*

La loi française impose expressément au transporteur une obligation de résultat (art. 4).

Bien qu'aucune décision judiciaire relative à un cas d'application de l'article III (1) ne nous ait été communiquée, il semble que l'application du droit commun doive conduire à la même solution qu'en Italie.

MM. Mazeaud et Tunc (Traité théorique et pratique de la responsabilité civile délictuelle et contractuelle) enseignent qu'« il faut poser en principe que le débiteur répond de ses substituts. C'est ce qui résulte du fait qu'il s'est engagé : c'est lui qui est tenu si l'engagement n'est pas respecté » (t. I, n° 990). Et plus loin, en conclusion : « Ainsi l'on peut dire que, sous réserve de rares exceptions légales ou conventionnelles, un débiteur est responsable de tous ceux qu'il introduit dans l'exécution de contrat ».

Examinant plus particulièrement la responsabilité contractuelle des substituts, les mêmes auteurs écrivent (n° 992, p. 1034) : « Elle s'explique essentiellement par la volonté des parties. Le débiteur promet un certain résultat ou une certaine diligence. Il peut lui être permis de se substituer un tiers pour le tout ou partiellement. Mais c'est lui qui assumait l'obligation et qui l'assumait tout entière. Le contrat par lui-même implique donc, sauf clause contraire, que le débiteur garantisse le fait de son substitut, même s'il l'a choisi avec soin, et bien que ce substitut soit dans une large mesure un tiers, ce que n'est pas le préposé. »

#### 5. — *Etats-Unis.*

Il n'y a pas d'arrêt de la Cour Suprême des Etats-Unis sur la question qui nous intéresse. Parmi les décisions des autres juridictions qui m'ont été communiquées, j'en ai relevé quelques-unes qui paraissent révéler une orientation semblable à celle qui a été consacrée par la Chambre des Lords dans l'affaire du *Muncaster Castle*. Aucune décision en sens opposé n'a été portée à ma connaissance.

1) La « due diligence » requise par la loi n'est pas seulement celle du propriétaire; elle comporte aussi l'exercice de la « due diligence » par ses « agents and servants » : *Yungay*, 58 F 2d 351 (S.D.N.Y. 1931). Dans le même sens : *Hartford Accident & Indemnity Company v. Gulf Refining Co*, 127 F Supp. 469 (E.D. La. 1954), affirmed in this particular, 230 F 2d 346 (5th Cir. 1956).

2) Le propriétaire ne peut s'exonérer de sa responsabilité en faisant valoir qu'il a fait examiner son navire, après un accident en cours de voyage, par les capitaines de deux autres navires et par un agent maritime, — en l'absence de tout inspecteur du Lloyd au port de chargement : *Willow Pool*, 12 F Supp. 96 (S.D.N.Y. 1935), affirmed 86 F 2d 1002 (2d Cir. 1936).

3) Dans un cas d'avarie par de l'eau de mer pénétrant par un trou provoqué par la rouille, il a été jugé que le propriétaire n'avait pas exercé la « due diligence » dont il est tenu, parce que la corrosion de la coque n'aurait pas dû échapper à l'attention des surveillants et des réparateurs, si ces derniers avaient réellement recouru aux mesures de vérification (*hammer testing*) qu'ils affirmaient avoir appli-

quées : *General Motors Corp. v. / The Olanco*, 115, F. Supp. 107 (S. D.N.Y. 1953), affirmed per curiam without opinion, 220 F 2d 278 (2d Cir. 1955).

4) Le fait de se substituer un organisme officiel (Sea Service Bureau) pour l'exercice de la diligence raisonnable (delegation of the duty of due diligence to the Sea Service Bureau) ne constitue pas, en soi, un défaut de diligence de la part du propriétaire; mais ce dernier pourrait être rendu responsable d'un défaut de diligence dans le chef du Sea Service Bureau (en l'espèce, il fut constaté en fait que cet organisme n'était pas en défaut) : *James Griffiths*, 84 F. 2d 785 (9th Cir. 1936).

#### 6. — *Danemark.*

Suivant la jurisprudence de ce pays, l'étendue de l'obligation imposée au propriétaire par l'article III (1) doit être déterminée par référence aux principes généraux, ce qui conduit à considérer que le propriétaire doit prendre toutes les mesures que l'on peut attendre d'un propriétaire prudent et conscient de ses responsabilités.

Cette obligation doit être considérée comme de droit strict, avec la conséquence que le propriétaire ne pourrait se libérer de sa responsabilité éventuelle par le seul fait qu'il aurait recouru à un sous-traitant indépendant, même s'il s'agit d'une firme de premier ordre.

#### 7. — *Canada.*

La question se ramène à celle de savoir si l'obligation d'exercer la diligence raisonnable est « delegable » ou non ».

La jurisprudence décide qu'elle ne l'est pas. L'obligation n'est pas considérée comme remplie par le fait que le propriétaire a été simplement diligent. Elle requiert que la diligence ait été réellement (in fact) exercée par le propriétaire ou par ceux auxquels il recourt dans ce but.

S'il s'est adressé à des spécialistes compétents, la seule conséquence en sera qu'on ne pourra lui reprocher une faute personnelle et, en conséquence, qu'il pourra limiter sa responsabilité.

#### 8. — *Belgique.*

La jurisprudence n'a eu à se prononcer que sur la valeur exonératoire, pour le transporteur, de vérifications et de certificats émanant de *bureaux de classification réputés*. Elle ne s'est pas prononcée sur le cas de fautes commises par des chantiers de réparation.

Elle considère que ces certificats constituent une présomption que le transporteur s'est acquitté de son obligation de « due diligence » (Bruxelles 25 avril 1958, J.A. 126; voy. aussi Bruxelles 10 mars 1951, J.A. 231).

Mais cette présomption peut être renversée. Elle l'est notamment — et la responsabilité du transporteur subsiste, — lorsqu'il est prouvé que les experts des Lloyd's ont commis des fautes ou des négligences : Comm. Anvers, 2 mai 1949, J.A. 331; Id., 16 octobre 1950, Id., p. 265; voy. aussi, quant au principe : Bruxelles 25 avril 1958, précité.

Le principe de la responsabilité personnelle du débiteur du fait de celui qu'il s'est substitué est reconnu par la doctrine : De Page, Droit civil, II, n° 592, et ce non pas seulement dans le cas où le contrat exigeait l'exécution personnelle : id. La loi n'y déroge que dans le cas du mandat : art. 1994 du Code civil, quand le propriétaire était autorisé à se substituer une autre personne : hors de ce cas, le droit commun s'applique, et le débiteur répond de ceux à qui il a confié l'exécution de ses propres obligations.

## Conclusion

Sauf une légère réserve en ce qui concerne le droit suédois, il semble que dans tous les pays ci-dessus mentionnés, le transporteur soit considéré comme responsable des fautes ou négligences commises par les tiers (sociétés de surveillance, bureaux de classification, chantiers de réparation, etc.) auxquels il s'en remet pour la vérification de l'état du navire et pour l'exécution des réparations nécessaires.

Il ne semble donc pas que l'article III, § 1, ait donné lieu à des interprétations divergentes. »

### 12. Received for shipment bills of lading (Art. III (3) and (7)).

*Britain* : Asks for further time to consider the point.

### 13. Statements in B/L as evidence (Art. (4) and (5)).

*Belgium* : Souhaiterait que des modifications soient envisagées au texte actuel de la convention (suppression des mots « sauf preuve contraire » à l'article III (4)).

*France* : Pour éviter toute équivoque, il serait peut-être utile d'ajouter, à la fin du § 4, la phrase suivante (inspirée de la formule du § 5) :

« Toutefois, la preuve contraire n'est pas possible à l'égard de toute personne autre que le chargeur. »

On pourrait aussi exprimer la même idée au § 4 sous la forme suivante :

« Un tel connaissance vaudra présomption, sauf preuve contraire à l'égard du seul chargeur, de la réception ... etc. »

*Italy* : We think that the bill of lading should, as against a bona fide holder, be a conclusive evidence of the receipt by the carrier of goods as described therein and, in order to assure a uniform interpretation of this paragraph, we support the amendment proposed by a minority of the subcommittee, namely :

« Such bill of lading when transferred to a third party who is acting in good faith, shall be conclusive evidence of the receipt of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). »

*Yugoslavia* supports the reservation (pages 47 - 49 of the report).

#### **14. Time limit for recourse action (Art. III (6) ).**

*Denmark* : If the Convention is to be altered (vide attitude to this point under « Future Action ») an article about time limit for recourse action should be added in order to avoid that a recourse action be lost solely on account of time bar merely because the receiver institutes a law suit at the last moment to avoid the one year prescription.

*France* : Suggests the following addition to Article III (6) paragraph 4 of the French text :

« Les actions récursoires pourront être exercées même après l'expiration des délais prévus par les règles qui régissent ces actions, si elles sont intentées dans le délai d'un mois à partir du jour où les personnes qui les exercent ont été elles-mêmes assignées. »

*Italy* : Supports the proposal made by the French Association.

#### **15. Time limit in respect of claim for indirect damage through delay (Art. III (6) ).**

*Denmark* : Subject to general reserve expressed under « Future Action » it might be recommendable to enlarge the stipulation of time limit to cover also indirect damage, for instance damage caused by delay.

*Sweden* : Reference is made to what is said by the Norwegian and Swedish Associations under point number 2) Notice of claim.

#### **16. Prescription (Art. III (6) ).**

*Belgium* : Souhaiterait que des modifications soient envisagées au texte actuel de la convention.

*Denmark* : Subject to general reserve expressed under « Future Action » the question whether the time limit constitutes a « prescrip-

tion » or a « délai de déchéance » ought to be discussed and decided if the 1924 Convention is altered.

*Germany* : This problem should be studied. We recommend a clarification to the effect that the period mentioned in Art. III (6) can be prolonged after mutual agreement to this effect between the parties concerned.

#### **17. Invoice value clause (Art. III (8) ).**

*Belgium* : Souhaiterait que des modifications soient envisagées au texte actuel de la convention.

*Britain* : There exists support within the Association that this subject should be further considered.

*Canada* : We are of opinion that it is important to have a fixed and easily determinable figure for each claim. We believe B/L Clauses should be permitted if they were to fix damages at some such sum as invoice value plus 10 %.

*Denmark* : Subject to general reserve expressed under « Future Action » it should be discussed whether a new convention should contain a provision to the effect that both types of invoice value clauses are valid in a B/L.

#### **18. The pro rata clause (Art. III (8) ).**

No comments.

#### **19. Fire (Art. IV (2) b) ).**

*Denmark* : Subject to the reserve expressed under « Future Action » a possible new convention should contain a provision to the effect that the burden of proof as to actual fault or privity of the carrier should rest on the claimant.

*Italy* : We suggest to delete the words « unless caused by the actual fault or privity of the carrier ».

#### **20. The reservation appearing in Protocol of Signature under nr. 1 (Art. IV (2) c) to p) ).**

*France* : Estime qu'il serait préférable que la règle posée dans le N° 1 du protocole de signature figurât dans le texte même de la Convention. Un nouveau § 2 bis de l'art. 4 pourrait être rédigé comme suit :

« La preuve par le transporteur que les pertes ou dommages résultent d'un des cas exceptés prévus aux alinéas (c) à (p) du § 2 ne met pas obstacle à l'administration par le réclamateur de la preuve de la faute du transporteur ou de ses préposés ou agents, autre qu'une faute couverte par l'alinéa (a) dudit § 2. »

*Italy* : Recommends that the text of the reservation in the Protocol of Signature be incorporated in the text of the Convention.

*Yugoslavia* holds the same view as Italy.

#### **21. Limitation as to value for indirect damage by delay (Art. IV (5) ).**

*Denmark* : Subject to the general reserve expressed under « Future Action » in case the 1924 Convention is altered it should say that limitation as to value « shall also apply with respect to indirect damage by delay ».

#### **22. Exceptional cargo (Art. VI).**

*Denmark* : Subject to the general reserve expressed under « Future Action » the word « or » should be used instead of the French « et ».

*France* : Il y a lieu de mettre, au dernier alinéa, le texte anglais (« ...or condition... or the circumstances ») en concordance avec le texte français (« ...et la condition... et les circonstances »).

*Germany* : In our opinion the French text is the only official one. Therefore there exists no difference between two official texts but a wrong translation from the official text into the English language. Having this in mind the problem seems to be settled.

#### **23. Paramount clause.**

No comments.

#### **24. Jurisdiction.**

*France* : Estime utile l'insertion dans la Convention d'une disposition prohibant toute clause attributive de juridiction aux tribunaux d'un Etat non-contractant.

Il serait peut-être également opportun d'examiner la question de savoir s'il ne conviendrait pas de rendre exécutoire dans tout Etat contractant, sans nouvel examen du fond de l'affaire, toute décision en dernier ressort rendue dans un autre Etat contractant.

## Future action

*Britain* : We feel strongly that the manner in which this is done should be somewhat as follows :

- (1) When the amendments have been settled within the C.M.I. a Diplomatic Conference should be called and which should be restricted to delegates from those countries which have signed and ratified the Hague Rules or which have taken positive steps so to do.
- (2) The amendments should be incorporated into a Protocol to the Hague Rules, thus avoiding the amendment of the Rules as a whole.

*Denmark* : Is strongly of opinion that C.M.I. should not take any action to amend the Bill of Lading Convention of 1924 in any respect.

Even if C.M.I. would only try to carry through some amendments, it is most likely that further suggestions would be advanced for discussion and, successively during the negotiations so many alternations would be adopted that you would get quite a new convention which might not work as well in practice as the present one.

*France* : Supports the view of the Subcommittee « d'après lequel il s'agit là d'une « question de politique générale pour le C.M.I. » et qu'en conséquence, il n'y a pas lieu de faire, pour le moment, des recommandations à ce sujet ».

*Germany* : We are of the opinion that a revision of the Hague Rules brings about the danger that the complete system which, on the whole, works satisfactorily would be set up. We share the view of the Dutch association (Conn. C 4) and of the members of the Subcommittee, who expressed their view in that way (p. 68/69). Even if only an additional protocol would be agreed upon in order not to upset the whole Convention this would lead to a dissipation of law as can already be observed in connection with the Warsaw Convention. If the plenary meeting nevertheless should decide upon a revision of the Rules by a Diplomatic Conference we suggest that only those states should be invited which have already ratified the Convention (article XVI Hague Rules).

*Italy* : We believe that, if a set of amended rules is approved by the Stockholm Conference, then a Diplomatic Conference should be called for the purpose of having the amendments incorporated in a Protocol to the 1924 Convention, but that such Diplomatic Conference should anyhow be restricted to the countries which have ratified or adhered to the 1924 Convention.

*The Netherlands* : In view of cautious attitude adopted throughout, no special recommendations are made.

*Norway* : It seems to us that the choice between an additional protocol and amendments in the Convention should better be decided when the final scope of the revision has been agreed.

*Sweden* : To have the amendments which will be eventually adopted embodied in an additional protocol of the type used for the Hague protocol of 1955 to the Warsaw Convention is we believe the best solution in this case.

Our Association should appreciate were the C.M.I. decision to contain a suggestion that the Belgian Government invite to the Diplomatic Conference which will deal with such protocol those Governments which ratified the 1924 Convention or afterwards have acceded to it.

*Yugoslavia* is of the opinion « that all the amendments to be agreed upon (new rules and interpretative rules) should be entered in a protocol. Nevertheless a difference should be made between the rules which are considered to be absolutely essential when accepting the protocol and those which are not. Concerning the essential rules no State should be allowed to make reservations, as for the others such reservations should be rendered possible ».

*Gothenburg, April 17th, 1963.*

*Kaj Pineus.*

## ASSOCIATION HELLENIQUE DE DROIT MARITIME

## CLAUSES DE CONNAISSEMENT

L'Association Hellénique a examiné, à plusieurs reprises, le projet de révision des clauses de connaissance, rédigé par le Comité sous la présidence de M. K. Pineus.

Notre Association désire, avant tout, rendre hommage à l'excellent travail que la Sous-Commission Pineus a pu effectuer sur ce sujet si important, malgré les grandes difficultés qu'elle avait à surmonter.

Avant d'exprimer les thèses de notre Association sur les « Recommandations positives » de la Commission Pineus, nous voudrions dire, une fois de plus, que l'avis unanime de notre Association est de procéder à la révision des clauses sur le connaissance, de façon à ne pas mettre en péril l'uniformité acquise sur ce sujet après tant d'efforts et de grandes difficultés, c'est-à-dire, à ne pas adopter de nouvelles clauses qui risqueraient de ne pas être admises par les Etats qui ont, jusqu'à présent, inséré dans leur Droit National les règles de La Haye.

**Remarques sur les « Recommandations Positives » :**

1. Notre Association est entièrement d'accord avec les propositions de la Commission relativement à la responsabilité du transporteur pour le chargement, etc..., effectué par le chargeur ou le destinataire.

2. En ce qui concerne l'amendement proposé de l'Article III (6) § 1<sup>er</sup>, notre Association croit que le libellé n'est pas assez clair. La sanction — en cas de réclamation tardive — doit être clairement énoncée, c'est-à-dire, il faut, à notre avis, appliquer les deux solutions possibles, à savoir :

Spécifier exactement en quoi consiste cette sanction, et surtout préciser la différence à la charge des preuves en cas d'une réclamation tardive et celle faite en temps dû.

Si cela n'est pas fait comme exposé ci-haut, la sanction ne sera pas effective.

3. En ce qui concerne la prescription en cas de livraison à des personnes erronées, Article III (6) § 3, nous vous prions de noter que notre Association estime que l'extension du temps de la prescription à deux ans, à partir de la date du connaissance, ne pourrait être

acceptée que dans le cas seulement où la livraison de la totalité de la marchandise serait effectuée à une personne erronée.

4. *Clause or :*

Notre Association n'a aucune objection à accepter le franc Poincaré comme unité, mais vous prie de bien vouloir noter qu'elle désire voir limitée la responsabilité à 5.000 francs par colis ou unité.

5. Notre Association est d'accord avec les propositions mentionnées dans les Articles 5, 6 et 7.

Nous estimons que le Comité Maritime International doit poursuivre ses Travaux sur les points qui sont marqués dans le rapport de la Sous-Commission Pineus, et qui n'ont pas fait l'objet d'une « recommandation positive », et parmi lesquels il y a quelques-uns qui sont d'une importance primordiale.

*Avril, 1963*

SPANISH MARITIME LAW ASSOCIATION

REVISION  
OF THE 1924 BRUSSELS CONVENTION  
ON BILLS OF LADING

**1. Carrier's liability for negligent loading, stowing or discharge of goods by shipper or consignee. (Article 3 (2) ).**

Taking into account that the present wording of this rule, in relation with the rest of the articles of the Convention, is sufficiently concrete as to entail the carrier with the responsibilities arising from the transportation which terminate on delivery of the goods to the consignee, with regard to the operations that this rule indicates, to the fact that these operations are not carried out by shippers or receivers, the addition proposed is not considered advisable since it would give rise not only to the carrier completely ignoring his responsibility for these operations, in those cases where they take place before delivery to the consignee, but for the bona fide holder of the bill of lading would create one conflict more for the adequate efficiency of his possible claims.

In view of the above, this Association supports the minority of the Subcommittee which prefers to maintain the « statu quo » on this point.

**2. Notice of Claim (Article 3 (6), first paragraph).**

This Association considers that the present text of the Convention on this matter is sufficiently clear and self-explanatory. But however, there is no objection to accepting the proposed amendment because in conclusion it does not change the present efficiency of the Convention text.

It is desirable in every case that national legislations in general should adapt themselves better to the Convention, something which lies outside of this class of amendments.

**3. Time limit in respect of claims for wrong delivery. (Article 3 (6) third paragraph).**

This Association considers it advisable to support the minority of the Subcommittee which has not deemed it advantageous to introduce into the Convention the extension of the proposed time limit in the case of wrong delivery.

**4. Gold Clause, Type of Exchange, Limitation Unit (Article 4, (5) and 9).**

This Association considers it pertinent to support the majority of the Subcommittee, with respect to the recommended amendment on this matter, that is :

1. Complete suppression of Article 9.

2. Modification of ordinance 5 of Article 4, with the resultant wording as follows :

« Neither the carrier nor the ship will, in any case, be responsible for losses or damages caused to the goods or affecting them for an amount *above the equivalent of 10,000 Poincaré francs per package of usual freight unit, each franc being made up of 65.5 milligrams of gold of millesimal fineness 900*, unless the character and value of these goods have been declared by the shipper before their loading and that this declaration has been included in the bill of lading. »

3. Complete maintenance of the second, third and fourth paragraphs of the same ordinance, thus excluding the final addition proposed by the Subcommittee to the last paragraph, relative to the date of conversion into national money, which it hands back to the ruling money, which it hand back to the ruling of the Tribunal viewing the case.

As can be appreciated, this Association considers it more advisable to use, before the word « unit », the expression « usual freight », which would permit greater facility in the solution of each concrete case.

**5. Liability in Tort. The « Himalaya » problem.**

Subject to maintaining an open position at the moment of amply discussing this question in the Stockholm Conference, this Association considers that in principle it is not advisable to introduce the reform which the Subcommittee has proposed on this much-mentioned matter, since the Convention being expressly directed to regulating the contractual relations arising from the transportation contract under bill of lading, the presence of regulations relative to extra-contractual responsibilities does not seem to fit therein.

**6. Nuclear damage.**

This Association supports the proposal of the Subcommittee on this point.

**7. Both to Blame.**

This Association considers it should support the proposal of the Subcommittee on this matter.

*April, 1963*

ASSOCIATION BELGE DE DROIT MARITIME

OBSERVATIONS AU SUJET DU RAPPORT  
DE LA COMMISSION INTERNATIONALE  
DES CLAUSES DE CONNAISSEMENT

L'Association Belge tient à exprimer tout d'abord sa reconnaissance et son admiration à la Commission Internationale ainsi qu'à son président, M. Pineus, pour l'excellent travail dont le Rapport de la Commission traduit les substantielles conclusions.

Avant d'aborder l'examen des recommandations positives de la Commission Internationale, l'Association Belge croit devoir signaler, en ce qui concerne la proposition de révision de l'article 10, qu'elle adopte pour sa part la suggestion très judicieuse faite par l'Association Finlandaise dans ses observations.

D'autre part, la rédaction française du nouvel article 10 devrait être soigneusement revue car dans son texte actuel, les mots introduits par l'expression « sous l'empire duquel » paraissent se rapporter à l'Etat dont il est question immédiatement auparavant.

**Examen des recommandations positives.**

1. L'Association Belge ne croit pas pouvoir appuyer cette recommandation. L'allègement du transporteur que cette recommandation tend à réaliser paraît difficilement justifiable. Elle est de nature à diminuer notablement la valeur du connaissement aux mains des tiers-porteurs et risque de provoquer une rupture grave de l'équilibre établi en 1924.

La disposition proposée ne pourrait se comprendre que si elle permettait au charguer et à lui seul de faire figurer dans le connaissement une clause ayant la portée indiquée dans le texte.

A titre subsidiaire, l'Association Belge estime que la rédaction actuelle du texte proposé, est manifestement défectueuse puisque le membre de phrase ajouté paraît concerner toutes les obligations du transporteur et non pas seulement le chargement et le déchargement.

2. L'Association Belge considère, comme la Commission Internationale, que la situation actuelle n'est pas satisfaisante mais elle

ne croit pas pouvoir se rallier à la modification proposée. Il lui paraît préférable de décider, comme semble le faire la jurisprudence dominante en Belgique et en France, que le réceptionnaire négligent, qui n'a pas notifié en temps utile un avis écrit au sujet des pertes et dommages, sera obligé de prouver non seulement que les marchandises délivrées n'étaient pas conformes, mais aussi la faute du transporteur, il semble raisonnable, en effet, de ne pas maintenir au profit du réceptionnaire négligent la présomption de responsabilité qui pèse sur le transporteur jusqu'à la réception des marchandises. Il en est d'autant plus ainsi que cette négligence du destinataire est de nature à rendre beaucoup plus malaisée pour le transporteur la preuve contraire par laquelle il devrait renverser la présomption qui pèse sur lui.

3. Une erreur paraît s'être glissée dans l'intitulé de cette recommandation, qui concerne en réalité l'article 3 (VI) 4 (et non 3).

L'Association Belge est d'accord au sujet du principe de cette recommandation. Il lui paraît également judicieux d'ajouter, comme l'a proposé la minorité de la Commission, à la deuxième ligne du paragraphe dont il s'agit, les mots « ou non délivrance ».

L'Association Belge propose toutefois de rédiger comme suit le texte à insérer « Ce délai est porté à 2 ans, à compter de la date du connaissance lorsque la délivrance a été faite à une personne qui n'y avait pas droit ».

4. L'Association Belge est d'accord sur cette recommandation sous réserve de la proposition qui concerne la date à laquelle se fera la conversion en monnaie nationale. Il lui paraît souhaitable que cette date soit fixée par la Convention elle-même et que la date choisie soit celle du paiement effectif.

D'autre part, l'Association Belge constate néanmoins avec regret que le maintien du statu quo en ce qui concerne les mots « colis ou unité » risque de laisser sans solution les difficultés auxquelles cette expression a donné lieu notamment dans le cas de marchandises volumineuses et de grande valeur, qui ne constituent, grammaticalement parlant, qu'un seul colis ou une seule unité. Aussi est-elle disposée à s'associer à toute nouvelle tentative pour remédier à cette situation.

5. L'Association Belge est d'accord en principe sur les quatre alinéas du nouvel article proposé par la Commission Internationale, sous réserve d'en amender quelque peu la rédaction.

Toutefois, elle se réserve de se prononcer ultérieurement sur le problème des personnes appelées à bénéficier des paragraphes 2 et 3 du nouvel article.

L'Association Belge est également d'accord au sujet de l'insertion à l'article 4 d'une nouvelle disposition, qui porte le n° 7, et qui concerne le cas du dol ou de la faute lourde du transporteur lui-même. La rédaction de cet article, comme celle d'ailleurs du 4 du nouvel article

mentionné ci-dessus, devrait être mise en rapport avec les termes employés à propos des mêmes questions par la Convention de Varsovie.

L'Association Belge n'est pas disposée à appuyer les réserves exprimées par certains membres et qui sont relatées sous les numéros 1 et 2, à la page 30 du rapport.

L'Association Belge n'a aucune observation à faire au sujet de ces deux recommandations.

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★★

#### **Autres sujets examinés par la Commission Internationale.**

N° 8, N° 9, N° 10. L'Association Belge est d'accord au sujet des conclusions du rapport sur ces trois points.

N° 11. L'Association Belge ayant pris connaissance du compte rendu de l'enquête à laquelle a procédé M. Jean Van Ryn constate que l'opinion consacrée aux Etats-Unis et à laquelle vient se rallier également la Chambre des Lords, est aussi celle qui domine en France, en Italie, au Canada, au Danemark, aux Pays-Bas et en Belgique. Il lui semble donc qu'une règle interprétative pourrait être aisément mise au point afin de rallier l'unanimité sur cette question.

N° 12. L'Association Belge n'a pas d'observation à formuler.

N° 13. L'Association Belge appuie la proposition d'amendement présentée par la minorité de la Commission et ce pour les raisons indiquées dans le rapport lui-même.

N° 14 et N° 15. L'Association Belge se rallie aux conclusions de la Commission Internationale.

N° 16. L'Association Belge considère que dès l'instant où une divergence sensible d'interprétation est relevée par la jurisprudence des tribunaux de différents pays, sur une question importante, il appartient au Comité Maritime International de veiller à l'établissement de l'uniformité du Droit. Le fait que, comme la Convention sur les connaissements existe depuis trente ans les personnes qui s'occupent de réclamations basées sur des connaissements sont actuellement familiarisées avec les démarches qu'il faut faire dans un Etat contractant particulier, afin d'éviter prescription, ne paraît pas, à l'Association Belge, de nature à dissuader le Comité Maritime International de remplir la mission qui est la sienne. Ce motif, étendu à d'autres cas, conduirait en effet le Comité Maritime International à renoncer purement et simplement à son rôle. Rien ne s'opposerait, semble-t-il, à ce qu'une règle interprétative soit proposée pour consacrer la solution qui, après examen, apparaîtrait la meilleure ou la plus conforme à l'opinion dominante.

N° 17. L'Association Belge n'est pas opposée en principe que soit éventuellement reconnue expressément la validité de la clause indiquée sous la lettre A (« stricte »).

N° 18 et N° 19. L'Association Belge n'a pas d'observation à formuler à ce sujet.

N° 20. L'Association Belge se rallie à l'opinion exprimée par la majorité de la Commission. La modification qui avait été proposée sur ce point lui semble en effet inutile et peut-être même dangereuse.

N° 21, N° 22, N° 23, N° 24. L'Association Belge se rallie aux propositions de la Commission Internationale sur ces quatre points.

L'Association Belge croit que la proposition d'insérer les amendements qui seront éventuellement adoptés par la Conférence à Stockholm dans un protocole additionnel est celle qui présente le plus d'avantages et le moins d'inconvénients.

### OBSERVATION COMPLÉMENTAIRE

Les dispositions de l'article 3 relatives aux mentions qui peuvent ou doivent être insérées dans le connaissement ont donné lieu à certaines difficultés d'interprétation en Belgique.

Pour rendre la situation plus claire et mettre fin à certaines contestations, l'Association Belge souhaiterait que soient prises en considération les règles interprétatives ci-après.

1. « Le motif pour lequel le transporteur refuse de tenir pour » exacte l'une de ces mentions doit être indiqué par une clause mar- » ginale sur le connaissement lui-même ».

(à insérer à la fin du § 3 de l'art. 3)

2. « Si le connaissement mentionne à la fois le nombre ou la » quantité, d'une part, et le poids d'autre part, le transporteur peut, » par une mention spéciale, préciser celle des deux indications à la- » quelle il ne reconnaît pas de force probante ».

(à insérer à la fin du § 3 de l'art. 3 après l'ajoute ci-dessus, sub 1°).

*Mai, 1963*

THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

SPECIAL REPORT  
OF THE BILL OF LADING COMMITTEE

REVISION OF THE HAGUE RULES

INTRODUCTION

The Hague Rules were originally prepared by the Comité Maritime International (C.M.I.) and take their name from the Plenary Conference of the C.M.I. at the Hague in 1923, at which they were approved and recommended to the Diplomatic Conference for adoption as an International Convention. They were approved by the Diplomatic Conference at Brussels August 25, 1924, and have since been ratified or enacted as domestic legislation by a large number of countries. Some countries made their own special amendments when accepting the Hague Rules and some made the Rules applicable to inward shipments as well as outward ones.

The United States of America, when ratifying the Hague Rules, took exception to Article IX, the Gold Clause, the purpose of which was to maintain uniformity of the limitation amount of £ 100 per package or shipping unit. The United States Carriage of Goods by Sea Act, approved April 16, 1936, consequently provided that the limitation amount should be \$ 500 U. S. currency. That Act also changed the limitation system for unpackaged goods, substituting the « customary freight unit » for the shipping « unit ». Many other countries which had also taken their currenties off the gold standard rejected

(\*) At the Annual Meeting of The Maritime Law Association of the United States, the report of its Bill of Lading Committee was approved in all respects except as regards Section 7, Both-to-Blame, as to which the vote was inconclusive, being nearly a tie vote.

the Gold Clause in one way or another. Its effect is in doubt in England and an ingenious private arrangement has been made among underwriters there substituting £ 200 of present currency for £ 100 Sterling. This agreement may be found in Scrutton, 16th, Edition, p. 575.

Interpretations of the Hague Rules by the courts of the various Hague Rules countries have also over the years developed substantial differences in the effect of the Rules in different countries.

The most striking difference in the effect of the Rules is the disparity which had developed in connection with the limitation amount. In England, for instance, the limitation amount is still £ 100 but its value has fallen to U. S. \$ 280. Other limitation amounts vary, in terms of U. S. money, from \$ 189 to \$ 552. The possibility of a conflict of law developed in connection with a shipment from a Hague Rules country to another country which applies the Rules to inward shipments. For instance, in the case of a shipment from England to the United States, the English Water Carriage of Goods Act fixes the limitation at £ 100 (U. S. \$ 280), while the United States Carriage of Goods by Sea Act fixes its at \$ 500, and both Acts, by their own terms, apply to such a shipment.

In May, 1959, the Subcommittee on Conflict of Laws of the C.M.I. raised the question whether the C.M.I. should prepare and recommend to the Diplomatic Conference a set of rules which would prescribe beyond the possibility of dispute which law should apply under all circumstances. This proposal was circulated for comment by the National Associations which are members of the C.M.I. At the same time, the Subcommittee pointed out that there were a number of other questions needing attention, and suggested that rather than developing a set of conflict of law rules, the state of the jurisprudence of each Hague Rules country be studied and amendments to the Hague Rules be prepared which would eliminate the differences.

In this posture, the matter came before the Plenary Conference of the C.M.I., held at Rijeka in September, 1959. It was there unanimously decided to solve certain English, French and Italian problems, and, by a vote of 19-5, the United States delegation being in opposition, to study the other questions which had been mentioned and any others which might be brought up.

The amendment to the Hague Rules adopted at the Rijeka Conference is the replacement of Article X of the Hague Rules with the following :

« 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, of discharge or one of the optional ports of discharge, is situated 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. »

The name of the Subcommittee was changed to the « Subcommittee on Bill of Lading Clauses » and it will herein be referred to simply as « the Subcommittee ». The Chairman of the Subcommittee is Hon. Kaj Pineus, President of the Swedish Maritime Law Association and a Swedish average adjuster, of whom there are two, appointed by the Crown.

The matter has been studied by correspondence and in Subcommittee meetings. The result of the deliberations of the Subcommittee was a document entitled in French and English, « Report of the International Subcommittee on Bill of Lading Clauses », dated March 30, 1962. Through the kindness of the C.M.I., enough copies of this document were made available to The Maritime Law Association of the United States so that it was possible to distribute a copy to each of our members, and this was done under cover of Document No. 459, dated October 15, 1962.

Your Committee's Report contained in Document No. 549 solicited the comments of the members of the Association for your Committee's guidance in preparing its final report and recommendations. The comments received consisted of three letters, one in opposition to any extension of the Hague Rules to protect stevedores or independent contractors, as would be accomplished by Recommendation No. 5 of the Subcommittee, the second supporting Recommendation No. 1 of the Subcommittee, in opposition to the imposition of liability upon a carrier where the shipper loads or discharges the cargo, and the third merely endorsing the second.

In view of the fact that possible revisions of the Hague Rules other than Article X were under study by the Subcommittee, the Bureau Permanent of the C.M.I., which is the governing body between meetings, decided to defer sending to the Diplomatic Conference the amendment to Article X, which had been agreed upon at Rijeka. There will, therefore, be a recommendation to the Diplomatic Conference of that amendment, and any other amendment which the C.M.I. decides to propose will be sent along with it. This fact makes it unnecessary to consider whether or not any particular other amendment or group of amendments is of sufficient importance to justify asking the Diplomatic Conference to consider amending the Hague Rules at this time.

The United States delegation to the Plenary Conference of the C.M.I. to be held at Stockholm from June 9 to 16, 1963, will have to be instructed by the Association at the Annual Meeting in May. The recommendations of the Subcommittee do not foreclose any possibility that other subjects may be brought up, and it will, of course, also

be open to the Conference to amend the proposals which have been put forward by the Subcommittee and to reject any of them in whole or in part. Your Committee therefore recommends that the Association at the annual meeting in May give the broadest possible authority to the Association's delegation so as to put the delegation in a position of being able effectively to represent our Association and the interests of the United States.

*It is your Committee's recommendation, by a vote of 9 to 4, that our Association's delegation be instructed as to the position which our Association would like to see taken with respect to each of the points discussed below and also that the delegation be empowered by a majority vote of the members of the delegation present at any regular delegation meeting to vote for or against any amendment of the Hague Rules discussed at the Conference not inconsistent with the tenor of this report in the form approved by the Association.*

The Subcommittee examined proposals for amendment of the Hague Rules with respect to 24 different questions. The final report of the Subcommittee recommended positive action with respect to six of those subjects, mentioned one more subject with an indication that it might be considered necessary if the United States did not enact legislation which was then under consideration, recommended against any action with respect to 16 more subjects, and placed one subject under further investigation with the probability that it will be brought up for discussion and possible action at the Stockholm Conference. Your Committee is in agreement with the Subcommittee's recommendation against action on any of the 16 subjects examined and rejected, and in the interest of saving time those subjects will not be mentioned in this report. The other subjects will be taken up with the numbers assigned to them by the Subcommittee.

**1. Carrier's Liability for Negligent Loading, Stowage or Discharge of the Goods by the Shipper or Consignee. (Art. III (2)).**

The Subcommittee proposes that Art. III (2) be amended to read as follows :

« (2) In so far as these operations are not performed by the shipper or consignee the carrier shall, subject to the provisions of Article IV properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried. »

Your Committee feels that the scope of the proposed clause is too broad and might lead to difficulty. The purchaser of a bill of lading may not know whether the loading of the goods was carried out by the shipper or by the carrier, and your Committee considers that for the good of international commerce the effectiveness of bills of lading should not be diminished by an amendment such as that proposed.

It is quite common in voyage chartering to provide that cargo shall be loaded at the risk and expense of the shipper or that it shall be discharged at the risk and expense of the consignee, and frequently both of these provisions are included in a single charterparty, often referred to as « free in and out » or « F.I.O. ». In the opinion of your Committee such clauses are not in violation of the Hague Rules, and sufficiently protect the carrier against ultimately having to bear a loss due to negligence of the shipped or receiver in loading or discharging the goods.

*Your Committee recommends that the Association disapprove this amendment.*

However, your Committee would not object to an amendment clearly limiting the Carrier's freedom from liability to the extent of damage done by the shipper or consignee to his own cargo, if the bill or lading is so claused as to put a purchaser thereof on notice of the fact that the shipper is to load or the consignee is to discharge. Your Committee considers that such a result could be obtained by amending Article III (2) to read (new latter in italics) :

« Subject to the provisions of Article 4, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried, *provided, however, that if the shipper or consignee performs any of such operations and the bill of lading so states, the carrier shall not be liable for loss or damage to that shipper's or consignee's goods due to the negligent performance of such operation.* »

Your Committee recommends that the Association's delegation to the Stockholm Conference be instructed to support an amendment to Article III (2) substantially in the form last above set forth.

## **2. Notice of Claim. (Art. III (6) first paragraph).**

The majority of the Subcommittee recommends that Art. III (6), first paragraph, be amended by adding the words appearing in italics below :

« Unless \* \* \* (no change) \* \* \* within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading *but shall have no other effect on the relations between the parties.* »

This amendment would be in accordance with the United States interpretation of the Hague Rules as they presently stand. Under the jurisprudence of Germany, and perhaps some other countries, Art. III (6) has been interpreted to place upon the consignee the burden of proof in all respects including, for instance, proof of the lack of

exercise of due diligence in making the ship seaworthy, if goods are removed against a clean receipt and no notice given within 3 days. The purpose of the amendment is to eliminate this lack of uniformity and, as already noted, it would not affect the law of the United States.

*Your Committee recommends that this amendment be approved by our Association.*

### 3. Time Limit in Respect of Claims for Wrong Delivery. (Art. III (6), third paragraph).

The majority of the Subcommittee recommends that there be added to Art. III (6), third paragraph, the words shown in italics below, so that the paragraph would read as follows (new words in italics) :

« In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered; *provided that in the event of delivery of the goods to a person not intitled to them the above period of one year shall be extended to two years from the date of the Bill of Lading.* »

Your Committee considers that such an extension of time to sue is not necessary, since the one-year limitation of time to sue is so well known that suit is almost always brought in one year. The consignee usually would not know whether the goods had been lost or wrongly delivered and would not delay suing in reliance on a belief that the goods had been wrongly delivered. In addition, your Committee fears that the adoption of such an amendment would in some cases foment litigation by encouraging disputes as to whether cargo had been lost or wrongly delivered.

*Your Committee therefore recommends that our Association disapprove this amendment.*

During the deliberations of the Subcommittee, it was pointed out that sometimes original bills of lading are lost or mislaid, making it necessary to deliver the goods against a letter of indemnity supported by a bank guaranty or other security. It was further pointed out that it is not safe for a carrier to release the letter of indemnity and its security until the expiration of any possibly applicable statute of limitations and that the maintenance of the security may be a substantial burden on the consignee. The suggestion was well received by the Subcommittee but no action was taken on it, attention being focussed on the special problem of allowing an extra year for suit in cases of delivery to a person not entitled to the goods.

The Swedish Maritime Law Association, in its report dated December 14, 1962, has revived this proposal and recommended that the

third paragraph of Art. III (6) be amended to read (new words in italics) :

« In any event [the carrier and the ship shall be discharged from all liability in respect of loss or damage] *all rights under the bill of lading cease* unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. »

Your Committee agrees in substance with this proposal but fears that the language used might be interpreted to prohibit any extension of time even by mutual agreement. Your Committee feels that it would be preferable to stay closer to the present language, which had already been interpreted to permit such extensions of time, for instance, by using the following language :

« In any event the carrier and the ship shall be discharged from all liability in respect of [ loss or damage] *the goods* unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. »

*Your Committee recommends that our Association's delegation to the Stockholm Conference be instructed to support this proposal, substantially in the form last above set forth.*

#### **4. Gold Clause. Rate of Exchange, Unit Limitation. (Art. IV (5) and IX).**

As already noted in the introductory remarks of this report, the unit limitations of the various Hague Rules countries are no longer standardized as they were when the Hague Rules were first made effective. The Brussels Convention of 1924 contained a Gold Clause (Art. IX), the purpose of which was to maintain standardization of the limitation amount, even if currencies fluctuated. In the 1930's, gold became generally rejected as the basis for national currencies and in various ways gold ceased to be used as a basis for maintaining the parity of limitation amounts. In the case of the United States, gold was specifically rejected both in ratifying the Convention and in the enactment of the Carriage of Goods by Sea Act. The majority of the Subcommittee recommends the following :

- « 1) Article IX be struck out
- 2) Article IV (5) should read as follows :

« Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65.5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been

declared by the shipper before shipment and inserted in the Bill of Lading. »

« This declaration \* \* \* (no change) \* \* \* on the carrier. »

« By agreement \* \* \* (no change) \* \* \* above named. »

« Neither the \* \* \* (no change) \* \* \* of lading. »

« The date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seized of the case. »

3) the status quo be retained in respect of « package and unit. »

The franc defined above is the so-called « Poincaré Franc », an artificial unit developed for the purpose of maintaining a parity of limitation amounts. This method was accepted by the United States in connection with the Warsaw Convention, dealing with liability of air carriers, and has proved practical and successful in practice. Your Committee sees no reason why the system should not be equally practical and successful in connection with the Hague Rules, and recommends that it be accepted. The proposed new limitation of 10,000 Poincaré Francs is a convenient round figure, equal at present to about U. S. \$ 662 and is higher than any existing Hague Rules limitation.

*Your Committee therefore considers it acceptable.*

The question of the date of conversion was discussed at length in the Subcommittee, it being the recommendation of certain European members of the Subcommittee that the time of payment be stipulated as the date for conversion even if the time of payment should be later than the time of judgment. The European members felt that such a time for conversion, which is common practice in Europe, is fairer because it prevents a carrier from speculating on foreign exchange by delaying payment of a claim or a judgment. This proposal was opposed in the Subcommittee by the Anglo-Saxon delegates because under Anglo-Saxon procedural methods it is impossible to have a date for conversion subsequent to the date of judgment, the rate of conversion being a question of fact for decision by the Trial Court.

*Your Committee considers the reservation with regard to the date of conversion as being harmless and, in fact, meaningless, but recommends that our Association's delegation be instructed not to object to the inclusion or exclusion of this provision.*

The Subcommittee also examined the problem of the different units for limitation purposes used in various international enactments of the Hague Rules. Although the Subcommittee found that substantial lack of uniformity had developed, both because of differences in legislation and because of differences in interpretation, it appeared impossible to negotiate any other solution.

*Your Committee recommends no action on this point.*

## 5. Liability in Tort, the Himalaya Problem.

The decision of the Subcommittee on this point is as follows :

« In order to avoid the possibility of by-passing the contract and the legislation based on the convention the Subcommittee recommends to the I.M.C. that the following new Article be adopted :

« 1) Any action for damages against the carrier, whether founded in contract or in tort, can only be brought subject to the conditions and limits provided for in this Convention.

2) If such an action is brought against a servant or agent of the carrier or against an independent contractor employed by him in the carriage of goods, such servant, agent or independent contractor shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3) The aggregate of the amounts recoverable from the carrier, his servants, agents and independent contractors in the employment of the carrier, in that case, shall not exceed the limit provided for in this Convention.

4) Nevertheless, the servant, agent or independent contractor shall not be entitled to the benefits of the above provisions if it is proved that the loss or damage resulted from an act or omission of such servant, agent or independent contractor done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result. »

The provisions of sub-paragraph (4) of the proposed new Article will be noted. In order to ensure that the position of a carrier is the same as a servant in such circumstances the Subcommittee further recommends that to Article IV be added a new provision which would have no. 7 and would read thus :

« Neither the carrier nor the ship shall be entitled to the benefit of the defences and limits of liability provided for in this Convention if it is proved that the loss or damage resulted from an act or omission of the carrier himself done with intent to cause loss or damage or recklessly and with knowledge that loss or damage would probably result. »

If a bill of lading clause claiming the benefits of the Hague Rules for the carrier's servants and independent contractors would be held by the United States Supreme Court and other final courts of appeal to be enforceable, such an amendment would not be necessary. Your Committee expresses no opinion as to whether or not such a bill of lading clause would be enforced by the courts, and nothing contained herein should be construed as indicating such an opinion.

As pointed out by the Subcommittee, there is a current dispute between cargo and vessel interests as to whether Article III (6) of

the Hague Rules (\$ 500 per package or per customary freight unit under the U. S. Carriage of Goods by Sea Act) may properly be extended to stevedores or others. The majority of your Committee considers attempts to hold stevedores and others liable in circumstances such that the carrier cannot be held liable particularly unfair in view of the fact that the shipper has been offered a choice of freight rates, the higher rate carrying an increased limitation amount, and he has chosen the lower rate but by suing others seeks the benefit he would have had under the higher rate. While it might be argued that the recovery in a suit against one other than the carrier is of no concern to the carrier, the practical economic fact is that the cost of judgments against such others has to be paid by the carrier in one way or another — either directly or through increased rates to stevedores, for instance — so that in fact any possibility of such a recovery is, *pro tanto*, a nullification of the protection given to the carrier under the Hague Rules.

*The majority of your Committee (9 members to 4 members) agrees with the recommendation of the Subcommittee, except that they do not approve paragraph (4) of the proposed new Article or the proposed new paragraph (7) of Article IV, and recommends that our Association's delegation be instructed to support this amendment.*

It has been suggested that there is a possibility of misinterpretation of the words, « in the carriage of the goods », in paragraph 2) quoted above and *your Committee recommends that these words should be changed to, « in connection with the carrier's duties under this Act. »*

## **6. Nuclear Damage.**

The Subcommittee recommends a new article on nuclear damage to read as follows :

« This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage. »

Under ordinary principles of statutory interpretation, your Committee would not consider any such amendment to be necessary. However, in view of the fact that such an amendment was contained in the 1961 Convention on Carriage of Passengers by Sea, Art. XIV, *your Committee has no objection to including such a provision in the present amendments to the Hague Rules and recommends that our Association's delegation be instructed accordingly.*

## **7. Both-to-Blame.**

The Subcommittee criticized the jurisprudence of the United States under which the cargo of a vessel which is partly to blame in a collision may in effect recover half of its loss from the carrying vessel, although if that vessel was solely to blame the owner and the vessel would be exempted from liability for negligence in the navigation or management

of the vessel and also for unseaworthiness if due diligence was proved to have been exercised to make the ship seaworthy before and at the beginning of the voyage. In view of the fact that at the time of the Subcommittee's report there was pending in the United States Congress legislation to enact as the domestic law of the United States the principles of the Brussels Collision Convention of 1910, the Subcommittee did not make any recommendation for action.

Subsequently, however, in accordance with a previous understanding with the Subcommittee, to keep him advised of developments here, the Chairman of your Association's Committee reported to the Chairman of the Subcommittee that the legislation had been withdrawn, and the Chairman of the Subcommittee has circulated that report to the members of the Subcommittee with a suggestion that Art. IV be amended to say that neither the carrier nor the ship shall be liable « directly or indirectly » for loss or damage, etc., resulting from causes for which the carrier cannot now be held liable directly. This could be done by inserting the words « directly or indirectly » after « liable » at the beginning of Art. IV (1) and after « responsible » in Art. IV (2).

From the point of view of draftmanship, the simplicity of the approach thus proposed in appealing and your Committee has studied it sympathetically. However, your Committee is of the opinion that such an amendment would not accomplish the purpose intended in certain both-to-blame collisions because of problems of collision accounting in connection with the single liability principle of limitation of liability and the fact that fault of the carrying ship is not imputed to her cargo.

The both-to-blame collision clause widely used in bills of lading (and quoted below) is based on the principle of indemnification by cargo to the ship for money recovered for a cause for which the ship and her owners are not responsible under the Hague Rules. Your Committee considers this approach artificial and sought diligently for a direct means to avoid this circuitry but the same problems of collision accounting doomed this attempt to failure.

Your Committee has reached the conclusion that if the both-to-blame problem is to be solved by amendment to the Hague Rules, the only suitable way to do it is by amending the Hague Rules, preferably Article III (8), to provide that the both-to-blame collision clause shall not be prohibited under the Hague Rules, and, if included in a bill of lading, shall be given effect in accordance with its terms.

Accordingly, it seems to your Committee that the best means of dealing with this question is an amendment to Article III (8) of the Hague Rules to add the following paragraph :

« A clause in a contract of carriage in substantially the following form shall, however, be valid and enforceable in accordance with its terms :

« If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier. »

However, your Committee is further of the opinion that the best way to eliminate the anomalous rule that a ship solely at fault is free of liability while one partly at fault is liable and bring United States law into conformity with the law of the rest of the world on this point is to ratify the Brussels Collision Convention or to enact the provisions of that Convention as United States law. Your Committee therefore would not recommend amendment of the Hague Rules on this point, if it were certain that the principles of the Brussels Collision Convention would in the near future be enacted as domestic law of the United States. However, there is the difficulty of timing.

*The majority of your Committee recommends by a vote of 9 to 4 that our Association's delegation to the Stockholm Conference be instructed to support an amendment of the Hague Rules to make valid a both-to-blame clause or otherwise eliminate the difficulties of the United States both-to-blame rule, preferably as above proposed, with the understanding, however, that the C.M.I. in reporting the proposed amendments should point out to the Diplomatic Conference that the both-to-blame amendment deals solely with a problem of United States law, and that it should be abandoned if, before the close of the Diplomatic Conference which deals with the proposed amendments to the Hague Rules, the problem is cured by United States legislation.*

(Note : As previously indicated, this report makes no comment with regard to points 8, 9 and 10 of the Report of the Subcommittee, since on these points the Subcommittee recommends no action.)

## **11. Due Diligence to Make Ship Seaworthy (Art. III (1) and IV (1)).**

During the period when the Subcommittee was studying amendments to the Hague Rules, the English House of Lords decided that a shipowner had not exercised due diligence in making the vessel seaworthy when he selected competent repairers who failed to do a parti-

cular job competently and, therefore, held the shipowner liable. This decision was in accordance with pre-existing United States law but caused a preliminary discussion of comparative law within the Subcommittee, in which it appeared that United States and English law were at variance with continental law on this point.

The difference between the continental law and United States law was succinctly summarized by the French legal terminology in which the French describe their own interpretation as an « obligation de moyens » or duty to use proper means, whereas the French describe the United States and English rule as an « obligation de résultat » or duty to achieve the result. It appeared that the divergence between continental jurisprudence and Anglo-Saxon jurisprudence was due at least in part to a difference in the text of the Hague Rules in the French language and in the English language. The Brussels Convention of 1924 in both French and English is printed as an appendix to the report of the Subcommittee. In the French language in the text of Art. III (1), quoted at the foot of page 2 of the appendix, the carrier is bound to exercise « une diligence raisonnable » to make the ship seaworthy, properly manned, equipped, etc. A fair translation of the French language text would be that the carrier is bound to exercise « reasonable diligence » while the English text requires him to exercise « due diligence ».

Since this subject came up so late in the deliberations of the Subcommittee that it was not possible thoroughly to explore and deal with the subject as had been done with the other questions, it was left that Dean van Ryn of the University of Brussels should, with the assistance of the representatives of the National Associations, study this problem and report at a later date. Dean van Ryn's report has not yet been received but it is expected that it will be received sufficiently in advance of the Stockholm Conference so that consideration of this point can be included in the deliberations at Stockholm.

*Your Committee recommends that our Association's delegation to the Stockholm Conference be instructed to seek international uniformity on this point, preferably on the basis of amendment of the Hague Rules to assure that the jurisprudence of all countries will be brought into accord with the jurisprudence of the United States and England.*

#### **Additional Comment Regarding Revision of Art. X.**

As indicated above (p. 4949) there was previously a proposal that a conflicts of law rule be formulated. Your Committee has heard that this proposal will probably be revived at Stockholm. Your Committee considers that for practical reasons there should be no conflicts of law rule, leaving the choice of law wherever possible to the court of the forum.

*Your Committee therefore recommends that our Association's delegation be instructed to oppose a conflict of law rule.*

### **Conclusion**

Your Committee is keenly aware of the importance of the position of the United States in the world of today and of the comparatively high corresponding position of leadership of our Association in the C.M.I. at recent Conferences. Your Committee therefore considers it important that our Association exercise its leadership but also that, where necessary and in the interest of international good will and uniformity of law, our Association accommodate its views with the views of others.

*February 25, 1963.*

Respectfully submitted,

*J. Edwin Carey \**  
*Albert F. Chrystal*  
*James J. Donovan, Jr. \**  
*James E. Freehill*  
*Harry L. Haehl, Jr.*  
*William L. Hamm*  
*Walter P. Hickey*  
*Herbert M. Lord*  
*Cyril F. Powers*  
*Henry J. Read \**  
*Dewey R. Villareal, Jr.*  
*John W. R. Zisgen \**  
*John C. Moore, Chairman*

\* Subject to Minority Report, Doc. No. 463A.

THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

BILL OF LADING COMMITTEE  
REVISION OF THE HAGUE RULES

MINORITY REPORT

The undersigned members of this Association's Committee on Bills of Lading strongly dissent from the recommendations of the Majority Report on two subjects, viz. :

5. Liability in tort, the Himalaya problem,  
and

7. Both-to-Blame

and urge the Association to reject those recommendations.

*5. Liability in tort, the Himalaya problem.*

The reasons given by the Subcommittee of the Comité Maritime International for seeking revision of the Hague Rules so as to extend to servants and agents of the carrier and to independent contractors employed by him in the carriage of goods the exculpatory clauses of the Rules, and the limitations of amount of liability established therein, are :

« In order to avoid the possibility of by-passing the contract and the legislation based on the convention \* \* \* . »

The reasons are specious and the reasoning baseless.

The Hague Rules themselves grant the exonerations and limitations only to « the carrier », not to his agents, servants, or independent contractors. Article 2 of the Hague Rules provides that :

« \* \* \* the carrier \* \* \* shall be \* \* \* entitled to the rights and immunities hereinafter set forth » ;

and Articles 1(a) defines « carrier » :

« « carrier » includes the owner or the charterer who enters into a contract of carriage with a shipper » .

We know of no « legislation based on the convention » which defines carrier otherwise; and it is clear, therefore, that suits against servants and agents of the carrier, and independent contractors, do not « by-pass \* \* \* legislation based on the convention » — those persons are not entitled to the benefits of such legislation by the terms of the legislation itself. *Krawill v. Herd*, 359 U. S. 297, 301-2.

The statutory exemptions and limitations, which were a departure from a common carrier's common law insurer's liability, were granted to « carriers » only to encourage shipping, a purpose only remotely served, if at all, by their extension to agents, stevedores and repairmen. It is to be noted that the direct beneficiaries of such a change are not the proponents of it. Rather, the extension is being advocated by the shipowners and their liability underwriters.

Similarly, such suits do not « by-pass the contract ». At least until very recent months, bills of lading did not purport to be made for the benefit of the carrier's agents or servants, or for independent contractors; and unless they do, it cannot be argued that such persons are entitled to their benefits.

The recommendation of the majority of the Committee, in any event, goes far beyond the stated reason. It would extend the benefits of the Rules to agents, servants, and independent contractors *not only when the bill of lading contract purports to be made for their benefit, but even when it does not.*

No servant, agent or independent contractor can be held liable excepting for his own negligence. Exoneration from liability for one's own negligence or limitation of the amount of that liability, is rightly the exception, not the rule. These should be granted sparingly, and only for good reasons. The reasons advanced by the Subcommittee and by the majority of this Committee are not such reasons.

The recommendation of the majority of this Committee goes even beyond the recommendations of the Subcommittee of the Comité. The latter propose to deny the benefits of the Rules to carriers, agents, etc. whose acts or omissions are done

« with intent to cause loss or damage, or recklessly and with knowledge that loss or damage would probably result. »

The majority of this Committee recommends that these provisions be stricken. Apparently it proposes to exonerate carriers, servants and independent contractors from liability even for wilful, personal, malicious damage to cargo.

The Hague Rules themselves were a compromise of conflicting interests, among which a balance was struck. The recommendation of the majority upsets that balance, without any compensatory benefit to cargo interests.

*We recommend (1) that the Association's Delegation be instructed to oppose the amendment; but (2) that if it be instructed to support it, the instructions require that it support the whole amendment, including paragraphs « 4 » and « 7 ».*

### 7. Both-to-Blame

At the outset, it should be noted that this whole matter concerns only the law of the United States. The Subcommittee of the Comité says only that it :

« \* \* \* would regard it as a great progress towards the unification of Maritime Law if the United States would accept and adopt the same rules about collisions as the rest of the maritime world \* \* \* ».

and the majority of this Committee concedes that :

« \* \* \* the best way to \* \* \* bring United States law into conformity with the law of the rest of the world \* \* \* is to ratify the Brussels Collision Convention or to enact the provisions of that Convention as United States Law. Your Committee therefore would not recommend amendment of the Hague Rules on this point, if it were certain that the principles of the Brussels Collision Convention would in the near future be enacted as domestic law of the United States ».

The concession makes it crystal clear that *the majority of this Committee seeks to amend the Hague Rules solely to effect a change in the law of the United States which the Congress has thus far been unwilling to make.* This we consider presumptuous and devious. It goes far beyond the Subcommittee's cautious remarks, which merely urge the United States to act. This ground alone would, we submit, justify defeat of the majority's recommendation.

Above and beyond this, however, is the inherent inequity of the recommendation. The both-to-blame clause perpetrates a legal wrong. It requires an innocent party to compensate a guilty one for the consequences of the latter's negligence. This is wholly contrary to the concept that « admiralty does equity ».

The both-to-blame clause does not, as the majority report says, require « indemnification by cargo to the ship for money recovered for a cause for which the ship and her owners are not responsible under the Hague Rules ». On the contrary, it requires that indemnification for a cause not dealt with in the Hague Rules at all—the right of one joint tort-feasor to seek contribution from a fellow tort-feasor.

At the common-law, one of two joint tort-feasors had no privilege of contribution from the other. The admiralty early granted him that privilege. The both-to-blame clause now seeks to turn the privilege into a license to be negligent without penalty.

By hypothesis in a both-to-blame situation both ships are negligent. The cargo is free from fault. The both-to-blame clause seeks to transfer the consequences of negligence of the carrying ship to its innocent cargo, while freeing that negligent ship from the consequences of its own negligence. This is neither logical nor equitable.

If, as the majority euphemistically insists, the sole purpose of the proposed amendment is to free the carrying ship from contributing to reduce the damages which the non-carrying ship must pay the carrying ship's cargo, the result can be obtained simply and directly by abolishing the right of contribution between the two ships in both-to-blame situations. This would accomplish the result without penalizing the only innocent party involved—the cargo.

*We recommend that the Association's Delegation be instructed to vote against any amendment to the Hague Rules which would make valid the both-to-blame clause.*

*March, 11, 1963.*

Respectfully submitted,

*J. Edwin Carey,  
James J. Donovan, Jr.,  
Henry J. Read,  
John W. R. Zisgen.*

## AMENDMENTS (\*)

CONN./STO. - 1

### ITALIAN DELEGATION

#### ARTICLE III (2)

The carrier shall, subject to the provisions of Article IV, properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried, provided, however, that if loading, handling, stowing and discharging are performed by the shipper or consignee or by an independent contractor appointed by them and the bill of lading so states, the carrier shall not be liable for loss or damage to or non-delivery of the goods due to the negligent performance of such operations.

#### ARTICLE III (6)

Unless notice of loss or damage or non-delivery of the goods and the general nature of such loss, damage or non-delivery be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss, damage or non-delivery be not apparent within three days, such removal shall be prima facie evidence of delivery by the carrier of the goods as described in the Bill of Lading but shall have no other effect on the relations between the parties.

Notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability resulting from loss of or damage to or non-delivery of goods unless suit is brought within one year of the date on which the goods were delivered or should have been delivered.

In the case of any actual or apprehended loss, damage or non-delivery the carrier and the receiver shall give reasonable facilities to each other for inspecting and tally of the goods.

(\*) The Amendments not submitted to the vote of the Plenary Assembly, have been rejected during the debates of the Subcommittee for which no minutes have been published.

FRENCH, PORTUGUESE AND POLISH DELEGATIONS

WRONG DELIVERY

ARTICLE III (6bis)

En cas de livraison de la marchandise à une personne qui n'y avait pas droit d'après le connaissement, l'action contre le transporteur de la personne ayant droit à la livraison se prescrit par un an à dater du jour où cette personne a eu connaissance de la livraison indument faite, sans que ce délai puisse cependant excéder deux ans à partir du jour de l'émission du connaissement.

En pareil cas, le transporteur ne peut se prévaloir des dispositions de la Convention qui excluent ou limitent sa responsabilité.

CONN./STO. - 3

AMERICAN DELEGATION

ARTICLE III (6)

The United States Delegation proposes that the following new paragraph be inserted in Article III (6) after the third paragraph thereof :

« The preceding paragraph shall not apply to recourse actions. »

CONN./STO. - 4

SCANDINAVIAN DELEGATIONS

ARTICLE 3 (6)

Recourse actions may be instituted after the expiration of the period laid down in the preceding paragraph if such actions are brought within three months from the date on which the persons bringing such actions have themselves been sued or paid the claim without being sued.

PROTOCOL OR INTERNATIONAL CONVENTION  
TO AMEND THE INTERNATIONAL CONVENTION  
FOR THE UNIFICATION OF CERTAIN RULES OF LAW  
RELATING TO BILLS OF LADING SIGNED IN BRUSSELS  
ON THE 25th AUGUST, 1924

ARTICLE 1

§ 1. In Article 3, § 4 of the 1924 Convention shall be added :

« However proof to the contrary shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith. »

§ 2. In Article 3, § 6, paragraph 4 is deleted and replaced by :

« In any event the carrier and the ship shall be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

Such a period may, however, be extended should the parties concerned so agree. »

§ 3. In Article 3, after paragraph 6 shall be added the following paragraph 6bis :

« Recourse actions may be commenced after the expiry of the period specified in the preceding paragraph if such actions are instituted within one month from the date upon which the persons bringing such actions have themselves been sued. »

ARTICLE II

§ 1. In Article 4, of the Convention the first sub-paragraph of paragraph 5 is deleted and replaced by the following :

« Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10.000 francs per package or unit, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading. »

§ 2. In Article 4, Paragraph 5, shall be added the following :

« The date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seized of the case. »

### ARTICLE III

Between Articles 4 and 5 of the Convention shall be inserted the following Article 4bis :

« 1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.

3. The aggregate of the amounts recoverable from the carrier, his servants and agents shall in no case exceed the limit provided for in this Convention. »

### ARTICLE IV

Article 9 of the Convention shall be deleted and replaced by the following :

« This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage. »

### ARTICLE V

Article 10 of the Convention is deleted and replaced by the following :

« 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, of discharge or one of the optional ports of discharge, is situated 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. »

CONN./STO. - 6

### FRENCH AND AMERICAN DELEGATIONS

#### ARTICLE III § 6

« Recourse actions may be thought even after the expiration of the » year provided for in the preceding paragraph if brought within the » time allowed by the law of the Court seized of the case. However, » the time allowed shall be not less than three months, commencing » from the day when the person bringing such recourse action has been » served with process in the action against himself. »

CANADIAN DELEGATION

ARTICLE IVbis

1. That reference to « agent » and « agents » be deleted from the english translation of Article 4bis (being document Conn./STO-5 English) so that from Article 4bis (2) will be deleted the words «or agent» and from Article 4bis (3) will be deleted the words « and agents ».
2. No change in the French text.

AMERICAN DELEGATION

ARTICLE III

- « 2. If such an action is brought against a servant or agent of the carrier such servant or agent not being a stevedoring company or other independent contractor such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention. »

CONFERENCE OF STOCKHOLM  
PRELIMINARY REPORTS  
AND  
AMENDMENTS

2

PASSENGERS LUGGAGE

INTERNATIONAL CONVENTION FOR THE UNIFICATION  
OF CERTAIN RULES RELATING TO

THE CARRIAGE OF PASSENGERS BY SEA

*Signed at Brussels on the 29th April 1961*

The High Contracting Parties,

*Having recognised* the desirability of determining by agreement certain uniform rules relating to the carriage of passengers by sea.

*Have resolved* to conclude a Convention for this purpose, and to this have agreed as follows :

Article 1

In this Convention, the following terms shall have the meanings hereby assigned to them :

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 made by or on behalf of a carrier to carry passengers, but 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 seagoing ship;

e) « carriage » covers the period while a passenger is on board the ship, and in the course of embarking or disembarking; but does not include any period while the passenger is in a marine station or on a quay or other port installation. In addition, « 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 any carriage in which according to the contract of carriage the place of departure and the place of

destination are situated either in a single State if there is an intermediate port of call in another State, or in two different States;

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 contract of carriage, either the place of departure or the place of destination is in a Contracting State.

## Article 3

(1) Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure the safety of the passengers.

(2) Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment exercise due diligence in the respects set out in paragraph (1) of this Article.

## Article 4

(1) The carrier shall be liable for damage suffered as a result of the death of, or personal injury to a passenger if the incident which causes the damage so suffered occurs in the course of carriage and is due to 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 be presumed, unless the contrary is proved if the death or personal injury arises from or in connection with shipwreck, collision, stranding, explosion or fire.

(3) Except as provided in paragraph (2) of this Article the burden 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 exonerate the carrier wholly or partly from his liability in accordance with the provisions of its own law.

#### 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 francs, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900. The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment

(2) Where in accordance with the law of the Court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of these payments shall not exceed the said limit.

(3) Nevertheless the national legislation of any High Contracting Party may fix as far as the carriers who are subjects of such State are concerned a higher *per capita* limit of liability.

(4) The carrier and the passenger may also agree by special contract to a higher *per capita* limit of liability.

(5) Any legal costs awarded and taxes by a Court in an action for damages shall not be included in the limits of liability prescribed in this Article.

(6) The limits of liability prescribed in this Article shall apply to the aggregate of the claims put forward by or on behalf of any one passenger, his personal representatives, heirs or dependants on any distinct occasion.

## Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 6, 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 liability of owners of sea going ships or in any national law relating to such limitation.

## Article 9

Any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or his personal representatives, heirs or dependants or to prescribe a lower limit than that fixed in this Convention, as well as any such 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 render void the contract which shall remain subject to the provisions of this Convention.

## Article 10

(1) Any claim for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.

(2) Any claim for damages for personal injury suffered by a passenger may only be made by or on behalf of the passenger.

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

## Article 11

(1) In case of personal injury suffered by a passenger, he shall give written notice of such injury to the carrier within fifteen days of the date of disembarkation. If he fails to comply with this requirement, the passenger shall be presumed, in the absence of proof to the contrary, to have disembarked safe and sound.

(2) Actions for damages arising out of the death or personal injury of a passenger shall be time barred after a period of two years.

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

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

(5) In the event of personal injury which occurs in the course of carriage and results in death after disembarkation the limitation period shall be calculated from the date of death, provided that this period shall not exceed three years from the date of disembarkation.

(6) The law of the Court seized of the case shall govern rights of suspension and interruption of the limitation periods in this Article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

## Article 12

(1) If an action is brought against a servant or agent of a 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 limits.

(3) Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2)

of this Article 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

This Convention shall be applied to commercial carriage within the meaning of Article 1 undertaken by States or Public Authorities.

#### Article 14

This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage.

#### Article 15

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

#### Article 16

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government.

#### Article 17

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

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

#### Article 18

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

The instruments of accession shall be deposited with the Belgian Government.

The Convention shall come into force in respect of the acceding State three months after the date of the deposit of the instrument of the Convention as established by Article 17, paragraph (1).

#### Article 19

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.

#### Article 20

(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 countries which have not yet obtained sovereign rights and for whose international relations it is responsible.

The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the countries named therein.

The United Nations Organization may apply the provision of this Article in cases where they are the administering authority for a country or where they are responsible for the international relations of a country.

(2) The United Nations Organization or any High Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such country.

This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

#### Article 21

The Belgian Government shall notify the States represented at the eleventh session of the Diplomatic Conference on Maritime Law, and the acceding States to this Convention, of the following :

(1) The signatures, ratifications and accessions received in accordance with Articles 15, 16 and 18.

- (2) The date on which the present Convention will come into force in accordance with Article 17.
- (3) The notifications with regard the territorial application of the Convention in accordance with Article 20.
- (4) The denunciations received in accordance with Article 19.

## Article 22

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, provided that one third of the High Contracting Parties are in agreement, shall convene the Conference within six months thereafter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, whose credentials have been duly accepted, have signed this Convention.

DONE at Brussels, this 29th day of April, 1961, 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.

## PROTOCOL

Any High Contracting Party may at the time of signing, ratifying or acceding to this Convention make the following reservations :

- (1) not to give effect to the Convention in relation to carriage which according to its national law is not considered to be international carriage;
- (2) not to give effect to the Convention when the passenger and the carrier are both subjects of the said Contracting Party;
- (3) to give effect to this Convention either by giving it the force of law or by including the provisions of this Convention in its national legislation in a form appropriate to that legislation.

# LIABILITY OF CARRIERS BY SEA RELATING TO PASSENGERS' LUGGAGE

## QUESTIONNAIRE

### I.

A. Does the national codified law of your country contain compulsory provisions on the question of shipowners' liability to passenger luggage ?

If so, what are these provisions ?

B. Does the non-codified public order of your country lead to any similar compulsory restrictions ?

If so, what are these restrictions ?

C. Does the national law of your country contain non-compulsory (non-obligatory) provisions covering such liability ?

If so, what are these provisions ?

D. Does the national law of your country allow complete contractual freedom ?

If not, how far does such freedom go ?

### II.

A. Do you wish an international unification of maritime law on this subject ?

B. If so, by international convention ?

If you wish an international convention, what are your views on the following questions :

### III.

A. *What items should be considered as luggage* and therefore covered by the convention ?

(1) Clothes, watches, jewellery and other articles which the passenger carries on his (her) own person ?

(2) Trunks, suitcases etc. and other articles (cameras, binoculars etc.) which the passenger takes with him (her) in the cabin ?

(3) Trunks, suitcases etc. which are given into the custody of the vessel for storage in the vessels' luggage compartments or holds (registered luggage) ?

(4) Monies, bonds and valuables which are delivered to the vessel for keeping in the vessel's safe deposit box ?

(5) Cars, caravans and motorcycles etc. stowed either on deck or in the hold of the vessel ?

B. *What period of time* should the convention cover ?

(1) The period between the passing over the vessel's rail both ways, regardless of type of article ?

(2) Alternatively :

(a) From the time of the embarkation to the time of the disembarkation in connection with articles under A (1) and (2) above ?

(Embarkation and disembarkation will have to be closely defined, so that similar doubt as those connected with the Hague Rules can be eliminated.)

(b) From the time of the delivery to the representative of the carrier (on the shore or on board) and until the time of the redelivery, of all articles under A(3), (4) and (5) above ?

C. *What should be the basis of liability* ?

Which alternative(s) of the following would you prefer :

(1) Liability for fault, leaving the burden of proof for the non-existence of fault in all cases to the carrier ?

Any exception for nautical disasters ?

(2) Liability for fault, leaving the burden of proving the existence of such fault to the passenger ?

Any exception under this alternative for nautical disasters ?

(3) Hague Rules basis for liability with the corresponding burdens of proof ?

(4) Further freedom from liability ?

(5) A mixture of the above systems, i.e. a different basis according to what category of luggage is involved ?

The following points seem to indicate that a mixture would be the most reasonable :

To a large extent the passenger carries on himself or in his cabin a great number of items over which none except the passenger himself has any control or even knowledge, and a natural solution with regard to such articles would seem to be to put the burden of proof in every respect on the passenger.

On the other hand, some types of luggage are treated in practically the same way as ordinary cargo, and the system of the Hague Rules seems to be acceptable with regard to such luggage.

Do you think that f.i. the following basis would be reasonable ? (1)

(a) Liability according to III C (2) for all luggage under III A and (2) ?

Possible exception for nautical disasters ?

(b) Liability according to III C (3) for all luggage under III A and (5) ?

(c) Liability according to III C (1) for luggage under III A (4) ?  
Possible exception for nautical disasters ?

(d) No liabilities for monies, bonds and valuables not delivered to the vessel unless the passenger proves intent or gross negligence on the part of the carrier himself ?

*D. What should be the monetary limitation of liability ?*

(1) Do you agree in principle to a monetary limitation of liability supplementing the « global » limitation of the 1957 convention ?

If so, should such limit apply

(a) per passenger ?

(b) per package or unit ?

(c) Or should a combination of the two systems apply ? If you agree to the latter solution, the following could be considered :

(i) One limit for the total of all items under III A (1) and (2) put together, regardless of number of such items ?

(ii) One separate limit for the total of all items under III A (3) ?

(iii) One separate limit for the total of all items under III A (4) ?

(iv) One separate limit for each unit of articles under III A (5) ?

(2) Do you agree that the monetary limit should be described in Poincaré francs ?

If not in what other currency or value ?

(3) What should the amounts be ?

(Give the indication in f.i. US\$).

(4) Under what circumstances should the carrier lose his right to limit ?

(a) Would you agree to the same rule as in the 1957 limitation convention ?

(b) If not, indicate what other solution you would prefer ?

*E. Should all regulations in the convention be compulsory ?*

Or should the carrier be allowed to contract out of liability in some special instances ?

Or to a certain degree ?

It would not seem unreasonable having regard to the practical advantages to let the carrier be able to contract out of any liability for f.i. small scratches and other trifling damage to cars, caravans and motorcycles.

Alternatively, the convention could give the carrier the right to contract for a certain franchise per vehicle ?

F. Should the convention contain rules *on jurisdiction* ?

If so, one single jurisdiction or several alternatives ?

G. Should the convention contain rules on maximum *time within which to sue* ?

If so, what time limit ?

## LIABILITY OF CARRIERS BY SEA RELATING TO PASSENGERS' LUGGAGE

### REPORT

Prepared by Mr. Sjur Braekhus and Mr. Annar Poulsson.

During the preliminary work on the Convention concerning Shipowners' Liability to Passengers it was considered desirable that the Convention should contain also some provisions governing the carriers' liability towards passengers for damage to and loss of luggage.

The Madrid draft of the 24th September 1955 did contain such provisions in Art. 4 and Art. 7 (2) and (3).

This draft was, as far as the basical liability goes, closely tied in with the principles set out in the Hague Rules. Between 1955 and the Brussels Diplomatic Conference 1957 the opinion on the basical liability, however, changed rather substantially.

The consequence was that during the 1957 deliberations the shipowners' liability to passengers was basically disrupted from the Hague Rules principles, and if the liability to luggage should have followed the new principles, one would have ended up with a situation where the shipowners' liability to luggage was, in some respects, stricter than their liability to ordinary cargo.

The deliberations in Brussels 1957 on this point very soon indicated wide differences in opinion, and in the circumstances it was unanimously agreed to leave out of the draft convention all questions of luggage.

Accordingly, the draft convention which was put before the Diplomatic Conference in Brussels this year did not contain any provisions whatsoever concerning luggage.

During the Brussels meetings in April this year the question of luggage was again brought up, but was rejected as not being within the scope of the work entrusted to the Conference. The Convention was therefore finalized without any references to luggage.

As the question, however, apparently by a number of delegates was regarded as one of great interest, it was proposed that the C.M.I. should be asked to look into the possibility of forming a separate convention concerning luggage.

At the meeting of the Bureau Permanent immediately after the Conference, the Norwegian member of the Bureau was entrusted with the task of getting the work on such an additional convention started.

Accordingly, we have formulated the enclosed *questionnaire*, which should be submitted to all branches of the CMI with a request that replies should come forward before *November 1st this year*.

It should be mentioned that the questionnaire which was sent out in 1953 concerning the Passenger Convention did in fact also contain a couple of questions concerning luggage.

These questions were :

(20) Is a distinction to be made between luggage and other property of commercial value ?

(21) Should a distinction be made between various classes of luggage in regard to the manner of their custody ?

Both questions received practically unanimous confirmative replies.

Oslo, 19th Juli 1961.

Den Norske Sjøretts - Forening  
Hon. Secretary.

# LIABILITY OF CARRIERS BY SEA RELATING TO PASSENGERS' LUGGAGE

## PRELIMINARY REPORT

Reporters are Mr. Sjur Breakhus and Mr. Annar Poulsson, Oslo.

Reference is made to the « Report » dated 19.7.1961 and to the questionnaire attached thereto.

Replies to that questionnaire have been submitted to us from the Maritime Law Associations of Denmark, Finland, Italy and Sweden.

Although the replies do differ somewhat with regard to the need of a separate Convention concerning passengers' luggage, it seems to be an unanimous opinion of those who have replied that a reasonably worded Convention would certainly be useful. The national systems do at the moment represent a rather mixed up picture, and unification by way of an international Convention would seem to be desirable.

With regard to the details of the questionnaire, the replies are practically unanimous on the main questions, i.e. A) items of luggage to be covered by the Convention, B) period of time which the Convention should encompass, C) the general basis of the liability, D) the applicability of the monetary unit and E) the principle that the Convention should be compulsory and give little room for contractual freedom.

On one point the replies do give practically no indications of opinion, i.e. the actual amount to be fixed for the maximum liability.

The undersigned have therefore had to put up figures which in their view seem to be acceptable, bearing in mind those figures which were previously discussed at the meetings of the CMI.

The limit of time to sue has been suggested in the draft to 1 year. This is the time indicated in the majority of the replies. One reply sets the time at 6 months.

As will be understood, the project of a separate convention for luggage has not been received with any great enthusiasm. In spite hereof we do believe that there are sufficient basis to continue the work and to see whether a convention is after all desirable.

Many states will at any rate have to alter their national legislation so as to enable them to ratify the 1961 Convention with a luggage

Convention so that national legislators may evaluate both projects more or less simultaneously.

Both on land and in the air there are already existing rules on an international Convention level with regard to luggage. We may only mention the Warsaw Convention on air transport of 1929 and the Rome Convention on transport of passengers by rail of 1933.

We do think that the evaluation of all questions of liability are never at a standstill but on an everlasting change greatly influenced by the steadily growing ethical conscience. From a shipowners' point of view it will, we believe, be easier therefore to obtain acceptance of limitations if they are based upon an international formula.

As for the passengers, it will obviously be of great advantage to know that they are at least protected according to certain minimum requirements.

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We have indicated above that there are close connections between the 1961 passenger Convention and the present question. We do think that it is most important that the discussions with regard to luggage should if possible be handled quickly if it shall be taken up at all.

We have therefore already at this stage taken upon ourselves to formulate a full draft Convention for the consideration of the CMI at the Athens meeting in April this year. In doing so we have as much as possible drawn up the draft in identical Articles to those of the passenger Convention. We enclose herewith the draft which we hope can be circularized to the national branches of the CMI as quickly as possible, together with these comments.

The discussions could in our opinion be restricted to those main points which have to be new as compared with the 1961 Convention.

To facilitate the reading we have underlined all paragraphs or sentences which are new, and therefore need special attention.

If agreement is reached on the points of principle, all the non-underlined provisions may possibly be accepted without of with very little discussion, they have been so thoroughly thrashed out less than a year ago.

We shall make a few comments on the main points :

*Article 1 (c)* : We have felt that the convention should deal with all articles carried onboard a ship for a passenger except those carried under a B/L. We do think that there should be no « loopholes » in the applicability either of the B/L rules or of this luggage convention.

*Article 1 (f)* : We have found it necessary to describe the period of carriage differently with regard to the different ways in which luggage is handled :

With regard to all articles carried on the passengers' person or in the cabin we propose to follow exactly the definition in the passenger

Convention, whilst for the (usually) more heavy articles which are carried elsewhere aboard the ship the period of carriage necessarily will have to be described differently.

*Article 4* : The basis of liability should in our opinion be : fault or neglect.

However, in a number of instances, luggage is stowed in a ship's hold side by side with cargo carried under a B/L, and it would seem very peculiar if those commodities should not be subject to somewhat the same liability rules. On the other hand there is obviously not the same social need for compulsory regulations regarding luggage as there is concerning personal injury and death.

In view hereof we have let the Hague rules influence our conclusions in the present draft convention, and have accordingly exonerated the carrier for his servants' nautical faults or neglects.

The rule so suggested will be simpler than the detailed specifications contained in the Hague-rules, but will in most cases lead to the same result.

Under article 3 there is no guarantee for seaworthiness but a slightly extended due diligence-rule, close to the Hague-rules and identical with rules in the Passenger Convention.

With regard to burden of proof (Article 4 (3) and (4)), we have tried to lay down rules which correspond closely to the possibilities of each party of proving the necessary circumstances.

It is f.i. obviously apparent that the carrier will have no possibility to prove what has not been going on in a passenger cabin, where people walk in and out more or less continuously during the day. Consequently it seems to us that passengers must have the full burden of proof with regard to everything happening in the cabin or with articles carried on the passenger's person.

The corresponding arguments lead to the conclusion that the carrier should have the full burden of proof so far as all other luggage is concerned.

*Article 6* : The question of fixing the limitation of liability has caused some trouble. Should it be limited to so much per kilo, per package or per passenger or to some other basis ? We have found the per kilo basis of the Warsaw Convention unpractical, both because the weight of passenger luggage onboard a ship may run to a very high figure and often is not ascertainable. Even the per package limit is in our opinion not practicable in its pure form, for the same reason. We do, however, believe that our suggested mixed basis is workable.

So far as the actual amount is concerned we have had little or no leading advice in the answers to our questionnaire.

The figures mentioned in the Madrid draft of the Passenger Convention seem somewhat out of date, particularly in regard to the actual

value of motorcars carried so often now on or in connection with a passenger ticket.

On the other hand, all experience of liability underwriters do show that a fixed maximum amount of liability, though intended to represent an upper limit only, tend to become a minimum figure as well. Particularly in cases of luggage, where there are no invoices or other vouchers or documents showing the number or value of missing or damaged articles, the amount should not be allowed to be inflated too much.

So far as registered luggage is concerned there is a certain check already in the luggage receipt. Finally the value of a motorcar or other vehicle is fairly easily ascertainable. Accordingly we have suggested higher amounts for these categories of luggage. We do believe that they represent a reasonable compromise of the conflicting interests of the two parties.

It will be realised that the amount suggested as the limit for a motorvehicle is rather compared with the present practice in maritime transport. However, the figure of 20.000 frs. seems to correspond reasonably well with the value of an average motorcar today. (The usual traffic insurance on motorcars can easily handle any excess values).

When the average passenger is allowed a claim so close to the full value of his motorcar, provisions must on the other hand be made for some way of eliminating all the trifling claims for scratches and stains to the finishing of the car. There are two reasons for this : firstly passenger cars are practically always used cars. It would be absolutely impossible for the carriers' people before loading to inspect such cars sufficiently so as to ascertain even hairline scratches. secondly the finish of a modern motorcar is so « tender » that in many cases it is literally impossible to load, stow and discharge such a car without inflicting some minor scratches or chafings on its body.

These views have led us to the conclusion that the carrier should be allowed to contract for a certain deductible, applicable to claims for damage to motor vehicles. When it is a question of total loss, these arguments do not carry any weight, so we have suggested the application of a deductible to be restricted to partial damages. We do believe the figure of 5 % to be reasonable.

We may add that there are very strong views in Scandinavia that some sort of deductible must be a condition for including motor vehicles in the present draft convention.

*Article 9 :* The question of jurisdiction has caused special considerations. As will be remembered, this question was the subject of rather heated argumentations during the diplomatic conference in Brussels last year on the Passenger Convention.

We cannot but state that the solution which was finally adopted in that Convention is, in the opinion of the legal experts in the four

Scandinavian countries, not a happy one. It was and still is a strong feeling in these countries that prohibition should have its basis in a framework of jurisdictional alternatives, and then, and only then would it be sound to prohibit clauses which tried to widen the jurisdictional alternatives basically agreed upon.

However, we do not want to take up this discussion again, because we feel that it will be reasonable that a passenger who has claims both for personal injury and for damage to luggage should be able to sue the carrier for both categories of claims, in one and the same court.

The carrier will at any rate have to put up with these wide facilities of the passenger with regard to the personal injury claims, and the added inconveniences which the application of the same rule also to luggage claims bring, would seem to us not of very great importance.

Accordingly we have adopted the wording of the 1961 Passenger Convention on this point.

*Article 10 :* We have not found Article 10 (2) or (3) of the Passenger Convention applicable to the present draft. Accordingly we suggest only 10 (1) maintained, and in its unaltered form.

*Article 11 :* We have to a great extent maintained the same rules as in the Passenger Convention with regard to time limits, but have found it unnecessary to increase the well known 1 year limit in the Hague rules to the two year limit in the Passenger Convention. The same arguments which do influence the decision when it comes to personal injury do not have any weight so far as luggage is concerned, and we therefore do think that the 1 year limit is workable.

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

FIRST PRELIMINARY DRAFT

(March 1962)

Article 1

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

(a) « carrier » includes the shipowner or the charterer or the operator who enters into a contract of carriage of passengers and luggage.

(b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers *and their luggage*, but does not include a charterparty.

(c) « passenger » means only a person, carried in a ship under a contract of carriage.

(d) « ship » means only a sea-going ship.

(e) « luggage » means any articles which a passenger carries on his (her) person or takes with him (her) in the cabin, and any other articles carried for the passenger except articles carried under a B/L.

(f) « carriage » covers the following periods :

1) *With regard to any articles which the passenger carries on his (her) own person or takes with him (her) in the cabin*, the period while a passenger is on board the ship and in the course of embarkation or disembarkation, but does not include any period while the passengers is in a marine station or on a quay or other port installation. In addition « carriages » includes transport by water from land to a 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.

2) *With regard to all other articles the period from the time of delivery to the representative of the carrier on shore or on board and until the time of redelivery.*

(g) « international carriage » means by carriage in which according to the contract of carriage the place of departure and the place of destination are situated either in a single State, if there is an intermediate port of call in another State, or in two different States.

(h) « 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 contract, either the place of departure or the place of destination is in a contracting State.

## Article 3

1) Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure *the safe transportation of the luggage*.

2) Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment, exercise due diligence in the respects set out in paragraph (1) of this article.

## Article 4

1) The carrier shall be liable for *loss of or damage to the luggage* if the incident which causes *the loss* or damage occurs in the course of carriage and is due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.

2) *However, the carrier shall not be liable if the fault or neglect is committed by the carrier's servants in the navigation or management of the ship.*

3) *The burden of proving the fault or neglect of the carrier or of the carrier's servants or agents lies with the passenger with regard to all articles carried on the passenger's person or in his (her) cabin.*

4) *The burden of proving the non-existence of fault or neglect of the carrier or of the carrier's servants or agents lies with the carrier so far as all other luggage is concerned.*

## Article 5

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

## Article 6

1) *The liability for the loss of or damage to the articles carried on the passenger's person or in the cabin shall in no case exceed 6.000 frs. per passenger.*

2) *The liability for loss of or damage to motorcar, caravan, motorcycle or other motorvehicle including all articles carried in or on the vehicle shall in no case exceed 20.000 frs. per vehicle.*

3) *The liability for the loss of or damage to all other articles than those mentioned under (1) or (2) shall in no case exceed Frs. 10.000 per passenger.*

4) *Each franc mentioned in this article shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900.*

The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment.

5) The carrier and the passenger may agree by special contract to a higher limit of liability.

*They may also agree that in case of damage to a motorcar caravan, motorcycle or other motorvehicle, the liability shall be subject to a deductible not exceeding 5 % of the round value of the damaged vehicle.*

6) Any legal costs awarded and taxed by a Court in an action for damages shall not be included in the limits of liability prescribed in this article.

7) The limits of liability prescribed in this article shall apply to the aggregate of the claims put-forward by or on behalf of any one passenger, his personal representatives, heirs or dependents on any distinct occasion.

## Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6, if it is proved that the damage resulted from an act or omission of the carrier done with the 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 liability of Owners of seagoing ships or in any national law relating to such limitation.

### Article 9

*Except as provided for in article 6 (5), any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or to prescribe 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 render void the contract which shall remain subject to the provisions of this Convention.*

### Article 10

Any claims for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.

### Article 11

1) *In case of loss of or damage to luggage the passenger shall give written notice of such loss or damage to the carrier within 15 days of the date of disembarkation. If he fails to comply with this requirement, the passenger shall be presumed in the absence of proof to the contrary, to have received his luggage undamaged.*

2) *Actions for damages arising out of loss of or damage to luggage shall be time-barred after a period of one year from the date of disembarkation or if the ship has become a total loss, from the date when the disembarkation should have taken place.*

3) *The law of the Court seized of the case shall govern rights of suspension and interruption of limitation periods in this articles; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.*

### Article 12

(1) *If an action is brought against a servant or agents 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 limits.

(3) Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2) of this Article if it is proved that the damages 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**

This Convention shall be supplied to commercial carriage within the meaning of article 1 undertaken by States or Public Authorities.

#### **Article 14**

This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage.

#### **Article 15**

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

#### **Article 16**

This Convention shall be ratified and the instruments of ratification shall be deposited.

#### **Article 17**

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

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

#### **Article 18**

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

The instruments of accession shall be deposited with the Belgian Government.

The Convention shall come into force in respect of the acceding State three 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 17, paragraph (1).

#### **Article 19**

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.

#### **Article 20**

(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 countries which have not yet obtained sovereign rights and for whose international relations it is responsible.

The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the countries named therein.

The United Nations Organization may apply the provision of this Article in cases where they are the administering authority for a country or where they are responsible for the international relations of a country.

(2) The United Nations Organization or any High Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such country.

This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

#### **Article 21**

The Belgian Government shall notify the States represented at the (.....) session of the Diplomatic Conference on Marine Law, and the acceding States to this Convention of the following :

(1) The signatures ratifications and accessions received in accordance with Articles 15, 16 and 18.

(2) The date on which the present Convention will come into force in accordance with Article 17.

(3) The notifications with regard the territorial application of the Convention in accordance with Article 20.

(4) The denunciations received in accordance with Article 19.

## Article 22

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, provided that one third of the High Contracting Parties are in agreement, shall convene the Conference within six months thereafter.

**RESOLUTION**  
**OF THE ATHENS CONFERENCE**  
**CARRIAGE OF LUGGAGE**

The International Subcommittee, appointed by the Conference to study a draft Convention for the unification of certain rules relating to the carriage of passengers' baggage by sea, has, within the time available to it, carried out its designated task, and reports accordingly.

- 1) A considerable degree of support exists for the view that such a Convention is necessary and desirable, and progress has been made by the Subcommittee in examining and amending the draft before it. However, owing to the complexity of the matter, it has not been possible to present to the Conference a draft Convention agreed in all points by the Subcommittee.
- 2) The Subcommittee, therefore, requests the Conference to allow it continues its study of the draft Convention between the end of this Conference and the holding of the XXVIthe Conference in Stockolm, and thereto report further.

## LIABILITY OF CARRIAGE BY SEA OF PASSENGERS' LUGGAGE

### SUMMARY OF THE ATHENS DISCUSSIONS

*by Mr. Sjur Brækhus and Mr. Annar Poulsson*

At the Athens meetings of the Comité Maritime International in April 1962 a sub-committee was formed under the chairmanship of Mr. Sjur Brækhus, of Oslo.

In the Sub-Committee 15 states participated, namely Belgium, Canada, Denmark, France, Germany, Greece, Israel, Italy, Netherland, Norway, Poland, Sweden, United Kingdom, United States of America, Yugoslavia.

The work started on Monday 16th April at 11.20 a.m. and continued (except for Thursday 19th April) until Friday 20th April at noon, when a first preliminary report was given by Mr. Brækhus to the plenary session. A stenographic report of the discussions of the Committee is included in the duplicated « Compte Rendu » of the Athens Conference.

The deliberations of the Sub-Committee were arranged as a preliminary discussion on the questionnaire which had been issued and distributed in the early autumn of 1961 (BAG 1 and 2) and on the preliminary draft convention drawn up by the Norwegian Association in March 1962 (BAG 9 and 10), see the printed report of the Athens Conference, pp. 287-304. Nine national Associations had given their written reply to the questionnaire (Denmark, Finland, France, Germany, Italy, Netherlands, Sweden, United Kingdom and Yugoslavia (doc. BAG N<sup>o</sup> 3-8 and 11-15). Reply from the Belgian Association was received in Athens (see doc. BAG A-3).

The questionnaire was discussed according to its numbered questions, and the first item which was set under debate was :

#### II. *Desirability of an international convention on sea transport of passengers' luggage.*

Of the nine written replies which had been given previously, three, i.e. France, Italy and Yugoslavia, were in favour of the idea of making

a convention. Of course, the Norwegian Association, having been empowered with the preliminary work, was positively inclined. Five national associations were rather doubtful, but would not vote against a convention. Only one single association (i.e. the United Kingdom) were absolutely adverse to the idea.

On the opening of the discussion it turned out, however, that the U.K. delegation would participate in the work of the Committee, although they did not feel the need of a Convention. In addition to the positive replies already given, Poland, Spain and Greece followed suit, so that of the 15 delegations present 7 were for the Convention, and the USA would, like the U.K. participate in the work, although with some reluctance. The rest of the delegations approved continued discussions.

### III A. What items should be considered als luggage, *and* therefore covered by the Convention ?

The discussion immediately centered on the question of whether cars, valuables, antiques and collections of models should be covered by the Convention.

It became apparent that the majority of the delegations felt that cars should be included. Antiques, collections and similar articles should not. A general provision was felt necessary that only articles for personal use should be covered.

As for valuables, there were differences of opinion.

### III B. What period of time *should the Convention cover* ?

Several delegations considered that the wording of the 1961 Convention (on personal injury liability to passengers) should be adopted as the basis, but it was felt that that wording would not be suitable for registered luggage, wherefore a special rule would have to be formed covering such registered luggage.

However, a couple of delegations felt that the period of time as described in the Hague Rules, should be adopted because luggage seems to have more likeness to cargo, and the rules should not be too bound by the wording of the 1961 Convention.

A further discussion took place with regard to the period of time for cars and for valuables.

The conclusion of the discussion indicated rather that the wording of the preliminary draft should be accepted. However, in such a way that the period of time should be dependent upon the time when the luggage is on board, irrespective of whether or not the passenger be on board (the draft, article I f 1, lines 3 and 5). However, according

to the views of some delegations the period of time for cars should be according to the Hague Rules, and the period of time for valuables should be from the delivery to the ship's purser and until the redelivery from him.

### III C. *What should be the basis of liability ?*

It became evident from the outset that all delegations agreed to the liability of the shipowner being based on fault.

The first question on which opinions differed was the question of exception for nautical faults. The delegations split up in two main fractions; one led by the French delegation considered that basically the principle adopted by the 1961 Convention should be copied, whilst the other fraction rather strongly argued for a basic principle similar to the Hague Rules.

One delegation (the U.K.) argued for complete contractual freedom.

### III D. *What should be the monetary limitation of liability ?*

All delegations agreed to a limit per passenger for all the luggage in the cabin, including articles carried on the passenger. There could be no possibility of having a limit per package for such items.

Likewise it was apparent that a great majority would have a special limit for vehicles.

With regard to registered luggage, the opinions differed. Most delegations were inclined to adopt a per package limit, but others preferred per passenger or per kilo limits.

The conclusion seemed to indicate a preference for a per package limit with a supplement of an over-all limit for each passenger's total luggage.

With regard to the actual amount, there were also different views, and amounts suggested were partly higher than those of the draft and partly lower, with a possible inclination towards the lower amounts. However, the figures put up in the draft were considered as sufficiently close to every one's wish as to form a proper basis for further discussions.

### III E. *Should all regulations in the Convention be compulsory ?*

The discussion led to the conclusion that whatever rules were formulated, they should be basically compulsory. However, several delegations would give the shipowner a right to contract a moderate deductible or franchise.

It was discussed whether such freedom of contract should be for a deductible or for a proper franchise only, and whether it should be admissible for all kinds of luggage or for vehicles only, as set out in the draft.

It was also discussed whether the franchise/deductible should be a fixed maximum amount or a fixed maximum percentage.

However, no conclusion was arrived at on these questions at this stage.

### III F. *Should the Convention contain rules on jurisdiction ?*

The discussion on this point immediately led to the question of whether the wording of the 1961 Convention should be adopted without alteration or not. It was argued by several delegations that the 1961 rules were not good ones, and that if the shipowner were denied any right to contract for special jurisdictions, the Convention should necessarily draw up a certain number of alternative jurisdictions.

However, the majority of the delegations seemed to put more weight on the conformity between the 1961 Convention and the proposed Luggage Convention and therefore found that it would be necessary to more or less copy the 1961 wording. However, arguments ended without any conclusion being reached.

### III G. *Should the Convention contain rules on maximum time within which to sue ?*

A number of delegations would adopt the time limit of the 1961 Convention (i.e. two years), but arguments were also put forward for a shorter time limit than the one year limit suggested in the draft.

The one year limit of the draft, however, seemed to be over-all favourably received.

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The *draft* was now put under discussion article by article, all amendments being put forward in writing. As time was running short and it became apparent that there would be no possibility of putting a revised draft before the plenary meeting at the end of the conference, the further discussions were restricted to those articles in the draft on which amendments were put forward.

#### *Art. 1 (e) (the definition of « luggage »)*

On this article a Dutch amendment (BAG A-10) was put forward. It read :

« Luggage means any articles carried under a passenger contract of carriage. »

The main objection made to this amendment by some of the delegations was that the shipowner under such a wording would have a possibility of circumventing the Convention by not agreeing to carry certain articles under a passenger contract of carriage. Particularly, this possibility would concern vehicles and therefore would be a risk of the Convention not covering all those articles which the majority of the delegations wanted to cover. However, in spite of this uncertainty, the Dutch amendment was, when put to a vote, adopted with eight against seven votes. On this conclusion some other amendments, by which jewellery, antiques etc. would be excluded, were withdrawn.

*Art. 1(f) (definition of « carriage »)*

To this article four amendments had been worked out, one French (BAG A-6), one Swedish (BAG A-7), one Dutch (BAG A-10) and one Greek (which was not numbered).

The Dutch amendment which suggested adoption of the Hague Rules period, was put under debate and to a vote, the amendment being the one most different from the draft. This Dutch amendment was rejected with seven against six votes and two abstentions.

The Swedish amendment which contained firstly a small alteration of the draft in its point (f) 1, lines 3 and 5 : The words « passenger » and « passengers » respectively was suggested to be replaced by the word « luggage ». This small alteration was adopted without formal votes being taken, as the Chairman agreed that the wording was really a drafting error.

The second part of the Swedish amendment which suggested a special rule for vehicles, read as follows :

« With regard to passenger motorcars, caravans, motorcycles or other motor vehicles, the period from the time when the luggage is loaded on to the time when it is discharged from the ship. »

This amendment was accepted with ten votes against one and four abstentions.

The French amendment was rather close to the wording of the draft, but the dividing line between the two alternative periods of carriage would according to the French amendment be drawn by the registration or non-registration of the luggage instead of, as in the draft, by the mere fact of the articles being carried in the cabin or not.

However, the French amendment was withdrawn after a vote had been taken on the Swedish amendment.

After the result of the vote on the Swedish amendment the Greek amendment was withdrawn.

The next article put under discussion was

*Art. 4*, to which there were forwarded three amendments, one Norwegian (BAG A-5), one French (BAG A-6) and one Swedish (BAG A-11).

The *Norwegian* amendment which contained a supplement only in the form of adding a new par. 5 to the article, read :

« The burden of proving the extent of the loss or damage lies with the passenger. »

This amendment was adopted without practically any debate, as it was regarded as useful, although by several delegations as not necessary.

Thereafter the *French* amendment was taken up for discussion. That amendment contained three paragraphs, but the first one was so similar to that of the draft that the French delegation withdrew it. The next two parts of the French amendment would have brought the liability of the shipowner (with regard to luggage) more in line with the rules in the 1961 Convention.

However, the amendment was put to a vote and rejected with seven against five votes.

A further discussion took place on the question of maintaining par. 2 of art. 4 of the draft. Two delegations argued rather extensively against the maintenance of the paragraph. But on taking the votes, the draft was maintained with ten votes against four.

The *Swedish* amendment to art. 4 was to insert, between par. 2 and 3 of the draft, a new par. 3, reading as follows :

« Nothing contained in this Convention shall make the carrier liable for loss of or damage to monies, bonds and other valuables, such as gold and silverware, watches, jewellery, ornaments, jewellery boxes, cameras, marine glasses etc. »

After some comments by the French delegation, the Swedish delegation stated that they proposed, as an alternative, to add the following sentence :

« unless specified and delivered against a receipt to the vessel for keeping in the vessel's safe deposit box against declaration of value. »

The delegates commented favourably on this addition. However, a prolonged discussion took place regarding the question of limit of liability in case of delivery into the safe deposit box. This question of limit was, however, referred to art. 6.

The first Swedish amendment was put to a vote, after the last words : « cameras, marine glasses etc. » had been deleted (with the agreement of the Swedish delegation) and exclusive of the words : « unless... value » quoted above.

The amendment was rejected with eight against five votes.

Then the second Swedish amendment (which consisted of their first proposal *including* the words : « unless... value » quoted above) was put to a vote, alternatively to an *Italian* amendment, proposing that the carrier should only be liable for valuables if these had been declared on the embarkation.

The Swedish alternative was accepted with nine votes whilst the Italian proposal received five votes.

With regard to art. 4, par. 3, the *Dutch* delegation proposed a change concerning the burden of proof, so that this burden should in all cases be on the passenger, regardless of whether the luggage was registered or not. After rather strong opposition from several delegates, the Dutch amendment was, however, withdrawn.

*Art. 6.* There were put forward four amendments to this article : a French (BAG A-6), a Swedish (BAG A-7), a Dutch (BAG A-10) and an unnumbered Greek amendment.

As it was clear that the work on the article could not be completed, it was agreed to restrict the discussions to the question of principle. Time would not allow any discussions on actual monetary figures.

The questions put under discussion were :

- a) Should there be a separate limit for cabin luggage, including whatever articles carried on the passenger's person ?
- b) Should there be a separate limit for cars ?
- c) Should the limit for registered luggage be per unit or per passenger ?
- d) Should there be an overall limit ?
- e) Should there be a separate limit for deposited goods ?
- f) Should there be a deductible ?

After some discussion the question under (a) was put to a vote and accepted in the affirmative with ten votes against three.

With regard to the question under (b) it was agreed without any formal vote being taken (but without much discussion) that there would be a separate limit for passenger cars.

The question under (c) was discussed, but no formal proposal to fix a limit per unit was put forward, and the « per passenger » limit was unanimously agreed.

Concerning (d) it was stated that as it had now been agreed the principle of three separate limits : one for the cabin luggage, one for the registered luggage and one for cars, there would be no need for an overall limit, and the question under (d) was accordingly dropped.

The question under (e) is tied in with the question of whether the carrier is free to accept goods in deposit or can reject them.

There seemed to be agreement on **two** points : First, that there shall be no liability whatsoever if there is neither made any deposit nor given any declaration. Secondly, that if the articles are declared and accepted, then there should be liability up to the amount accepted (or possibly subject to a rather high limit).

The difference of opinion seemed to concentrate on the situation when valuables are declared but not accepted.

The Swedish delegation would have no liability in such a case, whilst the French proposed liability in such a case, but subject to the ordinary limitation. These **two** alternatives were put to a vote, and the French proposal was adopted with eight votes against six.

Then the discussion went on to solve a situation where valuables are deposited but no declaration of value is made. The French proposal was that in such a case the liability should be unlimited. The Yugoslav delegation proposed a separate limit in this case.

These **two** alternatives were put to a vote. The Yugoslav proposal was carried by six votes against five.

As for question (f) there seemed to be some uncertainty as to the meaning of the words « franchise » and « deductible ». The franchise only applies to claims within the amount agreed upon, and is fully disregarded whenever the claim exceeds such amount. The deductible, on the other hand, applies to every claim regardless of size, as a subtraction from the amount otherwise payable.

There was a Dutch amendment (BAG A-10) which suggested a deductible of 1000 francs for any kind of luggage, as against the draft, which applied the deductible only to vehicles.

The question of deductible was divided in **two** : Should there be a deductible for cars, and secondly, if so, another deductible for other luggage ?

The Committee agreed unanimously to a deductible for cars, without a formal vote being taken.

With regard to a deductible or franchise for other luggage, the comments showed that there would probably have to be a franchise and not a deductible. Also the amount had to be small, otherwise a number of delegations would not vote for any franchise on such ordinary luggage. The question was put to a vote, giving eight votes for a small franchise on ordinary luggage with three votes against.

The time given to the Committee did not, however, allow further discussion on this point, or on any of the other unsolved questions.

A short report to the plenary session was drawn up and accepted (BAG A-13 and 14).

However, the U.K. delegation wanted to state officially that according to their views further work and studies seemed uncalled for, and that they did not want to participate in such work before the Stockholm meeting.

At the last meeting of the plenary session Mr. Brækhus gave a short summary of the work of the Committee; see the printed report of the Athens Conference, pages 266-69.

*Oslo, February 1963.*

*Sjur Brækhus*

*Annar Poulsson*

## REVISED PRELIMINARY DRAFT

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

## PASSENGER LUGGAGE BY SEA

*(February 1963)*

## Article 1

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

a) « carrier » includes the shipowner or the charterer or the operator who enters into a contract of carriage of passengers and luggage.

b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers *and their luggage*, but 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 sea-going ship.

e) « *luggage means any articles carried under a passenger contract of carriage.*

f) « carriage » covers *the following periods :*

1. *With regards to any articles which the passenger carries on his (her) own person or takes with him (her) in the cabin, the period while the luggage is on board the ship and in the course of embarkation or disembarkation, but does not include any period while the luggage is in a marine station or on a quay or other port installation. In addition « carriage » includes transport by water from land to a 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.*

Note. — With a view to make the reading easier, the points of interest have been printed as follows :

**changes from the 1962 draft**

*other changes from the 1961 Passenger Convention.*

the rest of the draft is identical to the last mentioned Convention.

2. With regard to passengers' motorcars, caravans, motor cycles or other vehicles, the period from the time when the luggage is loaded on to the time when it is discharged from the ship.

3. *With regard to all other articles, the period from the time of delivery to the representative of the carrier on shore or on board and until the time of redelivery.*

g) « international carriage » means any carriage in which according to the contract of carriage the place of departure and the place of destination are situated either in a single state, if there is an intermediate port of call in another state, or in two different states.

h) « 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 contract of carriage, either the place of departure or the place of destination is in a contracting state.

## Article 3

1. Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure *the safe transportation of the luggage.*

2. Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment, exercise due diligence in the respects set out in paragraph (1) of this article.

## Article 4

1. The carrier shall be liable for *loss of or damage to the luggage* if the incident which causes *the loss or damage* occurs in the course of carriage and is due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.

2. *However, the carrier shall not be liable if the fault or neglect is committed by the carrier's servants in the navigation or management of the ship.*

3. Nothing contained in this Convention shall make the carrier liable for loss of or damage to monies, bonds and other valuables such as gold and silverware, watches, jewellery, ornaments, jewellery boxes etc., unless specified and delivered against a receipt to the vessel for keeping in the vessel's safe deposit box against declaration of value.

4. *The burden of proving the fault or neglect of the carrier or of the carrier's servants or agents lies with the passenger with regard to all articles carried on the passenger's person or in his (her) cabin.*

5. *The burden of proving the non-existence of fault or neglect of the carrier or of the carrier's servants or agents lies with the carrier so far as all other luggage is concerned.*

6. The burden of proving the extent of the loss or damage lies with the passenger.

#### Article 5

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

#### Article 6

1. *The liability for the loss of or damage to the articles carried on the passenger's person or in the cabin shall in no case exceed 6.000 frs. per passenger.*

2. *The liability for loss of or damage to motorcar, caravan, motorcycle or other motorvehicle including all articles carried in or on the vehicle shall in no case exceed 20.000 frs. per vehicle.*

3. The liability for loss of or damage to monies and valuables, as specified in Art. 4, subsect. 3, shall in no case exceed the value declared when the articles were received for keeping in the vessels safe-box. If no value be declared, the liability for the articles deposited shall in no case exceed frs. ....

4. *The liability for the loss of or damage to all other articles than those mentioned under (1),(2)or(3) shall in no case exceed 10.000 frs. per passenger.*

5. The carrier has no liability in cases where the loss or damage suffered by the passenger does not exceed frs. 100,—.

6. Each franc mentioned in this article shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900. The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold

shall be made according to the gold value of such currencies at the date of payment.

7. The carrier and the passenger may agree by special contract to a higher limit of liability. *They may also agree that in case of damage to a motorcar, caravan, motorcycle or other motorvehicle, the liability shall be subject to a deductible not exceeding 5 % of the sound value of the damaged vehicle.*

8. Any legal costs awarded and taxed by a Court in an action for damages shall not be included in the limits of liability prescribed in this article.

9. The limits of liability prescribed in this article shall apply to the aggregate of the claims put forward by or on behalf of any one passenger, his personal representative, heirs or dependents on any distinct occasion.

#### Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6, if it is proved that the damage resulted from an act or omission of the carrier done with the 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 liability of owners of sea-going ships or in any national law relating to such limitation.

#### Article 9

*Except as provided for in article 6 (7), any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or to prescribe 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 render void the contract which shall remain subject to the provisions of this Convention.*

#### Article 10

Any claim for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.

## Article 11

1. In case of *loss of or damage to luggage the passenger shall* give written notice of such loss or damage to the carrier within 15 days of the date of disembarkation. If he fails to comply with this requirement, the passenger shall be presumed, in the absence of proof to the contrary, *to have received his luggage undamaged.*

2. Actions for damages arising out of *loss of or damage to luggage shall be time-barred after a period of one year from the date of disembarkation, or if the ship has become a total loss, from the date when the disembarkation should have taken place.*

3. The law of the Court seized of the case shall govern rights of suspension and interruption of limitation periods in this article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

## 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 limits.

3. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2) of this Article 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.

## Articles 13 - 22 as in the 1961 Convention

## FINNISH MARITIME LAW ASSOCIATION

CARRIAGE OF PASSENGERS LUGGAGE  
BY SEA

## ANSWERS TO QUESTIONNAIRE

## I.

A. (1) **Registered Luggage.** The Finnish Maritime Code (Art. 172) contains rules which are compulsory only for inland maritime transports and for transport between Finland and the other Nordic countries according to agreement between these countries.

Even so the Carrier is entitled to take exception by limiting his liability to 60,000 marks for each package or other unit of the luggage and to contract out of liability for damage caused by default or neglect of the master, mariner, pilot or other servant of the ship in the navigation or in the management of the ship, and for damage by any fire which is not caused by fault or neglect of the Carrier himself.

(2) **Non-registered Luggage.** Full freedom of contract.

B. No.

C. Yes. **Registered Luggage.** Freedom of contract. (See above under A).

**Non-registered Luggage.** The Finnish Maritime Code contains provisions, although they, as appears from what has been said above under A, are not compulsory. As to details we would refer to the answer given by the Swedish Maritime Law Association, as the Swedish and Finnish Maritime Codes contain similar provisions.

D. In respect of non-registered luggage there is complete contractual freedom. For registered luggage there is complete contractual freedom, except for inland and inter-Nordic transports.

## II.

A. - B. The Finnish Maritime Law Association will not oppose an initiative taken by the C.M.I. in this respect.

### III.

Should the C.M.I. come to the conclusion that an international convention is indeed desirable, we should like to make the following observations :

A. The items mentioned in the Questionnaire under (1) tot (5) should be covered by the convention. However, it is submitted that a distinction should be made between luggage and vehicles, which distinction should be observed in the heading of the convention.

**B. Embarkation to Disembarkation for items (1) and (2).**

**Delivery to Redelivery to Representative of Carrier for items (3) and (4).**

**Passing the Ship's rail for vehicles which are driven on board.**

**« Tackle-to-tackle » for vehicles and luggage lifted on board.**

C. As regards damage to registered luggage the Carrier should prove non-existence of fault.

As regards vehicles and non-registered luggage, the burden of proof should be with the passenger.

D. (1) Yes.

i. one limit per passenger for all articles which a passenger normally brings with him, i.e. for the total of all items under III A (1), (2) and (3) put together,

ii. one limit for items under III A (4) depending on declaration of value, and

iii. one separate limit for each unit of articles under III A (3).

(2) Yes.

(3) 10,000 Poincaré francs for all items mentioned under III A (1) to (3).

A limitation amount to be specified in the convention for item III A (4).

As regards III A (5) a limitation amount should be specified in the convention.

E. A certain franchise for trifling damages to vehicles might be reasonable.

F. No.

G. Yes. One year time limit. Notice should be given within 3 days from the time specified in III B.

Helsingfors, November 1961.

*Finnish Branch of Comité Maritime International*  
*Rudolf Beckman, Chairman. Fredrik Norrmén, Secretary.*

CANADIAN MARITIME LAW ASSOCIATION

CARRIAGE OF PASSENGERS LUGGAGE  
BY SEA

MEMORANDUM

1. In Canada there is already a short sharp section imposing and limiting liability for passenger's personal baggage.

The Canada Shipping Act RSC 1952 c.29 s.666

« Carriers by water are liable for the loss of or damage to the personal baggage of passengers by their vessels, but such liability shall not extend to any greater amount than two hundred dollars, or to the loss of or damage to any gold or silver, diamonds, jewels or precious stones, money or valuable securities or articles of great value, unless the true nature and value of such articles so lost or damaged has been declared to the carrier in writing. »

2. There is no move to alter this by any interest in Canada.

3. Thus the position of the Canadian Maritime Law Association is its general one that it favours uniformity. It has in this matter no pressing reason either for supporting or opposing the proposed convention.

## CARRIAGE OF PASSENGERS LUGGAGE BY SEA (\*)

### SUMMARY REPORT

(May 1963)

During the preliminary work on the Convention concerning Ship-owners' Liability to Passengers it was considered desirable that the Convention should contain also some provisions governing the carriers' liability towards passengers for damage to and loss of luggage.

The **Madrid draft** of the 24th September 1955 did contain such provisions in Art. 4 and Art. 7 (2) and )3).

« Article 4.

This Convention applies to any luggage according to the following provisions :

(a) The carrier shall be responsible for any damage suffered as a result of the destruction or loss of the registered luggage belonging to the passenger during carriage from the time it is accepted until it is put at the disposal of the passenger, notwithstanding the provisions of art. 1 (f).

(b) As far as cabin luggage remaining during carriage under the custody of the passengers on the one hand, and on the other hand luggage (said « de prévoyance »), stored in the special storeroom of the ship, as well as articles put in the safes accessible to the passengers during carriage are concerned, the carrier shall only be held responsible if the passenger can prove that the damage or loss is due to the fault of the carrier or of his servants.

(c) The carrier shall not be held responsible for loss of money, shares, jewels and precious articles of any kind belonging to the passengers, unless these have been put into the custody of the carrier who has agreed to take them in charge as such and has or has not collected a corresponding fee. »

(\*) P.S. - The French text of this report has been published in the French Edition under number BAG-21.

## Article 7.

2. In the event of loss or damage suffered by the passenger's registered luggage the liability of the carrier will in no case exceed an amount of frs. 6.000 per passenger.

3. In the event of loss or damage suffered by all other luggage or effects of the passenger the liability of the carrier shall in no case exceed an amount of frs. 4.000 per passenger. »

This draft was, as far as the basical liability goes, closely tied in with the principles set out in the Hague Rules. Between 1955 and the Brussels Diplomatic Conference 1957 the opinion on the basical liability, however, changed rather substantially.

The consequence was that during the 1957 deliberations the shipowners' liability to passengers was basically disrupted from the Hague Rules principles, and if the liability to luggage should have followed the new principles, one would have ended up with a situation where the shipowners' liability to luggage was, in some respects, stricter than their liability to ordinary cargo.

The deliberations in Brussels 1957 on this point very soon indicated wide differences in opinion, and in the circumstances it was unanimously agreed to leave out of the draft convention all questions of luggage.

Accordingly, the draft convention which was put before the **Diplomatic Conference in Brussels 1961** did not contain any provisions whatsoever concerning luggage. The Convention was therefore finalized without any references to luggage.

As the question, however, by a number of delegates was apparently regarded as one of great interest, it was proposed that the CMI should be asked to look into the possibility of forming a separate convention concerning luggage.

At the meeting of the Bureau Permanent immediately after the Conference, the Norwegian member of the Bureau was entrusted with the task of getting the work on such an additional convention started.

A questionnaire was submitted to all national branches of the CMI during the summer 1961 with a view to exploring the basic ideas on a separate convention for luggage.

At the **Athens meetings of the CMI in April 1962** a subcommittee was formed under the chairmanship of Mr. Sjur Brækhus, of Oslo.

In this Subcommittee 15 states participated, namely Belgium, Canada, Denmark, France, Germany, Greece, Israel, Italy, Netherland, Norway, Poland, Sweden, United Kingdom, United States of America, Yugoslavia.

The work started on Monday 16th April and continued (except for Thursday 19th April) until Friday 20th April, when a first preliminary report was given by Mr. Brækhus to the plenary session.

A stenographic report of the discussions of the Subcommittee is included in the duplicated « Compte Rendu » of the Athens Conference. References given below are contained in this stenographic report.

The deliberations of the Subcommittee were arranged as a preliminary discussion on the questionnaire which had been issued and distributed in the early autumn of 1961 (BAG 1 and 2) and on the preliminary draft Convention drawn up by the Norwegian Association in March 1962 (BAG 9 and 10), see the printed report of the Athens Conference pp 287-304. Nine national Associations had given their written reply to the questionnaire (Denmark, Finland, France, Germany, Italy, Netherland, Sweden, United Kingdom and Yugoslavia (doc. BAG Nos. 3-8 and 11-13). Reply from the Belgian Association was received in Athens (see doc. BAG A 3).

Although the replies did differ somewhat with regard to the need of a separate Convention concerning passengers luggage, it seemed to be the opinion of those who did reply that a reasonable worded Convention would certainly be useful. The national systems do at the moment represent a rather mixed-up picture, and unification by way of an international Convention would seem to be desirable.

With regard to the details of the questionnaire, the replies were practically unanimous on the main questions, i.e. A) items of luggage to be covered by the Convention, B) period of time which the Convention should encompass, C) the general basis of the liability, D) the applicability of the monetary unit and E) the principle that the Convention should be compulsory and give little room for contractual freedom.

On one point the replies did give practically no indications of opinion, i.e. the actual amount to be fixed for the maximum liability.

As will be understood, the project of a separate convention for luggage was not received with any great enthusiasm. In spite hereof there seemed to be sufficient basis to continue the work and to see whether a convention is after all desirable.

Many states will at any rate have to alter their national legislation so as to enable them to ratify the 1961 Convention with a Luggage Convention so that national legislators may evaluate both projects more or less simultaneously.

Both on land and in the air there are already existing rules on an international convention level with regard to luggage. One may only mention the Warsaw Convention on air transport of 1929 and the Rome Convention on transport of passengers by rail of 1933 and the Berne Convention concerning the carriage of passengers and luggage by rail of October 25, 1952, revised on Feb. 25, 1961.

The evaluation of all questions of liability are never at a standstill but on an everlasting change greatly influenced by the steadily growing ethical conscience. From a shipowner's point of view it will be easier therefore to obtain acceptance of limitations if they are based upon an international formula.

As for the passengers, it will obviously be of great advantage to know that they are at least protected according to certain minimum requirements.

★★

On account of lack of time in Athens the Subcommittee under the chairmanship of Mr. Brækhus, was not able to come forward with a fully revised draft convention and the work ended with the following resolution :

« The International Subcommittee, appointed by the Conference to study a draft Convention for the unification of certain rules relating to the carriage of passengers' baggage by sea, has, within the time available to it, carried out its designated task, and reports accordingly.

1) A considerable degree of support exists for the view that such a Convention is necessary and desirable, and progress has been made by the Subcommittee in examining and amending the draft before it. However, owing to the complexity of the matter, it has not been possible to present to the Conference a draft Convention agreed in all points by the Subcommittee.

2) The Subcommittee, therefore, requests the Conference to allow it to continue its study of the draft Convention between the end of this Conference and the holding of the XXVIth Conference in Stockholm and thereto report further. »

In continuation of this resolution a further **Subcommittee meeting took place in Antwerp on the 15th March** this year under the temporary chairmanship of Mr. Walter Müller from Switzerland, Mr. Brækhus being engaged on other Subcommittee matters in preparation of the Stockholm meeting.

Present at the Antwerp Subcommittee meeting were representatives from Belgium, Denmark, France, Italy, Norway and Sweden.

At this meeting those articles of the draft which had to be altered after the discussions in Athens and the other articles which were not discussed in Athens were evaluated, and some alterations agreed to.

A revised draft Convention has now been formulated according to the conclusions of the Subcommittee, and the articles have still, so

far as possible, been kept in the same wording as the corresponding articles in the Passenger Convention.

To facilitate reading, all paragraphs and sentences which differ from the Passenger Convention, and therefore need special attention, have been printed in italics, and the discussions at Stockholm can therefore be restricted to those points which have to be new as compared with the 1961 Convention.

If agreement is reached on these points, all provisions printed in normal print may possibly be accepted without or with very little discussion, as they have been so thoroughly thrashed out previously during the diplomatic conference of the 1961 Convention.

Below is a summary of the points brought forward during the Subcommittee work both at Athens and Antwerp :

**Article 1, (a), (b), (c), (d) :** No discussions, either in Athens or Antwerp.

**Article 1 (e) :** It is felt that the Convention should deal with most articles carried on board a ship for a passenger except those carried under a B/L. There should be few « loopholes » in the applicability either of the B/L rules or of this luggage Convention.

The discussions immediately centered on the question of whether cars, valuables, antiques and collections of haute couture should be covered by the Convention.

It is apparent that the majority of the delegations felt that cars should be included. Antiques, collections and similar articles should not. A general provision was felt necessary that only articles for personal use should be covered.

As for valuables, there were differences of opinion.

On this article a Dutch amendment (BAG A 10) was put forward in Athens. It read :

« Luggage means any articles carried under a passenger contract of carriage. »

The main objection made to this amendment by some of the delegations was that the shipowner under such a wording would have a possibility of circumventing the Convention by not agreeing to carry certain articles under a passenger contract of carriage. Particularly, this possibility would concern vehicles and accordingly there would be a risk of the Convention not covering all those articles which the majority of the delegations wanted to cover. However, in spite of this uncertainty, the Dutch amendment was, when put to a vote, adopted with eight against seven votes.

This question was again discussed in Antwerp in March 1963, but the Dutch wording was maintained.

**Article 1 (f) :** It has been necessary to describe the period of carriage differently depending upon the different ways in which luggage is handled :

With regard to all articles carried on the passenger's person or in the cabin, the proposal is to follow exactly the definition in the passenger Convention, whilst for the (usually) more heavy articles which are carried elsewhere aboard the ship the period of carriage necessarily will have to be described differently.

To this articles four amendments had been worked out in Athens, one French (BAG A 6), one Swedish (BAG A 7), one Dutch (BAG A 10) and one Greek (which was not numbered).

The Dutch amendment which suggested adoption of the Hague Rules period, was put under debate and to a vote, the amendment being the one most different from the draft. This Dutch amendment was rejected with seven against six votes and two abstentions.

The Swedish amendment contained firstly a small alteration of the draft in its point (f) 1, lines 3 and 5 : The word « passenger » and « passengers » respectively was suggested to be replaced by the word « luggage ». This small alteration was adopted without formal votes being taken, as the Chairman agreed that the wording was really a drafting error.

The second part of the Swedish amendment which suggested a special rule for vehicles, read as follows :

« With regard to passenger motorcars, caravans, motorcycles or other motor vehicles, the period from the time when the luggage is loaded on to the time when it is discharged from the ship. »

This amendment was accepted with ten votes against one and four abstentions.

The French amendment was rather close to the wording of the draft, but the dividing line between the two alternative periods of carriage would according to the French amendment be drawn by the registration or non-registration of the luggage instead of, as in the draft, by the mere fact of the articles being carried in the cabin or not.

However, the French amendment was withdrawn after a vote had been taken on the Swedish amendment.

After the result of the vote on the Swedish amendment the Greek amendment was also withdrawn.

**Article 1 (g) and (h) :** No discussions.

**Article 2 :** No discussions.

**Article 3 :** No discussions.

**Article 4 :** It is evident that all delegations agree to the liability of the shipowner being based on fault.

If luggage is stowed in a ship's hold side by side with cargo carried under a B/L, it would seem very peculiar if those commodities should not be subject to somewhat the same liability rules. On the other hand there is obviously not the same social need for heavy liability regarding luggage as there is concerning personal injury and death.

The first question on which opinions differed was the question of exception for nautical faults. The delegations split up in two main fractions; one lead by the French delegation considered that basically the principle adopted by the 1961 Convention should be copied, whilst the other fraction rather strongly argued for a basic principle similar to the Hague Rules.

One delegation (the U.K.) argued for complete contractual freedom.

The present draft exonerates the carrier for his servants' nautical faults of neglects.

The rule so suggested will be simpler than the detailed specifications contained in the Hague Rules, but will in most cases lead to the same result.

Under article 3 there is no guarantee for seaworthiness but a slightly extended due diligence rule, close to the Hague Rules and identical rules in the Passenger Convention.

With regard to burden of proof (Article 4 (4) en (5), the draft lays down rules which correspond closely to the factual possibilities of each party of proving the necessary circumstances.

It is f.i. obviously apparent that the carrier will have no possibilities to prove what has not been going on in a passenger cabin, where people walk in and out more or less continuously during the day. Consequently, it seems that passengers must have the full burden of proof with regard to everything happening in the cabin or with articles carried on the passenger's person.

The corresponding arguments lead to the conclusion that the carrier should have the full burden of proof so far as all other luggage is concerned.

To this article there were in Athens forwarded three amendments, one Norwegian (BAG A 5), one French (BAG A 6) and one Swedish (BAG A 11).

The Norwegian amendment which contained a supplement only in the form of adding a new par. 6 to the article, read :

« The burden of proving the extent of the loss or damage lies with the passenger. »

This amendment was adopted without practically any debate, as it was regarded as useful, although by several delegations as not necessary.

Thereafter the **French** amendment was taken up for discussion in Athens. That amendment contained three paragraphs but the first one was so similar to that of the draft that the French delegation withdrew it. The next two parts of the French amendment would have brought the liability of the shipowner (with regard to luggage) more in line with the rules in the 1961 Convention.

However, the amendment was put to a vote and rejected with seven against five votes.

A further discussion took place in Athens on the question of maintaining par. 2 of art. 4 of the draft. Two delegations argued rather extensively against the maintenance of the paragraph. But on taking the votes, the draft was maintained with ten votes against four.

The **Swedish** amendment to art. 4 was to insert between par. 2 and 3 of the draft, a new par. 3, reading as follows :

« Nothing contained in this Convention shall make the carrier liable for loss of or damage to moneies, bonds and other valuables, such as gold and silverware, watches, jewellery, ornaments, jewellery boxes, cameras, marine glasses etc. »

After some comments by the French delegation, the Swedish delegation stated that they proposed, as an alternative, to add the following sentence :

« unless specified and delivered against a receipt to the vessel for keeping in the vessel's safe deposit box against declaration of value. »

The delegates commented favourably on this addition. However, a prolonged discussion took place regarding the question of limit of liability in case of delivery into the safe deposit box. This question of limit was, however, referred to art. 6.

The first Swedish amendment was put to a vote, after the last words : « cameras, marine glasses etc. » had been deleted (with the agreement of the Swedish delegation) and exclusive of the words : « unless... value » quoted above.

The amendment was rejected with eight against five votes.

Then the second Swedish amendment (which consisted of their first proposal **including** the words : « unless ... value » quoted above) was put to a vote, alternatively to an **Italian** amendment, proposing that the carrier should only be liable for valuables if these had been declared on the embarkation.

The Swedish alternative was accepted with nine votes whilst the Italian proposal received five votes.

With regard to art. 4, par. 4, the Dutch delegation proposed a change concerning the burden of proof, so that this burden should in all cases be on the passenger, regardless of whether the luggage was registered or not. After rather strong opposition from several delegates, the Dutch amendment was, however, withdrawn.

At the Antwerp Subcommittee meeting the French delegate again took up the question of another liability rule for cabin luggage than for other articles, but the draft remained unaltered on this point, except that the French delegate would revert to this question, on the drafting in the French language.

The French Maritime Law Association will present at the Stockholm Conference a new text of article 4 as follows :

« a) A distinction is requested with regard to the registered luggage and/or the vehicles *and* the luggage including valuables kept by the passenger in his cabin.

b) The basis of liability for the registered luggage and vehicles should be similar to the one adopted in the Hagues Rules.

c) The basis of liability for the luggage and valuables kept by the passenger with him should be similar to the one adopted in the Brussels Convention of 1961. »

The Belgian delegate suggested to delete the last words « against declaration of value » in Art. 4 (3) because they really were in contradiction to Art. 6 (3). This suggestion was unanimously adopted.

The Swedish delegate suggested a redrafting of the first words in Art. 4 (3), so as to align them with the previous subsections. This redrafting was unanimously adopted, and also the elimination of the word « However » at the beginning of Art. 4 (2).

**Article 5 :** No discussions.

**Article 6 :** In Athens there were put forward four amendments to this article : a French (BAG A 6), a Swedish (BAG A 7), a Dutch (BAG A 10) and an unnumbered Greek amendment.

The questions under discussion were :

a) Should there be a separate limit for cabin luggage, including whatever articles carried on the passenger's person ?

b) Should there be a separate limit for cars ?

c) Should the limit for registered luggage be per unit or per passenger ?

d) Should there be an overall limit ?

e) Should there be a separate limit for deposited goods ?

f) Should there be a deductible ?

After some discussion the question under (a) was put to a vote and accepted in the affirmative with ten votes against three.

With regard to the question under (b) it was agreed without any formal vote being taken (but without much discussion) that there would be a separate limit for passenger cars.

The question under (c) was discussed, but no formal proposal to fix a limit per unit was put forward, and the « per passenger » limit was unanimously agreed.

Concerning (d) it was stated that as it had now been agreed the principle of three separate limits : one for the cabin luggage, one for the registered luggage and one for cars, there would be no need for an overall limit, and the question under (d) was accordingly dropped.

The question under (e) is tied in with the question of whether the carrier is free to accept goods in deposit or can reject them.

There seemed to be agreement on two points : First, that there shall be no liability whatsoever if there is neither made any deposit nor given any declaration. Secondly, that if the articles are declared and accepted, then there should be liability up to the amount accepted (or possibly subject to a rather high limit).

The difference of opinion seemed to concentrate on the situation when valuables are declared but not accepted.

The Swedish delegation would have no liability in such a case, whilst the French proposed a liability, but subject to the ordinary limitation. These two alternatives were put to a vote, and the French proposal was adopted with eight votes against six.

Then the discussion went on to solve a situation where valuables are deposited but no declaration of value is made. The French proposal was that in such a case the liability should be unlimited. The Yugoslav delegation proposed a separate limit in this case.

These two alternatives were put to a vote. The Yugoslav proposal was carried by six votes against five.

As for question (f) there seemed to be some uncertainty as to the meaning of the words « franchise » and « deductible ». The franchise only applies to claim within the amount agreed upon, and is fully disregarded whenever the claim exceeds such amount. The deductible, on the other hand, applies to every claim regardless of size, as a subtraction from the amount otherwise payable.

There was a Dutch amendment (BAG A 10) which suggested a deductible of 1000 francs for any kind of luggage, as against the draft, which applied the deductible only to vehicles.

The question of deductible was divided in two : Should there be a deductible for cars, and secondly, if so, another deductible for other luggage ?

The Committee agreed unanimously to a deductible for cars, without a formal vote being taken.

With regard to a deductible or franchise for other luggage, the comments showed that there would probably have to be a franchise and not a deductible. Also the amount had to be small, otherwise a number of delegations would not vote for any franchise on such ordinary luggage. The question was put to a vote, giving eight votes for a small franchise on ordinary luggage with three votes against.

However, at the meeting of the Subcommittee in Antwerp this small franchise was eliminated, as, on the one side, not being sufficiently important to the shipowner, and, on the other hand, somewhat hard on the passenger to justify its inclusion in the Convention.

At the Antwerp meeting a further discussion took place with regard to the amounts in Art. 6.

It was suggested that the amounts to some extent were rather low.

On the other hand, all experience of liability underwriters do show that a fixed maximum amount of liability, though intended to represent an upper limit only, tend to become a minimum figure as well. Particularly in cases of luggage, where there are no invoices or other vouchers or documents showing the number or value of missing or damaged articles, the amount should not be allowed to be inflated too much.

So far as registered luggage is concerned there is a certain check already in the luggage receipt. Finally the value of a motorcar or other vehicle is fairly easily ascertainable. Accordingly, a higher amount for these categories of luggage is suggested. The different amounts seem to represent a reasonable compromise of the conflicting interests of the two parties.

It will be realised that the amount suggested as the limit for a motorvehicle is rather high as compared with the present practice in maritime transport. However, the figure of 20.000 frs. seems to correspond reasonably well with the value of an average used motorcar today. (The usual traffic insurance on motorcars can easily handle any excess values).

When the average passenger is allowed a claim so close to the full value of his motorcar, provisions must on the other hand be made for

some way of eliminating all the trifling claims for scratches and stains to the finishing of the car. There are two reasons for this :

Firstly, passenger cars are practically always used cars. It would be absolutely impossible for the carrier's people before loading to inspect such cars sufficiently so as to ascertain even hairline scratches.

Secondly, the finish of a modern motorcar is so « tender » that in many cases it is literally impossible to load, stow and discharge such a car without inflicting some minor scratches or chafings on its body.

The conclusion was that the carrier should be allowed to contract for a certain deductible, applicable to claims for damage to motor vehicles. When it is a question of total loss of a motorcar, there would not be the same need for a deductible, so the application of a deductible is restricted to partial damages. The figure of 5 % seems to be reasonable.

The figure of 10.000 francs in Art. 6, sect. 3, was unanimously adopted.

The other amounts in Art. 6 of the draft were maintained.

The French Association expressed the views that

(1) the limitation for articles carried on the passenger's person and in his cabin should be fixed at frs. 10.000,

(2) the limitation for registered luggage should be fixed per unit and should be identical to the figure adopted in the Hague Rules,

(3) a special limit per passenger should be adopted for valuables received for keeping by the purser of frs. 10.000/20.000.

**Articles 7 and 8 :** No discussions.

**Article 9 :** The question of jurisdiction has caused special considerations. As will be remembered, this question was the subject of rather heated argumentations during the diplomatic conference in Brussels in 1961 on the Passenger Convention.

The solution which was finally adopted in that Convention is, in the opinion of the legal experts in a number of countries, not a happy one. It was and still is a strong feeling in these countries that prohibition should have its basis in a framework of jurisdictional alternatives, and then, and only then would it be sound to prohibit clauses which try to widen the jurisdictional alternatives basically agreed upon.

However, it can, on the other hand, be argued that it would be reasonable that a passenger who has claims both for personal injury and for damage to luggage should be able to sue the carrier for both categories of claims, in one and the same court.

The carrier will at any rate have to put up with these wide facilities of the passenger with regard to the personal injury claims, and the added inconveniences which the application of the same rule also to luggage claims bring, would seem not of very great importance.

This question was taken up again at the Antwerp Subcommittee meeting, and the arguments against the prohibition prevailed.

Accordingly, the corresponding lines in Art. 9 were stricken out, so that in the draft as it now stands, there is no prohibition against jurisdiction or arbitration clauses.

It must be added that all experience shows that no national courts will accept such clauses if they are clearly unreasonable, so this question can safely be left to national law.

**Article 10 :** Article 10 (2) or (3) of the Passenger Convention have not been found applicable to the present draft. Accordingly, only 10 (1) is maintained and in its unaltered form. There was no discussion in connection with this Article in Antwerp.

**Article 11 (1) :** At the Antwerp Subcommittee meeting it was decided to follow the wording of Art. 26 of the Warsaw Convention (with its later Hague Protocol) so far as the notice is concerned.

**Article 11 (2) :** To some extent the same rules as in the Passenger Convention with regard to time limit have been maintained, but it has been found unnecessary to increase the well known one year limit in the Hague Rules to the two years limit in the Passenger Convention. The same arguments which do influence the decision when it comes to personal injury do not have any weight so far as luggage is concerned and therefore the one year limit is found workable.

**Article 11 (3) :** No discussions.

**Article 12 :** No discussions.

**Article 13-22 :** No discussions.

However, the Belgian delegate pointed out that on signing of the protocol there would have to be taken a reservation with regard to the applicability of the Convention for combined railroad and ship transports.

The Subcommittee believed that the reservation, numbered (1), (2) and (3) on the protocol of the 1961 Convention, would have to be adopted in similar form on the signature of the luggage Convention.

Accordingly, the following additional reservation is drafted :

« (4) not to give effect to this Convention to a contract of carriage by more than one form of transport governed by the International Convention concerning the carriage of passengers and luggage by rail. »

## AVANT-PROJET REVISE

CONVENTION INTERNATIONALE POUR L'UNIFICATION  
DE CERTAINES REGLES EN MATIERE  
DE TRANSPORT DE

## BAGAGES DE PASSAGERS PAR MER

*(avril 1963)*

## Article 1

Dans la présente Convention les termes suivants sont employés dans les sens indiqué ci-dessous :

a) « transporteur » comprend le propriétaire du navire ou l'affréteur ou l'armateur partie à un contrat de transport de passagers et de bagages;

b) « contrat de transport » signifie un contrat conclu par un transporteur ou pour son compte, pour le transport de passagers *et de leurs bagages*, à l'exception d'un contrat d'affrètement;

c) « passager » signifie uniquement une personne transportée sur un navire en vertu d'un contrat de transport;

d) « navire » signifie uniquement un bâtiment de mer;

e) « bagages » *signifient tout objet transporté en vertu d'un contrat de transport de passager;*

f) « transport » comprend *les périodes suivantes :*

1. *En ce qui concerne tout objet que le passager porte sur lui ou prend avec lui dans sa cabine, la période pendant laquelle les bagages sont à bord du navire, ainsi que les opérations d'embarquement et de débarquement, mais ne comprend pas la période pendant laquelle les bagages se trouvent dans une gare maritime ou sur un quai*

Note. — Afin de faciliter le travail, les points d'intérêts ont été imprimés de la manière suivante :

**modifications par rapport au projet de 1962 :**

*autres modifications par rapport à la Convention des Passagers de 1961.*

Le surplus du projet est conforme à cette dernière Convention.

## REVISED PRELIMINARY DRAFT

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

## PASSENGER LUGGAGE BY SEA

*(April 1963)*

## Article 1

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

a) « carrier » includes the shipowner or the charterer or the operator who enters into a contract of carriage of passengers and luggage.

b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers *and their luggage*, but 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 sea-going ship.

e) « *luggage means any articles carried under a passenger contract of carriage.*

f) « carriage » covers *the following periods :*

1. *With regards to any articles which the passenger carries on his (her) own person or takes with him (her) in the cabin, the period while the luggage is on board the ship and in the course of embarkation or disembarkation, but does not include any period while the luggage is in a marine station or on a quay or other port installation. In addition « carriage » includes transport by water from land to a ship or*

Note. — With a view to make the reading easier, the points of interest have been printed as follows :

**changes from the 1962 draft**

*other changes from the 1961 Passenger Convention.*

the rest of the draft is identical to the last mentioned Convention.

ou autre installation portuaire. 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;

2. en ce qui concerne les automobiles, caravanes, motocyclettes et autres véhicules à moteur, la période comprise entre le moment où les bagages sont chargés et celui où ils sont déchargés du navire;
3. en ce qui concerne tout autre objet, la période comprise entre le moment de la remise au représentant du transporteur à terre ou à bord et celui de la délivrance.

g) « transport international » signifie tout transport dont, selon le contrat de transport, le lieu de départ et le lieu de destination sont situés soit dans un seul Etat, s'il y a un port d'escale intermédiaire dans un autre Etat, soit dans deux Etats différents;

h) « 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 soit effectués par un navire battant le pavillon d'un Etat contractant, soit lorsque, d'après le contrat de transport, le lieu de départ ou le lieu de destination se trouve dans un Etat contractant.

## Article 3

1. Lorsqu'un transporteur est propriétaire du navire, il exercera une diligence raisonnable et répondra de ce que ses préposés, agissant dans l'exercice de leurs fonctions, exercent une diligence raisonnable pour mettre et conserver le navire en état de navigabilité et convenablement armé, équipé et approvisionné au début du transport et à tout moment durant le transport, et *pour assurer la sécurité du transport des bagages* à tous autres égards.

2. Lorsque le transporteur n'est pas propriétaire du navire, il répondra de ce que le propriétaire du navire ou l'armateur, selon le cas, et leurs préposés, agissant dans l'exercice de leurs fonctions, exercent une diligence raisonnable aux fins énumérées au paragraphe 1) du présent article.

## Article 4

1. Le transporteur sera responsable *de la perte et du dommage aux bagages*, si le fait générateur *de la perte ou du dommage* a lieu au cours du transport et est imputable à la faute ou négligence du transporteur, ou de ses préposés agissant dans l'exercice de leurs fonctions.

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.

2. With regard to passengers' motorcars, caravans, motor cycles or other motor vehicles, the period from the time when the luggage is loaded on to the time when it is discharged from the ship.

3. With regard to all other articles, the period from the time of delivery to the representative of the carrier on shore or on board and until the time of redelivery.

g) « international carriage » means any carriage in which according to the contract of carriage the place of departure and the place of destination are situated either in a single state, if there is an intermediate port of call in another state, or in two different states.

h) « 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 contract of carriage, either the place of departure or the place of destination is in a contracting state.

## Article 3

1. Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make and keep the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and at all times during the carriage and in all other respects to secure *the safe transportation of the luggage*.

2. Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment, exercise due diligence in the respects set out in paragraph (1) of this article.

## Article 4

1. The carrier shall be liable for *loss of or damage to the luggage* if the incident which causes *the loss or damage* occurs in the course of carriage and is due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.

2. *Le transporteur ne sera pas responsable si la faute ou la négligence a été commise par des préposés du transporteur dans la navigation ou l'administration du navire.*

3. **Le transporteur ne sera pas responsable en cas de perte ou de dommages à des espèces, titres et autres valeurs tels que de l'or et de l'argenterie, des montres, de la joaillerie, bijoux, écrins, etc., sauf s'ils sont spécifiés et remis contre reçu pour être gardés dans le coffre-fort du navire.**

4. *La preuve de la faute ou de la négligence du transporteur ou de ses préposés incombe au passager en ce qui concerne tout objet porté sur lui ou se trouvant dans sa cabine.*

5. *La preuve de l'absence de faute ou de négligence du transporteur ou de ses préposés incombe au transporteur en ce qui concerne tout autre objet.*

6. **La preuve de l'étendue de la perte ou du dommage incombe au passager.**

#### Article 5

Si le transporteur établit que la faute ou la négligence du passager a causé la perte ou le dommage, ou y a contribué, le tribunal peut, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

#### Article 6

1. *La responsabilité en cas de perte ou de dommage à des objets portés sur la personne du passager ou se trouvant dans sa cabine est limitée, dans tous les cas, à un montant de 6.000 francs par passager.*

2. *La responsabilité en cas de perte ou de dommage à une automobile, caravane, motocyclette ou autre véhicule à moteur, y compris tout objet transporté à l'intérieur ou sur le véhicule, est limitée, dans tous les cas, à 20.000 francs par véhicule.*

3. **La responsabilité en cas de perte ou de dommage à des espèces et autres valeurs énumérées à l'article 4 - litteras 3 sera limitée, dans tous les cas, à la valeur déclarée au moment de la remise des objets en vue de leur conservation dans le coffre-fort du navire. A défaut de déclaration de valeur, la responsabilité pour les objets déposés ne dépassera en aucun cas de 10.000 francs.**

4. *La responsabilité en cas de perte ou de dommage à tout objet autre que ceux énumérés sous les litteras 1), 2) et 3) est limitée, dans tous les cas, à 10.000 francs par passager.*

2. *The carrier shall not be liable if the fault or neglect is committed by the carrier's servants in the navigation or management of the ship.*

3. *The carrier shall not be liable for loss of or damage to monies, bonds and other valuables such as gold and silverware, watches, jewellery, ornaments, jewellery boxes etc., unless specified and delivered against a receipt to the vessel for keeping in the vessel's safe deposit box.*

4. *The burden of proving the fault or neglect of the carrier or of the carrier's servants or agents lies with the passenger with regard to all articles carried on the passenger's person or in his (her) cabin.*

5. *The burden of proving the non-existence of fault or neglect of the carrier or of the carrier's servants or agents lies with the carrier so far as all other luggage is concerned.*

6. *The burden of proving the extent of the loss or damage lies with the passenger.*

#### Article 5

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

#### Article 6

1. *The liability for the loss of or damage to the articles carried on the passenger's person or in the cabin shall in no case exceed 6.000 frs. per passenger.*

2. *The liability for loss of or damage to motorcar, caravan, motorcycle or other motorvehicle including all articles carried in or on the vehicle shall in no case exceed 20.000 frs. per vehicle.*

3. *The liability for loss of or damage to monies and valuables, as specified in Art. 4, subsect. 3, shall in no case exceed the value declared when the articles were received for keeping in the vessels safe-box. If no value be declared, the liability for the articles deposited shall in no case exceed 10.000 frs.*

4. *The liability for the loss of or damage to all other articles than those mentioned under (1), (2) or (3) shall in no case exceed 10.000 frs. per passenger.*

5. Chaque franc mentionné dans cet article est considéré comme se rapportant à une unité constituée par 65,5 milligrammes et demi d'or au titre de 900 millièmes de fin. La somme allouée peut être convertie dans chaque monnaie nationale en chiffres ronds. La conversion de cette somme en monnaies nationales autres que la monnaie or s'effectuera suivant la valeur-or de ces monnaies à la date du paiement.

6. Par un contrat spécial avec le transporteur, le passager pourra fixer une limite de responsabilité plus élevée. *Ils pourront de même convenir qu'en cas de dommage à une automobile, caravane, motocyclette ou autre véhicule à moteur, la responsabilité sera soumise à une franchise déductible, limitée à 5 % de la valeur à l'état sain du véhicule endommagé.*

7. Les frais de justice alloués et taxés par un tribunal dans les instances en dommages-intérêts, ne seront pas inclus dans les limites de responsabilité prévues ci-dessus au présent article.

8. Les limitations de responsabilité prévues par le présent article s'appliquent à l'ensemble des actions nées d'un même événement et intentées par un passager ou en son nom ou par ses ayants-droit ou les personnes à sa charge.

#### Article 7

Le transporteur sera déchu du bénéfice de la limitation de responsabilité prévue par l'article 6, s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur, faits, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résulterait 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

*A l'exception de ce qui est prévu à l'article 6 (6), toute stipulation contractuelle, conclue avant le fait générateur du dommage, tendant à exonérer le transporteur de sa responsabilité envers le passager ou à établir une limite inférieure à celle fixée dans la présente Convention, ou à renverser le fardeau de la preuve qui incombe au transporteur est nulle et non avenue; mais la nullité de ces stipulations n'entraîne pas la nullité du contrat de transport, lequel demeure soumis aux dispositions de la présente Convention.*

5. Each franc mentioned in this article shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900. The sum awarded may be converted into national currencies in round figures. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of payment.

6. The carrier and the passenger may agree by special contract to a higher limit of liability. *They may also agree that in case of damage to a motorcar, caravan, motorcycle or other motorvehicle, the liability shall be subject to a deductible not exceeding 5 % of the sound value of the damaged vehicle.*

7. Any legal costs awarded and taxed by a Court in an action for damages shall not be included in the limits of liability prescribed in this article.

8. The limits of liability prescribed in this article shall apply to the aggregate of the claims put forward by or on behalf of any one passenger, his personal representative, heirs or dependents on any distinct occasion.

#### Article 7

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6, if it is proved that the damage resulted from an act or omission of the carrier done with the 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 liability of owners of sea-going ships or in any national law relating to such limitation.

#### Article 9

*Except as provided for in article 6 (6), any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or to prescribe 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 shall be null and void, but the nullity of that provision shall not render void the contract which shall remain subject to the provisions of this Convention.*

## Article 10

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.

## Article 11

1. En cas de *perte ou de dommage à des bagages*, le passager doit adresser des protestations écrites au transporteur **immédiatement après la constatation du dommage ou de la perte, et au plus tard sept jours après la date du débarquement en ce qui concerne les objets transportés en cabine et pour tout autre objet sept jours après leur délivrance.** Faute de se conformer à cette prescription, le passager sera présumé, sauf preuve contraire, *avoir reçu ses bagages en bon état.*

2. Les actions en réparation du préjudice résultant *de la perte ou du dommage aux bagages se prescrivent après une année à partir de la date du débarquement, et en cas de perte totale du navire à partir de la date à laquelle le débarquement aurait eu lieu.*

3. La loi du tribunal saisi régira les causes de suspension et d'interruption des délais de prescription prévus au présent article; mais, en aucun cas, une instance régie par la présente Convention ne pourra être introduite après l'expiration d'un délai de trois ans à compter du jour du débarquement.

## 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 responsabilité que peut invoquer le 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 lesdites limites.

3. Toutefois, le préposé ne pourra se prévaloir des dispositions des paragraphes 1) et 2) du présent article, s'il est prouvé que le dommage résulte d'un acte ou d'une omission de ce préposé fait, soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résulterait probablement.

## Article 13

La Convention s'applique aux transports à titre commercial effectués par l'Etat ou les autres personnes morales de droit public dans les conditions prévues à l'article 1<sup>er</sup>.

## Article 10

Any claim for damages, however founded, may only be made subject to the conditions and the limits set out in this Convention.

## Article 11

1. In case of *loss of or damage to luggage* the passenger shall give written notice of such loss or damage to the carrier **forthwith after discovery of the damage or the loss at the latest within seven days after the date of disembarkation for articles carried in cabin and after redelivery for all other articles.** If he fails to comply with this requirement, the passenger shall be presumed, in the absence of proof to the contrary, *to have received his luggage undamaged.*

2. Actions for damages arising out of *loss of or damage to luggage* shall be time-barred after a period of *one year from the date of disembarkation, or if the ship has become a total loss, from the date when the disembarkation should have taken place.*

3. The law of the Court seized of the case shall govern rights of suspension and interruption of limitation periods in this article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

## 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 limits.

3. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2) of this Article 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

This Convention shall be applied to commercial carriage within the meaning of Article 1 undertaken by States or Public Authorities.

#### **Article 14**

La présente Convention ne porte pas atteinte aux dispositions des conventions internationales ou des lois nationales régissant la responsabilité pour dommages nucléaires.

#### **Article 15**

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

#### **Article 16**

La présente Convention sera ratifiée et les instruments de ratification seront déposés auprès du Gouvernement belge.

#### **Article 17**

1. La présente Convention entrera en vigueur entre les deux premiers Etats qui l'auront ratifiée, trois mois après la date du dépôt de son instrument de ratification.

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

#### **Article 18**

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

Les instruments d'adhésion seront déposés auprès du Gouvernement belge.

La Convention entrera en vigueur pour l'Etat adhérent trois 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 par l'article 17, paragraphe (1).

#### **Article 19**

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 par le Gouvernement belge.

#### **Article 14**

This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage.

#### **Article 15**

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

#### **Article 16**

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government.

#### **Article 17**

1. This Convention shall come into force between the two States which first ratify it, three months after the date of the deposit of the second instrument of ratification.

2. This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification, three months after the date of the deposit of the instrument of ratification of that State.

#### **Article 18**

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

The instruments of accession shall be deposited with the Belgian Government.

The Convention shall come into force in respect of the acceding State three 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 17, paragraph (1).

#### **Article 19**

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.

## Article 20

1. Toute Haute Partie Contractante peut, au moment de la ratification, de l'adhésion, ou à tout autre moment ultérieur, notifier par écrit au Gouvernement belge que la présente Convention s'applique à tels pays qui n'ont pas encore accédé à la souveraineté et dont elle assure les relations internationales.

La Convention sera applicable auxdits pays trois mois après la date de réception de cette notification par le Gouvernement belge.

L'Organisation des Nations Unies peut se prévaloir de cette disposition lorsqu'elle est responsable de l'administration d'un pays ou lorsqu'elle en assure les relations internationales.

2. L'Organisation des Nations Unies ou toute Haute Partie Contractante qui a souscrit une déclaration au titre du paragraphe (1) du présent article, pourra à tout moment aviser le Gouvernement belge que la Convention cesse de s'appliquer aux pays en question.

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

## Article 21

Le Gouvernement belge notifiera aux Etats représentés à la ... session de la Conférence diplomatique de Droit Maritime ainsi qu'aux Etats qui adhèrent à la présente Convention :

1. Les signatures, ratifications et adhésions reçues en application des articles 15, 16 et 18.
2. La date à laquelle la présente Convention entrera en vigueur, en application de l'article 17.
3. Les notifications au sujet de l'application territoriale de la Convention en exécution de l'article 20.
4. Les dénonciations reçues en application de l'article 19.

## Article 22

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.

## Article 20

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 countries which have not yet obtained sovereign rights and for whose international relations it is responsible.

The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the countries named therein.

The United Nations Organization may apply the provision of this Article in cases where they are the administering authority for a country or where they are responsible for the international relations of a country.

2. The United Nations Organization or any High Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such country.

This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

## Article 21

The Belgian Government shall notify the States represented at the ... session of the Diplomatic Conference on Maritime Law, and the acceding States to this Convention, of the following :

1. The signatures, ratifications and accessions received in accordance with Articles 15, 16 and 18.
2. The date on which the present Convention will come into force in accordance with Article 17.
3. The notifications with regard the territorial application of the Convention in accordance with Article 20.
4. The denunciations received in accordance with Article 19.

## Article 22

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.

Toute Haute Partie Contractante qui désirerait faire usage de cette faculté avisera le Gouvernement belge qui, pourvu qu'un tiers des Hautes Parties Contractantes soit d'accord se chargera de convoquer la Conférence dans les six mois.

EN FOI DE QUOI les Plénipotentiaires soussignés dont les pouvoirs ont été reconnus en bonne et due forme ont signé la présente Convention.

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

## PROTOCOLE

Toute Haute Partie Contractante pourra, lors de la signature, de la ratification ou de l'adhésion à la présente Convention, formuler les réserves suivantes :

1. de ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux;
2. de ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante;
3. de donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous forme appropriée à cette législation.
4. **de ne pas donner effet à la Convention lorsque le contrat de transport étant exécuté au moyen de plus d'un mode de transport est régi par la Convention Internationale sur le transport de passagers et de bagages par chemin de fer.**

Any High Contracting Party proposing to avail itself of this right shall notify the Belgian Government which, provided that one third of the High Contracting Parties are in agreement, shall convene the Conference within six months thereafter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, whose credentials have been duly accepted, have signed this Convention.

DONE at Brussels, ... day ..., 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.

### PROTOCOL

Any High Contracting Party may at the time of signing, ratifying or acceding to this Convention make the following reservations :

1. not to give effect to the Convention in relation to carriage which according to its national law is not considered to be international carriage;
2. no to give effect to the Convention when the passenger and the carrier are both subjects of the said Contracting Party;
3. to give effect to this Convention either by giving it the force of law or by including the provisions of this Convention in its national legislation in a form appropriate to that legislation.
4. not to give effect to this Convention to a contract of carriage by more than one form of transport governed by the International Convention concerning the carriage of passengers and luggage by rail.

## HELLENIC MARITIME LAW ASSOCIATION

**CARRIAGE OF PASSENGER LUGGAGE  
BY SEA**

## COMMENTS ON PRELIMINARY DRAFT CONVENTION

The Hellenic Maritime Law Association has examined the draft, and would like to propose the following amendment in the text of same, stating as below :

1. **In Article I, e**, at the end of it, it should be added : « ... except if carried under a bill of lading ».

2. **In Article 1, f, 2**. An explanatory statement should be added to the effect that the terms « loaded » and « discharged » mean the moment the vehicle has passed the ship's rail.

3. **Article 4, para. 3**. The words « for keeping in the vessel's safe deposit box » should be deleted. It should make no difference whether the intention was to keep the valuables in the ship's safe box or not.

4. **Article 6, para. 9**. Should be eliminated inasmuch it has a meaning only in what the passenger's life is concerned, and never in connection with damage or loss to property.

*April, 1963*

## AMENDMENTS (\*)

BAG./STO. - 1

### BELGIAN DELEGATION

#### ARTICLE 3

Remplacer le par. 1 par le texte suivant :

« Lorsqu'un transporteur est propriétaire du navire, il exercera une diligence raisonnable et répondra de ce que ses préposés, agissant dans l'exercice de leurs fonctions, exercent une diligence raisonnable pour mettre le navire en état de navigabilité et convenablement armé, équipé et approvisionné au début du transport et pour assurer la sécurité du transport des bagages à tous autres égards. »

#### ARTICLE 4

Remplacer le par. 5 par le texte suivant :

« En ce qui concerne tout autre objet, le transporteur ne sera pas responsable des dommages causés par l'incendie à moins que celui-ci ne soit causé par le fait ou la faute du transporteur. Il ne sera pas non plus responsable s'il prouve que le dommage a été occasionné par un événement ou un fait auquel il est étranger. »

#### ARTICLE 11

Remplacer le par. 1<sup>er</sup> par le texte suivant :

« En cas de perte ou de dommage à des bagages le passager doit adresser des protestations écrites au transporteur ou à son agent, avant ou au plus tard lors de la délivrance ou l'enlèvement des bagages. »

« Faute de se conformer à cette prescription, le passager sera présumé sauf preuve contraire avoir reçu ses bagages en bon état. »

« Si les pertes ou dommages ne sont pas apparents, la protestation doit être faite dans les sept jours, de la délivrance ou de l'enlèvement. »

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(\*) The Amendments not submitted to the vote of the Plenary Assembly, have been rejected during the debates of the Subcommittee for which no minutes have been published.

## NORWEGIAN DELEGATION

The February 1963 draft contained in its article 9 the following words :

« Except as provided for in article 6 any contractual provision... purporting to... *or to require disputes to be submitted to any particular jurisdiction or to arbitration...* shall be null and void... ».

The words in italics were, however, deleted in the later April draft.

Although there is no unanimity of opinion on this point in the Norwegian Maritime Law Association, the majority of the Norwegian delegation is not in agreement with the deletion. The disadvantages and complications to the carrier in being subject to lawsuits anywhere in the world are partly counterweighed by the need for the passenger not to be bound by unreasonably restrictive jurisdiction clauses in the passenger ticket. A compromise between these conflicting (and in themselves reasonable) interests seems to be the answer.

Accordingly, the Norwegian delegation proposes to re-introduce in a slightly modified form the first part of *article 13* of the *Madrid draft* as a new article 13, reading as follows :

## ARTICLE 13

Action en responsabilité pourra être intentée au choix du demandeur uniquement :

a) soit devant le Tribunal de la résidence habituelle du défendeur ou d'un des sièges de son exploitation;

b) soit devant le Tribunal du point de départ ou du point de destination stipulé au contrat.

Est nulle et non avenue toute clause qui aurait pour effet de déplacer le lieu où doit être jugé le litige selon les règles portées à la présente Convention.

Proceedings for liability can be taken only according to the plaintiff's preference,

a) either before the Court of the usual residence of the defendant or before one of his permanent places of business;

b) or before the Court of the place of departure or that of destination according to the contract of passage.

Any clauses which would result into altering the place where the case is to be heard according to the rules of this Convention is null and void and of no effect.

No alteration in the April draft of article 9 is thereby needed. However the numbers of articles 13-22 would have to be changed correspondingly.

ITALIAN DELEGATION

ARTICLE 1

Remplacer l'alinéa e) par le texte suivant :

e) Bagages signifient tous objets à usage personnel des passagers emportés normalement et raisonnablement sous l'emploi d'un billet de passage.

SWEDISH DELEGATION

Addition to Article 6 (3) :

If delivrance of such valuables is not accepted by the carrier the carrier's liability is sujet to the ordinary limitation.

AMENDMENTS  
TO THE REVISED PRELIMINARY DRAFT (BAG-24) (\*)

5-63

*Adopted on the 11th and 12th June 1963  
by the International Subcommittee on the carriage of  
passengers luggage by sea*

ARTICLE 1

b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers and their luggage but does not include a charter party or bill of lading.

e) 1. « Luggage » means any articles or vehicles carried under a passenger contract of carriage.

2. « Cabin luggage » means luggage which the passenger carries on his person or takes with him in the cabin or which personally accompanies him.

f) 1. With regard to cabin luggage, the period...

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(\*) The French text has been published in the French Edition under number BAG/STO-6.

2. 2. With regard to all other luggage the period from the time when they are loaded on to the time when they are discharged from the ship.

### ARTICLE 3

Paragraph 1 should now read :

« Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents acting within the scope of their employment, exercise due diligence to make the ship seaworthy and properly manned, equipped and supplied at the beginning of the carriage, and in all other respects to secure the safe transportation of the luggage. »

### ARTICLE 4

2. At the end of the paragraph add the words « during the voyage »

3. Unless specially agreed the carrier shall not be liable for loss of or damage to monies, bonds and other valuables such as gold and silverware, watches, jewellery, ornaments.

4. The burden of proving

a) the extent of the loss or damage

b) that the incident which caused the loss or damage occurred in the course of carriage shall be with the passenger.

5. a) In the case of cabin luggage the burden of proving that the loss or damage was due to the fault or neglect of the carrier or his servants or agents shall lie with the passenger

b) In the case of all other luggage the burden of proving that the loss or damage was due to the fault or neglect of the carrier or his servants or agents shall lie with the passenger

b) In the case of all other luggage the burden shall be on the carrier to prove that the loss or damage was due to some cause other than the fault or neglect of the carrier, his servants or agents acting within the scope of their employment.

6. Delete.

### ARTICLE 6

1. The liability for the loss of or damage to cabin luggage shall in no case exceed 6.000 frs. per passenger.

2. The liability for loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 20.000 frs. per vehicle.

3. The liability for the loss of or damage to all other articles than those mentioned under (1) or (2) shall in no case exceed 10.000 frs. per passenger.

4. Each franc mentioned in this article shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of conversion of the sum awarded into national currencies and shall be regulated in accordance with the law of the court seized of the case.

5. The carrier and the passenger may agree by a special contract to a higher limit of liability. They may also agree that in case of damage to a vehicle, the liability shall be subject to a deductible not exceeding 1500 frs. per vehicle.

6. (Previous clause 7).

7. (Previous clause 8).

#### ARTICLE 9

Replace the reference to Article 6 (6) by Article 6 (5).

#### ARTICLE 11

Replace paragraph 1 with the following text :

1. a) In case of apparent damage to luggage the passenger shall give written notice to the carrier or his agent.
  - (i) in the case of cabin luggage before or at the time of disembarkation
  - (ii) in the case of all other luggage before or at the time of its delivery
- b) In the case of loss of or damage which is not apparent such notice must be given within seven days of disembarkation or delivery or at the time when such delivery should have taken place
- c) If the fails to comply with the requirements of this Article the passenger shall be presumed in the absence of proof to the contrary to have received his luggage undamaged.
- d) The notice in writing need not be given if the state of the luggage has at the time of their receipt been the subject of joint survey or inspection.

#### ARTICLE 12bis

Proceedings for liability can be taken only according to the plaintiff's preference.

- a) either before the court of the habitual residence or principal place of business of the defendant

b) or before the court of the place of departure or that of destination according to the contract of passage.

Any clauses which would result in altering the place where the case is to be heard according to the rule of this Convention is null and void and of no effect.

BAG./STO. - 7

## NETHERLANDS DELEGATION

### ARTICLE 6

Paragraph 5 should read :

« 5. The carrier and the passenger may agree by special contract to a higher limit. They may also agree that the liability of the carrier shall be subject to a deductible not exceeding 1500 frs. in the case of damage to a vehicle and not exceeding 500 frs. per passenger in the case of loss of or damage to other luggage. »

CONFERENCE OF STOCKHOLM

PRELIMINARY REPORTS

AND

AMENDMENTS

3

SHIPS UNDER CONSTRUCTION

## REGISTRATION OF SHIPS UNDER CONSTRUCTION

### REPORT

*prepared by Professor, dr. jur. Sjur Brækhus and  
Mr. Per Brunsvig, advocate at the Supreme Court of Norway*

1. The International Bar Association IBA has in two Conferences — in Oslo in 1956 and in Cologne in 1958 — discussed legal problems relating to security in ships under construction.

Rapporteur to the Oslo Conference was professor Brækhus. His rapport was later published by IBA in a book under the title « *International Shipbuilding Contracts*, Particularly legal problems in connection with finance and security », which also contained papers submitted to the Conference by E. Behrendt-Poulsen, Denmark, H. B. Lawson and J. E. Norton, England, James P. Govare, France, W. G. Wieringa, Netherlands and F. H. F. Oldewelt, Netherlands, Eskil Weibull, Sweden, and Churchill Rodgers, U.S.A.

Professor Brækhus concluded his report with the observation that « this state of affairs » — meaning the variation in national laws relating to security in ships under construction — « creates difficulties and uncertainty for the lawyers and the business world ». He suggested that these legal difficulties should be set right. « It would be a great advantage », he said, « for the international shipbuilding community, for bankers and shipbuilders, if a certain degree of uniformity could be achieved. »

The Council of the International Bar Association saw this suggestion as a challenge to renewed activity and appointed a Committee on International Shipbuilding Contracts « to the end that uniform rules may be promulgated which, it is hoped, will be of assistance to all interested in this field ». The Committee was set up with members from 14 countries and with M. Per Brunsvig, Norway, as Chairman. Mr. Brunsvig presented a printed report to the IBA Conference in Cologne under the title « *International Shipbuilding Contracts*, Unification of national laws relating to registration of ships under construction ». Annexed to the report was a Preliminary Draft Convention.

The Draft Convention was approved by the Cologne Conference and the IBA Council decided to forward the Reports and the Draft Convention to the Comité Maritime International, the Inter-Governmental Maritime Consultative Organization in London and the International Law Commission, United Nations.

II. Great values are involved in the modern shipbuilding industry. A single contract may run into millions in any currency and a multitude of contracts are in existence in the greater shipbuilding countries. The builder may finance the building out of his own funds, but more often he will receive from the purchaser the greater part of the purchase-money concurrent with the stage by stage completion of the contract. On his side the purchaser may finance the contract out of his disposable funds, by selling other tonnage, or by loans from banks, insurance companies or other sources. As security for loans the purchaser may i.a. put up his other ships, the newbuilding — as far as this procedure is possible — and his expected freight earnings under long term charter-parties. In some countries the state as well takes an active part in the financing of shipbuilding contracts.

When completed, the ship will be governed by marine law, which to a large extent is international in character. But while the ship is under construction the law takes little or no heed of the fact that shipbuilding nowadays is an important factor in world trade. Ships are very often built for foreign purchasers. To-day a ship may often be built in one country for the account of a foreign purchaser, who borrows money from bankers in a third country. Further this loan may be based on a time-charter party with a charterer who is a national of a fourth country.

In such situation it would of course be a benefit to all parties if they could base their transactions on a uniform system of legal rules. On the other hand, the great international trade which we have had in this field during the last decade may support the observation that the variations in national laws do not present too great an obstacle to the international community of builders, shipowners and financiers.

Contracts for the building of modern ships may easily run into millions. Even a slight degree of legal uncertainty will be an evil when such large amounts of money are involved, and if such uncertainty is due to the inadequacy of the law, this may have a bearing not on one, but on many shipbuilding contracts.

It does somehow seem irrational that in all civilized countries we find a well organized system for the registration of rights and security in real estate, however small, while a similar system for the registration of ships under construction — with the enormous values involved — is lacking or at best somewhat deficient in many countries.

This may partly be due to the very fact that in most countries shipbuilding contracts are classified as contracts for the sale of goods.

And chattels cannot normally be registered in any country. But a modern newbuilding and the materials and equipment specified for its construction are unique in relation to most other chattels. It might perhaps be said that even on the stocks the newbuilding is more closely related to a commissioned ship than to all sorts of raw-materials and ready-made commodities of every kind which are the chief domain of the law of sale. But for commissioned ships it is now a well established legal tradition in most countries that ships trading are to be treated on a line with real property as far as the registration laws are concerned.

The newbuilding and all materials and equipment for its construction are specified in detail in the building contract. Once the work has been started the structure is a somewhat ponderous immovable on the stocks until the time of its launching. At least from the time when constructional work has been commenced in a place from which the ship is supposed to be launched, it should be possible to treat the ship under construction as far as registration laws are concerned on a line with commissioned ships and real estate.

Economically a registration of ships under construction may open an opportunity for the parties to use the fabric itself (and materials and equipment appropriated to the building contract) as security for the financing of the constructional work. In this way the proposed reform may to some extent ease the purchaser's financial problems and thereby facilitate the acquisition of new contracts by shipbuilders.

Another point in this connection may be that basically the proposed form is of a legal-technical nature. No state could reasonably object to the proposed Draft Convention on political or competitive grounds.

However, the difficulties in accomplishing a reform of this complexity through international cooperation cannot be underestimated. Revision and unification of national laws relative to security in ships under construction is a tall order. The first question to be discussed is whether it does exist a need for such a reform which will justify the efforts which no doubt will be necessary in a great many quarters if such a complex reform is finally to be achieved.

By its very nature the question avoids an exact answer. It asks for an evaluation to be based on many rather uncertain considerations, and the answer is of course a relative one. The need may be more felt in some countries — or by foreigners dealing with certain countries — than by others with a different experience. There should be no doubt, however, that the question is an important one and that the possibilities of giving the international community of shipbuilders, shipowners and their lenders better legal tools to work with, should be further explored. The annexed Draft Convention has been prepared as a basis and a starting point for such a discussion.

III. The annexed preliminary Draft Convention is based on the following principles which are considered fundamental to the contemplated reform :

1. That all contracting States shall permit registration in a register established by or under the control of the State, of ships under construction for foreign purchasers at yards within their territory.

2. That such registration shall be permitted at the latest when the fabric is so far advanced that the ship may be satisfactorily identified.

3. That no discriminatory rules or practices shall be applied against nationals of other contracting States, in so far as registration of rights in or charges on the vessel is concerned.

4. That registered rights or charges shall have legal priority from the time of registration.

5. That such registration shall be recognized as valid in all contracting States.

6. That on transfer of the ship to another contracting State, all registered rights and charges shall remain in force retaining the order of priority of the original registration.

IV. The purpose of the proposed legislation is to regulate priorities — not to interfere with the parties' contractual relationship. The aim is to make it possible for the parties to obtain in a fairly simple and legally safe way protection for the arrangement which they have agreed upon in the contract.

When a system of registration for ships under construction is established, the registry may constitute recognized evidence of a title to the newbuilding. Security in the vessel may be obtained by entries in the register of transfer of title or of a mortgage deed relating to the vessel. In this way legal protection may be acquired against the parties' general creditors and in relation to later disposals of the newbuilding.

The opportunity for an early registration may greatly enhance the practical value of the reform to purchasers and their lenders and thereby also to the builder.

Most countries new permitting registration of ships under construction stipulate physical identification of the newbuilding as a prerequisite for registration. In Germany the keel must have been laid, and in France and the Netherlands « something » must have been placed on the stocks. In Denmark the work must have been carried so far, that the vessel may be satisfactorily identified according to its specified building measures.

In Italy and Canada, on the other hand, registration of the ship-building contract is possible.

In our opinion it should be recommended that all States should agree to accept registration of shipbuilding contracts — with the exception of pure option agreement. A registered mortgage on a piece of land may, according to the terms of the mortgage deed, also apply (under Norwegian law) to a house subsequently to be built on the site. Likewise it should be possible to obtain by way of registration priority for property or security in a vessel to be built subsequently. Physically the object of such rights will first materialize when the specified articles are procured or constructed by the shipbuilder, but for the purchaser and his lender it may be a considerable advantage to have established priority for their right in the vessel to be built already from the time when the first payment is made to the builder. The newbuilding may be properly identified by the names of the parties, the yard's building number and the detailed specifications of the ship stipulated in the contract.

As basis for discussion the Draft Convention, Article 3, contains three alternative provisions for at what stage of the execution of the building contract registration shall be permissible.

The point has been made that it should only be permissible to enter so-called rights in rem on the register. In Germany only instruments relating to a title or mortgage on the vessel may be registered, while under the new Danish Statute it is possible to register any instrument which establishes, creates, amends or annuls a title, mortgage, right of use, or right limiting the owner's competence to dispose of or deal with the vessel in one or several specified respects. Under this provision it is e.g. possible to enter charter parties or bare-boat agreements on the register.

The registration of the shipbuilding contract as such is recommended, but otherwise the Draft Convention suggests that it should be left to the individual State to decide whether registration of instruments relating to rights in personam should be allowed.

Another question of great importance to purchasers and their bankers is whether registered rights or claims on a newbuilding as a point of law shall comprise materials and equipment for its construction, provided the items have been properly marked as intended for the building of the ship in question.

The bulk of the purchase-price for a modern ship goes to pay for materials and equipment. At the builder's yard the materials will arrive as loose plates, beams, profiles, etc., and undergo a gradual transition into sections and constructional units which are finally turned into the completed ship ready for delivery.

The purchaser may have paid part of the purchase-money years before the ship is completed. A considerable time may elapse from the first payment to the day when the builder starts actual work on the

ship on the stocks. Usually the structure will not provide sufficient security for the purchase money which the purchaser has advanced to the builder until the last part of the construction period on the stocks, or even not before the main engine has been installed after launching.

It would, therefore, be of great practical importance if security could also be obtained in the materials and equipment procured for the construction of the vessel.

The Draft Convention does not include a provision to the effect that the contracting States should bind themselves to provide that registered rights in or claims on a newbuilding as a point of law should comprise properly identified materials and equipment for the construction of the vessel, provided nothing to the contrary has been agreed upon by the parties. It should be clear, however, that a provision to his effect would considerably enhance the practical value of the suggested reform.

In so far as the materials and equipment have been paid for by the purchaser, the builder's anterior general creditors should have no reason to object to an arrangement giving the purchaser a title to or security in these articles. Anyone subsequently contemplating extending credit to the builder would get sufficient notice of the arrangement by looking up the register-book before any credit is granted.

The two last Articles of the Draft Convention deal with the international recognition of registered rights and claims.

If registration is to give foreign purchasers and their financial backers the protection intended, registration undertaken in one country must be recognized as valid by all contracting States. On transfer of the vessel, on completion or otherwise, to a new country registration there should only be possible on the basis of a certificate from the registrar in the former country, setting out all registered particulars relating to the vessel. On registration in the new country all rights and charges in force when the ship was transferred, shall be entered in the ship's new register and shall remain as rights in or claims on the vessel, retaining the priority they have according to the original registration.

This provision may be one of the cardinal points, if the suggested reform is to furnish the international community of shipbuilders, purchasers and lenders with a practical and reasonably safe instrument for the money advanced to pay for the construction of the vessel.

## QUESTIONNAIRE

*Note* : The questionnaire is based on the annexed :

- 1) Preliminary draft of a Report to the Stockholm Conference.
- 2) Draft of an International Convention for the unification of certain rules of law relating to registration of ships under construction.

The Draft Report and Draft Convention are of a tentative nature only. A final Report and Draft Convention will be based on the answers to this questionnaire and the forthcoming discussions of the International Sub-Committee.

### I. Present legal situation in your country

1. Is registration of ships under construction in an official register permissible in your country ?
2. If so, at what stage of the construction process is registration of the newbuilding or of the shipbuilding contract permissible ?
3. What kind of instruments relating to a ship under construction may be registered (title, other property rights, security, contracts of affreightment, etc.) ?
4. Is registration of any instrument mandatory or is it left to the discretion of the interested parties whether they will apply for registration or not ? If mandatory, what is the legal consequence of non-registration ?
5. Does registered rights or charges comprise
  - a) the newbuilding,
  - b) materials and/or equipment as a matter of law or according to agreement between the parties,
  - c) if the question under litera b is answered in the affirmative : what further condition, if any, are required (that the materials are situated on the precincts of the yard, especially marked, that an inventory has been registered, etc.) ?
6. Is the register organized locally — with entries made to a registrar in the district where the yard is situated — or in a central register for the entire state ?

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

1. Do you think there is a need in your country for a reform substantially on the line suggested in the Draft Convention ?

2. Do you know of cases where the risk involved in advancing money to the yard has raised problems for the financing of new ship-building contracts or resulted in loss for the purchaser or his financiers ?

3. Is it usual in your country that purchasers get a bank guarantee from the yard for money advanced as instalments under a building contract ? If so, what is the cost of such bank guarantees ?

## **III. Who may apply for registration ?**

Provided the principle of registration of ships under construction be accepted in your country, who shall have the right to apply for such registration :

- a) the yard only,
- b) the purchaser if the title according to the building contract has been transferred to the purchaser,
- c) jointly by the yard and the purchaser ?
- d) Should registration of ships under construction be permitted irrespective of the nationality of the purchaser (the owner) of the newbuilding (Cf. the Draft Convention, Art. 2) ?

## **IV. When shall registration be permissible ?**

Provided the principle of registration of ships under construction be accepted, at what stage of the construction process should registration be permissible (Cf. Draft Convention, Art. 3) :

- a) When the shipbuilding contract has been duly executed ?
- b) When materials intended for the newbuilding has been received at the yard and has been properly marked ?
- c) When the constructional work has been commenced in a place from which the newbuilding is supposed to be launched ?
- d) When the keel has been laid ?
- e) When the hull has been framed ?
- f. When the newbuilding has been launched ?

(Please state your reasons for the standpoint you have taken.)

## **V. What instruments may be registered ?**

Provided the principle of registration of ships under construction be accepted, what instruments related to such ships should be registered (Cf. Draft Convention, Art. 4) ?

1. The shipbuilding contract ?
2. Property rights, as e.g. :
  - a) Declaration of ownership to the newbuilding.
  - b) Reservation of title, e.g. by subcontractor selling equipment to the shipbuilder.
  - c) Transfer of title.
3. Security rights.
  - a) Shipbuilder's reservation of right to detain the ship and materials for it until the entire purchase price has been paid (possessory lien) ?
  - b) Mortgages on the newbuilding.
  - c) Seizure and acts of execution.
4. Contracts of affreightment.
  - a) Bareboat, time, consecutive voyage or other form of charterparty on the newbuilding ?
  - b) Assignment of the charterparty or freight due thereunder ?
5. Should the parties be required by law to register any of the aforesaid transactions, e.g. transfer of title to the newbuilding, or should the question of registration be left entirely to the discretion of the parties ?

## **VI. Materials and equipment**

To which extent should registered rights or charges on a ship under construction comprise materials and equipment intended for, but not yet incorporated in the newbuilding (Cf. the Draft Convention, Art. 8 and 9) :

1. Should registered rights and charges comprise materials and equipment,
  - a) as a matter of law,
  - b) when the parties expressly have agreed thereupon and the agreement has been registered ?
2. What further conditions should be stipulated ?
  - a) That the materials and equipment are located in the builder's yard ?
  - b) That they are intended for the newbuilding and marked as such ?
  - c) That they are owned by the shipbuilder or the purchaser ?
  - d) That an inventory of the materials and equipment has been registered ?
3. Should entries in the register be allowed for rights and charges referring only to certain types of materials and equipment (as e.g. radio equipment) ?

4. Should legal protection acquired by registration of special rights in materials or equipment lapse, when :

- a) the object is sold to a third party who is not and ought not to have been cognizant of the registered right and the objects are moved from the yard's precincts,
- b) the object is incorporated in the newbuilding,
- c) on delivery of the completed vessel.

### **VII. Legal consequence of registration**

Provided the principle of registration of ships under construction be accepted, what would in your law be the legal consequences of such registration :

1. Any consequences to the relations between the parties ?
2. Priority for rights and charges registered on the newbuilding in relation to :
  - a) the yard's ordinary creditors,
  - b) the yard's possessory lien for the unpaid part of the contract price,
  - c) the yard's trustee in bankruptcy ?
3. Should the registered instruments obtain such priority from the day and hour when they were :
  - a) produced to the registrar,
  - b) registered by him.
4. Is the wording of the Draft Convention Art. 5 sufficient to provide the protection which registration in your opinion ought to give the interested party ?
5. Should the registration only give protection for a right acquired by contract if the acquirer was in good faith at the time when the contract was made ? (Cf. Draft Convention, Art. 6.)

### **VIII. Transfer of the newbuilding to another State**

In the event of the completed ship being transferred to another state :

Do you consider the wording of Art. 10 and 11 of the Draft Convention sufficient to establish protection on an international basis for all parties who have acquired legitimate registered interests in the ship during the construction period ?

PRELIMINARY DRAFT, AUGUST 1962

OF AN

INTERNATIONAL CONVENTION

FOR THE UNIFICATION

OF CERTAIN RULES OF LAW RELATING TO

REGISTRATION OF SHIPS

UNDER CONSTRUCTION

**Article 1.**

The High Contracting Parties undertake to introduce in their national law regulations necessary to permit registration in an official register established by or under control of the State of ships under construction within the State's territory.

The registration of ships under construction may be restricted to such ship, which the competent registrar is satisfied will be of the nature and size required by the national law to be registered in the national ship register when completed.

**Article 2.**

The High Contracting Parties may restrict registration of ships under construction to ships ordered by a foreign purchaser. The Contracting Parties agree to allow registration of instruments relating to ships under construction without discriminating against any applicant who is a national of one of the contracting States. Such registration shall not affect any restrictions imposed by national law on the acquisition of such rights by aliens, neither does the registration give a foreign owner of the ship the right to let the ship fly the colours of the registering country.

**Article 3.**

Registration of instruments relating to a ship under construction shall be permitted :

Alternative A :

— when a contract for the building of a properly specified ship has been executed.

Alternative B :

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

The national law may, however, permit registration at an earlier stage, or permit registration of a contract for the building of a properly specified ship also before any work is commenced.

Alternative C :

— when the constructional work has proceeded so far that the ship may be satisfactorily identified.

The national law may, however, permit registration at an earlier stage, or permit registration of a contract for the building of a properly specified ship also before any work is commenced.

#### **Article 4.**

Instrument relating to property or security in a registered ship shall on application be entered in the register. The national law may allow registration of other instruments relating to a ship under construction.

#### **Article 5.**

Registered instruments shall have legal priority, one before another, in the same order as the application for registration was produced to the registrar, and shall take precedence over unregistered rights in or charges on the newbuilding.

#### **Article 6.**

Notwithstanding the provisions of Article 5 the national law may provide that a previously acquired right shall take precedence over a subsequently acquired right regardless of registration, if the latter has been acquired by contract and the acquirer was or ought to have been cognizant of the former right at the time, when the contract was executed.

#### **Article 7.**

The national law may further provide that maritime liens, the shipbuilder's right to detain the ship until payment of the purchase-money has been made, or statutory rights protecting the interests of the workers, shall take precedence over registered rights or charges regardless of the provisions of Article 5.

#### **Article 8.**

The national law may also provide that registered rights in or charges on a ship under construction shall comprise materials, machinery and equipment that are located in the builder's yard and distinctly marked as intended for the construction of the ship.

#### **Article 9.**

If rights in or charges on machinery, special equipment or other separate parts of the newbuilding have been registered according to the national law, the legal protection acquired by such registration shall cease on delivery of the ship to a foreign purchaser for all objects or component parts which are built into the ship and for all appurtenances necessary for its navigation.

#### **Article 10.**

Rights or charges registered pursuant to the provisions of this Convention and lawfully executed according to the pertinent laws of the State where the registration has taken place shall be recognized as valid in all the contracting States.

#### **Article 11.**

When on completion the owners wishes to register the completed ship in another State, which is a party to this convention, such registration shall only be allowed by the State to which an application is made on presentation of a certificate from the competent registrar in the State where the newbuilding has been registered, setting out all registered particulars relating to rights in or charges on the vessel and their order of priority and further stating that no more particulars will be registered on the ship after the issue of the certificate. Said particulars shall be entered in the register of the State to which the ship is transferred, and all rights and charges shall remain as before, including their mutual order of priority.

## ITALIAN MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## REPLY TO THE QUESTIONNAIRE

**I. The questionnaire.**

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

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

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

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

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

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

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

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

It follows that contracts of affreightment cannot be registered.

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

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

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

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

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

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

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

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

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

## **III. Who may apply for registration ?**

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

## **IV. When is registration permissible ?**

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

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

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

## V. Instruments which should be registered.

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

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

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

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

## VI. Material and equipment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## VII. Legal consequence of registration.

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

2. The general effect of registration is that :

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

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

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

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

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

#### **VIII. Transfer of the newbuilding to another State.**

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

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

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

## **II.**

### **THE DRAFT CONVENTION**

#### **Article 1**

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

#### **Article 2**

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

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

### Article 3

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

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

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

### Article 4

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

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

### Article 5

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

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

### Article 6

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

### Article 7

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

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

### Article 8

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

### Article 9

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

### Article 10

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

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

## Article 11

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

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

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

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

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

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

*October, 1962.*

## SWEDISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## REPLIES TO QUESTIONNAIRE

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

**I. Present legal situation in Sweden.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### III. Who may apply for registration ?

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

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

### IV. When shall registration be permissible ?

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

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

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

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

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

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

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

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

## **V. What instruments may be registered ?**

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

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

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

## **VI. Materials and equipment.**

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

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

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

3. Our answer is no.

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

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

**VII. Legal consequences of registration.**

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

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

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

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

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

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

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

4. Our answer is yes.

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

### VIII. Transfer of the newbuilding to another State.

Our answer is in the affirmative.

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

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

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

*Stockholm, 22nd October, 1962.*

*For*

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

## DANISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## REPLIES TO QUESTIONNAIRE

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

## I

Present legal situation in Denmark.

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

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

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

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

**re 2.** See under re 1.

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

Maritime liens may not be registered.

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

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

re 5. The registered rights or charges comprise :

re a. the newbuilding.

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

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

re c. See under re b.

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

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

## II

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

re 2. Cases of the said nature have occurred.

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

## III

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

## IV

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

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

## V

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

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

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

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

re 2c. Transfer of title may be registered.

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

re 3b. Mortgages may be registered.

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

re 4a. Charter-parties may be registered.

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

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

## VI

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

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

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

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

## VII

Regarding the legal consequences of registration :

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

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

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

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

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

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

re 4. The wording seems satisfactory.

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

## VIII

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

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

*2. november 1962.*

*N.V. Boeg, formand.*

NETHERLANDS MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

REPLY TO QUESTIONNAIRE

I

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

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

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

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

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

5. Registered rights comprise the newbuilding only.

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

II

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

2. No.

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

### III

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

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

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

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

### IV

Registration of ships under construction should only be permissible

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

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

### V

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

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

- 2 a) Ownership
- 2 c) Transfer of title
- 3 b) Mortgage
- 3 c) Acts of execution (enforcement) and arrest
- 4 a) Demise charter.

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

5. The Dutch system seems satisfactory.

## VI

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

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

## VII

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

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

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

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

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

5. Yes.

## VIII

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

*Amsterdam, 16th January 1963.*

## GERMAN MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## REPLIES TO THE QUESTIONNAIRE

## I.

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

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

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

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

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

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

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

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

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

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

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

An inventory is not requested.

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

## II

1. No, as to the civil law.

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

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

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

## III

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

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

#### IV

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

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

#### V

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

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

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

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

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

## VI

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

2. These equipments and materials should

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

b) be marked with the sign of the newbuilding

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

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

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

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

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

b) Yes.

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

## VII

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

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

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

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

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

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

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

## VIII

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

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

*List of recommendations regarding the DRAFT*

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

*Hamburg, January 8th, 1963.*

## FINNISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## ANSWER TO QUESTIONNAIRE

## I. The present position in Finland is as follows.

Finland has ratified and brought into force the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages (dated 10th April, 1926).

At the time of the ratification no reserves were made by the Finnish Government.

## A. REGISTRATION OF SHIPS

Our law on registration of ships and of mortgages in ships of the 29th July, 1927, was corrected to comply with the regulations of the Convention.

According to our legislation registration of Finnish merchant ships is compulsory when the ship's burden is at least 19 net reg. tons (lighters and similar craft used only within limits of harbours are excluded).

An Owner having a merchant ship of a smaller burden than 19 net reg. tons may on application have the ship registered, if of a length of at least 10 meters.

If a merchant ship is being built in Finland for account of a Finnish Owner and if the construction of the ship has proceeded so far that the ship is individualized and it can be ascertained that, when ready, she will be 19 net. reg. tons, or have a length of 10 meters respectively, then on the application of the Owner the ship can be registered, so as to enable the vessel to be mortgaged as security for a debt.

Registration of a ready merchant ship of at least 19 net reg. tons is thus compulsory, but registration of a ship under construction is optional.

The purpose of registration is to officially establish ownership of the vessel, and such registration of title shall have taken place before any other rights in the vessel can be registered.

## B. REGISTRATION OF MORTGAGES IN SHIPS

A vessel entered in the Register can on application of the Owner himself be mortgaged as security for the payment of a fixed sum of money (plus interest and costs) based on a Promissory Note. A mortgage as security for one and the same Promissory Note can be registered in several vessels, provided they all belong to the same Owner.

It is thus not possible to register any other rights than the title (= ownership) to the vessel and the mortgage in the vessel.

An application for registration of a mortgage can be made by the holder of a Promissory Note, provided the Promissory Note itself contains authorization given by the Owner of the vessel to the holder of the Promissory Note to apply for such registration.

Registration of the title to a ship and registration of a mortgage in a ship takes place in the home port of the vessel, but registration of a ship under construction has to take place in the place, where the ship is being built.

When a ship under construction has been registered, then, when the ship is ready, all particulars in the Register of the place of construction are transferred to the Register of the vessel's home port.

A ship's mortgage comprises the ship itself and its accessories, outstanding freights and outstanding average contributions. In our Law there is no special mentioning of what the mortgage of a ship under construction comprises. In shipbuilding contracts it is often stipulated that the Shipowner shall have a lien on goods and material to be built into the ship and being delivered at the shipbuilder's yard.

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

1. We think a Convention authorizing the registration of rights in ships under construction would be useful.

2. We know of cases, where risks have been involved in advancing money to shipbuilders under shipbuilding contracts.

3. It is not usual in Finland that purchasers get a bank guarantee from the yard for money advanced as instalments under the building contract. The cost of a bank guarantee would vary between 1 and 2 %.

### III. Who may apply for registration ?

a), b), c). Registration of ownership is always the business of the Shipowner. Registration of a debt can take place only after the ownership of the vessel under construction has been registered.

d) In our opinion, before replying to the question under d), it should be decided whether registration should take place in the place, where the vessel is being built, or in the place, which will be the vessel's

home port. If it is decided that the registration should take place in the place, where the vessel is being built, which in our opinion is the most practical solution, then the only way would be to allow registration irrespective of the nationality of the Shipowner. If, again registration has to take place in the home port of the vessel, then the question under d) does not arise.

#### IV. When shall registration be permissible ?

We have an open mind on this question. It is not uncommon that a building contract is agreed four or five years before the building of the vessel starts. Under legal systems, where it is possible to register a bare-boat charter or a time-charter, it might be advisable to make facilities for registering such rights at any time after the building contract has been made. Under other legal systems, as ours for instance, where it is only possible to register a mortgage for a debt, such registration serves no useful purpose before the building has proceeded so far that the ship is individualized.

#### V. What instruments may be registered ?

1. See our answer to 2. below.

2. Under a legal system as ours the first thing would be to register the title (ownership). If any change in title (ownership) takes place during the construction, this should be registered.

3. a) It is uncertain whether under our legislation a shipbuilder has a possessory lien in a ship he is building. The shipbuilder would probably have to safeguard his rights in some other way. Now, according to a building contract, the building price usually has to be paid in instalments, partly in cash and partly by credit. The credit part the shipbuilder could have secured by a mortgage in the vessel. If the cash part is not paid as agreed, then there is a breach of contract on the purchaser's side and the shipbuilder could exercise a right, which in practice is very much similar to a possessory lien.

b) Mortgages on the newbuilding should be registered.

c) We understand that if a mortgaged vessel is seized and sold compulsorily, then the authorities attending to this will *ex officio* have corresponding data made in the Register.

4. Contracts of affreightment.

a) We would favour registration of long time charters such as bare-boat-, time- or consecutive voyage charters, which, as stated above, is not at present possible under our Law.

b) We are of the opinion that practical difficulties would arise in enforcing registered rights of assignment of charter party freights. On

the other hand, we would have no objection to the registration of the transfer from one holder of a charter party to another holder of the same charter party.

5. We see no reason why parties should be required by law to register any of the aforesaid transactions.

## VI. Materials and equipment.

The question whether the registration of a ship under construction should comprise also materials and equipment would depend on the wording of the building contract. If the contract stipulates, as it often does, that the purchaser shall have security in materials, equipment, etc., then a registration of a mortgage would comprise also, these accessories.

It is, however, easy to conceive a contract with no such stipulation and then a registration could comprise these only if the Convention *expressis verbis* stipulates that the mortgage of a ship under construction shall also comprise materials and equipment to be built into the ship.

At the present stage we do not think we can express any further opinion on

1. a) - b).
2. a) - d) and
- 3.

In our opinion when registration of a certain right is applied for, then the building contract should be enclosed with the application and the rights to be registered should be based on the building contract.

4. a) - c). A registration comprising materials and equipment lapses, of course, when these have been built in or otherwise made part of the ship. If a ship under construction is sold, then, of course, the buyer will inquire whether any registration has been made, and he will thus become cognizant of any rights being registered.

## VII. Legal consequence of registration.

1. The registration in itself would not have as a consequence any change in the relations between the shipbuilder and the purchaser.

2. Regarding 2. a), b) and c), we would refer to what we have stated under V. 3. a).

3. Registered rights should have priority from the day registration is applied for.

4. We think that Article 5 in the Draft Convention is in accordance with the view we have expressed above.

5. In our opinion what is stipulated in Article 6 does not belong to this Convention. This Article concerns principles, which are or should be stipulated elsewhere.

#### **VIII. Transfer of the newbuilding to another State.**

The principles embodied in the Brussels Convention on Maritime Liens and Mortgages should be applied. As we have pointed out, in some countries including Finland only a debt, i.e. an undertaking to pay a fixed sum of money, can be registered. Rights to use a ship can at present not be registered in Finland. Conflicts could therefore arise, e.g. if in a vessel under construction a right to use the vessel on time-charter has been registered and the vessel, when ready, is sold to and registered in a country, where such right cannot be registered.

### **THE DRAFT CONVENTION**

In addition to what we have said above we would make the following remarks.

**Article 7** refers to maritime liens. In our opinion maritime liens refer to a ship, which is trading, and not to a ship, which is under construction. Otherwise we have no objection to this Article.

#### **Article 8.**

It is doubtful whether it will be practical to have a stipulation regarding materials as proposed. Even if the Article can be complied with, there will always be great uncertainties.

#### **Article 9.**

Would it not be more correct to say that any registration regarding rights in a ship being built or in materials or equipment should comprise the ready-made ship with its equipment, etc., as stated in the present Convention on Maritime Liens and Mortgages. This would also apply to Article 10 and 11.

*Helsinki/Helsingfors, 11th September, 1962*

*Rudolf Beckman*

*Bertel Appelqvist*

## ASSOCIATION SUISSE DE DROIT MARITIME

ENREGISTREMENT DE NAVIRES  
EN CONSTRUCTION

## REPOSES AU QUESTIONNAIRE

Le droit maritime suisse ne connaît pas de dispositions concernant l'enregistrement de navires en construction étant donné que par nature ce pays dépourvu de littoral maritime ne possède pas de chantiers navals. Pour ces raisons l'association suisse de droit maritime n'est pas en mesure de répondre aux questions N° 1 à VII du questionnaire, sauf en ce qui concerne l'opportunité d'une Convention Internationale en la matière. Les armements suisses placent leurs ordres de construction à l'étranger et pour le financement d'une nouvelle unité à construire sur un chantier souvent l'hypothèque sera le moyen le plus approprié. Si une telle hypothèque jouira grâce à une Convention de la reconnaissance internationale, un des buts principaux de l'unification du droit est acquis et de ce fait, la préparation d'une Convention Internationale sera considérée souhaitable.

Les intérêts d'un Etat dépourvu de littoral maritime seront touchés au moment du transfert d'une nouvelle construction navale dans ce pays. Pour ce transfert le projet de Convention prévoit dans son article 11, dernière phrase, que toutes les inscriptions sur le registre de la partie contractante, dans lequel le navire en construction a été immatriculé, seront transférées dans le registre de l'autre partie contractante, où le navire sera utilisé. Cette règle qui dépasse une simple reconnaissance des droits inscrits, mais qui impose l'enregistrement de droits constitués à l'étranger dans un registre d'un autre pays, intéressera chaque Etat maritime, ainsi que celui dépourvu de littoral, et l'association suisse de droit maritime pourra donc se permettre à formuler quelques remarques d'ordre juridique à ce sujet :

1) Les droits réels sur les navires ne sont pas unifiés. Chaque Etat détermine dans sa législation les effets et conditions de la propriété, de l'usufruit, de l'hypothèque, des privilèges ou d'autres droits susceptibles d'être inscrits sur ses registres. Il est de même en ce qui

concerne l'exécution forcée pour ces droits, la notion de droit réel diffère dans la jurisprudence des Etats. Il y a des législations où l'inscription d'un droit réel sur le registre est constitutive pour la naissance de ce droit, tandis que dans d'autres législations l'inscription ne confère que des effets envers les tiers. Aussi l'étendue du droit réel diffère de législation en législation. Par exemple l'assiette d'une hypothèque (navire, accessoires) n'est pas uniforme dans toutes les législations et encore la question à savoir, si l'hypothèque couvre outre le capital dû les intérêts échus pour plusieurs années, demanderait une unification avant qu'un Etat puisse être obligé à inscrire sur ses registres un tel droit étranger qui ne correspondra pas à son droit national.

2) Plusieurs législations prévoient expressément que les droits réels inscrits sur ses registres sont soumis à sa propre législation et il est une règle du droit international privé que le droit du lieu de l'inscription est applicable aux droits réels. Les législations exigent en outre que les sommes garanties par une hypothèque doivent être inscrites dans la monnaie nationale du pays de l'enregistrement.

3) Pour des raisons de pureté du pavillon national, les législations peuvent prévoir que le créancier d'une hypothèque doit être un citoyen national. Il est ainsi pour le pavillon suisse qui, pour des raisons de neutralité, ne sera accordé que si aucun intérêt étranger existe.

4) Un autre point mérite d'être soulevé. Les règles pour l'enregistrement des droits touchent très sensiblement à la forme, soit pour la constitution, soit pour le transfert, soit pour la tenue des registres. Il y a des législations qui exigent p.ex. pour la constitution d'une hypothèque la forme authentique, tandis que d'autres se contentent avec un acte sous seing privé. Le préposé du registre veille à ce que les formes prescrites seront respectées. Comment pourra-t-il inscrire un droit constitué à l'étranger par un acte qui ne revêt pas la forme prévue par son droit national ?

5) Il est généralement reconnu qu'un navire ne pourra être immatriculé dans un pays que si un certificat de radiation de l'immatriculation antérieure sera soumis pour éviter une double immatriculation. Ce certificat de radiation ne sera fourni au propriétaire qu'avec le consentement des bénéficiaires des droits inscrits (spécialement des créanciers hypothécaires). Par la radiation de l'inscription dans un registre les droits réels s'éteignent ipso jure, surtout dans les pays où l'inscription est constitutive. Les mêmes droits seront reconstitués lors de l'inscription dans un autre registre.

6) Un Etat pourra donc s'engager à respecter les droits inscrits sur un registre d'un autre pays lors d'une exécution forcée sur son territoire, mais il ne pourra pas prévoir l'inscription des droits réels constitués à l'étranger sur ses registres tel quel. Ce qu'il faudra prévoir

c'est une plus grande facilité pour un propriétaire de procéder au transfert de l'immatriculation d'un pays à l'autre. Le propriétaire devra plus facilement obtenir le consentement des bénéficiaires inscrits pour la radiation. Ces problèmes se sont également posés lors de l'élaboration d'une convention internationale sur l'immatriculation des bateaux de la navigation intérieure au Comité Economique pour l'Europe de l'UNO, et tenant compte des difficultés juridiques du règlement national des droits réels, ce projet de convention fluviale prévoit une procédure de transfert qui facilite l'enregistrement dans un autre pays et qui tâche à éviter un intervalle pendant lequel les droits réels ne seront plus inscrits ni dans l'un ni dans l'autre registre. La procédure de transfert prévue est la suivante :

a) Le registre qui reçoit la requête pour la nouvelle immatriculation procède aux inscriptions requises y compris celles qui sont au bénéfice de tiers, mais mentionne sur le registre que les effets de ces inscriptions sont subordonnés à la condition que l'immatriculation antérieure du navire soit radiée.

b) Le registre sur lequel le navire était immatriculé antérieurement procède à la radiation sur présentation de l'extrait du registre de la nouvelle immatriculation et délivre une attestation de radiation mentionnant la date de cette radiation.

c) Sur présentation de l'attestation de radiation, sur le registre de la nouvelle immatriculation la mention qui était apposée (concernant la condition de la radiation antérieure) sera rayée et les droits déjà inscrits prendront tous leurs effets.

Une telle procédure pourra être possible pour permettre aux intéressés d'éviter un intervalle dans l'effectivité des droits inscrits. Les droits seront transposés dans le nouveau registre, mais ils ne pourront pas être transférés d'un pays à l'autre tel quel avec les effets juridiques qui dépendront toujours du droit du pays de l'immatriculation. Les bénéficiaires de ces droits n'autoriseront la radiation sur le premier registre que s'ils ont la garantie que sur le nouveau registre les mêmes droits, quant à leur effectivité, mais en vertu de la législation nationale du nouveau registre, seront inscrits.

Voici les remarques que l'association suisse de droit maritime voudrait faire pour le projet de convention qui mérite la reconnaissance du grand travail de ses auteurs.

*Bâle, avril 1963.*

*Dr. Walter Müller.*

## ASSOCIATION FRANÇAISE DE DROIT MARITIME

ENREGISTREMENT DES NAVIRES  
EN CONSTRUCTION

L'Association a été saisie du problème par le C.M.I. sous la forme de l'envoi de trois documents :

1. le rapport général du Professeur Brækhus et de M. Per Brunvig;
2. un questionnaire;
3. un avant-projet de Convention.

Le rapport rappelle que le problème de l'inscription d'hypothèques sur un navire en construction a été discuté en 1956 à Oslo et en 1958 à Cologne, au cours des Conférences de l'International Bar Association.

La conclusion a été qu'il convenait d'unifier le régime qui, actuellement, varie d'un Etat à l'autre, et de réaliser cette unification sur les bases suivantes :

- a) permettre l'immatriculation sur un registre public des navires en construction dans un Etat pour le compte d'armateurs étrangers;
- b) que cette immatriculation soit autorisée dès que la construction est arrivée au stade où il est possible d'identifier le navire;
- c) que le régime soit le même pour les nationaux et pour les étrangers sans discrimination;
- d) que les sûretés réelles inscrites prennent rang selon leur date d'inscription;
- e) que les inscriptions soient reconnues identiquement dans tous les Etats signataires de la Convention;
- f) que le passage du pavillon d'un Etat signataire à celui d'un autre Etat signataire n'affecte en rien les inscriptions antérieures.

Le rapport général fait ensuite état des divergences actuelles entre les législations nationales et montre l'intérêt manifeste d'une harmonisation et de l'institution d'un droit de suite qui ne soit pas affecté par le changement de pavillon.

L'Association française est entièrement d'accord sur ces différents points.

## REPONSE AU QUESTIONNAIRE

Le questionnaire adressé aux diverses Associations nationales de droit maritime comporte deux interrogations :

- la première : quel est votre régime national interne actuel ?
- la seconde : quelles sont vos préférences quant aux principales dispositions de la future Convention internationale.

On trouvera ci-dessous les réponses de l'Association française, présentées dans l'ordre même du document RSC 2 (8-62) :

### **I. Régime juridique actuel en France :**

1. Réponse affirmative : nous avons un registre tenu aux Recettes Principales des Douanes, sur lequel on peut immatriculer les navires en construction.

2. Cette immatriculation est possible dès que le navire est identifiable, c'est-à-dire :

- pour la construction traditionnelle, quand la quille est posée sur la cale;
- pour les navires préfabriqués, quand l'assemblage est assez avancé.

Il n'y a pas en France de possibilité d'enregistrer le marché de construction.

3 et 4. Seules peuvent être inscrites les hypothèques sur le navire. Cette inscription doit être précédée d'une déclaration faite à la diligence du chantier de construction qui indique à l'Administration des Douanes (Recette Principale locale) les mensurations approximatives et les caractéristiques du navire en construction.

- 5. a) Réponse affirmative.
- b) Seulement par accord des parties.
- c) A condition que les éléments soient dans le chantier et spécialement marqués.

6. Le registre est organisé localement à la Recette Principale des Douanes dans le ressort de laquelle se trouve le chantier de construction.

### **II. Utilité d'une convention internationale relative aux sûretés réelles sur les navires en construction.**

1. Internationaliser le rang et le droit de suite des hypothèques constitue certainement un progrès.

2. L'hypothèse s'est présentée en cas de faillite du chantier et d'interruption des constructions.

3. Oui, cette pratique est fréquente et le coût varie de 1,20 à 2,40 % selon les garanties.

### **III. Qui devrait requérir l'inscription ?**

Le seul bénéficiaire de la sûreté.

### **IV. A partir de quand l'inscription devrait-elle être autorisée ?**

A partir du moment où la quille a été posée sur la cale et, pour les navires préfabriqués, quand l'assemblage est assez avancé.

### **V. Quels instruments devraient pouvoir être inscrits ?**

Nous estimons qu'il suffit d'inscrire les hypothèques, c'est-à-dire que nous ne répondons affirmativement qu'au point 3, b).

### **VI. Matériel et équipement :**

1. Réponse affirmative pour b).
2. Réponse affirmative pour a), b) et c).

### **VII. Conséquences juridiques de l'inscription :**

- Réponse affirmative aux points 1.
2. a), b), c)
  3. a)
  - 4.

### **VIII. Changement de nationalité du navire :**

Réponse affirmative.

## AVANT-PROJET DE CONVENTION

L'Association française a établi un contre-projet que l'on trouvera en annexe et qui a été inspiré par le double souci :

- de ne pas, à propos de l'extension aux navires en construction de la constitution d'une hypothèque, mettre en cause le problème des droits, charges, privilèges, etc..., ni leur concours éventuel, ce qui introduirait des difficultés nouvelles sans présenter d'intérêt pour le crédit de l'armateur ou du chantier. C'est pourquoi, dans le texte modifié, n'apparaissent que les mots « sûretés réelles », à l'exclusion de tous autres;
- d'efficacement assurer aux créanciers ayant inscrit des hypothèques sur le navire en construction le maintien de leur droit de suite et de leur rang, quelque soit le changement de pavillon.

Les articles 1 et 2 n'appellent pas de commentaires.

A l'article 3, entre les trois variantes, c'est la dernière qui a semblé préférable. En effet, les deux formules précédentes permettent l'inscription trop tôt, à un moment où le navire n'a pas encore d'existence corporelle.

Articles 4 et 5 : pas d'observations.

Articles 6 et 7 : nous les avons supprimés purement et simplement en raison du danger que leurs dispositions représenteraient pour l'économie générale du régime de la Convention. Il faut éviter toute incertitude et respecter rigoureusement le rang chronologique des inscriptions sans qu'aucune connaissance réelle ou présumée puisse y porter atteinte.

Article 8 : La modification de rédaction a pour dessein de préciser davantage les conditions auxquelles les éléments non encore assemblés peuvent être l'objet de sûretés.

Article 9 : Entre les intérêts contradictoires d'accroître le crédit dont peut bénéficier le chantier et de tenir compte de la solvabilité apparente du propriétaire du navire, nous croyons qu'il faut choisir le second. C'est pourquoi l'article 9 nous paraît pouvoir être supprimé, de manière que les équipements, tels radars, radios, etc..., incorporés au navire, suivent purement et simplement le sort de celui-ci.

Articles 10 et 11 : Pas d'observations.

Il nous paraît enfin souhaitable d'étudier les moyens propres à réprimer la vente d'un navire hypothéqué au national d'un État non-contractant.

**AVANT-PROJET (août 1962)**  
**D'UNE CONVENTION INTERNATIONALE**  
**POUR L'UNIFICATION DE CERTAINES DISPOSITIONS**  
**LEGALES RELATIVES A L'IMMATRICULATION DE NAVIRES**  
**EN COURS DE CONSTRUCTION**

TRADUCTION FRANÇAISE  
DU TEXTE  
RSC 3 (8-62)

CONTRE-PROJET  
DE L'ASSOCIATION  
FRANÇAISE (\*)

**Article 1**

Les Hautes Parties contractantes s'engagent à introduire dans leur loi nationale les dispositions nécessaires pour permettre l'immatriculation, dans un registre officiel établi par l'Etat ou placé sous son contrôle, des navires en cours de construction sur son territoire.

L'immatriculation des navires en cours de construction peut être limitée aux navires dont les Autorités compétentes estimeront qu'ils sont d'un type et d'un tonnage permettant, d'après la loi nationale, leur immatriculation une fois la construction achevée.

**Article 2**

Les Hautes Parties contractantes peuvent limiter l'immatriculation des navires en cours de construction aux navires construits pour compte d'un acheteur étranger. Les Parties contractantes conviennent d'autori-

**Article 1**

Les Hautes Parties contractantes s'engagent à introduire dans leur loi nationale les dispositions nécessaires pour permettre l'immatriculation, dans un registre officiel établi par l'Etat ou placé sous son contrôle, des navires en cours de construction sur son territoire.

**Le régime de l'immatriculation — — de la présente Convention** sera limitée aux navires dont les Autorités compétentes estimeront qu'ils sont d'un type et d'un tonnage permettant, d'après la loi nationale, leur immatriculation une fois la construction achevée.

**Article 2**

Les Hautes Parties contractantes peuvent limiter l'immatriculation des navires en cours de construction aux navires construits pour compte d'un acheteur étranger. Les Parties contractantes conviennent d'autori-

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(\*) modifications  
suppressions — —

ser l'inscription des titres relatifs aux navires en cours de construction par tout demandeur citoyen d'un des Etats contractants sans discrimination. Cette inscription ne modifiera pas les limites imposées par la loi nationale à l'acquisition de tels droits par des étrangers, de même qu'elle ne donnera pas à l'armateur étranger le droit de battre le pavillon de l'Etat où a eu lieu l'inscription.

### Article 3

L'inscription des titres relatifs à un navire en construction sera autorisée :

**1<sup>re</sup> variante :** dès que le contrat pour la construction d'un navire, dont les spécifications sont nettement définies, est parfait.

**2<sup>me</sup> variante :** dès que la construction a été commencée à l'endroit où le nouveau bâtiment doit être lancé.

La loi nationale peut, cependant, autoriser l'inscription plus tôt ou permettre également l'inscription d'un contrat pour la construction d'un navire bien déterminé avant que le travail ne soit commencé.

**3<sup>me</sup> variante :** dès que la construction est parvenue à un stade tel que le navire peut être aisément identifié.

La loi nationale peut, cependant, autoriser l'inscription plus tôt ou permettre également l'inscription d'un navire bien déterminé avant que tout travail ne soit commencé.

ser l'inscription des sûretés sur les navires en cours de construction par tout demandeur citoyen d'un des Etats contractants sans discrimination. Cette inscription ne modifiera pas les limites imposées par la loi nationale à l'acquisition de telles sûretés par des étrangers, de même qu'elle ne donnera pas à l'armateur étranger le droit de battre le pavillon de l'Etat où a eu lieu l'inscription.

### Article 3

L'inscription des sûretés réelles sur un navire en construction sera autorisée :

dès que la construction est parvenue à un stade tel que le navire peut être aisément identifié.

#### Article 4

Les titres relatifs à la propriété ou à une sûreté réelle sur un navire immatriculé, seront, sur demande, inscrits sur le registre. La loi nationale peut autoriser l'inscription d'autres titres relatifs à un navire en cours de construction.

#### Article 5

Les titres inscrits prendront légalement rang l'un après l'autre, suivant l'ordre dans lequel les demandes d'inscription ont été déposées auprès des Autorités compétentes et primeront les droits et sûretés non inscrits, relatifs au navire en construction.

#### Article 6

Nonobstant les dispositions de l'article 5, la loi nationale peut stipuler qu'un droit précédemment acquis primera un droit postérieurement acquis sans tenir compte de l'inscription, si cette dernière a été acquise par contrat et si l'acquéreur avait ou aurait dû avoir connaissance du droit précédent, au moment où le contrat est devenu parfait.

#### Article 7

La loi nationale peut encore disposer que les privilèges maritimes, le droit de rétention du constructeur jusqu'au règlement du prix d'achat, ou les droits légaux protégeant les intérêts des travailleurs primeront les droits ou charges inscrits, nonobstant les dispositions de l'article 5.

#### Article 4

Les sûretés réelles — — sur un navire immatriculé, seront, sur demande du bénéficiaire de la sûreté, inscrites sur le registre.

#### Article 5

Les sûretés inscrites prendront légalement rang l'une après l'autre, suivant l'ordre dans lequel les demandes d'inscription ont été déposées auprès des Autorités compétentes.

#### Article 6

*Supprimer.*

#### Article 7

*Supprimer.*

### Article 8

La loi nationale peut aussi disposer que les droits ou sûretés inscrits sur un navire en cours de construction porteront sur les matériaux, les machines et l'équipement qui se trouvent dans le chantier du constructeur et distinctement marqués comme destinés à la construction de ce navire.

### Article 9

Si les droits ou sûretés sur les machines, l'équipement spécial ou autres pièces détachées du nouveau bâtiment ont été inscrits suivant la loi nationale, la protection légale acquise par cette inscriptions cessera à la livraison du navire à l'acheteur pour tous objets ou parties incorporées au navire et pour tous appareils nécessaires à sa navigation.

### Article 10

Les droits ou sûretés inscrits conformément aux clauses de la présente Convention et légalement parfaites au regard des lois applicables de l'Etat où a eu lieu l'inscription, seront reconnus valables dans tous les Etats contractants.

### Article 11

Si, à l'achèvement, les armateurs désirent faire immatriculer le navire terminé dans un autre pays signataire de la Convention, cette immatriculation ne

### Article 8

La loi nationale peut aussi disposer que les — — sûretés inscrites sur un navire en cours de construction porteront sur les matériaux, les machines et l'équipement qui se trouvent dans le chantier du constructeur —

— à condition qu'il s'agisse d'éléments affectés définitivement audit navire et que cette destination soit matérialisée par des marques distinctes et permanentes.

### Article 9

*Supprimer.*

### Article 10

Les — — sûretés inscrites conformément aux clauses de la présente Convention et légalement parfaites au regard des lois applicables de l'Etat où a eu lieu l'inscription, seront reconnus valables dans tous les Etats contractants.

### Article 11

Si, à l'achèvement, les armateurs désirent faire immatriculer le navire terminé dans un autre Etat signataire de la Convention, cette immatriculation ne

pourra être autorisée par ledit Etat que sur présentation d'un certificat émanant des autorités compétentes de l'Etat où le navire en construction a été immatriculé mentionnant toutes les énonciations inscrites relatives aux droits ou sûretés grevant le navire, dans leur rang respectif, et déclarant en outre qu'aucune inscription supplémentaire ne sera faite pour ce navire après délivrance du certificat. Lesdites énonciations seront reportées sur le registre de l'Etat sous pavillon duquel le navire est transféré, et tous droits et sûretés resteront inchangés, y compris leur rang respectif.

pourra être autorisée par ledit Etat que sur présentation d'un certificat émanant des autorités compétentes de l'Etat où le navire en construction a été immatriculé et mentionnant toutes les énonciations inscrites relatives aux — — sûretés grevant le navire, dans leurs rang respectif, et déclarant en outre qu'aucune inscription supplémentaire ne sera faite pour ce navire après délivrance du certificat. Lesdites énonciations seront reportées sur le registre de l'Etat sous pavillon duquel le navire est transféré, et toutes — — sûretés resteront inchangées, y compris leur rang respectif.

BELGIAN MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION (\*)

ANSWER TO QUESTIONNAIRE

Section I

1. Yes, provided the ship is intended to fly the Belgian flag.
2. Upon presentation of the shipbuilding contract, even if construction has not yet begun.
3. a) The shipbuilding contract (which may embody stipulations concerning transfer of title in equipment or materials to be incorporated in the newbuilding).
  - b) Contracts of transfer of the ship under construction.
  - c) Mortgages on the ship under construction.
  - d) Writs tending to the recognition or termination of a right in rem on the ship under construction, and judgements passed on such actions.
  - e) Bareboat charters and time-charters.

4. Registration of contracts mentioned under 3 a, b, and c is not mandatory, but such contracts, if not registered, cannot be invoked against third parties.

Writs (3d) must be registered, otherwise the action is not admissible by the Court; and judgements cannot be enforced, or even invoked against third parties, before they are registered.

Registration of contracts mentioned under 3e is optional and has no special effects.

5. a) Yes.
- b) Yes, insofar as provided for by the shipbuilding contract.

(\*) P.S. - The French translation of this report has been published in the French Edition under number RSC-12.

c) Parties are, on this point, free to contract as they wish (but, for a right upon certain objects to be protected, it is always mandatory that such objects be identifiable).

6. There is only one register for the entire State.

## Section II

1. Yes.
2. Yes.
3. No.

## Section III

a, b, c) In our opinion, the right to apply for registration should be recognized to the yard and to the purchaser, acting either individually or jointly (such is now the case in Belgium).

d) In our opinion, one should have the right to apply in Belgium for registration of a ship under construction in Belgium, irrespective of the flag which it is intended to fly (which is not now the case), and irrespective of the purchaser's nationality.

## Section IV

Registration must be accepted as soon as the shipbuilding contract is signed. This is to the obvious interest of creditors, suppliers and purveyors of credit who, before any further commitment, will thus be protected as early as possible against any misunderstanding as to the exact provisions of the contract. The purchaser and the yard are themselves advantaged by this state of things in their negotiations with third parties.

## Section V

1. Yes.
2. a) Yes.  
b) Yes, but such stipulation shall be protected only insofar as compatible with the shipbuilding contract, if the latter is already registered. Such stipulation shall in any case disappear upon incorporation of the equipment into the newbuilding (see VI, 4, b hereunder).  
c) Yes.
3. a) If the yard desires a protection differing from, or more precise than, that afforded by the normal rules of law in its country, it only has to stipulate to that effect in the shipbuilding contract and have the contract registered. There does not appear to be any justification for allowing separate registration.  
b) Yes.  
c) Yes.

4. a) One can well conceive the type of fraud consisting in granting two concurrent charterparties on the same ship under construction, for instance in order to secure two credit lines. One should, however, note that a charter-party is often substantially modified more than once in the course of construction, involving amendments to the registration which might prove burdensome.

b) Yes. This type of fraud is, however, even less of a menace in practice, because the instrument of the charter-party is normally handed over to the first assignee, who has already notified the other party to the contract.

5. Registration may be left optional. But as soon as a right, which is revealed and protected by registration, is terminated or modified, *then* the registration of such termination or modification should be mandatory.

### Section VI

1. a) No.

b) Yes.

2. a) No.

b) Yes, as soon as identification is possible, but the objects need not necessarily be marked.

c) No.

d) No.

3. The answer must surely be the same as under V, 2, b, hereabove.

4. a) Yes.

b) Yes.

c) See b.

### Section VII

1. No.

2. a) Yes.

b) Yes, insofar as the shipbuilding contract, if registered, allows it.

c) The question does not appear to arise in Belgium.

3. Registration should be immediate, upon presentation of the appropriate documents to the Registrar, and take effect from that moment.

4. Yes, except that it is *the right* resulting from a registered instrument which takes precedence over the concurrent right resulting from an unregistered instrument or an instrument registered later. Articles 6 and 7 of the draft are quite clear on that point.

5. Yes.

## Section VIII

Articles 10 and 11 of the draft call for the following remarks :

1. The draft fails to prohibit the registration of a ship under construction in a country other than the yard's. Thus, according to the law which may apply, the same ship under construction might give rise to registrations both in the yard's country and in the owner's country. This would involve undoubted insecurity and probable conflicts. Where the law of the yard's country allows registration of the ship under construction, it should be provided that registration effected in that country take precedence over all others.

2. The procedure organized by Article 11 should also be applicable where the transfer of registration is requested before the newbuilding is completed (as for instance when the ship has been launched but must be completed in another country).

## THE CANADIAN MARITIME LAW ASSOCIATION

REPORT ON REGISTRATION OF SHIPS  
UNDER CONSTRUCTION

## REPLIES TO QUESTIONNAIRE

Note : Section numbers refer to the Canada Shipping Act Chapter 29 of the Revised Statutes of Canada 1952 as amended to date.

**I. Present legal situation in Canada.**

1. A vessel under construction which when completed will be a vessel registerable in Canada may be recorded, pending registration, under an assigned number and a temporary name. (Sec. 3 (1)).

2. Such a vessel may be recorded as soon as it is « about to be built » and is defined as a « recorded vessel ». (Sec. 3 (1)).

3. (a) A written and signed description of such vessel and a statement of the port in Canada at which it is intended to be registered (Sec. 3 (2)).

(b) A Bill of Sale (Sec. 5 (1)).

(c) A Builder's Mortgage defined to be a mortgage of a « recorded vessel » (Sec. 45 (2)).

4. (a) Delivery of a written and signed description of such vessel is required before such vessel can be recorded (Sec. 3 (2)).

(b) Filing of a Bill of Sale is mandatory and the ownership of such vessel is deemed to be unchanged until the Bill of Sale is registered (Sec. 5 (1)).

(c) Filing of a Builders' Mortgage is permissive only. (Sec. 45 (2)). Where there are more mortgages than one registered in respect of such vessel, the mortgages are, notwithstanding any express implied or constructive notice, entitled in priority one over the other according to the date at which each mortgage is recorded in the register book and not according to the date of each mortgage itself. (Sec. 49).

5. (a) A Builders' Mortgage binds the « recorded vessel » from the commencement of building until its registration in Canada (Sec. 46).
- (b) A charge on the material and/or equipment intended for such vessel would arise only by agreement between the parties.
- (c) The material and/or equipment would have to be « appropriated » to the « recorded vessel ».

6. Such vessel may be recorded in the office of the Registrar of Ships at the port in Canada at or nearest to which such vessel is to be built.

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

1. Many of the provisions of the draft convention are incorporated in the Canada Shipping Act. Certain amendments to this statute as noted below would be desirable.

2. No.
3. No.

## **III. Who may apply for registration ?**

Under the existing statutory provisions referred to, the owner of a vessel about to be constructed may record such vessel upon delivery to the Registrar of a description of such vessel signed by the Shipbuilder. No amendment would appear to be required.

The recording of a vessel under construction is presently restricted to a vessel which when completed will be owned by British subjects and thus registerable in Canada. It is felt that these provisions should be extended to include vessels ordered by a foreign purchaser.

## **IV. When shall registration be permissible ?**

Under the existing statutory provisions referred to, a vessel that is « about to be built » may be recorded. It is felt that this provision should be amended to provide that such a vessel may be recorded when the shipbuilding contract has been duly executed. This would permit the registration of builders' mortgages entered into at the time.

## **V. What instruments may be registered ?**

Under the existing statutory provisions referred to, the only documents that may be filed are the Description of a Vessel Proposed to be Built, Bills of Sale and Builders' Mortgages. No reason can be seen for the filing of any additional documents.

## **VI. Materials and equipment.**

1. A Mortgage of a vessel under construction should comprise materials and equipment intended for such vessel as a matter of law.
2. Such materials and equipment must be distinctly marked as intended for such vessel.
3. No.
4. Special rights in materials and equipment acquired according to the National law should lapse on delivery of the completed vessel.

## **VII. Legal consequences of registration.**

1. Under the statutory provisions referred to, the recording of a vessel under construction has no effect on the relations between the parties.
2. Priority rights and charges recorded on the vessel under construction in relation to the shipbuilder its creditors and its trustee in bankruptcy would depend on the contract between the shipbuilder and the purchaser insofar as it relates to the transfer of property in the recorded vessel.
3. Registered instruments should obtain priority from the day and hour that they are registered.
4. It is felt that the Article should specify that priority should date from the day and hour that such instruments are actually registered.
5. Registration should give protection notwithstanding any express implied or constructive notice of unregistered instruments.

## **VIII. Transfer of the newbuilding to another State.**

The wording of Articles 10 and 11 would appear to be sufficient to establish such protection.

Submitted by the Committee on Registration of Ships under Construction :

*John J. Mahoney (Chairman)*  
*J. A. Geller*  
*L. Kaake*  
*Colin I. Mason*

*April 17 1963.*

# REGISTRATION OF SHIPS UNDER CONSTRUCTION

## REPORT

*prepared by Dr. jur. Sjur Brækhus, Professor at the University of Oslo,  
and Mr. Per Brunsvig, Advocate at the Supreme Court of Norway.  
(20<sup>th</sup> April 1963)*

## INTRODUCTION

The International Bar Association IBA at two Conferences — Oslo 1956, and Cologne 1958 — has discussed legal problems relating to security in ships under construction.

Rapporteur to the Oslo Conference was Professor Sjur Brækhus. His report was later published by IBA in a book under the title « INTERNATIONAL SHIPBUILDING CONTRACTS, Particularly legal problems in connection with finance and security », which also contained papers submitted to the Conference by E. Behrendt-Poulsen, Denmark, H. B. Lawson and J. E. Norton, England, James P. Govare, France, W. G. Wieringa and F. H. F. Oldewelt, Netherlands, Eskil Weibull, Sweden, and Churchill Rodgers, U.S.A.

Professor Brækhus concluded his report with the observation that « this state of affairs » — meaning the variations in national legislation relating to security in ships under construction — « creates difficulties and uncertainty for the lawyers and the business world ». He suggested that this be remedied. « It would be a great advantage », he said, « for the international shipbuilding community, for bankers and shipbuilders, if a certain degree of uniformity could be achieved ».

The Council of the International Bar Association met this challenge by appointing a Committee on International Shipbuilding Contracts « to the end that uniform rules may be promulgated which, it is hoped, will be of assistance to all interested in this field ». The Committee was set up with members from 14 countries and with Advocate Per Brunsvig, Norway as Chairman. Based on papers submitted to the

Chairman by the Committee members L. S. Reycraft, Canada, E. Behrendt-Poulsen, Denmark, Henry B. Lawson, England, Jean Warot, France, Kurt Ehlers, Germany, Arturo A. Alafriz, Phillipines, Thomas F. Whitewright, Scotland, Ragnar Heden and Eskil Weibull, Sweden, and Alan B. Aldwell, U.S.A., Mr. Brunsvig presented a printed report to the IBA Conference at Cologne under the title « INTERNATIONAL SHIPBUILDING CONTRACTS. Unification of National laws relating to registration of ships under construction ». Annexed to the report was a Preliminary Draft Convention.

The Draft Convention was approved by the Cologne Conference and the IBA Council decided to forward the Report and the Draft Convention to Comité Maritime International, the Inter-Governmental Maritime Consultative Organization (IMCO) in London and the International Law Commission, United Nations.

After the Bureau Permanent of the CMI had decided to place registration of ships under construction on the Agenda of the Stockholm Conference an International Subcommittee was appointed under the Chairmanship of Professor Brækhus and with Mr. Brunsvig as secretary. A Questionnaire and a Preliminary Draft Convention (RSC 1 - 3) was prepared by the Chairman and Secretary and sent to all member associations. Replies to the Questionnaire were received from the Belgian, Danish, Finnish, French, German, Italian, Netherlands, Swedish and the United Kingdom associations. The matter was discussed in a meeting of the International Subcommittee in Oslo in February 1963. In this report and in the annexed Draft Convention due consideration has been given to the observations made and the opinions expressed in the replies to the Questionnaire and at the Oslo meeting of the International Subcommittee. However, the responsibility for the report and the Draft Convention rests with the Rapporteurs only.

## THE NEED FOR REFORM

Modern Shipbuilding requires extensive financial resources. The price of one single vessel may run into millions — in any currency — and a multitude of contracts are being performed simultaneously in the greater shipbuilding countries.

The builder may finance the building out of his own funds or by the taking up of loans, but more often the purchase money will be advanced by instalments from the purchaser as the work proceeds. The main burden of raising money during the construction period will thus rest with the purchaser. He, in turn, may finance his instalments out of his own ready money or by selling other tonnage, but most purchasers are dependant upon loans — from bankers, insurance companies etc. As security for such loans the purchaser may i.a. put up

his other ships, the newbuilding — as far as this procedure is possible — and his expected freight earnings under long term charter-parties. In some countries the Government may provide credits, but the need for private financing is still vast.

In most countries we find a well organized system for the registration of title to and securities in real estate. In most — if not all — maritime countries a similar system has been applied to completed vessels. But ships under construction are still in many countries considered as chattels — unworthy of registration for credit purposes.

Registration of a waterborne vessel is possible, because the ship may be identified by its name, place of building, type and measures. Great values are involved and registration may be a necessity in order to regulate priorities between parties having interests in the ship. Further, registration is necessary as the nationality of ships trading is a public concern.. For all these reasons waterborne vessels, although classified as moveable goods, have been released from the national legal conceptions pertaining to other chattels. Vessels in commission are also subject to maritime law which is international in character. It is not easy to compete on the international maritime market without access to the facilities which other maritime countries provide for their shipping.

But shipbuilding is also, and increasingly so, an international trade. It is no rarity that a ship is being built in one country for the account of a shipowner in a second country who has borrowed money from a banker in a third country on the strength of time charter party with charterers in a fourth country. Some countries do provide facilities for the registration and mortgaging of ships under construction, others do not.

Even a slight degree of uncertainty with regard to the legal position is a great evil where such vast sums of money are involved as in modern shipbuilding. If the uncertainty is due to the inadequacy of the law, this may have a bearing not on one, but on many shipbuilding contracts.

It would be a great benefit to builders and purchasers alike if the capital which is being built into the ship could be utilized more extensively and in a legally safer way than now possible as security for the loans necessary for its construction. In view of the international character of the shipbuilding industry an internationally uniform system of rules seems to be called for. It can only be achieved by an international convention.

One obstacle to a reform may be the traditional reluctance in many countries to allow moveable goods on shore to be mortgaged. However, a ship under construction bears little resemblance to other chattels. When launched and completed it will automatically be eligible for registration and mortgaging. Whilst on the stocks or in the building

dock it is more closely related to a ship in commission than to any other kind of goods.

It will be necessary, however, as a practical matter to include for registration certain material and equipment not actually built into the ship provided it is earmarked for it.

During the discussions in the Subcommittee the point was made that registration is traditionally a domestic matter. This may be true, but the effects of domestic registration are felt in the international trade. The registration has, indeed, an international function. The Draft Convention does not purport to interfere with purely domestic matters. Its intention is to bind the contracting States to provide facilities for registration when the purchaser is of foreign nationality.

The reform should be beneficial also to countries which already have an arrangement for the registration of ships under construction. Title, right and encumbrances registered on the ship will be recognized as valid by all contracting States and will remain in force after the transfer of the vessel to the registry in another country.

The cost of introducing the new system will in all probability be moderate. Most countries in which ships are being built have already an organization handling the registration of ships in commission and it would be natural to entrust the registration of ships under construction to the same organization.

The great international trade which we have had in this field during the last decade may support the observation that the variations in national laws do not present too great an obstacle to the international community of builders, shipowners and financiers. However, this may partly be due to the fact that some of the more important shipbuilding countries (i.e. Denmark, France, Germany, Italy, Netherlands and Norway) already have to a certain extent established a system for registration of ships under construction.

Further, the difficulties in accomplishing a reform of this complexity through international cooperation should not be underestimated. Revision and unification of national laws relative to security in ships under construction is a tall order, and efforts in a great many quarters will be necessary if the contemplated international reform is finally to be achieved.

The need for reform may be felt more in some countries than in others. It is likely to be felt more in countries which import foreign built tonnage and in exporter countries than in countries chiefly supplying their own tonnage from domestic yards. The Rapporteurs, naturally, have based their opinion upon experience gathered in Norway which is typically an importing country. In Norway there is a strong feeling that a reform is really called for.

## BASIC PRINCIPLES OF THE DRAFT CONVENTION

The annexed preliminary Draft Convention is based on the following principles which are considered fundamental to the contemplated reform :

1. That all contracting States shall permit registration in a register established by or under the control of the State, of ships under construction for foreign purchasers at yards within their territory.

2. That such registration shall be permitted, when a contract for the building of a properly specified ship has been executed, with the exception, however, that national law may make it a condition for registration that constructional work has been commenced in the place from which the ship is supposed to be launched.

3. That no discriminatory rules or practices shall be applied against nationals of other contracting States, in so far as registration of rights in or charges on the vessel is concerned.

4. That registered rights or charges shall have legal priority from the time of registration. National law may provide, however, that priority shall originate from the time, when an application for registration was produced to the registrar.

5. That such registration shall be recognized as valid in all contracting States.

6. That on transfer of the ship to another contracting State, all registered rights and charges shall remain in force retaining the order of priority of the original registration.

### COMMENTS ON THE ARTICLES OF THE DRAFT CONVENTION

#### Article 1

The contracting States will be bound to provide facilities for registration of ships under construction in their territory, but the rules of procedure governing the registration are left to national legislation.

The Article does not expressly forbid registration of vessels under construction outside the territory of the State in question, but it is understood that vessels under construction in another contracting State may not be accepted for registration.

It is, of course, necessary to have a minimum tonnage requirement as referred to in the second paragraph. For practical reasons the national

rules of the country of registry must prevail even if they are stricter than the corresponding rules in the purchaser's own country. The question is of minor importance because ships of such a small size rarely are built for export.

## Article 2

The primary aim of the Convention is to facilitate international shipbuilding transactions and its rules, therefore, are mandatory only with respect to foreign purchasers. The contracting States will have a free hand with regard to purely domestic affairs.

Ships in commission may be registered only if they fly the flag of the country of registry. This condition cannot be maintained for the registration of ships under construction. But the registration shall not in itself confer rights of nationality. In the Netherlands the present law declares all ships under construction in the country to be Dutch irrespective of the nationality of the purchaser and owner of the newbuilding. This rule leads to the same result as the Draft Convention but seems to be unnecessary complicated.

It goes without saying, but for the sake of clarification it has been expressly stated, that the registration does not interfere with export and import regulations, currency provisions etc.

## Article 3

This Article has been the subject of some discussion and there is still differences of opinion in the Subcommittee.

Whilst, under Italian law, registration may take place as soon as the building contract has been duly executed other countries (France, Germany, the Netherlands) require that certain construction work has been commenced. Some countries require that the work has reached a certain stage. In Norway the vessel must have been framed.

From the purchaser's and the lender's point of view the Italian system will be preferable. It has been questioned, however, whether the Italian system is consistent with traditional legal theory. The problem may be a double one : Firstly, whether the subject matter will be sufficiently identified to allow registration and mortgaging, and secondly whether mortgaging should be permitted in respect of « future goods ».

In the opinion of the Rapporteurs the yard's name and the building number is sufficient to identify the vessel to be constructed. The laying of the keel, the framing etc. or other criteria at the initial stages of construction do not materially contribute to the identification. No real identification can be secured until the vessel is ready for measurement — and that would be much too late.

As the second question, this may be more a matter of degree than of substance. Even those countries which permit registration and mortgaging of a newbuilding as soon as some constructional work has been commenced, do in fact permit registration and mortgaging of « future goods » as the keel etc. at the time of registration only will represent an insignificant part of the value of the ship to be built, while the registration and mortgaging automatically will cover the newbuilding at all stages as the works proceeds. It is difficult to see that it can be of any real significance whether some physical object, however small, does exist or not at the time of registration.

Thus, in the opinion of the Rapporteurs, the Italian system is the more rational. However, as some countries have expressed strong objections to the system the second paragraph of Article 3 is a compromise. It has been left to the national legislation to deny facilities for registration until « constructional work has been commenced in the place from which the newbuilding is to be launched ». This affords a certain leeway, but it is not the intention that the said facilities may be denied until the vessel is near completion.

#### **Article 4**

The States are only bound to provide facilities for the registration of certain rights and encumbrances : title, mortgages, seizure and acts of execution. Charter parties — including charters by demise — have been left out in order not to complicate the Convention. Under the second paragraph, however, the contracting States are free to widen the scope of registration.

The registration of Charter-parties is presently under discussion in the CMI. If a system is devised for the registration of charters on ships in commission it will be a simple matter to extend the system to ships under construction.

Registration will take place only if applied for. It is an entirely voluntary system.

#### **Article 5**

The basic principle of priority set out in this Article is universally recognized. There may be differences, however, with regard to the exact moment when priority is obtained. The Draft gives the possibility of choosing between two systems, taking the registrar's receipt of the application or the registration itself as the decisive moments. The Draft, however, gives preference to the latter solution.

#### **Article 6**

Some members of the Subcommittee have proposed to delete this Article in order not to complicate the Convention. The principle con-

tained in this Article is, however, in some countries considered to be a fundamental legal principle which cannot be dispensed with. As the principle represents an exception from the main rule of Article 5 a contracting State will only be free to maintain it if expressly permitted in the Convention to do so.

#### **Article 7**

It is not the intention to let the Draft Convention interfere with maritime or possessory liens or similar statutory rights. The question of priority between such rights and the rights mentioned in Articles 4 and 5 must be governed by the applicable national law. Whether this law be the law of the flag, the *lex fori* of the place of enforced sale or any other law must be decided in accordance with the rules on Conflict of Laws. The Convention does not intend to regulate this problem.

#### **Article 8**

The greater part of the purchase-price for a modern ship goes toward payment for materials, machinery and other equipment for its construction. All this will be provided by the builder and built into or installed in the ship as the structural work proceeds. During the better part of the building period the hull will not offer sufficient security for the instalments usually advanced by the purchaser. This is particularly so in modern shipbuilding where plates and profiles outside the berth are welded into big sections which at a later stage are joined together forming a ship. Even though such sections may represent a large part of the ship in size as well as in value, it is not « a ship under construction ». If the purchaser could also get security in material and equipment as they arrive at the builder's yard the purchaser would obtain earlier and better protection.

However, as there are differences of opinion on this point the Draft do not oblige the Contracting States to introduce rules to this effect, but offers the option to do so. If the option is taken, it must be made a condition for registration that the material, machinery and equipment are located in the builder's yard and distinctly marked for the construction of the ship. An inventory of such articles may be useful as evidence, but is not a formal requirement under Convention.

#### **Article 9**

In some countries rights in separate parts of a newbuilding are sometimes considered valid even if not registered, e.g. reservation of title to auxiliary machinery or electronic equipment. In other states such arrangements are not accepted, because they may represent a

danger to bona fide purchasers and mortgagees of the vessel. The Draft does not interfere with the national law in this respect, but provides that such rights in separate parts of the ship shall lapse on delivery of the ship to a foreign purchaser. The purpose of this rule is strengthen the reliability of the register.

### Articles 10 and 11

These two Articles deal with the international validity of registrations executed pursuant to the uniform system established under Articles 1 to 9.

Article 10 provides that all Contracting States shall recognize the validity of registered titles, mortgages, seizure and acts of execution executed according to the national law of the country where the registration has taken place. If e.g. the newbuilding is moved to another country without transfer of registration, the authorities of the country where the ship is located must acknowledge title etc. as registered in the country of building.

Article 11 deal with the transfer of registration to another country, e.g. when the completed ship is delivered to a foreign purchaser. Registration in the purchaser's home country shall take place only on presentation of a certificate from the competent registrar in the country of building, setting out all registered particulars and their order of priority.

Title, mortgages and acts of execution registered on the vessel in the country of building shall after the transfer of registration to another country, remain rights registered on the ship, retaining their priority according to the dates of the original registrations.

As it is left to national law to regulate administrative details and rules of procedure there may be different requirements for the registration of e.g. mortgages in different countries. Article 11 provides that on transfer of the registration to a new country which is a party to the Convention all legal effects of the original registrations shall remain in force for at least 60 days in order to give the interested parties time to amend documents in the way necessary to have them accepted for registration in the new country. Also a substitution of documents, e.g. where a country makes it a condition for registration that the document is written in the native tongue, must be considered an « amendment » within the meaning of Article 11.

Some members of the Subcommittee have suggested that in the first place the Convention should be limited to these two Articles. However, international recognition of registered rights in ships under construction has to be based on some uniform system of basic principles for registration. Thus Articles 10 and 11 are based on the principles set out in the preceding Articles.

Articles 10 and 11 represent an important feature of the proposed reform. If registration of ships under construction is to give the intended protection to foreign purchasers and their financiers as well as to yards extending credit to a purchaser after delivery of the completed ship registration undertaken in one country during the period of construction must be recognized as valid in all Contracting States. The provisions of Articles 10 and 11 may be a cardinal point, if the suggested reform is to furnish the international community of shipbuilders, purchasers and lenders with a practical and reasonably safe instrument for obtaining legal security for the money advanced to pay for the construction of the vessel.

# REGISTRATION OF SHIPS UNDER CONSTRUCTION

## REVISED PRELIMINARY DRAFT

*(February 1963)*

### Article 1

The High Contracting Parties undertake to introduce in their national law regulations necessary to permit registration in an official register established by or under control of the State of ships under construction within the State's territory.

The registration of ships under construction may be restricted to such ship, which the competent registrar is satisfied will be of the nature and size required by the national law to be registered in the national ship register when completed.

### Article 2

The High Contracting Parties may restrict registration of ships under construction to ships ordered by a foreign purchaser. The Contracting Parties agree to allow registration of rights relating to ships under construction without discriminating against any applicant who is a national of one of the contracting States. Such registration shall not affect any restrictions imposed by national law of the country where the yard is situated on the acquisition of such rights by aliens, neither does the registration give a foreign owner of the ship the right to let the ship fly the colours of the registering country.

### Article 3

Registration of rights relating to a ship to be constructed or which is under construction shall be permitted, when a contract for the building of a properly specified ship has been executed or the yard declares that it has decided to build such a ship for its own account.

The national law, however, may make it a condition for registration that constructional work has been commenced in the place from which the newbuilding is to be launched.

#### **Article 4**

Titles to and mortgages (or hypothecs) on and seizure and acts of execution regarding a registered ship under construction shall on application be entered in the register.

The national law may allow registration of other rights relating to a ship under construction.

#### **Article 5**

Registered rights shall have legal priority, one before another, in the same order as they have been registered. The national law of the registering country, however, may provide that priority shall originate from the time, when an application for registration was produced to the registrar.

Registered rights shall take precedence over unregistered rights in the newbuilding.

#### **Article 6**

Notwithstanding the provisions of Article 5 the national law may provide that a previously acquired right shall take precedence over a subsequently acquired right regardless of registration, if the latter has been acquired by contract and the acquirer was or ought to have been cognizant of the former right at the time, when the contract was executed.

#### **Article 7**

Notwithstanding the provisions of Article 5 priority between rights registered according to this convention and maritime or possessory liens or similar statutory rights shall be governed by the applicable national law.

#### **Article 8**

The national law may also provide that registered rights in or charges on a ship under construction shall comprise materials, machinery and equipment that are located in the builder's yard and distinctly marked as intended for the construction of the ship.

#### **Article 9**

If rights in machinery, special equipment or other separate parts of the newbuilding have been acquired in compliance with the national law where the yard is situated, such rights shall lapse on delivery of the ship to a foreign purchaser.

## Article 10

Titles and mortgages (or hypothecs), and seizure and acts of execution registered pursuant to the provisions of this Convention and lawfully executed according to the national law of the State where the registration has taken place, shall be recognized as valid in all the contracting States.

## Article 11

When the purchaser wishes to register the ship in another State, which is a Party to this Convention, such registration shall only be allowed by the State to which an application is made on presentation of a certificate from the competent registrar in the State where the newbuilding has been registered, setting out all registered particulars relating to rights in the ship and their order of priority and further stating that no more particulars will be registered on the ship after the issue of the certificate.

Title, mortgages (or hypothecs) and acts of execution registered on the newbuilding shall after transfer of the ship to another country, be registered in the registry of that country retaining their priority from the date of the original registration. If these registered rights do not comply with the statutory requirements for registration according to the national law of the new country, the interested parties should be given at least 60 days in which to make the required amendments of the documents, all legal effects of registration being in force during this period.

If the ship was not registered in the country of building a registration of the ship in the country to which it is transferred, shall only be allowed on presentation of a certificate from the registrar stating that the ship was not registered in the country of building

## BRITISH MARITIME LAW ASSOCIATION

REGISTRATION OF SHIPS UNDER  
CONSTRUCTION

## REPLY TO QUESTIONNAIRE (R.S.C. 2)

**I. Present legal situation in your country.**

1. *Answer* : Registration of ships under construction cannot be effected in the United Kingdom and, for this reason, questions 2 to 6 must also be answered in the negative.

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

1. *Answer* : From the point of view of shipowners, we are of the view that there is no need for a Convention on the lines suggested. On the other hand, we think that shipbuilders may possibly obtain some benefit from such a Convention.
2. *Answer* : We have no knowledge of such cases.
3. *Answer* : Such a procedure is unknown in the United Kingdom.

**III. Who may apply for registration ?**

*Answer* : Subject always to the acceptance of the principle of registration in the United Kingdom (see reply to Question II (1) above), we think that the purchaser should be entitled to apply for registration (as in paragraph (b)) and that the nationality of the purchaser should be irrelevant to his right to register (as in paragraph (c)).

**IV. When shall registration be permissible ?**

*Answer* : We believe that the most appropriate time would be that set out in paragraph (c), i.e. at commencement of construction. It is, however, suggested that, in order to cover Prefabrication Shops, the words « in a place » should be replaced by the words « in the yard ».

We prefer paragraph (c) because we think that paragraphs (a) and (b) refer to times which are too early in the development of the building project and that paragraphs (d), (e) and (f) are too late.

#### V. What instruments may be registered ?

1. *Answer* : It is our view that the shipbuilding contract may well contain information of a highly confidential nature which would render its registration undesirable.
2. *Answer* : We think that declarations of ownership (as in (a)) and transfers of title (as in (c)) should be registered. On the other hand, we are opposed to reservations of title being registered on the ground that registration of sub-contractors' rights would complicate the issue.
3. *Answer* : We are of the view that only mortgages on the newbuilding should be capable of registration, and that the rights set out in paragraphs a) and c) should be reserved as a provision in the Convention.
4. *Answer* : Contracts of affreightment are not considered matters appropriate for registration in any Convention dealing with Construction of Ships. It is understood that a Convention dealing with Registration of Charterparties is already under active consideration within the C.M.I.
5. *Answer* : The question of registration should be left to the discretion of the parties, but, once the decision to register has been taken, *all* the rights which are capable of registration should be registered.

#### VI. Materials and equipment.

1. *Answer* : We think that the agreement of the parties should govern this question i.e. as set out in alternative (b).
2. *Answer* : We prefer paragraph (b).
3. *Answer* : Not applicable.
4. *Answer* : Not applicable.

#### VII. Legal consequences of registration.

1. *Answer* : We do not anticipate that registration would in any way alter the relationship between the parties.
2. *Answer* : We think that registered rights and charges should rank in priority to the Yard's possessory lien (paragraph (b)) but after the Yard's ordinary creditors (paragraph (a)) and trustee in bankruptcy (paragraph (c)).

3. *Answer* : The date and time of registry (paragraph (b)).
4. *Answer* : We think that the text of Article 5 is sufficiently wide for the purpose mentioned.
5. *Answer* : The question of good faith should not, in our opinion, be mentioned.

**VIII. Transfer of the newbuilding to another State.**

Our answer is in the affirmative.

## YUGOSLAV MARITIME LAW ASSOCIATION

REGISTRATION  
OF SHIPS UNDER CONSTRUCTIONCOMMENTS ON INTRODUCTORY REPORT  
AND DRAFT CONVENTION

The Yugoslav Maritime Law Association has carefully examined the Introductory Report and the Draft Convention for the unification of certain rules of law relating to registration of ships under construction, as well as the relative questionnaire and wishes to give the following answers :

**I. Present legal situation in our country.**

1. Registration of ships under construction is in our country not only permissible but even mandatory from the moment when the keel of the newbuilding has been laid down.

2. From laying the keel.

3. All kinds of instruments which may be registered on a ship, may also be registered on a ship under construction (title, property rights, securities etc), if consistent with her nature.

4. Registration of ships under construction is mandatory from the moment when the keel has been laid down (see answer to n° 1), which, of course, implies, that the title of ownership will have to be registered at the same time when registering the ship under construction. The registration of all other rights (property rights, security, etc.) is facultative, but such rights will have their full legal effect only if registered — for some of them *erga omnes* and for some, *erga tertios*.

5. The registered rights or charges comprise only the newbuilding.

6. The register is organized locally.

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

1. As the legislation of our country is on the line suggested in the Draft Convention, there would probably be no need for substantial reforms of the same.

2. No cases are known to us.

3. The purchasers sometime require from our yards bank guarantees from money advanced as instalments. The costs are the normal costs of bank guarantees.

## **III. Who may apply for registration ?**

a) b) c) According to our existing law, it is the purchaser who has to apply for registration of a ship under construction. If he fails to do so, the yard has to do it.

d) The registration of ships under construction should be permitted irrespectively of the nationality of the purchaser.

## **IV. When shall registration be permissible ?**

Being aware of the actual importance of the reasons set forth in the Introductory Report, page 7, we would be inclined to support the possibility that the registration of ships under construction should be permitted as early as the relative shipbuilding contract has been duly executed. Of course, only one solution should be adopted in the Convention.

## **V. What instruments may be registered ?**

In our opinion the right question would be « what instruments related to such ships should » and not « what instruments could be registered ». The main legal effect of registration being a) to give to the registered instruments (rights) a publicity which can be oposed to everybody, and b) to give to such registered rights a priority over the rights which have been registered later or not registered at all — we do not see the need to make their registration compulsory because if unregistered — they would have not the effects mentioned under a) and b).

In accordance with the previously said we think :

1. The shipbuilding contract can be registered.

2. a) The ownership of the newbuilding has to be registered at the same time when registering the ship under construction.

b) The possibility of reservation of title (e.g. by the subcontractor selling equipment to the shipbuilder) would create very serious difficulties for the enforcement of the security rights. The economic effect, which is aimed at by such reservation, can be easily achieved by registering adequate security rights in favour of the subcontractor or other interested party.

c) The transfer of title has to be registered in order to produce legal effects mentioned above.

3. a) The possessory liens of the shipbuilders would in our opinion upset the whole system of registered security rights and we therefore do not think they are admissible in the system of the Draft Convention. As in the case under 2. b) the same aim can be achieved by registered securities.

b) Mortgages on the newbuilding (« hypothèque sur navire en construction ») have to be registered to achieve legal effect at all.

c) Such acts have to be registered (as provided in our law).

4. a) We believe that contracts of affreightment which imply demise might be registered.

b) We do not see sufficient reasons for registering of assignments of charter-parties or freights due thereunder.

5. According to our law the ship under construction has to be compulsory registered by her owner (or the yard), which implies the unavoidable necessity of registering all relative property and security rights, in order to obtain the above mentioned legal effects.

## **VI. Materials and equipment.**

1. a) and b) In our opinion the registered rights and charges should comprise materials and equipment only when the parties to the shipbuilding contract have agreed thereupon and the relative agreement (contract) has been registered.

2. a) to c) The registered rights and charges should comprise materials and equipment, not yet incorporated in the newbuilding, only when these are already located in the builder's yard, marked as intended for the newbuilding and, of course, owned by the same person who is the owner of the ship under construction.

d) If the above conditions are fulfilled, we believe that there doesn't exist the need for a specific inventory, which inventory — on the other part, — if it had to be registered, would probably create a lot of difficulties owing to the continuous changes in its consistency.

3. Under the above conditions the registered rights and charges should comprise any type of material and equipment intended for the newbuilding, as it is obvious that they are an indivisible entity.

4. We do not believe that the possibility of registering special rights on materials and equipment, separate from the rights registered on the newbuilding, would be compatible with the true system of the Draft Convention. Apart from these considerations, however, we are of course of the opinion that special rights on materials and equipment, if such rights exist, should lapse when the object is incorporated in the newbuilding.

#### VII. Legal consequence of registration.

1. See our answer to question n° I 4.

2. Registered rights and charges have legal priority over all unregistered rights.

3. Registered instruments obtain such priority from the moment when the relative instruments have been produced to the registrar.

4. The wording of Art. 5 of the Draft Convention provides sufficient protection to the interested party.

5. In our opinion the acquirer should be deprived of the benefits of the registration only if his bad faith is proved.

#### VIII. Transfer of the newbuilding to another State.

We consider that the wording of Art. 10 and 11 of the Draft Convention establish sufficient protection for all interested parties.

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Our Association is deeply convinced that an International Convention for the unification of certain rules of law relating to registration of ships under construction is highly desirable. It would very much contribute to eliminate the risks involved in the enforcement of registered securities either during the construction or after delivery of the ship.

At this stage we do not make any comments as to the wording of each Article of the Draft Convention. We will possibly put forward some remarks at a later stage.

*Vladislav Brajkovic*

President of the Yugoslav Maritime  
Law Association

*Nikola Percic*

Rapporteur

SPANISH MARITIME LAW ASSOCIATION

REGISTRATION  
OF SHIPS UNDER CONSTRUCTION

REPLIES TO QUESTIONNAIRE

I. Present legal situation in Spain.

1. Registration of ships under construction is permissible in Spain. This possibility has its origin in Article 16 of the Naval Mortgage Act dated the 21st August 1893, which provided that prior to the constitution of any mortgage on a ship under construction the ownership of such vessel should be registered.

This provision was later incorporated to the Mercantile Register Rules dated the 20th September 1919. Article 147, 2 in said Rules stipulated that « in the register book must be entered : ...2. All ships under construction subject to any mortgage, as provided for in Article 16 of the Naval Mortgage Act dated the 21st August 1893 ».

The current laws vary nothing in this respect. So Article 145 in the present Mercantile Register Rules of December 14, 1956, reads : « In the register book must be entered... 2. Mortgaged ships under construction as provided for in Article 16 of the Naval Mortgage Act. »

2. So as to enable registration with a view to constituting a mortgage the above mentioned Rules require that at least *one third* of the total estimated cost for hull *has been disposed of in the newbuilding*.

3. Based upon the similitude between this Register and the Property Register, only the property *title* and, among the securities, the *ship mortgage* can be registered. In this connection Article 1 of the Naval Mortgage Act provides that for the purposes of any mortgage the ship « is considered as an immoveable property », thus amending Article 585 of the current Commerce Code. At the present time it was not necessary this fiction of regarding the ship as an immoveable property for the purpose of the mortgage since the new Security without displacement and moveable Mortgage Act admits the possibility of establishing a mortgage on certain moveable properties which are susceptible of identification (Law of December 16, 1954).

Registration is made by means of an application together with a certification issued by the shipbuilder. Also it may be made a copy of the shipbuilding contract, if any. The shipbuilder certification should show the status of the newbuilding, length of keel and other dimensions of vessel, as well as tonnage, expected displacement tonnage, quality of vessel, whether she is intended to be a sailing ship of a steamship, place of build, materials to be used in the construction, cost of hull and a general plan of the ship.

In case registration is effected through the building contract, it is necessary to submit a copy thereof duly signed by the shipowner or proprietor.

Neither the Naval Mortgage Act nor the Mercantile Register Rules stipulate anything regarding the required particulars for the application. It does not mean that these data are left to the applicant's discretion. So Article 34 in the Mercantile Register Rules, which recommends the Mercantile Registrars to comply as much as possible with the annexed official forms when completing the entries, leads us directly to Form XXI intended for the registration of ships under construction. It provides for the notarial legalization of the application signatures as well as those in the certification showing the status of the newbuilding, which should be issued by a Naval Architect. However, this legalization may be avoided by confirming the application before the Registrar who can at this stage identify the subscriber according to the provisions of Article 22 of the Schedule dated the 14th December 1956, which makes a specific reference to the Naval Mortgage Act in this connection.

As expressly required by Article 42 of same Rules a copy of the application must be also produced, which after been checked and found in order will be filed in the relevant record.

4. Although registration of ships is mandatory (Art. 147 Mercantile Register Rules), registration of ships under construction is not, unless it is intended to constitute any mortgage on same. Bearing in mind that mortgages have a constitutive character which is non-existent in the failure of registration, the entry of the newbuilding title is required by law prior to the registration of any mortgage. This doctrine comes out implicitly from the general principles and it is specifically contained in Article 145 of the Mercantile Register Rules under the terms : « Mortgaged ships under construction » « must be registered ».

5. Registration comprises only the newbuilding whose particulars are set out in the relevant entry, but not materials and equipment intended for.

6. The Register is organized locally by means of Mercantile Registers at all province's capitals as well as at Melilla and Ceuta.

The Mercantile Register has a specific section to deal with ships and ships under construction, which are recorded in separate books.

This section is kept only in certain Spanish cities as mentioned in Article 10 of the Mercantile Register Rules as follows : Gerona, Barcelona, Tarragona, Castellon de la Plana, Valencia, Alicante, Cartagena, Almeria, Motril, Malaga, Cadiz, Santander, Bilbao, San Sebastian, Palma de Mallorca, Las Palmas, Santa Cruz de Tenerife, Melilla y Ceuta.

Competence for the registration is determined by areas. Ships must be entered in the district book where they are registered. As regards ships under construction same should be registered in the district where the building is executed, thus without prejudice that when completed the ship may be finally entered in the book where she is to be registered and all provisional data transferred thereto.

Registration of ships under construction is only *temporary* until the newbuilding is completed, when such registration becomes *permanent*.

## II. Desirability of a convention on security in ships under construction.

1. Yes, because in Spain registration of ships under construction seems to be referred only to newbuildings for Spanish individuals or firms, although bearing in mind that law makes no distinction in this respect, also it might be possible to register ships intended for delivery to foreign purchasers. On the other hand this registration is merely *temporary* and with the sole purpose of the mortgage. Once the vessel is completed registration thereof becomes *permanent* by transferring temporary entry to the Register of Ships. In this connection it is necessary for the vessel to be previously entered in the Marine Register which is not open for foreign flag vessels.

However, the limit established by Spanish Law to the effect that registration must be effected when the constructional work is advanced as much as *one third* should be maintained, since it is at this stage when the ship may be properly identified and satisfactory securities made on her. In other words, we would be inclined to alternative C) in the Draft Convention.

It might also be considered that the Spanish system for registration of ships under construction is susceptible of amendment by extending the scope of documents to be registered. If at present only registration of the property title and mortgage is permissible, it might also be admitted registration of another instrument, such as the purchase option (like it happens in the Immoveable Property Register, Art. 14 R.H.). Likewise registration might be allowed for those rights having a real bearing on the ship, but not for the merely obligation rights which, if entered, would affect the essence of Register and would provide a different effect, since they are engaging the contracting parties only.

2. No. Shipbuilding in Spain is stimulated by a series of regulations and particularly by the Protection and Renewal of the Merchant

Shipping Act dated the 12th May 1956, which concerns with the granting of loans to the Spanish Shipowners.

3. Usually the shipbuilder contributes to the building contract with materials and labour at a bulk price. Under such contract, which may be defined as a *sale of a future thing* or *hire of work* contract, the shipowner should make substantial advances concurrently with the progress of the constructional work. Therefore, difficulties may arise in special circumstances. In principle until delivery of the vessel, either completed or not, same is owned by the shipbuilder. If the vessel becomes lost as a consequence of fire or otherwise, such loss is for shipbuilder's account. The shipbuilder is responsible for inherent vice and defects in the newbuilding as well as in the materials used and the burden of proof falls on the shipowner. Contracts referred to above contain also a provision regarding control and examination of the construction by experts of a classification society, who may refuse those vessels which are not in accordance with the required specifications. Thus the society turns out in a sufficient guarantee for both the shipowner and the shipbuilder.

The owner of a ship under construction cannot release himself from reimbursing the shipbuilder with the amounts due. However, payment is generally split up in instalments as follows : First when the contract is signed and second at the lay of keel, the balance being paid at different stages of the construction until expiry of the guarantee period. To deal with unstableness of materials and labour hand prices it is usual to include some clause pursuant to the revision of such prices.

### III. Who may apply for registration ?

It seems that under Article 16 of the Naval Mortgage Act dated the 21st August 1893 both the proprietor and the shipowner of the building are entitled to apply for registration. The words « *proprietor or shipowner* » seem to place both parties on the same level.

However, since the terms proprietor and shipowner are not clearly defined by Spanish law we think a difference may be established between them. According to the general doctrine the ship's proprietor may operate his vessel directly as a shipowner and in this assumption both parties coincide in the same person. However, he may transfer the vessel for construction and operation to another person and, in this case, proprietor and shipowner are regarded as different parties.

The official forms for registration of ships under construction only contemplate registration of property in the name of the person executing the contract with the shipbuilders, though the remaining possibilities are not excluded.

Nationality of the proprietor or shipowner should not be regarded as a legal difficulty for registration, even on the basis that it has a temporary character. However, Article 2 in the Draft Convention seems to conflict in principle with our laws inasmuch as the sale of ships to foreign purchasers is forbidden by the Decree of 22nd August, 1931. On the other hand, the Order of 22nd September 1931 stipulated that the above Decree would not be applicable to ships ordered by foreign individuals or firms to Spanish yards. Decree of 26th May 1943 contemplates the sale of ships to foreign purchasers when construction thereof is intended for immediate exportation. Decree of the 26th September 1944 deals with the authorization to export vessels under 500 tons.

Apart from the above, another regulation in support of the registration of ships under construction by foreign purchasers can be quoted, namely the Ministerial Orders of 24th December 1959, 10th February 1960 and 15th March 1962 in connection with foreign investments in Spanish moveables. Also the Decree/Law dated the 27th July 1959 and the Decree/Law dated the 22nd March 1962 dealing with the mandatory entry in the Property Register of any immoveable property purchased by foreigners.

#### IV. When shall registration be permissible ?

In order to authorize registration for the purposes of any mortgage it is required by Spanish law that at least *one third of the total* estimated cost for hull has been disposed of in the newbuilding. From the annexed forms to the official wording of the Mercantile Register Rules it appears that registration is made when the keel has been laid, the double bottom set and 80 % of the frames already placed in way.

It would seem unreasonable to think of registration of a ship under construction when she has been launched, because usually launching takes place after the newbuilding is practically completed. Same would apply for a building contract which has been duly executed. If this was already executed the newbuilding could not be regarded as a ship under construction but as a completed vessel. It would be different to speak of « perfection » of the contract instead of execution thereof.

Based upon registration of the so called « horizontal property » a solution could be found as to the time when registration should be made.

Number 4 in the present Article 8 of the Mortgage Act deals with registration of apartment-owned houses construction of which « should be achieved or, at least, commenced », and though it later refers to registration of land where the house is intended to be built and specification of the planned apartments must be made, the latter cannot be applicable to ships under construction. Whilst the land is considered

as a « property » for the purpose of any mortgage, when reference is made to ships it is impossible to speak of land on which the ship is intended to be built until construction of such *land* has been commenced.

Similitude between the Ships Register and the Property Register is almost complete. Both are Royal Rights Registers or ultimately *Title* Registers, but they cannot be described as Registers of Acts of Contracts. Should registration of the building contract be accepted when the work has not yet started, it would force our Register to be regarded as included among those mentioned in the last place above.

## V. What instruments may be registered ?

According to the Spanish Law the building contract is the title which proves property on a ship under construction and thus Article 16 of the Naval Mortgage Act permits registration of such contract with a view to give evidence on the property of a ship under construction. It is not the contract, but the property, which is registered.

Apart from the above, also the property title as well as any title relating to transfer of ownership and security rights can be registered. Since registration of a mortgage is permissible likewise the lien should be allowed for entry in the register.

Registration of contracts of affreightment seems more difficult to be allowed inasmuch as they have a merely obligational or personal character.

Whilst registration of ships is *mandatory* according to the Spanish law, registration of ships under construction is not, except when there is an established mortgage on vessel. We think this question may be left to the parties discretion.

## VI. Materials and equipment.

Bearing in mind the importance of these materials and since the moveable guarantee has been substantially extended in Spain by the Law of December 16, 1954 it appears that the registered rights and charges on a ship under construction might also comprise such materials.

Of course, like it happens in the Moveables Mortgage Act, said registration should be permissible provided that no previous mortgage has been effected on the materials and equipment in question and also that its cost has been fully paid and furthermore that they can be properly identified by their specific numbers or marks.

This should be left to the parties discretion likewise the objects referred to in Article 111 of the Hypothecary Act.

It seems that as a condition precedent to registration the materials should be placed at the shipbuilders yards, likewise it is provided for in Article 39 of the Moveables Mortgage Act regarding aircraft.

This protection should disappear when the materials are removed from the yards and, of course, when same are incorporated to the newbuilding because at this stage they mix up with the ship which is the main object of security.

#### **VII. Legal consequence of registration.**

Registration would have no bearing on the relations between the parties unless it is given a constitutive or mandatory character. As far as the hypothecary security is concerned registration is constitutive and in the absence thereof the mortgage has no effect, either between the interested parties or against a third party.

Of course, registration would have a priority in relation to the ordinary creditors. Registered rights, charges, etc. on a ship under construction take precedence against the ordinary creditors.

The priority should be obtained from the day the title is produced to the registrar, since according also to the hypothecary doctrine the date of registration is the date when the instrument is submitted for entry. (Art. 24 of the Hypothecary Act.)

It seems to us that contents of Article 5 in the Draft Convention can give sufficient protection to the interested parties under registration. In fact, this article briefly compiles one of the aspects on which the doctrine of priority is based. It could only be completed by refusing registration of any title in conflict with registered instruments.

According to Article 34 of the Hypothecary Act only the acquirer in good faith should be protected.

#### **VIII. Transfer of the newbuilding to another State.**

If the intended Convention aims at obtaining sufficient protection on an international basis for the shipbuilding contracts, it is obvious that contracts lawfully executed should be recognized as valid in all the contracting States and the priority of charges registered in other country should remain as before.

*March, 1963.*

GREEK MARITIME LAW ASSOCIATION

REGISTRATION  
OF SHIPS UNDER CONSTRUCTION

REPLY TO THE QUESTIONNAIRE

I. Present legal situation in Greece :

1. The new Greek Code of Private Maritime Law provides in Section 4 that a ship under construction can be registered. The registration is effected in the usual Register of Ships.

2. There is no special provision governing the stage of the construction process when registration is permissible. Registration is effected as soon as the contract of shipbuilding is concluded.

3. The instrument to be registered is the shipbuilding contract.

4. Registration is not mandatory.

5. To answer this question one should say that registration or registered rights comprises only the newbuilding. Registration of materials and/or equipment is not admissible. It is perhaps here the proper place to say that according to Section 4 of the Code, the entry of registration mentions :

a) The Yard.

b) The place of shipbuilding.

c) The name and nationality of the person on behalf of whom the ship is being built, as well as the name of a person authorised to accept service.

d) The material of which the ship is being built, the name of the ship, her prospective dimensions and capacity, the means of propulsion and the type and horse-power of the engines, in case of an engine-driven ship.

6. There is no « central » Register of ships in Greece. Every major Port has its own Register and naturally Registration will be made in the Register of the district where the yard is situated.

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

1. It is difficult to answer this question at this early stage of shipbuilding industry in Greece. There is now only one shipyard and a limited number of smaller establishments. We are not aware that problems such as envisaged by Professor Dr. Braekhus in his Report, have so far arisen in Greece.

The state of affairs resulting in difficulties and uncertainty for lawyers and businessmen, as depicted by Professor Dr. Braekhus, are not known in this country. May be the fact that Greek shipowners place considerable shipbuilding orders with yards all over the world, can influence towards a Convention. This, however, ought to be regarded as a preliminary statement based on general considerations and subject to discussion of details, some of which are inadmissible under Greek law, e.g. registration of Charter-parties, chattles, etc.

2. We have no particulars enabling us to answer this question.

3. As a purely hypothetical case, we can conceive purchasers receiving a bank guarantee from the Yard, in security of money advances. In such a case the cost, i.e. the commission of the Bank will be specially arranged between the parties, as there is no fixed rate.

## **III. Who may apply for registration ?**

1. The registration of the ship under construction is made on the application of the owner. This brings us to the question who is the owner of the newbuilding. If the material of the construction is supplied by the Yard, then the contract of shipbuilding is a contract of sale and the owner is the Yard. On the other hand, if the material is supplied by the prospective owner, the Yard is a contractor within the meaning of sections 681-702 of the Civil Code. In this case, the owner is the party who has ordered the ship to be constructed.

As regards the nationality of the purchaser, we believe the question to have a theoretical value. The rule is that the material is supplied by the Yard and the Yard is the owner of the newbuilding. The Yard, situated in Greece, is usually a Greek Company.

## **IV. When shall registration be permissible ?**

The present legal situation is that the shipbuilding contract can be registered as soon as it is duly executed. We see no useful purpose warranting a departure from this principle. We wish to avoid connecting registration with the various stages of constructional work. This cannot be clearly identified nor sharply defined. Moreover, modern shipbuilding technique is rapidly developing and conventional and time-honoured methods are abandoned. We may quote here « jumboising » and « tooth-paste tube construction ». We would very much prefer to stand by the principle quoted above.

## V. What instruments may be registered ?

Legislation in Greece does not recognize registration of documents other than a) the shipbuilding contract, b) mortgages on the newbuilding, c) a transfer of title on the newbuilding.

Contracts of affreightment and other documents mentioned in the Questionnaire under V are not registered in Greece.

## VI. Materials and Equipment.

Material and equipment useful for the construction of ships are chattels in Greece and as such are not subject to registration.

## VII. Legal consequence of registration.

Those are closely connected with the transfer of property over the ship, either commissioned or under construction. Section 6 of the Greek Code of Private Maritime Law provides that to obtain the transfer of property over a ship, a written agreement between the owner of her and the acquirer, is required. This agreement should be entered in the Register of Ships. The second paragraph of the same Section provides that a transfer of property is not attained, without the registration of the agreement.

These principles apply likewise on the registration of shipbuilding contract. It follows that a mere agreement of transfer — not registered — is not effective even between the parties, unless it is registered.

The questions connected with the ordinary creditors of the yard will be answered according to the principle laid down in the previous paragraph. The Yard will acquire rights over the newbuilding as from the registration of the contract of shipbuilding. If it belongs to the yard, it is only natural that it can be attached by its creditors and will be included in a bankruptcy of the yard, by its trustee.

Article 6 of the Draft Convention touches highly contested question of Greek Law. Under the regime of the law prior to the recent enactment (1958) Code of Greek Private Maritime Law, Courts had admitted although not unanimously, the French theory according to which, an acquirer was protected by the registration, only if he ignored a previous unregistered transfer of property. If it was proved that albeit he knew of this transfer, he did register the subsequent transfer to him, he was not considered a bona fide acquirer and therefore pronounced as not protected by registration. This older Jurisprudence was fiercely attached. It has been observed that this construction is not admissible in Greece where the provisions governing the matter are different to those in France. Further, it was observed that we thus abandon the known and in collaboration with a Public Authority established fact of the

registration in favour of the obscure allegation of knowledge or ignorance of a previous unregistered transfer. Be it observed that the matter has not been definitely settled either way in the Courts, which oscillated between the above different points of view.

After the recent Code, as mentioned above, the law has changed. Registration is now required not only against third parties, but between the parties to an agreement of transfer of property.

The agreement, if not registered, has not brought about a change of ownership, even between owner and acquirer. The matter has not yet been brought before the Courts in the light of the new provisions. We therefore do not know the reactions of Jurisprudence. It is, however, supported in theory that the new provisions are in favour of a definite departure from the French theory. If his contention is true, as it may well be in face of the strict wording of Section 6 of the Code of Private Maritime Law, we believe that Article 6 of the Draft Convention is difficult to explain and hard to accept, because it marks return to a construction no more supported by the text of the law.

#### **VIII. Transfer of the newbuilding to another State.**

We appreciate the motive which has dictated contents of Articles 10 and 11 of the Draft Convention. But considering that the Greek Association is in principle not in favour of an International Convention on the matter, we do not see how we could adhere to a Convention which would govern only the matter of transfer of the newbuilding in another State.

As regards internal Greek Law, it is to be noted that according to the Greek Code of Private Maritime Law (Section 201), it is prohibited to alter registration or the name of a ship encumbered with a mortgage without a written consent of the mortgage and this provision applies on preferred mortgages too. Consequently, as far as internal Law is concerned, sufficient protection is accorded to registered rights on a ship.

ASSOCIATION BELGE DE DROIT MARITIME

IMMATRICULATION DES NAVIRES DE MER  
EN CONSTRUCTION

RAPPORT

I.

L'Association Belge de Droit Maritime exprime sa reconnaissance et son admiration pour le remarquable travail préparatoire à la Conférence de Stockholm qui a été entrepris par Monsieur le Professeur Sjur Braekhus et Me Per Brunsvig.

Le questionnaire qu'ils ont rédigé (R.S.C. 2) joint à leur rapport préliminaire (R.S.C. 1) et à leur premier projet de convention (R.S.C. 3), a permis à plusieurs associations nationales non seulement de faire connaître les données du problème dans leurs pays respectifs, mais également de manifester en vue des travaux de la Conférence de Stockholm, les recommandations de ces associations nationales sur les éléments essentiels du problème (R.S.C. 4 à 11).

A l'issue de la réunion du sous-comité, à Oslo en février 1963, MM. Braekhus et Brunsvig ont le 20/4/63 rédigé un rapport introductif complété et un projet de convention remanié, qui constituent tous deux un apport constructif et particulièrement valable, devant servir de point de départ aux débats de la Conférence de Stockholm.

II.

L'Association Belge croit utile d'apporter sa contribution aux travaux qui sont en vue, en formulant les observations suivantes :

1. Dans le commentaire de l'art. 1 du Projet de convention, il est dit textuellement :

« The article does not expressly forbid registration of vessels under construction outside the territory of the State in question, but it is understood that vessels under construction in another contracting State may not be accepted for registration. »

L'Association Italienne a déjà souligné dans son commentaire (R.S.C. 4) du Projet de convention et en particulier de son article 11,

que le moyen pratique de conserver aux inscriptions faite pendant la construction toute leur valeur après transfert du navire achevé dans le registre du pays du Pavillon, était que les Pays contractants s'interdisent d'immatriculer un navire en construction dans leur propre registre, lorsque le navire est construit dans un autre Pays contractant.

Le texte proposé pour l'article 11 n'est à cet égard pas suffisamment formel et il paraît essentiel de stipuler de manière expresse dans la Convention que lorsqu'un navire est en construction dans un Pays contractant, il sera « interdit » de l'immatriculer dans d'autres Pays contractants, avant l'achèvement de sa construction.

2. La délégation belge est en faveur d'une immatriculation du navire dès l'instant où le contrat de construction est signé. C'est fréquemment pendant la période qui se situe entre la date de cette signature et celle du commencement effectif de la construction que l'armateur négocie le crédit dont il a besoin et se fait remettre les premières avances par le banquier qui voudra immédiatement faire transcrire l'hypothèque qui lui a été consentie.

Si même la loi nationale de certains Pays n'admettait l'immatriculation que lorsqu'un navire est arrivé à un certain stade de construction effective, il serait au moins souhaitable, que les titulaires de droits réels consentis par l'armateur ou le chantier sur le navire à construire, puissent faire enregistrer leurs « demandes » de transcription à la date de leur introduction, de manière à ce que ces droits réels puissent être transcrits dans le registre dans l'ordre où ces demandes ont été enregistrées, le jour où le navire lui-même pourra faire l'objet d'une immatriculation valable.

3. Le délégation belge pense également qu'il serait souhaitable que les chartes-parties de longue durée et contrats de cession de frets ou de loyers, puissent faire l'objet de transcriptions valables dès la période de construction du navire, car ce sont fréquemment semblables contrats qui constituent l'un des éléments essentiels du financement de la construction.

4. Enfin, la délégation belge exprime l'avis qu'il serait hautement désirable que pour uniformiser de manière efficace dans tous les Pays contractants l'étendue des droits pouvant grever un navire, en construction, la Convention décide que tout le matériel, les machines et les accessoires acquis soit par l'armateur, soit par le chantier, en vue d'être incorporés dans le navire, puissent être compris dans les droits réels enregistrés pour autant que les conventions entre parties le stipulent.

Il suffirait de préciser que cette incorporation sera valable dès l'instant où le matériel, les machines et les accessoires, seront suffisamment identifiés, laissant aux lois nationales le soin de déterminer les conditions de preuve de cette identification.

*Anvers, le 6 juin 1963.*

## AMENDMENTS (\*)

R.S.C./STO. - 4

### NORWEGIAN DELEGATION

#### ARTICLE 11

Titles and mortgages (or hypothèques), seizures and acts of execution registered in one of the Contracting States pursuant to the provisions of this Convention and lawfully executed in accordance with the national law of such State shall be recognized in all the Contracting States with the priority obtained under this Convention.

#### ARTICLE 11 § 1

When a ship under construction registered pursuant to the provisions of this Convention in one of the Contracting States before or on completion is to be transferred to another State, which is a party to this Convention, and the purchaser applies for registration of the ship in that State, such registration shall only be allowed on presentation of a certificate from the competent registrar in the State where the ship under construction has been registered, setting out all registered particulars relating to rights in the ship, and their order of priority and further stating that no more particulars will be registered on the ship after the issue of the certificate.

R.S.C./STO. - 5

### BRITISH DELEGATION

#### ARTICLE 1

The High Contracting Parties undertake to introduce in their national law regulations necessary to permit the registration in accordance with the provisions of this Convention in an official register established by or under the control of the State of rights in respect of ships which are to be or are being constructed within the State's territory.

(\*) The Amendments not submitted to the vote of the Plenary Assembly, have been rejected during the debates of the Subcommittee for which no minutes have been published.

The registration of such rights may be restricted to cases where the competent registrar is satisfied that the ship will be of the nature and size required by the national law to be registered in the national ship register when completed.

## ARTICLE 2

For the first sentence substitute the following :

The High Contracting Parties may restrict the registration of rights in respect of ships under construction so as to affect only ships (ordered by) (under construction for) a foreign purchaser.

For the last sentence substitute the following :

« but this shall not affect any provision of the national law of the country where the yard is situated for controlling shipbuilding or restricting the acquisition of such rights by aliens.

Nothing in the register shall affect the national status of any ship. »

R.S.C./STO. - 6

## BELGIAN AND FRENCH DELEGATIONS

Delete Article 6.

New Article 7 reads :

« Priority between rights registered according to this Convention and maritime or possessory liens or similar statutory rights shall be the same as for completed and delivered ships. »

R.S.C./STO. - 7

## BELGIAN AND FRENCH DELEGATIONS

### ARTICLE 5

Add the words in italics to the first paragraph :

Registered rights shall have legal priority, one before another, in the same order as they have been registered. The national law of the registering country, however, may provide that priority shall originate from the time, when an application for registration was produced to the registrar, *provided that such applications be available for public inspection at the registry.*

Registered rights shall take precedence over unregistered rights in the new building.

BRITISH DELEGATION

ARTICLE 5

Paragraph 2 should read :

Registered rights shall take precedence over rights when under this Convention can be registered, but in fact have not been so registered.

UNITED STATES DELEGATION

ARTICLE 2

Change the last two sentences to read as follows :

« The Contracting Parties agree to allow registration by a national of one of the Contracting States of instruments relating to ships under construction subject to restrictions imposed by national law of the country where the yard is situated. »

ARTICLE 3

Second paragraph : Change the paragraph to read as follows :

« The national law, however, may make it a condition for registration that constructional work has commenced. »

BELGIAN DELEGATION

Add the following paragraph at the beginning of Article 11 :

No rights in respect of ships which are to be or are being constructed within the territory of a Contracting State shall be admissible for registration in any other contracting State.

NETHERLANDS DELEGATION

1. To delete Article 8.  
Alternatively — delete the words « or charges on ».
2. To delete Article 9.

3. a) To delete Article 10 and to add to Article 5 a new first paragraph reading :

« Registered rights in ships under construction duly effected in accordance with the law of the Contracting State in which the ship is being built, shall be recognized as valid in all the other Contracting States. »

b) The second paragraph to begin with the words « These rights ».

c) To delete second paragraph of Article 5.

4. a) To insert in Article 11, paragraph 1 of the draft proposed by the Norwegian Delegation (RSC/STO-4) after the words « further stating that » the sentence :

« all the holders of registered rights have been notified of the new registration at least thirty days before the date of the certificate and that... »

b) Replace the words « no more particulars » by « no more rights ».

R.S.C./STO. - 12

## NORWEGIAN DELEGATION

### ARTICLE 3

Second paragraph :

« The national law, however, may make it a condition for registration that the keel has been laid or similar constructional work has been executed in the place from which the newbuilding is to be launched. »

### ARTICLE 4

« Titles to and mortgages on a ship to be constructed or under construction shall on application be entered in the register.

The national law may allow registration of other rights relating to a ship to be constructed or under construction. »

### ARTICLE 7

As the Belgian and French proposal, but the « and delivered » should be deleted.

### ARTICLES 8 AND 9

To be deleted.

### ARTICLE 10

« Titles and mortgages registered in one of the contracting States pursuant to the provisions of this Convention and lawfully executed in accordance with the national law of such State shall be recognized in all other contracting States with the priority obtained. »

## ARTICLE 11

The first paragraph should read :

« When a ship under construction registered pursuant to the provisions of this Convention in one of the contracting States before or on completion is to be transferred to another State, which is a party to this Convention, and the purchaser applies for registration of the ship in that State, such registration shall only be allowed on presentation of a certificate from the competent registrar in the State where the ship under construction has been registered, setting out all registered particulars relating to rights in the ship, and their order of priority and further stating that no more particulars will be registered on the ship after the issue of the certificate. »

In the second paragraph the first sentence should read :

« Title and mortgages registered on the newbuilding shall, after transfer of the ship to another country, be registered in the register of that country, retaining their priority from the date of the original registration. »

R.S.C./STO. - 13

## SCANDINAVIAN DELEGATIONS

### ARTICLE 6

Add the following words at the end of the Article :

« provided that if a third party in good faith has relied on the registered right no exception may be made from Article 5. »

R.S.C./STO. - 14

## REVISED DRAFT CONVENTION SUBMITTED BY THE SUBCOMMITTEE (\*)

### ARTICLE 2

The contracting States may restrict registration of such rights to cases where ships are to be or are being constructed for a foreign purchaser.

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(\*) The Articles which have not been amended at the plenary meeting are not printed here but only under the heading « Draft Conventions of the Stockholm Conference ».

The contracting States agree to allow registration of rights in respect of ships which are to be or are being constructed, without discriminating against any applicant who is a national of one of the contracting States. However, the foregoing shall not affect any provision of the national law of the State of registration controlling shipbuilding or restricting the acquisition of such rights by aliens.

Registration under the provisions of this Convention shall not affect national status of any ship.

## ARTICLE 9

When a ship is registered pursuant to the provisions of this Convention in one of the contracting States, registration in another contracting State shall only be allowed on presentation of a certificate of the State where the ship is registered setting out all registered particulars relating to the ship in their order of registration, such certificate shall further state that all persons whose rights are registered have been notified of the proposed new registration at least thirty days before the date of issue of the certificate, and that no more applications for registration will be accepted in respect of the ship after the issue of this certificate.

Registered title and mortgages (or hypothèques) shall, on registration of the ship in another contracting State, be registered in the register of the latter State, retaining the priority resulting from the original registration.

If these registered rights do not comply with the statutory requirements for registration of the national law of the State to which the application for registration is made, the interested parties shall be given at least 60 days in which to comply with such requirements, all legal effects of registration remaining in force during this period.

If a ship is built in a contracting State but not registered there, registration in respect of the said ship shall only be allowed in a contracting State on presentation of a certificate of the State of building stating that the ship is not registered in that State.

R.S.C./STO. - 15

## ITALIAN DELEGATION

### ARTICLE 9

Add the following paragraph between the 1st and 2nd paragraphs of Article 9 :

« The law of a Contracting State may, in addition, make the issue of such certificate subject to fulfilment of all conditions which that law requires prior to the deletion of a ship from the national register. »

SCANDINAVIAN DELEGATIONS

ARTICLE 6

Paragraph 2 should read :

« Registered rights shall take precedence over rights which under this Convention can be registered, but have not been so registered, provided always that the National law of a Contracting State may, in accordance with recognized equitable principles, prevent the holder of a registered right which he has not acquired in good faith from taking advantage of this provision. »

# III

## CONFERENCE OF STOCKHOLM

AGENDA AND TIME-TABLE

LIST OF ATTENDANCE

MINUTES

AGENDA  
AND  
TIME-TABLE (1)  
OF THE PLENARY SESSIONS

*Sunday, 9th June :*

Opening Session (2).

*Monday, 10th June :*

Bill on Lading Clauses (2).

Ships under construction.

Passengers Luggage (3).

*Wednesday, 12th June :*

Passengers Luggage (3).

*Friday, 14th June :*

Bill of Lading Clauses (2).

Ships under construction (3).

Closing Session.

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(1) at the House of Parliament — Riksdagshuset — except opening session — Riddarhuset.

(2) a.m.

(3) p.m.

## OFFICERS OF THE CONFERENCE

<i>Hon. President :</i>	Mr. Albert LILAR.
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<i>Hon. Secretary General :</i>	Mr. Carlo VAN DEN BOSCH. Mr. Claes PALME.
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<i>Hon. Administrative Secretaries :</i>	Mr. Henri-François VOET, Mr. Léo VAN VARENBERGH.

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# MINUTES

*Sunday, 9th June, 1963*

## OPENING SESSION

**Mr. Herman Kling**, Minister of Justice of Sweden.

Mr. Chairman, Ladies and Gentlemen, it was originally intended that the Conference should have been opened by H.R.H. Prince Bertil. Unfortunately he is prevented from being with us since he has had to go to Canada on official business. It has therefore become my privilege to extend to you on behalf of the Swedish Government a hearty welcome to Stockholm. I understand that this is the first occasion on which the Comité Maritime International has called its members to a conference in the Swedish capital and that forty years have passed since you last met in this country.

Over the course of many years your Organization has been a most important contributor to the development of international maritime law. The Swedish Government has therefore come to hold the Comité Maritime International in high regard, something which contributes to the satisfaction we feel in your choice of venue for this Conference.

Most conventions in the field of international maritime law are founded on draft conventions elaborated by your Organization. I have amused myself by working out just how many they are. Beginning with the 1910 convention on salvage and ending with the 1962 convention on nuclear ships, I have arrived at a total of thirteen conventions. Sweden has ratified or acceded to seven of them. These conventions have become part of our maritime code, as is also the case in the other Nordic countries. Four further conventions on civil jurisdiction, penal jurisdiction, arrest and carriage of passengers by sea are at present being considered by our legislative committee on maritime law, a committee which is chaired by the Vice-President of the Swedish branch of your Organization, Mr. Chief Justice Erik Hagbergh.

As regards the 1957 convention on the limitation of shipowners' liability I would like to take this opportunity to mention that the Swedish Government last Wednesday instructed her ambassador in Brussels to denounce the 1924 Brussels convention before July 1st this year.

I will further announce that the four Nordic Governments plan to introduce before their respective Parliaments bills on limitation of ship-owners' liability which are based entirely on the 1957 Brussels convention. According to the timetable planned these bills should become law on Juli 1st. 1964 and our four countries will then ratify the new convention. If sufficient ratifications have not been obtained by that time to bring the convention into force, this will not prevent the four Nordic governments from letting these new laws take effect. I am sure that this will give all of you in the Comité Maritime International great pleasure.

The subjects on the agenda for your Conference are of great importance and raise complicated problems. On behalf of the Swedish Government I wish you success in your important efforts to arrive at practical and simple solutions which strike an equitable balance between the various and sometimes conflicting interests involved. May I also welcome you to this old capital and express my hope that you will enjoy your stay here and come to share some of the affection felt for this city by those who live and work here.

Mr. President, Ladies and Gentlemen, it is my privilege now to declare the XXVIth Conference of the Comité Maritime International opened.

**M. Kaj Pineus, Président de l'Association Suédoise de Droit Maritime International.**

Monsieur le Ministre, Monsieur le Président, Mesdames, Messieurs,

C'est pour nous une source de satisfaction de pouvoir, à l'occasion de cette première réunion du Comité Maritime International, tenue à Stockholm, accueillir tant de participants venus de près et de loin. Nous sommes heureux de revoir de vieux amis. C'est avec plaisir également que nous remarquons tant de nouveaux visages, ce qui témoigne du nombre toujours croissant d'adhérents que le Comité Maritime International a su gagner. Aux autorités, aux entreprises et aux particuliers, l'Association Suédoise tient à exprimer ses sincères remerciements pour tout l'intérêt et tout le dévouement qu'ils ont portés aux travaux préparatoires de cette Conférence. Ils ont donné avec générosité leur temps, leur travail et leur argent. Sans leur précieuse collaboration, il n'aurait pas été possible d'organiser cette réunion.

La plupart d'entre vous connaissent, sans doute, la méthode de travail du Comité. Une commission internationale, composée de membres des Associations nationales exécute les travaux préparatoires et présente un projet de Convention. Celui-ci est envoyé aux Associations nationales qui font part de leurs commentaires. Le projet et les commentaires sont ensuite présentés à la Conférence plénière du C.M.I. où ils font l'objet d'une étude approfondie. Le projet amendé, amélioré est, si tout va bien, adopté par la Conférence plénière.

Ce projet de Convention est alors présenté, pour ainsi dire sur un plateau d'argent au Gouvernement Belge. C'est à partir de ce moment-là seulement que les pouvoirs législatifs interviennent.

Ce que je trouve remarquable dans ce processus d'élaboration de Conventions internationales, c'est que tout le travail est fait par le C.M.I. qui, depuis sa fondation, a été et reste un organisme privé. Il se compose de personnes intéressées aux problèmes du droit maritime et qui, d'une manière ou d'une autre, ont à s'occuper de questions de droit maritime appliqué. Ces particuliers ont, à titre entièrement gratuit et au prix d'un travail acharné, pendant de longues heures qu'on serait tenté de qualifier de « volées à leurs loisirs », élaboré des projets de Convention portant sur des problèmes capitaux du droit maritime privé.

Le fait de permettre aux intéressés eux-mêmes de prendre l'initiative des projets de Convention et de leur laisser le soin d'en établir les bases fondamentales est, je crois, du plus haut intérêt, non seulement pour nous, mais encore pour les Etats et les Pouvoirs Publics qui, lorsqu'ils sont saisis de nos projets, ont en main des documents élaborés avec le plus grand soin et qui constituent un compromis heureux entre des intérêts imposés et les exigences des différentes législations.

On a dit parfois qu'un chameau est un cheval dessiné par un Comité. Permettez-moi de souligner que cette remarque ne fut jamais faite à propos des projets de Convention que nous avons préparés.

**Mr. Kaj Pineus**, President of the Swedish Association of International Maritime Law :

All of us here in this historic room are well aware that no Institution can live entirely on its past. The achievements of the C.M.I. are certainly impressive, but if the Comité is to remain an active and influential body, real efforts are demanded.

I have said something about our method of work. I think it is of the greatest importance that Conventions on maritime law should originate in the thinking of those who are actually involved in the application of such law — Shipowners, cargo interests, Underwriters and the like.

Since the end of the war we have seen the growth of international governmental Institutions, some of which are, I am glad to say, represented here today. It is not mere courtesy to these representatives which persuades me to say that they play an essential part in the achievement of world peace and prosperity. Moreover it is through such Organizations that unity in the field of international law is finally made effective by the decisions of governmental representatives at meetings such as the Diplomatic Conference in Brussels.

Thus the C.M.I., composed of private individuals engaged in maritime affairs, is complementary to the Diplomatic Conference made up of governmental representatives. The two Organizations are essential to each other, the one cannot operate properly without the other.

But if this logical arrangement is to continue, the C.M.I. must maintain its independence and its liberty. « The price of liberty is eternal vigilance. » Are we being sufficiently vigilant ? We must keep watch and maintain the high standards of the past in order to meet the challenge of the future.

Each year the Comité grows in membership and the scope of its work widens. This means that an ever-increasing burden is thrown not only on to the administration but also on to the chairmen and members of the subcommittees who have somehow to find time to attend meetings and assist in drafting working papers for consideration at conferences. No conference can be a success if the preparatory work has been unsatisfactory, and the corollary is of course that no conference can be a success if the national Association which has been entrusted with the task of organising it has failed to do its job properly.

But the success of a conference does not lie in organization alone. Success will only be achieved if we keep alive the ideals which underlie the work of the C.M.I. as we know it. The encouragement of private initiative and the work of the individual, the will to look ahead without forgetting the past, the optimistic spirit, indispensable to achieve something, the energy to overcome human passivity, the ardent wish to be constructive, to listen, to cooperate in a spirit of give and take in order to reach a positive result. Seen in this light a C.M.I. conference is a challenge to us all. We must be worthy of those of the C.M.I. who worked before us. The Swedish Association feels convinced that all who take part in the XXVIth Conference of the C.M.I. shall live up to the mark.

**M. Albert Lilar**, Président du Comité Maritime International, Président de la Conférence Internationale de Droit Maritime de Stockholm 1963.

Monsieur le Ministre,

C'est avec une joie profonde que le Président du Comité Maritime International, à l'ouverture de cette XXVI<sup>me</sup> Conférence Internationale de Droit Maritime, exprime à sa Majesté le Roi de Suède et au Gouvernement suédois sa reconnaissance pour l'accueil qu'ils réservent aux travaux dont la réunion qui se tient aujourd'hui, sera l'occasion.

Par sa décision de recevoir en audience le Président de cette Conférence au moment où s'ouvrent nos travaux, Sa Majesté le Roi a marqué l'intérêt qu'il porte à l'œuvre d'unification à laquelle nous nous attachons en commun.

Monsieur l'Ambassadeur, Mesdames, Messieurs,

Depuis quelques 66 ans d'existence notre Comité a réussi par un travail persévérant, opiniâtre, mis au service de la sécurité et de la loyauté dans le commerce entre les peuples, à réaliser une œuvre dont il convient de rappeler les méthodes et de retirer les enseignements pour l'avenir.

Tout d'abord chaque fois que nous avons limité nos ambitions et que nous avons répondu avec perspicacité et précision aux besoins réels des transports et du commerce maritime nous avons été dans le vrai : abordage, assistance et sauvetage, connaissements.

Lorsqu'il est arrivé que nous avons été entraînés par un trop grand souci de perfection ou par un désir excessif de conciliation — les effets de ces deux extrêmes se rejoignent parfois — nous n'avons pas hésité à rectifier nos vues : limitation de la responsabilité des propriétaires de navires (conventions de 1924 et de 1957); convention sur les privilèges et hypothèques maritimes que nous sommes décidés à adapter aux nécessités nouvelles.

Bien qu'ayant obtenu dans de nombreux domaines des résultats reconnus mondialement comme valables, nous avons le courage de les remettre sur le métier lorsque l'évolution des besoins et des pratiques le commande : il en est ainsi des Règles régissant l'assistance et le sauvetage étendues aux navires des marines d'Etat; il en est ainsi des Règles de La Haye que nous allons examiner au cours de la présente Conférence.

Ce que nous souhaitons essentiellement, c'est de créer l'ordre, la sécurité, l'égalité de traitement dans les rapports de droit international privé. Mais, il nous est impossible de nous tenir à l'écart de certains problèmes de droit public qui marquent d'une manière croissante et sans doute irréversible, les rapports de droit privé : immunité des navires d'Etat, compétences civile et pénale, exploitation des navires nucléaires, etc... Cette évolution du droit dans les sociétés modernes pourra peut-être, un jour, nous conduire à envisager certaines adaptations aptes à y répondre, sans pour autant, renoncer à l'esprit et aux méthodes de travail qui ont fait leurs preuves.

Il y a un demi-siècle, le Comité Maritime International présentait l'apparence d'un cercle privé; seuls y étaient admis les hauts dignitaires du droit et des affaires, ressortissants des grandes nations maritimes de l'époque. Ils étaient trente ou quarante à se réunir. Leurs prestations étaient remarquables. Leur nombre a presque décuplé. Au lieu d'une dizaine d'Associations affiliées, le Comité International en compte dès à présent vingt-sept.

Le panorama d'euro-péen qu'il fut, avec l'apport des Etats-Unis à l'Ouest, du Japon à l'Est, s'est considérablement étendu et diversifié. Nombre de Nations jadis éloignées des affaires maritimes, souhaitent s'associer à nos travaux. Nous devenons le siège de débats élargis. Notre champ d'action s'accroît en même temps que nos responsabilités.

Une illustration des observations que je viens de vous livrer, nous est fournie par la comparaison à quarante ans de distance, de la Conférence de Gothembourg en 1923 et de l'actuelle Conférence de Stockholm.

En août 1923 se réunissaient à Gothembourg 36 délégués représentant 9 Associations affiliées au Comité Maritime International. Le Bureau International du Travail y était représenté comme observateur. Des noms distingués, dont certains se retrouvent aujourd'hui même, figurent à la liste des présences : Eliel Löfgren, Président; Algot Bagge, présent parmi nous, Einar Lange; C. D. Asser; Georges Vaes; Francesco Berlingieri; Anton Poulsson; Harry Miller. La session dura trois jours. Elle fut consacrée à trois sujets importants :

- l'assurance obligatoire des passagers, chère à Sir Norman Hill,
- l'immunité des navires d'Etat,
- le code international de l'affrètement.

Les discours solides, clairs, mais souvent longs, étaient fleuris et imagés.

Un orateur parlant du code de l'affrètement évoqua comme suit la rivalité entre les liners et les tramps :

« We have the highest authority to say that at the time when the lion will lie down with the lamb, we are not sure in what juxtaposition those animals may be when that occurs... »

Dans ce domaine du moins peu de choses ont changé.

Since our meeting at Athens in April 1962, our work has led to considerable achievements.

As early as the 25th May 1962, the Diplomatic Conference of Brussels, after two weeks of spirited discussions adopted the XIIIth International Convention of Maritime Law, relating to the liability of operators of nuclear ships. The Governments, confirming the principles laid down at the Rijeka Conference of 1959, adopted a text establishing the absolute and exclusive liability of the operator of a nuclear ship, subject to a limit both in amount and in time and requiring the operator to maintain insurance or other financial security to compensate those suffering damage by reason of a nuclear incident. The Convention aims at promoting the peaceful use of nuclear energy through its application to the propulsion of ships, and at affording adequate protection to the victims of nuclear incidents. It should also relieve the Owners of non nuclear ships of all nuclear liability.

Last year also the International Law Association gathered its members at Brussels for its Fiftieth Jubilee Conference. This memorable meeting afforded the opportunity to the President and the Bureau Permanent of the International Maritime Committee to strengthen the ties of friendship which link our Committee with this sister international Organization : indeed the International Law Association and the International Maritime Committee have in past years worked together in good companionship and out of their close common contribution two most important sets of Rules came to life : namely the Hague Rules 1924 and the York Antwerp Rules, 1950.

During the Academic Session, which was held at Antwerp on the 21st August 1962, our Vice President Cyril Miller read a most learned paper on the « Actual Position of the Problems of Limitation of Ship-owners' Liability ».

It was my great privilege to congratulate the International Law Association on their happy Jubilee and to pay a solemn tribute to their most valuable work.

During the Conference which opens today, we will examine three problems which I hope will be brought to a satisfactory solution. The interest they have raised is already illustrated by the recordbreaking number of delegates which will participate in our discussions.

The first topic is the revision of the « International Convention for the Unification of certain Rules of Law relating to Bills of Lading » signed at Brussels on the 25th August 1924, widely known as « The Hague Rules ».

Back in 1959, at the International Conference of Rijeka the revision of article X of that Convention had been agreed upon. However at the same time many delegations had become alert on the desirability of studying « other amendments and adaptations of the provisions » of the Convention and accordingly a resolution was adopted instructing the International Subcommittee on Bills of Lading to continue its work. This Subcommittee, which has been presided over with skilful authority and unquestioned ability by the President of the Swedish Association of International Maritime Law, Mr. Kaj Pineus, has almost a year ago concluded its activities when its substantial report has been published. This report as well as the observations received from sixteen National Associations of Maritime Law will be examined and should permit without any doubt to arrive at constructive resolutions.

May I dwell a moment on this subject. Indeed the Hague Rules are undoubtedly the most outstanding of our achievements and here we have them or anyway some of them reintroduced for discussion.

Is this a proof of our vitality ? Clearly so. Of our courage ? There is no doubt about it. Is it perhaps audacity ? May be.

Perhaps it is right for us to be on the guard against being dragged excessively towards the desire of being too perfect and of introducing too many new ideas.

The « Hague Rules » is a monument designed, it is true, in a particular style and not always very gracious, but which proved to be a real safeguard against the excesses and abuses which spoilt international trade. Harsh rivalries have been blended together in what is certainly a fragile balance, but it is nevertheless real and of great benefit. Let us be on the alert against scrubbing it too quickly merely for the sake of having a clean surface. Let us consider whether we should not leave a certain patina, lest we risk damaging it irreparably. Is it not true

that by deciding to replace one of its stones, we have seen a gang of well-intentioned masons cutting here, digging there, adding a wing at the risk perhaps of toppling over the whole building ?

Don't think that what I say is inspired by a pronounced taste of conservatism. On the contrary I would merely recall what my eminent predecessor Louis Franck said in 1923 at Göteborg :

« It is not an easy thing to bring over twenty nations into line — there were fifty at the last Diplomatic Conference —; on ordinary subjects, this is already difficult, but when it concerns a matter of law, and legal gentlemen have to give their opinion on it, the task is by no means easier, because the lawyers' mind, with all its great qualities, has an extraordinary tendency to conservatism, and although conservatism may be a good thing in some matters, it is not always so in matters of law. »

It is your sense of reality and of moderation which will be the factor in producing amendments limited to matters of necessity brought about by new developments.

Keep in mind that the International Subcommittee is submitting to your attention seven positive recommendations and has reserved seventeen others.

Let me repeat here all our gratitude to President Kaj Pineus and to those who have assisted him for the remarkable work, both in volume and in quality, that they have accomplished during the last two years. They have shown an example to be followed, an example which illustrates our methods of work and which does real credit to the International Maritime Committee. Thanks to them we have a complete file of documents which will facilitate the progress of our work.

The second topic which the delegates to this Conference will devote their attention to is the « Registration of Ships under Construction ». Its study originated out of a resolution moved at the International Conference of Rijeka by the President of the Norwegian Maritime Law Association, Mr. Sjur Braekhus, who has accepted to be responsible for the work of the International Subcommittee. In April of this year, after a meeting at Oslo, the International Subcommittee issued a « Report » and a « Revised Preliminary Draft Convention ». We hope to find in these the basis of an international agreement.

Mr. Walter Müller, the President of the Swiss National Association of Maritime Law, whose competence we all appreciate, will introduce a preliminary draft of an « International Convention for the Unification of certain Rules relating to the Carriage of Passenger Luggage by Sea ».

As far back as the Madrid Conference of 1955, the International Maritime Committee has examined this matter, which was included in the draft Convention for the « Unification of Certain Rules relating to Carriage of Passengers by Sea ». However the Diplomatic Conference

of Brussels of 1961, did not retain the problem of the luggage. The International Subcommittee which had been instructed by the Bureau Permanent to resume the study of this topic, gathered its members more than once in Athens and devoted their careful attention to this question. Undoubtedly some differences of opinion were maintained. A « Report » and a « Preliminary Draft International Convention » have been prepared. This work will make it possible for those who have a particular interest in this matter to continue their effort to arrive at a conclusion.

Nous avons à déplorer depuis notre dernière assemblée la perte de plusieurs de nos membres les plus distingués.

Monsieur Burchard-Motz, juriste éminent, issu des Universités de Lausanne, Cambridge, Heidelberg et Berlin, avocat, ancien Bourgmestre de Hambourg, nommé membre titulaire du Comité Maritime International en 1933 à la Conférence d'Oslo, à laquelle il participa, a laissé parmi nous le souvenir d'un de nos membres titulaires les plus distingués.

Monsieur P. Villadsen, Directeur au Ministère du Commerce, de l'Industrie et de la Navigation à Copenhague, fut élu membre titulaire il y a quelques années. Nous eûmes le regret de le perdre en septembre 1962.

Le 3 juin de l'an dernier est décédé Monsieur Torquato Carlo Giannini, vice-Président de l'Association Italienne de Droit Maritime et Président du Comité romain de cette Association, Professeur de Droit Commercial à l'Université de Ferrare et de Macerata et de Droit Maritime à l'Institut de Gênes et de l'Académie Juridique Américaine. Torquato Giannini fit une grande carrière scientifique et administrative. Il possédait une large érudition, une profonde expérience et s'avéra toujours un des meilleurs animateurs du Comité Maritime International. Vice-Président de la Société Dante Alighieri et jadis Ministre de la Justice de la République de Saint Marin, sa figure caractéristique, son activité éternellement juvénile alors même qu'il avait dépassé les quatre-vingt dix ans, laisseront parmi nous un sentiment de nostalgie dans toutes les réunions auxquelles il ne sera plus présent.

L'année 1962 a été marquée par la perte d'un autre membre illustre du Comité International Antonio Scialoja. Son nom reste attaché au code italien de la navigation, aux nombreuses publications scientifiques concernant le Droit Maritime, et à l'édition des principaux documents remontant au Moyen-âge qui lui permit de rédiger un ouvrage magistral en 1946 sur l'histoire du Droit Maritime. Son nom résistera au temps dans l'histoire du Droit Maritime international.

Apportons aussi tous nos sentiments de regret à nos amis du Maroc qui au cours de l'année écoulée perdirent un des leurs, Monsieur Henri Croze, membre titulaire du Comité Maritime International depuis 1958.

Qu'il me soit permis d'exprimer mes regrets de voir nous quitter, par démission, plusieurs de nos membres titulaires :

Monsieur Francis Sauvage, ancien Président de l'Association Française de Droit Maritime, qui participa aux Conférences d'Anvers (1930), Oslo (1933), Paris (1937), Anvers (1947), Amsterdam (1949). Membre titulaire depuis 1933, il s'était fait, au sein du Comité Maritime International d'innombrables amis, qui apprécient sa haute compétence et les relations particulièrement agréables qu'ils eurent avec lui. Que nos amis français transmettent à Monsieur Francis Sauvage tous nos regrets de sa décision.

Deux autres membres Monsieur Kjel Rördam de Copenhague et Monsieur L. Barber de Casablanca nous quittent après avoir été pendant quelques années membres titulaires de notre Comité. Nous regrettons leur départ.

Qu'il nous soit permis par ailleurs d'apporter nos souhaits de bienvenue à l'Association Brésilienne de Droit Maritime qui rejoint notre Comité et aux nouveaux membres titulaires que nous avons eu la joie de désigner le 20 avril 1962; Messieurs Evangelos Stratigis, Themistocles Valsamakis et Georges Daniolos que nous avons appris à apprécier au cours de l'accueil qui nous fut réservé à Athènes, Sir Mudaliar Ramaswami pour l'Inde et Stanislas Suchorzewski pour la Pologne dont la haute valeur et la réputation de juriste nous sont connues depuis longtemps. Qu'ils soient les bienvenus parmi nous.

Qu'il me soit permis maintenant de me retourner vers nos amis Suédois qui ont donné au Comité Maritime International des témoignages de fidélité depuis de très longues années et qui grâce aux éminentes personnalités qui ont participé à nos travaux, ont joué un rôle important dans l'œuvre du Comité Maritime International.

Le regretté Monsieur Eliel Lofgren, ancien Ministre de la Justice, secrétaire de l'Association Suédoise depuis 1900, ensuite son Président, ancien membre du Bureau Permanent, présida avec autorité la Conférence de Göteborg en 1923.

Monsieur Algot Bagge que je salue avec sympathie et respect, fut depuis 1927 jusqu'en 1957 le Président de l'Association Suédoise de Droit Maritime et participa aux Conférences de Göteborg (1923), Gênes (1925), Amsterdam (1927), Anvers (1930), Oslo (1933), Paris (1937), Anvers (1947), Amsterdam (1949), Madrid (1955), Membre du Bureau Permanent depuis 1930, il présida la Commission Internationale des conflits de lois, et s'il est un de nos amis dont on peut dire que chacune de ses interventions porte la marque de sa compétence et de son autorité, c'est bien Monsieur le Président Algot Bagge. Au cours de sa longue carrière il a su gagner l'estime et la sympathie de tous et l'on comprend dès lors l'extraordinaire résonance qu'ont eu les paroles si simples et si directs qu'il prononça à Anvers le 24 septembre 1947, lorsque le Comité Maritime reprit ses travaux après de dures années de séparation :

« Quand on a comme moi participé pendant plus de vingt-cinq années aux travaux de notre Comité, disait Monsieur Bagge, on a le sentiment de revoir après tant d'années de vieux amis et de pouvoir reprendre le travail qui nous a toujours tant intéressés, de croire de nouveau à l'avenir du Droit Maritime International. »

Que Monsieur Algot Bagge sache que nous avons tous le sentiment de voir en lui un vieil ami et que sa foi en notre œuvre est une foi communicative.

J'ai déjà eu l'occasion, Monsieur le Président Pineus, de rendre hommage à vos récents travaux comme Président de notre Commission des Connaissements. Succédant à Monsieur Algot Bagge à la Présidence de l'Association Suédoise de Droit Maritime, vous avez participé à de nombreuses conférences internationales. Membre titulaire depuis 1949 vous n'avez pas attendu longtemps pour conquérir à la fois l'estime et l'amitié de vos nombreux collègues. Votre compétence, la vivacité et l'originalité de votre esprit, la cordialité des rapports que nous avons avec vous ont fait de vous le Président idéal pour nous recevoir aujourd'hui à Stockholm et pour donner par votre présence et par votre accueil une nouvelle impulsion à nos travaux en commun.

Je voudrais à votre égard commettre une légère indiscretion. Quand, ensemble, nous préparions cette Conférence vous avez très gentiment exprimé une crainte. Vous avez craint que les participants à la Conférence de Stockholm ne soient nombreux. Votre crainte était pleinement justifiée. Sans doute innombrables sont ici les participants qui n'ont pu résister à l'attrait des connaissances, des navires en construction ou du transport des bagages. Mais croyez-le bien, il y a à tout ceci une toile du fond. Vos visiteurs n'ont sans doute pas pu résister à l'attrait de la région dont déjà Tacite célébrait la beauté en l'appelant l'antique Scandie, battue par la mer, embarcadère vers l'ultime Thulé, le dernier poste repéré avant les terres inconnues du rêve.

Ils n'ont pas essayé de résister au charme de votre invitation et à la perspective de se rendre dans ce pays ami et hospitalier.

Vous en payez aujourd'hui la rançon. Mais vous êtes aussi, reconnaissons-le, Monsieur le Président, devenu le créancier de vos visiteurs. Vous êtes en droit d'exiger d'eux qu'ils se consacrent avec ardeur aux problèmes qui vont leur être soumis et de souhaiter que s'ils gardent de leur séjour en Suède la gracieuse image que vous leur donnez, ils marquent aussi leur passage par des travaux dont la valeur illustrera cette XXVI<sup>me</sup> Conférence Internationale de Droit Maritime. (Vifs applaudissements)

*Monday, 10th June, 1963*

## OPENING PLENARY SESSION

Chairman : President Albert LILAR

### BILL OF LADING CLAUSES

**The President** (translation) : Gentlemen, the session is opened.

Yesterday, at the Meeting of the Bureau Permanent, it was decided that the work of this session would proceed as follows.

To-day, we shall take up the general discussion of the draft relating to the Hague Rules.

The report drawn up by the International Subcommittee presided by Mr. Kaj Pineus will be taken as a basis of the debate.

Same will wind up with the consideration by this Assembly whether it is advisable with a view to narrowing the work to its essentials, to send the draft to a Subcommittee which will be set up in the course of our session.

The Plenary Assembly will then be able to carry on its work the examination of the second item of the agenda.

If you have no objection, we shall then take up to-day the general discussion of this draft.

I will now beg the President of the International Subcommittee, Mr. Kaj Pineus, to kindly start the general discussion.

**Mr. K. Pineus**, Sweden : Mr. Chairman, Gentlemen, I really do not have very much to convey to you. You have in your hands the Report prepared by the Subcommittee on Bill of Lading Clauses and you will have had it for about a year to study. You will know that these various points have been discussed and examined by that Subcommittee under the understanding that one should not tamper with well-known and accepted clauses unless one felt that points were of real significance.

For this reason the Bill of Lading Subcommittee in its report has divided up the question into two groups : the first one as you will have observed they are not so many in number, deals with those points where your Subcommittee recommends a change. The other points have been analysed and the Subcommittee has, in some cases, reluctantly and in some cases not unanimously come to the conclusion that things should be allowed to stand. On the positive recommendations that have not always met with unanimity, those who have a different view have

had the opportunity in the report to express their views and submit it to your decision.

When this Report was ready it was sent out to the national Associations and I think I can say that there are mainly two groups of opinion : those who think that nothing should be done and those who think that something should be done. The reason for those who take a very cautious attitude is that they feel that it is a dangerous ground to tread on; that they do not know what would happen if we were to touch on these matters and the compromise arrived at between various interests. The other general attitude, if I may say so, is that after all it cannot be said and maintained that things have not changed since the Hague Rules were adopted, that a text submitted by the CMI should be open to improvements when it has been tested and found in some way deficient, that is is absolutely within the usual tradition of the CMI to improve and amend and submit changes to its own Conventions when there is need for it and that if we are not brave we will be left behind.

Even those who take — let us say — a negative attitude towards any change have submitted their views on the specific points in Document I and Document II and Document II contains a summary of replies so far received, it even contains a summary of the reply of the U.S.A. which, at the time, was not yet out in print, a very full and careful examination of the subject I have here.

With these documents in hand, I believe there is little need for me to go into the various points. You will have had the opportunity to study them. Your national Associations have expressed their views or most of them. I think there is little I can add at the very moment to this debate and that, Mr. Chairman, is what I have to say for the présent. Thank you.

**Mr. C. Moore**, United States of America : Mr. President, fellow delegates to the CMI Conference, before speaking on behalf of my National Association, I wish to say a word of my own behalf. In fact, under the Swedish custom which gives the person who thanks the host for the dinner the right and duty to speak for all the guests, I will take the liberty of speaking for all of us here.

For nearly four years, a number of us have had the privilege of serving under a most extraordinary chairman. He is a patient, good-humoured man, quite at home in Swedish, French and English, a keen judge of human nature, a master of the art of reconciling the seemingly irreconcilable, skilled in the use of bait, the needle and, when called for, the wip, and, above all, able to inspire others to devotion and hard work far above and beyond the call of duty.

I refer, of course, to the Hon. Kaj Pineus, not in his capacity as President of the Swedish Branch of the CMI but in his capacity as

Chairman of the Subcommittee on Bill of Lading Clauses, in which and through which he has produced such a thoroughly well prepared study of proposed revisions of the Hague Rules.

For his work, M. Pineus deserves a specially struck medal of 65.5 kilograms of gold of millesimal fineness 999. However, I expect that our Treasurer, Mr. Gyselynck, might have some objection to that and I therefore propose only that we should thank Mr. Pineus from the bottom of our hearts. (General applause)

In our portfolios we have all received copies of the special Report of the Bill of Lading Committee of the Maritime Law Association of the United States to which Mr. Pineus has just referred, our Document N° 463 of March 20, 1963 and also copies of the Minority Report of certain members of that Committee, Document N° 463A of the same date.

I might add that as indicated in the small slip that was enclosed in the Report, at the Annual Meeting of our Maritime Law Association, at the beginning of May, the Report of the Bill of Lading Committee was approved unanimously on all points except as regards the question of Himalaya, Item N° 5, as to which there was a small majority in favour of the Committee Report and the Both-to-Blame question, as to which a combination of those who would maintain the status quo with those who think that revisions of the Hague Rules is the wrong way to solve the problem, produced substantially a tie vote. Accordingly we will abstain on the Both-to-Blame question.

So, in our own old way, we have not only done our laundry in public but have also declared the precise extent of the authority of our delegation here.

In view of the fact that our whole position has been published, I propose only to summarize it and to try, to some extent, to show its relationship to the views expressed by other national Associations.

On Article X which was settled at Rijeka, the Maritime Law Association of the United States approves and favours the revision of Art. X as proposed.

In connection with the comments of certain Associations who would eliminate reference to optional ports, I would mention that this point was specifically considered at Rijeka, certainly within the Drafting Committee and if my memory serves me right in the Plenary Session as well. It was recognised that if a ship bound for one or more of two optional ports of discharge, one of which was not in a contracting State, were sunk or forced to go into a port of refuge where the voyage might be frustrated, there would be no agreed port of discharge. If such a voyage commenced in a non-contracting State, we would have a tailor-made law suit, with appeals guaranteed, and with that consideration, I would urge that the optional ports be not excluded.

The chance of such facts occurring is, of course very small but we have dealt with the question and we feel that we should not tinker with it further.

The first subject recommended for consideration is the question of the Carrier's Liability for negligent loading, stowage or discharge of the goods by the shipper or consignee. (Art. III (2)).

This is something of a twilight zone at present and we fear that the Subcommittee proposal would make it worse by permitting surprises for consignees where goods were, without the shipper's knowledge, shipped on free in terms so that the shipper would load, we fear that the consignee would not recognise that when he looked to the carrier for responsibility for careful loading. Examination of the comments of the various national Associations indicates substantial unanimity, subject to drafting, that where the loading or discharging is in fact not performed by the carrier and the bill of lading so states, the carrier shall not be liable for negligent performance of that operation.

The second point is Notice of Claim. (Art. I. (6) first par.) and the purpose of this amendment is to reunify the applications of the Hague Rules in this respect by reversing the rule in certain States, which shifts the whole burden of proof in all respects to the consignee who fails to give notice of claim within three days after delivery.

It would seem to us a harsh rule to apply such sanctions for failure to give notice of claim within such a short time as three days.

The next subject was the Time limit in respect of claims for wrong delivery.

The Maritime Law Association of the United States on this point finds itself in the large majority, which would simplify and clarify the present rule by specifically making the carrier's liability with respect to the goods subject to a limitation as to time, not only as regards loss or damage but in other respects as well.

Those who have expressed a preference for maintaining the status quo on these points either have indicated that preference as a choice between the Subcommittee proposal, which was for a two year limitation on claims for wrong delivery and the status quo, or they have objected to the drafting.

It appears that a clearly drafted revision providing for a one year limitation on a broadened basis would receive general approval.

On the Gold Clause, Rate of Exchange, Unit Limitation, the Maritime Law Association of the United States approves and supports the amendment proposed by the Subcommittee.

With regard to the date for conversion of the sum awarded into national currency, we note that a number of national Associations have urged that the date of conversion be the date of payment.

The date of payment rule was urged in the Subcommittee by members from countries which are accustomed to entering judgments in currencies other than their own. However, the members from the Common Law countries pointed out that under our system a Court can enter judgment only in its own currency, the rate of exchange being a question of fact to be dealt with at the trial.

Thus in our countries, the rules of procedure make it quite impossible to accept the date of payment rule.

It is out of the question, politically, to change this basic procedural rule because of this narrow point of maritime law. I might point out that in my country there are 51 Governments, each with its own independent chief executive, its own legislature, judiciary, its own system of Courts and rules of procedure. To change the law of all those 51 Governments would obviously be impossible for us.

We might perhaps be able to accept the date of trial as the date for conversion but that is absolutely the latest date with which we could deal. The Subcommittee proposal leaves it open to those countries which can alter their procedure to do so, to provide their own better brand of justice. And therefore it seems to us preferable to support the Subcommittee proposal and leave it open to the national law to determine the date of payment. It would seem that leaving it that way would lead to very little or no forum shopping and that is the thing that our CMI ought to combat. I hope that our good friends from the European countries in particular will not think that we are at all arbitrary or capricious but it is a simple fact of life for us that if the Convention is amended with a date of payment rule, it will not be possible for us to accept it and I think we all agree that any exceptions to our Conventions are very much to be deplored.

Now with regard to the next point, the Liability in Tort, the Himalaya problem, our Maritime Law Association of the United States, as I have said, is in the very large majority which approves the Subcommittee's proposal.

However, we do not feel that the proposed paragraph 4 or its counterpart, the proposed new paragraph 7 to be added to Article IV, both of which deal specifically with deliberate misconduct and gross negligence is necessary. In fact, we feel that either or both of those two paragraphs would only invite a great deal of dispute with the probability that these disputes would lead to varying results in different countries.

For the sixth point, which is Nuclear Damage, there appears to be complete unanimity that this clause should be accepted and therefore no need for discussion.

As already indicated on Both-to-Blame, the Maritime Law Association of the United States will abstain. Perhaps it would be best if the CMI did no more than pass a resolution as regards what we should do in our country.

On Due Diligence to make the ship seaworthy and the Muncaster Castle Rule, it is the desire of the Maritime Law Association of the United States that there should be uniformity, preferably on the basis of the present jurisprudence of the United States, England and a number of other countries.

There are sixteen other points examined by the Subcommittee and which the Subcommittee consigned to the dustbin — to use the expression that we used among us, as being of insufficient importance. In fact, some of those points were theoretical questions only, not resulting from any practical difficulty at all. There are others where there are some practical difficulties but the Subcommittee thought that they were not of sufficient importance to require action.

I submit that if we are to accomplish anything on the Hague Rules, either at this Conference or the next, we must exercise a great deal of restraint and not press for revisions beyond such as have actually been demonstrated by experience to be necessary.

If we are not careful, we will risk getting lost in minor points and I can assure you that if that happens, the problem will be compounded by other minor points being proposed for elaboration.

In summary, the Maritime Law Association of the United States proposes that we do a workmanlike job on the seven main points which we have discussed, we leave our Both-to-Blame problem in your capable hands and we urge that all the other sixteen points be left to the Subcommittee to provide a basis for CMI conferences of the next generation.

Thank you.

**Mr. J. A. L. M. Loeff**, Netherlands : Mr. Chairman, Ladies and Gentlemen, on behalf of the Netherlands Delegation I should like to explain our point of view on the proposed amendments of the Hague Rules, as expressed already in your Report.

In our opinion we must touch the Hague Rules as little as possible. They have stood now for forty years and on the whole they have worked satisfactorily. They constitute a very far-going unification and unification is going still further. Of course it would cause a loss of time if the States which are contemplating now adhering to the Hague Rules would not know exactly for some time to come what the Hague Rules really are.

I would say in this connection that I think everybody agrees that the underlying thoughts of the Hague Rules are all right but the drafting is not too good. It is hazardous for me to say anything about the context of the Hague Rules as the official text is in French, the more so as the translation we mostly use is in English but I think, looking at the British text, that I might be allowed to say that the drafting is not too good. I should just like to cite one instance. The Hague Rules were

originally set up as a set of clauses to be incorporated into Bills of Lading, but nevertheless they contain various provisions which do not deal with the contents of the Bill of Lading but deal with the contract as it exists before a Bill of Lading has been issued. That is perhaps a mistake in drafting. You have to be aware of it and once you are aware of it there are no great difficulties.

After all, the Hague Rules have worked very well. In my opinion there are many difficulties that have been solved; take for instance the distinction between care of the cargo and faults in the navigation and management of the ship, in French « administration du navire ». This is, I think, a most important distinction occurring in the Hague Rules and it has worked very well.

Now, I would on behalf of the Netherlands Delegation explain the principles which in our opinion ought to be observed in the work we are going to do here. The first is that we have to make no objection to any amendment which would extend the scope of the Hague Rules as it is done in the new proposed Article X.

There are, however, two things to which the Dutch Delegation is strongly opposed : the first is that we must have no redrafting; if by a small alteration you can make a useful amendment to the substantial contents of the Hague Rules, then we shall have no objection but those cases are very few. We must have no redrafting touching the whole structure of the text. I shall return to this point later but all we want to say for the moment is that if you want to have a new provision in the Hague Rules and this should entail a redrafting of two or more places in the Hague Rules, we are absolutely convinced that such a step would create enormous difficulties.

The second point I want to make is rather delicate. There is a tendency in some countries to use the Hague Rules in order to arrive at amendments of municipal law. Some countries — I shall give an instance later on — want to have the Hague Rules altered only in order to obtain as a result that it will be easier to have their municipal law amended. It happens that because of special concepts or provisions of the domestic law of Contracting States, the Hague Rules have not the full effect that the State wishes. We think that this is a rather dangerous procedure for as soon as we acquiesce in that, it will be very attractive for any State to get alterations in the municipal law by using the Comité Maritime International.

We do not shirk any extra work, but I think it is everybody's intention to come to a practical result and we necessarily have to limit ourselves.

Mr. Chairman, Ladies and Gentlemen, I am not going into the specific questions raised by the excellent Report of Mr. Pineus. I apologize for not having done so already, but on behalf of the Netherlands Delegation I have to say that we are in full accord with the

very eloquent words spoken by Mr. Moore when he praised the work of Mr. Pineus. I cannot say anything better; I want to say only that we feel convinced that Mr. Moore was the interpreter of this Assembly in thanking him.

Ladies and Gentlemen, I should now like to say a word or two on the positive recommendations.

The first recommendation concerns the Carrier's Liability in case of negligent loading, stowage or discharge of the goods by the shipper or consignee. The Netherlands Delegation think that if you touch this point, then you have to alter a lot of provisions in the Hague Rules and because of one of the principles I alluded to just now, we consider we ought not to touch that.

As for Notice of Claim, we think it is one of the points which must be left to the municipal legislations.

Regarding the third point, the recommendation in respect of claims in case of wrong delivery. As a matter of fact, we think that such an amendment would extend the scope of the Convention in a very simple way and it would take away the difficult position that arises when a bank guarantee has to be given. I think this is a very good example that by adding a few words a practical difficulty can be done away with.

As regards the Gold Clause : the whole question of the Gold Clause has got into a mess and we must do something about it as the present position is the reverse of unity.

Concerning the Himalaya problem, this is really a problem which concerns domestic law, Anglo-Saxon law; it would be a very complicated question and it is really up to the British to solve it themselves. It is outside the scope of the Hague Rules which deal only with the relations between shipowners and cargoowners; we are prepared to cooperate but I am afraid we are against an amendment trying to deal with this difficulty.

As for Nuclear damage, I do not think we have to say anything about it.

In respect of the Both-to-Blame-collision clause, Mr. Moore was kind enough to say to left this to the Conference and therefore, for the time being, I do not want to say anything about that.

Mr. Chairman, Gentlemen, of course for the moment I touched those points very lightly. It is quite possible that on discussion of all these questions in the Subcommittee, the Netherlands Delegation will feel bound to alter their standpoint but for the moment, our standpoint is as I have just explained it. I think I had better finish now and not say anything about the other subjects examined in the Report of the International Commission because we feel this Conference ought to leave these subjects alone. Thank you.

**Mr. C. Miller, United Kingdom :** Mr. Chairman, Ladies and Gentlemen, you have before you the Report of the Subcommittee on this topic, namely the reconsideration of the Hague Rules which is one of the most lucid and carefully prepared Reports that any Plenary Conference of the Comité Maritime has ever had. It deals with twenty-four points or projects. I do not wish to undertake the invidious task of assessing these in order of importance. But speaking for my delegation, the British Maritime Law Association, we agree with Mr. John Moore who in his opening address to this Plenary Session warned us against getting lost in a maze of small points from which we should never emerge at all. Therefore, it is not in disrespect to those who laboured so carefully and so successfully, if I may say so, on the Subcommittee that I am only going to address you now at this stage upon three points which we of the British Maritime Law Association think of great importance.

The first is the question which I think is raised in project No. 5 in the Report, the question concerning Liability in tort, what is called from the English point of view the « HIMALAYA » problem. The second question is that of due diligence which is the eleventh point dealt with in this Report and again is inspired by the difficulties which have arisen out of the recent decision of the Supreme Court of the House of Lords in the « MUNCASTER CASTLE » case. The third point is the question of the time limit for claims and the Gold Clause.

I feel that at this stage I should not deal in any detail with even these matters to which I have drawn special attention because we shall have long enough in the Subcommittee which our President will shortly appoint to discuss these matters in detail. But I think that I should comment on the suggestion which is made in some of the Reports of the National Associations and which has again been made by Mr. Loeff in his most clear and helpful address, namely that these first two points, liability in tort and due diligence, are really English (and, possibly, American) problems. The view is taken that these being purely questions of domestic law, the Comité Maritime ought not to be troubled with them and that modification — I use this neutral word advisedly — of the Hague Rules is not the proper way of dealing with them.

Gentlemen, with very great respect to the Netherlands Association and Mr. Loeff, for whom we all have the highest admiration, that is dismissing the matter far too lightly and is based on a major fallacy for three reasons. The first is the most important. Even if one of the Contracting Parties to the Hague Rules or to any other maritime Convention is out of step and if that one is my country — without making any admission — this affects all the other Contracting Parties in varying degrees. Carriage by sea is necessarily an international affair and the rights and liabilities of carriers, whatever their nationality or whatever flag the ship may fly, are just as likely to be determined in one of the

Contracting Countries as in any other and, therefore, it is quite useless to say to us here who are engaged in this most international of trades that the domestic law of one country is their own affair. Now, gentlemen, if we really analyse the matter to its fundamentals, the reason why we all come here and labour so diligently to obtain uniformity in maritime Conventions is that we do want the domestic laws of each country changed, and it is the domestic laws with which we are concerned. There are no such things as overall maritime laws which are applied by the Courts, otherwise we should not be here, we should be happily at home, or unhappily in the office. It is quite useless to attempt to dismiss this problem by saying this is a domestic matter and the United Kingdom or the United States have been foolish enough to get themselves into a bit of a mess. It won't do for any of us.

The second reason, assuming that the one and only country concerned is the United Kingdom, is that we cannot alter our official version of the Convention unilaterally. That is the worst possible international behaviour and even if we of the British Maritime Law Association were to propose such a course to our Government we should be regarded as having gone off our heads. It is all very well to say « if only you had adopted the French version of the Convention you would not be in this mess ». Incidentally that is not at all correct, as we will endeavour to show in the Subcommittee. The alteration of the text which is the official translation from the official text of the Convention or Treaty, in this case French, is a matter that cannot be done without international agreement. There is no point in entering into a treaty in whatever language if you can go and say « I might have drafted this better, I am going to alter it ».

The third reason is that it is obvious from the comments of nearly all the National Associations that difficulties arising from these two points are not confined to one country but are common to many. Indeed it is fair to say that, on the questions of liability in tort and due diligence, the majority of National Associations desire these problems to be resolved, although naturally their proposed solutions differ.

May I say this in conclusion. I don't propose to go item by item through this masterly Report, that would merely be occupying your time over something which will be gone into in detail in the Subcommittee. But I would like to say this; in a few months time it will be thirty-nine years that the Convention has been in existence. It represented a compromise between carriers by sea and their customers — though they are not always thought of as customers — Shipowners and Consignees and Underwriters, which had taken over twenty years to negotiate. It is not surprising that difficulties and divergencies of interpretation have arisen over the nearly forty years that the Convention has been in existence. It has been said by Mr. Loeff that the Convention works very well on the whole of course there are difficulties, but why

interfere with it. The answer is this. I would not agree without qualification with his statement that the Convention has worked very well. We have been much better off for having the Convention because there is not this internecine warfare between Shipowners and cargo owners that there was before the Convention was adopted. But I would not assent to the proposition that it has worked so well that we can afford to ignore the divergencies, because these divergencies will not diminish, they will increase unless we do something about it now. However, at the time the Convention was drafted it is clear that the draftsmen never thought of the possibility of separate liability in tort, nor did they intend by the used words « due diligence » the result which has ensued from the English and — I say this under correction — the United States decisions. I am not going to indulge in the fashionable sport of jeering at our ancestors, I merely state the fact that they did make one or two mistakes, and the results that have ensued on these two points were certainly not what they intended, for nobody ever thought that the construction of the term « due diligence » which our House of Lords has recently confirmed would be continued in the Hague Rules. I have spoken of this to the late President of the British Maritime Law Association, whom many of you knew, Sir Leslie Scott. He was one of the protagonists of the discussions which led up to the 1923 Convention, and shortly before his death, when we were discussing this matter, he assured me that they had not the slightest intention of this result, although he could not explain why they used the words « due diligence ».

For these reasons, Gentlemen, I do impress upon you the necessity for modification of the Hague Rules. It is no good thinking that we can lay down the law of the Medes and Persians which will last for ever. Human frailty being what it is, even in the bosoms of the best of our Judges, we are bound to get divergencies of interpretation which from time to time have to be put right and that is really the test of the Comité Maritime International. When, as I hope we shall do, we amend the Hague Rules nearer to the heart's desire, if not in my lifetime but certainly within the next forty years our successors will be having to do precisely the same thing.

Finally Gentlemen, the Netherlands Delegation say that there must be no redrafting of the Hague Rules. I am not quite certain precisely what that is intended to signify, because of course you can't make an amendment to the Rules — an amendment to the Rules which the majority of the Subcommittee in most cases think is needed — without some form of redrafting. The precise manner in which this will be done is a matter for more detailed discussion in the Subcommittee, whose deliberations and conclusions will of course be referred to the Plenary Session at the end of this Conference. We would, however, press upon your earnest attention that amendment or modification should be effected by Protocol. That Protocol can only of course be passed at the

Diplomatic Conference in Brussels. The Diplomatic Conference is by a happy fiction continually in being, though happily it is not always in session. In order that there should be a Protocol valid in international law the Belgian Government would require to fix another session of the Diplomatic Conference to which would be invited only those Contracting Parties who are, if I may use the expression, members of the Hague Rules Club, original signatories or subsequent acceders to this treaty. All parties to the treaty must be present if there is to be an alteration of an international contract, but no one of those has any right of interference who are not members of the club, and what we propose is that by this procedure, a very well-known procedure, a Protocol to the Hague Rules should be drafted embodying such modifications as the Plenary Session and a subsequent Diplomatic Conference may agree.

Now it has been said by one of the representatives of the National Associations that that is all very well, but if you do that you will get tremendous difficulties if a Protocol is added forty years after the original treaty was entered into. What are the Judges going to make of it? There are two answers to that, Gentlemen. First of all it will be our duty in the Diplomatic Conference to make the drafting clear, and secondly I am not going to weep tears over the difficulties of the Judges, because that is what they are there for. We will present them with as simple a problem as possible, but it cannot be absolutely cast-iron. We will try to make it easy, but it is quite useless to say you are casting too big a burden on the judiciary. That is what they are paid for.

That is all I have to say in opening this topic on behalf of the British Maritime Law Association and if I haven't dealt with the other problems which have been so fully dealt with by Mr. Moore and subsequently by Mr. Loeff, my Association must be taken as neither assenting nor dissenting to them because we think the proper place to deal with these important topics is in the Subcommittee.

Thank you, Mr. Chairman.

**Mr. Nagendra Singh, India :** While whole heartedly supporting the previous speakers in the tribute they have paid to the Chairman of the Committee and to Mr. Moore may I, with your permission, Mr. Chairman, express the view of the Maritime Law Association of India. Our considered opinion is that it is unnecessary, at present, to introduce any amendments in the 1924 Convention which has been widely accepted and found to work on the whole quite satisfactorily. We are of the opinion that the present unsettled conditions of both the International Trade and International Shipping do not make this an opportune time for upsetting the balance between Carriers and Cargo Interests which could very well be the effect of an amendment. It would appear that largely because of such consideration, the Subcommittee, which has examined numerous questions, has perhaps decided for the status quo

in seventeen out of twentyfour subjects and has made positive recommendations in seven cases only. In an exercise of this type which attempts at revision of an old established convention which has proved its merits, all possible attempts at improvement could be limited to a few items only. This does not in any way minimize the work of the Committee. The research undertaken has been valuable and the Committee's efforts will make a lasting contribution even though a few or no amendments to the existing Hague Rules may be accepted.

I will now deal with seven out of the 24 items considered for revision.

1. Carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee (Art. III (2)).

We are in favour of the minority view for retaining the status quo on this point.

2. Notice of Claim (Art. III (6) first para).

We are not in agreement with the majority proposed addition : « ... but shall have no other effect on the relations between the parties », as in our opinion this does not clarify further in any way. We are, therefore, in agreement with the minority view for the retention of the status quo on this issue as well. If, however, a rule can be devised which would prove a more effective sanction to a claim which is notified too late, it would be helpful, particularly because the application of the claim, notified too late, is generally based on survey and not on the untraceability of a package or unit.

3. Time limit in respect of claims for wrong delivery (Art. III (6) third para).

We are not in agreement with the majority decision of adding in Article III (6), third para, the text in italics, which extends the Carrier's liability to a period of two years instead of the normal one year in the event of delivery of goods to a person not entitled to them. Our chief contention in support of our disagreement is that at most ports and particularly the Indian ports the delivery of cargo is attended to by the Port Trust Organizations and not by the Shipowners, who are only required to issue their Delivery order against a surrendered Bill of Lading by its holder.

4. Gold Clause, Rate of Exchange, Unit Limitation (Art. IV (5) and IX).

We are in entire agreement with the majority recommendation that Article IX be struck out. We are, however, not in agreement with their further recommendation of introducing 10,000 Poincaré francs as the maximum limit of liability of the carrier, as we consider it very much

on the high side. We are of the opinion that, based on the actual practice of settlement of claims on the basis of £ 100/- Stg. (monetary value, and not gold value, in actual practice) insertion of 5000 Poincaré francs should meet the requirement. We are further not in agreement with linking the monetary unit with the gold value, as is suggested, because our idea is that if this or any other maximum limit is internationally decided upon, its application to the other countries and their currencies would be based on their National Law, which would specify the rate of conversion, either standardised under the National Law or varying according to the rate of exchange prevailing on a particular date, say, the date of loading or the date of commencement of discharge. In other words, the equivalent of Poincaré francs, under the currency of the country where the claim arises, should be determined by the National Law of the country without any reference to its gold contents as is sought to be laid down for Poincaré francs.

5. Liability in tort, the « Himalaya » problem.

While we are in agreement with the principle contained in « I » of the decision of the Subcommittee, we should like the status quo to be maintained on this issue, particularly because of the difficulty of defining an independent contractor and the implications arising therefrom.

6. Nuclear Damage.

We are in entire agreement with the unanimous decision of the Subcommittee.

7. Both to Blame.

We are in entire agreement with the unanimous suggestion of the Subcommittee that it should be regarded as a step in the right direction and a definite progress towards unification of the Maritime Law if the United States would accept and adopt the same rules about collisions as the rest of the maritime world and authorize this view to be made fully known to interested parties in the United States.

I thank you Mr. Chairman for the opportunity you have given me to express the views of the Maritime Law Association of India.

**Mr. Marcel Pitois, France (translation) :** Mr. Chairman, Ladies and Gentlemen, I shall not engage the attention of this Assembly for a long time.

The French Maritime Law Association have made known their views with their report. The French Association feels that the 1924 Convention has stood the test of time, that principles have been laid down on which it is dangerous to touch by unadvisedly studied or unconsidered amendments.

Nevertheless, there are points upon which we insist and on which we have set our hearts.

The first one concerns the amendment to Article X, amendment which has been adopted at Rijeka, and we insist in order that a Meeting of the Diplomatic Conference be held as soon as possible with a view to obtaining this amendment without changing one iota of the text which has been adopted at Rijeka and has been carefully studied.

The other points are first of all the question of the limitation of responsibility which is variable according to the States and for which uniformity is quite desirable.

Another point is the carrying out of a recourse action. You are aware that the French Association has adopted a text to amend a domestic law. This text, as you know, has been inserted in our report and we should be happy if it could be adopted.

A point on which we also insist is the « Himalaya » problem. In this case, all we wish is that one could not evade the provisions of the Convention by means of a liability in tort action. This is the only point which interests us in this case.

I think that is all I had to say. Here are the points on which the French Delegation insists : recourse action, the « Himalaya » case, amendment of the limitation of responsibility and mainly and first of all, amendment of Article X.

Thank you, Mr. Chairman.

**Mr. P. Gram, Norway :** Mr. Chairman, Ladies and Gentlemen, on behalf of the Norwegian Delegation I would briefly state that we are in full agreement with as thorough a revision of the Hague Rules as is possible and advisable now. It seems that quite a number of important points have already reached such a stage and I shall not go into any of the aspects of these points now except to state shortly that we are in favour of at least the seven positive recommendations of the International Subcommittee or a revision of that scope. We would also very much like to move for a revision of the Himalaya clause. We also welcome the British initiative on diligence in regard to seaworthiness, and support their move to quash the Muncaster Castle decision.

The point finally I would like to make as to the scope of the subjects to be examined is concerned with Article X, where we are sorry to say we find ourselves in disagreement with the last speaker, who on behalf of the French Delegation wanted the Rijeka amendment passed through the Diplomatic Conference without changing one iota. We have found from the British and especially the Canadian replies to the Report that there may be different understandings of the scope of this Rijeka amendment, which, as we all remember was passed in

order to widen the scope of the application of the Rules, and to tighten up certain of the geographical holes. It now seems that for instance our Canadian friends have read this Rijeka decision restrictively, on the same basis as present Article X, which makes the rules applicable only to outward trades and now read it as if it were only meant to cover in addition inward trades, whereas we think that the language is meant to cover any trade touching upon a port in a contracting State. So it seems that this point must necessarily be cleared up before this Article X is finally out of our hands. Therefore, we the Norwegian Delegation would very much like to maintain our proposal that this « scope » rule in the Rijeka language should be followed by a system of choice of law rules. We, as Mr. Moore said, consider that « forum shopping » is not a good thing and we cannot see why we should not try to deal with that very difficult and uncertain field at the present and seek further unanimity. It was said at Rijeka that if the C.M.I. were to give conflict of law rules they thereby admitted that there could be some disunity left among our national systems of law even after a C.M.I. Convention has been passed in that field. Now there will always be, as Mr. Miller also said, differences and there will be differences however carefully and well the Conventions are drafted. We are much urging that the amendment should now be followed by a very simple system of choice of law rules which could grant uniformity in that field.

**Mr. A. Suc, Yugoslavia :** May I also start with a few personal remarks of mine. I had also the privilege to work on the International Subcommittee on Bill of Lading Clauses under the Chairmanship of Mr. Pineus, but as Mr. Moore has said all those flattering words, which are all true, concerning the person, the method of work and the qualities of Mr. Pineus I really cannot add anything more, therefore I would like only to state that I entirely want to join him in this respect.

Mr. Chairman, Ladies and Gentlemen, the Yugoslav Maritime Law Association has carefully studied the Report of the International Subcommittee on the Bill of Lading Clauses, and as far as possible the comments of the national Associations (those which arrived in good time). I shall try to give in a few words the viewpoints of our Association concerning the most important questions.

We think that there should be as few changes as possible. The 1924 Bill of Lading Convention is one of the most applied and abided by maritime Conventions in the world. It has shown great results. Therefore only where the practice of different and contradictory interpretations of its rules imperatively requires amending or a clearer explanation of some rules, or the addition of a new rule, only in such cases should changes be effected.

In order to enable as many countries to adhere to the new international instrument, it should in our opinion be prepared on a similar

basis as the Hague Protocol of 1955 was, and should be in the same relation to the Warsaw Convention of 1929 concerning air transports, further only those rules of the new draft Protocol 1962 to be accepted by this Conference, should be made mandatory, without which the present status of the Bill of Lading Convention seems entirely unsatisfactory (such rules should be for example the rule of the field of application, (Art. X) and the Gold Clause rule (Art. IX), all other new rules should be allowed to be avoided by any State by making suitable reservations. In such a way no denunciation of the 1924 Bill of Lading Convention would be necessary.

Concerning Art. X (Scope of Application) our opinion is that this Article was thoroughly examined at the Rijeka Conference, a decision was brought and even a detailed formulation of the necessary amendment was accepted. There are no new arguments, so we do not see the necessity of reopening the discussion.

Art. III (para 2) (Carrier's liability for negligent loading etc.) Everyday practice is showing that the Article should be amended in order to keep in pace with the requirements of the trade. It has to be stated clearly that in some cases the carrier is not responsible for some operations to be performed (and which actually are performed) by the shipper or consignee. But the Subcommittee recommendation goes too far. We have presented an amendment which keeps the solution of the problem, according to our opinion, in the right limits.

Art. III (6) first para (Notice of claim) : We are for the recommendation made by the International Subcommittee, because it clearly indicates or explains, that no more favourable terms can be applied to the carrier than the Convention allows. In spite of the fact that all this already results from the rules of the Convention, practice has shown that an express explanation to this effect seems to be necessary. We do not think that any change of the 3 days period could be acceptable unless if necessary arguments will be put forward later.

Art. III (6) third para (Time limit and wrong delivery). We are for the *staus quo*, because to our mind, it comprises all kinds of loss of goods, inclusive of those resulting from wrong delivery. But for practical purposes (in spite of the fact that theoretically there could be made some objections) we could also support the far-reaching Norwegian and Swedish proposals which want to get a common delay for prescription for all claims connected with the transports under a Bill of Lading.

Art. IV (5) and Art. IX (Gold Clause, Rate of Exchange Unit Limitation) :

Gold Clause : We are, — as the majority is, — for the limitation sum of 10,000 Poincaré francs. This does not need more explanation.

Rate of Exchange : We are for the solution of the date of payment. This would mean unification of maritime law because the new

maritime Conventions are accepting this criterion (so is the Passengers Convention 1961 Art. 6 and the Liability of Operators of Nuclear Ships Convention 1962, Art. III para 4). The problems were discussed when the C.M.I. and the Diplomatic Conferences were dealing with the mentioned two Conventions and as far as I know there were no objections (neither from the Common Law countries) when the same principle was there accepted.

Package or unit. The necessity to deal with this question results from the following :

The liability of the carrier according to the system of the B/L Convention can be established only by two elements : a) the sum which will as a maximum be applied, and b) the basis (the basal unit) to which this sum will be applied. If we do unify only the first element and leave the second ununified, no unification has been achieved at all, because the final amount up to which the carrier will be liable may vary according to the basis to which the sum (the first element) is applied. From the many cases where the amount to be paid depends of the mere fact whether a cargo item carried was packaged or not, we would refer to the case *Middle East Agency v. The John B. Weterman*, 86 F. Supp. 487, 1949 A.M.C. 1403 (S.D.N.Y.) where a tractor machine, un packaged was divided — in contemplation of law — into units of 40 cu. ft. valued at \$ 500,— each. If packaged the amount would obviously been merely limited to \$ 500,—. (Cf. *Gilmore Black, Law of Admiralty*, 1957, p. 167). Therefore in order to get unification it is not enough to find a solution or replacement to the ominous obsolete gold clause, but also to the very unhappy formula of « package or unit ».

It is obvious that each solution concerning the unification of the second element has its negative sides. But the present state of affairs means complete uncertainty. The carrier cannot know in what country his ship might be arrested and suit brought against him, so he does not know what basis will be applied to the sum representing the first element mentioned above. He might be liable concerning the same goods up to 10,000 Poincaré francs or up to ten times 10,000 Poincaré francs. Even if sued in the USA he cannot know it in advance, the result may depend in some cases on the fact how the Court will treat the wrapping of the goods, whether it will consider that a package is in question or not.

We think there could be followed one of the following two solutions, a) to choose the solution which seems to have the least disadvantages and that is to accept the actual freight unit and in those few cases where this is impossible (I mean the carriages contracted on a lump sum basis) the customary freight could be applied — or b) to go even further and fix the limitation element of the unit in a certain unit

expressed in volume and weight. Package as an element should, being superfluous, disappear at all. In a later stage we would be glad to give or collaborate on a proposal to the mentioned effect.

Liability in tort, the « Himalaya » problem. We share the view of the minority opinion on page 33 of the Report and cannot agree to the extension of the privileges of the Bill of Lading Convention concerning limitation of liability to independent contractors. We do agree, however, with the extension of these benefits to the servants and agents of the carrier, for purely human and social reasons. If we do allow to limit the carrier (an economically strong company) why should we deprive the captain and the members of the crew of such benefits ? True, basically this Convention deals with contractual and not with extra-contractual claims, but as similar benefits were given also to such persons in other maritime Conventions (Limitation of Liability Convention 1957 and Passengers Convention 1962), we would like to stress the Passengers Convention is also dealing basically with contractual claims and in spite of that similar benefits for servants and agents on an extra-contractual basis were entered. So this should not constitute an obstacle.

Concerning all the other points I would like to refer to the Yugoslav standpoints as published in Document 1 page 34 to 39.

Thank you for listening and I should like to apologize myself for being longer than I wanted. Thank you.

**The President** (translation) : If nobody else wishes to come to the platform in this general discussion, I think that we should consider that this Assembly feels that the broad outlines of the problem which we are presently considering have been defined and that the time has come to set up a Subcommittee which will study more thoroughly the problems which have been raised.

If this Assembly agrees, we can ask Mr. Pineus to kindly let us know whether he could eventually assume the direction of that Subcommittee.

**Mr. Pineus, Sweden** : Mr. Chairman, Gentlemen, may I first say that the very kind words addressed to me have pleased me tremendously. Why should I not say so in the open ? But on the other hand it shows that it would be very foolish of me to assume the Chairmanship of the Subcommittee because you would have the opportunity to compare whether the words are true or not. This would in itself be sufficient reason for not continuing with the work on the Bill of Lading Clauses on my own behalf, which perhaps under the usual set-up of the Comité Maritime would otherwise have been the natural way. But as Chairman of your guest organization I am afraid I am a little bit too tied up with organization details and would not be the best Chairman, other things being equal, that you could have at this particular

moment. I therefore must say that I should not accept such a task, it would be in many respects not the thing to do. I may say so with better conscience because I have such an excellent name to submit to you Mr. Van Ryn, who has taken a very active part in the preparation of what is now a Subcommittee report to the International Bill of Lading Clause. I approached him vaguely at an early stage saying that probably in Stockholm I might not have the time to continue this work and he kindly consider whether he could take upon himself the burden of that charge. His reluctance was only of a lingual sort saying that his French was much better than his English. I wish I could say the same of mine. I am quite sure that within the Subcommittee to be set up there will be volunteers to help him with that one difficulty and for this reason Mr. Chairman, Ladies and Gentlemen, I propose to you Mr. Van Ryn.

**The President** (translation) : Gentlemen, may I consider the motion of Mr. Pineus as carried by this Assembly ? (Assent).

I beg Mr. Van Ryn to kindly let us know whether he agrees.

**Mr. Van Rijn**, Belgium (translation) : Mr. Chairman, my dear colleagues, I just want to say how flattered I am by the confidence which, on the motion of our excellent friend and President, Mr. Pineus, you so kindly placed in me, when asking me to preside over the work of a Subcommittee instructed to reconsider the recommendations of the International Subcommittee.

It is with great pleasure that I accept, while I am well aware that the honour you are doing to me represents a great weight, for the task and the multifariousness of the matters we have to consider will not be easy. I can only promise you all my good will and if I am confident that we can succeed, it is because I know, beforehand, that I can rely on the good will of all those who will be on the Subcommittee. At all events, I think that we can set to work with optimism and particularly with the conviction that by doing so, we come up to the purposes of those who took great merit to themselves, about 40 years ago, for the drafting and the restatement of the text of this Convention, so hard to bring into being. As a matter of fact, Article 16 of the Convention provides that one of the Contracting States shall constantly have the right to take the initiative in asking the reconsideration of the Convention or possible amendments thereto. Therefore, what we are now going to try, one or other of the States could, at all times, have asked the Diplomatic Conference to do. I feel that if we have any hope to succeed, we shall in any case owe it once again to our President, Mr. Pineus, for he has not only been satisfied with presiding over the work of the International Subcommittee with the authority and the efficiency which were deservedly reminded of a few minutes ago. He also continued,

after the closing of the report, to provide us with his inestimable contribution. As you know, he devoted himself to a real work of laborious scholarship on all the written reports sent to him by the National Associations. He finally prepared a conspectus which will enable us, at all times, to know what views each Association has expressed on each matter. Being so well prepared, the work of our Subcommittee ought to be a success and I express the wish that it will be so. (Applause).

**The President** (translation) : Gentlemen, I am much obliged to Mr. Van Ryn and I wish him to bring very speedily the work of the Subcommittee to a successful issue.

*Monday, 10th June, 1963*

(afternoon)

## PLENARY SESSION

Chairman : President Albert LILAR

### SHIPS UNDER CONSTRUCTION

**The President** (translation) : We shall now take up the general discussion of the second item of our agenda, the Registration of Ships under Construction.

**Mr. S. Braekhus**, Norway : Mr. President, Ladies and Gentlemen. As President of the international Subcommittee on the registration of ships under construction I have the honour to submit to you the report and draft Convention which has been printed in this booklet N° 3 on pages 31 to 43.

The draft is a rather short one containing eleven articles and the system proposed is a simple one. It consists of two parts, — the first part, articles 1 to 9, which makes it a duty for the contracting States to establish a system for the registration of ships under construction and which contains some basic rules as to the types of rights which it should be permissible to register and as to the effect of registration, and the second part, articles 10 and 11, which deals with the international recognition of the rights registered according to the preceding articles 1 to 9. Article 11 especially deals with the important problem of the recognition of rights in the new building when the completed vessel is transferred from the Country of building to the Country of the purchaser.

The intention of the draft has been to reach agreement only on basic principles and to leave it to the national legislators to see to the details. We believe that it would be better to propose something which has a chance of being adopted and thus to establish some degree of uniformity than to try to reach complete uniformity which would be a hopeless task.

If the draft be adopted two advantages would be obtained. First, it will be possible for shipowners who order vessels to be built at foreign yards to have title to and mortgages on the new building established in a simple and effective way, and secondly there will be a simple and

secure method of transferring these rights from the Country of building to the new flag Country of the vessel.

During the work of the Subcommittee rather few objections have been made against the principles of the draft. Some Countries however expressed some doubt as to the desirability of a Convention on this subject. I do not here speak about those Countries who divide all proposals on new international rules into two groups, first, rules which they do not need to adopt because they are in conformity with their municipal law and, second, rules which they are unable to adopt because they are not in conformity with their municipal law. I am thinking of those who point to the fact that the yards and the purchasers of vessels have done fairly well without the Convention. In my opinion various Delegations are forgetting that the problem before us is an international one. It is not a problem concerning yards and purchasers in one and the same Country, it is a question of yards who are building for foreign owners and for owners who are building new vessels abroad or, to put it shorter, a problem for the Countries who export or import new built tonnage.

Norway is a typical importing Country and Norwegian owners have some experience concerning the financing of new building and the question of transferring vessels and securities after completion of the vessel. It can be done to-day and its done in many cases, but the methods are often complicated and not watertight. In consideration of the vast amounts involved in these transactions and the short time available when the transfer shall be arranged even a slight degree of uncertainty is an evil.

Even among those Associations who admit the need for international regulation in this field there has been some doubt as to the scope of a future Convention. Some have asked whether it be not preferable to limit the Convention to the last two articles of the draft, articles dealing with international recognition of rights registered on the new building; the rest of the draft, namely the rules concerning registration could then be left out. In my opinion this is an idea which doesn't work. The system of article 11 dealing with the transfer of rights from one Country to another is based on there being an official register in the Country of building on the basis of which an official certificate can be issued. On the other hand there are some who say that the draft does only deal with a minor part of a greater problem, namely international recognition of rights in vessels generally, and that the greater problem should be discussed as a unit. I do agree that there is need for a Convention on the recognition internationally of ship mortgages, and even that the lien Convention of 1926 is due for revision, but I think it would be very unwise to try to solve all these sets of problems at the same time, especially the lien Convention would need very many years work and would raise most difficult problems. When

the Hague Rules were adopted it very prudently limited itself to dealing with the bill of lading question only and did not try to solve all the problems of the law of affreightment at once.

We must go step by step, and in my opinion the draft before us is a step which we are prepared to take now, the next step, the mortgage Convention and the lien Convention, will, we hope, come next.

Thank you, Mr. Chairman.

**Mr. Simonard, France (translation) :** Mr. Chairman, Gentlemen, on behalf of the French Delegation, I was anxious to bring our assent and our support on this point.

It seems that the problem of the mortgaging of ships under construction is the main point put to our debates, i.e. that the maintenance of the legal priority (*droit de suite*) after transfer of the ship to another country is nothing but a particular case of the general problem, more wide, of the mortgaging of ships under construction and of the danger which the registered securities run as a consequence of the transfer of the ship to another State, this transfer preventing the legal priority (*droit de suite*) from having an application without reserve.

Actually, the problem of the mortgaging of ships under construction, as a special case, has been particularly well selected in order to allow us, in the near future, to settle as a whole the problem of the internationalization of the law of mortgages on ships. After all, it is something like the parable of the seven-headed hydra and of the seven-tailed hydra. Mythology teaches us that the hydra with seven tails and one head succeeded in getting through the bushes, whereas the seven-headed hydra didn't. Thanks to the head which constitutes the problem of the mortgaging of ships under construction, let us hope that the tails will follow and that we shall thus succeed in inducing the interested countries to accept a general unification of the law on mortgages.

This is all the more desirable, specially as far as the problem of ships under construction is concerned, as nowadays there are more and more ships which are being built in certain States for the account of foreign shipowners.

It appears that a kind of specialization is taking shape which, moreover, is consistent with the economical development. It also appears that there are countries which build vessels and others which purchase them. Not long ago, shipowners generally had their ships built in national shipyards. It is no longer the same and in this manner, the problem takes more keenness.

If we go into the details, perhaps in a somewhat premature manner, of the problem which is submitted to us, you will note that the French Delegation has insisted in its counter-draft and in the attendant comments on its desire to limit the system under consideration to mort-

gages, exclusive of other rights or contracts. As a matter of fact, I think that we would unnecessarily complicate our task if, by means of the reform of the unification foreseen, we would attempt to introduce in our regime, rights other than mortgages, and register securities in favour of persons other than the mortgagee. This is accompanied on our part with a good many precise details which appear in the counter-draft and which will appear more distinctly and more easily as our debates proceed.

To sum up, we are favourable to the proposed system, in its principle, viz. : unification of the regime of mortgages. We are favourable to its future extension, but we feel that it is capital to start with the ships under construction, after which we shall widen the system to the ships in commission. As regards the draft, except for the articles 6, 7 and 9 which we propose to leave out, the amendments which we move are fundamentally concerned with the limitation of the system to mortgages, and furthermore, deal particularly with drafting matters.

I would add that the French Law, with regard to the sale of a vessel secured by a mortgage, is particularly drastic. As a matter of fact, article 33 of the Law of 1885 penalizes in three different ways the sale of a ship to a foreign country, i.e. the transfer to another State of a ship mortgaged in France.

The penalties treble. First of all, the sale is invalid according to common law. Secondly, on administrative grounds, the entry of satisfaction of the mortgage will be refused and finally, on penal grounds, the penalties provided by our article 408 of the Penal Code, relating to breach of trust, will be imposed on any person who would have thus sold to a foreigner a vessel secured by a mortgage, thereby defrauding his creditors of their security. (Applause)

**Baron Van der Feltz, Netherlands :** Mr. Chairman, Ladies and Gentlemen. In the reply to the questionnaire of the Netherlands Delegation it is said that the need for a rule on the lines suggested is not felt in our Country, as existing regulations are in line with the draft Convention and work satisfactorily. This reply does not mean that the Dutch Delegation will not collaborate and cooperate wholeheartedly with those who think that an international Convention in this field can be of advantage to all interested in maritime matters.

On the other hand, the Dutch Delegation will reserve its rights to consider the problems raised in drafting this Convention within the much wider framework and the much wider scope, namely in connection with the 1926 Convention on mortgages and privileges and its possible revision.

There is also a second point I would like to mention and that is that we are still in doubt whether we must try to solve these problems in the way of uniform law or whether it would be better to try to draft

some rules of conflict which deal with the problems raised with regard to this topic.

Thank you.

**Mr. N. Grenander**, Sweden : Mr. Chairman, Ladies and Gentlemen. In this Country opinions have been divided as to the desirability of the Convention on registration of ships under construction. After the amendments made in the original draft we are however in favour of the Convention in accordance with the draft of February 1963.

There might be small alterations to be made in the text now before us. I won't go into these details which I suppose will be dealt with by a special Subcommittee.

Instead I want to draw the attention of this meeting to the more important question, namely international recognition of mortgages in ships already in navigation. As we all know, there is often uncertainty whether a mortgage instituted in one Country will be recognised by Courts and Authorities in other Countries. From a practical point of view that is a problem of great importance. I think it is up to the Comité Maritime International to take that question up for reconsideration.

In short, Mr. Chairman, we think that the international recognition of mortgages in ships in navigation is the most important item in this field but, bearing that in mind, we are quite willing to discuss the Convention in accordance with the draft proposed by Mr. Braekhus and his Committee in February 1963.

Thank you.

**Mr. Vaes**, Belgium (translation) : Mr. Chairman, Ladies and Gentlemen. First of all and on behalf of all those who are here present, I would like to offer our meed of gratitude to Mr. Braekhus for the very remarkable work which was absolutely necessary in order that, at the outset of this Conference, we have at our disposal a draft Convention on which we could debate and build up for the future. It is to the unflagging work which he gave himself up for months that we owe the result written down in several documents and I think that it is but fair and advisable that we bring him to-day the mark of gratitude of all those who took a part in this work.

Gentlemen, the Belgian Delegation is in favour of the draft Convention prepared thanks to Mr. Braekhus and to his restricted study group. The replies which have been made to the various questionnaires have brought forward valuable information on the present legal situation in the various Countries members of the International Maritime Committee, which I think, can be classed in three categories : on the one hand, we have the Countries whose legislation does not provide, by this time, the possibility of registering ships under con-

struction in an official register and of securing same by rights. This is the case, for instance, in Great Britain. There is a second category concerning the Countries whose legislation does provide the possibility of registering ships under construction and of securing them by certain mortgages or other rights, but to a certain extent. This is the case in my country, Belgium, where only ships destined to navigate later under the Belgian flag can be registered and secured by rights in rem. The situation is the same in Denmark, Canada and Spain for instance. There is finally a third category of Countries where the legislation is already on the level with the draft Convention which is submitted to you. The Law of these Countries provides that ships, even if they are destined to navigate under a flag other than the flag of the State where the shipyard is established, can be registered and secured by rights in rem. This is the case in the Netherlands, Germany, Italy, France, Greece, etc.

Gentlemen, we have here three panels of this picture which will soon be confronted, for the first, if they are desirous of acceding to an international Convention, will have to institute, the second will have to adapt and the third will have to integrate their national legislation into an international Convention which will be more or less in accordance with their existing legislation.

Gentlemen, I would like, however, to draw your attention beforehand both on what seems to me to be with some of us a misunderstanding, and with the others an error. I think that the misunderstanding is the result of some of us confusing the registration of a ship as such, on the one hand, and the fact that this ship can be secured by rights in rem, on the other hand. Those are different notions. It is quite possible in a Country to register a ship, give it a number in a register without for this reason being allowed to dispose of this said register to secure the ship by certain rights. The error on which I would like to draw your attention is the error made by certain Delegations which already have at their disposal in their Country, an adequate legislation which allows them to do that which we would like to realize together, and which say : consequently, we do not see the utility of an international Convention. I feel, Gentlemen, that this is an error because it is quite possible that in certain Countries, a legislation according to which it is permissible to register and to secure by rights in rem ships under construction, functions to the satisfaction of all. But if this same legislation does not exist in other Countries, namely in the Countries which will be those of the shipowner who orders, or otherwise of the shipyard where the ship is to be built, for want of having an international Convention to which the Country where the ship is built and the Country which has ordered this ship have acceded, the national legislation of one of those Countries will be insufficient to evade the difficulty that we wish to evade.

This problem, Gentlemen, concerns the shipowners, It concerns the shipyards and the financiers, the bankers as well as the insurance companies which in certain Countries are becoming specialists in the financing on credit of ships to be built. It is beyond argument that this modern form of an economical activity interesting both for the Countries of shipowners as for the Countries of shipyards, the activity which consists in constructing ships on credit can only function appropriately if it is on a par with an international regulation which will allow to promote this activity by removing the risks which nowadays still cling to that kind of activity. I explain myself : one of the eminent orators who preceded me has said that the main problem of the draft Convention was the regulation of the legal priority (*droit de suite*). Gentlemen, the legal priority (*droit de suite*) is not the only problem. There is first of all the problem of ownership. Before we discuss the problem of the legal priority (*droit de suite*), we must mention the problem of ownership. Now, you know that it is a much debated problem than to know, for want of a convention which makes it clear, who is the owner of a ship. Is it the yard which builds the ship for a shipowner or is it the shipowner who orders the ship from the shipyard ? The shipbuilding contract will state it precisely and nowadays, in almost all shipbuilding contracts, it is provided who will be the owner and often, at what rate the shipowner will become the owner of the ship under construction. It is obvious, Gentlemen, that it is only when it will be possible to register a ship by registering its shipbuilding contract, that we shall be able to make known to all the third parties, at the same time as the registration of the ship, the identity of the owner of the ship under construction.

Then Gentlemen, as it has been so properly said, there is the legal priority (*droit de suite*). It is a matter of seeing to it that, the day when the ship will be transferred from the register of the Country where the ship is being built into the register of the Country under whose flag the ship will navigate, the ship be transferred from one register to the other with all the rights in rem which, in the meantime, have been secured on this said ship.

Finally Gentlemen, a problem which we should not loose sight of is the problem of the possible bankruptcy of the shipyard, of the possible bankruptcy of the shipowner during the period of construction, hence the need of regulating in an impeccable way the registration of the rights in rem.

All that Gentlemen — this is what I would like to emphasize within the limits of a general discussion — brings up, according to me, a previous problem but for which this is my modest opinion, we would perform bad work. This previous problem is the following one : it is necessary that we should agree to say that a ship under construction ought to be registered in the Country where it is being built. It ought

to be and all the other Countries acceding to this Convention undertake, when one of their nationals, a shipowner, has a ship built in another Country, not to admit the registration of the ship in the Country under which flag it is destined to navigate, since it will have to be registered in the Country where it is being built. In my opinion, this is the only way to evade the difficulty which hangs over us, viz., that a ship can be simultaneously registered and secured by rights in rem both in the Country where the ship is being built and in the Country of the flag under which the ship will navigate when finished. I think that it is on this previous problem that we should agree at the outset, as otherwise we shall, in my opinion, perform a botched work.

For all the other problems, every one of which already representing a rather important amount of discussions, namely at what stage of the construction it will be possible to register the ship, what kind of rights in rem or contracts it will be possible to register, what will be the procedure of the transfer, this rather falls within the scope of a debate in committee. Those are rather problems which fall within the scope of detail.

That on which I principally wanted to draw your attention are matters of a general nature on which I think we ought to agree first of all if we wish to arrive at a solution.

Thank you, Mr. Chairman.

**Mr. E. W. Reading, United Kingdom :** Mr. Chairman, Gentlemen. In Great Britain it is not possible to register ships under construction and the question for us is how far a Convention on these lines will assist us or in fact can be implemented by us. We support the view that has been put forward by the Netherlands that in fact until the very much larger problem of the 1926 Convention on mortgages and liens can be reconsidered and can be implemented by us we can achieve nothing by accepting such a Convention as this. In our Country priorities are very uncertain and unless priorities are settled then we do not see how a limited Convention like this can be very much help.

Nevertheless we do understand that for certain Countries this may be of some importance, and that if it is only part of a larger problem it may still be of help if we can contribute in the discussions that will take place in committee, as perhaps some part of a small problem may be included in the larger problem.

Therefore, Sir, although we do not think that we can accept this Convention we nevertheless do promise you that we will assist in any deliberations that are taking place on it.

Thank you.

**Mr. W. Hasche, German Federal Republic :** Mr. Chairman, Ladies and Gentlemen, the German Association highly appreciates the efforts of the International Maritime Committee to fix agreement on the legal problems of mortgages on new buildings, and we fully support these efforts. It is more necessary to reach such an agreement as ship building creates more and more legal problems which cannot be solved within the borders of a State. It frequently happens that the purchaser of a ship and the shipyard belong to different Nations. In general there is also the financing bank, the mortgage bank, domiciled in the shipowner's Country or in the Country of the shipyard, or even in a third Country. The problem is even more complicated in cases where it is not the complete ship ready to be delivered that is to be financed but where the bank has to make considerable advances out of its loan while the ship is still under construction.

In our own Country the system of legal rules governing this matter has worked to the satisfaction of all parties concerned. Apart from the register of ships there has to be a register of ships under construction where the ship under construction may be registered. I need not go into the details but refer to our reply to the questionnaire. Let me just point to the fact that a ship under construction can only be registered when it is to be mortgaged or when it is to be sold by judicial auction. The idea behind this legal rule is thus primarily to provide the financing bank with a real security at a stage when the ship is still under construction, which is a precondition for the loan being advanced before completion of the ship. Only the shipyard may apply for registration of a ship under construction; in case the yard is not the owner, the owner too may apply for registration.

The registration creates a real privilege for the mortgagee in the same way as the registration of a ship mortgage in the register of ships does. In case of judicial auction of the ship a mortgage on a new building is a claim entitled to priority over all other claims except maritime liens. This legal rule which for many years has proved to be good is however not sufficient to the interested parties in cases where after completion and delivery of the ship the owner wishes to register the completed ship in another State. For in these cases all entries in the German register have to be extinguished beforehand. This is a very unpleasant situation for the bankers and for the shipowners as well. The shipowners have to give a preliminary security to the bank for a period which in some cases may last some days and which may also last several weeks. The aim of this Convention should be to enable the continuous transfer of registration from register of ships under construction to the register of ships. No difference should be made as if the two registers are kept in one and the same State.

If the Convention will result in the realisation of these ideals I am sure this will meet with the approval of the yards and shipowners

and the banks and, of course, details of these problems should be discussed in the Committee.

Thank you.

**Mr. Pallua, Yugoslavia (translation) :** Mr. Chairman, Ladies and Gentlemen, the Yugoslav Association wishes first of all, to associate itself with the manifestation of heartfelt gratitude expressed to the President of the International Subcommittee, Mr. Braekhus, for the extremely useful work he has achieved.

The Yugoslav Association considers that a Convention in respect of ships under construction would be of real use in order to facilitate maritime credit on shipbuilding. The revised preliminary draft Convention presents, in our opinion, an adequate basis for our debates, more especially as its main principles correspond to our national legislation.

We feel that there are indeed a few problems which require further study and a restatement of the texts in question. It is in the first place a question of relation between good faith and the legal effects of the registration of the real securities in the register of the ships under construction. Secondly, we should perhaps take into consideration, right now, not to open a conflict between the new draft and the Convention on maritime liens and mortgages of 1926, as regards the ships under construction after their launching and as long as they remain registered in the registers of ships under construction. Finally, there is the problem of the recognition of rights in rem constituted on the ships under construction by the State where they will be registered after their putting into commission. This problem claims all the more our attention that all the national legal systems do not all know the very same rights in rem.

Having heard the various conceptions of the notion of ownership which we find in the national legislations, on the one hand, and on the other hand, the desire to render the Convention in preparation as widely acceptable as possible, we feel that it would be useful, in the investigation of the appropriate solution to this problem, to take pattern by the solution adopted in the draft Convention on the registration of ships of the inland navigation of the European Economical Committee of the U.N.O. (Art. I, par. 2).

We hope that the questions on which there are differences of opinion among the national Associations, will find their solution in the course of the debates in committee. We wish that a positive result be achieved, because the initiative of the International Maritime Committee, corresponds, once more, to the instant demands of the maritime trade.

**Mr. F. Berlingieri, Italy :** Mr. Chairman, Ladies and Gentlemen. The Italian Association has studied with great interest this draft Con-

vention and has taken part in the work of the Subcommittee. But after having thought about the articles in this Convention it is afraid it cannot support it at the present time, for the following reasons.

The first ten articles of this Convention actually deal with a problem which is not an international problem but is a problem of domestic law. A ship is built in a State and until she is delivered and commences to sail she is within the territory of that State and it is our feeling that the law governing contracts of building and the law governing registration of that ship must be the law of the Country where the ship is being built. We think that there is no reason for international unification of rules relating to the registration of ships under construction.

In addition, suggestions which have been made relating to the registration of ships under construction bring about various problems of considerable importance, with regard to that moment when registration is permissible. Views which have been expressed are different from one another. We have a system in our law whereby registration is permissible at the moment when the contract of ship building has been signed. I cannot say that we are prepared to change this system and accept that registration is permissible only at a later stage. Consequently the Convention as far as we are concerned should only give a general statement on this point and allow national legislations to have different rules. But is this an international Convention? I should not think so.

The second problem dealt with in the first ten articles is that relating to priorities. Well, if these priorities are something different from the priorities of ships in operation again the problem is a domestic one, for they are the same kind of priorities which can be applied to a ship in operation, maritime liens, for instance. It is possible that maritime liens apply also before delivery because a ship can be sent on the open sea for trials, in which case a maritime lien can arise in the case perhaps of the collision of a ship sailing on trials and in this case there would be an overlapping of this Convention with the 1926 Convention.

Moreover we are of the opinion that the 1926 Convention is ripe for thorough study and amendment and we feel that it is not advisable to consider a limited problem now before a decision is reached regarding the 1926 Convention both as regards mortgages and maritime liens.

There is one article which brings about a problem of great international interest and this is dealt with in article II in the case of a ship which is built with a foreign owner. But here again the same problem of the transfer of the vessel from one flag to another arises in the case of ships in operation and we wonder whether it would not be advisable to consider this problem on a wider basis and to try to study and reach a result regarding ships in operation and not only as regards ships under construction. We are afraid that if we now try

to reach a certain result limited to ships under construction we might commit ourselves to a certain extent when this same problem will arise as it will arise in the future as regards ships in operation, and we think it is much better to postpone a decision on these points on ships under construction and to reconsider the matter if and when the problem will be studied regarding ships in operation.

Thank you, Mr. President.

**Mr. G. Daniolos, (Greece) :** I belong to the Greek Delegation. I would just like to say that in Greece it is possible for a ship under construction for the account of a Greek shipowner to be registered in the port where she is to be finally registered when commissioned, and of course, it is possible to have a mortgage registered on such a ship before she is completed.

Under these circumstances, from the shipowners' point of view, we do not feel it necessary to have an international Convention on this matter because it is always possible for a Greek shipowner to have a title of ownership and to raise funds by granting a mortgage on a ship under construction irrespective of the place where the ship is built.

Nevertheless, we shall collaborate with pleasure with the Associations of all the other Countries in the effort for reaching an international Convention on this very, very important subject, provided that, first, the necessary steps be taken to render impossible for a ship under construction to be registered except in the place where she is built and in the place where she is to be finally registered after commission, secondly some amendments should probably be made to Articles 10 and 11 of the draft which we have now in mind.

We feel that the registration of a ship under construction is of a rather temporary character. We quite appreciate that it is not only advisable but absolutely necessary that the rights acquired under the registration in the place where the ship is built should survive after the transfer of the ship to another register. But probably all these rights should be adapted so far as the form and the substance of these rights are concerned; they should be adapted to the law of the Country where the ship is to be finally registered. There is such a difference of concept in the term of mortgage itself that we are afraid that the present drafting language of these Articles is not quite adequate. I think that we shall be able to find some suitable formula to meet all those points. Thank you.

**Mr. A. Rein, Norway :** Mr. Chairman, Ladies and Gentlemen, I am somewhat surprised to hear what Mr. Berlingieri has said, that the registration of a ship under construction is a domestic problem, in view of the fact that this Draft Convention is only concerned with those instances where a vessel is being built in a certain country,

and bought by a purchaser in another country, which is a typical international situation. As far as I can see the Convention does not oblige the Contracting States to have any rules for the registration of ships under construction for citizens in the same country.

It is easy to say nothing precisely, that one should wait and do nothing about ships under construction until we have streamlined the rules on sailing ships, ships in commission.

I think that the point of view of the Committee which has prepared this Draft Convention is this : that we may endanger the whole project by trying to swallow too much at one and the same time. But as all countries, in their own interest. — I might almost say in self-defence — will have to have rules regarding ships in commission, all we intend to do by proposing this new Convention is to oblige those States who adhere to it to give the same possibilities to ships under construction as they give to ships in commission. You can be pretty sure that no State will dare — at least if they have any interest as a maritime Nation — to have no system under which it will be possible to register a ship in commission, so you can be pretty sure that by having a simple set of rules obliging the States to offer the same facilities to ships under construction as they have for ships under commission, the main problem will be solved.

With regard to the British point of view, I feel that if a Convention comes into life and a certain number of States adhere to it, I believe they will follow suit for the simple reason that British ship builders would not like to lose in the competition, being otherwise unable to secure the financing of ships under construction like other Nations are able to.

I would again like to stress what Mr. Braekhus has said that while requiring the rules on the registration of ships in commission to be perfect before we can tackle this very practical problem of having mortgages registered under construction, we are pushing this problem into the future and nobody knows when anything will be done about it. (General applause).

**The President**, (translation) : Does anyone wish to come to the platform in the general debate ?

If nobody else requests leave to speak in the general debate, I consider that we can end same, and I interpret the will of this Assembly as wishing that the matter be now further studied in Subcommittee.

If you have no objections, we shall now set up the Subcommittee which will restate the decisions of our Conference. The first step to be taken will be the appointment of a President to this Subcommittee. I think that we shall not have to hesitate too long and that we can ask Mr. Braekhus to kindly accept this responsibility. (Signs of assent of Mr. Braekhus).

## TRANSPORT OF LUGGAGE

**Mr. Muller, Switzerland (translation) :** Mr. Chairman, Ladies & Gentlemen. It will certainly seem strange to you that a representative of a Country without any maritime coast-line submits to your consideration a draft of unification of maritime law. You will kindly excuse this impertinence on my part, but as the rules of the International Maritime Committee provide that it is necessary that a member to the Bureau Permanent presides over a Subcommittee, I was requested by telegram to come to Antwerp to act as President of the Subcommittee that Professor Braekhus had so magnificently presided before, which however, he could no more take upon himself owing to his activity in the Subcommittee on registration of ships under construction. This is how by a mere chance I am here to-day to submit to your consideration a draft of unification of maritime law.

I would not like you to think that this draft has been prepared by myself, and I wish to make it clear that the real author of the draft, and I may say of the excellent report, is Mr. A. Poulsson of the Norwegian Delegation. That is why, after the few words I still want to say, I will beg our Chairman to call upon that author of the draft, to whom I pay a tribute, to adress this meeting.

Gentlemen, in 1955 at Madrid, you have drawn up a draft on the liability of shipowners towards passengers. In that draft, there were rules of liability in respect of luggage.

The draft having been adopted by the International Maritime Committee, we met at Brussels at the Diplomatic Conference of 1957 where, thanks to the intervention of the British Delegation, the principle of liability was developed and a new draft was laid out. The above draft could not be adopted in 1957, but only at the following session in 1961, again at Brussels. In the course of the debates which took place under the Presidency of Mr. Govare, — debates which we have still in mind, — we discussed whether it was advisable or not to insert the matter of luggage in the draft. Many Delegations felt that the problem of luggage should be settled at the same time. For reasons that I will not set forth now, it was decided by a narrow majority not to mention the problem of luggage in the draft relating to passengers, but at the same time, we promised to those who had given up the luggage that a separate Convention would be prepared by the International Maritime Committee.

In order to keep that promise, the Bureau Permanent, immediately after the Diplomatic Conference of 1961, convoked a special Subcommittee under the Presidency of Mr. Braekhus, with a view to laying down a draft and a report. The latter has been circulated together with a questionnaire. Ten Countries had replied to it for the Athens

Conference of last year. The draft was debated and the discussion mainly turned on the question of the advisability of this draft. We discussed at length in order to know whether it was advisable to retain the principle of freedom of contract or of the rules of strict law. The above work resulted in a text which, in our opinion, is satisfying and could be used as a basis of a thorough debate for the special Subcommittee of this Conference. Discussions took place in order to know whether it was advisable to retain the principle of freedom of contract, i.e. do nothing, or to devote ourselves to the task of unification. The International Maritime Committee ought to make every effort to obtain uniformity of maritime law and it is in this work of unification that we shall have to consider whether we ought to retain a Convention of strict law which abolishes, to a certain degree, the freedom of contract.

This morning, during the debate on Bills of Lading Clauses, I heard of what you call the Himalaya case and this could also happen for the luggage. And as our French friends would say, the rule of the « faute lourde équipolente au dol » could abolish the principle of freedom of contract that some were happy to maintain in passage tickets. I will not come to a conclusion neither in one nor in the other, but this problem deserves to be further studied in the course of this session.

I hope that thanks to your good will and to your understanding, we shall be able first of all, to achieve our task of unification and keep our promise towards all those who in 1961 at Brussels, have made the task easier for us by casting aside the problem of luggage.

Mr. Chairman, that was the sort historical introduction of the problem. If you have no objection, I would beg you to ask Mr. Poulsson to give us a full account of his draft.

**Mr. Poulsson, Norway :** Mr. President, Ladies and Gentlemen, I am not going to repeat most of the report which we have made up and which is before you, but I do think that there are a few points which could be emphasised at this point on the discussions. We have in the report stated that we do think it is about time to take up this question of a new passenger luggage Convention. We stick to that view, we do think that the feeling of people is not the same to-day as it was ten or twenty years ago. There is a social conscience growing up all around the world whereby people, officials, governments do gradually get aware of the need to regulate contracts so that the small man can be guarded against too strict and hard contracts. Of course we have felt that we do not need to have this luggage Convention this year, it is not that urgent, but we feel that if the C.M.I. do not take up the work someone else will do it within a fairly short time, and if we let the governmental entities or other official entities take up the work the C.M.I. will have no say in the work and we do think that we have a good opportunity to-day to take up this work and to let the shipping

world people have their opportunity to be in on the discussions, and think that we to-day have a better chance of obtaining a reasonable compromise taking due care of both parties' interests.

I could remind the Delegates of the similar thing which happened on the Passenger Convention. The work was taken up fairly reluctantly and then some disaster happened and governments got interested and pushed through a much faster Convention than would otherwise have been the case. That is the main point but tied up with is the question which formally is a detailed question but is so important basically that I want to say first of all a few words on that, and that is the question of whether the Convention should be made compulsory or not. It is under Article IX but as we and I feel that it is the most important question of the whole Convention to decide whether it is going to be compulsory then I feel very strongly that we have done ourselves a bad service, because then the Convention will change nothing, we will have a paper Convention and all passenger tickets and contracts will remain the same as long as shipowners do have complete freedom of contract, and if at a later stage it arrives that a compulsory Convention should be needed then I do think we would have a very difficult job to get a non-compulsory Convention converted into a compulsory Convention.

The draft Convention before you is as you have all seen, drawn up practically on the same lines as the Passenger Convention, and that means that most of the Articles so far as numbers go are identical with the original Passenger Convention and there has been, and probably should not be any need for discussing of these articles. Those articles which have had to be altered as compared with the Passenger Convention are few but they are important. We have the question of whether the shipowner is going to have freedom of liability for nautical faults in Article IV. We have the Jurisdiction question which has caused quite some difficulties, right back from the time of the Madrid deliberations. The draft in the view of some Delegations is not quite up to the point on this article. Then we think the question of amounts, and strangely enough those have caused very few discussions, but there are some open questions still on this, that is Article VI. Then we have the question of the valuables, liability for them and the possibility of delivering valuables to safe deposit and so forth in Article IV and VI and I suppose we will have to go through them very closely again. I am pleased to say this and I repeat that I do think we have a good chance of constructing a Convention which is good to all parties, and which is a compromise, and I can only recommend it. Thank you.

**Mr. Koelman**, Belgium (translation) : Mr. Chairman, Ladies & Gentlemen. I need say no more after the excellent speeches delivered by Mr. Müller, President of the Subcommittee, and by Mr. Poulsson.

Mr. Müller has been far too modest when he said : « I did nothing else than take over the Presidency of this Subcommittee, which Presidency had previously been assumed by Mr. Braekhus ». I deny this assertion. As a matter of fact, at the last meeting of this Subcommittee which took place at Antwerp on the 15th March this year, Mr. Müller acted as President to the Subcommittee and there were still a good many debated points which, however, have been cleared up.

I join with Mr. Müller in paying a tribute to Mr. Poulsson who really is the father of this Convention and who gave us a full account on this topic a few minutes ago.

Gentlemen, I wonder how such an elementary question as the one of liability in respect of luggage has possibly formed the subject of so many discussions since our Madrid Conference of 1955, i.e. for 8 years. In the first place, it is because at that time we had felt that the matter had been settled by connecting this problem with the one of Shipowners' liability to passengers, the passengers with luggage.

At the 1957 Diplomatic Conference, when we discussed the liability towards passengers, we realized that it was not possible to compare the luggage with this said liability towards human beings and that actually for the luggage, we had to draw nearer to the Hague Rules as the question of carried goods was also concerned. I am aware that part of those articles are carried in the passenger's cabin and that some of us have put forward that there are luggage to which the passenger has access during the voyage. This gives rise to difficulties, but in my opinion, the principle rather derived from the Hague Rules.

We have therefore separated the question of luggage from the Convention on liability to passengers and we have felt that this question could be settled more easier that way. But we came up against such an abundant subject, as in the meantime, we had had the Warsaw Convention of 1929 and the Rome Convention on transport of passengers by rail had also been reconsidered in 1952, thus the transport of passengers and of luggage by rail. Consequently, we have ourselves complicated the situation a bit more.

But it is not a bad thing that this situation has lasted for a few years. The work of the International Maritime Committee is one of reconciliation among the various legislations and even among the various compromises. It has to pour itself off very slowly and we cannot settle in a twinkling matters which may seem to be easy.

After the Antwerp meeting of the 15th March, we had practically arrived at a sameness of views on all the matters.

After the Athens debates, we had already arrived at an agreement on the main points, viz. the category of luggage to be covered by the Convention, the period of time which the Convention should cover, the basic principle of liability, the application of the monetary unit and

finally, the statement of the principle according to which the Convention should be compulsory, leaving a limited room for contractual freedom.

Gentlemen, we have achieved a draft which can certainly still be improved.

I say it without flatulence, the Belgian Delegation, although it took an important part in the work of the 15th March, submits, however, some amendments to your consideration; like the Norwegian Delegation to which the draft owes its birth and of which it has been said that Mr. Poulsson is the father, now brings forward another child. This proves that it is always possible to improve and I hope that you will be willing to adopt all these amendments which, however, are not very important. They have in view our drawing nearer, more than it had previously been done, to the situation which results from the Hague Rules.

In this manner, in Art. III, and I will not take up here a debate on the articles, I only point out the 3 reasons which induced us to submit these amendments to your consideration, in Art. III, par. 1, mention is made of « diligence raisonnable » or « due diligence ».

I cannot see the difference between « due diligence » and « diligence raisonnable », but you may call it some way or other, the Hague Convention provides that the due diligence should be exercised before the voyage and at the time of departure, but not at all times during the carriage.

This is what has been done in your Art. III, par. 1, where it is provided that the due diligence should be exercised by the Owner of the carrying ship, not only before and at the time of departure, but also at all times during the carriage. This is overdone. Let us consider the case of a passenger whose articles of luggage are a little bulky. He has two suitcases stowed in the ship's hold and two trunks which are being carried under a bill of lading. The liability would be different. It seems to me that this is impossible and it is the reason why we wish to move this amendment.

In article IV, another question also crops up. As it results from the Antwerp deliberations, the draft of the Subcommittee provides that the Shipowner's exception can be accepted, but for this, a negative proof was necessary, proof which the shipowner was unable to produce. We feel that our amendment reduces everything to a positive test that the shipowner is able to prove.

Finally, the last amendment concerns the written notice one has to give. We feel that this is more true for luggage than for goods.

Let us consider the solutions adopted by the Hague Rules and let us lay down that if at the time of delivery, no notice has been given, one is no more entitled to give any notice thereafter. But I admit of

course that if the damage was not apparent, one is entitled to give notice within 7 days as it had been moved at Antwerp.

Finally, Gentlemen, I arrive at the amendment to article XIII moved by the Norwegian Delegation. You know that, in this respect and in many others, the attitude of the International Maritime Committee has been lately : let us leave aside the matters of jurisdiction as it would complicate things and let the national Courts of the contracting States decide whether they are competent or not. This is a rule of facility that we are often obliged to follow as otherwise, there would be many insoluble matters.

In this case, it seems to me that the motion of the Norwegian Delegation is very simple. Besides, it partly takes up again that which was mentioned in the first draft.

The amendment seems to be very reasonable and personally, I would be inclined to adopt it. I think that the Belgian Delegation would also adopt it and that would be a great advantage if we could have a jurisdiction clause which would appear to be reasonable and normal.

Gentlemen, under these conditions, I feel that we have now arrived at a stage where, providing some slight alterations, we shall achieve a successful result, not a perfect one as this does not exist, but a work which could soon be put forward to a Diplomatic Conference and could be adopted. (Applause).

**Mr. Hecht, United States :** Mr. President, Delegates, the United States Delegation will be happy to collaborate in the discussion on the proposed Convention. Fairness however requires us to point out as we did in Athens, that the Convention deals with matters which do not create any particular problems in our country. Our present law appears satisfactory to all parties and interests, on our side. Certainly there is no agitation for any change. To us the proposed Convention, with all due respect, is answering questions that nobody is asking. We do feel in our Association that the views of our Association speak louder in the legislative halls and with the executive branch of our Government if it does not speak too many times, and fairness does require me to point out that it is extremely doubtful that our Association would be prepared to approach our Governmental Authorities in connection with a Convention of this nature.

**Mr. Sandiford, Italy (translation) :** Mr. Chairman, you know how much the Italian Association took part in the debate on the Convention which is now submitted to our consideration. We reserve ourselves to comment on various points of this Convention, but we are desirous of having a Convention on luggage. I want to assure you that the Italian

Association, which has worked on those drafts since Madrid, has attempted by all means to complete, with regard to luggage, the agreement on the liability to passengers.

Therefore, you may rely on the collaboration of the Italian Association and I hope that we shall soon have a Convention to put forward to a Diplomatic Conference.

Thank you, Mr. Chairman. (Applause).

**Mr. Warot, France (translation) :** Mr. Chairman, Gentlemen, I would only like to say a few words on behalf of the French Delegation.

The French Delegation entirely supports the draft which has been drawn up by our friend, Mr. Annar Poulsson. I must confess that we hesitated for a while as the texts which were submitted to our consideration did not seem to be satisfying, but we remembered, after protracted discussions, that it is with conventions as with genius and that it is a long patience. We must hope, again hope and that is why we shall take part in the debate. We shall do it with great interest, but we would like, from now onward, to lay stress on the importance of article 4 of the Convention. We have heard with great interest the motion of the Belgian Delegate who pointed out to us, among others, that in regard to registered luggage, the proof which was imposed on the carrier was, as we ascertain from the text submitted to our consideration, a negative proof, a « probatio diabolica ». As a matter of fact, it is essential to relieve in this respect the burden which lies with the carrier.

We shall also submit to your consideration our amendment which concerns the maximum attainable limitation of liability, but for the rest, we shall bring you a loyal, and I hope efficient collaboration. (Applause).

**Mr. Deloukas, Greece :** The Greek Association thinks exactly as the United States Association that Greece has a satisfactory legislation on the matter of the passengers' responsibility for luggage, but contrary to what the United States Association thinks we think a Convention on this matter would be of supreme interest because it is not enough to say that we in our Country have a satisfactory legislation on this point it is necessary to find a solution which would be satisfactory to all Nations. This is the purpose of the Comité Maritime International and this is why the Greek Association heartily proposes this committee and will support the operations of this committee to find a satisfactory solution.

Thank you.

**The President, (translation) :** Does anyone else wish to come to the platform ?

Gentlemen, is there someone who would eventually wish to take the floor in our general debate of to-morrow morning?

If not, I will declare that this general debate is closed, unless there are delegations which would like to come to the platform to-morrow morning.

I move that we consider the general debate as closed and that we set up the Subcommittee which will deal with this problem. I propose to this Assembly to appoint Mr. Müller to preside over the work of the Subcommittee. (Assent) (Applause).

*Wednesday, 12th June, 1963*

(afternoon session)

## PLENARY SESSION

Chairman : Mr. Albert LILAR

### PASSENGERS LUGGAGE

**The President**, (translation) : Gentlemen the session is open.

We will proceed this afternoon with the examination in plenary session of the draft International Convention for the unification of certain rules relating to the carriage of passenger luggage by sea, which has been the subject of the work of one of the Subcommittees which you have set up and over which M. Müller has kindly presided.

I shall ask Mr. Müller, president of the Subcommittee, to come to the platform in order to report on this work.

**Mr. Müller**, Switzerland (translation) : Mr. Chairman, Ladies and gentlemen,

In the name of the Subcommittee known as the « Subcommittee for the study of the carriage of passenger luggage by sea », I beg to submit my report on the outcome of its work.

In one and a half day we have succeeded in agreeing a draft of a Convention, which should satisfy all the interests involved. We do not boast on having arrived at a « perfectionism », something which in the field of the unification of law can hardly be achieved, but we believe that we have succeeded to the best of our ability and in a very short time, thanks to the excellent provisional draft and to the magnificent report prepared by our rapporteur Mr. Annar Poulsson, to whom I express all our gratitude. If we have achieved a good result in such a short time, it is thanks to the spirit of comprehension and intense collaboration of all the members of the Subcommittee, who have discussed the problems at stake in an atmosphere of friendship, which, I hope, always prevails during the work of the International Maritime Committee. I add that if we have achieved a result in such a short time, it is also due to the excellent propositions of the British Delegation, which have been accepted with enthusiasm by the Subcommittee on account of their clearness and their juridical equilibrium. I would also like to thank all those who have contributed to the work of the

Subcommittee as well as Mtre. Jean Warot, rapporteur to the Subcommittee in the french language and Mr. Nyssens, Belgian delegate, who made available his services as translator for the report as well as for the provisional drafts.

Having said this, I beg to submit to you, whole-heartedly our work which, I hope, will meet with your approval. The final wording is not yet contained in one document only, therefore I would thank you to take the booklet Nr 2 of the Subcommittee in which you will find the draft of the Convention, printed in normal letters in as much as the rules have been taken over textually from the Convention of 1961 relating to the carriage of passengers by sea, printed in italics and in fat type the alterations which have been made by the Subcommittee before the Conference. The second document « BAG/STO-6 » which has just been distributed, contains the alterations which the Subcommittee has adopted during its work in Stockholm.

Please excuse the errors in language which might appear in this document, the haste we had to present this document not having made it possible to insert the necessary corrections.

I shall only comment on the alterations to the draft of the Convention which appear in this last document BAG/STO-6, as I am convinced that the other articles, which have remained unaltered, are sufficiently familiar to all of you.

In article 1 we have made alterations in respect of the period during which the luggage is covered by the Convention. We have succeeded in reducing the rules provided for to two categories instead of three.

In article 3 we have changed the rules relating to the seaworthiness of the vessel. We have brought them in line with the Hague Rules, which means that the seaworthiness must be available at the beginning of the voyage.

In article 4, paragraphs 4 and 5, we have thoroughly reexamined the question of the onus of proof and we have ruled out the negative proof, which was still provided for in the provisional draft.

Concerning the valuables, ornaments, gold, silverware, watches, jewellery we have reestablished the freedom of contract, which means that according to the Convention there is no liability unless specially agreed upon in the contract of carriage.

In article 6 we have somewhat changed the gold clause in as much as, concerning the date of conversion of the gold francs into national currencies, we have put it in line with the work of the Subcommittee dealing with the Hague Rules.

In article 11 we have clarified the problems of the extinction of the action when the passenger does not claim in due time in case of damage or loss of the luggage.

In article 12 we have added a clause of competence.

The rule relating to the deductibles has been amended in as much as there is not a deductible of 5 % on the sound value of the vehicles which are carried, but a fixed sum of 1500 gold francs, provided the contracting parties agree on this. Hence we hope to have found a compromise between the tendencies which on the one hand were aiming at maintaining the freedom of contract, i.e. the irresponsibility pursuant to the clauses of the luggage tickets, and on the other hand were insisting on putting a considerably heavier burden of liability on the carrier.

The liability is still based on the idea of the fault but a difference is made concerning the onus of proof depending on whether cabin luggage or registered luggage are concerned. The exoneration in respect of nautical faults is maintained as in the earlier provisional draft.

The limitations of liability are based on amounts which we consider reasonable.

As far as the other questions are concerned, I hope that the wording is sufficiently clear and speaks for itself and that it would be needless to comment on them.

If you would approve in plenary session the draft of the Subcommittee, you would express in the best way your gratitude to all those who have contributed to the drafting of these new rules of unification of the Maritime Law. It is in such a way that I submit our work to your kind attention. (Applause).

**The President,** (translation) : Ladies and Gentlemen I suggest that we now examine in plenary session the draft, article by article. The basis of our discussions will be the text as it appears from the revised preliminary draft amended by the Subcommittee presided over by Mr. Müller. I thus mean that unless an amendment is moved and adopted in plenary session, the text as revised and amended by the Müller Subcommittee will be considered as the text adopted by the plenary session.

#### ARTICLE 1

**The President :** Does somebody want to speak on article 1 ?

If there is no objection, I consider that article 1, as it has been amended by the Subcommittee, is adopted.

Article 1 is adopted.

#### ARTICLE 2

**The President** (translation) : Article 2 has not been altered by the Subcommittee. The wording which is submitted to you is the one, which appears in document Nr. 2.

Does somebody want to speak on article 2 ?

If there is no objection, I consider that article 2 is adopted.

Article 2 is adopted.

### ARTICLE 3

**The President** (translation) : Some alterations have been made to article 3 by the Subcommittee as it appears from the text which has been distributed to you.

The wording of the first paragraph having been altered, does somebody want to speak on article 3 ?

I consider that, failing any objection, article 3 is adopted, as modified.

Article 3 is adopted.

### ARTICLE 4

**The President** (translation) : Article 4 has been the subject of various alterations by the Subcommittee and the text of these modifications has been distributed. Does somebody want to speak on article 4 ?

If there are no objections, I consider that article 4, as it has been altered by the Subcommittee is adopted.

Article 4 is adopted.

### ARTICLE 5

**The President** (translation) : No changes have been made by the Subcommittee to article 5. This article is therefore maintained in its wording of document N° 2.

Does anybody want to speak on article 5 ?

Without objections, I consider article 5 as adopted.

Article 5 is adopted.

### ARTICLE 6

**The President** (translation) : Does somebody want to speak on article 6 ?

**Mr. E. Japikse**, Netherlands : Mr. Chairman, Ladies and Gentlemen, I first apologize for the fact that the amendment the Dutch Delegation is intending to propose is being distributed only now.

In support of and to explain this amendment, I would like to make the following brief remarks : the main idea of the Convention is to grant the passenger a fair and reasonable protection in relation to his luggage. In practice, however, the present draft will entail the possibility of a large number of trifling and untrue claims being lodged against the carrier which, in turn, will compell him to set up a special department or enlarge his present legal department. This is necessary because if the carrier is flooded with all sorts of claims of a very small amount very frequently, he has the choice either to deal with these claims and to go into the merits of every claim or if he does not follow this line and, in other words, undertakes to carry out an investigation

into their merits, he shall have to pay to get rid of all these claims, and he may prefer to feel himself released of the nuisance of all those claims. Claimants may, in turn, hope for such a policy, may hope for an amicable settlement if the claim is not a very true one and this fact, in turn, may elicit the filing of unreasonable claims. If a claim is not unreasonable and a fair one, the passenger may be quite certain that his claim will be met because the carrier will be inclined to meet his customer. But if it is a claim which is not reasonable and does not seem very true, the carrier will not, as I said, be prepared to pay the claim and will go into the details of it or he has to get rid of it and pay a nuisance value.

To cut out this unwanted consequence of the present draft, the Netherlands Delegation proposes to insert a franchise or deductible in the amendment they submit which reads as follows :

« The carrier and the passenger may agree by special contract to a higher limit ». We add « of liability ». It is said in this paragraph that « They may also agree that the liability of the carrier shall be subject to a deductible not exceeding 1500 frs in the case of damage to a vehicle » and to this we would add that « a deductible is granted if specially expressed and agreed upon for claim or loss or damage of other luggage up to 500 francs ».

Par. 5 would read in full as follows :

« 5. The carrier and the passenger may agree by special contract to a higher limit of liability. They may also agree that the liability of the carrier shall be subject to a deductible not exceeding 1500 frs. in the case of damage to a vehicle and not exceeding 500 frs. per passenger in the case of loss of or damage to other luggage ».

I may point out that I think that would be fair, that we feel this amendment, this aspect of the Convention is of such vital importance that our final vote will depend on this amendement being rejected or accepted. Thank you, Mr. Chairman.

**Mr. A. Poulsson, Norway :** Mr. Chairman, Gentlemen, I shall be very brief. I will only say that we did have this question before us in Athens and in Antwerp and the feeling was that the majority wanted to delete this deductible or franchise for the smaller luggage.

I quite agree that if there is a franchise on the small items it would simplify the handling of passenger luggage claims considerably but it depends very much upon the figure which is indicated. It seems obvious from all the discussions we have had that if there should be a franchise for these items, it ought to be very small indeed, because we cannot think of ocean transport only. We have to think of all the cross-channel traffic or the Baltic traffic, or the car ferries which are coming up here and there and where the total amount of the luggage is very often not as much as these 500 francs. So in justice to the passengers, we do

think, the Norwegian Delegation, that we should not have a franchise on these items unless it is much smaller than these 500 francs.

The difference to the shipowner would not amount to so much in money if we do not have a franchise. It would, on the other hand, have some importance for the small passenger on the short trips. Thank you.

**Mr. Pitois, France** (translation) : Gentlemen, The French Association of Maritime Law is in entire agreement with the principle of the proposition moved by the Delegation of the Netherlands, aiming at a limitation of the deductible for the losses and damages on luggage other than vehicles. But we feel that it would even be ill-advised on account of its anti-democratic character, to fix a limit as high as that of 500 francs Poincaré. We think that 500 francs Poincaré is enormous. I quite appreciate the necessity of eliminating a considerable number of claims but 500 francs Poincaré appears nevertheless to be too high a figure. We think that the limit should not exceed that which had been contemplated at Athens say 100 francs Poincaré.

Thank you, Mr. President.

**Mr. Sandiford, Italy** (translation) : As it has been observed this low deductible has been suppressed at the Antwerp meeting as on the one hand it was not sufficiently high for the shipowners and on the other hand it was somewhat too heavy to justify its inclusion in the Convention.

For this reason the Italian Delegation opposes the amendment proposed by the Delegation of the Netherlands.

**Mr. Müller, Switzerland** (translation) : Mr. Chairman, Ladies and Gentlemen,

I would have given the preference to maintaining the original wording of the Subcommittee. But if the general feeling is to permit a deductible for all sorts of luggage, I will join in.

I think nevertheless that the figure of 500 gold francs which represent 140 Swiss francs or about 31 U.S.A. dollars is a bit too high. I could accept the proposition of the Netherlands provided this Delegation would accept to reduce the amount proposed to a figure that would exclude the small vexatious claims by the terms of the adage « de minimis non curat praetor » but not an amount as high as 140 Swiss francs which, to my mind, exceeds the reasonable limit.

Above all this is a problem of figures and perhaps the Delegation of the Netherlands will make it possible to reach a decision by changing the amount of the deductible in the proposed amendment.

**Mr. E. Japikse, Netherlands** : Mr. Chairman, Ladies and Gentlemen, we are strongly in favour of a deductible and we are inclined to bargain on the figure, but I wonder whether the procedure could be

this one : that, first of all, the principle is voted on or the amendment in its present form is voted on and afterwards a new vote will be taken on another amendment to allow for a figure.

**The President** (translation) : Gentlemen, according to the rule of every deliberating Assembly, when it comes up, as we are doing, to restate a text, votes are to be taken on principles. It is permissible to the Delegation of the Netherlands, in the event the proposed amendment would not be adopted, to move an amendment containing lower figures, so that the Assembly may favourably carry that proposition.

**Mr. E. Japikse**, Netherlands : Mr. Chairman, if a vote is being taken, we are prepared to reduce the figure to 100 francs.

**The President** (translation) : Gentlemen, The Delegation of the Netherlands has just made it known to us that they maintain the proposed amendment but that they reduce the proposed figure of 500 francs Poincaré to 100 francs Poincaré.

Therefore we are now, if you agree, going to vote on the amendment, it being understood that the figure of 500 francs Poincaré is reduced to 100 francs Poincaré.

*Have voted in favour of the amendment* : France, Germany, Netherlands, Norway, Poland, Portugal, Switzerland, Yugoslavie.

*Have voted against* : Belgium, Canada, Denmark, Italy, Sweden.

*Have abstained* : Finland, Great-Britain, Greece, Ireland, Japan, U.S.A.

**The President** (translation) : The amendment proposed by the Delegation of the Netherlands is adopted by 8 votes against 5 and 6 abstentions.

We must now take a decision on the whole of article 6 as amended. Does the Assembly agree the amended article 6 ? Without objections, I consider that article 6 as adopted.

Article 6 is adopted.

#### ARTICLE 7

**The President** (translation) : There have been no alterations made by the Subcommittee to article 7.

Does somebody want to speak on article 7 ?

Without objections, I consider article 7 as adopted.

Article 7 is adopted.

#### ARTICLE 8

**The President** (translation) : Article 8 has not been modified by the Subcommittee.

Does somebody want to speak on article 8 ?  
Without objections, I consider article 8 as adopted.  
Article 8 is adopted.

#### ARTICLE 9

**The President** (translation) : A very small modification has been made in the beginning of this article where one should read « article 6 (5) » instead of « article 6 (6) ».

Does somebody want to speak on article 9 ?  
Without objections, I consider article 9 as adopted.  
Article 9 is adopted.

#### ARTICLE 10

**The President** (translation) : No alterations have been made to this article by the Subcommittee.

Does somebody want to speak on article 10 ?  
Without objections, I consider article 10 as adopted.  
Article 10 is adopted.

#### ARTICLE 11

**The President** (translation) : There has been an alteration to article 11 by the Subcommittee.

**Mr. P. Wright**, Canada : Mr. President I wish to refer to the amendment of the Subcommittee and particularly to 1 (b) and to suggest a change in language in respect of the word disembarkation. I suggest that it should read instead « from the date of disembarkation or delivery ». The reason I suggest this is that the date of disembarkation is used in sub paragraphs 2 and 3 of Article 11.

**The President** (translation) : Does the Assembly agree with this observation ? Are there any objections ? Does somebody want to speak on article 11, as it has been drafted by the Subcommittee ?

Without objections, I consider article 11 adopted.  
Article 11 is adopted.

#### ARTICLE 12

**The President** (translation) : Does somebody want to speak on article 12 ?

Without objections, I consider it adopted.  
Article 12 is adopted.

## ARTICLE 12bis

**The President** (translation) : For this article please refer to document BAG/STO-6.

Does somebody want to speak on article 12bis as drafted by the Subcommittee ?

Without objections, I consider article 12bis adopted.

Article 12bis is adopted.

## ARTICLES 13, 14, 15, 16, 17, 18, 19, 20, 21 AND 22

**The President** (translation) : Now follow articles of protocol. Are there any objections in respect of these articles as they are proposed ?

Without objections, I consider them as adopted.

The articles 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 are adopted.

## PROTOCOL

**The President** (translation) : Finally a protocol is proposed. Are there any objections ?

If there are none, we are going to vote on the draft of the Subcommittee as a whole amended by the Dutch Delegation.

*Have voted in favour* : Belgium, Canada, Denmark, Finland, France, Germany, Greece, Italy, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Yugoslavia.

*Have voted against* : Great-Britain.

*Have abstained* : Ireland, Japan, Netherlands, U.S.A.

**The President** : The draft is adopted as a whole.

I congratulate the Assembly and more in particular the President and the members of the Subcommittee, whose assiduous work has made it possible to arrive at this result. (Applause).

*Friday, 14th June, 1963*

(morning session)

## PLENARY SESSION

Chairman : President Albert LILAR

### BILL OF LADING CLAUSES

**The President** (translation) : Ladies and Gentlemen, in the course of this plenary session, we shall take up the examination of the conclusions of the Subcommittee which you have set up and which met lately here at Stockholm.

May I beg the President of this Subcommittee, Mr. Van Ryn, who has accepted at the same time to present the report of his Subcommittee, to come to the platform.

**Mr. Van Ryn**, Belgium (translation) : Mr. Chairman, Ladies and Gentlemen, the draft which has been circulated under number 5, brings to your knowledge the provisions which the Subcommittee proposes to insert in the Protocol to amend the International Convention of 1924.

The title given to this draft has been worded according to what has been done with the Warsaw Convention when an additional protocol to that Convention has been adopted.

I shall now endeavour to comment, as succinctly as possible, upon the various provisions of the draft.

It is more advisable, for the clearer comprehension of what follows, that I comment item by item upon the report of the International Subcommittee, which you all know, so as to be able to point out to you what has been the result achieved on each of the points of deliberations of the Subcommittee.

First of all, with regard to Article X, there have been no drafting amendments, except for a minor amendment to the French text in order to render same more explicit.

The text which is submitted to your consideration, except for the adding of the word « et » (and), is the text which was adopted at Rijeka. Only the word « et » (and) has been added after the words « s'appliqueront à tout connaissement relatif à un transport de marchandises d'un Etat à un autre » (shall apply to every bill of lading for carriage of goods from one State to another). It is an amendment of pure form in order to render the French text more explicit.

This new provision which is intended to supersede Article X of the 1924 Convention, figures in the draft you have before your eyes under article 5.

Afterwards, we have examined the various positive recommendations of the International Subcommittee.

The first and the second of these recommendations were negated after much discussion.

The Subcommittee therefore proposes not to amend the 1924 Convention in respect of those two points.

The first point was concerned with the carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee.

The second point is the one which figures in the report of the International Subcommittee under the heading « Notice of claim ».

As regards the third positive recommendation of the International Subcommittee, the Subcommittee moves an amendment to the present text of the Convention, more exactly to the present text of Article III, par. 6, relating to the one year period for the entering of claims.

The object of the aforesaid amendment is to give the text a bearing as wide as possible, so as to embody within the scope of application of the one year period, even the claims grounded on the delivery of the goods to a person not entitled to them, i.e. even in the case of what we call a wrong delivery.

The new provision which we submit to your consideration figures in the draft you have before your eyes under Article 1, par. 2. It is to the first sentence of this paragraph 2 that I am alluding for the moment. I shall comment on the second sentence of this same paragraph in a few minutes, in connection with another question.

So much for the third positive recommendation of the International Subcommittee.

The fourth positive recommendation concerns the gold clause, the rate of exchange and the expression « package or unit ».

The Subcommittee proposes to adopt the recommendation of the International Subcommittee and the text which is submitted to your consideration on that point figures in the draft you have before your eyes under Article 2.

The fifth recommendation of the International Subcommittee concerns the liability in tort, the « Himalaya » problem.

After having debated this point at length, the Subcommittee proposes to adopt the three first paragraphs of the recommendation of the International Subcommittee as they figure on page 29 of the report of the International Subcommittee, however, with two reservations.

First reservation : the Subcommittee proposes to delete in the text all references to the independent contractors, in French « sous-traitant indépendant ».

The Subcommittee feels that there is no need for the independent contractors to be entitled to the benefits of the new provisions which are now submitted to your consideration.

The second reservation is less important, for it only concerns the drafting and more particularly the drafting of the French text. This reservation concerns the translation into the French language of the words « servants and agents ».

The Subcommittee proposes to do the same thing that was done on the occasion of the amendment of the Warsaw Convention, i.e. to translate those two English expressions by one single French word, which actually embodies them both, the word « préposé ».

This is a parlance which corresponds to the one already used in other international conventions and it therefore seems to be advisable not to depart from it.

Besides, the Subcommittee proposes not to accept the fourth paragraph of the recommendation of the International Subcommittee, this said paragraph figuring at the top of page 31 of the report of the International Subcommittee.

It concerns the provision which deprived the servants of the benefit of the defences and limits of liability provided for in the Convention in case of an act committed with intent or of a gross fault (« faute lourde »).

The Subcommittee also felt that there was no need to retain the new paragraph 7 that the International Subcommittee had recommended to be added to Article IV. The object of this new paragraph was to deprive the carrier himself of the benefit of the defences and limits of liability, in case of an act committed with intent or of a gross fault (« faute lourde »).

The sixth recommendation of the International Subcommittee has not been debated at all and the Subcommittee proposes to adopt this recommendation as it is. You will find this recommendation in the draft you have before your eyes, under article 4.

We propose to add this new provision to Article IX of the 1924 Convention, for the following reason. The carrying of the recommendations of the International Subcommittee in regard to the gold clause, results in the rescission of the present text of Article IX. From now on, there will be therefore one article void of contents in the 1924 Convention.

In order to avoid the altering of the numbering of the last articles of the 1924 Convention, it would seem advisable to add to Article IX, the new provision relating to nuclear damage, this provision having been recommended to you by the International Subcommittee.

The seventh recommendation of the International Subcommittee concerns the « Both to Blame Clause ». This recommendation is not intended to introduce a new text in the 1924 Convention. It has only

been decided that an extract from its protocol for November 4th and 5th, 1960 should figure in the report. This has been done at the request of the American Association.

The American Association has brought to the knowledge of your Subcommittee that it did not wish that the Subcommittee reach any supplementary decision whatever on this matter, nor that the Stockholm Conference be invited to deliberate on this topic.

We have complied with the above request and we have no recommendations to make to you on that point.

The Subcommittee has thereafter examined some of the other points considered by the International Subcommittee, for which this Subcommittee had not deemed advisable to make any recommendations.

I shall now examine rapidly those which your Subcommittee has reconsidered and I shall therefore follow the numbering of the report of the International Subcommittee.

First of all, the n° 8, the question of deck cargo.

The Subcommittee has considered a recommendation which had been made on that point by the British Association in its amended report. This recommendation tended to introduce in the Convention, a new provision on that point.

Upon examination, the Subcommittee was however of opinion that there was no need to adopt this recommendation and same was therefore negated.

The eleventh item concerns the case of the Muncaster Castle or more exactly the interpretation of the due diligence laying on the carrier. This interpretation has formed the subject of a decision of the House of Lords, in the case of the Muncaster Castle.

The Subcommittee has considered the recommendation which has been made by the British Association in its amended report dated April 30th, 1963 and wherein figures a definite suggestion, on page 9 of the third brochure, tending to complete Article III, par. 1, by adding the following provision : « Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the Carrier has taken care to appoint one of repute as regards competence, the Carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents in respect of the construction, repair or maintenance of the ship or any part thereof or of her equipment. Nothing contained in this provision shall absolve the Carrier from taking such precautions by way of supervision or inspection as may be reasonable in relation to any work carried out by such an independent contractor as aforesaid. »

The Subcommittee has not concealed the interest of the above suggestion, but we deeply regret that it has not been possible to examine

this suggestion more in detail in the report, more especially as it has only been formulated a few weeks before the opening of this Conference. Very opposing views have been expressed on the above suggestions during the meetings of the Subcommittee and finally, the British Association proclaimed that it did not insist on the Subcommittee coming to a decision on that point, by a vote, but this Association reserved itself to eventually submit its suggestion at the plenary session of the Conference.

Therefore, we have no suggestion to offer you on that point, as in the deference to the desire of the British Association, the Subcommittee abstained from voting to this effect.

The thirteenth item concerns another point considered by the International Subcommittee. The Subcommittee has complied with the wish expressed by the minority of the International Subcommittee. It concerns the problem of statements in bills of lading as evidence.

According to the opinion of the minority of the International Subcommittee which figures on page 47 of the report of the International Subcommittee, it is not actually a question of bringing, to this effect, an amendment to the provisions of the 1924 Convention, but only of confirming an interpretation which is admitted in many countries, as it has been said and confirmed during the proceedings of the International Subcommittee.

It happens that in other countries, this interpretation, which is accepted nearly everywhere and which is considered as good and advisable, cannot be recognized by the Courts in view of the present text of the 1924 Convention. An express text would be necessary in order to be able to win acceptance for this interpretation.

It is with a view to complying with the request of the countries where this interpretation cannot be accepted in the present state of the text, that the Subcommittee has decided to recommend you to adopt a short addition to Article IV, par. 4 of the 1924 Convention. This addition figures in the draft Convention you have before your eyes, under article I, par. 1.

In Article III, par. 4 shall be added : « However, proof to the contrary shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith ».

As third item, the Subcommittee has retained the consideration of a suggestion which had been made by the French Association and has adopted same after some minor drafting amendments. You will find the text of that suggestion in the draft you have before your eyes, under article I, par. 3. It concerns the recourse actions. Recourse actions may be brought even after the expiration of the limit provided for in the preceding paragraph if brought within one month, commencing from the day when the persons bringing such recourse actions have been served with process in the action against themselves.

But I learned this morning that the Conference will have to examine a draft amendment which will be moved jointly by the French and American Associations. This draft amendment is not intended to bring a substantial amendment to the above suggestion, but to take in account certain peculiarities in regard to the time limit in certain countries. This is rather a question of drafting improvement than of a fundamental alteration.

The sixteenth recommendation was the last point that our Subcommittee considered. It concerns the item headed : prescription.

Here again, it is a matter in which only a few countries are concerned. In certain countries of Western Europe, the one year period is considered as a « *délai de déchéance* » which means that it is not possible to extend this period even by an agreement between the parties. This brings about the following situation, which is obviously regrettable, that in case of damage or loss for instance, and when the Carrier does not contest his liability, even then it will be necessary to serve a writ on this Carrier anyhow, before the one year period has expired, failing which the forfeiture will be acquired against the holder of the bill of lading. This solution, which is only accepted in a few countries, is obviously regrettable. Fortunately, the problem does not crop up in other countries. These latter countries are in a majority, but the Subcommittee has considered that it was possible, without any inconveniences, to accede to the suggestion which had been made by the German Association in its comments on the report of the International Subcommittee, suggestion which tends to the adding of a very short text to Article III, par. 6, providing that the one year period may, however, be extended should the parties concerned so agree.

In most countries, this is a matter of course and there is therefore no need to say it, but in some countries, it is on the contrary absolutely necessary that it be said.

The Subcommittee has felt that in these circumstances, there was no objection to recommend you the above adding which you will find in the draft you have before your eyes, under article I, par. 2. The second sentence is concerned.

Here, I will open a parenthesis. I notice that in the English text, this second sentence has been put in a new sub-paragraph. We certainly ought to avoid such differences which could bring about confusion. Actually, there is no reason why we should not put this sentence after the text of the paragraph as it is presently drafted.

Mr. Chairman, Ladies and Gentlemen, those were the comments which I deemed it proper to make on the work of the Subcommittee, over which I have had the honour to preside.

With your permission, Mr. Chairman, I would now like to add a few personal views about the result of our work in committee.

I have been impressed owing to the fact that, among the other topics considered and set aside by the International Subcommittee, there are several of them to which the national associations, or at least certain national associations, persist in attaching importance. This is what can be deduced from the comments which have been made following the report of the International Subcommittee.

As a matter of fact, we find statements about several of those questions, sometimes four, sometimes three, sometimes only one, which expressly ask that such or such matter be further studied. In certain cases, and this happens with the British Association, the association even gives notice of its proceeding with the study of such or such topic. Such is the case, first of all, with the question of liability before loading and after discharge. The British, French and Italian Associations reveal the interest that they persist in attaching to a positive solution of this problem and I note, in particular in the comments of the British Association, the following sentence : « if it would not be appropriate to discuss the matter at the Stockholm Conference. It will however be necessary to evolve a clear definition of the period of the carrier's liability ».

The same happens with regard to the interpretation of the due diligence. Following the decision in the « Muncaster Castle », in its report dated 30th April, 1963, the British Association declared that it was thought that further serious efforts should be made to reach a compromise on that point.

As I said just now, although it was actually offered « in extremis », we have an opposite suggestion before us which obviously deserved a further study. It is the first effort which we are invited to make after the report of the International Subcommittee, as it is meant by the British Association, which urges us to carry on in that direction.

The same happens again with regard to the question, undoubtedly less important, of the validity of the invoice value clause. I also read in the comments of the British Association on that point, that it is felt that this question should not be raised at the Stockholm Conference but that it should be the subject of discussion thereafter.

What I have just said concerning those few matters might also be true for other suggestions on which the International Subcommittee has not yet expressed a view as to their merit. As it appears from the report of the International Subcommittee, some of those suggestions have been set aside as being of little importance or simply, as having been considered not very appropriate.

I will not go into detail on that point but I would only like to quote the items Nos. 12, 19, 20, 22 and 24.

This is what I have established when perusing the result of our deliberations and consequently, the presumption is that following the studies which will thus be carried on within the various national asso-

ciations, suggestions on various points will be laid before the Diplomatic Conference when same will hold its meeting.

Ladies and Gentlemen, here a question crops up which, personally, I believe to be important for us. Would it not be advisable that the suggestions on those points which have previously been set aside but which are further studied within the national associations, be also previously considered by the International Maritime Committee? Is it not the normal part of the International Maritime Committee? Would it not be unfortunate that, on a series of points, suggestions be laid before the Diplomatic Conference which would not have been considered by the International Maritime Committee? Personally, I feel that it would be regrettable. As far as lies within our power, we ought to avoid such a situation.

If this is also the opinion of the Conference, it will of course rest with the President of the International Maritime Committee to consider whether this result is achievable or not. He will perhaps consult the Conference about the most appropriate means to that effect, there being no possibility, of course, of reconsidering the positive results which have been acquired and which figure in the draft convention you have before your eyes and which establish the progress of the work of the International Maritime Committee in regard to the 1924 Convention.

Ladies and Gentlemen, to sum up, I believe I may say, with all due modesty, that the draft, as it results from the deliberations of the Subcommittee, if it reflects the present progress of our work, might not be absolutely complete, without reproaching anyone in the slightest, but owing to the studies which are being carried on and which will still be carried on, this draft ought to be completed before being brought before the Diplomatic Conference, for it is necessary that the draft we are putting before that Conference should contain definite recommendations on all the points in connection with which an amendment will have been considered both desirable and possible.

Therefore, I feel that we ought to reserve the possibility of still adding to the draft you have before your eyes, such provision on points which are not considered in that draft.

It is not possible of course to put off this supplementary work for two years, until we have the pleasure in meeting again at New York, on the occasion of the next Conference of the International Maritime Committee. Maybe there are other procedures; maybe there are precedents. I think that in this respect, we can only leave it to the discretion and cleverness of our President. As for me, I have simply wanted to draw the attention of the Conference on a point which seems important to me.

(Sustained applause).

**The President** (translation) : Ladies and Gentlemen, I believe I am voicing the general feeling when offering Mr. Van Riyn my very

special congratulations on the interesting account he has just given and when also congratulating all the members of the Subcommittee he has presided, on the very important work which is now laid before our Plenary Assembly.

I would now like to explain to you how I consider our debate. I think it will comprise three parts : we shall first of all consider the various points which had been retained by the International Subcommittee, and the decisions reached on those points by the Subcommittee which our Assembly has set up, in order that you be able to accept or reject the final conclusion which, in the present state of things, they have reached.

Afterwards, I think that we shall have to consider the points which, beside the solutions retained by the International Subcommittee, are moved or have been retained by the Subcommittee of the Assembly.

Finally, we shall no doubt have to come to a decision as to the suggestions which have just been personally made by the President of the Subcommittee.

If you agree with this procedure, I shall open the general debate successively on the various recommendations which have been moved by the International Subcommittee.

#### *First Recommendation*

If you have no objection, I shall follow the order of the report of the International Subcommittee and I shall therefore commence with the first positive recommendation of the International Subcommittee concerning the carrier's liability for negligent loading, stowage or discharge of the goods by the shipper or consignee. This recommendation figures on pages 10 and 11 of the report.

The Subcommittee of the Assembly proposes to reject the recommendation and not to adopt a positive provision on the point which is the subject of this said recommendation.

The suggestion which is brought before our Assembly, in the present state of things, is not to arrive at a conclusion on this first recommendation.

If someone wishes to make a statement on this first suggestion, I will ask him to come to the platform.

In the negative, we shall have to consider that this first recommendation is not adopted.

As nobody requests leave to speak, I consider that the suggestion made by the Subcommittee of the Assembly to reject from our debate the first positive recommendation, is carried by this Assembly.

#### *Second Recommendation*

The same situation arises in regard to the second positive recommendation, figuring in the report of the International Subcommittee

on pages 14 and 15. It concerns the « Notice of Claim » or « Avis de Réclamation ».

The recommendation of the International Subcommittee has not been adopted by the Subcommittee of the Assembly. I therefore submit to the consideration of this Assembly the ratification of the conclusion reached by our Subcommittee, unless someone wishes to make a statement on that point.

If nobody requests leave to speak, I consider that the suggestion not to adopt the discussion of the second recommendation, is also carried by the Assembly.

### *Third Recommendation*

The third positive recommendation, figuring on pages 16 and 17 of the report of the International Subcommittee, concerns the « time limit in respect of claims for wrong delivery » or « prescription en matière de réclamations relatives à des délivrances à personnes erronées ».

The Subcommittee of the Assembly recommends the text which it has formulated on that point in document 5, under article I, par. 2.

**Mr. W.H. Hecht**, United States of America : The French and United States Delegations have proposed a Joint Amendment which is found in Document CONN/STO-6 dealing with Recourse actions.

The proposed amendment would insert in Article III Sub-Section (6), paragraph (4) the following :

« Recourse action may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case.

However, the time allowed shall be not less than three months, commencing from the day when the person bringing such recourse action has been served with process in the action against himself. »

This is a joint proposal of the French and United States Delegations and I understand it has the support of many of the other delegations.

**The President** (translation) : We have before us an amendment of the American Delegation to the text recommended by the Subcommittee. This amendment comes after the text recommended by the Subcommittee of the Assembly, viz. the text of Article I, par. 2, concerning which the amendment is not moved as such. We shall return to it in a moment because it immediately follows up that text.

I propose to the Assembly to make known their comments on Article I, par. 2.

If there are no remarks on Article I, par. 2, I consider that the Assembly follows the Subcommittee on that point.

Let us immediately proceed with the following provision to which refers the amendment which has just been moved by the American

Delegation. This amendment forms the subject of document Sto/6. It tends to supersede to Article I, par. 3 of the Subcommittee's report, the text which forms the subject of the amendment — document Sto/6 — moved by the American Delegation, which amendment has just been commented.

The American Delegation points out that its amendment — document Sto/6 — ought to be slightly corrected. May I ask you to kindly take up this document and read the last line as follows : « When the person bringing such recourse action has settled the claim or has been served with process in the action against himself » or in French : « où la personne qui exerce l'action récursoire a réclamé ou a elle-même reçu signification de l'assignation ».

The amendment moved by the American Delegation — document Sto/6 — being thus perfected, I now put it to your votes.

*Voted in favour* : Belgium, France, Germany, Great-Britain, Greece, Netherlands, Switzerland, U.S.A.

*Voted against* : Italy, Norway, Sweden.

*Abstained from voting* : Canada, Denmark, Finland, Ireland, Japan, Poland, Portugal, Spain, Yugoslavia.

**The President** (translation) : The amendment is adopted.

#### *Fourth Recommendation*

**The President** (translation) : The fourth recommendation of the International Subcommittee concerns Article IV (5) and IX : « Gold clause, rate of exchange, unit limitation ».

The Subcommittee of the Assembly recommends to supersede Article IV (5), first sub-paragraph, by the provision which forms the subject in document Sto/5 of Article II (1), and to add a provision in the same document, which forms the subject of Article II (2).

**Mr. J.P. Kruseman**, Netherlands : Mr. Chairman, it is only a very short remark : is it not necessary in connection with this Gold Clause to mention in the Protocol that we have before us whatever the word maybe. It is said in an indirect way in connection with a new clause regarding Atomic ships that there will be a new version of Article IX.

I would suggest it is much better — and that is the first remark I have to make in a positive way — that in the Protocol of today, Article IX of the Convention of 1924 is cancelled because, otherwise, there might be some doubt as to whether Article IX which is in connection with the Gold Clause has been withdrawn or not.

I suggest to put a positive statement that Article IX is withdrawn, cancelled, whatever the word maybe.

If you will allow me, Mr. Chairman, another word. I would like to make another proposition and that is not to give the Article regarding Atomic Ships, N° IX but rather make it a new Article and for this particular reason that it will take a few years before the new Protocol, if it is adopted at the Diplomatic Conference, will become effective. Then you will have to wait and see what countries and how many countries will ratify it and there is always a chance, and rather a large chance, that all the countries that adopted the Convention of 1924 will not adopt and, all at the same time, the new Protocol with the result that there will be a lot of countries that have only the old Convention of 1924 including Article IX of the Gold Clause which does not operate and there will be other countries who have adopted the new Protocol and they will have a Convention with the same article but on quite a different subject. That tends to create confusion and in as much as the Convention and the Protocol do not only operate in the Courts and with lawyers but, first of all, operate in the course of the daily work of the steamship companies and the insurance companies and the shippers and consignees who all have to work with it, including their agents who are very simple people, we must not confuse them too much. So I definitely propose to say in this Protocol that Article IX is cancelled.

Secondly, I propose that the new clause regarding atomic ships be made an article with the next number.

**The President** (translation) : Ladies and Gentlemen. We have before us a suggestion of the Dutch Delegation which consists in adding to Article II as recommended by the Subcommittee of the Assembly, a third paragraph as follows : « Article IX of the Convention is abrogated ».

Does anyone wish to make a statement on the amendment moved by the Dutch Delegation ?

If the Assembly agrees to insert the above amendment in Article II, there is no need to take a vote by calling over the names of each delegation. Are there any objections ?

I believe I may consider this amendment as adopted.

Article II recommended by the Subcommittee of the Assembly, which comprises 3 paragraphs whereof the last one is worded as follows : « Article IX of the Convention is abrogated », is adopted.

#### *Fifth Recommendation*

As to the following positive recommendation, same concerns the « liability in tort, the « Himalaya » problem ».

The Subcommittee of the Assembly recommends in this respect a text which figures on page 2 of document Sto/5.

I have just received from the Canadian Delegation a draft amendment relating to Article III. It is the subject of document Sto/7. This amendment, drafted in the English language only, is as follows : « The Canadian Delegation proposes :

(1) that reference to « agent » and « agents » be deleted from the English translation of Art. 4bis (being document Conn. Sto-5 English) so that from Art. 4bis (2) will be deleted the words or agent »  
and from Art. 4bis (3) will be deleted the words « and agents »

(2) no change in the French text. »

The Canadian Delegation therefore asks an amendment to the English text by deleting the words « agent » and « agents » from Article IVbis (2) and (3).

Does anyone wish to make a statement on the amendment moved by the Canadian Delegation ?

**Mr. K. Grönfors, Sweden :** Mr. Chairman, May I remind you that in the Warsaw Convention of 1929, the French word « préposés » is translated « servants or agents ».

I think another translation might cause much confusion in the future.

**Mr. P. Wright, Canada :** Mr. President, Although this Amendment proposed by the Canada Delegation appears to be a matter of form, as far as we are concerned we think it is a matter of substance and it is a matter of substance that was referred to and dealt with in the United States Amendment, STO/8, and while I am only too happy to discuss our amendment, I would like to say that the Canadian Delegation would vote for the American amendment. I would like, however, if I may — as I am on my feet — say why we advocate the elimination of the word « agent » or « agents » from the proposal that has come from the Subcommittee.

We have just heard from the Swedish Delegation of what appears in the Warsaw Convention but I suggest to the Assembly that we should pay some attention to what appears in the Hague Rules of 1924 which are printed at the back of the Report of the International Subcommittee and I direct your attention there to pages 8 and 9 of the text of the Hague Rules where you will find this very matter dealt with in translation and you will see that in the version of the Hague Rules giving the exemptions under (2), you have « des actes, négligence ou défaut du capitaine, marin, pilote ou des préposés du transporteur... » in the French version and in the English version you have : « Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier » and « of the agents or servants of the carrier ». That same translation

appears in Rule or Clause 2 (q) at the bottom of pages 8 and 9. It seems to me a strong proposition that we are putting forward that the amendments to the Hague Rules and the translations in them should conform to the Hague Rules rather than to the Warsaw Convention on another matter and I leave that with you for your consideration.

Now, Gentlemen, the point of substance that concerns the Canadian Delegation is the one that has already been discussed and that is whether independent contractors are covered. It was agreed, as I understood from Mr. Van Ryn, in the Commission, that independent contractors were intended to be covered by Article III and Clause (2) but in the French version I understand that independent contractors are not covered.

It is our view in the law of Canada that the word « agent » can and does include a variety of independent contractors and as it is not, in our view a proper translation under the Convention in this translation of the French, we think it should be limited to servants. Now, we think this for two basic reasons : one is purely a Canadian one and though it may not affect other countries, we are a federal country and our Federal Government represented at the Diplomatic Conference can only enact legislation in this matter with regard to navigation and shipping if we admit that independent contractors who may be connected with the shipping trade are not engaged directly in the business of navigation and shipping. We do not ask others to change their position or views but we cannot change our position.

A second part of that is one which was referred to by the Secretary General when matters of this kind were being discussed and that it is the business of a Comité Maritime International to concern itself with shipping and with what happens on the seas with regard to maritime commerce and we are always seeing in our meetings great attempts to extend the jurisdiction and interest of the Comité to matters ashore and other matters, such as we have them, of recourse and matters which do not directly deal with the subject matter which is specially our own and I do commend that point of view to the meeting.

**Mr. W. Hecht, United States :** Mr. President, May I speak to our proposed amendment, I was not entirely clear as to whether Mr. Wright withdrew the Canadian amendment.

**Mr. P. Wright, Canada :** We are not withdrawing our amendment but if your amendment is put first we will vote in favour of it.

**Mr. W. Hecht, United States :** I would like to move our amendment and I think it was the sense of the Subcommittee that the exemption should extend to an independent contractor or to such as a stevedoring company or other independent contractor. When we use the word servant or agent we feel that we are probably intending to give

effect to that but under our law servant or agent should include the stevedore or other independent contractor, and this is in line with the meaning that these independent contractors were not to get the benefit of this exemption that we proposed in our amendment. We do feel for clarity or draftmanship that in our amendment under the paragraph No. 2 there should be a comma or parenthesis after the word carrier, and before the words such servants, and the parenthesis should end after the words independent contractor. There should probably be a comma after that parenthesis, and in paragraph No. 3 there should be no comma after the word carrier on the second line.

**The President** (translation) : We are now considering both documents Sto/7 and Sto/8 as they actually refer to the same provision and are in close connection, one of them being a Canadian amendment, the other an amendment moved by the Delegation of the United States.

**Mr. J.P. Kruseman**, Netherlands : Mr. Chairman, yesterday in the Commission there was a long discussion regarding a question of translation. The British proposal was to mention « agents and servants » or « servants and agents » and then originally the French translation ran « agents et préposés ». Yesterday it was clearly demonstrated, I think it was by the French Delegation that the correct translation in this connection should be only « préposés » without the word « agents » (in French). But now we are seized with the amendment to strike out in the English text on that last proposal the word « agent » (English). Now one of my colleagues has taken yesterday the whole day and I have controlled his work, to find out in the original Convention of 1924 what about « agent » (English and French) and what about « préposé », and I think if I am not mistaken they are mentioned nine times.

In the English text of the Convention you will find the « agent of the carrier » in the Article 3, par. 3 (two times), par 6 and par. 7, in Article 4, par. 5, par. 6 and Article 6; the « agents and servants » are to be found in Article 4, par. 2, par. 3 and in Article 6; the « servants » without mentioning the « agents » are in Art. 4, par. 1a and in the Protocol, par. 1. In the French text you will see in the same articles and paragraphs respectively « agent du transporteur », « agents ou préposés » et « préposés » without more. In Article 4, par. 2, sub i is, moreover, the « agent or representative (agent ou représentant) » mentioned, but they are connected with the shipper and we can leave them aside in this respect.

I am making a suggestion : let us be careful that in the text of a new article to be added to the Convention, we don't throw away something we have in the Convention in this connection. It is my understanding that in English (in Great-Britain) there are two ways of using the word « agent », one is a shipping agent in the sense of some-

one who signs Bs/L, delivers cargo etc., and there is another kind of « agent » who does other work and who is also called « agent ». I am afraid we will get into all kinds of difficulties if we translate one kind of (English) « agent » by (French) « agent », and the other kind in « préposé », then I would prefer to have a Dutch version of the whole Convention.

Mr. Chairman, I am not joking, I think that if we are not very careful, the Diplomatic Conference will say that the work has not been done very well in Stockholm, or that afterwards we will have no end of trouble with courts, or even before we come to the courts, and so on and so on. So I would respectfully suggest that we try and get out of this muddle — how Mr. Chairman, perhaps you can best advise and we propose a committee of one — being yourself. Thank you, Mr. Chairman.

**Mr. J. P. Honour**, Gt. Britain : I will be extremely brief. It was always the intention of the British Delegation to include in this amendment agents. To give you one example we are referring to actions which may be brought against members of the crew in order to get round the Hague Rules we should propose also adding all cases of ship's managers who may also be sued for this reason. Ship's managers under English law are in fact agents and not servants and therefore if the Canadian amendment were adopted such people would not be included.

As regards the American amendment I would like to say that it would seem that their main intention is to expressly exclude independent contractors. With this we would not in any way disagree but we would suggest that if this is in fact their only reason for the amendment the words « stevedoring company or » should be deleted and the amendment of the draft would write in the words « and other such servant or agent not being an independent contractor ». We would have no objection to the amendment on these lines, but we do not see why the words « stevedoring company » should be included, as this can in fact indirectly include agents.

**The President** (translation) : Does anyone else wish to come to the platform ?

If nobody requests leave to speak, we shall successively put to your votes the two amendments submitted to the consideration of the Assembly. The first amendment forms the subject of document Sto/7, a Canadian amendment which tends to delete the words « agent » and « agents » from the English text...

**Mr. P. Wright**, Canada : Mr. Chairman, would it be possible to have the American amendment first it would be a great deal easier for the meeting and would certainly carry the judgment of our delegation.

**The President** (translation) : I think there are good reasons in proceeding according to the request of the Canadian Delegation. I therefore withdraw the suggestion I have just made and we shall now put to your votes the amendment forming the subject of document Sto/8, moved by the Delegation of the United States.

The American Delegation agrees with its amendment being corrected according to the wish expressed by the British Delegation, i.e. that the amendment should read on page 2 as follows : « such servant or agent not being an independent contractor », the words « the stevedores companies » being deleted.

We shall now put to your votes the amendment moved by the United States.

**The President** (translation) : We shall therefore put to your votes the amendment moved by the American Delegation, being document STO-8.

*Voted in favour* : Belgium, Canada, Denmark, Finland, France, Great Britain, India, Ireland, Italy, Netherlands, Norway, Portugal, Sweden, United States, Yugoslavia.

*Abstained from voting* : Germany, Greece, Japan, Poland, Spain, Switzerland.

**The President** (translation) : The amendment is adopted.

**Mr. P. Wright**, Canada : It is withdrawn.

#### *Sixth Recommendation*

**The President** (translation) : The sixth positive recommendation concerns nuclear damage. It is the subject of Article 4 of the study of the Subcommittee.

If nobody requests leave to speak, I consider that the Assembly carries the recommendation of the Subcommittee.

Adopted.

#### *Seventh Recommendation*

It is understood that the seventh recommendation does not form the subject of a deliberation.

### ARTICLE X

Before leaving the proposed subjects, we still have to consider the suggestion formulated in regard to Article X of the Convention, which forms the subject of Article 5 of the Subcommittee of the Assembly, on page 3 of document C 5.

**Mr. H. Andersson, Finland :** Mr. President, only for the sake of clarification, if a ship loads in one port which is not in a State in the Convention and discharges in another port which is not a Contracting State but the bill of lading contains a stipulation regarding an optional port which might be in a Convention State, should the Convention then apply ?

*Several voices :* Yes.

**The President (translation) :** If nobody wishes to make a statement on Article X, I consider that the Assembly follows the Subcommittee and adopts the proposed text.

#### *Eighth Recommendation*

We shall now proceed with the subjects which have been considered by your Subcommittee, some of which having formed the subject of suggestions of texts which figure in document STO-5.

I return to the list of topics examined by the Subcommittee and I shall follow the order of the report of the International Subcommittee.

The 8th point has been considered in committee but does not form the subject of a recommendation to this Assembly.

It is understood that even for the topics which are not the subject of recommendations, if someone wishes to come to the platform, he will kindly show himself.

#### *Eleventh Recommendation*

Thereafter comes point 11 concerning the « due diligence to make ships seaworthy » or « diligence raisonnable pour mettre le navire en état de navigabilité ».

**Mr. E. W. Reading, Great Britain :** Mr. President, Ladies and Gentlemen, the British Delegation would not like any of the questions that have not been dealt with, or are dealt with today, to be referred to international commissions. They would like us here today to settle on what should go forward to the Diplomatic Conference.

Therefore we do not answer that we should discuss this wording that we have put forward, I think in Document No. 3, which was the British proposal for a revision to enable us to overcome the difficulties created by the « Muncaster Castle » case, but we would like to ask you, Sir, if you would be indulgent and take a vote on the principle.

**Mr. Martin Hill, Great Britain :** Mr. President, the principle the British Delegation is seeking to establish is contained in the amendment that we have proposed in the yellow booklet No. 3 of June 1963. To try to put it into a few words it is that the carrier shall not be deemed to have failed in the exercise of due diligence if he has sent

his ship to a competent ship repairer and something is wrong with the ship solely because the ship repairer has failed to do his job properly for the shipowner. I think that is the best way in which I can state it.

The shipowner sends the ship to a competent ship repairer and shall not be deemed to have failed in the exercise of due diligence solely because of a fault on the part of the ship repairer, and I emphasize the word « solely ».

**The President** (translation) : The intervention of the British Delegation has in view that the problem which this Delegation has raised, should be clearly defined.

I shall ask the British Delegation to be all attention so that we do not enter needlessly into certain discussions that this Delegation might not have in view.

First question : does the British Delegation move or not a text of amendment as to which the Assembly has to come to a decision ?

Following the statement which has been made in the first place, I have understood that the British Delegation does not wish that we come to a conclusion as to a text.

Therefore, there is no amendment put to the votes of the Assembly.

I have understood that the British Delegation wants us to reach a decision as to a principle, i.e. not to come to a decision regarding a text but to express a wish of a general meaning.

This suggestion is of course somewhat unusual. Personally, I shall only be able to enter upon that course of the Assembly itself, by means of a previous vote, wishes to come to a decision as to the above principle.

If the Assembly decides and feels that there is no need to come to a decision as to that principle, we shall then not try to reach any decision.

I cannot put to the votes of this Assembly mere principles or mere general views.

It is a sound practice of the deliberative Assemblies to come to decisions as to texts only. However, if the Assembly requested its President to proceed to a vote, he would bow to your decision.

There is thus, if you like, a kind of a previous vote which would be issued in order to decide whether we wish or not to come to a decision as to a principle or be satisfied with the common practice.

**Mr. W. H. Hecht**, United States : Mr. Chairman, our delegation at a caucus yesterday decided that we would abstain from any position. There was a considerable divergence of opinion in our delegation as to the stand we should take. We have no instructions on this point from our Association, the British proposal coming after we had our meeting in May, and it was felt that the most appropriate action for us today would be to abstain.

I do however question the advisability of voting on principle when we do not have the text of anything before us. That is my personal view.

**The President** (translation) : The opinion expressed is of course the traditional rule of our deliberations.

**Mr. J. Loeff**, Netherlands : Speaking on behalf of the Netherlands Delegation, I must say that by the last proposal on the part of our British friends we have been placed in a very difficult position. We started with a text proposed by the British Delegation to do something about the « Muncaster Castle » decision, that is very reasonable, but I must say that I doubt very much what we have to do when the text more or less is withdrawn and we have to vote on the principle. Then you never can know what the text will be.

We should have been prepared to vote for the British text in order to open the possibility of consulting the people interested in Holland, and of course leaving it open as far as the Brussels Conference is concerned, the final decision to be with the Governments concerned, as is always understood. But now the Netherlands Delegation feels that it is certainly not in a question to vote in favour of a general principle.

Thank you.

**Mr. Martin Hill**, Great Britain : Mr. President, in trying to simplify matters by referring to principles the British Delegation has obviously made confusion more confounded rather than doing anything else. I think we will withdraw everything that we have so far said and we will refer to the exact text of the British wording in this volume No. 3 of June 1963 where it is set out on page 9, and we would move that amendment as it stands.

**The President** (translation) : Gentlemen, the situation has been cleared up. (Laughing). We have no more before us a suggestion on a principle, but an amendment moved by the British Delegation. It is the text which commences with the words « Provided that if » and ends in the words « as aforesaid » in document No. 3, page 9.

The British Delegation proposes therefore that this text be moved in the form of an amendment to the text of Article III of the Convention.

**Mr. F. Berlingieri**, Italy : Mr. Chairman, Gentlemen, the Italian Association has very carefully considered the British amendment during the past two days and it has come to the conclusions that this amendment cannot be supported, and that the « Muncaster Castle » decision is a very sound one. It is the opinion of the Italian Delegation that the British proposal, if carried, would upset the balance at present existing between the carrier and the owner of the goods.

According to our law there is a rule in tort whereby the principal is liable only for personal faults and for the faults of his servants, whilst he is not liable for the faults of independent contractors, but this principle does not apply in contractual relationships. When there is a contractual relationship the principal is liable not only for personal faults but also for those of independent contractors. The reason why this principle has been approved in our law is that the principal is that the person taking care of the enterprise who takes all the advantages which the enterprise may bring, must suffer loss and damages which may arise from the enterprise. For this reason he must be liable also if he employs independent contractors.

There are of course some exceptions to this principle in the Brussels Convention of 1924, the main one being that relating to non-responsibility of the carrier for faults in the management of the vessel, but this is an exception and we cannot extend this principle further. We think that if the British proposal is accepted the owner of the vessel could in all circumstances avoid his liability by employing independent contractors instead of servants in carrying out his obligations. He could, for instance, employ independent contractors for carrying out the stowage of the goods on board the ship, and in this case he would not be liable any more. Before the commencing of the voyage he could ask a surveyor of the classification society to carry out a visite to the vessel in order to ascertain whether or not the vessel was seaworthy. If this expert says that the vessel is seaworthy, according to the British proposal that shipowner won't be liable anymore, and this we say is wrong.

Now consider the position from the point of view of the receiver of the goods. We would find if the proposal is carried this poor receiver won't be able to recover damages he is going to suffer to his goods in all cases where an independent contractor has been properly employed by the shipowner, and it would be very difficult for him to try to act in tort against the shipyard, for instance, the stevedoring company, etc. It is very doubtful if in some legislations this action in tort would be permissible, but in any case even if this action in tort might be considered permissible it might very well happen that the shipyard has employed a sub-contractor to carry out certain repairs, so he would just reply to the consignee, « I am sorry, we haven't carried this out personally, we have employed somebody else », and in this case action would have to be taken against the sub-contractor, and so on.

I have to conclude we cannot support the principle, and we must vote against it.

Thank you.

**Mr. J. Loeff**, Netherlands : Mr. Chairman, Ladies and Gentlemen, after what I said a couple of minutes ago it is not necessary for me to say much more. I will only say that after the clarification that has

now been given the Netherlands delegation will vote for the amendment as we think that if some action is needed on the Muncaster Castle decision this is the best solution. We wish to give our support and cooperation in order that this matter might possibly be brought before the Diplomatic Conference at Brussels.

I would like to say also that we make two express reservations. We must absolutely reserve the decision of the Netherlands Government, and we want very thoroughly to study the question whether, if the British amendment is adopted, the balance of interests which is the basis of the Hague Rules would not be destroyed. That is a very important question which we want to be absolutely free to study.

Thank you.

**Mr. Prodromides, France (translation) :** Mr. Chairman, Gentlemen, we have considered this matter within the drafting committee and as you know, we have come to the conclusion that it was very difficult to reach a decision as to the fundamental question and that it was advisable to entrust the question to the Plenary Assembly.

This means that we have to come to a decision regarding the fundamental question and that we have to adopt therefore a very important debate, for this question is of capital importance.

Therefore, I think it would be a very bad method, to say, after some short exchanges of views, I vote in favour or against. A question of this importance needs to be thoroughly studied.

From the first explanations which have just been given, I am under the impression, if I do not mistake, Mr. Chairman, that we have started that debate. May I therefore come to the discussions as to the fundamental question ? (Assent of Mr. Chairman).

In these circumstances, Gentlemen, I shall venture the following remarks. All the harm is the result of the decision of the House of Lords in the « Muncaster Castle ». It is well obvious that in order to come to a decision as to this question, we ought to know what the decision in the « Muncaster Castle » has exactly defined. We do not have that decision before our eyes. We have all studied the said decision but we do not keep it very clearly in mind.

To the best of my recollection, the question presented itself in the following way : you know that according to the Brussels Convention there are two cases of exemption of liability in favour of the shipowner :

1° He is not responsible in case of latent defect in the ship, a latent defect not discoverable by due diligence. In all countries, there is an almost unanimous jurisprudence which explains what is meant by latent defect. I refer to Article IV (2) of the Convention.

2° We have then Article IV (2) which provides that the shipowner shall not be liable for loss or damage resulting from unseaworthiness

of the ship, but on condition that he has exercised the due diligence which is required by Article III of the Convention, to make the ship seaworthy before and at the beginning of the voyage.

Both notions are full cousins but constitute two cases of exemption.

Now Gentlemen — and this is a point on which I venture to draw your very particular attention — in the case of the « Muncaster Castle », the shipowners have not at all taken up the discussion on the grounds of latent defect. If they have not done so, it is because they have felt that it was not a question of latent defect, in the sense of jurisprudence. If, in the case of the « Muncaster Castle », the defect attributable to the shipyard could have constituted a latent defect, there could not have been any « Muncaster Castle » case. The shipowner would not have been condemned. The shipowner has not opposed the latent defect but the unseaworthiness. He pretended that he was not responsible because the ship was unseaworthy. He said he had exercised due diligence by applying to a competent shipyard. The House of Lords — I sum up its decision in a few words — has decided : the due diligence is nothing that can be delegated. The due diligence should be exercised by yourself.

Gentlemen, this is how the problem presents itself. Consequently, the decision in the « Muncaster Castle » ought not to be considered, a priori, as something catastrophic for the shipowners. If we place ourselves on the grounds of latent defect, the shipowner will not be condemned. It is only on the grounds of the other case of exemption, the unseaworthiness of the ship, that we shall have to appreciate how the notion of due diligence will have to be construed.

Gentlemen, the Doyen van Ryn has devoted himself to a study of comparative law, and his report figures in the documents we have before us, on what decide either the decisions of jurisprudence or the authors in the different countries. You have then noticed that nearly all the countries have in this respect, a jurisprudence and a doctrine almost unanimous, in the sense of the decision in the « Muncaster Castle ».

Why should we then be here trying to modify or amend our Convention in order to avert the disparities in the various countries, when the quasi unanimity which we desire already exists in most countries ?

The second argument which has been brought forward in this connection by the British Delegation, has been the following one. The British Delegation declares : before the 1924 Convention, we had the freedom of contract. As a shipowner, I was entitled to stipulate in the bill of lading as many exemption clauses as I wanted and in particular, I could have validly stipulated, in a case like the « Muncaster Castle », that I was not responsible. This is exact. With the freedom of contract, the shipowner was entitled to do it, but that is precisely why the 1924 Convention was adopted to put an end to the abuses of the exemption clauses and to create a compromise, for the 1924 Convention is nothing

else than a compromise between conflicting interests. It has been said on the one hand, that the maritime carrier shall no more be entitled to stipulate the exemption clauses, but on the other hand, that he shall be legally entitled to the benefits of a full series of exemption cases and of limitation of liability. He shall be entitled to the benefit of those defences and limits of liability in all cases and in particular, in case of a nautical fault, even if those cases are the result of a gross fault (« faute lourde ») of the carrier or of his servants or agents. Before 1924, at the time of the contractual freedom, it was well said that the carrier was validly entitled to stipulate exemption or limitation clauses, but when the judges felt that it was iniquitous, the shipowner was condemned by the expedient of the gross fault (« faute lourde ») and the validity of the clause in case of gross fault (« faute lourde ») was contested.

You can therefore see, Gentlemen, that it is a compromise. If to-day, you want to modify that compromise, you overthrow the whole economy of those said arrangements proceeding from the 1924 Convention.

But at least, is the solution which is proposed by the British Delegation, although it overthrows the economy of the 1924 Convention, logical? Is it equitable? Is it legal? I do not think so. Personally, I consider it as a flagrant injustice and I feel that the decision of the House of Lords is completely equitable, completely defensible, completely legal. The reasons of this are.

It is already in itself a rather considerable thing to say that the carrier is not liable for latent defect, since it is a matter of damage sustained by the goods as a consequence of a latent defect of the thing, the ship. The decision on that point exists : it is said in the Convention, we do not have to return to it. But you can already see that we are in a tremendously exorbitant matter of common law and that it is a notion which cannot be extended, which can only be handled with much moderation.

This being so, let us now place ourselves solely on the grounds of equity. In the case of the « Muncaster Castle », we are in presence of three persons : the shipper, the carrier and the shipyard. It is a question of damage sustained by the goods as a consequence of a defect in the ship which has not been properly repaired. It is not abnormal that the carrier be held liable for that damage. It is quite obvious that the shipyard be held responsible, but what is quite abnormal is that the shipper be the one who is held responsible.

Now, to say that the shipper shall not be entitled in that case to bring an action against the carrier is to make him assume the responsibility of that defect. For if the shipper is not entitled to bring an action against the carrier, he shall not in practice be able to sue the shipyard either, which is however the real one in fault. The shipyard will tell

him : I do not know you. I have a contract with a shipowner. You, shipper, I do not know you.

One could say : but he shall always be entitled to bring an action against the shipyard on the grounds of a fault in tort. Maybe, but this is not certain for all countries, and even as far as in a country the action of this said shipper against the shipyard, with which he has no contractual bond, would be considered as admissible, the shipyard would say : if you are entitled to sue me in tort, the basis of my obligation is the building contract. Look for instance, there is a clause which allows me to supply such materials. You cannot therefore reproach me with having supplied those said materials, etc., etc.

You see that the whole debate will take place on the basis of a contract which the shipper does not know.

But Gentlemen, even if we admit that the action in tort brought by this said shipper against the shipyard could be accepted, this is only but an action in tort, i.e. an action in which the shipper will have the entire burden of proof, when he is bound with the carrier by a contract according to which he has nothing to prove. We are therefore completely turning the parts.

I have finished with saying this on the grounds of equity.

On practical grounds, it is so obvious that I, shipper who have only contracted with you, carrier, I apply to you, shipowner, according to the contract which is binding on both of us. I say to you : the damage sustained by my goods results from the fault, from the defect of your thing, the ship. Pay me and in your turn, you will sue the shipyard with which you, and you alone, have a contractual relationship. You tell the shipyard that it has not properly fulfilled its contractual promise to carry out proper repairs.

Those are the reasons why actually, I feel that the decision of the House of Lords has been delivered in a completely legal and equitable way and that there is no need to adopt the British amendment.

**The President** (translation) : I shall now call on the Norwegian delegate to address the meeting.

**Mr. P. Gram**, Norway : Mr. President, Ladies and Gentlemen, I speak here on behalf of the Norwegian Delegation and also of the Finnish, Danish and Swedish Delegations. We all feel very strongly we want to support the British proposal. The main point we want to keep in mind here is that it is not a question of upsetting the balance of the 1924 Convention but, as Mr. Miller told us so very clearly in the Commission, it is quite the contrary, it is a question of re-establishing the balance. The tendency is growing from the reasonable care, due diligence type of liability into a quite strict absolute warranty that was not the original idea of the great compromise which nobody wants to upset.

I think also the Assembly should very much bear in mind the reason why this was drafted, and so very carefully drafted, and why it came to us so late. It was because negotiations were going on in Great Britain between the shipowners' representatives and the cargo interests, and they reached agreement. That is no little thing, when one considers whether it is a question of upsetting the balance or not. We have actually very important cargo interests who are agreeable to this.

For these reasons we very strongly support this amendment.

Thank you.

**Mr. J.S. Perrakis, Greece :** The Greek Delegation has given due consideration to the amendment and reached the conclusion that it should be supported. It should be supported because I am afraid we cannot agree with the risk theory as expressed by Professor Berlingieri. He mentioned two things.

He mentioned one thing about stevedoring. I have the text of the amendment here that these independent contractors will be employed solely for the construction repair or maintenance of the ship. I don't think stevedoring enters into it, in that respect at all.

Secondly of course it should be noted there are two things which the British Delegation emphasized, one is the good repute of such an independent contractor, and the second was their insistence on the word « solely » by reason of such a thing, and that gives the clue to the matter.

Mr. President, I think that in spite of the compromise character of the 1924 Rules things in the technical field have changed a lot in the forty years since these questions were discussed in 1923. It is, if you will allow me to say so, rather unreasonable to expect that the shipowner should be held responsible for technical mistakes which cannot be considered as inherent vice or vice caché as Mr. Prodromides mentioned because these things may be such that due diligence cannot be exercised by the shipowner. It is asking too much of a shipowner, especially a small shipowner with only one or two ships, to exercise due diligence in some respect on his own to distinguish and to discover an inherent vice in such a purely technical matter as radar or in a refrigerating machine, and so on.

Therefore we come to the conclusion wholeheartedly to support the British proposal.

Thank you, Mr. Chairman.

**The President** (translation) : Does anyone else wish to come to the platform ?

We shall now put to your votes the amendment moved by the British Delegation.

*Voted in favour* : Canada, Denmark, Finland, Great Britain, Greece, India, Ireland, Japan, Netherlands, Norway, Sweden.

*Voted against* : Belgium, France, Italy, Poland, Yugoslavia.

*Abstained from voting* : Germany, Portugal, Spain, Switzerland, United States.

**The President** (translation) : The amendment is adopted.

The Subcommittee of your Assembly has also formulated recommendations as regards item 13 of the report of the International Subcommittee, concerning statements in bills of lading as evidence. I would refer to the text of Article 1, par. 1, where the Subcommittee proposes to add the following text :

« However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith ».

Does anyone wish to make a statement on the text of Article I, par. 1 of document Sto-5 ?

I consider that the Assembly carries the recommendation of the Subcommittee.

#### *Fourteenth Recommendation*

In the report of the International Subcommittee figures under item 14 : « Time limit for recourse actions », which we have already carried by vote a few minutes ago.

#### *Sixteenth Recommendation*

So it is with item 16 of the report of the International Subcommittee.

Gentlemen, we have now completed the examination of the points which had been retained by the International Subcommittee and those which, although they were not retained, have been the subject of suggestions made by the Subcommittee of the Assembly.

I feel that there is one last point which ought to be submitted to the consideration of the Assembly. The President of the Subcommittee of the Assembly has expressed the personal view that according to his account, there remained certain points which had not been dealt with and which have deserved our attention, so that your Assembly, if it wishes to submit those points to a supplementary joint study, should eventually either decide of the method of examination, or leave it to the administration medium of the International Maritime Committee, in order to arrange the study of those questions which form the subject of proceedings within the International Subcommittee. Does the Assembly wish to come to a decision in this connection in Plenary Assembly,

or does it wish to leave it to the Bureau Permanent to consider the suggestion of the President of the Subcommittee, eventually advised of the proper steps to be taken ?

**Mr. Pitois, France (translation) :** Mr. Chairman, Ladies and Gentlemen, the French Association of Maritime Law agrees to leave it to the Bureau Permanent to decide of the procedure to be adopted in regard to the examination of the points in abeyance. But we are very insistent that there be no delay in the adoption of the provisions, namely of Article X, of the various recommendations which have just been made. It would not be advisable that this study, if it was continued, result in the delaying of the presentation to the Diplomatic Conference of what has been adopted by our Congress.

**The President (translation) :** Gentlemen, I feel that we ought to take into account this legitimate wish expressed by the French Delegation.

**Mr. Van Ryn, Belgium (translation) :** Mr. Chairman, Ladies and Gentlemen, since we have adopted a certain number of provisions which can be the subject of an additional Protocol to the 1924 Convention, I ask you to kindly take into consideration the wish expressed by the International Subcommittee at the end of its report and more particularly on page 70. This said wish expressed the hope that the positive recommendations, after being adopted by the International Maritime Committee, be the subject of a solemn signing, if I may put it so, in that historic place of the old and beautiful Swedish city of Visby, which would allow us to give a particularly clear and striking name to our recommendation, which would then be known, as it has been suggested in the report of the International Subcommittee, as the « Visby Rules », thus forging a link with the « Visby Sealaw » of Mediaeval times and the whole set of rules in respect of Bills of Lading sponsored by the International Maritime Committee might in this way become known as the « Hague/Visby Rules ». Thank you, Mr. Chairman.

**Mr. Pineus, Sweden :** Mr. Chairman, Ladies and Gentleman, may I, in respect to the last suggestion made by our great friend Mr. van Ryn say that, of course, we are very pleased with that suggestion in this part of the world and it may in some effective way help also to get them adopted because we have got a name which might go then with the Hague Rules and in that way they may have success with others which might not be so easy and I support the proposition made by the delegate from Belgium. Thank you, Mr. Chairman.

*Friday, 14th June, 1963*

## PLENARY SESSION

(afternoon session)

Chairman : President Albert LILAR

### SHIPS UNDER CONSTRUCTION

**Mr. S. Braekhus, Norway** : Mr. President, Ladies and Gentlemen, on behalf of the commission for the registration of ships under construction I have the honour to submit to you the results of the work of the Commission, namely the revised draft convention on the registration of rights in respect of ships under construction. It is document RSC/STO-17 in English with a French version.

The draft on the whole is in the same pattern as the original draft, but the wording of practically all the articles has been changed, in most cases it is only a question of drafting, I hope that the drafting has been improved. Sometimes the original drafting has been clarified and only in a few cases is there a change of substance.

I will very briefly explain to you the more important changes.

In Article 1 and Article 2 changes are only changes of drafting. I should here correct as misprint in Article 2. The first paragraph now reads « The contracting State may restrict registration of such rights in respect of ships which are to be or are being constructed for a foreign purchaser ». This should be altered to read « The contracting State may restrict registration of such rights to cases where ships are to be or are being constructed for a foreign purchaser ».

Article 3 of the draft is now, but the content of that article is quite in line with the ideas underlying the original draft and the principle embodied in Article 3 is expressly stated in the report of the International Subcommittee printed in the boklet on page 35.

Article 4 contains a minor change in the wording of the second paragraph. This article corresponds to the old Article 3 of the original draft, which had this wording : « The national law may make a condition for registration that constructional work has been commenced in the place from which the newbuilding is to be launched ». We now propose « ... the national law may make it a condition for registration that the keel has been laid or equivalent constructional work has been performed in the place of launching ». We hope this small change will make it easier for some of the delegates to adopt the draft.

Article 5 has been simplified insofar as reference to « seizure and/or execution » has been deleted and the corresponding change has also been made in Article 8 corresponding to Article 10 of the original draft. The present draft then does only deal with title and mortgages, but it is left to the national law to permit registration of other rights, but the Convention on International Recognition is only concerned with title and mortgages.

In Article 6 the only changes are concerned with drafting. I hope it is an improvement of drafting. The former Article 6 of the original draft has been deleted. There has been some difference of opinion on these points, and there will be put forward a Scandinavian amendment which proposes an addition to Article 6, third paragraph.

Article 7 of the new draft corresponding to the original draft is only changed in drafting.

An important point is that Articles 8 and 9 of the original draft have been deleted and the new Articles 8 and 9 of the draft before you correspond to Articles 10 and 11 of the original draft. Also in these last two articles the wording has been changed and, I hope, improved. Only one change is a change of substance and should be mentioned here. In the last sentence of the first paragraph it says that all persons whose rights are registered must be notified of the proposed new registration at least thirty days before the date of issue of the certificate mentioned in the first sentence of the paragraph. The intention is to give some protection to mortgages when the vessel is transferred to a new country.

Those are my comments on the different articles of the draft. I should add only that the Committee strongly recommends that the Comité Maritime International should embark on a study of the rules concerning mortgages on ships in commission and the rules on liens with the aim of making a new or revised lien and mortgage convention, but that on the other hand this subject should be dealt with separately in order that one should not unduly delay the adoption of the other in our organization, the Comité Maritime International. What will happen when the drafts are taken to the Diplomatic Conference in Brussels it is not for us to decide, if we have made three separate drafts, on the registration of ships under construction, on mortgages, and on liens, perhaps they might be united at the Diplomatic Conference, but here we are only concerned with the draft before us, and I would strongly recommend that it should be adopted.

Thank you, Mr. President.

**The President** (translation) : Ladies and Gentlemen, we shall now take up article by article the Revised Draft Convention relating to rights on ships under construction, and as basis of the debate for this Assembly, we shall consider the draft as it results from the work of

the Subcommittee which this Assembly has appointed, acting under the Presidency of Mr. Braekhus.

*Article 1* : Adopted.

*Article 2* : Adopted.

*Article 3* : Adopted.

*Article 4* : Adopted.

*Article 5* : Adopted.

## ARTICLE 6

**Mr. A. Rein**, Norway : First, Mr. President, Ladies and Gentlemen, I must apologise on behalf of the Norwegian Delegation for reintroducing a proposal which has already been soundly rejected by the Committee. We have a very good, although somewhat strange, reason for doing so, which I shall presently explain.

In the original draft, in Article 6, there was a qualification to the rule which is now contained in the draft before you in Article 6, paragraph 3, to the effect that registered rights shall take precedence over rights which under this Convention can be registered, but have not been so registered. The qualification in the original Article 6 said « that in cases where the holder of the registered right had been in bad faith when he acquired the right he should not supersede the holder of the unregistered right ». This proposal was rejected in the Committee, but it transpired during the discussions that all delegates agreed that the rule was correct, but that it was unnecessary to have it. They did not want to have it because it went without saying. Now, unfortunately, in the Committee no minutes were made and we have no record at all. It will not go down in history that these remarks were made.

In our country we feel that it is necessary, at least in the national legislation, to have the qualification in the last paragraph in Article 6 otherwise it may be argued that the words mean exactly what they say, that the registered right shall always supersede the unregistered. Now, if the Plenary Session is of the same opinion we shall be very happy if they will adopt our proposal but we don't expect that. All we want is to have it on the record, and I would like somebody to support the view that it is unnecessary to have this qualification. Then our Government will be free to enact the qualification without violating the Convention.

May I add that the amendment proposed is contained in document 16 and it says that paragraph 2 which should be corrected to paragraph 3, because the amendment was made before Article 6 had been through the Drafting Committee where the original paragraph 2 was made paragraph 3 should read : « Registered rights shall take precedence over rights which under this Convention can be registered, but have not been so registered, provided always that the National Law of

a Contracting State may, in accordance with recognized equitable principles, prevent the holder of a registered right which he has not acquired in good faith from taking advantage of this provision ».

**The President** (translation) : The Norwegian Delegate moves an amendment to the text which is being submitted to our consideration by the Subcommittee. This amendment consists in superseding the text of article 6 by the text which forms the subject of document STO-16 which has just been explained to you.

**Mr. Vaes**, Belgium (translation) : Mr. Chairman, Ladies and Gentlemen, the problem which is exercising the minds of our Norwegian friends is a problem of which we very precisely understand the full significance and I wish to make this clear so that there be no doubt about it.

Article 6, par. 3 provides that registered rights shall take precedence over rights which could have been registered, but have not been so registered.

Now, we understand that particularly in Norway, and perhaps in some other countries, a rule exists according to which it is possible that a creditor, whose rights have not been registered, may have priority over a creditor whose rights are registered. This is the case when the person who had registered his rights has obtained this registration fraudulently, knowing that a preceding creditor who had had no time or no occasion to register his right, had precedence over him.

With much objectivity — this does not surprise us coming from Mr. Rein — Mr. Rein says : we have no illusions that our amendment be possibly accepted and carried as such. It would be enough for his Government that we proclaim here in public session that the provisions of article 6, par. 3 will not necessarily constitute a bar to the fact that another rule exists in certain national laws.

Gentlemen, on behalf of the Belgian Delegation and I think, on behalf of various other Delegations which took part in the preparation of the draft which is to-day being submitted to your consideration, I believe I am authorized to proclaim that actually, in our opinion, the problem ought to be put in the following concrete form : when a ship which is secured by mortgages or hypothèques or by other rights in rem, has to be sold in a determined country, and that at the time of the determination of priorities or on the occasion of an equality of rank and rights between creditors, the question arises whether one creditor, whose rights are registered, should not take precedence over another creditor whose rights are not registered but who, according to the law of his country, would have taken precedence over the registered creditor for the reasons I have just explained. We are here confronted with a problem of international private law, i.e. with a conflict of laws which will have to be solved according to the rules of domestic law of

the Country which will apply, in respect of the conflict which has arisen within the territory under its jurisdiction, the rules relating to conflict of laws which prevail in that territory.

I think that in that way our Scandinavian friends should obtain satisfaction on principle. If the judge of the district where the conflict arises considers that, in pursuance of the principles relating to international private law, he should apply the rules which in Norway allow a non-registered creditor to take precedence over a creditor whose rights are registered, he will act in that manner, but this is a problem of conflict of laws to be settled according to international private law and in our opinion, our Convention cannot insert provisions which will govern, in the various Contracting States, the problems of international private law which may crop up in those Countries and find there different solutions based on the conceptions of those said Countries.

Thank you, Mr. Chairman.

**Dr. Nagendra Singh, India :** Mr. Chairman, it is hardly necessary for me to speak because my predecessor has explained the position at such great length. All that I would like to add is to assure my Norwegian colleague that according to all established principles of jurisprudence any right which has been obtained by fraud or by deceit or something which is not in good faith is not a right which has any recognition for legal purposes. Any right which comes by fraud is not a right at all, and as such that registration which has taken place by fraud is no registration at all. A registration obtained by fraud is void *ab initio*. As such there is no right which accrues to the deceitful individual, and the amendment which the Norwegian Delegate has proposed is wholly redundant. He can have his assurance in respect of the law which prevails in India.

**Mr. Simonard, France (translation) :** Mr. Chairman, Ladies and Gentlemen, the Delegate of India has said exactly what I wanted to say, viz. that we all have inherited from the Romans the principle « *fraus omnia corrumpit* » but I was arriving at an opposite conclusion. The existence of the aforesaid principle, recognized in all our national laws, renders the Norwegian amendment unnecessary and not quite normal.

Actually, there is no need to write down in a Convention that which constitutes a principle. On the contrary, if we write it down, we will thereby weaken the principle by turning it into a peculiar case and by giving it that way a restricted bearing.

Therefore, I feel that the problem has been cleared up as the Norwegian Delegate wanted it to be in this debate. We admit that fraud abolishes the right fraudulently registered, also the force of the registration itself or of its rank, but I feel that it would be dangerous to

say it. It is better not to mention it. This is a matter of course and we would weaken the principle if we would write it down in our Convention.

Thank you Mr. Chairman.

**Mr. A. Rein, Norway :** Mr. Chairman, Ladies and Gentlemen, the amendment proposed by the Scandinavian Association in Document sixteen now having served its purpose is hereby withdrawn.

**The President (translation) :** Gentlemen, the amendment of the Norwegian Delegation having been withdrawn, does anyone wish to make a statement on article 6 ?

It is adopted.

#### ARTICLE 7

**The President (translation) :** Does anyone wish to make a statement on article 7 ?

It is adopted.

#### ARTICLE 8

**The President (translation) :** Does anyone wish to make a statement on article 8 ?

It is adopted.

#### ARTICLE 9

**The President (translation) :** Does anyone wish to make a statement on article 9 ?

**Dr. Nagendra Singh, India :** Mr. Chairman, Sir, my Association has certain objections to Article 9 in the way in which it has been drafted. If the entire trend of the drafting of the articles is examined it will be seen that the intention of the Convention is not the registration of ships as such, but is registration of the right pertaining to ships under construction. I beg to submit that there is a world of difference between the registration of ships under construction and registration of rights as such pertaining to ships under construction. If the Convention is going to be on registration of rights pertaining to ships under construction which is the basic concept and that is what has been very clearly brought out in Article I, 2, and 7 and 8, my delegation would support the Convention. However, I find that suddenly in Article 9 we jump to the registration of ships under construction which is inconsistent with the previous Articles. Article 9 talks of a ship being registered pursuant to the provisions of this Convention and is therefore not in keeping with the entire trend of the previous articles, and it is likely to give rise to a lot of confusion and to innumerable difficulties. These I will explain briefly.

Registration is a word which has a special legal connotation. In commercial shipping law it has a special meaning and in public inter-

national law it has very wide consequences. The national character which is given to a ship after registration, i.e. after the ship is delivered, determines the law of the flag. The word registration, therefore, should not be used for ships under construction. Again, if it is registration of rights as such its proper place would be under the 1926 Convention on Mortgages. If the objective of this Convention is to help the construction of ships by raising credits and offering deferred payment terms to purchasers a suitable place should be found for this objective in the 1926 Convention on liens and mortgages. My Association is in full agreement with the idea which helps shipbuilding countries which are constructing ships for developing countries like India, on long deferred payment terms. However, the convention under discussion should talk of registration of the rights pertaining to the ship under construction and not the registration of the ship as such under construction, because once the ship is registered under construction the word registration has a special connotation and once it has been delivered it will become necessary that the rights which are created on the ship should pass on to the new purchaser who is the foreign national. If the Conference wishes to have a separate Convention on this subject apart from the 1926 Convention on mortgages and liens I have no objection. My Association will support the idea. However, we must then talk of registration of rights pertaining to construction of ship and not registration of ship as such. Therefore, Article 9 needs to be amended to fit in with the trend of the previous Articles. If this is accepted I will support the Convention.

**Mr. E. Gutt, Belgium :** Thank you, Mr. Chairman, Ladies and Gentlemen, the point which has just been raised by the Indian delegate is not one which has escaped the attention of the Commission in the Drafting Committee. It is not the result of an unintentional omission in drafting. In Article 9, we speak of the registration of ships and submit to this assembly that the drafting be kept.

There is another Article which refers to the registration of ships. It is Article 1. You will see in the second paragraph of Article 1, « The registration of such rights may be restricted to ships which, under the national law of the State of registration, will be of a type and size making them eligible, when completed, for registration in the national ship register ».

As you have rightly pointed out, Sir, we have even altered the title of the Convention; the title of the Convention which we submit to you now reads « Registration of rights in respect of ships under construction ».

Article 1, in the first paragraph, states that clearly and the second paragraph relates to the type of rights which might be registered in respect of a ship which is in the national ship register after completion.

Now, Mr. Chairman, Gentlemen, you will see that in all following articles, up to and including Article 8, we refer to the registration of rights, or to titles to and mortgages (or hypothèques) which are rights again of ships which are to be or are being constructed.

Article 8, I submit is the transition into the second phase of which you were talking about and at that time, I am afraid we cannot go on talking simply about rights in respect of ships because in the second stage, necessarily there is a ship. Why do I say necessarily ?

First of all, because under the provisions of the new Article 3, the ship is still a ship under construction and if it is still in the country of construction, there will be no question whatsoever of registering any single right in any other contracting state. You have read Article 3 to that effect. If, for example, it is under construction in Belgium, even for the account of a British purchase, for instance, there is no question whatsoever if this country is one of the countries that adhere to the Convention, of rights being registered anywhere else than in Belgium. That is the first point.

Therefore if the ship is not completed and there is any question of registration elsewhere, it means it has been partly completed and if in all likelihood the hull has been sent elsewhere for completion, there will then be a ship which will still be a ship under construction. There will be a ship susceptible of being registered. That is why I submit the wording of Article 9, as it is now presented to you by the Subcommittee, is correct.

You will see in the first paragraph « When a ship is registered pursuant to the provisions of this Convention in one of the contracting States, registration in another contracting State... » here obviously as I have said already, registration in another contracting State can only be contemplated when there is a ship, otherwise it will not take place in another contracting State.

We shall have, a little further on another mention in the second paragraph, « Registered title and mortgages (or hypothèques) shall, on registration of the ship in another contracting State, be registered in the register of the latter State,... »

There, Gentlemen, it is not only better drafting but it is essential to keep the wording as it is set, because what we want is to avoid that the ship itself might be registered in the new State, and that by a play of words the new State might, if this was not clearly stated in the Convention, might feel that it was free not to register the rights on that ship. That is why, I think we must say that on registration of the ship in another contracting State, registration, title and mortgages (or hypothèques) must be registered, and I think, Gentlemen, that is the answer which the majority of the members of the Commission would wish to make to the intervention of the Indian delegate.

Thank you, Mr. Chairman. (general applause).

**Mr. G. Daniolos, Greece :** The Greek Delegation is fully cognizant of certain difficulties which we are going to meet in connection with Articles 8 and 9, in Greece. Still, we are inclined to disregard these difficulties completely in the desire to reach an international agreement in this very important matter and in the hope that sooner or later the Comité Maritime International will deal with certain problems, certain questions which are common both to ships under constructions and to ships in commission. I refer, of course, to Warsaw. We here provided in Article 8, for instance that titles and mortgages acquired and registered in the place where the ship is built are to be recognised in all other contracting States, by all other contracting Parties. This obviously means that his right ought to be recognized irrespective of whether they are conformant or not with the law of the place where the ship is to be finally registered, so far as the form as well as the substance of the rights are concerned.

We here provided in Article 9 that if these registered rights do not comply with the statutory requirements for registration of the national law at the place where the ship is to be finally registered, then the interested parties shall be given a time of sixty days to bring the necessary amendments.

Well, there may be some forms which can be complied with only by one party but there may be some other forms for which a common action, of all the parties interested, is necessary in cases, for instance, when a notarial document is a mandatory requirement for a market. What is the position if a mortgage has been executed in the form of a so-called private document and when this mortgage is transferred to the Greek register? The Greek shipowner is not prepared in the sixty days for re-executing the mortgage in the form of a notarial document, is the mortgage going to lose his security?

In my opinion, it would be probably worth so far as the substance of certain rights is concerned. There is a big difference when it comes to hypothecation. There may be some provision in a mortgage, for instance, the rights of the mortgagee to take possession of the ship or to sell it by a private sale which cannot be complied with, which are not permissible in some other countries where the hypothèques-system only is known. It is always very, very difficult to transplant something from one country to another, if the necessary steps for adaptation have not been taken.

I am quite sure it is not possible to transplant a vine from Italy or an olive tree to this beautiful country and I am very much afraid that it will be very, very difficult to transplant a mortgage in countries where the hypothèque is known and not the mortgage itself, so that is why I want to explain that we are disregarding all these difficulties in our desire to help to reach an International Convention, but also in the hope that the Comité Maritime International will try to take certain

steps regarding mortgages for ships under construction and for ships in commission as well, because we know that in the Convention of 1926 one has not provided about these questions in an ample way. That is all we would like to explain. (General applause).

**Mr. W. Müller**, Switzerland (translation) : Mr. Chairman, Ladies and Gentlemen.

It is no part of my intention to render your task more difficult, but I would like to explain the reasons why the Swiss Delegation wishes to abstain from voting.

First of all, it goes without saying that we cannot undertake to set up registers for registration of ships under construction as there will never be any shipyards in our country.

Secondly, I cannot agree with the principle laid down in article 9 although it has already been better drafted than in the original draft.

Without wishing to prevent this Assembly from arriving at a decision, I had to make known the reasons why the Swiss Delegation will abstain from voting on this topic.

**Dr. Nagendra Singh**, India : Mr. Chairman, I apologize for taking the floor again. I shall be very brief. Two things I shall never do : firstly, I shall not prolong the controversy. Secondly, I shall never be obstructive.

I will only explain the viewpoint of the Indian Maritime Law Association and state why we will be abstaining from voting on this Convention.

As I already submitted, in order that a Convention may be fruitful, it should have universal application. This particular subject has a very limited application. It applies particularly to those countries which are building ships and selling them abroad.

Secondly, the Indian Maritime Law Association feels that the proper place for the draft under consideration would be the 1926 Convention on Mortgages and Liens where it would not lead to any misunderstanding and misconceptions.

The text of the draft under consideration, I still maintain is likely to cause misunderstanding. In the sub-paragraph of Article 1, we are talking of national registration where ships have to be registered under national law of the State, which is the proper act of the State by which the flag and nationality is given to ships. This confusion between national registration of ships and registration of ships under construction is being perpetuated. It is unfortunate to have to draw the attention of the Conference to this. In the circumstances my delegation would like to abstain, as far as voting on this Convention is concerned. Thank you, Mr. Chairman.

**The President** (translation) : Does anyone else wish to make a statement on article 9 ?

I consider article 9 as adopted.

Before submitting to your votes the draft as a whole, I note that an amendment has been left on the table of the President. This amendment has been moved by the British Delegation and concerns article 2. I now learn that this amendment was adopted this morning.

We shall now put to your votes the whole draft as it springs from the deliberations of the Subcommittee.

Voted in favour : Belgium, Canada, Denmark, Finland, France, Germany, Greece, Netherlands, Norway, Poland, Portugal, Sweden, U.S.A., Yugoslavia.

Voted against : None.

Abstained from voting : Great Britain, India, Ireland, Italy, Japan, Switzerland.

Consequently, the draft is adopted.

Certain delegations have asked me again to be able to state the reason for their abstention.

**Mr. Berlingieri**, Italy : Mr. Chairman, Gentlemen, may I be allowed to briefly explain the reason why the Italian Delegation has abstained from voting in this connection.

It is the opinion of my Delegation that there are some rules in this Convention, in the final draft of this Convention, which are worthy of consideration and of international regulation. I especially refer to Articles 3 and 9. It is, anyhow, our opinion that the problems dealt with in these articles also arise with respect to ships in commission and not only with respect to ships in the course of building. It follows that it would be rather dangerous to try to deal with these problems only with respect to ships in the course of building and not with respect to ships in commission. It might happen in the future that when the same problems will be considered by our International Maritime Committee, with respect to ships in commission, a different solution might be arrived at, and this concern is of considerable importance since it has been decided by the Bureau of our Comité Maritime International that the 1926 Convention on Mortgages in Maritime Liens should be re-considered. It follows that if we are now trying to separately deal with ships in the course of building, the conflict as mentioned might arise.

I submit, therefore, to the consideration of this Assembly the advisability of postponing a final decision regarding ships in the course of building until the problems relating to ships in commission will be re-considered. It is our opinion that it is not advisable to have a

separate Convention regarding ships in the course of building but it would be much better to unify this draft Convention with the new Convention regarding mortgages and maritime liens and privileges applicable in commission. Anyhow, we at least press that this Convention be not sent to the Diplomatic Conference until the new revision of the 1926 Convention has been considered by the International Subcommittee which is going to be considered for that purpose.

Thank you very much Mr. Chairman.

**Mr. J. T. Asser, Netherlands :** Mr. Chairman, Ladies and Gentlemen, I would like to add a few words to what has been said by the delegate of the Italian Association, not to support his proposal but to make a somewhat different proposal, a proposal also dealing with procedure. I hope, ladies and gentlemen, that you will allow me to follow a somewhat different method in that I may start by explaining the reasons for my proposal before telling you what in the Netherlands Delegation is in fact proposing.

The draft convention, the text of which has just been voted, is short. It has a very limited scope, and as such I am sure it has great merits. It is that any international convention, especially one in a new field, should be short and clear but that does not prevent certain problems, which are immediately connected with the questions which this present draft Convention seeks to solve, from arising when it will come to applying the Convention if adopted by the Brussels Conference.

I may quote the following problems which have not been solved. Priority of mortgages in relation to maritime liens both during the period of construction and after the ship has been completed. You are all no doubt aware that during the period of construction, that is a year before the ship under construction has been completed and delivered to her purchaser, maritime liens may accrue, for instance by reason of a collision occurring during her trial trip or even at a time when a ship is towed from one place to another in the port where the yard is established.

The next problem is enforcement of the mortgage in a country other than that of the yard at which the ship has been built, now in our draft convention we adopted the principle of the international survival of the mortgage granted on a ship under construction. Consequently such mortgage granted on a ship under construction may lead to enforcement proceedings in another country. I only have to remind you of the differences in methods of enforcement as appears in most continental countries where the creditor, the mortgagee sells the ship and those in Great Britain, for instance, where the mortgagee is entitled to take possession of the ship.

To quote another problem, the draft convention does not, and quite considering its limited scope rightly does not solve the problem

of the international effect of a forced sale of the ship, especially when such sale takes place in a non-contracting State.

Now, Mr. Chairman, we all know the fate of the 1926 Convention which so far has been ratified by nineteen countries only, a number of important maritime Nations remaining outside for one reason or another. These are (inter alia) the United States, The United Kingdom, Germany, Japan, India and the Netherlands. It does not look at present as if there would be a great chance of any of these States ratifying or adhering to the 1926 Convention. I need not set out the confusion which this state of affairs has caused over the last forty years and more in the case law of the various maritime Nations, because it is not only in a non-contracting State where the private international law of such State is applied to the distribution of the proceeds of a ship; the same thing happens when a ship flying the flag of a non-contracting State is sold in the court of a country which did ratify the 1926 Convention.

I do not think I disclose a secret by telling this meeting that about two and a half hours ago the Bureau Permanent decided to set up an international commission which has as its task to study the possibility of a revision of the 1926 Convention on maritime liens and mortgages in order to make that convention more workable and to see whether it will not be possible to arrive at a text which will find acceptance in more States than these who so far have ratified the 1926 Convention.

Now the Netherlands Delegation is afraid that if the draft convention, the text of which has just been approved, should be sent at once to the Belgian Government for transmittal to the Diplomatic Conference at Brussels and should be adopted say next year, this might have two consequences which might perhaps better be avoided.

The lesser danger would be that the adoption of an international convention of this very restricted scope might impede and hinder the work of the Comité Maritime International in attempting to arrive at a revised convention on maritime liens and mortgages; the greater danger in our opinion is that if this restricted draft convention should be adopted by the Diplomatic Conference at Brussels, those Nations who sofar abstained from adhering to the 1926 Convention would also abstain from ratifying the new convention, because in their view the situation as regards mortgages and liens would not have been improved by the new convention for the reasons I have been setting out.

Now, Mr. Chairman, it is not the purpose of the Netherlands Delegation to ask this meeting to shelve the work which has been so successfully performed or to put it back for an indefinite period, but what we would like to recommend is that a short time of, say, something over two years namely until the next conference of the Comité Maritime International at New York in September, 1965, be given to

the Comité Maritime International in order to see whether it will be possible to obtain agreement on all or most of make work out the problems involved, that is to say all or more problems relating to maritime liens and maritime mortgages including mortgages on ships under construction. If the Comité Maritime International should be successful in arriving in these two years at that result, I am sure that the text of the draft Convention on mortgages on ships under construction could easily be inserted into a new Convention covering the whole field.

Should it be by 1965 that no fundamental argeement has been reached on this wider scope then we would suggest that this draft should then immediately be presented to the Belgian Government for transmittal to the Brussels Diplomatic Conference.

I thank your, Sir.

*Friday, 14th June, 1963*

## FINAL PLENARY SESSION

Chairman : President Albert LILAR

**The President** (translation) : Gentlemen, we have finished with the examination and the votes of the drafts. I would like to take this opportunity in order to make several communications.

The first one concerns the statement which has just been made by Mr. Asser. At the meeting of the Bureau Permanent of the International Maritime Committee, we have felt that it was desirable to examine the problem of liens and mortgages in general. We have felt that it should be done as soon as possible. We have also decided to set up a Subcommittee and Mr. Asser has accepted to act as the President thereof. We can hope that this work will be carried out very quickly seen the peculiar interest which Mr. Asser takes in it, and we trust we will succeed in working out some drafts within a short time.

We have also reached a decision in regard to bills of lading. This morning, we have carried a series of provisions relating to the Hague Rules. We have carried them one by one as the various points were constituting, contrary to the other topics of our Assembly, not a comprehensive draft, but a series of distinct points on which every one had to be induced to adopt a definite position unrestrainedly, the vote on one of these topics not necessarily bringing about the accession to the others.

The Bureau Permanent has also decided to entrust the President and the Bureau with the examination of the question whether it was advisable and to what extent, to carry on a joint study of the other topics which will, from now on, form the subject of works within the various National Associations.

Afterwards, the Bureau Permanent has decided to invite Mr. Müller to kindly accept the Presidency of the Subcommittee dealing with the study of the D.D. Rules, Presidency which Mr. Govare has given up for valid personal reasons, in order to devote himself to other activities and in order to uphold the personal views that he intends to maintain on this problem.

Finally, Mr. Govare himself has kindly accepted to carry on the task of the Presidency of the Subcommittee on Damages in Collision Cases.

I wanted to acquaint you to-day with those various communications before parting company.

**Mr. A. M. Boal**, United States : Gentlemen, I would like to report to you on the status of the two Conventions in our country the Brussels 1957 Convention on the Limitation of Liability and the Collision Convention of 1910.

Legislation was introduced in our Congress in 1961 to incorporate the provisions of both Conventions into our domestic law. These hearings were held by a subcommittee of the Commerce Department of the Senate in 1962. Then it reported to the Commerce Committee who reported to the Senate recommending approval on both bills. No action was taken on these bills in that Congress but they were reintroduced in the present Congress. Hearings were held by the Subcommittee of the Commerce Committee of the Senate on May 2nd and May 22nd 1963. We cannot predict what the results will be, but I am sure we are going to get action. I hope we get action on both of them in this present Congress.

Thank you.

**Mr. W. H. Hecht**, United States : Mr. President, delegates, there is an old American saying that simplicity is sincerity. So on behalf of the United States delegation, and I am sure there will be no abstentions, I want to say to our Swedish hosts and their fair ladies thank you very much for your gracious hospitality and many kindnesses which have made this Conference one to be long remembered.

Mr. President, I also wish to thank you and your colleagues and the chairman of the subcommittee for the courtesy and competence with which every aspect of this Conference has been held. It is my pleasant duty to remind you of the invitation to attend the 27th Conference of the Comité in New York in September, 1965.

Thank you.

**Mr. Govare**, France (translation) : Mr. Chairman, a few minutes ago, I requested leave to speak not on one of the articles under debate, but merely because I have felt that I was the eldest member of the International Maritime Committee, now present in this session-room. It seemed to me that in this capacity, I was entitled to claim the honour of speaking on behalf of all our comrades and friends, to congratulate you for the brilliant manner in which you have managed to conduct the debate and principally for the courtesy by which you have been able to call upon those who wished to address our meeting, and this without any limit of time. You have managed to conduct these debates at the entire satisfaction of everyone.

Therefore, on behalf of those who are here present, I wish to express to you our hearty and deep gratitude. (Sustained applause).

**The President** (translation) : Gentlemen, I think that it is now the turn of the defence to take the floor. For my part, I would like to say a lot of things which are usually said at the end of a Conference.

First of all, I would like to explain in what measure many of our colleagues and friends have devoted themselves for the preparation of this Conference. These said persons are specialized in keeping in the background during the Conferences, but during the period of preparation, they get through a considerable lot of work for which we will never render enough homage. As you have been told just now, the success of our Conferences indeniably and largely depends on the preparation and on the devoted courage of the associates who, during this difficult and often obscure period, give themselves up to those tasks. I have specially in mind my colleagues, the Hon. Secretary, Mr. Van den Bosch, the members of the firm Henry Voet-Genicot, Messrs. Henri Voet and Léo Van Varenbergh who have been actually knocked up for weeks for the preparation, the circulating, the restatement of the numerous documents which we have needed.

I join in this homage all those who have devoted themselves during this period and for whom it would not be possible to make mention of all the names.

I proceed with the list of the devoted fellow-workers of this Assembly by paying a special tribute to those who have presided over the Subcommittee, mainly the preliminary Subcommittees, the International Subcommittees.

I dare no more mention the name of Mr. Pineus. He must be overwhelmed with flowers. I shall however come back to him again in a moment for he deserves to be put in the final limelight. But I think of Mr. Braekhus who has been so kind as to work steadily on the subjects entrusted to his Subcommittee. I also think of Mr. Van Ryn, of Mr. W. Müller and of other Presidents who have all brought to us the best of themselves.

As for Mr. Pineus, I don't know how to sum up the innumerable titles for which he deserves our gratefulness. I think that we cannot part company without him being the last and the principally mentioned of our friends.

As you know, the preparation of this Conference has, to a large extent, been his achievement. The amount of work he has done is considerable. He has cumulated this activity with the preparation of the Conference and I believe I may say that this work is not of less importance than the other. Attended by our friend, Mr. Claës Palme, who has always danced attendance on him during the preparation of this Conference, he has, together with all our Swedish friends, achieved this wonderful thing to see to it that everything be completely in order and that at the same time, he saves up, with the taste which distinguishes him, with the devotion which belongs to him, festivities and friendly meetings which, moreover, have not all taken place, for if our work will come to an end in a few minutes, we will still have, and again thanks to him, the favour of meeting like friends this

evening, and during the following days, the occasion of taking some rest after the dreadful strain of this Conference (laughing).

Therefore, my dear Mr. Pineus, I would like to tell you that I have not found more titles of our gratefulness, for they are innumerable. I feel that all those who are here present will agree with me. I would therefore ask you to consider yourself, unpretentiously, as the hero of our meeting. (Sustained applause).

**Mr. K. Pineus, Sweden:** Mr. Chairman, Ladies and Gentlemen, I am somewhat overwhelmed by the kind words and your kind greetings to me and to my colleagues. I think when these few days have gone and things have settled down we will have to consider what this Conference is worth. We know that the C.M.I. and the Stockholm Conference is subject to the judgment of history and that history goes by result.

I think all of us, our Chairman and you ladies and gentlemen, will join in the pleasure we of the Swedish Association feel in having in these days achieved three positive results which go down on the record of the C.M.I. You will also agree that the words of Winston Churchill, « Give us the tools and we will finish the job » apply for this conference and for the C.M.I.

I think that we who all have the interests of the C.M.I. at heart should be glad of this result. May I add that, while there is some truth in the fact that there has been some work to prepare this conference, it has been the greatest pleasure and the highest possible compliment to all our efforts that we have obtained these three results. This is thanks to you Mr. Chairman and thanks to you ladies and gentlemen too. On behalf of the Swedish Association I should like to say thank you.

**The President** (translation) : Ladies and Gentlemen, the meeting is dissolved. The XXVIth session is closed.

# IV

CONFERENCE OF STOCKHOLM

DRAFT CONVENTIONS

PROJET DE  
PROTOCOLE OU CONVENTION INTERNATIONALE

PORTANT MODIFICATION DE LA CONVENTION INTERNATIONALE  
POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE

CONNAISSEMENT

*signée à Bruxelles, le 25 août 1924*

**Article 1<sup>er</sup>**

§ 1 *A l'article 3 § 1 de la Convention de 1924, il y a lieu d'ajouter :*

« Dans les cas où il est normal de recourir à un contractant indépendant (y compris un bureau de classification), si le transporteur a pris soin de s'adresser à un contractant d'une compétence reconnue, il ne sera pas considéré comme ayant manqué d'exercer une diligence raisonnable par le seul fait d'un acte ou d'une omission imputable à ce contractant indépendant, à ses préposés, à ses sous-traitants ou aux préposés de ces derniers et concernant la construction, la réparation ou l'entretien du navire, d'une partie de navire ou de son équipement. Cette disposition ne dispense aucunement le transporteur de prendre toutes les précautions raisonnables par voie de surveillance et de contrôle en ce qui concerne tout travail effectué par ce contractant indépendant comme il est dit ci-dessus ».

§ 2 *A l'article 3, § 4, il y a lieu d'ajouter le texte suivant :*

« Toutefois, la preuve contraire n'est pas admise lorsque le connaissance a été transféré à un tiers porteur de bonne foi ».

§ 3 *A l'article 3, § 6, le 4<sup>e</sup> alinéa est remplacé par la disposition suivante :*

« En tout cas le transporteur et le navire seront déchargés de toute responsabilité quelconque relativement aux marchandises à moins qu'une action ne soit intentée dans l'année de la délivrance des marchandises ou de la date à laquelle elles eussent dû être délivrées. Ce délai peut toutefois être prolongé moyennant l'accord des parties intéressées ».

DRAFT  
PROTOCOL OR INTERNATIONAL CONVENTION

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

BILLS OF LADING

*signed in Brussels on the 25th August, 1924*

Article 1

§ 1. *In Article 3, § 1 of the 1924 Convention shall be added :*

« Provided that if in circumstances in which it is proper to employ an independent contractor (including a Classification Society), the Carrier has taken care to appoint one of repute as regards competence, the Carrier shall not be deemed to have failed to exercise due diligence solely by reason of an act or omission on the part of such an independent contractor, his servants or agents (including any independent sub-contractor and his servants or agents) in respect of the construction, repair or maintenance of the ship or any part thereof or of her equipment, Nothing contained in this proviso shall absolve the Carrier from taking such precautions by way of supervision or inspection as may be reasonable in relation to any work carried out by such an independent contractor as aforesaid. »

§ 2. *In Article 3, § 4 shall be added :*

« However, proof to the contrary shall not be admissible when the Bill of Lading has been transferred to a third party acting in good faith. »

§ 3. *In Article 3, § 6, paragraph 4 is deleted and replaced by :*

« In any event the carrier and the ship shall be discharged from all liability whatsoever in respect of the goods unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. Such a period may, however, be extended should the parties concerned so agree. »

§ 4 *A l'article 3, il y a lieu d'ajouter après le § 6, un § 6 bis libellé comme suit :*

« Les actions récursoires pourront être exercées même après l'expiration du délai prévu au paragraphe précédent, si elles le sont dans le délai déterminé par la loi du Tribunal saisi de l'affaire. Toutefois, ce délai ne pourra pas être inférieur à trois mois à partir du jour où la personne qui exerce l'action récursoire a réglé la réclamation ou a elle-même reçu signification de l'assignation ».

## Article 2

§ 1 *A l'article 4, le premier alinéa du § 5 est remplacé par la disposition suivante :*

« Le transporteur comme le navire ne seront en aucun cas responsables pour perte ou dommage causé aux marchandises ou les concernant pour une somme supérieure à l'équivalent de Francs 10.000,— par colis ou unité, chaque franc étant constitué par 65,5 milligrammes d'or au titre de 900 millièmes de fin, à moins que la nature et la valeur de ces marchandises n'aient été déclarées par le chargeur avant leur embarquement et que cette déclaration ait été insérée au connaissement ».

§ 2 *A l'article 4, § 5, il y a lieu d'ajouter la disposition suivante :*

« La date de conversion de la somme accordée en monnaie nationale sera déterminée conformément aux dispositions de la loi nationale de la juridiction saisie du litige ».

## Article 3

*Entre les articles 4 et 5 de la Convention est inséré un article 4 bis libellé comme suit :*

« 1. Les exonérations et limitations prévues par la présente Convention sont applicables à toute action contre le transporteur relativement à la réparation de pertes ou dommages à des marchandises faisant l'objet d'un contrat de transport, que l'action soit fondée sur la responsabilité contractuelle ou sur une responsabilité extra-contractuelle ».

« 2. Si une telle action est intentée contre un préposé du transporteur (pourvu que ce préposé ne soit pas un contractant indépendant), ce préposé sera autorisé à se prévaloir des exonérations et des limitations de responsabilité que le transporteur peut invoquer en vertu de la Convention ».

« 3. L'ensemble des montants récupérables à charge du transporteur et de ses préposés ne dépassera pas dans ce cas la limite prévue par la présente Convention ».

§ 4. *In Article 3, after paragraph 6 shall be added the following paragraph 6bis :*

« Recourse actions may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such recourse action has settled the claim or has been served with process in the action against himself. »

## Article 2

§ 1. *In Article 4 of the Convention the first sub-paragraph of paragraph 5 is deleted and replaced by the following :*

« Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 10,000 francs per package or unit, each franc consisting of 65,5 milligrams of gold of millesimal fineness 900, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the Bill of Lading. »

§ 2. *In Article 4, paragraph 5, shall be added the following :*

« The date of conversion of the sum awarded into national currencies shall be regulated in accordance with the law of the court seized of the case. »

## Article 3

*Between Articles 4 and 5 of the Convention shall be inserted the following Article 4bis :*

« 1. The defences and limits of liability provided for in this Convention shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort. »

« 2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Convention. »

« 3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Convention. »

#### Article 4

*L'article 9 de la Convention est remplacé par la disposition suivante :*

« La présente Convention ne portera pas préjudice aux dispositions d'une quelconque Convention ou d'une loi nationale qui régit la responsabilité pour les dommages nucléaires ».

#### Article 5

*L'article 10 de la Convention est remplacé par la disposition suivante :*

« Les dispositions de la présente Convention s'appliqueront à tout connaissement relatif à un transport de marchandises d'un Etat à un autre et 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 le connaissement et quelle que soit la nationalité du navire, du chargeur, du destinataire et de tout autre intéressé ».

#### Article 4

*Article 9 of the Convention shall be deleted and replaced by the following :*

« This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage. »

#### Article 5

*Article 10 of the Convention is deleted and replaced by the following :*

« 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, of discharge or one of the optional ports of discharge, is situated 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. »

## PROJET DE CONVENTION INTERNATIONALE

### POUR L'UNIFICATION DE CERTAINES REGLES EN MATIERE DE TRANSPORT DE

## BAGAGES DE PASSAGERS PAR MER

### Article 1

Dans la présente Convention les termes suivants sont employés dans les sens indiqués ci-dessous :

a) « transporteur » comprend le propriétaire du navire ou l'affréteur ou l'armateur partie à un contrat de transport de passagers et de bagages;

b) « contrat de transport » signifie un contrat conclu par un transporteur ou pour son compte, pour le transport de passagers et de leurs bagages, à l'exception d'une Charte-Partie ou d'un connaissance.

c) « passager » signifie uniquement une personne transportée sur un navire en vertu d'un contrat de transport;

d) « navire » signifie uniquement un bâtiment de mer;

e) (1) « bagages » signifient tout objet ou véhicule transportés à l'occasion d'un contrat de transport de passager.

(2) « bagages de cabine » signifient les bagages que le passager porte sur lui ou prend avec lui dans sa cabine ou qui l'accompagnent personnellement.

f) « transport » comprend les périodes suivantes :

(1) En ce qui concerne les bagages de cabine, la période pendant laquelle les bagages sont à bord du navire, ainsi que les opérations d'embarquement et de débarquement, mais ne comprend pas la période pendant laquelle les bagages se trouvent dans une gare maritime ou sur un quai ou une autre installation portuaire. 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.

## DRAFT OF INTERNATIONAL CONVENTION

### FOR THE UNIFICATION OF CERTAIN RULES RELATING TO CARRIAGE OF

## PASSENGER LUGGAGE BY SEA

### Article 1

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

a) « carrier » includes the shipowner or the charterer or the operator who enters into a contract of carriage of passengers and luggage.

b) « contract of carriage » means a contract made by or on behalf of a carrier to carry passengers and their luggage, but does not include a charter party or bill of lading.

c) « passenger » means only a person carried in a ship under a contract of carriage.

d) « ship » means only a sea-going ship.

e) (1) « luggage » means any articles or vehicles carried under a passenger contract of carriage.

(2) « cabin luggage » means luggage which the passenger carries on his person or takes with him in the cabin or which personally accompanies him.

f) « carriage » covers the following periods :

(1). With regard to cabin luggage, the period while the luggage is on board the ship and in the course of embarkation or disembarkation, but does not include any period while the luggage is in a marine station or on a quay or other port installation. In addition « carriage » includes transport by water from land to a 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.

(2) En ce qui concerne tous les autres bagages, la période comprise entre le moment où les bagages sont chargés et le moment où ils sont déchargés du navire.

g) « transport international » signifie tout transport dont, selon le contrat de transport, le lieu de départ et le lieu de destination sont situés soit dans un seul Etat, s'il y a un port d'escale intermédiaire dans un autre Etat, soit dans deux Etats différents;

h) « 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 soit effectués par un navire battant le pavillon d'un Etat contractant, soit lorsque, d'après le contrat de transport, le lieu de départ ou le lieu de destination se trouve dans un Etat contractant.

## Article 3

1. Lorsqu'un transporteur est propriétaire du navire, il exercera une diligence raisonnable et répondra de ce que ses préposés, agissant dans l'exercice de leur fonctions exercent une diligence raisonnable pour mettre le navire en état de navigabilité et convenablement armé, équipé et approvisionné au début de transport, et pour assurer la sécurité du transport des bagages à tous autres égards.

2. Lorsque le transporteur n'est pas propriétaire du navire, il répondra de ce que le propriétaire du navire ou l'armateur, selon le cas, et leurs préposés, agissant dans l'exercice de leurs fonctions, exercent une diligence raisonnable aux fins énumérées au paragraphe 1) du présent article.

## Article 4

1. Le transporteur sera responsable de la perte et du dommage aux bagages, si le fait générateur de la perte ou du dommage a lieu au cours du transport et est imputable à la faute ou négligence du transporteur, ou de ses préposés agissant dans l'exercice de leurs fonctions.

2. Le transporteur ne sera pas responsable si la faute ou la négligence a été commise par des préposés du transporteur dans la navigation ou l'administration du navire, durant le voyage.

3. Sauf Convention particulière, le transporteur ne sera pas responsable en cas de perte ou de dommages à des espèces, titres et autres valeurs tels que de l'or et de l'argenterie, des montres, de la joaillerie, bijoux.

(2). With regard to all other luggage, the period from the time when they are loaded on to the time when they are discharged from the ship.

g) « international carriage » means any carriage in which according to the contract of carriage the place of departure and the place of destination are situated either in a single State, if there is an intermediate port of call in another State, or in two different States.

h) « contracting State » means a State whose ratification or accession 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 contract of carriage, either the place of departure or the place of destination is in a contracting State.

## **Article 3**

1. Where a carrier is the owner of the carrying ship he shall exercise due diligence, and shall ensure that his servants and agents, acting within the scope of their employment, exercise due diligence to make the ship seaworthy and properly manned, equipped, and supplied at the beginning of the carriage, and in all other respects to secure the safe transportation of the luggage.

2. Where a carrier is not the owner of the carrying ship, he shall ensure that the shipowner or operator, as the case may be, and their servants and agents acting within the scope of their employment, exercise due diligence in the respects set out in paragraph (1) of this article.

## **Article 4**

1. The carrier shall be liable for loss of or damage to the luggage if the incident which causes the loss or damage occurs in the course of carriage and is due to the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.

2. The carrier shall not be liable if the fault or neglect is committed by the carrier's servants in the navigation or management of the ship during the voyage.

3. Unless specially agreed, the carrier shall not be liable for loss of or damage to monies, bonds and other valuables such as gold and silverware, watches, jewellery, ornaments.

#### 4. La preuve :

- (a) de l'étendue de la perte ou du dommage,
- (b) de ce que l'événement qui a causé la perte ou le dommage est survenu au cours du transport, incombe au passager.

5. a) En ce qui concerne les bagages de cabine, la preuve que la perte ou le dommage est dû à la faute ou à la négligence du transporteur ou de ses préposés ou agents, incombe au passager.

(b) En ce qui concerne les autres bagages, il appartient au transporteur de rapporter la preuve que la perte ou le dommage est dû à une cause autre que sa faute ou sa négligence ou celle de ses préposés ou agents agissant dans l'exercice de leurs fonctions.

### Article 5

Si le transporteur établit que la faute ou la négligence du passager a causé la perte ou le dommage, ou y a contribué, le tribunal peut, conformément aux dispositions de sa propre loi, écarter ou atténuer la responsabilité du transporteur.

### Article 6

1. La responsabilité en cas de perte ou de dommage à des bagages de cabine est limitée, dans tous les cas, à un montant de 6.000 francs par passager.

2. La responsabilité en cas de perte ou de dommage aux véhicules y compris les bagages transportés à l'intérieur ou sur le véhicule, est limitée, dans tous les cas, à 20.000 francs par véhicule.

3. La responsabilité en cas de perte ou de dommage à tout objet autre que ceux énumérés sous les littéras 1) et 2) est limitée, dans tous les cas, à 10.000 francs par passager.

4. Chaque franc mentionné dans cet article est considéré comme se rapportant à une unité constituée par 65,5 milligrammes et demi d'or au titre de 900 millièmes de fin. La conversion de cette somme en monnaies nationales autres que la monnaie or s'effectuera suivant la valeur de ces monnaies à la date de conversion de la somme en monnaie nationale et sera déterminée conformément aux dispositions de la loi du tribunal saisi de l'affaire.

5. Par convention spéciale avec le transporteur, le passager pourra fixer une limite de responsabilité plus élevée. Ils pourront de même convenir que la responsabilité du transporteur ne sera engagée que sous déduction d'une franchise qui ne dépassera pas 1500 francs en cas de dommage à un véhicule et 100 francs par passager en cas de pertes ou dommage aux autres bagages.

4. The burden of proving

(a) the extent of the loss or damage

(b) that the incident which caused the loss or damage occurred in the course of carriage shall be with the passenger.

5. (a) In the case of cabin luggage the burden of proving that the loss or damage was due to the fault or neglect of the carrier or his servants or agents shall lie with the passenger

(b) In the case of all other luggage the burden shall be on the carrier to prove that the loss or damage was due to some cause other than the fault or neglect of the carrier, his servants or agents acting within the scope of their employment.

**Article 5**

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

**Article 6**

1. The liability for the loss of or damage to cabin luggage shall in no case exceed 6,000 francs per passenger.

2. The liability for loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 20,000 francs per vehicle.

3. The liability for the loss of or damage to all other articles than those mentioned under (1) or (2) shall in no case exceed 10,000 francs per passenger.

4. Each franc mentioned in this article shall be deemed to refer to a unit consisting of 65,5 milligrams of gold of millesimal fineness 900. Conversion of this sum into national currencies other than gold shall be made according to the gold value of such currencies at the date of conversion of the sum awarded into national currencies and shall be regulated in accordance with the law of the Court seized of the case.

5. The carrier and the passenger may agree by a special contract to a higher limit of liability. They may also agree that the liability of the carrier shall be subject to a deductible not exceeding 1500 francs in the case of damage to a vehicle and not exceeding 100 francs per passenger in the case of loss of or damage to other luggage.

6. Les frais de justice alloués et taxés par un tribunal dans les instances en dommages-intérêts, ne seront pas inclus dans les limites de responsabilité prévues ci-dessus au présent article.

7. Les limitations de responsabilité prévues par le présent article s'appliquent à l'ensemble des actions nées d'un même événement et intentées par un passager ou en son nom ou par ses ayants droit ou les personnes à sa charge.

#### **Article 7**

Le transporteur sera déchu du bénéfice de la limitation de responsabilité prévue par l'article 6, s'il est prouvé que le dommage résulte d'un acte ou d'une omission du transporteur, faits, soit avec l'intention de provoquer un dommage, soit témérement et avec conscience qu'un dommage en résulterait 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**

A l'exception de ce qui est prévu à l'article 6 (5), toute stipulation contractuelle, conclue avant le fait générateur du dommage, tendant à exonérer le transporteur de sa responsabilité envers le passager ou à établir une limite inférieure à celle fixée dans la présente Convention, ou à renverser le fardeau de la preuve qui incombe au transporteur est nulle et non avenue; mais la nullité de ces stipulations n'entraîne pas la nullité du contrat de transport, lequel demeure soumis aux dispositions de la présente Convention.

#### **Article 10**

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.

#### **Article 11**

1. (a) En cas de dommage apparent à des bagages, le passager doit adresser des protestations écrites au transporteur ou à son agent;

(i) en ce qui concerne les bagages de cabine, avant ou au moment de leur débarquement;

6. Any legal costs awarded and taxed by a Court in an action for damages shall not be included in the limits of liability prescribed in this article.

7. The limits of liability prescribed in this article shall apply to the aggregate of the claims put forward by or on behalf of any one passenger, his personal representative, heirs or dependents on any distinct occasion.

#### **Article 7**

The carrier shall not be entitled to the benefit of the limitation of liability provided for in article 6, if it is proved that the damage resulted from an act or omission of the carrier done with the 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 liability of owners of sea-going ships or in any national law relating to such limitation.

#### **Article 9**

Except as provided for in article 6 (5), any contractual provision concluded before the occurrence which caused the damage, purporting to relieve the carrier of his liability towards the passenger or to prescribe 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 shall be null and void, but the nullity of that provision shall not render void the contract which shall remain subject to the provisions of this Convention.

#### **Article 10**

Any claim for damages, however, founded, may only be made subject to the conditions and the limits set out in this Convention.

#### **Article 11**

1. (a) In case of apparent damage to luggage the passenger shall give written notice to the carrier or his agent

(i) In the case of cabin luggage before or at the time of disembarkation

(ii) en ce qui concerne tout autre bagage, avant ou au moment de la délivrance.

(b) En cas de perte ou de dommage non apparent ces protestations doivent être adressées dans les sept jours du débarquement ou de la délivrance ou de la date à laquelle la délivrance aurait dû avoir lieu.

(c) Faute de se conformer aux prescriptions de cet article, le passager sera présumé, sauf preuve contraire, avoir reçu ses bagages en bon état.

(d) Les réserves écrites sont inutiles si l'état des bagages a été contradictoirement constaté au moment de leur réception.

2. Les actions en réparation du préjudice résultant de la perte ou du dommage aux bagages se prescrivent après une année à partir de la date du débarquement, et en cas de perte totale du navire à partir de la date à laquelle le débarquement aurait eu lieu.

3. La loi du tribunal saisi régira les causes de suspension et d'interruption des délais de prescription prévus au présent article; mais, en aucun cas, une instance régie par la présente Convention ne pourra être introduite après l'expiration d'un délai de trois ans à compter du jour du débarquement.

#### 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 responsabilité que peut invoquer le 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 lesdites limites.

3. Toutefois, le préposé ne pourra se prévaloir des dispositions des paragraphes 1) et 2) du présent article, s'il est prouvé que le dommage résulte d'un acte ou d'une omission de ce préposé fait, soit avec l'intention de provoquer un dommage, soit témérairement et avec conscience qu'un dommage en résulterait probablement.

#### Article 13

Une action en responsabilité pourra être intentée au choix du demandeur uniquement :

a) soit devant le Tribunal de la résidence habituelle ou du principal établissement du défendeur;

b) soit devant le Tribunal du point de départ ou du point de destination stipulé au contrat.

(ii) in the case of all other luggage before or at the time of its delivery.

(b) In the case of loss of or damage which is not apparent such notice must be given within seven days from the date of disembarkation or delivery or at the time when such delivery should have taken place.

(c) If he fails to comply with the requirements of this article the passenger shall be presumed in the absence of proof to the contrary to have received his luggage undamaged.

(d) The notice in writing need not be given if the state of the luggage has at the time of their receipt been the subject of joint survey or inspection.

2. Actions for damages arising out of loss of or damage to luggage shall be time-barred after a period of one year from the date of disembarkation, or if the ship has become a total loss, from the date when the disembarkation should have taken place.

3. The law of the Court seized of the case shall govern rights of suspension and interruption of limitation periods in this article; but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation.

## Article 12

1. If an action is brought against a servant or agent of the carrier arising out of damage 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 limits.

3. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of paragraphs (1) and (2) of this Article 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

Proceedings for liability can be taken only according to the plaintiff's preference.

(a) either before the Court of the habitual residence or principal place of business of the defendant

(b) or before the Court of the place of departure or that of destination according to the contract of passage.

Est nulle et non avenue toute clause qui aurait pour effet de déplacer le lieu où doit être jugé le litige selon les règles portées à la présente Convention.

#### **Article 14**

La Convention s'applique aux transports à titre commercial effectués par l'Etat ou les autres personnes morales de droit public dans les conditions prévues à l'article 1er.

#### **Article 15**

La présente Convention ne porte pas atteinte aux dispositions des conventions internationales ou des lois nationales régissant la responsabilité pour dommages nucléaires.

#### **Article 16**

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

#### **Article 17**

La présente Convention sera ratifiée et les instruments de ratification seront déposés auprès du Gouvernement belge.

#### **Article 18**

1. La présente Convention entrera en vigueur entre les deux premiers Etats qui l'auront ratifiée, trois mois après la date du dépôt de son instrument de ratification.

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

#### **Article 19**

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

Les instruments d'adhésion seront déposés auprès du Gouvernement belge.

La Convention entrera en vigueur pour l'Etat adhérent trois 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 par l'article 18, paragraphe (1).

Any clauses which would result in altering the place where the case is to be heard according to the rule of this Convention is null and void and of no effect.

#### **Article 14**

This Convention shall be applied to commercial carriage within the meaning of Article 1 by States or Public Authorities.

#### **Article 15**

This Convention shall not affect the provisions of any international Convention or national law which governs liability for nuclear damage.

#### **Article 16**

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

#### **Article 17**

This Convention shall be ratified and the instruments of ratification shall be deposited with the Belgian Government.

#### **Article 18**

1. This Convention shall come into force between the two States which first ratify it, three months after the date of the deposit of the second instrument of ratification.

2. This Convention shall come into force in respect of each signatory State which ratifies it after the deposit of the second instrument of ratification, three months after the date of the deposit of the instrument of ratification of that State.

#### **Article 19**

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

The instruments of accession shall be deposited with the Belgian Government.

The Convention shall come into force in respect of the acceding State three 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 18, paragraph (1).

## Article 20

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 par le Gouvernement belge.

## Article 21

1. Toute Haute Partie Contractante peut, au moment de la ratification, de l'adhésion, ou à tout autre moment ultérieur notifier par écrit au Gouvernement belge que la présente Convention s'applique à tels pays qui n'ont pas encore accédé à la souveraineté et dont elle assure les relations internationales.

La Convention sera applicable aux dits pays trois mois après la date de réception de cette notification par le Gouvernement belge.

L'Organisation des Nations Unies peut se prévaloir de cette disposition lorsqu'elle est responsable de l'administration d'un pays ou lorsqu'elle en assure les relations internationales.

2. L'Organisation des Nations Unies ou toute Haute Partie Contractante qui a souscrit une déclaration au titre du paragraphe (1) du présent article, pourra à tout moment aviser le Gouvernement belge que la Convention cesse de s'appliquer aux pays en question.

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

## Article 22

Le Gouvernement belge notifiera aux Etats représentés à la . . . . session de la Conférence diplomatique de Droit Maritime ainsi qu'aux Etats qui adhèrent à la présente Convention :

1. Les signatures, ratifications et adhésions reçues en application des articles 16, 17 et 19.

2. La date à laquelle la présente Convention entrera en vigueur, en application de l'article 18.

3. Les notifications au sujet de l'application territoriale de la Convention en exécution de l'article 21.

4. Les dénonciations reçues en application de l'article 20.

## Article 20

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.

## Article 21

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 countries which have not yet obtained sovereign rights and for whose international relations it is responsible.

The Convention shall three months after the date of the receipt of such notification by the Belgian Government, extend to the countries named therein.

The United Nations Organization may apply the provisions of this Article in cases where they are the administering Authority for a country or where they are responsible for the international relations of a country.

2. The United Nations Organization or any High Contracting Party which has made a declaration under paragraph (1) of this Article may at any time thereafter declare by notification given to the Belgian Government that the Convention shall cease to extend to such country.

This denunciation shall take effect one year after the date on which notification thereof has been received by the Belgian Government.

## Article 22

The Belgian Government shall notify the States represented at the . . . . session of the Diplomatic Conference on Maritime Law, and the acceding States to this Convention, of the following :

1. The signatures, ratifications and accessions received in accordance with Articles 16, 17 and 19.

2. The date on which the present Convention will come into force in accordance with Article 18.

3. The notification with regard to the territorial application of the Convention in accordance with Article 21.

4. The denunciations received in accordance with Article 20.

## Article 23

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

Toute Haute Partie Contractante qui désirerait faire usage de cette faculté avisera le Gouvernement belge qui, pourvu qu'un tiers des Hautes Parties Contractantes soit d'accord se chargera de convoquer la Conférence dans les six mois.

EN FOI DE QUOI les Plénipotentiaires soussignés dont les pouvoirs ont été reconnus en bonne et due forme ont signé la présente Convention.

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

## PROTOCOLE

Toute Haute Partie Contractante pourra, lors de la signature, de la ratification ou de l'adhésion à la présente Convention, formuler les réserves suivantes :

1. de ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux;
2. de ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante;
3. de donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous forme appropriée à cette législation.
4. de ne pas donner effet à la Convention lorsque le contrat de transport étant exécuté au moyen de plus d'un mode de transport est régi par la Convention Internationale sur le transport de passagers et de bagages par chemin de fer.

### Article 23

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, provided that one third of the High Contracting Parties are in agreement, shall convene the Conference within six months thereafter.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, whose credentials have been duly accepted, have signed this Convention.

DONE at Brussels, . . . . . day . . . . . 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.

### PROTOCOL

Any High Contracting Party may at the time of signing, ratifying or acceding to this Convention make the following reservations :

1. not to give effect to the Convention in relation to carriage which according to its national law is not considered to be international carriage;
2. not to give effect to the Convention when the passenger and the carrier are both subjects of the said Contracting Party;
3. to give effect to this Convention either by giving it the force of law or by including the provisions of this Convention in its national legislation in a form appropriate to that legislation;
4. not to give effect to this Convention to a contract of carriage by more than one form of transport governed by the International Convention concerning the carriage of passengers and luggage by rail.

## PROJET DE CONVENTION

RELATIVE A L'INSCRIPTION DES DROITS RELATIFS AUX

### NAVIRES EN CONSTRUCTION

#### Article 1

Les Etats contractants s'engagent à ce que leur législation nationale comporte les dispositions permettant l'inscription, conformément aux règles de la présente Convention, dans un registre public officiel tenu par l'Etat ou placé sous son contrôle, des droits relatifs aux navires dont la construction est décidée ou en cours sur leur territoire.

L'inscription de ces droits peut être limitée aux navires d'un type et d'un tonnage qui, d'après la législation nationale du pays où l'inscription est requise, sont susceptibles d'immatriculation, une fois terminés.

#### Article 2

Les Etats contractants peuvent limiter l'inscription de ces droits aux navires dont la construction est décidée ou en cours pour le compte d'un acheteur étranger.

Les Etats contractants conviennent d'autoriser l'inscription des droits relatifs aux navires dont la construction est décidée ou en cours, sans discrimination entre les ressortissants des Etats contractants, requérant une telle inscription. Ceci toutefois sera sans incidence sur les dispositions de la législation du pays de l'inscription qui limitent l'acquisition des dits droits par des étrangers, ou réglementent la construction du navire.

L'immatriculation prévue par les dispositions de la présente Convention sera sans effet sur la nationalité des navires.

#### Article 3

Aucun Etat contractant n'autorisera sur son territoire l'inscription de droits relatifs à un navire dont la construction est décidée ou en cours sur le territoire d'un autre Etat contractant.

## DRAFT CONVENTION

RELATING TO REGISTRATION OF RIGHTS IN RESPECT OF

# SHIPS UNDER CONSTRUCTION

### Article 1

The contracting States undertake that their national law shall contain provisions permitting the registration, in accordance with the provisions of this Convention, in an official public register established by or under the control of the State, of rights in respect of ships which are to be or are being constructed within their territories.

The registration of such rights may be restricted to ships which, under the national law of the State of registration, will be of a type and size making them eligible, when completed, for registration in the national ship register.

### Article 2

The contracting States may restrict registration of such rights to cases where ships are to be or are being constructed for a foreign purchaser.

The contracting States agree to allow registration of rights in respect of ships which are to be or are being constructed, without discriminating against any applicant who is a national of one of the contracting States. However, the foregoing shall not affect any provision of the national law of the State of registration restricting the acquisition of such rights by aliens or for controlling shipbuilding.

Registration under the provisions of this Convention shall not affect the national status of any ship.

### Article 3

No rights in respect of ships which are to be or are being constructed within the territory of a contracting State shall be admissible for registration in any other contracting State.

#### Article 4

L'inscription de droits relatifs à un navire dont la construction est décidée ou en cours sera autorisée dès qu'un contrat pour la construction d'un navire bien déterminé a été signé ou que le constructeur déclare qu'il a décidé de construire pareil navire pour son propre compte.

Toutefois, la législation nationale peut subordonner l'immatriculation à la condition que la quille ait été posée ou qu'un travail de construction équivalent ait été exécuté à l'endroit où le navire doit être lancé.

#### Article 5

Les droits de propriété et hypothèques (ou mortgages) relatifs à un navire dont la construction est décidée ou en cours seront, sur demande, inscrits au registre.

La législation nationale peut autoriser l'inscription d'autres droits relatifs à un navire dont la construction est décidée ou en cours.

#### Article 6

Les droits inscrits prendront légalement rang l'un après l'autre dans l'ordre de leur inscription.

La législation du pays d'immatriculation peut toutefois disposer que l'ordre de préférence sera celui dans lequel les demandes d'inscription auront été reçues par le bureau compétent à la condition que les tiers puissent en obtenir communication.

Les droits inscrits primeront ceux qui aux termes de la présente Convention auraient pu être inscrits mais ne l'ont pas été.

#### Article 7

L'ordre de préférence entre les droits inscrits conformément à la présente Convention et les privilèges maritimes ou droits réels similaires sera le même que pour les navires immatriculés après achèvement.

#### Article 8

Les droits de propriété et hypothèques (ou mortgages) inscrits dans l'un des Etats contractants conformément aux dispositions de la présente Convention et parfaits au regard de la législation de cet Etat, seront reconnus dans tous les autres Etats contractants, avec le rang qui s'y attache.

#### Article 9

Lorsqu'un navire est immatriculé dans l'un des Etats contractants, conformément aux dispositions de la présente Convention, son immatriculation dans un autre Etat contractant ne sera permise que sur production d'un certificat, émanant de l'Etat où le navire est immatriculé,

#### **Article 4**

Registration of rights in respect of a ship which is to be or is being constructed shall be permitted, when a contract for the building of a properly specified ship has been executed or the builder declares that he has decided to build such a ship for his own account.

However, the national law may make it a condition for registration that the keel has been laid or equivalent constructional work has been performed in the place of launching.

#### **Article 5**

Titles to and mortgages (or hypothèques) on a ship which is to be or is being constructed shall on application be entered in the register.

The national law may allow registration of other rights in respect of ships which are to be or are being constructed.

#### **Article 6**

Registered rights shall have legal priority, one before another, in the same order as they have been registered.

The national law of the State of registration, however, may provide that priority shall originate from the time, when an application for registration was received in the office of registration, provided that such application be available for public inspection.

Registered rights shall take precedence over rights which under this Convention can be registered, but have not been so registered.

#### **Article 7**

Priority between rights registered according to this Convention and maritime or possessory liens or similar rights shall be the same as for ships registered after completion.

#### **Article 8**

Titles and mortgages (or hypothèques) registered in one of the contracting States pursuant to the provisions of this Convention and duly perfected in accordance with the national law of such State, and the priority thereby obtained, shall be recognized in all other contracting States.

#### **Article 9**

When a ship is registered pursuant to the provisions of this Convention in one of the contracting States, registration in another contracting State shall only be allowed on presentation of a certificate of the State where the ship is registered setting out, in their order, all

énonçant dans leur ordre toutes les mentions inscrites relatives à ce navire, ainsi que, s'il y a lieu, également dans leur ordre, les demandes d'inscription retenues selon l'alinéa 2 de l'article 6. Ce certificat attestera que toutes les personnes dont les droits sont inscrits ont reçu notification de la demande de nouvelle immatriculation trente jours au moins avant la date de délivrance du certificat, et qu'aucune demande d'inscription concernant ce navire ne sera plus reçue après la délivrance du certificat.

Les droits de propriété et hypothèques (ou mortgages) seront, lors de l'immatriculation du navire dans un autre Etat contractant, inscrits au registre de cet Etat, en conservant leur rang d'origine, conformément aux dispositions de l'article 6.

Si la législation du pays où l'immatriculation est demandée ne permet pas l'inscription de ces droits tels qu'ils sont inscrits, les intéressés disposeront d'un délai de soixante jours au moins pour satisfaire aux exigences de cette législation, tous les effets juridiques de l'inscription précédente demeurant en vigueur pendant cette période.

Si le navire construit dans un Etat contractant n'y est pas immatriculé, il ne pourra être immatriculé dans un autre Etat contractant que moyennant la production d'un certificat émanant de l'Etat dans lequel il a été construit indiquant que le navire n'y est pas immatriculé.

registered particulars relating to the ship, and in addition, also in their order, the applications, if any, admitted according to paragraph 2 of Article 6. Such certificate shall further state that all persons whose rights are registered have been notified of the proposed new registration at least thirty days before the date of issue of the certificate, and that no more applications for registration will be accepted in respect of the ship after the issue of this certificate.

Registered title and mortgages (or hypothèques) shall, on registration of the ship in another contracting State, be registered in the register of the latter State, retaining the priority resulting from the original registration, in accordance with the provisions of Article 6.

If these registered rights do not comply with the statutory requirements for registration of the national law of the State to which the application for registration is made, the interested parties shall be given at least sixty days in which to comply with such requirements, all legal effects of registration remaining in force during this period.

If a ship is built in a contracting State but not registered there, registration in respect of the said ship shall only be allowed in a contracting State on presentation of a certificate of the State of building stating that the ship is not registered in that State.

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