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REPORT OF COMMITTEE ON PROPOSED INTERNATIONAL MARITIME CONFERENCE.

TO THE MARITIME LAW ASSOCIATION :

The undersigned, appointed a committee to consider and report upon the communications in regard to the proposed International Maritime Conference to be held at Brussels early in the present year, offers the following report:

As the members of this Association will recall, the former Brussels Conference in 1910 resulted in two Maritime Conventions (both signed on September 23, 1910). One declared rules for collision liabilities, in case of contributory fault, which apportioned the damages unequally according to the relative degree of fault, and subjected cargo claims to a like limitation, instead of the present rule in this country, which allows in such cases a joint and several liability in favor of cargo.

The other Convention related to salvage and assistance, which was adopted by the United States, and proclaimed by the President on February 13, 1913. Further constructive work was continued by a sub-committee under the Comite Maritime International, which progress, however, was interrupted by the war of 1914.

Meantime, the United States Department of State has never presented the Collision Convention to the Senate, in view of the opposition it was supposed to arouse.

On November 5, 1921, the Belgium Legation addressed our Department of State. It expressed the wish that this country might also adopt the Collision Convention, which in the meantime had been accepted by Great Britain, and the great majority of maritime countries. This commu-

nication then referred to the subsequent work of the sub-committee, which had led to revised projects for conventions relating to (1) Limitation of shipowners' liability, and (2) Mortgages and liens on vessels. This country was invited to offer suggestions as to these projected treaties, which it was hoped might then be received and considered at Brussels, so that thereafter the Conference could be called for an early date in 1922.

In December the State Department transmitted this communication to Secretary Hoover, requesting his views, with the intimation that a like invitation had been sent to the U. S. Shipping Board. Mr. Hoover on December 23rd replied, stating that he was not prepared to submit any remarks on the proposed drafts, but suggested that this country should be represented at the coming Conference. Apparently the Collision Convention is not to be submitted to the Senate until after further results of the expected Brussels Conference. Therefore the members of this Association at this time are specially interested in the two draft Conventions to be presented to the International Conference—that concerning limiting the shipowners' liability, and the second regarding hypothecations and privileges (liens) on vessels.

This first draft Convention has already been communicated to this Association, and a translation thereof was circulated in 1913. Its features are a separation between ordinary property claims and claims for loss of life and personal injuries. For the property claims there is a liability to the value of vessel and freight, but not to exceed for the vessel a value of £8 a ton. This valuation of the vessel is based on its condition in the port of arrival after the casualty. But if on the same voyage there be two distinct and independent casualties, the first value after the original casualty will nevertheless survive unaffected by the second (Art. 3).

As to loss of life and personal injury claims, there is a further liability of £7 a ton if caused by fault of those in the vessel's service. If this does not compensate the victims, then any deficiency may be proved with other claims against the £8 fund, but subject to the lien of property claims (Art. 8).

The method of such a combination of English limitation with the Continental method has before been considered in this Association. At the March 7, 1913, meeting Mr. Wheeler reported on changes in our Limited Liability Statutes. His report in connection with the *Titanic* casualty called out much discussion. Allusion was then made to the fact of this Brussels *projet* and to the inquiries that the Belgian Government had already begun as to the views of other nations.

Many conflicting opinions were expressed, and Mr. Wheeler's report was not approved. Finally, by the substantial majority of 13 to 5, the Association passed this resolution:

“RESOLVED, That the Department of State be requested to instruct the delegates of the United States to the Third International Conference on Maritime Law, to urge the adoption of the existing British system of limitation of shipowner's liability, with due regard to the interests of the owners of small vessels, and with provision for loss of life and personal injuries.”

As I read this draft treaty, the loss of the vessel on the voyage would discharge the shipowner from property liability, unless to the extent of advanced freight and passage money. Regarding loss of life and personal injuries, the maximum liability of £7 per ton stands, ship lost or not lost. In other words, the owner would have to cover this liability by special insurance.

Thereby it seems that this draft provides a reasonable limitation against both loss of life and property damage claims.

In view of the tonnage standard, quite inapplicable to small vessels and coastwise craft, and even to our sailing vessels, a reservation should be made to apply to this class of shipping.

I also regard the separate liabilities for successive casualties on the same voyage as contrary to the present system, by which all casualties on same voyage are treated as a united venture. Such details, however, are not beyond being harmoniously solved and adjusted in conference.

Hence I conclude that, if we are to reach the long-sought ideal of an international system to limit liability, this *projet* is a near and hopeful approach to an acceptable system, subject, however, to special modification for small vessels.

The second draft regarding Hypothecations and Liens is not at present adapted to our conditions.

After efforts for about ten years, this Association obtained the passage of an "Act relating to Liens on vessels for repairs, supplies or other necessaries," passed June 27, 1910 (36 Stat. 604), which has been satisfactory in practice, and has the approval of our commercial bodies. Hence it is unlikely that this country would to-day adopt this proposed Continental hypothecation with the system of privileges that are not by any means equivalent to our maritime liens, either in ranking, or in the means of enforcement.

Furthermore, this country has adopted a special ship mortgage statute embodied in the Jones Bill (Act of June 6, 1920). Without the concurrence of the U. S. Shipping Board officials, this Association would hesitate to recommend the acceptance of any foreign system of mortgage

or liens which would materially change our present statutes.

The standing and scope of liens on American vessels have never been extended in the attempt to join in the aspirations for world-wide uniformity. Our policy protects small supply and material men in a way quite different from the law of Great Britain. It is not desirable that these safeguards be yielded in the effort for a supposed general uniformity.

As to this proposed Convention on ship mortgages and liens, I recommend that this Association expresses its conviction that, at this time, the difficulties involved in the proposed changes would, in our judgment, prevent this country from adhering to this treaty.

As already noted, the Government of Belgium has approached the State Department, not only as to being represented at a Conference, but as to any suggestions or comments that it may offer prior to the Conference. These are all matters of great moment to the members of this Association, who naturally may wish to present its views to the authorities at Washington. Hence for that purpose I suggest a committee to be appointed, to set forth the recommendations not only regarding the text of any draft treaty under consideration, but the reasons or grounds why the maritime interests here do not see their way clear to follow the lead of Belgium in respect to any of the provisions of the drafts now being the subjects of diplomatic inquiry.

Dated, February 10, 1922.

HARRINGTON PUTNAM.

APPENDIX.

**MARITIME LAW ASSOCIATION OF THE
UNITED STATES.**

**DRAFT INTERNATIONAL CONVENTION FOR THE
UNIFICATION OF CERTAIN RULES OF LAW
RELATING TO THE LIMITATION OF THE LIA-
BILITY OF OWNERS OF SEA-GOING VESSELS.**

ARTICLE 1.

The liability of the owner of a vessel is limited to an amount equal to the value of the vessel, her freight, and the accessories of the vessel and her freight, in respect of:

- (1) Compensation due to others by reason of damage caused, whether on land or on water, by the acts and faults of the master, crew, pilot, or any other person in the service of the vessel;
- (2) Compensation due by reason of damage caused to cargo delivered to the master to be transported, or by reason of damage caused to any goods and property on board;
- (3) Liabilities arising on bills of lading signed by or on behalf of the master;
- (4) Compensation due by reason of the breach of a contract through faults of navigation;

- (5) Liabilities arising out of any obligation to raise the wreck of a sunken vessel or any responsibilities connected therewith;
- (6) Compensation for assistance and salvage;
- (7) The contribution due from the vessel or freight to general average;
- (8) Liabilities arising on contracts entered into or acts done by the master away from the vessel's port of registry by virtue of his legal powers, where such contracts or acts were necessary for the preservation of the vessel or the continuation of the voyage if the necessity was not caused by any insufficiency or defect in equipment or stores at the commencement of the voyage.

In no case, however, shall such liability exceed an aggregate sum of £8 per ton of the vessel's tonnage, except in the cases mentioned in paragraphs 5, 6, and 7 (above) in respect of which the limit of £8 a ton has no application.*

ARTICLE 2.

The limitation of liability laid down in the foregoing Article does not apply:

- (1) to obligations arising from faults of the owner;
- (2) to obligations arising under paragraphs 3 and 8 of Article 1 where the owner has expressly authorised or ratified the acts in question;

*The "protocole de clôture" will reserve to the high contracting parties the right of not allowing liability to be limited to the value of vessel and freight in respect of damage occasioned to ports, docks, and navigable ways, or to ratify on these points only on a condition of reciprocity. It is understood that in no case can the liability for damage exceed £8 per ton.

- (3) to obligations resulting from the engagement of the master, crew, and other persons in the service of the vessel.

When the master of a vessel is also owner, or a part owner, of the vessel, he cannot obtain limitation of liability for his faults other than his faults of navigation and the faults of persons in the service of the vessel.

ARTICLE 3.

An owner who avails himself of the limitation of his liability to the value of the vessel must prove that value. The valuation shall be according to the condition of the vessel at the points of time hereinafter set out:

- (1) In cases of collision or other accidents, and as regards all claims for damages or other payments arising therefrom, including claims arising out of contracts, which have arisen before the arrival of the vessel at the first port reached after the accident, and also as regards all claims for general average contributions arising out of the accident, the valuation shall be according to the condition of the vessel on her arrival at that port.

If before her arrival at that port a fresh accident, unconnected with the previous accident, has reduced the value of the vessel, any such diminution of value shall not be taken into account in calculating the liability on claims arising out of the previous accident.

As respects accidents occurring during the sojourn of a vessel at a port, the valuation shall be according to the condition of the vessel at that port after the accident;

- (2) If it is a question of claims relating to the cargo, or arising on a bill of lading, not being claims

provided for in the preceding paragraph, the valuation shall be according to the condition of the vessel at the port of destination of the cargo, or, if the voyage is previously abandoned, at the time when it is abandoned.

If the cargo is destined to more than one port, and the damage arises from one cause, the valuation shall be according to the condition of the vessel at the first of those ports.

- (3) In all the other cases mentioned in Article 1, the valuation shall be according to the condition of the vessel at the end of the voyage.

ARTICLE 4.

The value of the freight mentioned in Article 1 includes:

- (1) In the case mentioned in Article 3 (1) two-thirds of the gross freight accruing to the owner on account of goods on board at the time of the accident;
- (2) In the case mentioned in Article 3 (2) two-thirds of the gross freight accruing to the owner on account of goods on board at the time of the arrival of the vessel at the port;
- (3) In the case mentioned in Article 3 (3) two-thirds of the gross freight accruing to the owner for the voyage.

The provisions as to freight apply also to passage money and demurrage.

ARTICLE 5.

The accessories mentioned in Article 1 include the sums hereinafter enumerated where paid to the owner since the commencement of the voyage:

- (1) Compensation for material damage sustained by the vessels and not yet repaired, or for loss of the freight specified in Article 4.
- (2) Compensation for general average losses, in so far as those losses consist in material damage sustained by the vessel and not yet repaired, or in loss of the freight specified in Article 4.
- (3) Two-thirds of any remuneration for assistance or salvage, without taking into account any sums allotted to the master and other persons in the service of the vessel.

Payments made or due to the owner on policies of insurance, and bonuses, subventions, and other national subsidies, are not deemed to be accessories of the vessel or of the freight.

ARTICLE 6.

Unless special circumstances justify another interpretation, the term "voyage," for the purpose of this Convention means the voyage for which a vessel is fitted out and equipped, or the voyage undertaken by a vessel in execution of a contract of affreightment, or the voyage which she has brought to a conclusion by a complete discharge of the goods on board, whether or not she takes on board new cargo.

ARTICLE 7.

The various claims attaching to a single accident, or as respects which in the absence of an accident the value of a ship is ascertained in a single port, rank with one another against the amount representing the limit of the owner's liability, regard being had to the rank of their respective liens.

ARTICLE 8.

Where death or personal injury is caused by the act or fault of the captain, crew, pilot, or any other person in the service of the vessel, the owner of the vessel is liable to the victim or his legal personal representatives up to a maximum amount of £7 per ton of the vessel's tonnage over and above the limit of liability provided for in the preceding Articles.*

If the victim or his legal personal representatives are not fully compensated by this amount, they rank, as regards the balance of their claims, with the other claims against the amounts specified in the preceding Articles, regard being had to the priority of their lien.

The same limitation of liability applies to passengers on the carrying ship, but does not apply to the crew or other persons in the service of that ship whose right of action in the case of death or personal injuries remains governed by the law of the ship's flag.†

ARTICLE 9.

If the vessel is arrested in the course of her voyage, the claimant who arrests the vessel is entitled to the bail given to effect her release according to the terms on which the bail is given and his rights are not affected by subsequent events, nor shall the fact that a bail has been given be used to derogate from the rights of other claimants.

* The victims of one accident and their representatives rank together against the sum constituting the limit of liability.

† The protocole de clôture will contain an Article authorising the contracting Powers to reserve to themselves the right of deciding that the owner of a ship not used for carrying passengers and not exceeding 300 tons is responsible for damage due to death or personal injury in accordance with the general terms of the Convention, but without the necessity of applying to this liability the provisions of paragraph 1 of this Article.

ARTICLE 10.

In the event of any action or proceeding being taken against the owner of a vessel on one of the grounds enumerated in Article 1, or Article 8, the Court may, if it thinks fit, on the application of the owner of the vessel, order that execution should not be levied on the goods of the owner other than the vessel, her freight and accessories, until such time has elapsed as may be sufficient to allow him to realise his vessel and effect a division of the proceeds amongst his creditors.

ARTICLE 11.

Where a person other than the owner of the vessel, or where, in the case of a charter, whether a time charter or a voyage charter or any other description of charter, the charterer is liable under one of the heads enumerated in Article 1 or Article 8, the provisions of this Convention shall apply to that person in like manner as they apply to the owner.

If in any of the circumstances specified in the preceding paragraph, the owner is himself liable, Article 4 shall have effect as though for two-thirds of the gross freight there were substituted two-thirds of the freight or hire accruing to the owner in respect of the period elapsing between the beginning of the voyage and the various points of time indicated in the said Article 4.

ARTICLE 12.

For the purposes of this Convention, the expression "tonnage" means, in the case of steamers and other mechanically propelled vessels, net tonnage with an addition for engine room space, and in the case of sailing vessels, net tonnage.

ARTICLE 13.

The provisions of this Convention shall be applied in each contracting State in cases in which one of the parties interested belongs to another contracting State, as well as in any other cases provided for by the national laws.

But the principle formulated in the preceding paragraph does not affect the right of the contracting States not to apply the provisions of this Convention in favour of persons belonging to a non-contracting State.

ARTICLE 14.

This Convention does not apply to vessels of war nor to other Government vessels appropriated exclusively to a public service.

ARTICLE 15.

Nothing in the foregoing provisions shall be deemed to affect in any way the competence of tribunals, modes of procedure, or methods of execution authorised by the national laws.

ARTICLE 16.

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 pounds sterling into terms of their own monetary system in round figures.*

ARTICLE 17.

After an interval of, at most, two years from the day when this Convention is signed, the Belgian Government

*It will be better, at a later stage, to transfer this provision to the "Protocole de Clôture."

shall place itself in communication with the Governments of the High Contracting Parties which have declared themselves prepared to ratify the Convention with a view to deciding whether it should be put into force. The ratifications shall be deposited at Brussels at a date to be fixed by agreement between the said Governments. The first deposit of ratifications shall be recorded in a Protocol signed by the Representatives of the Powers which take part therein and by the Belgian Minister for Foreign Affairs. The subsequent deposit of ratifications shall be made by means of a written notification, addressed to the Belgian Government and accompanied by the instrument of ratification.

A duly certified copy of the Protocol relating to the first deposit of ratifications and also of the instruments of ratifications accompanying them shall be immediately sent by the Belgian Government, through the diplomatic channel, to the Powers who have signed this Convention, or, who have acceded to it. The said Government shall in the cases contemplated in the preceding paragraph inform them at the same time of the date on which it received the notification.

ARTICLE 18.

Non-signatory Powers may accede to the present Convention whether or not they have been represented at the International Conference at Brussels.

A Power which desires to accede notifies its intention in writing to the Belgian Government, forwarding to it the act of accession, which shall be deposited in the archives of the said Government.

The Belgian Government shall immediately forward to all the Powers which have signed or acceded to the Convention a duly certified copy of the notification as well

as of the act of accession, mentioning the date on which it received the notification.

ARTICLE 19.

The present Convention applies, in the case of each Contracting State, to the Mother Country, and also to all Colonies, Possessions, or Protectorates, and all areas within the jurisdiction of a Consular Officer.

Notwithstanding the above, each Contracting Power has the right of not applying the Convention in its self-governing Colonies or Possessions. In such cases, it shall declare its intention in the instrument of ratification or the act of accession. Similarly, and subject to the same provisions, in so far as there exists in any Colony, Possession, or Protectorate, a special code of law for the native population and similar inhabitants, each Contracting Power has the right of not applying the Convention to such persons.

When a Power desires ultimately that the Convention should be put in operation in one of its self-governing Colonies or Possessions, or should be extended to the native population or similar inhabitants, it shall make known its wish by means of a special notification addressed in writing to the Belgian Government. This notification shall be deposited in the archives of the Belgian Government, who shall immediately transmit to the other Contracting States a duly certified copy of the notification mentioning the date upon which it was received.

ARTICLE 20.

The present Convention shall take effect in the case of the Powers who have taken part in the first deposit of ratifications one year after the date of the Protocol recording such deposit. As respects the Powers which ratify subsequently or which accede, and also in cases in which

the Convention is ultimately put into effect in accordance with the second paragraph of Article 19, it shall take effect six months after the notifications specified in paragraph 1 of Article 17, and paragraph 2 of Article 19, have been received by the Belgian Government.

ARTICLE 21.

In the event of one of the Contracting Parties wishing to denounce the present Convention, the denunciation shall be notified in writing to the Belgian Government, which shall immediately communicate a duly certified copy of the notification to all the other Powers informing them of the date on which it was received.

The denunciation shall only operate in respect of the denouncing Power, and only on the expiry of one year after the notification has reached the Belgian Government.

ARTICLE 22.

Any one of the Contracting States shall have the right three years after this Convention comes into force to call for a fresh Conference with a view to possible amendments.

Any Power exercising this right must notify its intention to the other Powers through the Belgian Government, which will make arrangements for convening the Conference.