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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

**REPORT OF THE DELEGATES OF THE MARITIME LAW
ASSOCIATION OF THE UNITED STATES TO THE CON-
FERENCE OF THE COMITE MARITIME INTERNATIONAL
AT AMSTERDAM, SEPTEMBER 1949**

REPORT to The Maritime Law Association of the United States on the Conference of the Comité Maritime International held at Amsterdam, September 19-24, 1949.

From the point of view of this Association the two important matters dealt with were the following:

YORK-ANTWERP RULES, 1950

The revision of the 1924 rules was accomplished, and the representatives of Great Britain, Norway, Sweden and the United States announced that they anticipated that the new rules would be incorporated in bills of lading on ships carrying the flag of their countries without delay. The official English text of the rules as adopted is now in print and is submitted herewith.

SHIP MORTGAGES

The protection of foreign ship mortgages was discussed and the following resolution was adopted:

“Under reservation of exceptional provisions of municipal laws prohibiting the arrest of a ship during the course of a voyage, the Conference agrees in principle to the following resolution proposed by the American Delegation:

‘It is resolved that the Conference approves in principle that a mortgagee of a vessel under a mortgage or “hypothèque” valid by the law of her flag should have the right to enforce his security in any jurisdiction in which the vessel may be found and for that purpose to have the vessel arrested or otherwise detained within the jurisdiction until proper security has been lodged or the Court has adjudicated on the matter.

In order to implement this resolution, National Associations, whose municipal law does not provide the above remedies, are respectfully requested to urge upon their Governments that the necessary changes be effected in their law in order to achieve this purpose',

and, in order to ensure the most efficient protection to mortgage and 'hypothèque' creditors, the Conference recommends that all interested States should as soon as possible ratify, or adhere to, the Brussels Convention of 1926, for the unification of certain rules in the matter of liens and mortgages."

Sous réserve des dispositions exceptionnelles des lois nationales qui interdiraient la saisie d'un navire pendant le cours d'un voyage, la Conférence adopte, en principe, la résolution suivante proposée par la délégation américaine :

"Il est décidé que la Conférence approuve le principe qu'un créancier ayant sur un navire un 'mortgage' ou une hypothèque valables selon la loi de son pavillon devrait pouvoir demander à toute juridiction dans le ressort de laquelle le navire se trouverait, la reconnaissance de son droit, et à cet effect, être autorisé à y saisir ou arrêter le navire jusqu'à ce qu'une garantie adéquate ait été fournie ou que la question ait été tranchée par la juridiction saisie.

Afin de donner effet à la présente résolution, les Associations des Etats dont les lois n'accordent pas ces droits, sont priées de vouloir demander instamment à leurs Gouvernements respectifs, une modification des lois en vigueur pour atteindre ce but."

et afin d'assurer la protection la plus efficace des créanciers qui ont "mortgage" ou hypothèque sur les navires, recommande que tous les Etats intéressés donnent, le plus rapidement possible, leur ratification ou leur adhésion à la Convention de Bruxelles de 1926, pour l'unification de certaines règles en matière de privilèges et hypothèques maritimes.

In addition to the foregoing matters as to which the American delegates were specially instructed by this Association, the Conference took the following action :

ARREST OF SHIPS

This subject is closely connected with the question of ship mortgages, and the Conference adopted the following resolution :

La Conférence décide d'inviter le Bureau Permanent à nommer une commission internationale et de donner mission à cette commission d'étudier tous les problèmes directement ou indirectement relatifs ou liés à l'unification internationale de

toute la matière de la législation sur la saisie conservatoire des navires; de faire un rapport en temps utile avant la prochaine Conférence du Comité Maritime International et, si possible, de présenter un projet de convention. La commission aura toute liberté d'examiner et de présenter telles recommandations qu'elle estimera opportunes.

The Conference resolves to request the Bureau Permanent to appoint an International Commission and instruct this Commission to study all problems directly or indirectly appertaining to or connected with the international unification of the whole field of the law of arrest of ships; to report thereon in good time before the next Conference of the C. M. I. and, if possible, to submit a draft convention. The Commission having a free hand to consider and make such recommendations as it thinks proper.

LIMITATION OF LIABILITY AND GOLD CLAUSE

The question of reconciling the divergent national laws as to the right of the shipowner to limit his liability and to stabilize the valuation clause in the Hague Rules (\$500 clause in our statute) in view of the present instability of currencies, was discussed and the following resolution was adopted:

La Conférence exprime le voeu que la Bureau Permanent charge la Commission Internationale pour la Limitation de la Responsabilité des Propriétaires de Navires et pour les Clauses-or d'étudier à nouveau tout le problème de la limitation de la responsabilité des propriétaires de navires et spécialement celui de la clause-or ainsi que le problème de la clause-or dans la convention sur les connaissements, de consulter à ce sujet toutes les Associations Nationales et de présenter un rapport comportant, le cas échéant, un nouveau projet de convention, à la prochaine conférence du Comité Maritime International.

The Conference expresses the wish that the Bureau Permanent will instruct the International Commission on the Limitation of Liability of Shipowners and the Gold-Clause to renew its consideration of the whole question of the Limitation of Liability of Shipowners as well as the question of the Gold-Clause in the Convention on Bills of Lading, consult the National Associations on these questions and to present a report embodying, if necessary, a new draft convention, at the next Conference of the Comité Maritime International.

A proposal was made to draft a convention authorizing the issuance of through bills of lading covering the *terms of transit* from point of origin to ultimate destination and the following resolution was adopted:

The Conference recommends that the question of combined transport be referred to the Sub-Committee appointed for its study; that this Sub-Committee be invited to consider taking the evidence from the commercial interests concerned as to if and under what conditions such document is practicable and useful.

La Conférence décide que la problème relatif à l'établissement d'un document de transports combinés sera renvoyé à la Commission déjà désignée pour son étude et recommande à cette commission d'examiner s'il convient de consulter les milieux commerciaux intéressés sur le point de savoir si, et à quelles conditions, un tel document serait susceptible d'une utilisation pratique.

A proposal was also made to create an international tribunal to which all questions of maritime law might be referred, and the following resolution was adopted:

La Conférence décide d'inviter le Bureau Permanent à nommer une commission internationale et à donner mission à cette commission d'étudier le problème de la création d'une Cour Internationale Maritime et de présenter un rapport à la prochaine Conférence.

The Conference resolves to request the Bureau Permanent to appoint an International Commission and instruct this Commission to study the problem of the creation of an International Maritime Law Court and to report thereon to the next Conference.

The Permanent Bureau appointed the committees authorized by the foregoing resolutions, generally giving representation on each committee to each of the nations represented at the Conference, including the United States. The membership of the various committees will be submitted later.

We may add that the American representatives were warmly welcomed at the Conference and it was made plain to us that the Comité Maritime International desired continued and increased participation by the United States in its future Conferences and on the various preparatory committees whose work, in practice, determines the quality of the results achieved by the Comité. We think the Maritime Law Association should give serious consideration to providing for continuous and enlarged participation in the work of the Comité.

OSCAR R. HOUSTON,
Secretary.

YORK-ANTWERP RULES, 1950

RULE OF INTERPRETATION

In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

RULE A. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

RULE B. General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.

RULE C. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

RULE D. Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies which may be open against that party for such fault.

RULE E. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

RULE F. Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

RULE G. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

RULE I. JETTISON OF CARGO.

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognized custom of the trade.

RULE II. DAMAGE BY JETTISON AND SACRIFICE
FOR THE COMMON SAFETY.

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

RULE III. EXTINGUISHING FIRE ON SHIPBOARD.

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage to such portions of the ship and bulk cargo, or to such separate packages of cargo, as have been on fire.

RULE IV. CUTTING AWAY WRECK.

Loss or damage caused by cutting away the wreck or remains of spars or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

RULE V. VOLUNTARY STRANDING.

When a ship is intentionally run on shore, and the circumstances are such that if that course were not adopted she would inevitably drive on shore or on rocks, no loss or damage caused to the ship, cargo and freight or any of them by such intentional running on shore shall be made good as general average, but loss or damage incurred in refloating such a ship shall be allowed as general average.

In all other cases where a ship is intentionally run on shore for the common safety, the consequent loss or damage shall be allowed as general average.

RULE VI. CARRYING PRESS OF SAIL—DAMAGE TO OR LOSS OF SAILS.

Damage to or loss of sails and spars, or either of them, caused by forcing a ship off the ground or by driving her higher up the ground, for the common safety, shall be made good as general average; but where a ship is afloat, no loss or damage caused to the ship, cargo and freight, or any of them, by carrying a press of sail, shall be made good as general average.

RULE VII. DAMAGE TO MACHINERY AND BOILERS.

Damage caused to machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the machinery and boilers, including loss or damage due to compounding of engines or such measures, shall in any circumstances be made good as general average.

RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE, AND CONSQUENT DAMAGE.

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and the loss or damage sustained thereby, shall be admitted as general average.

RULE IX. SHIP'S MATERIALS AND STORES BURNT
FOR FUEL.

Ship's materials and stores, or any of them, necessarily burnt for fuel for the common safety at a time of peril, shall be admitted as general average, when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.

RULE X. EXPENSES AT PORT OF REFUGE, ETC.

(a). When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b). The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage.

(c). Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the cost of reloading and stowing such cargo, fuel or stores on board the ship, together with all storage charges (including insurance, if reasonably incurred) on such cargo, fuel or stores, shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemna-

tion or of the abandonment of the voyage shall be admitted as general average. In the event of the condemnation of the ship or the abandonment of the voyage before completion of discharge of cargo, storage expenses, as above, shall be admitted as general average up to the date of completion of discharge.

(d). If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transshipment and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

RULE XI. WAGES AND MAINTENANCE OF CREW AND
OTHER EXPENSES BEARING UP FOR AND
IN A PORT OF REFUGE, ETC.

(a.) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b.) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average. When the ship is condemned or does not proceed on her original voyage, the extra period of detention shall be deemed not to extend beyond the date of the ship's condemnation or of the abandonment of the voyage or, if discharge of cargo is not then completed, beyond the date of completion of discharge.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(c.) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the ship-owners or be made under the terms or articles of employment.

(d.) When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average, had such overtime not been incurred.

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.

Damage to or loss of cargo, fuel or stores caused in the act of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

RULE XIII. DEDUCTIONS FROM COST OF REPAIRS.

In adjusting claims for general average, repairs to be allowed in general average shall be subject to deductions in respect of "new for old" according to the following rules, where old material or parts are replaced by new.

The deductions to be regulated by the age of the ship from date of original register to the date of accident, except for provisions and stores, insulation, life- and similar boats, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

No deductions to be made in respect of provisions, stores and gear which have not been in use.

The deductions shall be made from the cost of new material or parts, including labour and establishment charges, but excluding cost of opening up.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

No cleaning and painting of bottom to be allowed, if the bottom has not been painted within six months previous to the date of the accident.

A.—UP TO 1 YEAR OLD.

All repairs to be allowed in full, except scaling and cleaning and painting or coating of bottom, from which one-third is to be deducted.

B.—BETWEEN 1 AND 3 YEARS OLD.

Deduction off scaling, cleaning and painting bottom as above under Clause A.

One-third to be deducted off sails, rigging, ropes, sheets and hawsers (other than wire and chain), awnings, covers, provisions and stores and painting.

One-sixth to be deducted off woodwork of hull, including hold ceiling, wooden masts, spars and boats, furniture, upholstery, crockery, metal- and glass-ware, wire rigging, wire ropes and wire hawsers, gyro compass equipment, wireless, direction finding, echo sounding and similar apparatus, chain cables and chains, insulation, auxiliary machinery, steering gear and connections, winches and cranes and connections and electrical machinery and connections other than electric propelling machinery; other repairs to be allowed in full.

Metal sheathing for wooden or composite ships shall be dealt with by allowing in full the cost of a weight equal to the gross weight of metal sheathing stripped off, minus the proceeds of the old metal. Nails, felt and labour metalling are subject to a deduction of one-third.

C.—BETWEEN 3 AND 6 YEARS.

Deductions as above under Clause B, except that one-third be deducted off wood work of hull including hold ceiling, wooden masts, spars and boats, furniture, upholstery, and one-sixth be deducted off iron work of masts and spars and all machinery (inclusive of boilers and their mountings).

D.—BETWEEN 6 AND 10 YEARS.

Deductions as above under Clause C, except that one-third be deducted off all rigging, ropes, sheets, and hawsers, iron work of masts and spars, gyro compass equipment, wireless, direction findings, echo sounding and similar apparatus, insulation, auxiliary machinery, steering gear, winches, cranes and connections and all other machinery (inclusive of boilers and their mountings).

E.—BETWEEN 10 AND 15 YEARS.

One-third to be deducted off all renewals, except iron work of hull and cementing and chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

F.—OVER 15 YEARS.

One-third to be deducted off all renewals, except chain cables, from which one-sixth to be deducted, and anchors, which are allowed in full.

RULE XIV. TEMPORARY REPAIRS.

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected merely to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving, in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

RULE XV. LOSS OF FREIGHT.

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. AMOUNT TO BE MADE GOOD FOR CARGO
LOST OR DAMAGED BY SACRIFICE.

The amount to be made good as general average for damage to or loss of goods sacrificed shall be the loss which the owner of the goods has sustained thereby, based on the market values at the last day of discharge of the vessel or at the termination of the

adventure where this ends at a place other than the original destination.

Where goods so damaged are sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value at the last day of discharge of the vessel or at the termination of the adventure where this ends at a place other than the original destination.

RULE XVII. CONTRIBUTORY VALUES.

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure, to which values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the shipowner's freight and passage money at risk, of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average.

Passenger's luggage and personal effects not shipped under bill of lading shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP.

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear when repaired or replaced shall be the actual reasonable cost of repairing or replacing such damage or loss, subject to deduction in accordance with Rule XIII. When not repaired, the reasonable depreciation shall be allowed, not exceeding the estimated cost of repairs.

Where there is an actual or constructive total loss of the ship the amount to be allowed as general average for damage or loss to the ship caused by a general average act shall be the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the proceeds of sale, if any.

parties entitled thereto of the general average, salvage or special charges payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

[Extract from the minutes of a regular meeting of the Executive Committee of The Maritime Law Association of the United States, held at New York on November 29, 1949:

“The action of the Association’s Committee to Consider and Recommend Amendments to the York-Antwerp Rules, 1924, in approving at the Amsterdam Conference in September, 1949 the York-Antwerp Rules of 1950, was endorsed and approved and the Rules themselves were approved, and it was agreed that the Executive Committee will recommend to the Annual Meeting of the Association in May, 1950 that the Association approve the York-Antwerp Rules, 1950, and the Committee was ordered discharged with thanks.”]