

INTERNATIONAL MARITIME COMMITTEE
COMITÉ MARITIME INTERNATIONAL

Report on Naples Conference, September 23-30, 1951

The Conference acted upon a number of matters of importance to the Members of this Association. The official resolutions and text are attached hereto and may be briefly summarized as follows:

1. **SHIP MORTGAGES:** The Conference passed a resolution repeating its recommendation that those countries that do not now afford an adequate remedy by which foreign mortgages may be foreclosed (namely England and the British Commonwealths and Possessions) should amend their laws to give such remedy. I believe this resolution will be very helpful in securing remedial legislation in Britain, and that it will also help us with the clarifying legislation which we are urging in our Congress.

2. **ARREST OF SHIPS:** In England and the British Possessions and Commonwealths (except Canada) a ship cannot be attached or arrested except for disputes over the ownership of the ship, and claims for collision, salvage, necessities, personal injuries caused "actively" by the ship and crew wages. Repair men, members of the crew injured "passively" by the ship or mortgagees of non-British ships have no rights that may be asserted against the ship *in rem*, nor is there any right of foreign attachment. In some of the Continental and other countries there are rather serious limitations on the right to attach a ship; for example, many countries require the libellant to post a bond to pay demurrage and other damages in the event that he is unsuccessful in the suit; in others a ship can only be arrested after she has discharged her cargo at the end of the voyage and before she is ready to sail on a new voyage; and in others there are troublesome limitations on the jurisdiction of the courts if neither the shipowner nor the claimant is a resident of the country where the ship is arrested.

To remedy these difficulties, the Comité has been working for some time on a draft of an International Convention to unify the

rights to arrest (or, as we say, libel *in rem* or attach under a writ of foreign attachment) seagoing ships, and a draft of such a convention was discussed by the Conference and directed to be submitted to the Diplomatic Conference which will meet early next year. However, as the national associations which are members of the Comité had not had an adequate opportunity to consider the text, and as the proposed convention would modify the laws of many countries in various details, the Conference decided to include with the proposed convention a résumé of all reservations that any of the national associations might submit between now and December 1, 1951. This I think, gives us time to consider the project carefully and determine whether we wish to endorse it as drafted, or make any reservations in respect of it or reject the whole idea. For this purpose, I am calling a meeting of the members at the Bar Association at 2 P. M. on November 15, 1951, the afternoon before the Dinner to Judge Learned Hand, to discuss the project, and I am also calling a meeting of the Executive Committee at my office at 2.30 P. M. on November 16, 1951, for the same purpose.

I hope that all our members will give the text careful thought and express their views fully, either in person at these meetings, or by letter, so that our decision may fairly represent American opinion.

I hope our members will approach the subject in a broad spirit of give and take, realizing that there are advantages in uniformity, that our laws are not as unalterable as the laws of the Medes and Persians, and that if the professional and business interests for whom the Comité speaks cannot agree on a uniform project, it may well be that unification will be imposed upon us by the United Nations acting through its purely Governmental Commission known as Unidrot, without regard to the wishes of private enterprise.

As to the merits of the text, it seems to me to be a reasonable compromise of the varying rules of the different maritime states. If adopted in the United States either as a treaty or by Federal legislation incorporating it into our laws like the Carriage of Goods by Sea Act, it would forbid the arrest of a seagoing ship for any claim that was not maritime. It preserves I think, all the the rights of arrest that we now have in the Federal Courts either *in rem* or by writ of foreign attachment, and in addition allows the arrest of a foreign ship for a maritime claim even though the foreign owner lives or has an office in the district and may therefore be "found within district". It increases very greatly our rights to arrest ships in Great Britain, and the British Possessions and Commonwealths,

and improves and clarifies our remedies in France and some other countries. It contains some limitations on the *second* arrest of the same ship but I know of very few cases where a second arrest was legitimately needed.

3. GOLD CLAUSE: The Conference by a vote of 10 countries to 4 decided to refer to the Diplomatic Conference the problem that bothers some countries arising from the devaluation of their currencies.

As you know, the Hague Rules provided for a limit of value per package of £100 in *gold*. Those countries that adopted this gold standard find their limits much increased, while those countries that translated the value into their own currencies at the parity then existing, find their valuations reduced to nothing. A similar problem arises in those countries that allow shipowners to limit their liability to £8 per ton for property damage with an additional £8 for death and personal injury, as these figures are now quite out of line with the present value of ships. The American Delegation voted against taking any action on these subjects until national currencies are stabilized and some fair solution can be found. I do not think that our Association need take any action on the matter at this time.

4. PASSENGER CLAIMS: The Conference decided to appoint an International Commission to consider the question of fixing a limit on claims for loss of life, personal injury and loss of baggage of passengers by sea, as was done in the case of passengers by air in the Warsaw Convention. I do not see that we can do anything about this at the present time, but it will require serious consideration in the future.

5. THE CONFERENCE was attended by the largest American delegation that has ever attended such a Conference abroad, and I wish to take this opportunity to express our appreciation of the lavish hospitality and friendly spirit with which we were met in Naples.

OSCAR R. HOUSTON
President

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES
99 John Street
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INTERNATIONAL MARITIME COMMITTEE

Naples Conference, September 23-30, 1951

MORTGAGES AND LIENS

RESOLUTION

The Conference notes with satisfaction that progress has been made to implement the Resolution passed at the Amsterdam Conference relating to unifying the law on the subject of enforcing foreign ship mortgages, in that Bills have been introduced in both Houses of the Congress of the United States and are pending, and that the British Association has been in correspondence with their Authorities, who have shown sympathy with the project. Nevertheless the Conference again strongly urges the National Associations whose municipal law still does not adequately provide for the enforcement of foreign ship mortgages to press their governments to effect the necessary changes in their laws in accordance with the terms of the Resolution.

ARREST OF SHIPS

RESOLUTION

The Conference

Having studied the draft International Convention on the arrest of sea-going vessels prepared by the International Commission,

Instructs the Bureau Permanent to forward such draft, as amended by this Conference, together with the résumé hereafter referred to, to the Belgian Government for submission to the Diplomatic Conference to be held in the year 1952.

The Conference further takes note of the fact that certain national delegations have found themselves unable to accept some of the provisions of the draft Convention in its present form.

The Conference therefore invites the Bureau Permanent to instruct the Rapporteurs to draw up a résumé setting out such reservations as may be formulated by National Associations and to forward such résumé to the Bureau Permanent not later than the 15th of December, 1951. To this end the Conference earnestly requests the National Associations to send such reservations as they desire to make to the Bureau Permanent and also direct them to each of the Rapporteurs as soon as possible and at any event not later than the 1st of December, 1951. The Conference expresses the hope that such reservations will be confined to matters of substance and will not deal with questions of drafting.

NOTE: The addresses of the Rapporteurs are:

Mr. Jan T. Asser, 391 Keizersgracht, Amsterdam C.

and

Mr. Cyril Miller, Thos. Miller & Son, 24 St. Mary Axe, London E.C. 3.

**INTERNATIONAL CONVENTION ON THE ARREST OF
SEAGOING VESSELS**

ARTICLE 1.

The following words are employed in this Convention with the meanings set out below.

(I) "Maritime Claim" shall mean a claim arising out of one or more of the following:

- (a) damage done by any ship either in collision or otherwise.
- (b) loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship.
- (c) salvage.
- (d) disputes as to title or ownership of any ship.
- (e) disputes between co-owners of any ship as to ownership, possession, employment or earnings of that ship.
- (f) the mortgage or hypothecation of any ship.
- (g) agreements relating to the use or hire of any ship whether by charterparty or otherwise.
- (h) agreements relating to the carriage of goods in any ship whether under charterparty, bill of lading or otherwise.
- (i) loss of or damage to goods including baggage carried in any ship.
- (j) general average.
- (k) bottomry.
- (l) towage.
- (m) goods or materials wherever supplied to a ship for her operation or maintenance.
- (n) construction, repair or equipment of any ship.
- (o) wages of Masters, officers or crew.
- (p) Master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner.

(II) "Arrest" shall mean an arrest made to secure a claim.

(III) "Person" shall include individuals, partnerships and bodies corporate, and Governments and their Departments.

(IV) "A person belonging to a Contracting State" shall mean "a person having his domicile or principal place of business in one of the Contracting States".

(V) "Claimant" shall mean a person who alleges that a maritime claim exists in his favour against the owner of a ship or against the ship herself.

ARTICLE 2.

A ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of one of the other Contracting States only in respect of a maritime claim, as defined in Article 1.

ARTICLE 3.

(I) Without prejudice to the provisions of paragraph V of this Article a claimant may arrest either the particular ship in respect of which he alleges that a maritime claim arises or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the arrested ship may be ready to sail.

(II) Ships shall be deemed to be in the same ownership for the purpose of this Convention, when all the shares therein are owned by the same person or persons.

(III) When a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or otherwise, such third party shall for the purpose of this Convention be deemed to have the same domicile or principal place of business as the original claimant.

(IV) A ship shall not be arrested, nor shall bail or other security be given more than once in any one or more of the jurisdictions of any of the Contracting States in respect of the same maritime claim

by the same claimant: and, if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction either to release the ship or to avoid a threatened arrest, any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released by the Court or other appropriate judicial authority of that State, unless the claimant can satisfy the Court or other appropriate judicial authority that the bail or other security had been finally released before the subsequent arrest or that there is other good cause for maintaining that arrest.

(V) When in the case of a charter by demise of a ship the chartered and not registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim: and the provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.

ARTICLE 4.

A ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the Contracting State in which the arrest is made.

ARTICLE 5.

The Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested shall permit the release of the ship upon sufficient bail or other security being furnished, save in cases in which a ship has been arrested in respect of any of the maritime claims enumerated in Article 1 (I) (d) or (e). In such cases the Court or other appropriate judicial authority may permit the person in possession of the ship to continue trading the ship, upon such person furnishing sufficient bail or other security, or may otherwise deal with the operation of the ship during the period of the arrest.

In default of agreement between the parties as to the sufficiency of the bail or other security, the Court or other appropriate judicial authority shall determine the nature and amount thereof.

The request to release the ship against such security shall not be construed as an acknowledgment of liability or as a waiver of the benefit of the legal limitation of liability of the owner of the ship.

ARTICLE 6.

All questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, or whether he shall be required himself to furnish guarantee to secure the payment of such damages or costs, shall be determined by the law of the Contracting State in whose jurisdiction the arrest is made or applied for.

ARTICLE 7.

The rules of procedure relating to the arrest of a ship, to the application for obtaining the authority referred to in Article 4, and to all matters of procedure which the arrest may entail, shall be governed by the law of the Contracting State in which the arrest is made or applied for.

ARTICLE 8.

The Courts of the country in which the arrest is made shall have jurisdiction to determine the case upon its merits.

(1) If the domestic law of the country in which the arrest is made gives jurisdiction to such Courts, and

(2) In the following cases, namely

- (a) If the Claimant has his domicile or principal place of business in the country in which the arrest is made.
- (b) If the claim arose in the country in which the arrest is made.
- (c) If the claim concerns the voyage of the ship during which the arrest is made.
- (d) If the claim arose out of a collision.
- (e) If the claim is for salvage.

- (f) If the claim is upon a mortgage or hypothecation of the ship arrested.

If the Court within whose jurisdiction the ship has been arrested has not jurisdiction to decide upon the merits, no release of the ship, as provided in Article 5 shall be granted unless the bail or other security specifically provides that it is given as security for the amount (including interest and costs) in which the defendant or the ship may be held liable by a judgment of the Court or of one of the Courts having jurisdiction so to decide. But the Court or other appropriate judicial authority of the country in which the arrest is made shall fix the time within which the claimant shall bring an action before a Court having such jurisdiction.

If the parties have agreed to submit the dispute to the jurisdiction of a particular Court other than that within whose jurisdiction the ship has been arrested or to arbitration, the Court or other appropriate judicial authority within whose jurisdiction the ship has been arrested may fix the time within which the claimant shall bring the action or begin proceedings in arbitration, and if the action be not brought or the proceedings in arbitration be not begun within such time, the defendant may apply for the release of the ship or of the bail.

ARTICLE 9.

This Convention shall not apply to claims made by Governments or other Public Authority in respect of taxes, dues, or penalties under any Statute or Regulation, and the Convention shall not affect any rights of Dock or Harbour Authorities under their existing domestic law against vessels or their owners.

ARTICLE 10.

I The provisions of this Convention shall apply to any vessel flying the flag of a Contracting State in the jurisdiction of any Contracting State.

II A ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in Article 1 or of any other claim for which the law of the Contracting State permits arrest.

III Nevertheless any Contracting State shall be entitled wholly or partly to exclude persons not belonging to a Contracting State from the benefits of this Convention.

IV This Convention shall not apply to the arrest of any ship within the jurisdiction of the State of her flag, unless the claimant be a person belonging to one of the other Contracting States.

ARTICLE 11.

Nothing in this Convention shall be construed as creating a right of action, which, apart from the provisions of this Convention, would not arise under the law applied by the Court which has seized of the case, nor as creating any maritime liens which do not exist under such law or under the Convention on maritime mortgages and liens.

ARTICLE 12.

Nothing in this Convention shall modify or affect the laws and principles in force in the respective Contracting States relating to the immunity from arrest of warships and State-owned vessels.

PASSENGERS

RESOLUTION

The Conference

Requests the Bureau Permanent to appoint a Commission with the object of studying the question of the responsibility of the ship owner as a carrier of passengers and to make such proposals as it may consider useful to the solution of the problem.

LIST OF AMERICAN DELEGATES

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