

DOCUMENT No. 430

August 2, 1959

THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

**NOTICE OF A SPECIAL MEETING TO BE HELD AT 2  
P. M. ON TUESDAY, AUGUST 18, 1959 AT THE HOUSE  
OF THE NEW YORK COUNTY LAWYERS ASSOCIA-  
TION, 14 VESEY STREET, NEW YORK**

---

In the preliminary notice of this special meeting, we advised you that there were two important subjects that would be considered at the meeting of the Comité Maritime International in Rijeka, Yugoslavia, in September, to wit:—Liabilities arising out of the transportation of nuclear materials (it now appears that the problems arising out of transportation of nuclear materials will be dealt with in such conventions as the O.E.E.C., placing the responsibility for damage done by such materials on the operator who is consignor or consignee of such materials), and liabilities arising out of the operation of the nuclear powered merchant ship, and the limitations to be placed on those liabilities.

Since the mailing of that notice, the Comité Maritime International called a meeting of a sub-committee which was to draft a convention dealing with the liabilities of the nuclear merchant ship. This committee met in Antwerp, July 11th and 12th. Your Association was represented on this sub-committee by your president, Arthur M. Boal and the Chairman of our Nuclear Committee, Leonard J. Matteson, and the General Counsel for the Maritime Administration, E. Robert Seaver.

The sub-committee unanimously agreed upon a draft of a convention which is mailed herewith as Document #431. The Committee also prepared a report to accompany the draft of the convention which is forwarded herewith as Document #432.

The draft convention is based upon the following fundamental principles:

(1) The operator of a nuclear ship is absolutely liable without regard to fault for damage caused by a nuclear incident coming from the vessel's reactor;

(2) No other person is liable for such damage;

(3) That liability shall be insured, and

(4) Limited.

These proposals are embodied as to land based reactors in the draft conventions of the O.E.E.C., which, if adopted, will apply to 17 western European countries of the Euratom (6 of the O.E.E.C. countries), and of the International Atomic Energy Agency (82 countries).

The principle of liability without fault and the channeling of that liability to one person to the exclusion of all others is new to us. We are, however, faced with a situation where we must adopt rules which will permit the development of nuclear ships, and at the same time provide the public with reasonable compensation for injuries that they may suffer from a nuclear incident caused by such a vessel. It seems probable that a nuclear ship will be regarded as a dangerous instrumentality and that absolute liability, irrespective of negligence, will be imposed by the courts upon the operator of such a vessel, for nuclear damage merely because the ship has nuclear power, and without the benefit of limitation of liability under existing laws since the operation will be within the operator's privity and knowledge. The most practical way to deal with this problem is to accept liability without fault so that those persons who are injured by a nuclear incident resulting from the operation of a nuclear ship will not need to prove the fault in order to get compensation. They will still have to prove causation and their damages. This rule will result in certainty and will serve to avoid much troublesome and expensive litigation. It probably represents the same result which the courts would reach in the absence of any treaty. It also serves the purpose of affording necessary protection to the public.

The channeling of the liability for a nuclear incident to one person is necessary for very practical reasons.

In the first place, the liability should be insured and that insurance will exhaust the world market. If other people are liable we will have a pyramiding of insurance which will increase costs, even if it can be obtained.

Unless a number of people, other than the operator, can be protected from liability for a nuclear incident, there will be no nuclear ships built. Designers and manufacturers of the equipment used and the suppliers of nuclear materials must be protected.

The operators of non-nuclear ships must also be protected. Under existing law, if a non-nuclear ship is in collision with a nuclear ship with a resulting nuclear incident, and the non-nuclear ship is wholly or partly at fault, that ship will be liable for all or part of the damages caused by the nuclear incident, subject to such rights of limitation of liability as are now provided. This would mean that the non-nuclear ship would be required to be as fully insured against liability for nuclear damage resulting from a collision as the nuclear ship. The burden on the non-nuclear ship would be very heavy. The countries without nuclear ships, under these circumstances, might exclude nuclear ships from their ports.

In a set-up of this kind it is obvious that the non-nuclear ship must be protected by placing sole and absolute liability for nuclear damage on the nuclear ship. Then only the nuclear ship need be insured. The convention requires that such insurance or other financial security be maintained by the operator of a nuclear ship. The sub-committee at Antwerp felt that the owner should be required to carry as much insurance as he could get in the world market, but they also felt that a higher limit should be fixed in the convention and that the state licensing the nuclear ship should assume those liabilities between the amount which the owner could insure and the limit fixed. These amounts were not included because the amount of insurance obtainable is not certain at this time and the committee did not feel that they should suggest to the governments the amount which they should assume. They felt that this should be left to the Diplomatic Convention.

The question of jurisdiction also presented difficulties which were met by leaving the present law in effect, except where there was to be a limitation proceeding, and then it was provided that the administration of the limited liability should be in the home state of the licensing

authority since that state itself might have to contribute to the limitation fund.

The draft convention (Document #431) will be submitted to the Plenary Session of the Comité in Rijeka in September. There will probably be at that time efforts made to amend it and it may be amended. We hope that the members of the Association will give this draft convention serious consideration. We request and hope that the Association will approve this convention in principle and will authorize the delegates of the Association at the Rijeka meeting to exercise their discretion in voting for the convention and any amendments to it that may be proposed.

The United States has built and is building a number of nuclear naval ships. It is building one nuclear merchant ship. Others have been proposed, some by private interests. Nuclear merchant ships will come. The only question is when. It is necessary to have a world-wide convention dealing with the liabilities of such merchant ships and the limitation of those liabilities. In order that the nuclear ship may be welcomed in the ports of the world, it is necessary that such a convention be adopted and meet with general approval. It is fitting and proper for the Comité Maritime International to propose the convention. Every maritime nation in the world is represented in the Comité with the exception of Russia and some of her satellites. It is composed of men who are familiar with the general maritime law and with the particular problems of their own countries. It has been dealing with problems of international uniformity for a long time. It is better qualified than any other body to propose a convention dealing with the nuclear ship.

We hope that each and every member of the Association will give this matter serious consideration, and that as many as possible will attend the meeting on August 18th. If you cannot attend, we would appreciate your views in writing.

We hope that you will authorize your delegates to the Rijeka meeting of the Comité to use their discretion in voting on the convention and any amendments that may be proposed to it.

ARTHUR M. BOAL,  
President

HERBERT M. LORD,  
Secretary