

# MARITIME LAW ASSOCIATION OF THE UNITED STATES.

JANUARY 15, 1913.

Annexed hereto is the report of the Committee of this Association appointed to answer the list of questions received from the International Maritime Committee, and included in the circular of this Association dated September 17, 1912. The letter of the Committee of this Association to the International Maritime Committee attached to the report was forwarded to the International Maritime Committee December 24, 1912.

The Committees appointed to consider the limitation of liability statutes and the Nelson Bill have not yet reported.

Annexed also is a copy of notice from the International Maritime Committee that the next Conference will be held at Copenhagen on the 13th-17th of May, 1913. It is very desirable to have delegates from this Association attend such Conference. This Association, however, cannot pay the expenses of delegates. Any member who can and will attend the Conference at Copenhagen in May is requested to notify the Secretary of that fact.

EDWARD GRENVILLE BENEDICT,  
*Secretary.*

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*To the Maritime Law Association  
of the United States:*

GENTLEMEN:

Having been appointed a Committee to consider and report upon certain matters suggested by the "Questionnaire" of the International Maritime Committee, we respectfully make report as follows:

Regarding the questions under the heading "Safety in Navigation," we were instructed to express our views and communicate directly with the International Maritime Committee. We have done so by a communication sent through our Secretary, of which a copy is hereto appended marked "A."

As to the questions under the headings "State of War," "Marine Insurances on Enemies Goods," "Comparative Law," and "Bases of International Agreement," we beg to report as follows:

1. Does a state of war render void policies of marine insurance on enemy goods?

Answer: Yes:

2. Does such avoidance apply only to risks of war properly so-called, or does it go further and affect insurance against ordinary risks?

Answer: After the outbreak of war the assured loses the benefit of indemnity under his policy against ordinary risks as well as against the risks of war.

3. What is the law of your country so far as regards actions at law brought by insured enemies.

(a) For losses sustained before the state of war.

(b) For losses sustained during the war.

Answer: Upon the declaration of peace, action may be brought for losses sustained before the war, provided that no reason exists, other than the lapse of time, for denying payment. The remedy only is suspended, the right of action is not destroyed by the pendency of war. For losses sustained during the war, however, no action can be brought.

In our opinion the foregoing answers accord with the law of Great Britain, the doctrines of which have been recognized and

enforced in the United States. The legal propositions may be sufficiently summarized thus:

Executed contracts are not avoided or nullified by the mere fact of war. The modern rule permits (after the declaration of peace) recovery of what is due under such executed contract; the period of warfare being not counted in any statute of limitation. *New York Life Ins. Co. vs. Statham*, 93 U. S., 24, reviewing 45 Miss., 581; *Hamilton vs. Mutual Life Ins. Co.*, 9 Blatch, 234; Fed. Cases 5986; See also *Semmes vs. Hartford Ins. Co.*, 13 Wall., 158.

If, however, the contract be executory, it is dissolved by the declaration of war. *Hamilton vs. Mutual Life Ins. Co. supra*; *Isaacs vs. McGrath*, 2 McCord (S. C.) 26; 1 Nott & M. (S. C.) 563.

No new contracts can be formed between subjects or citizens of nations at war with each other. *White vs. Burnley*, 20 How., at 249.

On the question "How far, if at all, is it possible to come to an international agreement with regard to the validity of policies on enemy goods?", we respectfully report as follows:

It would in our judgment be desirable to prevent by international agreement the extinction or nullification of policies of insurance by declaration of hostilities. It seems to us equitable that losses should be paid, if they are due to the risks originally insured against,—and not proximately caused by the pendency of warfare,—and if they occur while the policy is duly validated by payment of premiums. The right of recovery, however, should be suspended during hostilities. Further than this we do not consider it either possible or desirable to cover the subject of insurance of enemy goods by international agreement.

Respectfully submitted,

CHARLES M. HOUGH,  
FREDERICK M. BROWN,  
GEO. B. OGDEN,

*Committee.*

Dated Dec. 23, 1912.

THE INTERNATIONAL MARITIME COMMITTEE,  
 M. LOUIS FRANCK, Hon. Gen. Secretary,  
 30, rue Des Escrimeurs,  
 Antwerp, Belgium.

DEAR SIR:

At a meeting of the Maritime Law Association of the United States, held in the City of New York on October 18, 1912, the "Questionnaire" appended to your letter of July 15, 1912, was submitted to our Association.

The undersigned were appointed a Committee to answer by direct communication to the International Maritime Committee the views of our Association regarding the queries under the heading "Safety in Navigation."

We therefore beg to report that in the opinion of the Maritime Law Association of the United States it is desirable to render uniform by international convention the provisions of law enacted or proposed in the various countries, for the purpose of securing safety in navigation.

The second question submitted, viz.:

With what subjects should the convention deal, special regard being had to the class of ship (sail or steam), the nature of the traffic, and the tonnage of the vessels?

We answer as follows: The convention should deal with and seek to regulate by international agreement within the limits hereinbelow set forth under the heading "Measures of Safety," all vessels, whether propelled through sails, by steam or otherwise, engaging in foreign commerce, to wit: *traffic or communication on the high seas between different and independent countries*. There should be excluded from international consideration and regulation all vessels of any kind engaged in inland or coastwise voyages, traffic or transportation. The regulation of such vessels should be left to the different countries.

"Measures of Safety." In our opinion the following items or subjects should be regulated by international convention as to vessels engaged in foreign commerce, as above defined, viz:

- (1) Seaworthiness of the ship, watertight compartments;
- (2) Engines and boilers;
- (3) Draft and freeboard;
- (4) Deck cargo stowage and ballast;
- (5) Lifeboats and life-saving apparatus;
- (6) Wireless telegraphy;
- (7) Nautical instruments, charts and sailing directions.
- (13) Medical attendance.

The following items or subjects should not be treated, nor sought to be treated, by international agreement, viz.:

- (8) Number and physical condition of crew;
- (9) Number and physical condition of passengers;
- (10) Sleeping and other accommodation of crew;
- (11) Sleeping and other accommodation of passengers;
- (12) Sleeping and other accommodation of immigrants;
- (b) Certificates of seaworthiness and other similar documents;
- (c) Inspection of ships and legal and administrative action consequent thereupon.

Our reasons for these opinions are briefly as follows: As to items or subjects 1-7 and 13, we regard the same as directly involving the safety and seaworthiness of the ship and the health of those on board, and perceive no reason why an international standard of fitness should not be agreed upon. We strongly insist, however, that such international standard should be a minimum requirement, below which all countries should agree not to go; but we are also of opinion that each country should be left free to prescribe a higher standard in respect of its own vessels.

The items or subjects numbered 8-12, (b) and (c) we do not regard as pertinent to safety or seaworthiness; they are matters of comfort or habit, as to which the views of different peoples are widely diverse. An agreement on these points

is not to be expected, nor is it necessary, and an endeavor to obtain the same would render agreement on vital points more difficult.

On behalf of the Maritime Association of the United States, we remain, Dear Sir,

Very truly yours,

CHARLES M. HOUGH,  
FREDERICK M. BROWN,  
GEO. B. OGDEN,

Official.

EDWARD GRENVILLE BENEDICT,  
*Secretary, Maritime Law Association  
of the United States.*

Dec. 23, 1912.

INTERNATIONAL MARITIME COMMITTEE.

No. 36

ANTWERP, December 20th, 1912.  
30, RUE DES ESCRIMEURS.

DEAR SIR:

COPENHAGEN CONFERENCE, 1913.

We beg to inform you that the XIth Conference of this Committee will be held at Copenhagen, the week following Whitsuntide, viz on the 13th, 14th, 15th, 16th and 17th of May. The inaugural sitting will probably take place on Tuesday, 13th May, in the afternoon.

The AGENDA-PAPER will include the following matters:

- 1.—International Code of Affreightment.
- 2.—Safety in Navigation.
- 3.—London Declaration of the 26th February 1909 in regard to the law of Maritime Warfare.
- 4.—Marine Insurances on Enemy goods in time of war.

We kindly request the National Associations to let us have without delay their answers to the Questionnaire which they have received with our circular of 15th July 1912. It is of the greatest importance to have these reports soonest possible and in any case on or before February 15th 1913. We beg to invite the Secretaries of the National Associations and Committees to advise us within the shortest delay when they expect to be able to send the reports of their Associations and also who will be the representatives of their respective bodies at the forthcoming Conference.

The permanent Members of this Committee will oblige in informing us at their earliest convenience whether they will, as we hope, be able to attend.

We are, Dear Sir,

Yours very truly.

FOR THE PERMANENT BUREAU:

*The Hon. General Secretaries,*  
LOUIS FRANCK,  
LESLIE SCOTT.

*The Vice-President,*  
CHARLES LE JEUNE.