

LEAGUE OF NATIONS

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*League of Nations Publications*

VIII. TRANSIT

1931

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Geneva, February 28, 1931.

LEAGUE OF NATIONS

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Held at Lisbon, October 6th to 23rd, 1930.

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**PART I.**

**Sections I—VI.**

**SECTION I.—RESOLUTION CONCERNING THE CONTINUATION  
OF WORK RELATING TO THE UNIFICATION OF BUOYAGE**

ADOPTED BY THE CONFERENCE ON OCTOBER 23rd, 1930.

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The Conference,

Expressing its satisfaction that the work of its Buoyage Committee and of its Drafting Committee has permitted uniform rules to be drawn up regarding a certain number of buoyage questions capable of facilitating the elaboration of a complete international buoyage system, and that these rules have been unanimously agreed upon with a view to the organisation of such a system ;

Noting however that it hardly seems possible to apply these rules, except as part of a sufficiently general agreement dealing with the main questions of buoyage as a whole ;

Noting further that no immediate agreement seems possible with regard to certain of these important questions, such as the allocation of colours by day and by night of odd and even numbers in the Lateral Buoyage System ;

Believing that further efforts must be made to secure agreement between all the maritime nations of the world before the expediency of examining the possibilities of agreement between certain of these nations only is considered ;

Takes note of the proceedings of its Buoyage Committee and of the texts prepared by the Drafting Committee ;

Decides to postpone its work on buoyage questions, and expresses the hope that it will be given an opportunity of resuming its work in about a year's time with a view to allowing the Governments concerned to make fresh efforts to reach complete agreement after consideration of the proceedings of the present Conference.

The present resolution, to which will be annexed an extract from the Minutes of the Conference with regard to buoyage,<sup>1</sup> and a copy of the Minutes of the Buoyage Committee<sup>2</sup> and of the texts concerning buoyage prepared by the Drafting Committee, will be communicated to all the Governments represented at the Conference or invited to send representatives thereto.

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<sup>1</sup> See Section III, Nos. III to VII, XII to XVII and XXI.

<sup>2</sup> See Section IV.

SECTION II.—TEXTS CONCERNING BUOYAGE DRAWN UP  
BY THE DRAFTING COMMITTEE.

[C.B.E./Com.Réd./5.]

1. Draft Agreement concerning Buoyage.

TEXT PREPARED BY THE DRAFTING COMMITTEE.

The contracting Governments, represented by the undersigned, having decided to proceed to the unification of certain rules concerning buoyage, have agreed to the following provisions :

*Article 1.*

In all cases in which the authorities of the contracting Governments communicate the information or warnings dealt with in the annexed Regulations to Navigators by means of day or night buoyage, each of these Governments undertakes that only measures in conformity with the provisions of the said regulations will be taken for this purpose in its territory. The necessary measures to that effect shall be taken within two years of the entry into force of the present Agreement.

*Article 2.*

The provisions of the annexed regulations may only be departed from in cases when, owing to local conditions, certain of the said provisions cannot reasonably be carried out without the risk of endangering the safety of navigation or without involving expenditure out of proportion to the traffic concerned. Such departures should be as slight as possible and proper notice of them must be given to mariners.

*Article 3.*

The present Agreement should not be considered as in any way modifying the legal situation in the different countries as regards the relations between the public and the authorities responsible for signalling.

[Here follow the final articles.]

[C.B.E./25.]

2. Draft Rules concerning Buoyage.

TEXT PREPARED BY THE DRAFTING COMMITTEE AND APPROVED  
BY THE CONFERENCE.

CHAPTER I.—GENERAL.

*Article 1.—Definition.*

The buoyage to which the present rules apply includes all fixed or floating marks, other than lighthouses and lightships, serving to indicate either natural dangers or the lateral limits of navigable channels or accidental obstacles such as wrecks. The principal marks available for this purpose are lighted and unlighted buoys and fixed or floating beacons.

*Article 2.—Buoyage Systems.*

Two principal systems of buoyage are employed :

The *lateral* system, which lends itself more particularly to the marking of well-defined channels and in which the marks show the location of dangers in relation to the route to be followed by navigators in their vicinity ;

The *cardinal* system, which lends itself more particularly to the marking of shoals, and in which the direction of the mark from the danger is indicated. This direction is defined by characteristics appropriate to the nearest cardinal point of the true compass.

*Article 3.—Use of the Systems.*

In any one country, according to local requirements, either system or both systems may be employed.

Both systems are applicable to the marking of permanent natural dangers such as rocks, variable dangers such as shifting sandbanks, and accidental dangers such as wrecks.

*Article 4.—Characteristics utilised in Buoyage.*

Buoyage marks are characterised in both systems :

(1) By day :

(a) By the shape of the body of the mark or of the topmark which it carries.

(b) By the colour of the mark.

(2) By night :

By lights which are differentiated either by colour, or by rhythm, or by a combination of both.

*Article 5.—Shape of the Body of the Mark.*

*Lateral System.*—There are three characteristic shapes : a mark, the upper part of which is pointed (called conical or nun), a mark, the upper part of which is flat (called cylindrical or can), and a mark, the upper part of which is domed (called spherical).

*Cardinal System.*—There are four characteristic shapes : a conical mark, a cylindrical mark, an-ogival mark and an elongated mark (called a spindle).

*Article 6.—Shape of Topmarks.*

*Lateral System.*—The characteristic topmarks have the appearance of a cone, point upward, of a cylinder and of a sphere.

*Cardinal System.*—The characteristic topmarks have the appearance of a cone, point upward a cone point downward, two cones base to base, and two cones point to point.

In both systems, when local circumstances require it (particularly in waters exposed to ice) topmarks may be replaced by brooms of dark colour approximating as far as practicable in shape to the topmarks which they replace.

*Article 7.—Characteristic Colours.*

*Lateral System.*—The characteristic colours by day for natural dangers are plain black and plain red, which, for certain purposes, can be combined with white.

The characteristic colour by day for wrecks is green.

*Cardinal System.*—The characteristic colours by day for natural dangers are black combined with white and red combined with white, in horizontal sections.

The characteristic colour by day for wrecks is green combined with white.

In both systems, topmarks shall, in all cases, be painted in the same characteristic colour (other than white) as the mark. This provision does not apply when brooms are used as topmarks.

*Article 8.—Lightbuoys and Special Buoys.*

When their structure and the conditions in which they are used permit, lightbuoys and special buoys (such as bellbuoys, whistle-buoys, etc.) may, with advantage, be given the characteristic shape corresponding to their position in the buoyage system, or, failing this, may be provided with a topmark of the corresponding shape.

The same provisions apply to boat-beacons, or other large floating marks which fulfil the same purpose as lightbuoys.

CHAPTER II.—LATERAL SYSTEM.

*Article 9.—Definition of the Direction of Arrival.*

In principle, the position of the marks in the lateral system is determined with reference to the general direction taken by the navigator coming from seaward. The application of this principle will be defined, as necessary, in hydrographic documents.

*Article 10.—Allocation of Shapes on Either Side of the Channel.*

Conical shall be the distinguishing shape for the starboard side of the channel and cylindrical for the port side.

When ordinary unlighted buoys are used, the upper part of the body of the buoy shall conform to these characteristic shapes.

When topmarks are used, they shall have the same characteristic shapes.

*Article 11.—Colours.*

The marks on the same side of the channel shall be uniformly painted in one and the same characteristic colour. Nevertheless, for purposes of differentiation, black and white chequers or red and white chequers may be used.

*Article 12.—Bifurcation and Junction (Middle-ground) Marks.*

If topmarks are used in order to :

(a) Distinguish between a bifurcation and a junction or between the outer and inner ends of middle-grounds ;

(b) Show the relative importance of the two channels ;

the following special topmarks shall be employed :

(1) *Principal Channel to the Right* :

Bifurcation : a cylinder ; junction : a St. George's cross.

(2) *Principal Channel to the Left* :

Bifurcation : a cone, point upward ; junction : a cone, point downward.

(3) *Channels of Equal Importance* :

Bifurcation : a diamond ; junction : a sphere.

When bifurcation and junction marks are characterised as to shape by a spherical topmark, the latter shall be placed below the special topmarks mentioned above.

CHAPTER III.—CARDINAL SYSTEM.

*Article 13.—Allocation of Characteristics to the Different Quadrants.*

*Shapes.*—The characteristic shapes of the marks shall be allocated as follows :

In the northern quadrant (NW—NE) : Conical shape ;

In the southern quadrant (SE—SW) : Cylindrical shape.

The ogival shape and the spindle shape shall be allocated one to the eastern quadrant (NE—SE) and the other to the western quadrant (SW—NW).

Where a simpler system is desired, only two characteristic shapes may be used, the conical shape being substituted for the ogival shape and the cylindrical shape for the spindle shape.

*Topmarks.*—The characteristic topmarks shall be allocated as follows :

In the northern quadrant : A cone, point upward ;

In the southern quadrant : A cone, point downward.

Topmarks consisting of two cones base to base and two cones point to point shall be allocated, one to the eastern and the other to the western quadrant.

The use of topmarks is compulsory when the body of the mark is not of one of the characteristic shapes.

Topmarks may be repeated one above the other so as to facilitate differentiation between similar marks. In such cases, only the lower cone need be repeated in the eastern or western quadrant.

In exceptional cases, topmarks may be dispensed with on spar-buoys, in view of climatic conditions or the special nature of passing traffic.

*Colours.*—Combinations of colours shall be allocated as follows :

In the northern quadrant : Black with a broad white median band or, as an alternative for spar-buoys only, white with a broad black median band ;

In the southern quadrant : Red with a broad white median band.

The two following arrangements of colours shall be allocated one to the eastern and the other to the western quadrant :

Black for the upper half and white for the lower half of the mark ;

Red for the upper half and white for the lower half of the mark, or, as an alternative for spar-buoys only, white for the upper half and red for the lower half of the mark.

*Lights.*—Lights shall be allocated as follows :

In the northern quadrant : A white light with an even number of variations ;

In the southern quadrant : A light with an odd number of variations, red (preferably) or white.

The following lights shall be allocated one to the eastern and the other to the western quadrant :

A white light with an odd number of variations ;

A light with an even number of variations, red (preferably) or white.

CHAPTER IV.—WRECKS.

*Article 14.—General Provisions.*

Wreck marks shall be painted in the characteristic green colour, at any rate during the period when their presence is not generally known to navigators.

Once their presence is generally known, wrecks may, if desired, be marked in the same manner as natural dangers.

Wrecks may be buoyed either on the lateral system or on the cardinal system.

In addition to the colour green, wreck marks should, if practicable, have the letter "W" painted on them.

It should be stated in the sailing directions what are the system or systems in use in each country.

*Article 15.—In the Lateral System.*

Wrecks to be left on the starboard hand shall be marked by day by a conical buoy, or, failing this, a buoy surmounted by a conical topmark.

Wrecks to be left on the port hand shall be marked by day by a cylindrical buoy or failing this, a buoy surmounted by a cylindrical topmark.

The lower part of the buoy may be painted in the characteristic colour (black or red) of the corresponding side for the marking of natural dangers.

This distinction by colour is compulsory when a lighted or special buoy used for wreck marking is not of the characteristic shape or does not carry the characteristic topmark.

In all cases green shall be the predominant colour.

CHAPTER V.—SPECIAL MARKS AND MISCELLANEOUS PROVISIONS.

*Article 16.—Landfall Buoys.*

Landfall buoys shall be painted in black and white or red and white vertical stripes.

*Article 17.—Mid-channel Buoys.*

Mid-channel buoys marking a fairway shall, as far as practicable, be of a special shape, different from the characteristic shapes. Their topmarks, if any, shall also be of a shape different from the characteristic shapes.

They shall be painted in black and white or red and white vertical stripes.

*Article 18.—Transition Buoys.*

Buoys marking the transition from the lateral system to the cardinal system or vice versa shall be painted in red and white or black and white spiral bands.

*Article 19.—Various Buoys.*

Buoys whose purpose is not defined in the present regulations shall be painted in such a way as not to lead to confusion with the characteristic buoyage colours.

Quarantine buoys shall be painted yellow.

*Article 20.—Harbour Entrance Lights : Sector Lights.*

In the case of lights placed on permanent works at the entrance of harbours and whose principal purpose is to mark the sides of a channel, the colour and rhythm should, as far as possible, be in accordance with the rules of the lateral system.

When coloured sectors are used on lights forming part of the lateral system, it is desirable, when circumstances permit, that their colours should be in accordance with the rules of that system. In cases where this is not considered practicable, the colours should preferably be allocated in accordance with a definite rule laid down for a particular region, in order that the sectors may be arranged in the same manner when the circumstances are identical.

*Article 21.—Colours of Supports of Lights.*

Fixed supports of lights forming part of a lateral or cardinal buoyage system should, as far as practicable, be painted in the colour characteristic of the position of the light in the particular system. If the correct characteristic colour cannot be used, the opposite colour should, wherever possible, be avoided.

[C.B.E./Com. Réd. /7.]

**3. Draft Additional Protocol to the Agreement concerning Buoyage  
(with an Annex).**

TEXT PREPARED BY THE DRAFTING COMMITTEE.

The Governments parties to the Agreement of the . . . concerning buoyage, represented by the undersigned, having decided to proceed to the unification of certain rules concerning buoyage which are not dealt with in the said Agreement, have agreed on the following additional provisions.

*Article 1.*

In all cases in which the authorities of the contracting Governments communicate the information or warnings dealt with in the regulations annexed to the present Protocol to navigators by means of day or night buoyage, each of these Governments undertakes that only measures in conformity with the provisions of the said regulations will be taken for this purpose in its territory. The necessary measures to that effect shall be taken within two years of the entry into force of the present Agreement.

*Article 2.*

The provisions of the annexed regulations may only be departed from in cases when, owing to local conditions, certain of the said provisions cannot reasonably be carried out without the risk of endangering the safety of navigation or without involving expenditure out of proportion to the traffic concerned. Such departures should be as slight as possible and proper notice of them must be given to mariners.

*Article 3.*

The present Agreement should not be considered as in any way modifying the legal situation in the different countries as regards the relations between the public and the authorities responsible for signalling.

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**ANNEX.**

[C.B.E./Com.Réd./8 and 8(a).]

**SUPPLEMENTARY REGULATIONS FOR BUOYAGE.**

*Ad Chapter II, Article 12.—Bifurcation and Junction (Middle-ground) Marks.*

Bifurcation and junction marks shall be spherical or, failing this, provided with a spherical topmark.

They shall be painted in red and white or black and white horizontal bands, according to the channel to be marked, the dark colour being the same at the two extremities of the same middle-ground.

*Ad Chapter IV, Article 15.*

Wrecks which may be passed on either side shall be marked by day by a spherical buoy or, failing this, a buoy surmounted by a spherical topmark.

Wrecks shall be marked by night by buoys with the following light characteristics, which are exclusively reserved for this purpose :

Wrecks to be passed on one side only : Green flashes in groups of two or green flashes in groups of three, according to the side.

Wrecks which can be passed on either side : Single occulting green lights.

As an exception, wrecks in narrow channels may be marked by a light characteristic appropriate to the side of the channel on which the wreck is situated, when the use of a green light might be likely to cause confusion.

*Article 15bis.—Cardinal System.*

Marks shall be placed in relation to the wreck in such a way as to cover the latter in one or both of two sectors of 90°, the first from north to east and the second from south to west.

Buoys marking the NE sector by day shall be conical in shape or, failing this, carry a topmark consisting either of two cones points upward, one above the other, or of two flags.

Buoys marking the SW sector by day shall be cylindrical in shape or, failing this, carry a conical topmark, point downward, or one flag.

In either sector, the marks shall be painted green with a broad white median band.

By night, marks in the NE sector shall carry a light with green flashes in groups of two, and marks in the SW sector shall carry a single flashing green light.

In countries which use in some cases the lateral system and in others the cardinal system for the buoyage of wrecks, the green light for wreck marks in the NE sector shall show groups of four flashes.

In countries employing the cardinal system for the buoyage of wrecks, the characteristics of the green lights used shall be exclusively reserved for this purpose.

*Ad Chapter V.—Isolated Danger.*

An isolated danger, which may be passed on either side and is of such small extent that its presence can be indicated by a single mark, shall be distinguished by a spherical mark or, failing this, by a mark carrying a spherical topmark. Isolated danger marks shall be painted in red and black horizontal bands separated by white bands.

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SECTION III. — MINUTES OF THE PLENARY MEETINGS  
OF THE CONFERENCE.

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**The Bureau of the Conference and the Delegations.**

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*President of the Conference :*

His Excellency Vice-Admiral Ernesto DE VASCONCELLOS of the Portuguese Navy.

*Chairman of the Committee on Buoyage :*

M. P. VAN BRAAM VAN VLOTEN (Netherlands).

*Chairman of the Committee on Port Signals and Coastal Signals :*

M. Erik HÄGG (Sweden).

*Chairman of the Committee on Lighthouses :*

Mr. George R. PUTNAM (United States of America).

*Secretariat :*

M. R. HAAS, Head of the Communications and Transit Section of the Secretariat of the League of Nations, Secretary-General of the Conference.

M. J. ROMEIN, Member of the Communications and Transit Section of the Secretariat of the League of Nations, Deputy Secretary-General of the Conference.

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COMMONWEALTH OF AUSTRALIA.

*Delegate :*

Sir John G. BALDWIN, K.C.M.G., C.B.

BELGIUM.

*Delegate :*

M. F. L. URBAIN, Director of the Hydrographic Service.

UNITED STATES OF BRAZIL.

*Delegate :*

Lieutenant-Commander Francisco Xavier DA COSTA, Naval Attaché at the Embassy to the President of the French Republic.

CANADA.

*Delegate :*

Mr. J. G. MACPHAIL, B.A., B.Sc., M.E.I.C., Commissioner of Lights Department of Marine.

CHINA.

*Delegates :*

Mr. L. TWEEDIE-STODART, Engineer-in-Chief to the Maritime Customs.

Captain L. R. CARREL, Deputy Coast-Inspector.

CUBA.

*Delegate :*

M. Arturo LOINAZ DEL CASTILLO, Consul, Attaché to the Legation to the President of the Portuguese Republic.

FREE CITY OF DANZIG.

*Head of the Delegation :*

Commander Eugène SOŁSKI, of the Polish Navy.

*Delegate :*

M. Johannes STABEN, of the Danzig Observatory.

*Expert :*

M. Thadée ZIOŁKOWSKI, Head of the Pilot Service of the Danzig Harbour Board.

DENMARK.

*Delegate :*

Commander P. E. B. SINDING, Director of the Lighthouse Service.



ESTONIA.

*Delegate :*  
M. T. GUTMAN, Secretary of the Consulate General at Lisbon.

FINLAND.

*Delegate :*  
M. Matti Sakari TAINIO, Head of the Pilotage and Lighthouse Service.

FRANCE.

*Head of the Delegation :*  
M. P. H. WATIER, Councillor of State, Director of Navigable Waterways and Maritime Ports.

*Delegates :*  
M. A. DE ROUVILLE, Director of the Lighthouse and Buoyage Service.  
Commander SAILLANT, Head of the Maritime Instructions Section at the Hydrographic Service.

*Secretary :*  
M. François DE PANAFIEU, Attaché of Embassy.

GERMANY.

*Delegate :*  
M. G. MEYER, Ministerial Counsellor in the Ministry for Communications.

GREAT BRITAIN AND NORTHERN IRELAND

AND ALL PARTS OF THE BRITISH EMPIRE WHICH ARE NOT SEPARATE MEMBERS  
OF THE LEAGUE OF NATIONS :

*Head of the Delegation :*  
Sir John G. BALDWIN, K.C.M.G., C.B.

*Delegates :*  
Mr. F. E. F. ADAM, Counsellor to His Britannic Majesty's Embassy to the President of the Portuguese Republic.  
Mr. J. P. BOWEN, B.Sc., M.Inst.C.E., Engineer-in-Chief, Trinity House.  
Captain V. R. BRANDON, C.B.E., R.N., Professional Officer of the Board of Trade.  
Captain K. E. L. CREIGHTON, M.V.O., R.N., of the Admiralty.  
The Honourable L. H. CRIPPS, C.B.E., representing British Shipowners.  
Major E. G. FINCH, T.D., of the Dock and Harbour Authorities Association.  
Captain F. W. MACE, O.B.E., R.N.R., of the Dock and Harbour Authorities Association.  
Vice-Admiral Sir Robert MANSELL, K.C.V.O., C.B.E., Deputy Master of Trinity House.  
Captain A. H. RYLEY, Elder Brother of Trinity House.  
Mr. D. Alan STEVENSON, M.Inst.C.E., Representative of the Scottish and Irish Lighthouse Boards.

*Secretaries of the Delegation :*  
Mr. C. B. GLENISTER, of the Board of Trade.  
Mr. T. H. BURLEIGH, of Trinity House.

GREECE.

*Delegate :*  
Commander D. RASI-KOTSICAS.

INDIA.

*Delegate :*  
Captain Sir Edward J. HEADLAM, C.S.I., C.M.G., D.S.O., of the Royal Indian Marine (Retired).  
Commander E. A. CONSTABLE, R. N. (Retired).

*Advisers :*  
Mr. J. OSWALD, B.Sc., M.Inst.C.E., Lighthouse Service of British India.  
Captain K. OOKERJEE.

ICELAND.

*Delegate :*  
M. Th. KRABBE, Director of the Lighthouse Service.

ITALY.

*Delegates :*

Colonel Aristide LURIA, of the Naval Engineering Service, Head of Division in the Italian Lighthouse and Maritime Signals Service.

Captain Domenico BIANCHERI of the Ministry of Transport.

Captain L. SPALICE, Naval Attaché to the Embassy to His Majesty the King of Spain and to the Legation to the President of the Portuguese Republic.

M. Pietro PERIANI, Engineer, Head Inspector of Maritime Works at the Ministry of Public Works. Member of the Central Board of Public Works, and of the Central Merchant Marine Board.

JAPAN.

*Delegates :*

M. Masato HATTORI, Engineer-in-Chief of the Imperial Lighthouse Service.

M. S. CHIBA, Secretary at the Imperial Legation to His Majesty the King of Spain.

*Secretary :*

M. J. KOBAYASHI, Secretary at the Ministry of Communications.

LATVIA.

*Delegate :*

M. K. PURNS, Head of the Hydrographic Section of the Marine Department.

THE UNITED STATES OF MEXICO.

*Delegate :*

M. Octavio BARREDA, Consul at Lisbon.

MONACO.

*Delegate :*

Count C. J. H. DE BOBONE, Consul-General at Lisbon.

PROTECTORATE OF THE FRENCH REPUBLIC IN MOROCCO.

*Delegate :*

M. A. DE ROUVILLE, Director of the French Lighthouse and Buoyage Service.

THE NETHERLANDS.

*Delegates :*

M. P. VAN BRAAM VAN VLOTEN, Engineer-in-Chief, Head of the Technical Service of Lights.

M. J. W. LANGELER, Inspector, Head of Division of the Navigation Service of the Netherlands Indies.

NEW ZEALAND.

*Delegates :*

Sir John C. BALDWIN, K.C.M.G., C.B., and the other delegates of Great Britain and Northern Ireland and all Parts of the British Empire which are not separate Members of the League of Nations.

NORWAY.

*Delegate :*

M. Finn KOREN, Chargé d'Affaires at Lisbon.

POLAND.

*Head of the Delegation :*

Commander Eugène SOLSKI.

*Delegate :*

M. André MARCHWINSKI, of the Ministry for Foreign Affairs.

*Expert :*

M. ZIOLKOWSKI, Head of the Pilot Service of the Danzig Harbour Board.

PORTUGAL.

*Delegates :*

His Excellency Vice-Admiral Ernesto DE VASCONCELLOS.

M. Francisco DE CAIHEIROS, Minister Plenipotentiary, Head of the Portuguese League of Nations Bureau.

Commander Manoel NORTON.

Commander Fernando DE CARVALHO, Director of Lighthouses.

Commander A. LOPES.

Commander J. MONTEIRO, of the Central Lighthouse Service.

Commander P. PENTEADO.

ROUMANIA.

*Delegate :*

M. Alexandre GURANESCO, Envoy Extraordinary and Minister Plenipotentiary to the President of the Portuguese Republic.

SPAIN.

*Delegates :*

Commander Rafael ESTRADA.

M. J. HERBELLA Y ZOBEL, Engineer-in-Chief of the Central Service of the Maritime Signals.

SWEDEN.

*Delegate :*

M. Erik HÄGG, Director General, Royal Administration of Pilotage, Lighthouse and Buoyage.

REGENCY OF TUNIS : FRENCH PROTECTORATE.

*Delegate :*

M. A. DE ROUVILLE, Director of the French Lighthouse and Buoyage Service.

UNITED STATES OF AMERICA.

*Delegate :*

Dr. George R. PUTNAM, M.S., D.Sc., Commissioner of Lighthouses in the Department of Commerce.

URUGUAY.

*Delegate :*

M. Eduardo KAYEL, Engineer, Head of the Lighthouse and Buoyage Section.

YUGOSLAVIA.

*Delegate :*

M. Vinko MAROEVIC, Head of Section in the Ministry for Communications.

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The following delegates also took part in the Conference :

FOR THE LIGHTHOUSE ADMINISTRATION OF THE FORMER OTTOMAN EMPIRE.

M. Jean DODIER, Inspector of the General Lighthouse Administration.

FOR THE SUEZ MARITIME CANAL UNIVERSAL COMPANY.

M. Pierre BLANC, Head of the Transit Service.

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The following international organisations were represented at the Conference in an advisory capacity :

INTERNATIONAL ASSOCIATION OF MERCHANT MARINE OFFICERS.

M. C. GOSLINGA, Secretary and Vice-President of the "Vereeniging van Nederlandsche Gezegvoorders en Stuurlieden ter Koopvaardy".

INTERNATIONAL HYDROGRAPHIC BUREAU.

Captain L. TONTA, Member of the Governing Board of the International Hydrographic Bureau.

INTERNATIONAL METEOROLOGICAL COMMITTEE.

Commander F. MORNA, Director of the Meteorological Service of the Portuguese Navy.

INTERNATIONAL SHIPPING CONFERENCE.

Mr. Maurice Ph. HILL, Assistant Secretary of the International Shipping Conference.

PORTUGUESE MERCHANT MARINE OFFICERS' ASSOCIATION.

M. Luitz Leite SPENCER.

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## MINUTES OF THE PLENARY MEETINGS OF THE CONFERENCE.

### OPENING MEETING.

*Held under the Presidency of the PRESIDENT OF THE PORTUGUESE REPUBLIC,  
on Monday, October 6th, 1930, at 3 p.m., in the "Portugal" Hall of the Lisbon Geographic Society.*

#### I. Opening Speeches.

Commander NORTON (Portugal).—On behalf of the President of the Portuguese Republic, I declare open the inaugural meeting of the International Conference for Buoyage and the Lighting of Coasts.

Commander MAGALHAES CORREIA (Minister of Marine of the Portuguese Republic).—Your Excellency—On behalf of the Portuguese Republic, and as the present chief of the administration of the Ministry of Marine, under which is the service for the buoyage and lighting of the coasts of Portugal, it is my duty and my very great pleasure to welcome the distinguished delegates of all the maritime countries which have been good enough to send representatives to this Conference and which are doing us the honour of working among us.

I am very happy to see the capital of my country chosen as the site of so important an international conference, whose aim is to bring about uniformity in the buoyage and lighting of coasts throughout the world, thus endeavouring to facilitate navigation and to safeguard human life and the immense wealth which is transported by sea.

The importance of this question is well known to all. But it is those of you who are sailors like myself who will follow with the keenest interest the proceedings of this Conference, which is called upon to settle the operation of these services in every country.

The sailor's work will then be much simplified, and many of the difficulties which we encounter on entering ports and along coasts will be enormously reduced.

You have before you three problems :

The first concerns everything connected with lighthouses ; it would be most desirable to fix for all lighthouses the characteristics of flashes and occultations and the part to be assigned to the colours white, red, or green, according to their uses.

The second concerns buoyage. It is more difficult to achieve uniformity here, because we have to consider the lateral system and the cardinal system, and we have to see that the rules of the first do not hamper the rules of the second.

The third concerns the signals of tides, locks, movements of ships, etc., which have to be fixed without hampering the signals of buoyage.

The sailor does not like anything complicated ; he likes to understand at once what is before him. It is on these lines that you will no doubt work, and I hope that you will reach a conclusion giving satisfaction to all.

The Portuguese, who are the descendants of the great navigators who astounded the world in the fifteenth and sixteenth centuries by their voyages and by the discovery of the great ocean routes leading to the rich countries of the East and of America, who for many years were predominant in maritime trade, continue, owing to the geographical situation of their metropolis and of the great colonies, to take a keen interest in all efforts which tend to increase the safety of navigation.

Gentlemen, you will find here, besides the welcome of a hospitable people, the special consideration to which you are entitled as workers for the welfare of humanity.

Before concluding, allow me, as we have among us Sir Francis Lindley, Ambassador of Great Britain, and the members of the Delegations sent by that country, to express our deep sympathy for the terrible disaster which has overtaken the airship R 101, among whose passengers was a distinguished statesman, the Air Minister, and some of the courageous members of the Air Department of the great British nation. As a tribute to the victims, I should like to ask you to observe a minute's silence.

*(The Assembly rose and observed a minute's silence.)*

Commander Fernando BRANCO (Minister of Foreign Affairs).—Your Excellency, Gentlemen—Allow me, after the words of my colleague, the Minister of Marine, who chiefly dealt with the technical aspect of the present Conference, to add a few words of quite a different character. Having just come back from Geneva, where, at the Assembly of the League of Nations, I found myself in contact with the representatives of nearly all the nations of the world, allow me to tell you how glad I am to find myself once more among them. Portugal has always been a friend of all the other countries of the world, and the meeting of this Conference in Lisbon is a fresh confirmation of her friendship. The Minister of Marine has already emphasised how judicious was the choice of the City of Lisbon. I will not recall here the numerous historical reasons which justify this choice, but shall only draw your attention to the memories which in this very hall redound to Portuguese maritime glory. The League of Nations has chosen well.

The essential task of the League of Nations is to prevent war and fortify peace ; I am particularly glad to see here this technical conference, whose work aims at the welfare of humanity.

Lastly, during your stay in our country you will see its beauties, you will appreciate the magnificent geographical situation which makes of this fine port of Lisbon the favourite calling-place of nearly all the shipping lines of the world ; you will enjoy our pleasant climate, you will taste our wines and other Portuguese products and you will admire our monuments raised to the glory of Portuguese history. Allow me, as Minister of Foreign Affairs, to ask you when you return to your countries to tell your compatriots of Portugal's beauties and to encourage them to visit our territory.

In conclusion, I would like to extend the best thanks of the Portuguese Government to all the Governments who have been good enough to send representatives to the present Conference.

Sir John BALDWIN (British Empire).—Your Excellency—I have been asked to reply, on behalf of the representatives of the countries assembled under your hospitable roof, to the cordial and generous welcome which Your Excellency has expressed so ably. I have been asked to thank Your Excellency on their behalf for your good wishes for the success of their labours, and for the splendid arrangements which, with true Portuguese hospitality, have been made for their welfare, for their work, and for their entertainment during their leisure time by showing them the sights of your beautiful country.

As a representative of Great Britain, it gives me particular pleasure to have been asked to perform this duty, for my country and yours are the oldest of friends. Within a hundred years of the beginning of Portuguese history, the first treaty of commerce and navigation was signed with England and that friendship has continued to this day. In this fine hall of the Portuguese Geographical Society the mind of every one of us instinctively reviews the past, and is conscious of the great and lasting contribution to human knowledge and progress, to the safety of human life, and the development of civilisation which Portugal has made and continues to make.

The mariner's chart is the most essential instrument of overseas communication, and it is the peculiar glory of Portugal to have been foremost in the charting of the seas. Which of us to-day can fail to remember the glories of Vasco da Gama, Pedro Alvares and Pires de Andrade in their discoveries of the sea route to India, of Brazil, and of West Africa, their voyages to China, and even their circumnavigation of the globe, on uncharted and unlighted seas, and in ships, which to-day could be carried like motor-cars on the deck of any liner. Over them and, I venture to say, over this Conference, presides the genius of Henry the Navigator, the *inçlyta geração* of the *Lusiads* of Camoens.

The labours which lie before this Conference may be fraught with difficulties as the sea is fraught with dangers, but, like Henry the Navigator, we reject the title of the Cape of Storms for that of Good Hope and take as our motto the device of King Diniz : "I achieve what I set out to do".

On behalf of the Conference, Your Excellency, I thank you.

M. HAAS (Chief of the Communications and Transit Section of the League of Nations).—Mr. President, Your Excellencies, Gentlemen—The Secretary-General of the League of Nations, Sir Eric Drummond, has asked me on his behalf and on that of the Council of the League of Nations to convey to you once more the warm thanks of the authorities of the League for the Portuguese Government's invitation to the Council to have this Conference held at Lisbon. In expressing to you these thanks I am also speaking for the Communications and Transit Committee of the League, under whose auspices this Conference has been prepared, and it is particularly agreeable to me to recall that Portugal is at present represented on this Committee by Dr. Augusto de Vasconcellos, whose colleagues and associates have always highly appreciated his devotion to duty, his highly cultivated mind and his unfailing courtesy. The technical activities of the League of Nations are less well known and less striking to the public eye than political events but they involve perhaps a no less genuine participation in the work of the League and exert no less profound an influence on its development. Portugal, whose association with the work of the Mandates Commission for so many years past has allowed the League of Nations the benefit of her valuable colonial experience has thus been able to give the Transit Organisation the assistance of her wide knowledge in problems of maritime navigation and of her glorious nautical traditions. The fine gesture of hospitality which Portugal is making to-day has been understood by all at Geneva as the confirmation of a spirit of international co-operation and solidarity, which, since the League has been in existence, has never for a moment faltered.

Thanks to the Portuguese Government's offer, which the Council of the League hastened to accept with gratitude, the Transit Organisation of the League, which was constituted nearly ten years ago at Barcelona, is now holding this conference here in Lisbon, in this historical other city of almost legendary audacity, discovery and energy. Everything here speaks of the sea ; and the past, which is carried on by the present, is a constant pæan to mariners. The first maritime conference of the League of Nations, in which all the great sea Powers are taking part, whether Members of the League or not, could not be held in a more congenial atmosphere, nor receive a clearer call to perseverance and faith.

I beg you, Mr. President and Your Excellencies, to accept the respectful homage of all those who are endeavouring to organise the common effort of peoples with a view to a better understanding on all problems, to mutual comprehension and, hence, to peace.

THE PRESIDENT OF THE PORTUGUESE REPUBLIC.—Gentlemen—It is with the greatest pleasure that I welcome here, on behalf of the Portuguese Republic, the delegates of the International Conference for Buoyage and the Lighting of Coasts.

I sincerely wish you every success in your work, the importance of which to world trade I need hardly emphasise. Your efforts will lead, I am sure, to valuable results for the security of persons and goods carried by maritime routes.

I shall now withdraw to allow you to elect the President of the Conference.

*(The President of the Portuguese Republic withdrew.)*

## II. Election of the President of the Conference.

M. WATIER (France).—On behalf of the French delegation and in agreement with a number of other delegations, I propose the election as President of Admiral Ernesto de Vasconcellos, First Delegate of Portugal.

ADMIRAL DE VASCONCELLOS *was elected President of the Conference by acclamation.*

Admiral DE VASCONCELLOS (President of the Conference).—As President of the Portuguese delegation to the International Conference for Buoyage and Lighting of Coasts, my first duty is to welcome the distinguished representatives of the nations gathered here for a purpose so useful to navigation in general and of which it may be said that it represents a work of charity performed in advance.

Thanks to a proper lighting of coasts and rivers, a navigator may pursue his way with all the necessary facilities and defend himself against the often serious perils which sometimes cause distressing loss of wealth and human life.

To-day, in all the maritime countries which carefully provide for the lighting of coasts and the buoyage of dangers surrounding the navigator, the latter may read in these maritime signals the way that his ship should take. To-morrow, his task will be easier when all the maritime countries have agreed together to supply lighthouses and buoys. It will then be possible to find the route to be followed without hesitation or danger of confusion.

I have always taken an interest in these questions and, in 1887, I had the honour to submit to the Geographical Society of Lisbon a proposal which it unanimously approved for the adoption of a uniform international system for all maritime buoys. A communication was then addressed to all the bodies which this question concerns, but replies were somewhat dilatory. This documentation has been printed and copies are at the present Conference's disposal.

I do not tell you this in a spirit of vanity but simply to recall that the Portuguese have ever been anxious to improve methods of navigation not only along the coast but also in the open sea. In this connection, no one can forget the famous names of the Infante Don Henriquez, protector of navigation; Abraham Zacuto, with his nautical almanack; Diego Gomes; the authors of maritime itineraries like Don João de Castro, Duarte Pacheco, Francisco Rodrigues and many others, whose names I will not mention so as not to take up your time.

It was the scholars who taught us the art of navigation, but it was men of action like Diego Cao, Bartholomew Diaz, Vasco da Gama, Alvares Cabral, Miguel Cortereal and many others who discovered lands hitherto unknown and added bright pages to history. Perhaps in this sphere, we seem rather to be living on our past, but we are now rousing ourselves from this apparent lethargy, and as navigation has now taken to the air, the Portuguese have been the first to fly over untravelled spaces with the appropriate appliances—I allude to Gago Coutinho and Sacadura Cabral, who crossed the Southern Atlantic and directed their course by means of a special sextant invented by Gago Coutinho. The credit for this achievement therefore belongs to the Portuguese Navy.

To-day, we have come among the distinguished technicians here present to achieve unification of lighthouses and buoys, which will facilitate navigation across the seas and on the more difficult rivers. I am sure that, thanks to your knowledge, ability and goodwill, we shall achieve the most successful results.

In conclusion, I would extend to you and to the States which have sent you to this Conference the warmest and most cordial greetings.

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## FIRST MEETING.

*Held at Lisbon on Monday, October 6th, 1930, at 5 p.m., at the Congress Palace.*

*President: Admiral DE VASCONCELLOS (Portugal).*

## III. Programme of Work.

The PRESIDENT proposed that the Conference should set to work immediately. It might be well, however, for him to recall very briefly the proposals and conclusions of the Technical Committee for Buoyage and the Lighting of Coasts, contained in the Brown Book (document C.59.M.34.1929.VIII), which constituted the basis of the discussions of the Conference.

The Committee submitted three important questions, with which several secondary questions were connected. These principal questions were those of buoyage, lighthouse signs and maritime signals. As regards buoyage, the Conference had before it a proposal both for the lateral system and for the cardinal system. In its last report, the Committee proposed for day signals a rule very similar to the so-called Washington rule (1889)—*i.e.*, red mark to starboard, black mark to port for a navigator coming from the open sea. For night signals a red light was placed on the red mark to starboard and a white or green light to port. The combinations of colours and rhythms of lights were stated in the Committee's report. As regards the cardinal system, the Committee proposed differentiation by the colour of the marks, which all contained a white part together with one or other of the more distinctive colours, red or black; the white part prevented any confusion with marks of the lateral system. The Committee also provided for differentiation by the shape either of the buoys or topmarks.

For the buoyage of wrecks the Committee distinguished between two systems of buoyage, the lateral and the cardinal systems. It was thought necessary that buoys of this kind should show both their special character and also the direction of passage for navigation. The special character of wreck marks was particularly useful during the period immediately following the wreck of a vessel. It was less necessary when the navigator had long been acquainted with the presence of a wreck and of its marks. Signals of characteristics similar to those of normal buoyage could then be used. The Committee proposed to allocate for wreck-buoys the colour green. In the lateral system this characteristic colour was associated with a lower black band (to port) or red band (to starboard) to show the direction of passage, when this was not indicated by the shape of the buoy (or topmark in the case of lightbuoys).

In the cardinal system, the colour green was combined with white in the same manner as red or black in the buoyage of natural dangers.

As regards lighthouse signs, the Committee mainly considered the distance that should be kept between similar lights, the characteristics to be given to different kinds of lights in accordance with the regulations for lightbuoys and the avoidance of possible confusion between aero-lighthouses and maritime lighting. The object of the Committee's proposals in this connection was to provide rational and uniform directions for the organisation of entirely new lighting systems or for the amelioration of older systems by a judicious allocation of available characteristic signs.

The Committee also laid down a certain number of rules with regard to radio-beacons and the concordance of the characteristics of lighthouse signs with those of fog signals with which they were associated.

Under the heading "Maritime Signals", the Committee dealt with various categories of coastal and port signals. These various categories included storm-warning signals, tide and depth signals, signals regarding general movements of vessels at the entrances to harbours or important channels, signals for locks, bridges and sluices and those for lightships not on their stations.

In conclusion, the President recalled that the present Conference was, in some sort, the natural and logical continuance of the work of the Conferences which met at Washington in 1889 and at St. Petersburg in 1912. The continuance of this uninterrupted tradition was to-day of growing interest, both in view of the constant development of navigation and of the multiplication of the number and categories of signals which were now being used in this service. The Technical Committee, in concluding its report, expressed the opinion that the proposals contained therein constituted a satisfactory basis for the unification of maritime signals.

At the opening of the Conference's work, the President associated himself with the hopes expressed by Sir John Baldwin in his speech at the opening meeting, and expressed his own conviction that the Conference would achieve the most successful results in the sphere of unification of maritime signals.

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## SECOND MEETING.

*Held at Lisbon on Tuesday, October 7th, 1930, at 10 a.m.*

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*President : Admiral DE VASCONCELLOS (Portugal).*

### IV. General Discussion.

M. VAN BRAAM VAN VLOTEN (Netherlands) said that the Netherlands Government, being of opinion that the unification of maritime signals would be likely to facilitate navigation, had examined with the greatest interest the report of the Technical Committee for Buoyage and the Lighting of Coasts set up by the Advisory and Technical Committee for Communications and Transit of the League of Nations.

The Netherlands delegation which, at the same time, represented the Netherlands Indies and the other Netherlands colonies, was quite ready to co-operate loyally in all measures likely to put an end to the chaotic situation at present existing in maritime signalling. It approved the main outline of the proposals contained in the Technical Committee's report, and therefore considered this report as a suitable basis for the discussions which would follow.

As any unification would require a change in the different rules at present in force, it had to be recognised that this would involve drawbacks of various kinds.

In the first place, they had to overcome the conservative spirit which opposed any change in what had been known and practised for a long time. In the second place, there was some danger in changing rules, on account of the mistakes which might follow. Lastly, they had to take into account the fact that the present economic situation was not such as to permit of the proposal of costly modifications.

It was to be hoped, however, that the Conference would succeed in surmounting all these obstacles, so as to facilitate the task of navigators. Nor must it be forgotten that the wider the field to which unification extended, the more profit a country would derive for its maritime transport. As regards the mistakes to which the changes might give rise, it must be recognised that many effective means existed to-day to give due warning of such changes. As regards expenses, the question could be solved by confining the compulsory changes to inexpensive modifications of signals or paint, and by fixing the time-limit within which the new unified system should be put into force in such a way that these expenses should not be greater than the ordinary costs of upkeep.

The Netherlands delegate also pointed out that, in his opinion, the unification of the cardinal system of buoyage was still more important than the unification of the lateral system. Most of the countries which had hardly any cardinal buoyage nevertheless employed the system without realising it, to mark out distinctly the dangers situated on their charts beyond the channels leading to the ports. As vessels sailing along a coast passed in the vicinity of these marks without a pilot, it would certainly be most useful to navigation if the signals used in the cardinal system were uniform throughout the world.

Mr. PUTNAM (United States of America) presented to the Conference a plan for putting into a concise form, both in words and illustrations, the proposals of the Committee for Buoyage and Lighting of Coasts prepared at Genoa in February 1929 with some modifications, mostly minor. Those proposals had been printed at Geneva by the League of Nations and widely distributed a year and a half earlier and up to the time of the present meeting only one comment on them had been sent out, this being the communication from Finland dated April 8th, 1930 (see Part II, page 91).

In presenting this draft, he referred to the traditional interest of the United States of America in the subject of the international uniformity of buoyage as shown by its participation in the Washington International Marine Conference of 1889, by the publication of a discussion on this subject in November 1926, by the presentation of a full statement to the Technical Committee for Buoyage in November 1927 (both widely distributed among the maritime countries of the world) and by sending a representative who collaborated in the work and the report of the Committee at Genoa in February 1929.

The United States of America believed that two fundamental general principles should always be followed—first, that the object of all systems of aids to navigation was to safeguard shipping and to help the navigator, and second, that such systems should be kept as simple as possible while still fulfilling this purpose. Simplicity was of vital importance, not only to avoid overburdening the navigator, but also to lessen the danger of mistaking and confusing the marine signals.

The papers he submitted for the consideration of the members of the Conference—namely, a plan for a uniform system and accompanying illustrations (dated September 13th, 1930)—were intended only for convenience in consideration of the subject. They represented the view of the United States delegation that the Committee which worked at Genoa in February 1929 made an important contribution towards the solution of the problem now before the Conference in bringing forward a plan, and that this plan was practicable with a few minor exceptions. In the draft now submitted the provisions which concerned uniformity of aids to navigation only had been grouped under six heads, all brought into a single international buoyage and lighting system. The plan was much simpler than it might at first sight appear, as many features were optional to meet the needs of different parts of the world, and yet, in every case, these optional provisions fitted in logically and without giving rise to confusion. Emphasis was laid on adhering without deviation to certain general principles—as, for example, the meaning of red and black in lateral buoyage, the meaning of horizontal bands, the meaning of vertical stripes, the definite indication of cardinal buoyage by white horizontal sections and the significance of green as a buoy colour.

As to lights, the problem was much more difficult to solve and this draft eliminated some inconsistencies which he considered the Committee's report to contain, and did not go so far in some respects as the report before the Conference. It was restricted to well-tried grounds, and left open for future experimentation, study and discussion, the development of the system of the characteristics of distinguishing lights—if needed, as complete as that proposed for buoy colours. While admittedly incomplete, the light system in this draft was, in his opinion, logical, and went further than present practice in most countries and was therefore an advance.

It was evident that an underlying principle of the Committee's work was to obtain satisfactory uniformity with the least expense and amount of change, taking the world as a whole, and this had been carefully kept in mind in the draft plan he submitted to the Conference. He wished to make it clear that this draft contained many features which were not included in the system used in the United States of America, some of which they were disposed to view with disfavour, but, as they had studied some of these ideas further, they were now inclined to believe that, if logically developed, they might prove valuable in their work for the mariner.

There was comparatively little that was experimental in the draft plan submitted; some of the most important features, such as the buoy and light colours in the lateral system, had been



in successful use for half a century or more in vast areas of the world, without any unfavourable comment or any reported mishap having been attributed to them. One change in the proposed cardinal system was the outcome of the attempt to follow more closely the Washington recommendation of 1889 ; present practice appeared to follow it rather more closely than it did the Committee's plan.

The Committee's report was of necessity rather full and the draft plan submitted was an attempt to sift out and rearrange the essential features with some minor modifications, as he had already stated.

Sir John BALDWIN (British Empire) did not wish for the moment to examine in detail the proposals put forward by the Technical Committee. He would only say a few words with regard to the general attitude and views of His Majesty's Government.

When the question of standardisation was first brought up in the Advisory and Technical Committee of the League of Nations, His Majesty's Government took the view that no practical case had been made out for uniformity ; that, so far as they were aware, there was nothing to show that the existing national systems caused danger to navigation and that it was doubtful whether the expenditure of time, money and trouble involved in effecting uniformity could be justified. They suggested that the protagonists of uniformity should be invited to produce evidence that the present systems caused either danger or inconvenience or that any general desire had been expressed for uniformity.

During the six years that had elapsed since the consideration of the subject was initiated, no evidence of the sort had been produced. In the circumstances, His Majesty's Government did not feel able to participate, either at the commencement or at any subsequent time in the preparatory work of the Conference.

The views of His Majesty's Government had undergone no change, and, in fact, the work of the Technical Committee and the seemingly contradictory conclusions which that Committee had from time to time reached during the course of its studies had served to strengthen, if possible, the opinion of His Majesty's Government that, however seductive an international system of uniform buoys might appear in theory, its attainment would do little more than satisfy an abstract principle and, if carried to a logical conclusion, would be unworkable and give rise, without any compensating advantages, to danger, uncertainty and expense.

It appeared that not all maritime States shared the views of His Majesty's Government in this connection, and the machinery which had been set in motion to deal with the subject continued to function under the enthusiastic direction of the interested Committees of the League of Nations and their equally enthusiastic Secretariat, until the normal cycle in such matters was completed and the International Conference which was there in session was convened. There was evidently a very considerable difference between participating in the work of a sub-committee of a Committee of the League of Nations and participating in an International Conference. If only on the grounds of international courtesy, though that was not the only point of view, His Majesty's Government had decided, on the invitation of the League, that Great Britain should take part in the Conference. The British delegation was there to put at the disposal of the Conference its experience and its views with the object of securing a real and practical result. He took this opportunity of assuring them that his delegation's collaboration would be wholehearted, without any reservations at all.

As an abstract principle, uniformity might perhaps be desirable, but its value should not be exaggerated. Any uniform international system of buoys and lights which could only be agreed to after a series of compromises, would inevitably be inferior to the best system which could be applied to any given locality, and would with difficulty be equal even to the average of the national systems which it was destined to replace. The adoption of an international uniform system had the additional disadvantage of discouraging technical progress which was naturally stimulated by the existence of a series of contrasting systems. An international uniform system should, in the British delegation's opinion, be limited to certain broad, general principles, which could be adapted to meet the various conditions which obtained not only in different countries but in different parts of the same country. A system based on these principles should be sufficiently elastic to meet most requirements and should be so applied as to minimise, as far as possible, the danger and inconvenience which was the necessary result of any change of system.

It was on these lines that the existing British system had been evolved. It was, in its main principles, a uniform system which could be adapted to meet local conditions and could be applied wherever the adoption of a uniform system was considered essential. It was this system which the British delegation was now going to submit to the Conference for consideration and, it hoped, adoption as a uniform international system.

The principles which it enunciated might be considered insufficiently detailed, but, in the British delegation's mind, it was exactly that simplicity which constituted its great advantage. This system was not of haphazard growth ; it had stood the test of time ; it had proved its practical efficiency and had become familiar to the navigators of all countries. The chief considerations which had governed the evolution of the British system as it now existed were, firstly, that the principal safeguards of shipping were clear and accurate charts and competent navigators, and, secondly, that shape should be the principal consideration for distinguishing one sea mark from another.

The British delegation was of course prepared to give any explanation and to answer any questions which the members of the Conference might put to them ; they were also prepared to consider sympathetically any modifications and or additions which might be suggested.

Mr. CRIPPS (British Empire) wished to put forward the views of the shipowners he represented, not on any technical point, but on the general principles advocated for the establishment of uniformity. After carefully consulting those concerned as to the advantages and disadvantages

of standardisation, he had come to the definite conclusion that standardisation would afford no more safety to the seafarer than existed under the present systems. The shipowners would be called upon to subscribe additional sums to establish any form of standardisation—money which should not be expended except where there were very definite advantages.

The International Shipping Conference almost unanimously agreed that though standardisation might be convenient in a small degree it was not worth any additional expenditure. Had the idea of uniformity come from the shipowners and mariners with a view to obviating pilotage in other than difficult waters or for some other real difficulty he thought that the lighting authorities might have been well justified in examining the proposals.

Without any such request from those for whom the services in question had been established and for whose lives these services were responsible, each in its own area, the Committee had brought forward proposals for uniformity, and it was essential that good reasons should be adduced in support of those proposals. They had heard that the present systems were chaotic, but this the shipowners would never have tolerated and there was no evidence to substantiate this statement.

In Britain, they saw disadvantages to any form of standardisation. It was feared that any standard system must mean compromise and that the organisations in certain areas would have to consent to take measures to which they did not really agree, and which might not be suitable in the area in question. Incidentally, if the Conference did evolve a scheme it would be largely untried, while present conditions in various areas had grown up as a result of actual experience and of local conditions with regard to atmosphere, etc.

The Conference must recollect that they held in their hands the life and death of the mariner ; the moment they compromised, as compromise they must, they would not be carrying out that responsibility in the best way.

On this occasion, they might be brought to a certain agreement, but on future occasions when they discussed these matters they might be asked to carry out some alteration or innovation with which they did not honestly agree, with the alternative of leaving that group of nations who adhered to standardisation. They would then be compelled to withdraw, as they could not allow the life of the mariner to be subject to such intolerable terms. The shipping industry and the lighting authorities bore in the public mind a joint responsibility for the safe navigation of the seas, but the public would hold the delegates to the Conference responsible if they determined to carry through standardisation.

A satisfactory service had been provided in the past. There was no considerable dissatisfaction. The clients of those services asked them to continue as before, carrying the whole responsibility without allowing other technical experts who did not necessarily know or understand their area to interfere in so vital a service.

M. WATIER (France) noted that in his excellent speech on behalf of the Netherlands Government, M. van Braam van Vloten had declared himself in favour of the unification of the rules for buoyage and lighting of coasts, and had considered that a reasonable transformation, like that proposed by the Technical Committee, could be achieved without appreciable supplementary expense, on condition that it was spread over the same period as ordinary maintenance work. The French delegation was in full agreement with the Netherlands delegate on these two points, and, generally speaking, the French Government associated itself with the declaration he had made.

In reply to certain apprehensions expressed by the British delegate, M. Watier said that on two occasions he had to change the whole system of signals, on the Loire before the war and on the Seine after the war. These operations had always been carried out gradually and utilising the regular maintenance staff ; the expenditure had been small. There had been no accidents, and navigators had met with no difficulties. Since the beginning of the Technical Committee's work, a new experiment had been made involving not only changes of colours but the introduction of new colours. It was wished to ensure complete uniformity of colours by day and night. In the estuary of the Seine they had established a buoyage system of this kind in full agreement with the navigators and pilots, without this having involved any additional expenditure or practical difficulties.

The French shipowners and mariners were absolutely convinced of the great utility of the measure proposed. The shipowners, as a matter of fact, had not been immediately convinced, and had only finally accepted the idea under pressure from the mariners, who were those most directly concerned. It was owing to the unanimous opinion existing in France, among both the public services and shipping circles, that the French delegation was solely composed of officials.

He pointed out that it might be advisable to change the system of signals, even if this system was not dangerous ; it was sufficient if the new system was simple and likely to facilitate the work of those for whom it was instituted. Nor would uniform rules constitute an obstacle to technical progress. The latter, of course, did not consist in periodically disturbing the principal characteristics of signals, but in introducing new methods fitting in with the existing characteristics as had been the case in the past with flashlights, and was to-day the case with wireless lighthouses.

In conclusion, no Government, and least of all the French Government, would accept a system which would not offer every safety to seamen. French shipowners, mariners and experts alike, considered the system proposed to the Conference as a basis of discussion as fully satisfactory from this point of view.

Sir John BALDWIN (British Empire) added a few remarks to M. Watier's observations.

As regards the question of expense, Sir John Baldwin envied his colleague when he said that the cost for his country would be practically nil. In the British Isles, three or four hundred organisations would be affected by any change of system. While he could not go into the details of the total expense which would be involved by the introduction of the system recommended in the Brown Book, and so warmly supported by M. Watier, M. van Braam van Vloten and Mr. Putnam, Sir John Baldwin stated that for one single organisation—though he acknowledged that it was the largest in the British Isles—the expense would be about £31,000, or between 3 ½ and 4 million French francs. From this estimate, some idea might be gained of the total expense which would be involved for the British Isles.

As regards the drawbacks of the introduction of a new system, M. Watier had made a passing allusion to the question of pilotage. Sir John Baldwin thought that pilotage was compulsory in the French ports, and in these circumstances, with experienced pilots, the danger would be greatly diminished if a new system were introduced. In the British ports, in London for example, which was the largest, pilotage existed, but was not compulsory in the sense in which this term was usually understood in many countries. There were a great many exceptions and especially exemptions, and it was chiefly in the latter case that there would be uncertainties, dangers, and drawbacks of all kinds if a radical change were made from one system to another. The British delegate only wished to mention that this delegation had very legitimate reasons for rejecting any violent alteration of the present system, but he repeated that his delegation was not only willing but anxious to co-operate with the other delegations, despite the dangers and criticisms to which it would no doubt be exposed.

Mr. CRIPPS (British Empire) said that, according to M. Watier, it was not necessary to prove that one system was dangerous before proclaiming the necessity of modifying it. In the view of the British shipowners, the present British system unquestionably did not present the slightest danger. This system had indeed been adopted by many countries. According to the French delegate, the French shipowners were in favour of unification. No statement to this effect had been made at the International Shipping Conference, but this Conference possessed letters which Mr. Hill could produce, showing that the British, German and Netherlands shipowners were opposed to the scheme. Some account must be taken of the relative tonnages of the different countries, and there could be no doubt that the British, German and Netherlands tonnages constituted a very considerable portion of world shipping.

As regards expense, M. Watier did not seem to realise that it would fall not only on the lighting administrations but also on the shipowners. Any change in the present system would involve the shipowners in considerable expense.

It was not, however, primarily a matter of expense but of the security of ships and human lives. The seamen concerned had been consulted and had informed the British delegation that there would be no advantage in adopting unification, but, on the contrary, there would be objections. If the object had been to secure greater security, the British delegation would have had no objection and the British had never been reproached with economising at the expense of safety. The present system involved no difficulties, and, for an experienced navigator, the adoption of unification would make no appreciable difference. The sailor had his charts and it was for persons of experience to pronounce on the question. If unification offered a technical advantage, the question would be quite different, but, in the opinion of navigators, this was not the case.

M. WATIER (France), in reply to Sir John Baldwin, said that pilotage was compulsory in all the French ports except Marseilles. He added that the International Statute of Maritime Ports drawn up at Geneva in 1923, and in the drafting of which the British delegation and particularly Sir John had taken an important part, expressly provided that a country could not be regarded as discriminating between flags if it granted to certain experienced captains belonging to a port a licence exempting them from pilotage. M. Watier added that this system would probably soon be extended to other French ports.

M. GOSLINGA (International Association of Officers in the Mercantile Marine) regretted that the Association he represented had not as international a character as the present Conference, but it represented German, French, Spanish, Portuguese, Belgian, Dutch, Chilian and Estonian navigators. It took a keen interest in the work of the Technical Committee of the League of Nations and it hoped and wished that this attempt to simplify and unify the signals intended to ensure safety at sea in the vicinity of the coasts, would be crowned with success. He had been expressly asked to convey the thanks of his Association to the League of Nations for the initiative it had taken. If his Association desired the success of this undertaking it was not because the lack of uniformity had been so considerable in the past as to hamper seriously the security of navigation. By the assistance of good charts and able pilots, and, last but not least, by the vigilance of the masters of the merchant fleet, ships were navigated all over the world, and when captains spoke of their troubles they rarely mentioned the different systems of buoyage customs, coast lighting, signalling, etc. But this was not a reason to leave things as they were. The fact that no complaints were made did not prove that no difficulties existed. One got used not only to good things, but also to bad, and the difference was appreciated when the bad things were replaced by the good.

When, in 1926, the League of Nations undertook its enquiry and had asked those concerned whether the discordance of the present systems constituted a hindrance, the unanimous reply had

been in the affirmative. Moreover, speed was more and more essential in navigation and the saying "Time is money" was particularly true in the case of a ship. Nowadays, the captain of a ship could not afford to lose time if he did not wish to have trouble with the owner of his ship. Moreover, if he risked the safety of his crew, he was breaking the law. He therefore had two contradictory duties. He had further to think of all that a captain had to do when he reached port, and in port he had his business, seeing the Consul, shipowners or agents, merchants, etc. He often had to sail the same evening of the day he came into port, especially in ports such as Rotterdam and others, where a modern equipment for loading and discharging existed. It often happened that the captains, when navigating near the coast, did not have a good night's rest for a fortnight.

It was therefore not a good policy to continue to trust that the vigilance of masters was a sufficient safeguard, and it was necessary to help them in fulfilling their task by the adoption of a system of signals which would be easy to understand and the unification of which would prevent the possibility of misunderstanding. In addition, M. Goslinga thought it very good policy to make the captain less dependent on pilots or charts, because he was responsible for human life, and he must be in a position to assume his responsibility. M. Goslinga was sure he was speaking for the best elements in the Merchant Marine—those who had a sense of responsibility—when he stated that uniformity and simplicity with regard to buoyage and lighting would be warmly welcomed.

Looking at the matter from another point of view, a reform of this kind would result in important economies for the shipowners. It was to the latter's advantage to aim at unification, which, in the long run, led to economy. To pursue such a course was in keeping with rationalisation and modern progress, which had replaced the sail by steam and which was tending more and more to replace steam by oil-driven motors. There might be some extra expense to start with, but, in the long run, there would be an important advantage. M. Goslinga was convinced that the lack of uniformity led to loss of time, even when a captain did not state this as the reason for the delay. M. Goslinga was also in favour of unification because he looked ahead. The systems in force in the different countries were at present very different. It might yet be possible to reduce these differences. Unification would not be achieved immediately, but they would come nearer and nearer to it each year; whereas, if the different Governments persisted in their old practices, differences would increase, as difficulties would be aggravated.

M. Goslinga acknowledged that it was indispensable to maintain a certain elasticity according to different climatic and local conditions, but he thought this would be possible if the principles of unification were observed.

As regards the questions which the Conference had to discuss, M. Goslinga would not go into details. Moreover, details would be of less importance to navigation when they had been made uniform.

The Association which he represented desired a uniform and logical system. It realised however that account must be taken of realities and that there was not only the question of security, but also of economy, which demanded that only indispensable changes should be made, and that the best features in the present system should be retained.

In 1926, the majority of the members of the Association which M. Goslinga represented had pronounced in favour of buoyage in the lateral system according to the St. Petersburg rule. He still thought this system the most logical. A navigator coming from the open sea and going towards the land, often without the help of a pilot, preferred to have the red buoys and red lights on his port side, corresponding to his own red side-light, according to the saying: "Green to green and red to red; perfect safety, go ahead." If, however, he were asked if he considered this question to be of such essential importance that it might imperil the success of unification, he would reply in the negative, and this was also the opinion of the leaders of the different affiliated organisations with whom M. Goslinga has been in correspondence. In this connection he referred to the remark on page 5 of the Technical Committee's report:

"This greater importance of the direction of entry is chiefly to be found in the case of the port opening directly on to the sea, but is scarcely marked, or even tends to disappear, in the long channels or estuaries . . . A navigator, once he has gone a certain way along them, navigates more or less under the same conditions in whatever direction he is going."

M. Goslinga further thought that an essential condition was to adopt an energetic recommendation against the use of fixed lights on buoys and jetties. He realised that it was not yet possible to prohibit such a practice totally and everywhere, but the diagram on page 22 of the Brown Book indicated a number of combinations, regarding some of which he had to make reservations.

As regards the cardinal system, the Association which M. Goslinga represented regretted the Technical Committee's decision, which would oblige the Finnish Government to change the signals by 90°. M. Goslinga said that he did not know the Technical Committee's argument in favour of this proposal, and it was therefore possible that these arguments were better than those of the Finnish Government, but until now his sympathy was with the latter and he hoped that an understanding would be reached to the satisfaction of all concerned, because it was important to ensure the co-operation of all.

Lastly, M. Goslinga was glad that the Technical Committee had insisted on the question of wireless-beacons and on their superiority over direction-finding shore stations.

In conclusion, M. Goslinga appealed to the spirit of co-operation of the different countries and hoped that the Conference would reach results likely to facilitate navigation without involving disturbances.

Captain BRANDON (British Empire) congratulated M. Goslinga on his observations, which had particularly pleased him as a sailor, because his colleague had taken the question out of the sphere of theory and office work into the sphere of reality and experience.

The problem which confronted a captain at the entrance to a difficult estuary, when there was wind and fog, was to know how he should enter. Captain Brandon regretted that he could not agree with M. Goslinga on his view as to the advantages of unification for a captain in such a position. M. Goslinga had failed to adduce any proofs in support of his views. He had asserted that delays were due to the lack of unification. Captain Brandon had been thirty years at sea and he had not yet noticed this fact. Before entering an estuary, the charts and sailing directions had to be consulted as to local conditions and Captain Brandon did not see how unification would remove the necessity for this.

Nor had his Netherlands colleague proved that the introduction of unification would diminish the task or would increase the sense of responsibility of the captain. On the contrary, Captain Brandon thought that such a measure would tend to diminish the captain's sense of responsibility. According to what he had been taught when he went to sea some thirty years ago, it was the duty of the master of a ship not to trust entirely to buoys, which might drag or break adrift, but determine his position from landmarks. Buoys were only useful adjuncts and nothing more. This was an argument against unification and the so-called advantages it offered to navigators.

As to whether red lights should be to port or starboard, M. Goslinga had said that he would not press the point and that he was ready to sacrifice his preferences on the altar of unification. The question was perhaps not considered to be of great practical importance in certain countries, but such was not the case for British sailors who, on the contrary, had a marked preference based on sound reasons. It would be dangerous, in order to achieve unification, to sacrifice a factor considered by them as being of great value. Captain Brandon did not want at present to go into the technical details as to whether a red light, if there was one, should be to port or starboard. This was, however, a question of great importance to British navigators.

His Netherlands colleague had alluded to the different combinations permitted by the Technical Committee's report. Captain Brandon thought that it would be impossible to bear in mind all the combinations allowed. To sum up, he was not convinced that unification would present any important advantage to navigation.

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### THIRD MEETING.

*Held at Lisbon on Wednesday, October 8th, 1930, at 10 a.m.*

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*President : Admiral DE VASCONCELLOS (Portugal).*

#### V. General Discussion (continued).

Mr. PUTNAM (United States of America) proposed to reply briefly to the questions raised at the previous meeting by the British delegation. It was a good thing that these questions had been raised, for they cleared the ground and permitted of frank discussion. It was also a matter for satisfaction that the British Government had been able to send representatives to the present Conference, for a meeting on maritime signals would have been most incomplete if it had not included a delegation from one of the most important countries in the world from the maritime point of view—a country, moreover, which had made most important contributions to the improvement of conditions of navigation.

The British delegation had first of all stated that solid reasons must be adduced to justify the efforts made to bring about uniformity. On this point, Mr. Putnam agreed with M. Watier, the French delegate, that to make improvements it was not necessary to wait for complaints to be made or for accidents to happen. In every country, it was customary for the authorities to improve methods and appliances after a conscientious examination, and they always acted in concert with the representatives of maritime interests.

No better reply to this question could be made than to point out the example of the uniform system which existed on the Great Lakes of North America, where international co-operation was complete between Canada and the United States, along a water boundary of 1,200 miles. On these lakes, there was a very important traffic, which was carried on by ships comparable in size to ocean vessels, on routes crossing and recrossing the international boundary. An absolutely uniform system of buoyage and lighting had been established on all these lakes, and Mr. Putnam was quite sure that the shipowners and shipping companies would strenuously oppose any modification which would detract from the present uniformity. If uniformity appeared desirable as between the United States and Canada, why should it be less desirable in the Baltic, in the English Channel, in the Atlantic Ocean, and on all the coasts in the world? It must be remembered that maritime trade was necessarily international in character, and that ships had to call at ports in all parts of the world. Mr. Putnam went on to point out that, in the United States of America, no practical difficulty had been found in applying a uniform system of signs, despite the differences in climatic, hydrographical and economic conditions between the different parts of that country—for example, between Alaska and Florida, New York, and California.

The real question was : How far it was necessary to carry uniformity? As to this point, the British delegation had not done sufficient justice to the efforts made by Great Britain herself in the

cause of uniformity. Already at the Washington Conference, as the report showed, efforts had been made by Great Britain in this direction. If the document which had just been communicated to the Conference by the British delegation (see Part II, page 103) was compared with the results of the Washington Conference of 1889, it would be found that a number of recommendations made by this Conference were now applied in British waters.

As regards the question of expense, he thought it premature to deal with it at that point. In any case, the figures mentioned by the British delegate were small compared with the value of a single large ship. Moreover, many of the proposed clauses were optional, so that the corresponding expenses were also optional. Lastly, the expenses which might be involved were small compared with the cost of upkeep of buoys and lighthouses.

Mr. Putnam emphasised the fact that, during the discussions, stress had been laid chiefly on the differences between the national systems; he thought that the degree of uniformity at present existing had thus been under-estimated. In any case, everyone realised the utility and convenience of a uniform system. A century ago, France had made a great step forward by establishing the metric system, which was now in universal use for scientific purposes. In the case of buoyage, the task would perhaps be easier. It did not seem impossible to arrive at an agreement, and he hoped that the efforts of the Conference would be crowned with success.

Commander NORTON (Portugal) entirely associated himself with the remarks of M. van Braam van Vloten, delegate of the Netherlands—*i.e.*, Portugal pronounced in favour of the proposals put forward by the League of Nations.

The advantages of uniformity were undoubted. It could, of course, be claimed that the present system worked well, but it was nevertheless necessary to improve it. They must think of the future. The speed of ships increased every day, and navigators had less and less time in difficult situations to consult charts and nautical instructions.

At present, there were three systems in the world—the Washington system, the St. Petersburg system and the third system, which was a combination of the two. There could be little doubt that many wrecks which were attributed to currents or other accidental causes had simply been due to hesitation caused by the lack of uniformity.

The uniformity of buoys and lights would further permit navigators, in the majority of cases, to dispense with the services of pilots. When they had a uniform and rational system, the use of pilots would be limited to artificial ports and ports where conditions changed frequently and were only known to people on the spot. This would be a considerable economy, since pilotage was very expensive.

In the Portuguese delegation's opinion, the most rational system was the St. Petersburg system, but the countries who, like Portugal, preferred this system were ready to abandon it to achieve uniformity.

Commander Norton did not agree with what Mr. Cripps had said on behalf of the British shipowners. If the shipowners were satisfied with the present situation, a point on which there might be some difference of opinion, they would be still more satisfied with a better situation.

Captain Brandon had said that he had never had any difficulties with the present system. He himself had never had any either. But they must not think only of the most competent mariners but also of the others. Signals ought to be simplified and made uniform as far as was humanly possible. The sailor did not like anything complicated, and everything must be easy for the man on the bridge to understand.

As regards expense, it would in the first place be incurred gradually, and, in the second place, would be small compared with the loss represented by the wreck of a liner. It should, however, be recognised in this connection that the lighthouse and buoyage services were never given enough money.

In conclusion, he expressed the hope that all the delegates at the Conference would place considerations of pride on one side. Italy, Spain and Portugal were ready to relinquish their present systems immediately, so as to permit of the achievement of greater uniformity. This was a great sacrifice, and he hoped that their example would be followed by all in the interests of the general welfare.

M. KOREN (Norway) recalled that, at the previous meeting, Mr. Cripps, member of the British delegation and representative of the British shipowners, had said that, besides the latter, the German and Netherlands shipowners were generally opposed to the idea of the unification of buoyage and the lighting of coasts. According to the information at his disposal, he would add that the Norwegian shipowners agreed with the opinions expressed with regard to the general aspect of the question by Mr. Cripps and the other member of the British delegation who had spoken at the preceding meeting.

As far as the Norwegian shipowners knew, there were no practical reasons making it necessary to introduce international uniformity of buoyage, nor was there any reason to think that the present national systems of buoyage and lights had caused or at present caused dangers to shipping. They therefore considered that the efforts made to achieve international uniformity in these systems were based on theoretical rather than on practical grounds, and that this uniformity was not worth the expense which its compulsory adoption would involve.

They also considered that geographical, hydrographical and economic conditions were so different in various parts of the world that uniformity of system was practically impossible.

As regards more particularly the interests of Norwegian shipping on foreign coasts, the Norwegian shipowners considered that, if uniformity was desired, the Lisbon Conference should endeavour to draw up an ideal system sufficiently elastic to permit of its gradual attainment as existing marks fell due for replacement.

The Norwegian shipowners therefore fully supported their British, German and Netherlands colleagues in the attitude they had taken up in this connection.

M. Koren would confine himself for the moment to these few remarks, which had been suggested by Mr. Cripps' speech on behalf of the British shipowners. He reserved the right to make a statement later on behalf of the Norwegian Government.

Mr. HILL (International Shipping Conference) thanked the League of Nations on behalf of the International Shipping Conference for its courtesy in inviting that organisation to attend in an advisory capacity. This was an instance of the very cordial relations existing between the shipowners and the League, and of the willingness which the League had always shown to hear the views of those who would be affected by their proposals. It was the shipowners who used the lights and who, directly or indirectly, had to pay for them. This was a sufficient reason to justify the presence of a representative of the International Shipping Conference at the present meeting.

The International Shipping Conference represented over sixty million tons of shipping organised in shipowners' associations of the following seventeen countries : Australia, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Italy, Japan, the Netherlands, New Zealand, Norway, Spain, Sweden and the United States of America (including the United States Shipping Board).

Shipowners wished to give the Lisbon Conference every assistance in their power. They felt that the Conference would wish them to express their views frankly. They would do so, not in any captious spirit of criticism, but moved by a desire to co-operate towards a practical solution of the problem.

The International Shipping Conference had not officially adopted any resolution on the question of buoyage and lighting but constituents representing a majority of tonnage had communicated their views which were practically unanimous. The submission of these views, however, must not be taken to commit those associations which had not expressed opinions.

In principle, shipowners had always attached value to uniformity. They had contributed to its attainment in relation to questions of vital importance. Thus, they supported the League of Nations in securing uniform treatment of vessels of all flags in all ports of the world which the Maritime Ports Convention (1923) had very largely secured. They were now studying the proposals of the League in regard to uniform tonnage measurement. Notwithstanding the risk of slowing down scientific and mechanical progress by standardisation, they had co-operated with Governments in promoting the recent Conventions on Safety of Life at Sea and on Load-line. These questions were, however, part of the movement to fulfil for international shipping and commerce the fundamental need of equality of treatment so that no country might be put at an unfair disadvantage as against its competitors, in accordance with the League's mandate to secure "freedom of communications and transit and equitable treatment for commerce".

The problem of buoyage and lighting stood on an entirely different footing. Uniformity here responded to no deep-seated economic need of international trade. In the vast majority of cases, the navigator was indifferent to uniformity because he worked, and must always work, by his chart. It was rather a question of convenience and of simplification. The principle that uniformity was a good thing remained as a principle. But the practical advantages were less obvious and there might even be economic disadvantages which would outweigh the theoretical advantage of uniformity.

Mr. Hill wished to inform the Conference of the views of the different shipping associations in this connection.

Norway had already stated her views through M. Koren. Denmark, Germany, Great Britain, the Netherlands, Italy, Sweden, Finland and Japan had informed the International Shipping Conference that, for various reasons, they were opposed to international unification, at any rate immediately, of buoyage and the lighting of coasts. (See Part II, page 105.)

The International Shipping Conference had not received the views of their constituents in the United States of America, the British Dominions, Belgium or France. As regards France, M. Watier had informed the Conference that the French shipowners had agreed to support the proposals of the Technical Committee, not, however, without some hesitation which might perhaps indicate no great depth of conviction. Mr. Hill did not doubt that shipowners in the United States and Canada preferred their own system, and for practical reasons Australian shipowners might be assumed to oppose the Committee's report as unsuitable to their coasts.

M. Goslinga had referred at the previous meeting to the desire for uniformity manifested in the replies to the questionnaire sent out by the Technical Committee, and Mr. Hill had closely studied the replies to the International Hydrographic Bureau's questionnaire. He felt bound to point out, however, that these replies were quite unrepresentative, whereas the International Shipping Conference officially represented practically the whole of the sixty million tons of mercantile shipping in the world.

The economic aspect—the question of cost—was one which had been borne in mind by the League from the start.

Mr. Hill recalled the resolution of the Permanent Committee on Ports and Maritime Navigation dated July 21st, 1924, the report of the Technical Committee on Buoyage and the Lighting of Coasts in 1926 and the report of the same Committee in 1929. The question of cost was not trifling. Any proposal involving immediate and drastic changes would be inopportune at a time

when the industry was suffering from the severest depression in its history. One in every twenty ships was idle and the rest were under-employed. Tramp ships of all flags were struggling to find cargo and carrying it at unremunerative rates. Cargo liners, in order to maintain their schedules, were sailing often only half full. Passenger vessels built at enormous expense found their trade cut from under them by the restriction of migration and the diminution of travel owing to industrial depression. Shipping earnings were at dead low water. To illustrate this fact, he would quote the example of British shipping in the following extract from the annual report of the Chamber of Shipping of the United Kingdom :

“Accounts of shipping companies published during the year show that tramp earnings have declined sharply. Many have been unable to provide for depreciation and lines have paid lower dividends and their reserves have been further depleted.”

In the Australian trade, six representative British cargo lines with a total capital of over ten millions pounds sterling and having 117 steamers lost three million pounds in the three years 1926-7-8 and were still losing.

For thirty companies and seventy-three tramp companies, dividends represented only  $3\frac{1}{2}$  to  $4\frac{1}{2}$  per cent of capital and reserves, and these were provided largely by drawing on balances from previous years, from ancillary undertakings, or by neglecting to provide for depreciation. Considering that one could get 5 per cent from gilt-edged securities, it was obvious that if the shipping companies had invested the whole of their funds in such securities instead of in ships, the shareholders would be better off. What was true of British shipping was true of shipping generally. There was hardly a member of the International Shipping Conference who could look with satisfaction at the present position or with confidence to the immediate future.

There could not be a worse moment at which to increase charges on shipping. Changes in lights and buoys would involve additional burdens on shipowners, either directly, if light dues were levied—*e.g.*, in Great Britain, and payable by ships of all flags—or indirectly, in taxes, port charges, etc., where no light dues were levied. Nor would the expense be small. For example, ships of all nationalities calling at British ports paid light dues for the upkeep of lights in the United Kingdom. The amount of dues collected annually was in the neighbourhood of £1,000,000 of which some 35 per cent was contributed by vessels of other than British nationality. After the war, light dues in Great Britain rose to an unprecedented level but gradually, by agreement between the British Government, the lighthouse administrations and shipowners, a reduction had been made. The present proposals, if carried into effect in any short space of time, would mean the cancellation of a considerable proportion of this reduction and the reimposition upon the industry of a burden which it was in no position to bear. The alteration of colours in buoys and lights alone would more than absorb a recent reduction of five points in the dues, which had afforded material relief to the industry. The alteration of shapes of buoys would absorb almost a further five points. And, if account were taken of the cost of altering charts, the whole of the reductions made since the war would be more than wiped out for some years to come.

Lastly, Mr. Hill emphasised the question of harbour lights, the cost of which was reflected in port dues. Any modification would also have the effect of increasing the charges on ships and cargoes.

Shipowners were working on such a narrow margin that the smallest addition to their costs sufficed to turn a profit into a loss or to aggravate loss already incurred. The cumulative effect of small charges overburdened trade. Nor could the cost be passed on in the freight in the state of the market which had existed since 1920. Mr. Hill would remind those responsible for the welfare of seamen that any increases in the cost of running ships must react to increase the already grave unemployment among seamen.

But it was not only a question of money. There was the over-riding consideration of safety. Safety of life at sea had increased continually during the last fifty years and under the existing conditions of buoyage and lighting. The statistics of casualties both to crews and passengers in relation to the number of voyages proved this overwhelmingly. The proposals of the Technical Committee were not likely to affect the safety of ocean-going ships one way or the other. But sudden changes in old-accustomed marks might create grave dangers for small coasting ships and for fishing craft. For, in these trades, navigation was often instinctive rather than scientific.

Shipowners, therefore, did not believe that a Convention on this subject was necessary or desirable, because the proposed changes might create dangers and would not be worth the money they would cost. They wished, however, to help and not to hinder. If, therefore, after considering the matter, the Conference decided to formulate proposals for unification, they would draw attention to the following statements of the Technical Committee which in their opinion would provide a basis for agreement :

The Technical Committee's report of 1926 began as follows :

“In adopting the regulations annexed hereto, the Committee does not intend to lay down any absolute rules—nor to prescribe any immediate alteration in existing provisions . . .



Its object is rather to provide rational and uniform directions for the organisation of entirely new lighting systems or for the reorganisation of older systems . . . . ”

and later (page 5) :

“ . . . . changes can be spread over the normal period required for the renewal of buoyage marks.”

In the report of 1929 the Technical Committee repeated :

“It will be permitted to spread the changes over the normal period of upkeep ”,

and stated that (page 4) they :

“ . . . . base their action on the desire to interfere as little as possible with the habits of persons using buoyage and with present conditions ”,

and (page 5) that

“ . . . . efforts should be made to reduce to a minimum the disturbance in the habits of navigators ”,

and (page 13) that “ . . . . every favourable opportunity should be taken ” to introduce recommended changes.

These statements anticipated the suggestions of shipowners' associations already quoted that the Conference should, if necessary, formulate :

“ . . . . an ideal system which should be sufficiently elastic to permit of its gradual attainment as existing marks fall due for replacement.”

The International Shipping Conference attached great importance to the work of the Communications and Transit Organisation in many spheres. If, therefore, after considering shipowners' views in conjunction with those expressed by Governments in regard to general principles, the Conference thought that it would be useful to give a final shape to the work of the Technical Committee, the International Shipping Conference would be prepared to co-operate to the best of its ability in formulating an ideal system, but would urge that this should be elastic and so framed as to permit of gradual attainment in the normal course of administration. In this way, much would be gained. A definite standard would be set up and each country could work towards it according to its circumstances.

On this basis, it was probable that agreement could be reached and unification would be gradually attained without jeopardising safety or economic requirements. It was, however, desirable that such a solution should be in the form of a recommendation rather than a Convention, in order to remove the obligation to act within a fixed period which would be inherent in a Convention, and to facilitate agreement. In the view of shipowners, the object to be aimed at should be to set a standard for the guidance of the administrations in the future working of their respective systems so as to attain a practical rather than a rigid uniformity.

In putting forward this view, it was assumed that it was possible from the technical and administrative points of view, to spread the changes over a long period. Should the administrations represented at the Conference advise that this was not possible the International Shipping Conference would be unable to support any change.

If the Conference decided to formulate an ideal system on these lines, the International Shipping Conference would be prepared at the appropriate stage to render any assistance it could in regard to matters of detail.

In conclusion, Mr. Hill thanked the Conference for allowing the shipowners to put their views before it.

M. BIANCHERI (Italy) said that Italy, being an eminently maritime country, was happy to co-operate with the other nations in all that might conduce to the safety of human life at sea and to the conduct of navigation in general. A system adopted uniformly by every country would constitute an undoubted advantage to navigators. In the same way as it had been found necessary to establish uniform rules to prevent collisions at sea, there was no reason to doubt that a uniform system of lighting and buoyage would constitute a genuine step forward.

Italy, like Spain and Portugal, had adopted the rules laid down by the St. Petersburg Conference, and this system, from the moment of its adoption, had proved fully satisfactory to Italian navigators, and had given rise to no mishaps. The rules adopted on that occasion were, from the Italian point of view, preferable to the other rules in use, owing to the fact that, for vessels coming from the open sea, they corresponded, as regards the colour of lights, to the general rules established to prevent collisions at sea, and even masters of small fishing vessels could easily remember the concordance of red with red.

Despite these considerations, Italy, who had been happy to welcome at Genoa in February 1929 the Technical Committee of the League which had drawn up the general report and proposals for a uniform system of buoyage and the lighting of coasts, would not oppose even a radical change of the system in use within a reasonable period of time, owing to the international character of this public service, which was of such importance to shipping. Italy would accept the change proposed, despite the drawbacks of a financial nature and the initial difficulties which would result for Italian mariners, provided this sacrifice, as the Italian expert had already stated at Genoa, would ensure the success of unification. The Italian delegation would therefore follow the Conference's proceedings with the keenest interest, and hoped that, as a result of the Conference's conclusions, it would be able to ask its Government to adopt uniform rules unanimously approved by the delegates.

The Italian delegation took this opportunity of expressing its warm thanks for the welcome extended to the Conference by the Portuguese Government, which had every reason to be proud of its glorious maritime traditions.

M. HERBELLA Y ZOBEL (Spain) said that, as the Spanish delegation entirely endorsed all that had been said by the French, Italian and Portuguese delegations, he did not think it necessary to repeat the arguments which had already been advanced.

Captain CARREL (China) said that the presence of a Chinese delegation at the Conference was a testimony of the support which China would give to the efforts made to achieve a certain measure of uniformity on broad lines only. He added that the Chinese Government was not prepared to undertake any heavy expense in this connection.

He felt that he could not do better, in the first instance, than enumerate certain basic principles which, he considered, should be adhered to in any agreement that might be reached, and also some of the reasons which had led the Chinese delegation to adopt these principles. This referred not only to buoyage but also to the various other matters which appeared on the agenda.

First, they felt that simplicity was absolutely essential, since any scheme of international uniformity affected all classes and races, including men of high and low standards of education and of different degrees of intelligence.

Secondly, they considered in theory that shape, rather than colour, should be the first consideration in all signals, whether afloat or exhibited from shore on signal masts, etc., colour and topmarks being regarded as additional safeguards.

With regard to buoyage, they were in agreement with the proposal to adopt conical red buoys for the starboard side of the channel and flat or can-shaped black buoys to port, the side of the channel being determined by its relation to the main flood stream which should always be, and they thought usually was, clearly defined on charts. They did not see any necessity for providing any other special indication on charts to show which was the starboard and which the port side of the channel, nor of providing the authorities with special means of determining that. Further, it should be noted that the mariner would have to consult charts and publications to ascertain the line of direction (see document C.59.M.34.1929.VIII, Annex, paragraph II, A (2)), so that it was not clear that any useful object would be served by adding to the chart further data in the shape of direction lines where tidal symbols could serve this purpose adequately. In fact, confusion might conceivably arise between tidal symbols and channel direction symbols. There could be no doubt either in the mind of the mariner or of the competent authorities as to the direction of the main flood stream, especially if this were clearly marked on all charts, or a line of direction were given in publications. The Chinese delegation presumed that whatever rules would be agreed upon, these rules would not necessarily apply to rivers beyond tidal influence, or, better still, beyond the main port in the estuary.

In this connection, they would, however, point out that the adoption of this scheme would mean that China would have either to alter or renew approximately eighty port-hand buoys, and Captain Carrel could not pledge her to do this without further reference, nor, in any case, could this be done except gradually, as suggested in paragraph 3 of page 3 of the Brown Book.

The Chinese delegation was strongly of the opinion that spherical buoys should be used for bifurcations and junctions of channels and isolated dangers, the conical can or flat buoys being entirely reserved for both sides of channels, fairways and wreck buoys.

The proposals in the Committee's report that can buoys of certain colours should mark the bifurcations, and conical buoys the junctions, when the main channel was to the right, etc., did not commend themselves to the Chinese delegation, as it was conceivable that a vessel bound inwards, being unable to distinguish the colour of the conical junction-buoy, would take it to be a starboard-hand buoy *by its shape* and act accordingly. The same was true of a vessel bound outwards in connection with the can bifurcation-buoy.

Further, the Chinese delegation did not see the necessity of indicating the main channel. They felt that mariners should be required to keep their charts and official publications reasonably up to date, and to take pilots, at strange ports, if at all possible. It would be courting disaster to encourage seamen, by a too elaborate system, to neglect the ordinary precautions of their profession in regard to charts, etc., and to rely solely on a system of floating aids, which might conceivably, during a period of storm and stress, have been damaged, or even have apparently changed their characteristics. The safest thing was to depend on the shape of the buoy as the final determining factor least likely to change; to mark and light the main channel as such, and let the secondary channel be used only by those with local knowledge or adequate up-to-date information. This would go far towards simplification and would enhance the chances of international agreement.

The Chinese delegation felt that a simple system would be more appreciated and better understood by all classes of seamen. A mariner suddenly called upon to run for shelter into a strange port, unable to secure a pilot and without very detailed charts, etc., would have only three basic buoyage principles to remember for daylight navigation. Local additions could be made to suit local conditions without altering the fundamental characteristics.

The adoption of spherical buoys would necessitate China's constructing about fifteen buoys of this shape.

As regards topmarks which, as previously stated, should only be regarded as additional safeguards, here again the Chinese delegation was not in agreement with the Technical Committee's proposals. Topmarks in Chinese waters could not be relied on owing to the large number of native craft which were apt to collide with buoys, use them temporarily for mooring purposes and even, if in want of a little bamboo or steel work, to steal them. Further, topmarks were used, not to distinguish the side of the channel, but to distinguish the buoys. Numbers painted on the buoys—a proposal in which the Chinese delegation heartily concurred and which it had already adopted in a slightly different form—could only serve as a verification of position when close to the buoy, but, given a long line of starboard buoys, for example, all with the same topmark, leading up a winding channel, and assuming that one buoy at a slight bend was either waterlogged or for some other reason either temporarily or permanently out of sight at a certain distance, the next buoy in line was assumed to be the one to be steered for. This would lead the vessel into difficulties. The Chinese delegation was opposed to double topmarks, as more liable to damage and consequent confusion, and to coloured topmarks, as certain conditions made it impossible, at any appreciable distance, to distinguish colours with certainty. There was, however, no objection to the use of green topmarks for wrecks, provided their shape conformed to the general system agreed upon. The Chinese delegation therefore proposed a compromise, whereby triangular topmarks, apex up or down, double cones base to base, and double cones apices contiguous, be used to starboard—*i.e.*, four distinct types, and rectangular and spherical shapes to port. Bifurcation, junction and fairway buoys, which could be passed either side, could carry double topmarks, one triangular and one spherical, indicating their dual lateral functions, the lower topmark being appropriate to the main channel. Loss or damage to these double topmarks would not involve serious consequences.

As regards colours on buoys, the Chinese delegation considered that plain colours, vertical stripes and chequers were the most desirable and that the colours white and red and white and black, according to the side of the channel marks, should be used in most cases, and black and red should only be associated in fairway or other buoys which could be passed on both sides.

The colour white, then, would have no significance except as a variant to the colour red or black, which determined the side on which the buoy should be passed. The use of vertical stripes would prevent any conflict with the cardinal system, where horizontal stripes only were used.

As regards lights to be shown by buoys, the Chinese delegation felt that the colour green should only be used for wreck marking and that other colours such as red and possibly orange—he understood that experiments were being made with this colour—could not always be confined to one particular side of the channel. The Chinese delegation considered that red should *generally* be shown on the *port* side. A fairly wide personal experience of fixed and occulting lights in Chinese waters had convinced Captain Carrel that, in certain conditions of permanent or temporary background, white lights were very difficult to pick up with certainty, and freedom to use a coloured light if required was essential. This left China no alternative, so far as the Committee's report was concerned, but differentiation by rhythm, which would probably have, for the present, to be equal periods of light and darkness in the one case and unequal in the other. The Chinese delegation would like, however, to hear suggestions to overcome this colour difficulty.

The Chinese delegation feared that the same results in differentiation as could be obtained by day could not be obtained by night, if by rhythm only, except at considerable risk to the mariner.

Though China was not interested in the cardinal system at present, there was one point which Captain Carrel felt might be worth mentioning. The exclusive use of conical topmarks seemed to him to introduce an element of danger, as the loss of the upper cone in the north or south quadrant would at once change the top mark characteristic into that of the west or east quadrant respectively. It was true that colour and shape would still indicate the true quadrant, but was there any reason why spherical and rectangular shapes could not be used in these quadrants?

In conclusion, Captain Carrel once more laid stress on the importance of simplicity and on the adoption of certain fundamental characteristics capable of finding agreement in every country and of being easily recognised by all navigators.

Mr. MACPHAIL (Canada), after expressing his appreciation of the goodwill and liberality of the Portuguese Government, said that the discussion of the previous day and of that morning could not fail to promote the common interest that all the delegates had at heart—the humanitarian and economic interest of safeguarding life and property at sea. Each speaker had frankly stated his position. It seemed to him eminently desirable that each should know, in a general way, the views held by the others, before they entered upon a discussion of details and set up the various committees which would no doubt be necessary in order to arrive at a result. Diversity of opinion had developed, but probably the majority of the delegates present had had occasion in their countries to serve on Committees in which opinions had at first been strongly divergent and had eventually been reconciled after amicable debate.

The Canadian delegate was satisfied that uniformity of buoyage, in respect of general principles, was important in the highest degree, in the interest of safe and convenient navigation. He was satisfied that the proposals put forward by the Technical Committee afforded a satisfactory basis, but with this qualification, that the proposals ought to be somewhat simplified; that a limited

number of general principles ought to be agreed upon ; and that sufficient room ought to be left for modifications to meet the requirements of each locality and condition. For example, a buoy of particular shape and colour *must* everywhere have one significance and one significance only.

He took that position as a result of experience in Canada. If he was correctly informed, the first attempt at unification had been made by the Washington Conference in 1889. Canada was not separately represented there. But Canada was ably represented by the British delegation, who had taken a very important part in those deliberations. Certain conclusions had been reached by unanimous agreement. Canada had adopted those conclusions to the letter, and, during forty-one years, had built up a considerable buoyage system, conforming always to the rules of the Washington Conference.

At that time, no rules were made for lighted buoys, perhaps because they were non-existent ; certainly they were few, but, in the early 'nineties, such buoys were introduced and, year by year, in increasing numbers, on the Pintsch system, until 1905, when important extensions were made, following the introduction of acetylene. Until 1908, no definite rule was adopted in respect of the characteristics of buoy lights, but, in that year, it was determined that red buoys should exhibit red lights, green buoys should exhibit green lights and black buoys should exhibit white lights. Unfortunately, they were not able to devise black lights ; otherwise they would have used them. He had not heard of one case of confusion. Since that time a navigator approaching the coast of Nova Scotia or British Columbia, entering the St. Lawrence, making the ports of Halifax, St. John, Quebec, Montreal, Victoria or Vancouver had confidently expected to find, and he had found, that a buoy of a certain shape, colour and light had one significance and one significance only.

In forty-one years of uniformity in respect of shape and colour of buoys, and twenty-two years of uniformity of colour of lights, not one complaint had been received ; on the contrary, navigators from all parts of the world had expressed satisfaction with the system provided.

Such were the reasons for the attitude adopted by the Canadian delegate.

Sir Edward HEADLAM (India) paid a tribute to the remarkable and interesting work done by the Technical Committee of the League. If conditions were the same throughout the world, it would be possible to accept this report unanimously. Unfortunately, conditions varied a great deal from the climatic, geographic and economic points of view, so that uniformity could not extend to details.

Mr. Putnam had said that the same system of signals could now be employed on the coasts of Alaska and on those of Florida. After forty years' experience of the sea, Sir Edward Headlam did not think it would be possible to apply detailed regulations answering at the same time to conditions on the coasts of Alaska and to conditions in the Bay of Bengal, or to find uniform colours which could be readily distinguished against dark backgrounds or against blue backgrounds like those of the tropics. Similarly, the same colours could not be adopted for buoys in the clear waters of the Pacific and for buoys in the waters of the North Sea.

The Indian Government—Sir Edward was only representing the Government of British India and not the native States under British suzerainty—was very anxious to co-operate with the Conference as far as possible, so as to achieve useful results for the unification of buoyage and the lighting of coasts. But he was very strongly of the opinion that as regards unification in rivers and in ports, where special conditions obtained, it would be not possible to introduce a compulsory system and that the respective authorities ought to be allowed to apply methods suited to their special circumstances.

The Indian delegate supported the considerations already put forward with regard to the importance of the financial aspect of the question in a time of economic depression. Anyone who had been closely connected with the administration of a great port, as he had, would understand that such a consideration must be in the forefront of the Conference's preoccupations. The shipowners were ready to shoulder any expense absolutely necessary to ensure the safety of navigation, but they would rightly object to spending their shareholders' money on experiments which might not prove successful.

The Indian delegate also associated himself with those of the previous speakers who had dealt with the question of the shapes and colours of buoys. In his opinion, shape was the most important factor to be considered. It might be a good thing to have detailed rules concerning colour in the case of tranquil waters under the direct supervision of the lighthouse authorities, but, if it was desired to introduce uniformity, the logical conclusion was that these colours must be the same for buoys situated outside these privileged waters.

To illustrate this point, speaking as a sailor, Sir Edward Headlam pointed out that a black buoy became white in bird-infested waters and that a black and white buoy would rust at the top and turn green at the bottom owing to the collection of seaweed, etc. If the Conference wished to adopt a uniform system of buoyage it would have to confine itself to the broadest possible rules, but it would expose itself to failure if it wished to draw up very detailed rules. On the other hand a convention or recommendations including a large number of exceptions or optional clauses would have little practical value. Any convention or recommendation adopted would have to rest on a sufficiently wide basis to enable the local authorities to adapt it to their particular circumstances. While appreciating the work of the Technical Committee of the League, the Indian delegation would be unable to adopt a detailed regulation fixed by convention. As a sailor, Sir Edward Headlam would even regard it as dangerous. Not only would such rules be

mainly theoretical in character but the navigator would have his head filled with detailed regulations which would distract his attention from his chart, which should be his Bible. A navigator must follow a certain route and keep to a certain speed, and he did not always have time to decipher the numbers painted on the buoys. The chief thing for him was that the shapes of the buoys should be clear and easily distinguishable. If the passage was a complicated one he would have to take a pilot. He could not be expected to bear in mind all the distinctive signs of all the ports of the world.

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#### FOURTH MEETING.

*Held at Lisbon on Wednesday, October 8th, 1930, at 3 p.m.*

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*President: Admiral DE VASCONCELLOS (Portugal).*

#### VI. General Discussion (continuation).

M. HÄGG (Sweden), as a former member of the Technical Committee on Buoyage and Lighting of Coasts, explained the attitude that he felt obliged to adopt at this Conference, in his capacity as representative of the Government of Sweden.

The instructions which he had received from the Swedish Government contained the following passage:

“With regard to the adoption by Sweden of the agreement which may be the result of the Conference, an agreement based chiefly on the principles embodied in the report of the League of Nations Technical Committee on Buoyage and Lighting of Coasts would probably be acceptable to Sweden, but must, as usual, be subject to ratification by Parliament. The coming into force of such an agreement in Sweden should be dependent on its acceptance by the other northern countries and by Germany, the Netherlands, Belgium, and Great Britain.”

M. Hägg desired to emphasise that the Swedish authorities and shipping circles, who had expressed an opinion on the Committee's proposals, had been favourably disposed towards those proposals, but insisted on certain modifications. Those modifications had been summarised in a memorandum which M. Hägg had prepared and which would be communicated to the Conference. He would refer later to this memorandum when it had been circulated.

Captain SINDING (Denmark), referring to the proposals made by the Technical Committee for the unification of buoyage and lighting of coasts, said that every attempt to promote an understanding between nations by means of international agreements must be greeted with pleasure, and Denmark appreciated the principle on which the Committee's proposal was based—a proposal which would facilitate international intercourse. It was likewise realised that it must be necessary for some nations to adapt themselves to new conditions and possibly to make sacrifices to attain such a modification as that proposed by the Technical Committee. If, in spite of this, Captain Sinding did not consider that he was able to support the proposal of the Committee, the reason must be sought in different circumstances of a practical nature, which he would try to explain more explicitly.

In taking into consideration the introduction of an international system of buoyage and lighting of coasts, one should try to answer the following questions:

Had the present state of things, in which countries employed systems independently of one another—systems adapted to various local conditions—occasioned considerable inconvenience to navigation, and would the introduction of an international system of buoyage be a really practical measure or merely of theoretical interest.

Would the contingent practical advantages which an international system might bring about justify the comparatively large expense which such an introduction would entail in some countries?

Captain Sinding said that he had good reason to believe that the Danish shipowner and navigator class shared on all essential points the views that he was about to express. To answer the first question, it would be desirable if statistical material were available to judge how often shipwrecks or other maritime disasters were due to faulty navigation caused by the confusion of the different systems of buoyage. As far as Danish vessels were concerned, it would appear from the Danish statistics of accidents at sea for the years 1903 to 1928, that during that period no accident due to such confusion took place. He believed that, throughout the world, accidents due to the said cause occurred but seldom.

It was his opinion that, in bringing forward the proposal, the importance of the system had been somewhat over-estimated. Certainly, a system of buoyage was necessary for every country. But navigation was conducted, at any rate as regards the principal waters, in accordance with charts and the sea-marks shown on the charts. It was scarcely conceivable that a simple and practical system could be evolved whereby navigation could be continued without constant reference to charts. It was therefore of the greatest importance that charts should be as distinct and as complete as possible.

As regards narrow channels and rivers, it was, of course, possible to a certain extent to navigate exclusively with the aid of buoyage, but, with the exception of the large rivers, these waters were not frequented by international shipping, and therefore an international system was of no great importance in such cases.

Finally, Captain Sinding was of opinion that several simple systems were preferable to a single complicated system. That was a point which he would go into more closely on a later occasion.

Furthermore, it must be pointed out that, even though several differences existed, there was yet a certain connection between the buoyage system and the special conditions appertaining to a country.

Both geographical and climatic conditions played an important part, as did also financial conditions, even though economy might have to be disregarded in favour of security at sea.

During the transition period, before charts and buoyage had been made to agree and before shipping was in possession of the new buoyage charts, there would certainly be great confusion; many shipping casualties would doubtless occur, so that for this reason alone it would be extremely dangerous to make so complete a revolution in the existing state of things. Even though in itself it would be right to have a system of buoyage common to all countries, the importance of uniformity would be merely of a theoretical nature, and would not at the present time bring about conditions which would outweigh the inconveniences involved by its introduction.

In conclusion, Captain Sinding declared that, only in the case of a majority of the greater European maritime nations agreeing with the proposed changes, would there be a possibility of Denmark altering her point of view, and she would only do so with serious misgivings.

M. TAINIO (Finland) reminded the Conference that the Finnish Government had forwarded a memorandum to the League of Nations as the answer to the proposal of the Technical Committee, dated February 20th, 1929. This memorandum (see Part II, page 91) indicated the principal points in respect of which the Government of Finland was opposed to this proposal. The Finnish Government, in its memorandum to the League of Nations dated August 20th, 1928, had already stated the same objections in connection with another proposal by the Technical Committee. The main requirements of local conditions in Finland and those found to be necessary for safe navigation had been explained in the two memoranda, which had been communicated to the Governments of all maritime countries.

The latest of these two memoranda was accompanied by four diagrams, the second of which (see Part II, page 94) showed the alterations which represented the maximum which his Government could accept as far as concerned the cardinal system, should it be possible to arrive at unification at the present Conference. Diagrams 2 and 4 showed the cardinal system and the signals for isolated dangers, which had been worked; but, by the Washington Conference of 1889, this cardinal system had been adopted by the St. Petersburg Conference of 1912, with the additional bands proposed by the Technical Committee.

He reserved the right to raise this question later when the cardinal system was discussed, and he also reserved the rights of his Government in this matter, within the limits of its last memorandum, in case of any alteration made in the cardinal system, and in the signal for isolated dangers, as used in conjunction with the cardinal system.

M. KRABBE (Iceland) said that, in many respects, Iceland was in a different position from most of the greater maritime countries. Buoyage was still in its early stage, and, consequently it was of small practical importance which system was adopted.

M. Krabbe associated himself with the point of view of the Finnish Government so far as concerned the use of red and black as contrasting colours. He was of opinion that, in view of the existing atmospheric conditions on the coast of Iceland, the two said colours would not be sufficiently distinguishable, and that it would be preferable to adopt red and white or black and white.

During the last twenty years, a considerable number of flashlights with red and green sectors had been set up on the coasts of Iceland as indications of danger (skerries), etc. Many of these skerries being of small extent, the corresponding sectors were also very small. This involved certain difficulties in showing more than one colour in each sector. Should it be required to show a white light on each side of such a small single-coloured sector, it would be impossible to follow the ordinary rule observed in Iceland—*i.e.*, red to port and green to starboard on both sides of the sector. In many cases, especially where there was a range of differently-coloured sectors separated by white sectors, it would not be practicable to divide all the coloured sectors in such a way as to have green against green and red against red. Therefore, in such a case, they would simply use a row of sectors, red—white—green—white—red—white—etc. Naturally, however, the same colour would not be put on both sides of white. Another case in which Iceland had not followed the normal rule was when a considerably greater optical range was required on one side of a white sector than on the other. In such cases, they had always used red on the former side and green on the latter, even if that involved a breach of the rule.

These had been the guiding principles followed from the very beginning in respect of lights of this type. He thought that he was justified in stating that navigators had accepted this system with satisfaction, and that no mistake or accident had been caused thereby. When fixed lights were provided with coloured sectors, they had always used red to port and green to starboard.

M. Krabbe did not think that any alteration of these principles could be advantageous so far as the lighting of the coast of Iceland was concerned, since the present system had given full satisfaction. He would therefore have a certain hesitation in accepting an international system of buoyage and lighting, so far as the coasts of Iceland were concerned.

M. MEYER (Germany) explained the views of his Government. The German Government was of opinion that the general report and proposal of the Technical Committee for Buoyage and Lighting of Coasts provided a suitable basis for examining the important question of the unification of buoys and lights.

The German delegate agreed with the French and Netherlands delegates in stating that unification would be of great value if all countries undertook to introduce a uniform system within a certain period to be fixed by common agreement.

The German system and organisation were satisfactory. Should unification be decided upon Germany would have to change all her buoys and many of her lights, but she was ready to do so.

The German shipowners had expressed an opinion to the effect that unification was not at present urgently necessary and they thought that the costs of unification were too great. Personally M. Meyer was of opinion that the expense necessary for changing the buoys in Germany was small; the only expensive step was the transformation of lighthouses with mixed characteristics, but this would have to be done in the near future even if an international agreement for unification were not concluded.

Furthermore, the shipowners feared that countries levying lighthouse dues would take advantage of unification to increase such dues. M. Meyer hoped that this fear could be set at rest. In his opinion unification was a benefit for navigators and for trade in general.

Commander SAILLANT (France), in his capacity as representative of the French Navy, referred to certain arguments that had been brought forward concerning the occasionally insufficient qualifications of the technical services for lighting and buoyage to speak concerning the proposal for unification.

In many countries, particularly in France, there was the closest liaison between the lighthouse services on the one hand and the services of the Navy and Merchant Marine on the other. The French point of view had been set forth by the French delegation in full agreement with their seamen, both of the Merchant Marine and of the regular Navy. The same was the case in Italy as was shown by the statement made by Commander Biancheri who simultaneously represented the Italian Navy and the Italian Merchant Marine.

Commander Saillant did not think that the point at issue was whether the replacement of the present systems of buoyage and lighting by a uniform system would more or less prevent disasters at sea; what was desired was that navigators should have a more convenient system at their disposal. Commander Norton had spoken of modern ships, the speed of which was increasing. Commander Saillant quite agreed with him that in view of the progress of navigation and the increase of the speed of ships, it was necessary to have greater facilities for navigation. This meant, among other things, that the navigator should as seldom as possible have to consult sailing instructions and charts on his bridge in order to identify buoyage marks. Furthermore, account must be taken of the fact that navigators of small fishing craft and small vessels engaged in coasting trade often had quite inadequate documents at their disposal and had little practice in consulting them. Moreover, in bad weather these craft might be blown away from the coasts to which they were accustomed.

One could not help noticing that in the general discussion, during which it had been urged that heads of lighthouse services were not fully competent since they did not navigate—which was not true since many of them were naval officers and the others, even if civilians, had a greater or lesser experience of navigation—the views of the shipowners had frequently been defended. The shipowners, however, probably did not navigate any more than the heads of the lighthouse services. On the other hand, far fewer speakers had spoken in the name of the officers of the Merchant Marine, who were continually at sea and who indeed would appear to be in favour of uniformity.

Commander Saillant fully agreed with those of his colleagues who had urged the need for an extremely elastic system which could be put into effect gradually. These qualities of elasticity and suitability for gradual application were to be found in the rules recommended by the Technical Committee in its report at the Genoa Conference.

He thought therefore that the Conference should take note of the fact that the shipowners were in a general way not opposed to the principle of uniformity so long as the uniform system was sufficiently elastic and could be put into effect without considerable expenditure.

M. RASI-KOTSICAS (Greece) emphasised the importance of maritime questions for Greece in view of the length of that country's coasts. The competent Greek services had examined with keen interest and profound attention the proposals regarding the unification of buoyage and lighting. All the systems at present applied aimed at diminishing the dangers to navigation, and the differences between them were explained by the need for taking local conditions into account. The Greek Government was in favour of uniformity. Nevertheless it stressed the fact that the system adopted would have to be based on the very low standard of ability, intelligence and seamanship of ordinary sailors, who were sometimes almost illiterate.

Greece had adopted the provisions of the St. Petersburg system, as her neighbours had done, but she was ready to change the system in order to bring about uniformity.

Personally the Greek delegate desired to add that he saw common points in the two systems of buoyage before the Conference. Perhaps these principles could be taken immediately, so as to facilitate discussion and make it easier to reach an agreement.

He concluded by associating himself with the statements made by the maritime countries of the Mediterranean. He thought it would be useful for mariners to find in Greece a system similar to that which they would find before reaching Greece.

M. CHIBA (Japan) said that the Japanese delegation was very anxious to achieve uniformity in the sphere of buoyage and lighting of coasts. It accepted as a whole the proposals of the Technical Committee as a basis of discussion. It would, however, have various observations of detail to put forward, and it hoped that these would be favourably received by the other members of the Conference. He would confine himself for the moment to stating that the Japanese delegation would prefer a considerable period to be allowed for the putting into force of the agreement, so as to avoid a hasty transformation of the present material which would involve excessive expenditure.

Mr. CRIPPS (British Empire) thought that there was a slight misunderstanding on the part of the French delegation. The British shipowners represented a large proportion of world shipping, and it was for this reason that they had put forward observations, but they had only expressed their opinion after having the question carefully examined by experts including some of the most competent navigating officers.

The question of expense was of great importance to shipowners at the present time. This would be quite a secondary matter if it was a question of security, but the British shipowners did not believe that the proposed system—in respect of many of the elements of which experiments would be necessary—would add anything to existing security. What they desired was results, and the best results. The British shipowners were convinced that the best results were those which they had at present. The responsibility for safety at sea belonged to the authorities of each country, who were in the best position to judge local conditions. In this way, they were certain of having the best system. If the Conference substituted itself for these authorities, and, if later on, the League of Nations introduced changes into the system in force, he was not sure that this would be a good thing.

Lastly, as regards uniformity, Mr. Cripps reminded the Conference that there was positive uniformity and negative uniformity. The Conference might perhaps agree not to do certain things and thus achieve negative uniformity, but it might find it difficult to agree to do certain things—*i.e.*, to achieve positive uniformity.

M. SOŁSKI (Poland) stated on behalf of the Polish Government and the authorities of the Free City of Danzig that both were ready to make all the efforts necessary to arrive at the unification of buoyage and the lighting of coasts. The advantages of unification were indisputable. In the course of the general discussion, the difficulties in the way of this unification had been very clearly stated. But these difficulties, as several speakers had already indicated, were not insurmountable, especially if sufficiently broad and liberal rules were drawn up in the course of the discussions and if their application were spread over a sufficiently long period of time. The delegation of Poland and of the Free City of Danzig was ready to take the Technical Committee's report as a basis.

M. VAN BRAAM VAN VLOTEN (Netherlands), referring to the expense which any system of unification would involve, noted, in the first place, that, according to the Technical Committee's proposals, the expense caused by the compulsory changes would be very small compared with the annual maintenance expenses. If this expenditure were insisted upon, however, it must be pointed out that it would be incurred once and for all and only the interest on the capital sum—*i.e.*, one twentieth (or 5 per cent) a year—need be charged to each annual budget, over a period of twenty years. In the second place, it had been alleged that no expense, however small, was admissible in the present economic situation. The expense, however, which, as he had already said, would be incurred once and for all, would only become necessary in perhaps five or six years' time, and in view of the cycles of depression and prosperity it was quite probable that, by that time, prosperity would have returned.

M. KOREN (Norway) recalled that he had already stated the views of the shipowners in reply to certain observations made the previous day by Mr. Cripps. He was now requested by his Government to make the following statement :

The Norwegian Director of Lighthouses and Buoyage, having consulted the principal maritime institutions and associations in Norway, desires to express his recognition of the very great work done by the Technical Committee for Buoyage and the Lighting of Coasts, the result of which is explained in the report. The Norwegian authorities have a clear understanding of the advantages to be gained by all seafaring powers, if a general unification of maritime signals, buoyage and lighthouse signs could be agreed upon.

After having very carefully considered the proposals of the Committee, as laid down in the report, the Norwegian authorities concerned regret having to state that geographical and hydrographic—as well as economic—conditions are of such a nature that the rules and recommendations contained in the report are not suitable for introduction as a basis for a system of buoyage and lighthouse signs on the coast of Norway.

The characteristics of this coast are, as is well known by everybody, that it is enveloped by an extensive accumulation of islands, isles, skerries and rocks—the *skjaergaard*. Among these isles, etc., there exist a great number of fairways, both large and small, running either parallel to the coast or crosswise. In many places, inlets lead from the sea into the fairways and fjords, but in a few cases only is it possible to speak of these inlets or fairways as entrances leading directly from the open sea to a port or ports. On the contrary, they branch off in all directions.

Conditions are therefore quite different from those existing in most other countries, where a single estuary, river, inlet, channel or canal leads from the sea to a port or ports.

Sandbanks off the coast do not exist. Other shoals dangerous to navigation and far from land are very rare. Buoyage, therefore, serves principally to mark inshore waters.

The existing system of buoyage in Norway was introduced in 1906 as a result of very long and careful investigations. It has up to now worked to the satisfaction of everybody, and, taking into consideration the peculiarities of the Norwegian coast, it may be said without exaggerating that it is the only system possible, due regard being taken to existing economic conditions.

The system is based on the use of a very great number of small and inexpensive marks, at present about 11,800 ; most of them are fixed iron poles (about 9,500) and floating wooden spars. Buoys in the ordinary European sense are comparatively few.

The Norwegian authorities concerned are aware that floating marks as used in Norway may be employed according to special conditions in the Annex to the report of the Technical Committee,



II, paragraph B, 8 (d)—viz., without adhering to the principal requirements of the proposal regarding *shape* and the use of *topmarks*.

As regards colouring, the proposal does not, however, make allowance for any exception, and, in this respect, a greater number of types is required, especially if it is necessary to use both the lateral and the cardinal system.

Experience and trials have shown that with the type of floating marks used in Norway it is not practicable to employ more than three types as regards the colouring. White bands have been tried, but have proved to be of no use.

The most serious drawback, however, is the alteration made in the present proposal from the draft proposal agreed upon in Finland (1927)—viz., the re-arrangement of the two principal colours (black and red) in the lateral as well as in the cardinal system.

This arrangement would upset completely our present system and cannot be accepted.

As regards lighthouse signs, the Norwegian authorities are aware that the proposal does not aim at any immediate alteration in existing conditions, and they subscribe to a number of the recommendations as set down.

With regard to the recommendation to use flashes only as characteristics of landfall lights, it is, however, necessary to make a reservation, as a number of the Norwegian landfall lights serve also as entrance lights and are therefore provided with sectors. These sectors must of necessity be maintained, and the flashing characteristics can therefore not be adopted in these cases.

The proposed principles for the arrangement of sector-lights in channels and fairways are impracticable in our waters. A glance at a chart showing the sectors of some of the Norwegian unguarded lights will prove this. At present, Norway has about 1,700 guarded lights with about 15,000 sectors. Alteration of these lights in compliance with the proposal would increase the number of sectors by many thousands. Moreover it would not be possible in many cases to utilise the colours in the best way with regard to visibility.

To sum up as regards buoyage, the proposals with regard to the provision of detailed regulations for the purpose of unification of buoyage cannot be adopted for the Norwegian coast.

They are not applicable to the thousands of fixed marks, mostly simple iron poles. Neither are they practicable for the type of floating marks employed, which are as a rule, wooden spars which do not permit the use of many different shapes, top-marks or colours. The main principles of colouring, according to the proposals, would upset the present system, which is regarded as very satisfactory, and would, if adopted, bring about confusion and difficulties for the navigator.

As regards lighthouse signs, it is necessary to make reservations concerning several of the proposed regulations and recommendations. Landfall lights which also serve as entrance lights must in future, as at present, become sector-lights and cannot therefore be altered to flashing-lights.

Neither is it possible to arrange the coloured sectors of the numerous unguarded lights in fairways or entrances according to the rules laid down.

The Norwegian authorities must therefore refer to and abide by the statement contained in the following resolution passed by a Conference held at Oslo on June 5th, 1930, where the principal maritime institutions and associations in Norway were represented :

“We find that it would be beneficial to navigation if buoyage and the lighting of coasts could be made as uniform as possible in the different countries.

“After having carefully considered the proposals framed by the Technical Committee of the League of Nations, and taking into account our economic as well as our geographical and hydrographic conditions, we find, however, that the proposed rules and regulations are not suitable for application to our coast.

“The buoyage and lighting of our coasts should be provided for on the same lines as at present. At the same time we will take into consideration any international rule which might be adopted and which we might use with advantage.”

Vice-Admiral Sir Robert MANSELL (British Empire) said that, as Deputy Master of Trinity House, the Lighting Authority for England and Wales, which was a corporation composed of both mercantile marine and naval officers, he had a special opportunity of hearing the views of officers of both these services and also of pilots of whom Trinity House administered the service for the important Port of London and for many other ports round the coast, including Southampton. Trinity House was also in close touch with Lighting Authorities round the coast in the large ports as in the small. Sir Robert therefore thought that the position of Trinity House gave it an exceptional opportunity of getting the views of all maritime and lighting bodies in the United Kingdom.

These bodies were unanimous in the belief that unification of buoyage and lighting systems was not required, that it would be costly, and that it would be dangerous ; particularly during the period of transition.

Before coming to the Conference Sir Robert Mansell had consulted all the authorities of whom he had just spoken, maritime, lighting and pilotage, and he proposed to state their views. He did not think that he should make an apology as others had done for pressing that the chart was the

seaman's Bible. Whatever system of buoyage was laid down it would not affect the prime importance of the chart. Even if the mariner had a perfect knowledge of the buoyage system arrived at he *must* rely on his chart. Imagine him navigating, for instance, the Thames Estuary with its curves. How was he to know the next buoy to make for? If he went towards the nearest, it was quite probable that he would be omitting to circumnavigate an obstacle and in taking the short cut he would go ashore. He *must* have correct charts and use them and if he did so, why have unification, which could not possibly suit all ports?

As regards cost, M. Watier had told him how France was able to make the necessary changes with little cost. They would remember that Sir John Baldwin had congratulated M. Watier. In England, however, the proposed changes would involve considerable expenditure. Sir Robert Mansell did not know whether the changes had been made in a position similar to the Thames Estuary with its five channels forty miles or so in length, but any seaman would appreciate that changes could not be made there piecemeal. All the changes must be made quickly and, as far as possible, simultaneously. Some three hundred or more buoys would be involved and this work would entail the hire of craft to assist their steamers. This was a very costly business in itself.

Lastly, the permanency of any system of unification was very doubtful if they took account of the changes in the recommendations made by the present Committee within two years, and therefore any rules made should be elastic, which he feared would not make the system too simple for the navigator.

In conclusion, he stated that, as Sir John Baldwin had already said, the British Delegation was prepared to assist with the best will in evolving a simple method of unification, not a complicated one.

M. DE ROUVILLE (France) wished to reassure certain delegates as to the extent of the transformations which the different lighting and buoyage services would have to make if they accepted a system similar to that proposed by the Technical Committee. Some delegates had said that they might have to modify existing lighthouses, on the ground that the Technical Committee's first proposal recommended certain signs for landfall lighthouses. M. de Rouville did not think that there had ever been any intention of going as far as that. It was necessary to learn to read the Brown Book, one of whose faults was its apparent complication, but it was only apparent, for, if it was studied with care, one soon found that it was as clear as was possible in the circumstances. It must not be thought that these proposals would involve far-reaching modifications, notably in lighthouses. There were numerous changes in buoyage, but they were superficial changes. They did not affect the shape of the buoys, and the principal idea was to change their colour and invert the shapes of the top marks. The changes in question would therefore cost very little. If the report appeared complicated when it was read, the experts could not help it and had been obliged to take into account the different conditions in the various parts of the world. To some extent, as had been pointed out, they had arrived at negative indications rather than at imperative rules. But it was the elasticity of these rules which would make them easier to adopt.

M. URBAIN (Belgium) stated that the Belgian Government would certainly be ready to adopt any good system of unification which was proposed.

It should be noted that from Danzig to Greece the whole continent of Europe had pronounced for a system of unification. This was a fact deserving of some attention. At the preceding meeting, mention had been made of the reasons which in certain cases had justified unification, and notably of the necessity of observing equality of treatment in commercial matters. The Belgian delegate wished to emphasise the fact that, if the European Continental group adopted unification, it would no longer enjoy equality of treatment, and the British Mercantile Marine would have a great advantage. It would be able to enter all the ports of the Continent and each time find the same rules and the same buoyage; on the contrary, when Continental sailors entered the British ports—whose rules were not always uniform—they would be at a disadvantage.

The Belgian delegate therefore appealed to the British delegation's spirit of fair play, and asked it to consider this aspect of the problem.

It had been said that the British shipowners were not much inclined to accept unification, which they regarded chiefly from the point of view of expense. Had they also looked at this unification from the point of view of efficiency? When their officers could enter all ports without difficulty they would avoid loss of time equivalent to a considerable amount of money.

It had also been said that the British pilots did not seem to be in favour of unification, but this was easy to understand, and they might even be expected to be opposed to any system of buoyage at all.

One opinion which was very important, however, was that of the merchant marine officers. British officers had no doubt been consulted by their owners, but it was quite possible that these consultations had not taken place in circumstances which could justify their being regarded as complete. They had also heard the opinion on the representative of an international association to which a large number of mercantile marine officers belonged, and it was regrettable that the British merchant marine officers were not represented at the Conference. If they had been, they could have given their opinion without any constraint.

As a complement to the opinion put forward by those chiefly concerned, M. Urbain brought the assent of another association of mercantile marine officers not affiliated to the one he had just mentioned, and he could assure the Conference that, if a referendum was taken among them, 90

or 95 per cent would be in favour of unification. Here again he regretted that there was not equality of treatment with regard to merchant marine officers, but the persons chiefly concerned were certainly the most ardent advocates of unification.

The PRESIDENT declared the general discussion closed.

#### VII. Programme of Work (continuation).

The PRESIDENT, in accordance with the suggestions made by various delegates, proposed that the three following Committees should be set up :

A Committee on Buoyage, with M. VAN BRAAM VAN VLOTEN (Netherlands) as Chairman ;  
A Committee on Port Signals and Coastal Signals, with M. HÄGG (Sweden) as Chairman ;  
A Committee on Lighthouses with Mr. PUTNAM (United States) as Chairman.

Each delegation would have the right to be represented on each of these Committees, which, as a rule, would not be able to sit simultaneously, as several countries were only represented by one delegate.

*The President's proposals were adopted.*

### FIFTH MEETING.

*Held at Lisbon on Thursday, October 23rd, 1930, at 11 a.m.*

*President : Admiral DE VASCONCELLOS (Portugal).*

#### VIII. Recommendations concerning Lighthouses and Radio-Beacons.

The Conference examined paragraph by paragraph the draft recommendation on lighthouse and radio-beacon characteristics.

In paragraph A ("Lighthouse Characteristics") it was decided to bring the French text into harmony with the English by saying : "*qui ne seraient pas conformes auxdites règles*" in line 8, instead of "*qui seraient contraires auxdites règles*".

*Subject to this drafting amendment, the Conference approved the draft recommendation submitted by the Drafting Committee (see document C.634.M.253.1930.VIII).*

#### IX. Agreement and Regulation concerning Maritime Signals.

The Conference examined the text submitted by the Drafting Committee for the Agreement and Regulations concerning Maritime Signals paragraph by paragraph (document C.B.E./23).

##### I. AGREEMENT.

The Indian delegation proposed that the words "or when pilotage is compulsory" should be inserted after the words "exceptional circumstances" in Article 2.

The DEPUTY SECRETARY-GENERAL OF THE CONFERENCE wondered if the text of the article as it actually stood would not cover the cases that the Indian delegation wished to take into consideration—namely, those when pilotage was compulsory on account of local conditions. He thought that the clause did not cover every case of compulsory pilotage, but at least it did cover those where the obligation to have recourse to the pilotage service depended upon exceptional local circumstances.

Sir John BALDWIN (British Empire) agreed that the provision under discussion was a very wide one, and he thought that it covered the cases mentioned by the Indian delegation.

- Sir Edward HEADLAM (India) announced that he had submitted the amendment under discussion in conformity with his Government's instructions. However, if the Conference thought that the present text also covered the case of compulsory pilotage, he was ready to withdraw his amendment, subject to the reservation that note should be taken of it in the Minutes and that the interpretation made by the Deputy Secretary-General of the Conference of the actual provision should also be mentioned in the Minutes.

*The Conference adopted the above interpretation.*

Sir Edward HEADLAM (India) said that he was satisfied.

*The Conference approved the text of the Agreement concerning Maritime Signals (see document C.634.M.253.1930.VIII).*

##### 2. MARITIME REGULATIONS.

###### *Chapter I.—Gale-warning Signals.*

On the suggestion of Captain CARREL (China), who pointed out that the heading of the document prepared by the Drafting Committee under Chapter I of the Regulations for "Gale-warning Signals",

did not reproduce the formula adopted by the Drafting Committee, the Conference decided to adopt the following title : "Warning of Gale expected to affect the Locality"

A. *Direction of the wind.*

*Adopted.*

B. *Probable bad weather, hurricane of strong gale.*

*Adopted, subject to a drafting amendment in the English text.*

C. *Change of direction of wind.*

Captain CARREL (China) pointed out that the last paragraph of this section of the regulations mentioned the use of *additional* signals. The word "additional" appeared to him unfortunate, especially as applied to typhoon signals, which were among the most important that had to be employed in China.

On the proposal of M. DE ROUVILLE (France) the Conference decided to replace the expression "the use of additional signals" by the expression "the use of other signals".

*Paragraph C was approved, subject to this drafting amendment.*

*Chapter II.—Tide and Depth Signals.*

A. *Vertical movement of the tide.*

*Adopted.*

B. *Height of water level.*

A discussion took place on the following sentence : "These signals shall be hoisted in such a manner as to be read from right to left by the incoming navigator."

M. URBAIN (Belgium) pointed out that this provision was not clear. If, for example, it was wished to indicate a height of 22 feet, would they have to put the "20" signal on the right and the "2" signal on the left, or the other way about ?

After a discussion to which M. WATIER (France), M. URBAIN (Belgium), Captain CARREL (China), Sir John BALDWIN (British Empire) and M. VAN BRAAM VAN VLOTEN (Netherlands) contributed, M. DE ROUVILLE (France) proposed to revise the text as follows :

"These signals shall be hoisted in the following manner :

"The cones (or spheres) indicating . . . in a vertical line on the extreme right  
(Text unchanged).

"Left and right shall be interpreted from the point of view of the incoming navigator."

*M. de Rouville's proposal was adopted.*

*Chapter III.—Signals concerning the Movements of Vessels at the Entrances to Harbours and Important Channels.*

*The regulations were adopted (see document C.634.M.253.1930.VIII).*

X. *Question of Procedure.*

Sir John BALDWIN (British Empire) asked what was the exact meaning of the word "adopted" which the President said after each provision was read. Were delegations which had said nothing bound by the adoption of these provisions, or did their abstention merely mean that they had no objections to make to the text in the form in which it had been submitted ?

The SECRETARY-GENERAL OF THE CONFERENCE, in reply to Sir John Baldwin, said that that was a question which had already been raised and dealt with during previous conferences. The adoption of a provision, or even a vote in favour of a provision, was in no way binding on delegations ; all that it meant was that these delegations considered that the proposed text raised no objections and was of a kind to facilitate international work. Delegations were in no way bound to sign the instrument and apart from that, even in the case of signature, the Governments concerned were not bound to ratify.

Sir John BALDWIN (British Empire) found himself unable to agree to a part of the interpretation given by the Secretary-General of the Conference. When the British delegation raised no objection, that meant that it considered the text to be a faithful reproduction of previous debates, but it could not commit itself to saying that the provisions it was not prepared to adopt or sign constituted a step forward in the path of international progress. In this case the position of the British delegation was an entirely negative one.

The SECRETARY-GENERAL OF THE CONFERENCE explained that the fact that a delegation approved a provision simply meant that it saw no objection to other countries signing it. There could be no question of compelling delegations to approve even a text which might be a faithful reflection of previous work. If in such a case the provision appeared to be contrary to a country's interests, the delegation concerned could vote against this provision, and it was even its duty to do so.

The PRESIDENT asked if the Conference approved of the interpretation that resulted from the remarks of Sir John Baldwin and the Secretary-General of the Conference.

M. URBAIN (Belgium) thought that there was no doubt about the question. He recalled the provision which occurred in Article XI of the Agreement concerning maritime signals. Sir John Baldwin's remarks had merely emphasised the privileged position accorded to each delegation.

*The Conference agreed to this opinion.*

Sir John BALDWIN (British Empire) declared himself satisfied.

#### XI. Agreement concerning Lightships not on their Stations.

The Conference examined, paragraph by paragraph, the text submitted by the Drafting Committee for the Agreement and Regulations concerning lightships not on their stations.

##### I. AGREEMENT.

The SECRETARY-GENERAL OF THE CONFERENCE pointed out that the words "to all or" should be deleted in the second and third paragraphs of Article 8.

He added that this article contained a purely formal legal provision which would perhaps have to receive certain formal changes. Any changes carried out would be brought to the notice of the Conference before the signing of the instrument. The same remark applied to the corresponding article of the Agreement concerning maritime signals.

He also pointed out that Article 10 should be omitted since its insertion was due to an error. Article 11 would consequently become Article 10.

Subject to the above remarks and to the rectification of errors concerning the references to certain Articles, *the Conference adopted the text of the Agreement concerning Lightships not on their Stations* (see document C.634.M.253.1930.VIII).

##### 2. REGULATIONS.

On the proposal of M. URBAIN (Belgium), and after a short discussion to which Captain BRANDON (British Empire) and M. WATIER (France) contributed, *it was decided that the provisions of the regulations would apply to manned lightships not on their stations. Consequently the headings of the Agreement as well as the regulations would have to be changed.*

##### Paragraph 1.

Captain BRANDON (British Empire) proposed that the following words: "It should not show its characteristic light nor make its characteristic fog signals", should be substituted in the English text for: "It should not use its characteristic light and fog signals." This change did not affect the French text.

*The British amendment was adopted.*

*Paragraph 1 was adopted.*

##### Paragraphs 2 and 4.

Captain BRANDON (British Empire) proposed that the words "not on its station" at the beginning of paragraph 2 should be replaced by the words: "which has dragged or broken adrift from its moorings". As a matter of fact he did not think it necessary for a lightship proceeding to or from its station to fly the required signals, and even if this procedure did not raise difficulties in the case of the day signals (two large black spheres or red flags), it would do so in the case of the night signals.

He thought that a lightship proceeding to or from its station ought to fly the regular route signals used by all vessels, and it seemed to him extremely dangerous to hoist two red lights, which might lead to confusion. Moreover, he wondered what would be the position of a lighthouse administration in the case of a collision between a ship and a lightship carrying these special signals.

After a discussion, to which M. WATIER (France), Captain BRANDON (British Empire), and the DEPUTY-SECRETARY-GENERAL OF THE CONFERENCE contributed, Commander SAILLANT (France) proposed that paragraph 4 should read as follows:

*"Lastly, a lightship under weigh must carry the same lights and make the same sound signals as other vessels under weigh and, if self-propelled, should hoist by day the signal provided for in paragraph 2."*

In France, for example, there were lightships which sailed under their own power. Such lightships under weigh would have to show by an appropriate signal that they were not on their station. The question was especially important in the neighbourhood of these lightship stations, when it was necessary to prevent mariners from taking inexact bearings.

*The Conference adopted paragraph 2 as amended by the British delegation, as well as paragraph 4 as amended by the French delegation.*

In reply to Captain CARREL (China), *it was made clear that the use of red flags instead of black spheres, as provided for in paragraph 2, was also provided for in the new wording of paragraph 4.*

*Paragraph 3.*

Captain BRANDON (British Empire) proposed that "by day" should be added to sub-paragraph (a) and "by night" to sub-paragraph (b).

*Paragraph 3 was adopted, subject to this amendment.*

*The Rules were adopted (see document C.634.M.253.1930.VIII).*

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SIXTH MEETING.

*Held at Lisbon on Thursday, October 23rd, 1930, at 9 p.m.*

*President : Admiral DE VASCONCELLOS (Portugal).*

**XII. Resolution concerning the Continuation of Work relating to the Unification of Buoyage : text submitted by the Drafting Committee.**

The SECRETARY-GENERAL OF THE CONFERENCE explained the conditions that had led the Drafting Committee to submit the draft resolution now before the Conference (see page II).

The Drafting Committee had attempted, on the basis of the discussions of the Buoyage Committee, to draw up a collection of texts containing the uniform regulations to be applied to a series of questions in connection with buoyage. It managed in this way to establish the text of a draft agreement on the Unification of Buoyage, and this text contained detailed regulations on certain questions in an annex. Apart from this draft agreement, which seemed to him capable of universal or widely general adoption, the Drafting Committee had prepared a draft supplementary protocol containing regulations on a number of other questions in an annex.

After a fresh examination of these various texts, the Drafting Committee had had to realise that, generally speaking, the rules that had been laid down, had only been approved as part of a relatively complete system of buoyage unification. Quite a large number of these rules could not be put into application unless an agreement were arrived at on certain other fundamental questions, such as that of the allocation of colours by day and by night and of odd and even numbers in the lateral buoyage system.

In these circumstances, the Drafting Committee had wondered whether there was really any necessity to submit to the Conference these texts of an Agreement and Supplementary Protocol. This could not have been done unless special rules had been laid down for the putting into force of these texts, under which the application of the provisions in the texts would have depended on the conclusion of a subsequent agreement on other questions ; another solution would have been to provide a special Protocol for the putting into force of these rules. The Drafting Committee was unanimous in thinking that this method should not be followed because it would only lead to an apparently complete result, whereas in reality they were only taking a first step forward and, in order to attain any results, new progress would have to be made and certain fundamental questions on which it had been impossible to obtain agreement at this moment would have to be settled.

The members of the Drafting Committee—and he wished here to emphasise the fact that they had discussed this question not so much as a Drafting Committee, but rather as a group of the delegates of the Conference—had considered that; in order to arrive at a result, a new examination of the question would be necessary after quite a short time ; moreover, it had seemed to them that this examination would be considerably facilitated by the discussions that had taken place at the Conference and that, in particular, the texts prepared by the Drafting Committee, after the discussion in the Buoyage Committee, had noticeably cleared the ground and the new discussions which would be indispensable might be confined to two or three fundamental points, so that there would be some hope of obtaining a definite result in the near future.

Emphasis had to be laid on the fact that there was no question of failure ; they were merely trying to arrive at the best method of coming to practical results in future. That was the meaning of the draft resolution submitted to the Conference in a form that did not do away with freedom of action on the part of the various delegations.

Sir John BALDWIN (British Empire) said that he had little to add to the explanations given by the Secretary-General of the Conference. As a member of the Drafting Committee, he merely wished to justify the attitude it had adopted. As the Secretary-General of the Conference had said, the draft resolution did not express the opinion of the Drafting Committee as such ; otherwise it might justly be thought that the Drafting Committee had exceeded its powers. The draft resolution was rather the expression of the individual opinions of certain delegations represented in the Drafting Committee. The British delegation approved of it and asked the Conference also to agree to the text before them.

When the Drafting Committee had started work, it was sincere in its desire to carry out what it thought to be the unanimous wish of the Conference—namely, to draw up a document which would contain in a conventional form the points on which the Committee had been able to agree, whether unanimously, or by a majority, and which would enunciate certain general principles which might be useful in drawing up any uniform buoyage system that was likely to be adopted. The question might have appeared comparatively simple at the beginning, but it was quite different when they came to put their results on paper. When the Drafting Committee had drawn up the

conventional articles as they appeared to result from the discussions in the Buoyage Committee, it wished to separate them into two documents : one containing what might be considered as a translation of the unanimous opinion of the Conference ; the other containing in a fewer number of articles certain principles that had been approved of and accepted by the majority of the Conference. When the Drafting Committee came to compare the two documents, it had been struck by a certain article—and the same feeling might have been provoked by another article—which, had it been accepted, would have prejudiced any agreement that might have been realised at a late date. The Drafting Committee had consequently decided that this article would have to disappear from the majority document ; it afterwards appeared that the omission of this article had repercussions on a whole series of other articles in the unanimous document, and these articles in their turn affected other articles of the same document. They were then forced to realise—perhaps they should have done so earlier—that, practically speaking, any kind of fragmentary agreement on the question of buoyage, which was more complicated than had sometimes been thought, was impossible and that they could not put anything on paper before coming to an agreement on the whole question, for the adoption of fragmentary rules would have affected any subsequent agreement. For that reason, the British delegation wished the Conference to accept the proposals in the form in which they had been submitted.

The British delegation, and doubtless other delegations also, considered that, if from now onwards an arrangement like the one proposed were accepted, any subsequent agreement would be rendered much more difficult and the difficulties in the way of the settlement of the problem in the future would be more considerable than they had been during the discussions in the present Conference.

M. WATIER (France) said that he was in entire agreement with the British delegation. The following draft resolution submitted by the Drafting Committee was read :

“The Conference,

“Expressing its satisfaction that the work of its Buoyage Committee and of its Drafting Committee has permitted uniform rules to be drawn up regarding a certain number of buoyage questions capable of facilitating the elaboration of a complete international buoyage system, and that these rules have been unanimously agreed upon with a view to the organisation of such a system ;

“Noting, however, that it hardly seems possible to apply these rules, except as part of a sufficiently general agreement dealing with the main questions of buoyage as a whole ;

“Noting further that no immediate agreement seems possible with regard to certain of these important questions, such as the allocation of colours by day and by night and of odd and even numbers in the lateral buoyage system ;

“Believing that further efforts must be made to secure agreement between all the maritime nations of the world before the expediency of examining the possibilities of agreement between certain of these nations only is considered ;

“Takes note of the proceedings of its Buoyage Committee and of the texts prepared by the Drafting Committee ;

“Decides to postpone its work on buoyage questions, and expresses the hope that it will be given an opportunity of resuming its work in about a year's time with a view to allowing the Governments concerned to make fresh efforts to reach complete agreement after consideration of the proceedings of the present Conference.

“The present resolution, to which will be annexed an extract from the Minutes of the Conference with regard to buoyage, and a copy of the Minutes of the Buoyage Committee and of the texts concerning buoyage prepared by the Drafting Committee, will be communicated to all the Governments represented at the Conference or invited to send representatives thereto.”

Mr. HILL (International Shipping Conference) supported the draft resolution for the following reasons :

Any attempt to present a form of agreement for adoption by the Conference must represent an agreement on points which, however useful in themselves, only covered a small part of the distance to be traversed before a uniform system of buoyage was attained. Even so, it was obvious from the views expressed by almost every delegation, that even those points would only meet with general acceptance if they were covered by an effective reservations clause. In these circumstances, the true interests of uniformity practically dictated a policy of *festina lente*.

The Conference had accepted the argument that the crystallisation of existing differences in regional systems would place an obstacle in the way of future uniformity, and this was expressed in the draft resolution. The same argument applied in favour of postponing agreement on buoyage in the lateral system altogether. To give formal expression to the small measure of agreement which had been reached with regard to the system was simply to crystallise the large measure of disagreement, and to hinder a greater measure of agreement in future. If, on the other hand, it was agreed to adjourn the discussion on the lateral system, scientific study and development might be expected to bring their own remedy and to prepare the ground for a future harvest, which would reflect credit on the Conference.

At the same time, there was an obvious advantage in knowing, for each person's private information, where they now stood. Some record of the present position would seem necessary to any constructive further study of the subject. It was therefore desirable to record in the Minutes of the Conference the exact state of present opinion, at least in regard to the main point of contention—namely, the allocation of colours of lights on port and starboard in the lateral

system of buoyage. At the same time, it was valuable to record the agreement which had been reached in regard to the question of shape, and, if possible, the colour and characteristics for wreck-marking.

The representative of the International Shipping Conference thought that he might understand the last paragraph of the draft resolution in the sense of the suggestion he had just put forward.

The SECRETARY-GENERAL OF THE CONFERENCE made slight reservations on certain points of the interpretation that the representative of the International Shipping Conference had just given to the draft resolution. Personally, the Secretary-General of the Conference had had the impression that the Drafting Committee had not wished to follow the policy of *festina lente*, but had rather tried to hasten their work by choosing the method they considered the most likely to give positive results. On the other hand, if they collected the opinions of the various delegations on the principal controversial questions and recorded them in the Minutes, they would be going against the aim of the Drafting Committee and they would consequently risk compromising the success of their work. If there was a proposal to postpone the Conference, it was not in order to allow each person to express his opinion, for the opinions of all were well known; it was in order to allow the new work, which it was to be hoped would be fruitful, to be prepared in an atmosphere of calm, with the memory of past disagreements at least officially forgotten, and in a spirit of mutual goodwill. This method was indispensable if they wanted the different delegations to return imbued with the new spirit of mutual confidence which was an essential element.

The Secretary-General of the Conference was gratified that the representative of the International Shipping Conference, who had co-operated wholeheartedly in the work of the present Conference, now approved of the draft resolution, which was aimed at taking more and more positive steps towards the unification of buoyage and lighting of coasts.

Mr. TWEEDIE-STODART (China) pointed out that the penultimate paragraph of the draft resolution provided for the resumption of the work of the Conference in a year's time. This period seemed to him too short, first, because the problem was extremely complicated, and they would have to leave the various nations ample time to examine it; and secondly, because it would be too much to ask very distant countries to send a representative to another Conference in one year's time. It would be better to provide a period of three years, for example, and that was the moment when the next Conference on the Administration of Lighthouses would be meeting at Paris. He did not wish to prejudice the place where the new Conference on Buoyage and Lighting of Coasts would be held, but the fact that the majority of the delegates would already be in Paris would facilitate the future meeting.

The SECRETARY-GENERAL OF THE CONFERENCE insisted on the fact that the text of the draft resolution had been drawn up in such a way as to express a recommendation without binding the Governments represented at the present Conference. If special difficulties were met in carrying out this recommendation, it was obvious that a prolongation of the interval between the two Conferences would be necessary. Nevertheless, the Drafting Committee had attempted to take into account in the text of the resolution the rather contrary opinions which had been expressed, and to establish a kind of mean between them. On the other hand, if the present Conference came to an end without obtaining any immediate results—at least in appearance—on one of the principal points on its agenda, and if it gave the erroneous impression that it wished to postpone the continuation of its work until a very distant date, those who were not well acquainted with the details of the various questions, which were certainly complicated but limited in their kind, would get an unfavourable impression of the Conference, and might perhaps somewhat discourage future efforts towards the ideal of unification.

As to the choice of the exact moment when the future Conference would be held, those whose duty it was to prepare for it would naturally take into consideration the convenience of all concerned and particularly that of the countries situated at a great distance from Europe, assuming that the future Conference took place in Europe. To sum up, the Secretary-General of the Conference thought that he might speak on behalf of the Drafting Committee in asking the Conference to adopt the draft resolution as it stood, it being understood that Governments would not be bound by adopting it. Moreover, the Drafting Committee had taken into consideration the case of delegations which were unwilling to bind their Governments, even morally, and it was quite permissible for such delegations to abstain from voting if they so desired. The Drafting Committee had never had the intention of exerting any pressure on delegations.

The PRESIDENT asked the Conference to give its opinion on the draft resolution.

*The draft resolution was adopted by twenty-two votes to one (Mexico). There were five abstentions (Canada, China, the United States of America, Japan and Norway).*

### XIII. Rules concerning Buoyage (Text submitted by the Drafting Committee).

M. WATIER (France) thought that, as they were not dealing with a final text, but merely with a basis for future work, it was not necessary to read the text drawn up by the Drafting Committee for Buoyage Rules *in extenso*.

*This text was approved (see page 12).*

### XIV. Declaration made by the Delegations of Germany, Belgium, Spain, France, Greece, Morocco, Monaco, Netherlands, Poland, Portugal, Roumania and Tunisia.

The DEPUTY-SECRETARY-GENERAL OF THE CONFERENCE said that the Bureau had received the following declaration signed by the delegations of the above-mentioned countries:



The delegations of Germany, Belgium, Spain, France, Greece, Morocco, Monaco, Netherlands, Poland, Portugal, Roumania and Tunisia express their satisfaction that the work done by the present Conference is of a nature to facilitate the eventual unification of buoyage rules. They greatly regret, however, that it has not proved possible to reach any agreement on certain important questions of buoyage, such as the allocation of lights in the lateral system, and that accordingly the application of certain rules envisaged by the Conference will be delayed.

The undersigned delegations feel that they are not responsible for this situation. The various countries for which they are acting at this Conference represent a considerable sum of maritime interests, and the systems of buoyage employed in their territories are sufficiently varied for any unification to involve as great sacrifices on the part of these countries as those which would have to be accepted by the other countries represented at this Conference. Nevertheless, the debates both of the Technical Committee and of this Conference have shown that the countries represented by the undersigned delegations have always been ready to make the greatest concessions with a view to a common agreement and even, if need be, to make fundamental changes in the buoyage systems in use in their territories.

The undersigned delegations are convinced that a full agreement on the questions left unsettled by the Conference could be reached here and now between their countries. So as not to compromise the prospects of a more general agreement, they have consented not to take any immediate steps with a view to the conclusion of such a regional or continental agreement, but they desire to state that they have only made this further concession in the hope that steps will be taken in the near future to bring about this general agreement.

Failing this, and if a general agreement is not rapidly attained, the undersigned representatives wish to reserve full freedom of action to their respective Governments with a view to the conclusion of as complete as possible a unification of their buoyage rules.

#### **XV. Declaration by the British Delegation.**

Sir John BALDWIN (British Empire) said that the British delegation had heard with interest the declaration made by certain delegations of their desire to facilitate a certain form of unification. Doubtless mention had been made of this possibility in the Brown Book, as well as in the previous report of the Technical Committee; but His Majesty's Government had always considered the guiding ideal of the Technical Committee, which had been responsible for drawing up the Brown Book, to be that the system of unification proposed by it would be universally adopted, and the question just raised had not been examined by the Governments represented by the British delegation. Nevertheless, the members of the British delegation would bring this declaration to the knowledge of these Governments at the same time as the Minutes of the Conference.

#### **XVI. Declaration by the Italian Delegation.**

M. LURIA (Italy) made the following declaration :

The Italian delegation has followed the work of the Conference with the greatest interest. It has made no opposition to the attempts to establish uniform rules for the buoyage and lighting of coasts, even if these rules might bring about economic sacrifices on the part of the nation.

It notes that, in spite of its hopes, the questions raised have not obtained that unanimous approval which would have allowed it—as it made clear in its declaration at the time of the general discussion—to propose to its Governments the adoption of rules which had been unanimously approved.

The Italian delegation, after very carefully examining the text of the regulations, provisions, recommendations and suggestions drawn up by the Committee concerned, gives its adherence to the above-mentioned regulations, provisions, recommendations and suggestions, and will duly recommend them to the approval of the Government of His Majesty the King of Italy.

It must be noted that several of these proposals are an accomplished fact so far as Italy is concerned—for example, those concerning lighthouse signs.

The Italian delegation will also make it its duty to communicate to its Government the texts of the agreements for the application of the rules and provisions that have been established.

Finally, the Italian delegation wishes to pay homage to the President of the Conference, and to reiterate its thanks to the Portuguese Government for its liberal hospitality.

In conclusion, it hopes that the results of this Conference will form the basis for the unification desired by seamen.

#### **XVII. Declaration by the Roumanian Delegation.**

M. GURANESCO (Roumania) made the following declaration :

Being convinced of the great value to navigation of the adoption of a uniform system of buoyage and lighting of coasts, Roumania has been represented at this Conference which has been assembled under the auspices of the League of Nations, in the hope of seeing the efforts of all the nations here present result in a general agreement.

The Roumanian delegation has taken part in the discussion on the various subjects dealt with during numerous meetings and has noted that, in spite of the wishes and endeavours of the majority of the States represented, it has been impossible to arrive at a general agreement. Since, however, the results of this Conference constitute a solid basis for such an agreement, the Roumanian delegate, not having received full powers enabling him to sign, will make it his duty, when reporting

to his Government, to support the eventual adoption of the Agreement on maritime signals, as well as the recommendations, proposals and resolutions adopted by the Conference.

In her desire to see the work of the League of Nations succeed, Roumania hopes that the States concerned will renounce their old and incongruous technical systems in favour of a modern and uniform system.

#### XVIII. Presentation to Commander Norton.

(Commander Norton was invited to come to the table of the Bureau.)

M. URBAIN (Belgium), having also been called to the Bureau, spoke as follows :

The Conference has invited you to appear before it, Commander Norton, because it looks on you as the person responsible for all the misdeeds that have been committed here. Last night the Conference had to work until two in the morning and it is probable that it will have to do so to-night. I will not mention the strain placed on members of the Conference by these journeys from the north to south, and from the east to west of Portugal, these receptions, banquets, etc.

However, I have agreed to undertake your defence, and I have done so with considerable pleasure, for in the bottom of my heart it is not you whom I consider the culprit. I am going to denounce the real culprits. They are three.

First, we have, on his own confession, M. Watier, who from the beginning of this Conference has shown that he was responsible for bringing here all the people who have been torn from their homes in the five continents of the world.

To find the second culprit we shall have to go back forty-three years. In the archives of the Geographical Society of Lisbon, where we have been welcomed so unforgettably, there is a small document dating from 1887 which deals with a scheme for the international unification of maritime buoyage and lighting of coasts, the initiative for which was due to this famous Society. The Rapporteur of the question is a certain Ernesto de Vasconcellos, who was then probably merely an officer. What has happened to him since then? Has he been promoted? I do not know and I do not want to know. In any case you know now who is the second culprit.

As for the third culprit, he can be found in a document dating from 1888 which I have borrowed from the Lisbon Library. When various nations had been consulted on the scheme for the unification of buoyage and lighting of coasts, replies arrived at Lisbon and among them was one from Trinity House which so warmly welcomed this scheme of unification that it is easy to detect manifest signs of guilt in that quarter too. In these circumstances, I ask this assembly to act as a tribunal and acquit Commander Norton.

I do not merely ask you to acquit him, I want him also to be compensated in some way for the damages and injury he has suffered because of this accusation. For this purpose I ought doubtless to praise Commander Norton, but it may well be feared that, if I praised him as he deserves, this Conference would never come to an end. Apart from that, Commander Norton's sense of modesty would never forgive me.

It will be better to praise Portugal, and I am sure that, modest as he is, Commander Norton will be grateful to me for flattering the legitimate pride he must experience in belonging to so beautiful a country whose glorious past explains its majestic present and prepares a magnificent future. Remember, gentlemen, the speeches delivered at the opening meeting in the admirable hall of the Geographical Society, ornamented with the historical and geographical treasures of Portugal. Portugal's past is written on every sea route of the world, so that no other town was better fitted than Lisbon to be the seat of the present Conference. It may also be that the Ernesto de Vasconcellos I have just alluded to is still living and that it is he himself who has accepted the presidency of this Conference to which he has brought the inestimable benefit of his experience and authority. It is also because we have come to Lisbon that we have found Commander Norton so opportunely appointed by his Government to receive us, and we all give him our sincerest gratitude, sympathy and admiration. For three weeks Commander Norton has not spared himself. Between the meetings he could not do too much for us, and I am sure I interpret the feelings of all when I give him our warmest thanks.

In spite of that it cannot be said that the Lisbon Conference has entirely succeeded. Why? Is there no moral to be drawn from this fact for next time? I must be the first to confess *mea culpa* for this imperfect success. If I, the representative of such a small maritime country, have thought that my country's position ought to govern that of other countries, it can be understood that the representatives of other much more important maritime countries have taken up the same attitude and each has kept its particular position too clearly in mind and failed to make allowances for the general interests.

There is another reason why the Lisbon Conference has not been as completely successful as we could have wished. It is because we have held our meetings in the admirable Parliament halls and because unconsciously we have found ourselves working in a parliamentary atmosphere with the result that it was quite natural for a left and even an extreme left, which advocated extreme measures, to arise among us, and a right and even an extreme right which perhaps also advocated extreme measures, but in quite a different sense, as well as a centre which in accordance with its name has obstinately refused to move from its position and to compromise either with the right or the left, with starboard or port. Let us hope that next time we shall not succumb to parliamentary

manners in this way, and let us express the wish that we shall find once more guides such as Admiral Ernesto de Vasconcellos and Commander Norton. That would be our best guarantee of success.

I alluded just now to the glorious traditions of Portugal. Formerly Portugal made geographical, colonial and religious conquests. To-day Commander Norton has accomplished the best and rarest of conquests, a conquest of hearts, and I do not refer only to the hearts of us men, I also refer to a more precious and delicate conquest, that of the hearts of the ladies, whose wishes I am sure I am interpreting when I pay you, Commander Norton, all their gratitude.

To-morrow we separate and will return to our countries with the memory of all Commander Norton's attentions. I wonder whether, when he recalls all the cares and worries that the Conference must have given him, the memory he will have of us will not be a little bitter. This evening we wish to efface this impression as far as possible. That is why, Commander Norton, we would ask you to do us the favour of accepting, as token of our affection and gratitude, a little present on which we have had a suitable inscription engraved. Whenever you look at it, you will know that it was offered to you by people who felt the most cordial friendship, the greatest affection and the most lively gratitude towards you.

Commander NORTON (Portugal) replied as follows :

I do not know how to thank you, M. Urbain, for the speech you have just made in your own name and on behalf of all the delegates of the Conference, for I am not a orator. I hoped that we should have been able to come to an unanimous agreement at Lisbon. Circumstances—it is certainly not the moment to return to them now—have not allowed us to do so. Nevertheless, a work of considerable importance has been accomplished, and we may have the feeling that, in the future, the work we have undertaken concerning the unification of buoyage and lighting of coasts will be completed.

I thank you from the bottom of my heart. If you take away with you a pleasant memory of Lisbon, I shall also keep the best recollections of this Conference and of you all, and if I feel that I have been able to prove of any use to you, be certain that I yet remain your debtor for the honour you have done my country in coming to visit it.

You have just made me a splendid gift. I shall be proud, when I show it to my children, to think that they will find an inscription on the silver plate, bearing witness to the fact that at least once in their father's life he has been able to give the distinguished visitors who came from all parts of the world as pleasant as possible a stay in Portugal. That is an honour that I shall never forget.

The SECRETARY-GENERAL OF THE CONFERENCE spoke as follows :

I wish to associate myself personally with everything that M. Urbain has just said, and my position leads me to put myself forward as the spokesman of the members of the Secretariat of both sexes. I wish to thank Commander Norton on behalf of everyone for all the attention he has given us. As we have mentioned culprits, I feel somewhat confused in that I am one of those responsible for all the worries that you have had, Commander Norton, during this Conference. I do not believe that you have been guilty in any respect, but I am certain that we have been so. As a result of one of those accidents that frequently occur in communications and transit, the supplies of the Conference had been mislaid and we even had no paper on which to preserve the words that were to be spoken here. You have helped and advised us, and thanks to you the Conference has had its working materials. We have applied to you for all kinds of services, and you have satisfied us with unequalled kindness and perfect good humour. To-night the Conference will finish its work. But we shall continue to occupy ourselves with the problem of the unification of buoyage and lighting of coasts, and I am sure I express the opinion of the Communications and Transit Organisation and the Secretariat of the League of Nations in hoping that henceforward you will be more and more closely associated with our labours and will continue to bring your talent to bear on the work which has been undertaken by the Communications and Transit Organisation.

All the members of the Geneva Secretariat here present thank you for the way in which you have helped them in their task ; it has been their wish to give you—and they beg you to accept—some mark, however small it may be, of the pleasant recollections of Lisbon and especially of yourself that they will carry away, when they leave.

Commander NORTON (Portugal) replied as follows :

I thank you, Mr. Secretary-General of the Conference, for the words you have just spoken in your own name and in the name of all your assistants. I have known you for many years ; I know how you have directed the work of the Communications and Transit Organisation of the League since its beginning, and you are a man of whom it may be said that, if he did not exist, it would have been necessary to invent him. Under your direction the Secretariat has worked admirably and with unflagging zeal, perfect good humour and complete disregard of fatigue. My ambition has been to look on myself as if I were part of the staff and to do my best to help you to the best of my ability in your difficult task.

I thank you, M. Haas, you, M. Romein, and all your assistants of both sexes for your valuable assistance and for your kindness.

#### XIX. Adoption of the Final Act.

*The Conference adopted the Final Act which included the recommendation proposed by the Lighthouse Commission concerning the increase of the frequency band assigned to radio-beacons.*

**XX. Signature of the Final Act, the Agreement on Lightships, the Agreement on Maritime Signals, and of the Recommendations on Lighthouse Signs and Radio-Beacons.**

The delegations were called in alphabetical order to sign the whole or part of the Final Act, the agreement on lightships and maritime signals, and the recommendations, it being understood that only those delegations would sign the agreements concerning lightships and maritime signals which were in a position to engage their Governments, subject to the reservation of subsequent ratification.

The alphabetical roll-call having been concluded, the SECRETARY-GENERAL OF THE CONFERENCE stated that the agreement on maritime signals had been signed in the name of thirteen Governments and the agreement on lightships in the name of sixteen Governments.

**XXI. Close of the Work of the Conference.**

The PRESIDENT spoke as follows :

At the end of our work I have first to thank you for the honour you have done me in offering me the Presidency of the plenary meetings of this Conference. Other people more competent than myself would have carried out my task with wisdom and brilliance.

After a calm discussion, during which different opinions sometimes came to light, some of them of wide divergence, we have arrived at conclusions on certain points which mark the half-way stage in the path we have to follow if we are to arrive later at the unification of all maritime signals.

Few people here will be as satisfied with the results as myself, because, as I have already had occasion to tell you, I now see brought to almost complete realisation an idea that I had in 1887 on the international unification of maritime buoys and beacons. The results now arrived at are already of considerable value and will be of immense advantage for navigation, which, on the completion of the Convention, will find a uniform system in force in all parts of the world, thanks to which it will be easy for it to avoid the dangers by which it is beset.

When the unification of maritime signals is finished, it will become a real work of public assistance, especially if it is aided by the development of wireless.

The Technical Committee which drew up the report that served as a basis to our discussions can well be proud of the work it has accomplished and without which it would have been impossible to arrive at the results desired by all.

These are naturally the difficulties in connection with buoyage which are the most difficult to overcome, but we hope that, with the exercise of great prudence, we shall arrive at a complete agreement within a few years.

The nations represented at the Conference by such eminent delegates may be proud of their officials, among whom I will mention the representatives of Great Britain, France, the United States of America, Belgium, Germany, Sweden, Italy, the Netherlands and India.

Portugal, which is a country of such great maritime traditions, which has created a veritable empire in the Indies, opened the markets of the Orient to western commerce, and been the first to construct a lighthouse on the coast of China, may feel proud that at Lisbon, whence her fleets sailed to India and Brazil, a work has been accomplished which, although incomplete, is nevertheless of real service to navigation and which has been brought about by the collaboration of so many nations, inspired by goodwill and a high understanding of their duty.

The League of Nations, by means of its organisation, has just rendered to international navigation a service for which posterity will be grateful, and the effects of it will be fully felt in a few years' time when the agreement is complete.

I wish to thank all the delegates for the way in which they have carried out their work. It remains for me to propose a vote of thanks to all the staff of the Secretariat. Finally, I wish to express our sincere thanks to the two secretaries of the Bureau of the Conference and to the organisers of this meeting.

Sir John BALDWIN (British Empire) said that the delegations which might still have hoped that morning that the Conference would end in a unanimous agreement had been disappointed, but it could not be otherwise. It had been difficult, in the limited time at the disposal of the Conference, for a large enough number of States to come to a unanimous agreement on a question of such considerable and even vital importance for some people, an agreement which of necessity made a breach in long-standing traditions. In these circumstances, the delegates of the British Empire considered that the Conference had accomplished an extremely important and valuable piece of work. Many misunderstandings, he hoped, had been dissipated ; they had been able to register the general acceptance of certain fundamental principles, and the results obtained constituted an important step forward on the way to unification which was the desire of so many States represented in the present Conference.

The British delegate thanked the Portuguese Government and its representatives for the hospitality and unequalled kindness with which the delegates had been welcomed at Lisbon. Although no one had entrusted him with the task, he was convinced he was interpreting the opinion of all when he expressed in the name of the whole Conference his deep appreciation of the way in which the President, Admiral Ernesto de Vasconcellos, had guided the Conference towards the accomplishment of a particularly difficult task.

M. WATIER (France) expressed the very sincere gratitude of the French delegation to the Portuguese Government for the courteous and cordial welcome with which they had met during the whole of their stay at Lisbon ; he and the other members of his delegation would carry away

with them the best recollections of their too-short stay in Portugal and would always be extremely grateful to their Portuguese colleagues, Admiral de Vasconcellos, the Minister Plenipotentiary de Calheiros, Commanders Norton, de Carvalho, Lopez, Monteiro and Penteado, for the kindness which they had lavished on their guests.

M. Watier had the great pleasure of telling the President of the Conference, the Chairman of the Committees (M. Hägg, Mr. Putnam and M. van Braam van Vloten), how much the impartiality with which they had conducted their work was appreciated.

The French delegate would strongly recommend his Government to ratify the Conventions that had been prepared. He had the firm hope that, when the work was taken up again, which would be in a short time, the questions that had here been left in suspense would receive universal and definite settlement.

M. Watier had been very happy to hear the praise of Commander Norton, which was an exact reflection of the feelings of the French delegation. He wished to associate himself in this homage and hoped that they would have Commander Norton's assistance for the continuation of the work and the application of its results.

The delegates had had the honour of being presided over by Admiral de Vasconcellos, one of the greatest maritime authorities in the country which had welcomed them so well, and they had been deeply touched by this honour.

Sir Edward HEADLAM (India) expressed his gratitude, not only as a delegate of India, but particularly as a sailor, for the way in which the opinion of sailors had been taken into account during the whole of the Conference. It was with the greatest pleasure that he had noted that the administrators and political men here present had duly taken account of the sailors' point of view in a work undertaken in the interest of sailors and navigation. Perhaps that was partly due to the fact that the Conference had met in so essentially nautical a country as Portugal, the fatherland of Vasco da Gama.

Mr. PUTNAM (United States of America) declared, in the name of his country, that he profoundly appreciated the hospitality of the Portuguese Government to the Conference and the innumerable marks of sympathy and courtesy which all the delegates had met with throughout the entire country. He thanked the President and the whole Bureau for the work they had accomplished during the Conference. He also thanked the staff of the Secretariat for its collaboration. He was pleased that this Conference would open the way to yet wider results in the future, for the success of which he expressed his sincerest wishes.

M. DA COSTA (Brazil) associated himself wholeheartedly with the words of gratitude that had been addressed to the Portuguese authorities and the Portuguese delegation. He asked the President to receive a special expression of gratitude from Brazil. The Portuguese language had a word which had no equivalent in other languages : "saubad"—and he would leave Portugal with this word on his lips.

The PRESIDENT thanked all the preceding speakers for their kind words. In spite of all the differences of opinion that had occurred, the delegations had been unanimous in the cordiality with which they had taken part in the work of the Conference, and the way in which the Conference itself had proceeded was extremely flattering for Portugal. The Portuguese Government had done no more than its duty in welcoming, as it had done, the eminent delegates who had come to Lisbon from all parts of the world.

## SECTION IV. — RECORDS OF THE WORK OF THE COMMITTEE ON BUOYAGE.

### FIRST MEETING.

*Held at Lisbon on Thursday, October 9th, 1930, at 10 a.m.*

*Chairman : M. VAN BRAAM VAN VLOTEN (Netherlands).*

#### I. Summary of Discussions.

At the beginning of the meeting, the CHAIRMAN announced that no Minutes would be taken, but that a summary of the discussions of the Committee and decisions arrived at by the Committee would be put on record.

#### II. Lateral System.

##### I. SHAPE OF THE BODY OF BUOYS.

The Committee adopted two shapes to be used for the body of buoys :

- Upper part of the body conical ;
- Upper part of the body flat.

##### 2. SHAPE OF TOPMARKS.

The Committee decided to adopt the two following shapes for topmarks :

- Outline of a triangle point upwards ;
- Outline of a rectangle.

Topmarks with a triangular outline will be used in the same place as buoys with bodies of a conical shape.

Topmarks with a rectangular outline will be used in the same place as buoys the shape of which is flat.

##### 3. PLACING OF BUOYS.

The Committee decided that the two sides of a channel should be distinguished by the shape of the buoys :

- Buoys of a *conical* shape should indicate the *starboard* side ;
- Buoys of a *flat* shape should indicate the *port* side.

With regard to this point, the Chairman drew attention to the fact that, at the present stage of the discussion, the starboard and port sides of a channel should be held to mean the banks to starboard and to port as seen by a navigator coming from the open sea.

##### 4. CONDITIONS OF APPLICATION OF THE ABOVE PRINCIPLES.

The adoption by the Committee of the principles set forth above should in no way prejudice the question of the period within which signals at present existing should be replaced in countries which make a distinction between the starboard side and the port side, not by the shape of the body of the buoy, but merely by topmarks.

The Committee will consider later the possibility of allowing exceptions to the above principles in order to take account of local conditions. The question of the manner in which such a clause should be worded will be settled when a decision has been taken as to the form to be given to the conclusions of the Conference.

At the present stage of the discussion, Sir John Baldwin (British Empire) proposed the following text, which would make it possible to apply the above principles and to take account of local conditions in each country :

“If, owing to local conditions, the foregoing proposals cannot reasonably be carried out, they may be departed from, but such departures from the system should be as slight as possible, and proper notice of them should be given to mariners.”

##### 5. LIGHTBUOYS AND SPECIAL BUOYS.

The Committee decided to hold over, for the present, the question of the shape of the body of buoys and of topmarks in the case of lightbuoys and special buoys.

#### III. Cardinal System.

The rules which follow are laid down for cases in which a country makes use of a cardinal system of buoyage. It should be quite understood that the adoption of a cardinal system of buoyage is in no way compulsory.

### I. SHAPE OF THE BODY OF BUOYS.

The Committee decided that, if a country should desire to use four different shapes of buoys, the said shapes should be the following :

- (a) Conical shape ;
- (b) Ogival shape ;
- (c) Cylindrical or flat shape ;
- (d) Spindle shape.

### 2. SHAPE OF TOPMARKS.

The Committee decided that the topmarks used in the cardinal system should have the following four shapes :

- (a) Cone point upwards ;
- (b) Cone point downwards ;
- (c) Two cones base to base ;
- (d) Two cones placed point to point.

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## SECOND MEETING.

*Held at Lisbon, on Thursday, October 9th, 1930, at 3 p.m.*

*Chairman : M. VAN BRAAM VAN VLOTEN (Netherlands).*

### IV. Cardinal System (continued).

#### 3. POSITION OF TOPMARKS.

The delegates of Finland, Estonia and Latvia declared themselves ready to accept the proposal submitted by the United States delegate with regard to the allocation of topmarks in the cardinal system.

The Swedish delegate, while expressing his preference for the system recommended by the Technical Committee and adducing practical reasons based on the buoyage system employed in Sweden, declared himself nevertheless ready to co-operate with the other delegations with a view to arriving at a satisfactory solution.

On the Chairman's proposal, the Committee decided that the question should be provisionally reserved until after the discussion of the allocation of colours, owing to the connection between the two questions.

### V. Lateral System (continued).

#### 6. COLOUR OF DAY MARKS.

A proposal by the Belgian delegate, tending to accept the colour green for one of the sides, gave rise to a lively discussion. After declarations had been made for and against this proposal by several delegates, the Belgian representative withdrew his proposal, so as not to compromise unification.

The Committee decided to adopt plain red and black as the characteristic colours for either side in the lateral system.

On the British delegate's proposal, the Committee agreed to allow the use of buoys painted with black and white chequers and red and white chequers, for purposes of differentiation.

#### 7. ALLOCATION OF COLOURS TO PORT AND STARBOARD MARKS.

##### *Concordance of Day and Night Signals*

On the proposal of the British delegate, supported by the United States delegate, the Committee adopted the following decision :

"Red marks may carry red lights or white lights, but black marks may not carry red lights."

#### 8. SIDE TO WHICH RED BUOYS SHOULD BE ALLOCATED.

The Committee had before it a proposal submitted on this question by the British delegation. In view of the importance of this proposal, it decided to postpone the discussion of this question to the next meeting.

### VI. Cardinal System (continued).

#### 4. COLOUR OF DAY MARKS.

##### *Choice of Colours.*

The Committee decided to assign to the cardinal system the combination of white with black and of white with red.

*Choice of Combinations of Colours.*

The Committee adopted the following characteristics :

- (1) A mark painted half-black and half-white, with black above and white below ;
- (2) A mark painted half-red and half-white.
- (3) A black-and-white mark, one of the colours taking the form of a broad horizontal median band painted on the other colour—*i.e.*, a mark, black at both extremities, with a white horizontal median band, or *vice versa*.
- (4) A red and white mark, one of the colours taking the form of a broad horizontal median band painted on the other colour—*i.e.*, a mark, red at both extremities, with a white horizontal median band, or *vice versa*.

As regards the final choice of the characteristics for (2) and (3), the Finnish delegate expounded the arguments adduced by his Government in its memorandum (see Part II, page 93) in favour of placing the colours red and black on opposite sides in the case respectively of marks (1) and (2) and of marks (3) and (4). He therefore proposed that marks (2) and (3) should be determined as follows :

- (2) White above, red below ;
- (3) White with black horizontal median band.

The Swedish delegate stated the reasons for which he asked the Committee to maintain the characteristics proposed by the Technical Committee—*viz.*, for mark (2) red above and white below and for mark (3) black at the two extremities with a white horizontal median band.

**VII. Nomination of a Sub-Committee on the Cardinal System.**

On the proposal of the Chairman, the Committee decided to refer this question to a Sub-Committee consisting of :

- M. HÄGG (Sweden) ;
- M. TAINIO (Finland),
- M. MEYER (Germany),
- M. GUTMAN (Estonia),
- Mr. PUTNAM (United States of America),
- M. VAN BRAAM VAN VLOTEN (Netherlands),
- M. PURNS (Latvia).

This Sub-Committee was also asked to submit to the Committee proposals concerning the allocation of the topmarks and combinations of colours adopted, as between the four quadrants.

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THIRD MEETING.

*Held at Lisbon on Friday, October 10th, 1930, at 10 a.m.*

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*Chairman : M. VAN BRAAM VAN VLOTEN (Netherlands).*

**VIII. Lateral System (continued).**

8. SIDE TO WHICH RED BUOYS SHOULD BE ALLOCATED (*continued*).

The British delegation gave the Committee a number of explanations concerning the proposal it had submitted at the previous meeting. Various delegations stated their views on the subject.

In the course of the discussion, the Committee also examined the question of the use of the colour green and green lights in the lateral system.

The continuation of the general discussion was postponed to the next meeting.

**IX. Nomination of a Sub-Committee on the Lateral System.**

On the proposal of M. Watier (France), the Committee decided to set up a small Sub-Committee to examine the following questions :

1. Position of red buoys and red lights in the lateral system.
2. Use of green lights in the lateral system and for the marking of wrecks.

On the proposal of the Chairman, the Committee decided that the Sub-Committee should be composed of members of the British, United States, French, Italian and Japanese delegations.

It was decided that the Chairman of the Committee should attend the discussions of the Sub-Committee.



#### FOURTH MEETING.

*Held at Lisbon on Friday, October 10th, 1930, at 3 p.m.*

*Chairman : M. VAN BRAAM VAN VLOTEN (Netherlands).*

#### X. Proposal by the British Delegation.

After observations by M. Kayel (Uruguay), Captain da Costa (Brazil) and M. Barreda (Mexico) on the buoyage systems employed in their countries, a discussion on the British delegation's proposal ensued, in which Mr. Putnam (United States of America), Sir John Baldwin, Major Finch, and Mr. Alan Stevenson (British Empire), M. Urbain (Belgium), and M. Watier (France) took part.

The Chairman summed up the position as follows :

1. A certain group of maritime countries employs both by night and day the system known as the Washington system, although the Washington rules only refer to day marks and not to lights.
2. A second group employs the St. Petersburg system, both by day and night.
3. A large number of maritime countries employs a mixed system—namely, the Washington system by day and the St. Petersburg system by night.

This latter group is inclined to follow one of the first two, but for these it is both difficult to make a complete change and impossible to agree upon a middle course. The Chairman proposed that no definite decision should be taken for the moment, and that the Sub-Committee on the Lateral System should thoroughly examine the question.

It was decided that the Sub-Committee on the Cardinal System would not meet until the Sub-Committee on the Lateral System had finished its work.

#### FIFTH MEETING.

*Held at Lisbon on Friday, October 17th, 1930, at 2.30 p.m.*

*Chairman : M. VAN BRAAM VAN VLOTEN (Netherlands).*

#### XI. Examination of the Reports of the Sub-Committees.

The CHAIRMAN read the report of the Sub-Committee on the Lateral System (Annex 1, page 77) and the report of the Sub-Committee on the Cardinal System (Annex 2, page 78).

Both as Chairman of the Committee and as delegate of the Netherlands, he regretted that it had not been possible to arrive at more satisfactory results with regard to the use of red in the lateral system.

#### STATEMENT BY THE FRENCH DELEGATION.

M. DE ROUVILLE (France) made the following statement :

“We have just heard the Chairman read the unsatisfactory results attained by the Sub-Committee appointed to find an agreement on the position of red in the lateral system and on the allocation of special characteristics to wreck marks in harmony with the allocation of colours in the lateral system.

“Although I was a member of this Sub-Committee, I was perhaps less closely concerned than others in the upshot of its debates, and hence I should like to put before you a few observations suggested to me by these discussions.

“It should not be concluded that the Conference has definitely failed on these essential points, or that the maritime world will have to divide immediately into two opposing groups—the first, preferring to buoy wrecks like any other danger; and the second, marking them with special characteristics by day and night; one group wishing to place red (by day and night) to the starboard hand of the incoming navigator and the other to his port hand.

“These positions were only taken up in the face of diametrically opposed alternatives successively submitted to the examination of the maritime countries or their representatives.

“With regard to the position of red, the Committee of Experts up to 1927 was inclined to favour the St. Petersburg system (red to port), which several countries of Southern Europe had already applied and which others were ready to adopt in order to establish concordance between maritime lights and the lights of vessels and in order to remove the anomaly of having red on different sides by day and night.

“In 1929, the enlarged Committee thought it possible to achieve a wider unification by extending to night signals the rule laid down for day signals at Washington in 1889. By so doing it would attach greater importance to the predominance of marks at present adapted to this system, although it realised that the theoretical or practical arguments adduced in favour of the different systems had not perhaps always as much importance in reality as the force of custom would suggest.

“These two positions having successively been taken up by those who had been entrusted with the preparation of the present Conference, the latter had first to hear the views of the delegations

which had not yet directly taken part in the discussions. These views, as regards the position of red, were inclined to favour the original choice of the Committee of Experts (that of 1927) ; and, from the geographical distribution of the views thus expressed, which I would remind you are irreconcilable in one particular, it is clear that the 1929 proposals would no longer ensure a good geographical grouping of the countries respectively supporting the alternative rules (assuming two rules had to be maintained).

"In these circumstances, a large number of countries who would have accepted the Washington rule, proposed in 1929, to facilitate general uniformity, are displaying a tendency to revert to the other rule, since it ensures both an equal degree of uniformity in the maritime area which surrounds them and agrees with their secret preference, whether theoretical or practical, as to the most important direction of navigation.

"Such was the situation with which the members of the Sub-Committee were faced when they began their work.

"But, as I said before, it would be premature to conclude that there is a definite schism between the two parties.

"As regards, first of all, the narrower question of the buoyage of wrecks, the Sub-Committee on the Lateral System found that certain objections to the adoption of special night characteristics were chiefly due to the fact that the necessary apparatus for using these characteristics were not yet well known to certain services, which consequently hesitated to utilise them, and that these services would require to make preliminary experiments before they could adopt them. They had thought it possible or desirable not to make this method of marking wrecks compulsory, since they had hitherto treated wrecks like any other danger ; but, at the same time, they did not view with disfavour the idea of marking them in a special manner.

"However that may be, the majority of the delegates present at this Conference was ready to accept the proposals submitted to the Sub-Committee as compulsory—at any rate as regards this question of wrecks, and, in fact, some of them regarded this compulsory character as essential. Others, however, were not yet able to accept this obligation, chiefly for the technical reasons mentioned above. There is reason to hope, however, that they will eventually come round, especially as remarkable progress—which makes me personally very hopeful—has already been made in the Sub-Committee towards reconciling, as far as possible, the new characteristics of the special buoyage of wrecks with the desire to indicate also the direction of navigation in their neighbourhood and not to deprive night lateral buoyage of a useful colour.

"Accordingly, I think that most of us would be glad to see the adoption of the technical provisions finally submitted to the Sub-Committee (if necessary with one or two alternatives) as constituting the basis of a future general agreement. This basis would at once be binding on the countries which were prepared to accept them without reservation, and would constitute a valuable final objective for the countries still wishing to carry out the necessary tests and to examine all the consequences of such an obligation ; after which they would perhaps realise the advantages of the system proposed.

"As regards the apparently more insoluble dilemma of the position of red, this evidently cannot be settled by technical tests ; but I think that a certain amount of natural hesitation still persists in the minds of a number of delegations who have been surprised by the change-round which has been proposed to them, and for which some were perhaps less prepared than others. Some delegations are still hesitating as to which side they will support. The majority cannot conveniently and expeditiously consult their authorities at home or prepare the ground for a change, which I personally still consider possible without serious risk, apart from the natural aversion of the users of the system to any change. These delegations, I repeat, are unable to prepare the competent administrations and the opinion of maritime circles at home for the advent of the new system.

"This is a process which must take a certain time. Could not this evolution—which each of us will certainly do his best to promote in his own surroundings—be allowed to bear fruit before the maritime world is forced to this regrettable and perhaps irremediable schism to which I have been alluding ? It would be time enough to resign ourselves to it later if it proved to be inevitable.

"The choice of the side of red is no doubt one of the most important factors in the unification of maritime signals ; but it is not the only one, and it has perhaps already hypnotised our minds too much. The results of the Conference would already be substantial if only its other decisions alone were taken into account. And these results would be still more valuable if they were accompanied by a moral undertaking on the part of each of us to work loyally and energetically to promote a general unification on the last point still remaining in suspense.

"The factors in favour of such unification seem to me so numerous as to augur well for the success of this new, and no doubt, final effort."

With reference to the question of cardinal buoyage, M. de Rouville added that this system was not employed in France, and that, when the question had been examined in that country, they had found that there was not one but four or five systems of this kind. France would therefore wait until unification had been attained before she employed the cardinal system. Apart from the utilisation of this system on the French coasts, unification would be valuable to French sailors who encountered the system in other countries.

#### STATEMENT BY THE AMERICAN DELEGATION.

Mr. PUTNAM (United States of America) made the following statement :

*"Agenda for this Conference.*

"The agenda for this Conference is the report of the Technical Committee for Buoyage and Lighting of Coasts published in February 1929. The plan for unification before this Conference

is the plan submitted in that report. This plan was the unanimous report of the Committee, composed of representatives of a considerable number of important maritime nations, and it represented the result of some years of careful investigation. It was published a year and a-half ago. Up to the convening of this Conference, there had been but one comment on it—that from Finland as to a particular feature of regional concern only. It is this plan that is before the Conference for discussion or amendment. I will refer to it as the Committee report.

*“ Guiding Principles.*

“At the beginning of this Conference, on October 7th, I suggested certain guiding principles for a system of unification of buoyage (See Part II, page 93). These were that the system should be as simple as possible, always keeping in mind the needs of the navigator, and the fact that a buoyage system does not take the place of charts or pilots; that it should adhere without deviation to certain general principles; that within these principles it should be sufficiently flexible, through optional provisions to meet the needs of various regions; that, considering the world as a whole, it should involve the least amount of change and of expense to accomplish satisfactory uniformity; and that it should avoid requirements of an experimental character. On the same day, the head of the British delegation suggested that an international uniform system should ‘be limited to certain broad general principles’; that it ‘should be sufficiently elastic to meet most requirements’ of different countries; and that it ‘should be so applied as to minimise, as far as possible, the danger and inconvenience’ of a change of system. The need of simplicity was also stated.

*“ Position of Colour Red.*

“At this time the most important question affecting unification is the position of the colour red in the lateral buoyage system. A definite decision on this point is essential to a uniform international system of buoyage. This question was fully discussed, and was decided in favour of red to starboard for the entering vessel, by the International Marine Conference at Washington in 1889. This recommendation has great weight, as that Conference included twenty-eight nations, all of the principal maritime countries which are represented here to-day. The Conference lasted seventy-six days, and full discussions were published. A leading part in this Conference was taken by the representatives of Great Britain. The recommendation for the position of the colour red to starboard was unanimous and without opposition. Up to the present day, this has been the authoritative international action on this subject. As a result of this action forty-one years ago, a very considerable degree of uniformity has to-day been reached throughout the world as to the position of the red buoy to starboard, and also, although to a less degree, as to the position of the red light to starboard. It was estimated in the United States Lighthouse Service in 1927, which was submitted to the League of Nations and published by the Secretariat in 1928, that 22,000 buoy stations in the world have systems by which the red buoy is placed to starboard, and only 500 buoy stations are coloured in the reverse manner. Thus 80 per cent of the world buoyage is now uniform; in this respect, with the Washington system, and only 2 per cent, is opposed to it, the balance being on the cardinal system or without uniform colour rule. The chart shown by the delegate from Canada clearly shows this situation (see Part II, map).

“It should here be noted that the assignment of the colour red to the buoy placed to starboard did not originate in America, but in England. In an official report to the Secretary of the Treasury, June 22nd, 1846, describing the lighthouse system of Great Britain, it is stated that in Liverpool, as in all the ports of the kingdom, red buoys are placed on the starboard hand of the channels leading from seaward, and the black ones on the port hand. For Liverpool it is especially stated that buoys are distinguished by their colour, shape, number and name—thus, red buoys on the starboard hand and black on the larboard, when running in. This is four years before the legislation by Congress prescribing this allocation of colours for buoys in the United States of America. A report a few years earlier (1842) describes the previously existing lack of system in American buoyage. This country derived from Great Britain the system which it has satisfactorily and systematically used for seventy years, with red to starboard and black to port.

“As to the position of the red light, the present status is also decidedly in favour of the red light with the red buoy to starboard. The red light belongs on the red buoy. On all the coasts of the world where there is any definite system in this respect, the red light is so placed to starboard, with the exception of the Continental European countries, where the red light is to port. The countries having a uniform system of red light to starboard include the United States, Canada, Newfoundland, Brazil, Argentina, Uruguay, Venezuela, Panama Canal, Ireland, Japan and Turkey. Outside of Europe, the other countries appear to have no rule as to the position of the red light.

“Therefore, considering the present position of the colour red, both as to buoys and lights, the preponderance of practice is very greatly on the side of red to starboard. On the principle of

'minimising the danger and inconvenience of a change', for the world as a whole, the colour red should remain on the starboard side.

"This was the unanimous recommendation of the Technical Committee in its report, which is on the agenda of this Conference. On the first two days of this Conference, the delegates of many countries made general statements ; and all of these, with three exceptions, supported the Committee's report as to the position of red to starboard, or stated definitely that, for the sake of uniformity, they were prepared to accept and carry out this plan. The three exceptions all expressed themselves as opposed to the idea of world uniformity of buoyage ; one of these three countries, Norway, does not use the lateral system. It is important to note that the countries offering to accept the Committee's report include all of those which now systematically have the red light to port.

"The Washington Conference was held before the advent of lighted buoys, and it did not touch on the question of the position of the red light in the lateral system. Consequently, divergent practice has grown up. As already stated, the decided preponderance, considering the world as a whole, is for the red light to starboard with the red buoy. But in a group of Continental European countries—Germany, Sweden, Denmark, Belgium, the Netherlands, France, Portugal, Spain, Italy, and Greece, and their colonies—the reverse practice has developed, with the red light to port. It is quite natural that these countries should prefer so to retain it. From the Committee's report, however, which most of them signed, and from the formal statements made by nearly all of them on the opening days of this Conference, it is evident that they consider it practicable, and not opposed to any essential principle of navigation, for them to change the red light from the port side to the starboard side. It is important to note that most of these countries would be obliged, whatever is done, to change either their red lights to starboard or their red buoys to port, with presumably little difference either way so far as respects costs or difficulty involved. The divergent system in Europe is due to the fact that only in this part of the world had a system of red and green harbour entrance lights been set up before lighted buoys came into general use.

"In view of the attitude of accommodation shown by these countries, it is only fair to point out that, for some years, it has been their desire to achieve uniformity by a rule for the red light to port. This was shown by a recommendation made presumably on their behalf, at the Conference at St. Petersburg in 1912. Owing to its circumstances, the United States and most other countries have never recognised the report of the St. Petersburg Conference as a valid expression of international maritime opinion, with conclusions that are binding on any country. The views of the Government of the United States on the subject of this Conference, and the detailed evidence on which they are based, were communicated to the League of Nations in 1927.

"In 1926, comments were received by the American Government regarding the Washington system from a number of lighthouse authorities and organisations, including the following : Argentina follows the Washington system and opposes any change ; Australia is in favour of the Washington recommendations of 1889 ; China says the Washington system is considered best by a large majority of the mariners consulted ; Ireland is in full accord with these views ; Japan adopted the Washington system ; the Boston Chamber of Commerce is opposed to any change in the United States system ; the Lake Carriers' Association (a very strong shipping organisation) is opposed to the St. Petersburg system and desires ample notice if there is any likelihood of its serious consideration by the United States. There were other similar comments.

"To sum up the present status on the position of the colour red : So far as there is any rule, all the world, with the exception of the countries of Continental Europe and their colonies, place red buoys and red lights to starboard ; four countries of Continental Europe place red buoys and red lights to port ; and six countries of Continental Europe place red buoys to starboard and red lights to port. In the British Isles, there is no general system. Red buoys are placed to starboard in Scotland and Ireland ; there is no rule in England, and red buoys are found on either side. In the printed 'System of Buoyage' presented to this Conference by the British delegation on October 7th (see Part II, page 103), no rule is given as to the position of the red light in Great Britain. In Ireland red lights are placed to starboard. The present practice of the various authorities of the British Isles follows the findings of the Washington Conference to a considerable degree as to colour, and to a lesser degree as to shape.

"Laying aside the matter of national preferences, it is clear from the above that, to bring about uniformity, it will be necessary either (a) for a group of four Southern European countries to change both red buoys and red lights from port to starboard, or (b) it will be necessary for all of the world outside Europe (including Scotland as to buoys and Ireland as to buoys and lights) to change red buoys and red lights so far as there is any rule, from starboard to port. For six countries of Europe, (c) change will have to be made in either case, as regards either buoy colours or light colours, and, for one particular country, (d) a system will need to be introduced as respects both

buoy colours and light colours. For the seven countries (c) and (d) there will be little difference in the difficulty or expense between unification on one basis and unification on the other basis, and the same is true as respects light colours for those countries (b) which now have no rule as to the position of the red light.

“The comparative effect of placing red to starboard or red to port, measured in terms of systems of aids to navigation that would have to be reversed, is strikingly shown in the table below. This table is based on estimates in the above-mentioned League of Nations document, and omitting figures where no buoy or no light colour system is now in effect, or where either one or the other must be changed in any event.

“Systems required to be reversed.

	Total of buoys and of lights	
	With red to starboard	With red to port
(a) Europe, four countries, buoys and lights—Portugal, Spain, Italy, Greece.	2,400	—
Africa, colonies of above. . . . .	300	—
(b) America, eleven countries, buoys and lights—Argentina, Brazil, Canada, Chile, Cuba, Mexico, Panama Canal, Haiti, United States, Uruguay, Venezuela. . . . .	—	23,200
Asia, one country, buoys and lights—Japan; five countries, buoys—China, India, Indo-China, Philippines, Turkey. . . . .	—	1,700
Europe, one authority, buoys and lights—Ireland; one authority, buoys—Scotland. . . . .	—	800
Australasia, two countries, buoys—Australia, New Zealand. . . . .	—	750
Total. . . . .	2,700	26,450

“This table shows that placing the colour red to port would cause to the world as a whole many times more disturbance than placing the colour red to starboard, as recommended by the Committee. It is evident, as the Technical Committee unanimously reported, that ‘the system of the colour red and of red lights to starboard would, if generally adopted throughout the world, involve a minimum change in present conditions’.

“A considerable degree of world uniformity now exists, with the colour red to starboard. To make it at all possible to reverse this, it must be shown that there are really strong advantages to navigation in having the colour red to port. The expressions of preference by navigators, seamen, or shipowners, are quite unconvincing, as in every case they simply fall in with the practice of their own countries. It is quite natural that each should express a preference for the system of his country, or for that to which he is accustomed.

“It is our belief that there is no valid difference in the theoretical or practical advantages to the navigator between having red to starboard or red to port. The matter of concordance with the colour of the lights of a ship entering is discussed at length in the Committee’s report (page 5), and it is shown not to be a controlling factor.

“A new point is raised at this Conference in regard to a vessel entering a channel or harbour entrance. Such a vessel, under the rules of the road, may be to the right of the axis of the channel, or nearer to the buoy or the light to starboard, and this relation to a red light is claimed to be objectionable. It is submitted, however, that there is no sound basis for this claim, and that the reverse is true. The danger to a vessel in this position is the bank or jetty to starboard. A red light is a more distinctive and a more usually recognised danger-signal than is a white or green light, particularly where there are other white lights; and under certain conditions of visibility, as in haze or mist, the red light will be more readily recognised. Therefore, if there is any material difference, the mariner should be somewhat better protected by having the red light on the starboard side where the danger is nearer. Also, if a white light is used on one side, there may be some advantage in having this white light, with greater range of visibility, on the more distant aid to port. It should be observed, however, that harbour and channel entrances are in general approached by means of the coast lights, lightships, radio-beacons, etc., and not by the lateral channel lights themselves. Therefore, the range of visibility of the entrance lights is usually not of prime importance. Moreover, in the only region where these questions have assumed present importance—*i.e.*, the coasts of Continental Europe—it is the usual practice to have red and green lights on the opposite sides of entrances, and objections, if any, on the score of range of visibility would apply equally to both colours. In the case of a channel of any length, only the two outer lights need be considered, as a vessel once within a channel requires just the same protection in keeping off the bank whether she is entering or leaving port.

“This whole question has been very thoroughly tested by actual experience. The red buoy has been very generally placed to starboard for at least seventy years, and red lights have been systematically placed to starboard for many years throughout several of the greatest lighthouse

systems. Not the slightest difficulty has arisen because of this arrangement, and there is no record of a single objection or complaint. Navigators in international commerce, including British navigators, enter many ports and channels with red lights to starboard, and they have not been involved in any inconvenience or danger by reason of the red lights to starboard. The record and the facts stated are ample proof that no instinct of the mariner, and no valid navigational interest, are affected by the red light being on the starboard side.

“If the world were starting afresh in this matter, there might be no great difficulty in considering placing the colour red on either side ; but it is evident that, with substantial uniformity now existing with red to starboard for North America and South America and for the North Pacific Ocean and the South Pacific Ocean—and, so far as buoy colours are concerned, for the whole world—it would be extremely difficult to bring about a reversal, on the basis of the facts as they have been presented to this Conference, and as they are stated above, and having in view the very thorough consideration of this subject by the Technical Committee, as shown by its report. There has been no showing of any advantage in reversing the colour red from starboard to port. Even if the claims made were substantiated, this would not at all compensate for the vast disturbance that would be brought about in the long-established major practice of the world as to buoyage and lighting systems, and as to charts and nautical publications, and as to the usage and customs of the majority of navigators and seamen.

“For a country having a disinclination for red lights to starboard, the Committee’s report is sufficiently flexible to permit their avoidance, either by the use of white to starboard and green to port, or white on both sides, with a rhythm distinction.

*“Position of Odd and Even Buoy Numbers.*

“Practically all the details of a system of unification of buoyage and lighting are so interrelated as to require consideration together. I refer now to other characteristics that have come up for discussion.

“The Committee’s report recommended that, when numbered, starboard-hand buoys have even numbers, and that port-hand buoys have odd numbers. From the publications of the International Hydrographic Bureau, it appears that this is the accepted practice of the world, so far as there is any system. The countries with even numbers to starboard and odd numbers to port include Australia, France, Canada, Japan, Spain, Portugal, Mexico and the United States. There appears to be practically no buoyage at present on the opposite system, with odd numbers to starboard. There does not appear to be the slightest association in the mind of the mariner between odd and even numbers on buoys, and the internal ship customs of numbering state-rooms, hammocks, etc. The placing of even numbers on buoys to starboard has been in systematic use in large lighthouse services for at least seventy years, and the practice has never been questioned until now ; the seaman has never said anything about it, or raised any objection to it. Seamen who are accustomed to any system of lateral number distinction expect to find even numbers on red buoys to starboard, and odd numbers on black buoys to port. To upset or reverse present world practice in this respect, now in systematic use for the major part of the world’s buoyage, would involve a disturbance to buoyage systems, to practical navigation, and to charts and nautical publications, wholly out of proportion to the theoretical reason put forward, even if this reason had any basis of merit. The present British system of buoyage does not include any rule as to numbering of buoys, showing that the matter has not been considered of special importance in Great Britain. For countries having now no system there will evidently be no difference at all, in trouble or expense, between using even numbers on buoys to starboard or on buoys to port ; but the question is of great importance to the United States and to other countries with extensive long-established systems of numbered buoys.

*“Position of Odd and Even Flashing Lights.*

“As to light rhythm, the Committee’s report consistently provides for the even number of flashes on the starboard side and the odd number on the port side of channels. This is the present practice of Sweden and other countries, and there is no reason why it should not be adhered to.

*“Middle-Ground Buoys.*

“The Committee’s report recommended, for bifurcation and junctions, cylindrical buoys with black and red horizontal bands when the main channel is to the right, and conical buoys with red and black horizontal bands when the main channel is to the left. This is a logical system, as these buoys under these circumstances are part of a continuous lateral system, which is shown both by shape and colour. The use of the spherical buoy was not recommended in the Committee’s report for this purpose. The objection to such use is that this would have the effect of abandoning the appropriate shape distinction for these buoys indicating the recommended channel. It would be a step backward so far as shape distinction is concerned.

*“Isolated Danger Buoys.*

“For isolated danger signals the Committee’s report allows the spherical buoy, or the shapes as above, with horizontal red and black bands. The United States favours this, and also the reservation of the spherical shape for danger indications, without its use being compulsory. As to red and black horizontal bands, this system of buoy colours is logical, being a combination of the two lateral colours. Its effectiveness and good visibility have been proved by the practice of half a century or more by a considerable number of countries, and in some of the largest buoyage systems. The complication of an added white band as suggested is unnecessary, and for a number of reasons it is not desirable. Horizontal white bands are the distinguishing feature of the cardinal system, and should be reserved for that purpose. The obligatory requirement of the spherical shape, either for this or other purposes, would complicate the practical operations of so extensive a buoyage service as that of the United States (having 9,900 buoy stations), and of other countries. Besides the heavy and continued expense involved, it would diminish the effectiveness of the service in meeting emergencies, because only the spherical shape could be used. While we favour the extension of the shape characteristic, it should be pointed out that 63 per cent of the buoyage of the United States now has no shape distinction (including lighted, bell, whistle and spar buoys), and other countries are in a similar situation. However, many important gas-buoys have a marker-buoy with shape distinction alongside, and the number of sparbuoys is diminishing. It is believed that no manufacturer of lighted buoys at the present time attempts to give these buoys a shape distinction, or designs them so that a shape distinction can conveniently be added. The United States favours, however, the requirement of the shape characteristic for ordinary buoys, and its further extension as is found feasible, and it is believed that the use of the shape characteristic will increase.

*“Marking of Wrecks.*

“In the United States of America the greatest importance has been attached to having wrecks promptly and effectively marked, and this has been satisfactorily accomplished by using the regular lateral system. However, this country is prepared to accept the principles of the Committee’s report, providing for adding or superimposing the colour green on buoys used for wreck-marking. The particular importance of a distinctive system of wreck-marking is diminished by the use of radio to broadcast information. Wrecks are not the only unexpected changes important to the navigator.

*“Light Characteristics.*

“The light characteristics recommended in the Committee’s report for the lateral system are, as has been shown above, in conformity with the present major practice of the world. Briefly, the report provides for red or white lights to starboard, and white or green lights to port, or for distinction by rhythm using an even number of flashes to starboard and an odd number to port. The United States favours these recommendations of the Committee’s report. The subject of light distinction for buoys of other signification is a complex problem of the greatest importance, and in our opinion should have further study and investigation, with a view to evolving a simple and reliable system, free from the likelihood of confusion. We propose to consider the subject carefully, especially as regards the lighting of wrecks or other isolated obstructions to which the use of the cardinal system may be adaptable. There are important possibilities in the reservation of the quick-flashing light for obstructions and points of specially important significance.

*“Cardinal System.*

“The cardinal system of buoyage has not been used in the United States, but we are favourable to the setting up of a logical system. We believe it should be made available for general application either for occasional dangers, in conjunction with the lateral system, or for continuous areas for countries that so desire. If used at all in the United States, it would probably be in the former manner. It is desirable that, both as to colours and lights, it be designed to avoid confusion with the lateral system. The basic idea of the cardinal system is understood to be a directional characteristic for each of the four cardinal points of the compass, and this should be adhered to, whether for wrecks or for other dangers.

*“Substitute Plan to take the Place of the Committee’s Report.*

“On the fourth day of the Conference a plan was submitted to one of its Committees which amounted to a substitute for the Committee’s report on the agenda. It differs from the Committee’s report in nearly every item, and the differences are of great importance. This substitute plan is of particular significance to the United States, with its very extensive buoyage and lighting system. The Committee’s report, which the United States is prepared to accept with minor modifications, included much that would be new to the system in use in the United States. The British substitute

plan, however, would have the effect of materially changing or of reversing nearly every colour and number characteristic and some shape characteristics of the buoyage and lighting system long in use on the coasts of the United States, as well as of other countries with large lighthouse interests. The effect of the adoption of this plan in the United States would be considerably more serious than the figures that have been stated, because of the predominant importance of natural and artificial channels of considerable length along the coasts of North America, all now systematically marked, and the great numbers of beacons which are also coloured in accordance with the buoyage system.

“The British substitute plan appears to be more detailed and more rigid than any that has heretofore been put forward as a basis for unification, and it is especially complex as to light requirements. Without previous opportunity for study of so sweeping a proposal, it evidently becomes rather impracticable for so large a Conference to solve the technical problems unexpectedly placed before it.

*“Conclusion.*

“To reach a basis for a system of uniformity of buoyage which may be accepted generally throughout the world, it will be necessary to give due consideration to the weight of present world practice and precedent, and to lay down a system that is simple, practicable and reasonably flexible. The Committee’s report presents substantially such a system, and one which, as regards its important features, nearly all countries now having a definite lateral system have indicated that it is feasible for them to put into effect.

“In the League of Nations document previously mentioned,<sup>1</sup> it is stated, on behalf of the United States of America :

“ ‘It is safe to say that such a sweeping change (as the reversal of the position of the colour red) would not be accepted by maritime interests in the United States except on strong grounds, and it is thought not for any reasons that have thus far been advanced.’

“Attention is also invited to the danger of causing ‘more confusion than exists at present’, and of retarding ‘the cause of uniformity, instead of advancing it’, if changes are undertaken which are impracticable of general adoption.

“It is important to note that the problems of lack of concordance and of uniformity of buoyage and lights are insistent at this time only in Europe, and that navigators in the rest of the world, and particularly in America, are not disturbed by such problems, and do not, in general, know that they exist. There is no inconvenience to navigation on this account in the western hemisphere and in much of the rest of the world, where there is now uniformity. To make real progress it is essential that greater uniformity be obtained than exists now, and the conclusions reached must be such that they are capable of being explained and justified to mariners using these extensive systems. I have therefore formulated a few general principles, which I submit to the Committee” (see Annex 3, page 77).

STATEMENT BY THE CANADIAN DELEGATION.

Mr. MACPHAIL (Canada) made the following statement :

“Inasmuch as considerable time has been given to consideration of the question of the proper position of the colour red in lateral buoyage, I shall limit my observations to the space of a very few minutes. I take it that there is general agreement that, whatever position is assigned to the colour red by day, the red light should occupy the same position. In a matter of this kind it seems to me that the Conference should not lose sight of existing conditions and of the changes or disturbances which a determination one way or the other would involve throughout the world. I have here an illustration of existing conditions (see Part II). It is a British Admiralty chart of the world coloured to show the present situation. On those coasts coloured red on this chart the red buoy is placed on the starboard side. On those coasts coloured black the red buoy is placed on the port side. From the figures which I shall quote in detail it will be observed that, of all the buoy stations of the world, 80 per cent conform to the Washington system, 2 per cent conform to the St. Petersburg system, and 18 per cent conform to the cardinal system, or have no colour distinction. The cardinal system may be left out of consideration for the moment, because that system is not now in question. I repeat that, of all the buoy stations of the world, the Washington system at present applies to 80 per cent and the St. Petersburg system is confined to 2 per cent, and lies within four countries—Greece, Italy, Portugal and Spain.

“These percentages are based on figures contained in the memorandum of the United States Lighthouse Service communicated to the Secretariat of the League of Nations in 1927. That

<sup>1</sup> See page 60.



document shows that the Washington system is employed in Europe in the following countries : Belgium, Denmark, France, Germany, Ireland, the Netherlands, Scotland, comprising 3,980 buoy stations ; in North and South America : Argentina, Brazil, Canada, Chile, Cuba, Mexico, Panama Canal, United States, Uruguay, etc., 15,558 stations ; in Asia : China, India, Indo-China, Japan, Netherlands East Indies, 1,448 stations ; in Africa : Algeria, Egypt, Suez Canal, Tunis, etc., 286 stations ; in Australasia : Australia, New Zealand, etc., 760 stations ; or a total of 22,032, comprising 80 per cent of all the buoy stations of the world.

"There are certain minor modifications referred to in the document from which I am quoting—namely, in respect of Denmark, Scotland, Suez Canal and New Zealand, which use white or black and white or parti-colour on the port side ; and in respect of the Netherlands East Indies, where white is used on the starboard side, but these departures are merely modifications of the Washington system.

"In like manner that document shows the distribution of the St. Petersburg system in Europe : Greece, Italy, Portugal and Spain, 405 buoy stations ; in Africa : colonies of Italy, Portugal, and Spain, 90 buoy stations ; or a total of 495, comprising 2 per cent of all the buoy stations of the world.

"These percentages are percentages of all the buoy stations of the world. If we should consider percentages of the lateral buoy stations only, the preponderance of use of red to starboard would be even more apparent.

"There has been much talk in committee with regard to the instinct of the sailor, and it has been claimed that he has an instinct to keep away from red paint and odd numbers. If the European sailor, using 2 per cent of the buoys of the world, has that instinct, what is to be said of the Japanese, the Australian, the New Zealander, the American (north and south), the Scotch, and the Irish, who use 80 per cent of the buoys as a sure and safe guide.

"I really think it must be admitted that it does not matter on which side the red paint and the red light are used ; that it does not matter on which side the odd numbers are used. In England, odd and even numbers are used consecutively on both sides. In England, too, some of the red buoys are placed on the starboard side. In Scotland and Ireland, all the red buoys are on the starboard side. In making these statements I am basing myself on a British Admiralty publication of 1922, the latest I happen to have. This publication advertises the character of buoys as follows :

- "Starboard, conical : In England, red or black ;  
In Scotland and Ireland, red only.
- "Port, can : In England, red and white or black and white ;  
In Scotland and Ireland, black.

"It seems to me that the principal question to be considered in any scheme of unification is the adoption of a satisfactory system which will occasion least change and inconvenience throughout the world. If we adopt the St. Petersburg system, we must change 80 per cent of the buoys. If we adopt the Washington system, we must change only 2 per cent. That is my argument in favour of the Washington system."

#### STATEMENT BY THE GERMAN DELEGATION.

. M. MEYER (Germany) made the following declaration :

"The German delegation has not participated in the work of the Sub-Committee on the Lateral System. It has therefore not been possible for me to know all the arguments which have been developed in the course of the deliberations of the Sub-Committee in favour of the allocation of the colour red either to port or to starboard. But, as far as I can judge from the discussions which took place in the full Committee on this subject, I feel bound to say that, in my opinion, both practical and theoretical arguments are in favour of red to port ; the existing situation, however — at least in certain parts of the world—seems to be an argument in favour of red to starboard. Most of the Continental European countries have on different occasions indicated that, for the sake of obtaining a worldwide uniformity, they are willing to accept either one solution or the other. The fact, however, that the Technical Committee in its first report recommended the St. Petersburg rule clearly indicates the preference of those States, and I must say that this preference was not at all based on considerations of individual convenience, because to most of them the changes to be made did not materially differ in one case or the other.

"From the replies received from Governments on the first report of the Technical Committee, it was clear that, apart from the countries which had participated in the work of the Committee at Stockholm and which were willing to accept the conclusions of the report, some other important maritime countries did not show the same sympathy towards the proposal put forward by the Committee. Some countries seemed to be more or less indifferent, others indicated their desire for unification but proposed that, in view of the existing situation, unification should be carried out on the basis of the Washington system. The European countries, with a view to arriving at a uniform system which might be adopted throughout the world, then declared their willingness to adopt this last solution, although it meant a very considerable sacrifice on their part, and I must say, Mr. Chairman, that I think the importance of this sacrifice has not been sufficiently appreciated.

Perhaps it was not good policy on the part of those countries to change their views so rapidly. They ought, perhaps, to have shown themselves more difficult in accepting another solution than the one which they had themselves advocated after very careful study. They felt, however, that they owed something to the spirit of international collaboration, and, as I have said, they were prepared to consider the sacrifice for the purpose of obtaining general uniformity. They have learnt now that it is not possible—at least at this Conference—to obtain such uniformity, either by adopting the St. Petersburg rule or the Washington rule. Those countries still remain firm partisans of a worldwide uniformity, and for that reason they prefer not to adopt to-day a solution which would undoubtedly render such general uniformity practically impossible for the future. It is hoped that, by leaving some time for further consideration to all the countries concerned, it may be possible to arrive in the near future at a system generally acceptable ; but, should it eventually not prove possible to obtain such worldwide uniformity, then my country—and I think many other European countries—would certainly attach sufficient importance to partial uniformity to adopt a regional solution.

“I should like to say a few more words with regard to the question of wreck-marking. As I have already pointed out, the German delegation did not participate in the work of the Sub-Committee ; but I am glad to give my full support to the proposal which has been placed before that Sub-Committee and which certain of its members have declared themselves willing to accept. I think it ought to be possible for this Conference to arrive at some firm agreement with regard to wreck-marking—apart from the important question of the shape of buoys in the lateral system, which we have already agreed upon, and the allocation of the various shapes, topmarks and colours in the cardinal system, which I suppose will be under discussion later on. In Germany, a special system of wreck-marking is considered to be a most important question and my country is willing to adhere to any reasonable system in this respect. Of course, it may not be possible for all the delegations to sign such an agreement immediately ; but it could remain open for the signatures of all the States invited to this Conference, and thus, in the near future, practical and tangible results may be achieved.”

Captain NORTON (Portugal) observed that, at previous conferences, it had always been the cardinal system which had given rise to the greatest difficulties. At the present Conference, agreement seemed possible on this point, but it did not seem possible to arrive at an agreement concerning the position of red lights in the lateral system. He thought that another effort should be made to reach an agreement. Captain Norton suggested that, since the object of the coastal buoyage and lighting services was to facilitate the task of sailors, the numerous sailors on the Committee should be asked to meet and state their personal preferences with regard to the position of red in the lateral system.

Personally, he was in favour of red to port, but he was ready to change his mind and accept red to starboard, if agreement could be reached on this point.

However, should it be impossible to reach a general agreement, Captain Norton fully supported M. Meyer's suggestions regarding the possibility of regional agreements. Italy, Spain, Greece and Portugal already followed the St. Petersburg rule, and offered an excellent basis for partial unification.

M. URBAIN (Belgium) thought it would be better not to draw up a partial agreement for the moment, so as to leave open the possibility of a general agreement. As regards the position of the colour red, he thought it ought to be stated in the report that the majority of the Committee had pronounced in favour of red to port. A statement of this kind in the Committee's report would be more effective than a statement of the views of the different delegations.

As regards Captain Norton's suggestion, he thought it difficult to accept, for the sailors at this Conference were there, not in their personal capacity, but as members of their delegations, and it would be difficult for them to state their private views. As he himself had been given a free hand, if Captain Norton would let him have his proposal in writing he would be quite ready to endorse it.

As regards the marking of wrecks, he agreed with the conclusions contained in the Committee's report.

Mr. PUTNAM (United States of America) could not accept Captain Norton's suggestion, since in many delegations, including those of the United States, Canada, Japan, etc., there were no sailors.

M. RASI-KOTSICAS (Greece) entirely agreed with the observations made by M. de Rouville and M. Meyer.

Although all the delegations had already stated their views, he hoped that a fresh effort would be made to reach an agreement, and he thought Captain Norton's suggestion a good one.

#### STATEMENT BY THE SWEDISH DELEGATION.

M. HÄGG (Sweden) made the following statement :

“I have read with great interest the proposal of the Sub-Committee on the Lateral System as to wreck-marking. The proposed system is without any doubt a very logical one.

“Nevertheless, it implies a complication which I consider to be very serious. I have nothing to say against the double flashes indicating that a wreck must be passed on the starboard hand when entering a harbour, nor against the scintillating quick-flashing light indicating that wrecks could

be passed on either side. It will not be possible for Sweden to adopt the triple flashes for wrecks to be passed on the port hand when entering a harbour.

"The Swedish Government considers it very important to use on buoys, and especially on wreck-buoys, as few flashes as possible, and I therefore propose that the triple flashes be replaced by a single flash. As the latter will not be a good signal in a system where the quick-flashing light is used, I suggest that the quick-flashing light be replaced by a light with a single occultation.

"The signals would thus be as follows :

- "(1) For wrecks to be passed on the starboard hand : green lights with double flashes ;
- "(2) For wrecks to be passed on the port hand : green lights with one flash ;
- "(3) For wrecks to be passed on either side : green lights with a single occultation.

"This proposal is based on the assumption that the proposal of the British delegation as to the distribution of odd and even flashes in the lateral buoyage system will be accepted.

"I wish to add that, for about thirty years, there has been a Convention between Denmark and Sweden concerning the buoyage of wrecks. The system in use is a very simple one and no complaint has been received. The same system is used in Norway and Finland and, I think, in Germany.

"According to this system, the green light is the only light in use—with single flash and double flash ; and the system can as well be used in the open sea as in channels."

M. DA COSTA (Brazil) pointed out, in connection with Captain Norton's suggestion, that sailors would be unable to agree on the position of red, as this was a question of habit and personal preference and not of choice dictated by technical reasons.

He recalled the fact that the Technical Committee had emphasised in its report the desirability of changing the present practice as little as possible. He therefore declared himself to be in full agreement with the delegate of the United States, and Brazil would continue to follow the Washington rule.

Sir John BALDWIN (British Empire) pointed out, in reply to M. Hägg, that, as regards the buoyage of wrecks, the Sub-Committee had chiefly endeavoured to exclude certain signals and not to assign specially to wrecks signals which in some countries were very useful for other forms of signalling, such as lights with single flashes or scintillating lights. This was why the Sub-Committee had thought it better to entertain several suggestions. If a general agreement was reached on any proposal, the British delegation would consider favourably the possibility of accepting it.

Going on to the question of the work of the Conference in general, Sir John Baldwin considered that the Conference had already done a great deal of good work. Even if agreement was only reached on a single point, some progress towards uniformity would have been achieved.

Sir John Baldwin was not in favour of the conclusion of regional or partial agreements at present. If uniformity was necessary at all it was necessary everywhere, and they must avoid laying down definite rules on certain points now. If there was any possibility of unification being achieved in the future, they must not make it more difficult by establishing hard and fast divisions between the different parts of the world.

Sir John Baldwin then reviewed a certain number of points on which he thought unanimous agreement, or at any rate a sufficiently general agreement, was possible. He proposed to refer to these different points later on in the proceedings.

Lastly, he said that the British delegation attached great importance to the insertion in the Final Act of the Conference of a general reservation similar to that stated at the end of the British proposal (see Part II, page 97) :

"If, owing to local conditions, the foregoing proposals cannot reasonably be carried out, they may be departed from, but such departures from the system should be as slight as possible and proper notice of them must be given to mariners."

Mr. PUTNAM (United States of America) entirely agreed with the British delegation that it was undesirable to have partial agreements establishing a schism between the different parts of the world.

Mr. HILL (International Shipping Conference) was of the same opinion. They must endeavour to achieve an ideal system and not commit themselves to anything falling short of this ideal. The wisest thing would be to note the points on which they were in agreement and, as the Belgian delegate had suggested, to state in the report the opinions expressed in the course of the debates. The remaining problems could be left to individual study and technical research.

As regards the general clause referring to local conditions, he would revert to this question when a definite text was before them.

M. LANGELER (Netherlands), M. HÄGG (Sweden) and M. SINDING (Denmark) made brief observations regarding the various points mentioned by Sir John Baldwin as likely to command unanimous or general agreement, and stated their intention of reverting to these questions when they came to be examined.

## SIXTH MEETING.

*Held at Lisbon on October 18th, 1930, at 10 a.m.*

*Chairman : M. VAN BRAAM VAN VLOTEN (Netherlands).*

### XII. Buoyage of Wrecks in the Lateral System.

#### I. DAY CHARACTERISTICS.

##### A. Colour of Port and Starboard Marks.

The Committee decided that green should be used as the characteristic colour, with the option of painting the lower part the colour of the corresponding side, green remaining in all cases the predominating colour (this allows predominance in position).

##### B. Wrecks which can be passed on Either Side.

###### *Shape.*

After a discussion in which, among others, the delegates of the United States of America, Canada, China, British Empire, Belgium and France took part, the French delegation proposed, as a compromise, that the United States delegation should accept the principle of a spherical topmark surmounting non-spherical buoys, and that the British delegation should agree to its being optional to paint a buoy another colour below the green, on condition that green remained the predominating colour.

The Chairman asked the Committee whether it accepted the spherical shape, or, failing that, a spherical topmark, as the characteristic of a buoy marking a wreck which could be passed on either side.

*A considerable majority of the members of the Committee accepted this proposal.  
The second part of the compromise proposal was accordingly withdrawn.*

### XIII. Procedure of the Committee.

The Secretary-General of the Conference proposed that the Committee should follow the same procedure as had been adopted in examining the question of signals and that delegates should express their opinion on the following :

- (1) Points of a general character on which universal agreement could be reached ;
- (2) Particular points on which a sufficient number of delegations geographically connected could agree ;
- (3) Points on which no practical result could be reached.

When the delegations had stated their opinions, the texts dealing with the various questions could be divided into the above three categories. The Secretary-General of the Conference did not think that this procedure would apply to the question of the side to which red should be allocated, which was quite a separate question.

*This was agreed.*

### XIV. Buoyage of Wrecks in the Lateral System (continued).

#### I. DAY CHARACTERISTICS (continued).

##### B. Wrecks which can be passed on Either Side (continued).

###### *Colour.*

The Chairman asked the Committee whether it agreed to the use of plain green as a characteristic colour for buoys marking wrecks (proposal of the Brown Book).

*A considerable majority of the members of the Committee pronounced in the affirmative.*

###### *Shape.*

After a discussion, the majority of the Committee favoured the following decision :

“In all cases where a wreck can be passed on either side, lightbuoys for wrecks should be either spherical in shape or have a spherical topmark.”

*The Committee also unanimously agreed to the following provisions :*

“Should the luminous buoy not show either by its shape or by a topmark the side on which the wreck should be passed, it will be compulsory to paint the lower part in the colour corresponding to the side on which the buoy should be passed.”

*The Committee also decided that, as in the case of ordinary buoys, green should be the predominating colour of the lightbuoys, the practical details being left to the competent authorities.*

## 2. NIGHT CHARACTERISTICS.

After a discussion, the Chairman asked the Committee whether it was agreed that green should always be employed for lights on wreck buoys, subject to the possibility of the additional use of other colours in quite exceptional cases—a question which might be examined later.

*The majority of the Committee pronounced in the affirmative. The United States delegate stated that he was prepared to study the question with regard to the future, but that he would be unable to accept the proposed rule immediately.*

### *Characteristics of Green Lights to be assigned exclusively to the Buoyage of Wrecks.*

After a discussion in which, among others, the delegates of the British Empire, the United States of America, Sweden, Spain, the Netherlands, Italy and France took part, the Chairman asked the members of the Committee to choose three from among the following five characteristics: (a) one occultation; (b) one flash; (c) two flashes; (d) three flashes; (e) scintillating lights.

## SEVENTH MEETING.

*Held at Lisbon on Saturday, October 18th, 1930, at 3 p.m.*

*Chairman: M. VAN BRAAM VAN VLOTEN (Netherlands).*

### XV. Buoyage of Wrecks in the Lateral System (continued).

#### 2. NIGHT CHARACTERISTICS (continued).

The Committee took note that a number of countries were prepared to reserve the following characteristics for the night buoyage of wrecks in the lateral system: (a) two flashes; (b) three flashes; (c) one occultation.

### XVI. Buoyage of Wrecks in the Cardinal System.

M. HÄGG (Sweden) proposed only to use two quadrants for the buoyage of wrecks—namely, one quadrant to the north-east and another quadrant to the south-west.

The signals to be used for the *north-east quadrant* would be:

By day: conical buoy; spar carrying as topmark either two cones point upwards or two flags;

By night: light buoy with two flashes.

The signals to be used for the *south-west quadrant* would be:

By day: cylindrical buoy; spar carrying as topmark either a cone point downwards or a flag;

By night: light buoy with one flash.

The colour for these signals will be green with a white horizontal band indicating that the cardinal system of buoyage is being used.

*The majority of Committee was in favour of the proposal of M. Hägg.*

### XVII. Bifurcation and Junction Signals in the Lateral System.

#### I. DAY SIGNALS.

*Shape.*

*The majority of the Committee were in favour of a spherical shape for the body of the buoy, or—if a buoy of another shape were used—of a spherical topmark.*

*Colour.*

*The Committee expressed its preference for the use of red and white, or black and white in horizontal bands.*

#### 2. NIGHT SIGNALS.

*The Committee, having noted that it was only desired to avoid any possible confusion with other signals, was of opinion that it would be sufficient to use, in the case of these lights, characteristics different from those of neighbouring lights on banks.*

### XVIII. Other Buoyage Signals independent of the Lateral and Cardinal Systems.

#### I. ISOLATED DANGER SIGNALS.

*Signals by Day.*

*Shape.*

*The majority of the Committee favoured a spherical shape for the body of the buoy, or a spherical topmark.*

**Colour.**

*The majority of the Committee favoured the use of black and red horizontal bands, separated by a white band.*

**Night Signals.**

*Should isolated danger signals carry a light, the majority of the Committee was in favour of the use of a rhythmical light to be either white or red, according to the colour of the other signals in the neighbourhood.*

**2. LANDFALL OR RECONNAISSANCE SIGNALS.**

*The Committee decided in favour of signals characterised by vertical black and white or red and white stripes; it was understood that black and white or red and white bands could be used.*

**3. BUOYS SHOWING THE TRANSITION BETWEEN THE LATERAL AND CARDINAL SYSTEMS.**

It was proposed that these buoys should be characterised by diagonal stripes, either white and red or white and black.

*The majority of the Committee was in favour of this solution.*

*Should these buoys carry a light, it would be sufficient for the characteristics of that light to be such as to avoid any confusion with neighbouring lights.*

**4. SPECIAL BUOYS.**

*In the case of quarantine buoys, the Committee was in favour of the colour yellow, since that colour was used for all indications of a sanitary character.*

*The Committee was in favour of a clause to read as follows:*

*"All buoys of which the purpose is not defined in the present rules shall be painted in such a way as not to lead to confusion with normal buoyage."*

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**EIGHTH MEETING.**

*Held at Lisbon on Sunday, October 19th, 1930, at 11 a.m.*

*Chairman: M. VAN BRAAM VAN VLOTEN (Netherlands).*

**XIX. Mid-Channel Buoys in the Lateral System.**

The Chairman proposed that mid-channel buoys should be painted with vertical black and white or red and white stripes.

*This was agreed.*

On the proposal of the British delegation, which mentioned that, in such cases, pillar buoys were used in Great Britain (this proposal being amended by the United States delegate), and after a discussion in which the Belgian delegate took a prominent part, the Committee agreed that care should be taken to avoid, as far as possible, the use of shapes of buoys or topmarks likely to cause confusion with other buoys and topmarks used in the lateral system—*i.e.*, with the cylindrical, conical or spherical shapes.

**XX. Side to which Odd or Even Numbers should be allocated.**

The British delegation proposed to assign odd numbers to starboard and even numbers to port.

After a discussion, in which the delegations of Sweden, Denmark, the United States, Belgium, Italy, the Netherlands, speaking on behalf of the Netherlands Indies, Germany, Canada and France, and the representative of the International Association of Merchant Marine Officers took part, the Chairman, observing the close connection between this question and that of the position of red lights, proposed that the question should be left open like that of the position of red lights.

*This was agreed.*

**XXI. Shape and Topmarks for Lightbuoys and Special Buoys.**

The Chairman, on behalf of the Bureau, submitted the following proposal to the Conference:

"Subject to the special provisions laid down with regard to the shape and topmarks for lightbuoys and special buoys marking wrecks, the Committee desires to make the following recommendation concerning shape and topmarks for lightbuoys and special buoys (bellbuoys, etc.):

"It is desirable that lightbuoys and special buoys, such as bellbuoys, should be given a shape distinction, either in the body of the buoy or by topmarks, corresponding

to their position in the buoyage system, in all cases where their structure or the conditions of their position at sea renders such a distinction reasonably practicable.' ”

On the proposal of the delegate of the United States of America *the Committee decided that the text submitted by the Chairman should be circulated and discussed at the next meeting.*

## NINTH MEETING.

*Held at Lisbon on Monday, October 20th, 1930, at 2.30 p.m.*

*Chairman : M. VAN BRAAM VAN VLOTEN (Netherlands).*

### XXII. Shape and Topmarks for Lightbuoys and Special Buoys (continued).

#### PROPOSAL BY THE CHAIRMAN OF THE BUOYAGE COMMITTEE.

*The Committee adopted, with the deletion of the words “at sea” in the penultimate line, the proposal of the Chairman of the Buoyage Committee concerning shape and topmarks for lightbuoys and special buoys (bellbuoys, etc.).*

The Drafting Committee was requested to prepare a final text for this recommendation (see Section II, page 13).

### XXIII. Orientation of the Lateral System.

*The Committee adopted the following rule :*

“In principle, the orientation of this system is planned from the point of view of the navigator arriving from the open sea. It should, if necessary, be adequately defined in sailing directions.”

### XXIV. Various Provisions.

*The Committee decided to replace the text figuring in Section F, “Various Provisions”, on page 14 of the Brown Book by the following text :*

“Fixed structures serving a purpose corresponding to that of lateral buoys may be coloured and lighted, in part or in whole, on the same system ; in any event, reversal of these colours should, if practicable, be avoided.

“Boat beacons forming part of a lateral buoyage system should, when practicable, be treated in the manner suggested by the Technical Committee—*i.e.*, as lighted buoys.

“By a boat beacon is meant a floating mark which is not readily distinguishable from a buoy and does not include unmanned light vessels.”

### XXV. Report by the Sub-Committee on the Cardinal System.

#### I. DAY SIGNALS.

The Sub-Committee's proposals were adopted with an amendment by the United States delegate stipulating that the marks should be painted with broad bands.

In reply to the delegate of the Netherlands Indies, the Chairman said that the use of a buoy to mark the transition from the lateral system to the cardinal system was optional.

The delegate of Finland said that, although his country did not use double topmarks, he thought his Government would be prepared to accept the proposal ; this would depend on the attitude of the neighbouring countries having the same system as Finland.

Captain Brandon (British Empire) having asked for instructions for the Drafting Committee with regard to the alternative contained in the Sub-Committee's report, the Deputy Secretary-General of the Conference explained that the only point which had not been fixed was the position of the marks in two of the quadrants.

#### 2. NIGHT SIGNALS.

Following upon a remark by the United States delegate, the Deputy Secretary-General of the Conference proposed that, in cases where there might be some confusion between the signals employed in the cardinal and lateral systems when these systems were used close to one another, sufficiently distinctive characteristics should be introduced, but in such cases only. For the rest, sufficient freedom would be allowed if, in accordance with the suggestion made by the German delegate, the words “double flashes” and “single flashes” were replaced respectively by “even variations” and “odd variations”.

Indications informing the navigator of the points of transition from the cardinal to the lateral system or *vice versa* could be inserted either in sailing instructions or in the charts.

*The Sub-Committee's proposals were approved with the German amendment (see Annex 2) on the understanding that it should be left to the good sense of the competent authorities to avoid risk of confusion between signals belonging to the cardinal system and neighbouring signals belonging to the lateral system.*

**XXVI. Differentiation in the Lateral System.**

After a discussion in which the delegates of China, the British Empire, Sweden, Germany, Italy and the Netherlands took part, *the Committee decided, on the Chairman's proposal, that, as a general rule, differentiation might be made in three ways—viz., (1) by colour only, (2) by rhythm only or (3) by a combination of both, it being understood that the question of the side to which odd or even numbers should be allocated should be reserved on the same conditions as the question of the side to which red lights should be allocated.*

**XXVII. Use of Fixed White Lights in the Lateral System.**

After a discussion in which the delegates of the United States, the British Empire, France and Canada took part, the French delegate pointed out that the fact of not recommending fixed white lights did not oblige countries at present utilising such lights to abolish them if local circumstances justified their maintenance.

In reply to the arguments put forward by the Canadian and United States delegates, the French delegate added that the solution recommended by the Committee evidently applied less to navigable waterways situated a long way inland than to maritime waters.

**XXVIII. Topmarks on Signals indicating Middle-Grounds (Bifurcation and Junction) in the Lateral System.**

The delegates of the British Empire and France submitted the following proposals to the Committee :

*“Principal channel to the right :*

*“Bifurcation : spherical topmark surmounted by a square topmark.*

*“Junction : spherical topmark surmounted by a special topmark—for example, a cross.*

*“Principal channel to the left :*

*“Bifurcation : spherical topmark surmounted by a conical topmark point upwards.*

*“Junction : spherical topmark surmounted by a conical topmark point downwards.*

*“Channels of equal importance :*

*“Bifurcation : spherical topmark surmounted by two cones, base to base.*

*“Junction : two spherical topmarks, one above the other.”*

The delegations of the United States, Canada and Japan emphasised the optional character of these provisions. A large number of delegations stated their willingness to accept these provisions as compulsory in cases when it might be useful to differentiate by shape bifurcation and junction channels and the relative importance of the different channels.

**XXIX. Night Marks on Wrecks in the Case of Countries wishing to employ either the Cardinal or the Lateral System, according to Circumstances.**

In view of the fact that indications regarding wrecks cannot, or can only with difficulty, be given in sailing instructions and on charts, the Deputy Secretary-General of the Conference asked if the countries which utilised either the cardinal system or the lateral system for the buoyage of wrecks, according to circumstances, would be prepared, when a wreck was marked according to the cardinal system, to use an even number of flashes other than the two flashes provided for under the lateral system—for example, four flashes.

After a brief discussion, the Deputy Secretary-General of the Conference noted that none of the countries at present represented on the Committee employed the two systems simultaneously for the buoyage of wrecks, with the exception of Germany, whose delegate declared his willingness to accept the system of four flashes.

The Deputy Secretary-General of the Conference then asked whether the countries which employed the cardinal system, involving the use of single flash green lights for the marking of wrecks, would be prepared not to utilise this characteristic of the green light for other uses, countries wishing to use the single flash green light for other purposes undertaking to use only the lateral system for the buoyage of wrecks.

*This suggestion was approved.*

**XXX. Allocation of a Special Shape to Buoys indicating Bifurcations and Isolated Dangers.**

In reply to the United States delegate, the Chairman said that there had simply been various expressions of opinion on this subject, and that the Committee had not reached a unanimous decision.

**XXXI. Possibility of Employing Green Lights in the Lateral System.**

In reply to the United States delegate, the Deputy Secretary-General of the Conference explained that this question could not be settled until the question of the side to which red lights should be allocated had been decided.



**XXXII. Use of Green Lights for the Buoyage of Wrecks.**

**STATEMENT BY THE BRITISH DELEGATION.**

The British delegation stated that, in the absence of an agreement permitting the use of green lights for other purposes than the marking of wrecks—*i.e.*, on condition that distinctive characteristics should be reserved for wrecks—it reverted to its original proposal that green lights should be reserved for wrecks.

**XXXIII. General Reservation submitted by the British Delegation.**

After discussion of an amendment submitted by the Swedish delegation, in which the delegations of Sweden, India, China, the British Empire, Italy and France took part, the Committee decided to amend as follows paragraph 12 Sub-Section (a) of the British proposal (see Part II, page 97) regarding the general reservation, subject to final drafting :

“If, in order to ensure the safety of navigation, or if owing to local conditions, the foregoing proposals cannot reasonably be carried out, they may be departed from ; but such departures from the system should be as slight as possible, and proper notice of them must be given to mariners.”

**XXXIV. Side to which Red Lights should be allocated.**

A proposal made by the Chairman to the effect that the delegations should be consulted on their preferences as to the allocation of red lights to port or starboard having been opposed by the United States and Canadian delegates, the Secretary-General of the Conference pointed out that the opinion was almost unanimously held that no decision as to the question of the position of red lights should be taken during the present Conference, even between a limited number of delegations. On the other hand, it would be very useful to note forthwith the opinions of the different delegations without, however, re-opening the technical discussion. He therefore proposed that the members of the Drafting Committee, sitting not as a drafting committee but as a small committee, should submit suggestions to the plenary Conference on the manner in which the questions could be settled in a practical manner as soon as possible. It would be understood that the statements of opinion made before the plenary Conference in this connection would not be regarded as equivalent to a vote.

*The suggestion of the Secretary-General of the Conference, which was supported by the delegate of the British Empire, was approved.*

**XXXV. Buoyage in the Netherlands Indies.**

The Netherlands delegate, while maintaining his previous observations submitted to the Committee (see Part II, page 102) with regard to the use of the colour white in the tropics, stated that his Government was prepared to try the use of red. He asked whether the case of the Netherlands Indies constituted an exception covered by the general reservation.

The Chairman replied in the affirmative.

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ANNEX 1.

[C.B.E. /16.]

REPORT OF THE SUB-COMMITTEE ON THE LATERAL SYSTEM.

The Sub-Committee on the Lateral System, consisting of the delegations of the British Empire, the United States of America, France, Italy and Japan, met under the chairmanship of the Chairman of the Buoyage Committee to examine the two questions submitted to it by that Committee—viz :

- (1) Position of red buoys and red lights in the lateral buoyage system ;
- (2) Use of green lights in the lateral buoyage system and for the marking of wrecks.

As regards the first question, the Sub-Committee found to its great regret that it was not possible to reach, during the present Conference, an agreement capable of permitting universal unification.

As regards the second question, the following proposal, referring both to the use of green lights in the ordinary lateral buoyage system and the determination of certain characteristics of green lights to be reserved for the buoyage of wrecks, was submitted to the Sub-Committee in the course of its proceedings as a combined proposal :

USE OF GREEN LIGHTS IN THE LATERAL BUOYAGE SYSTEM.

Green lights may be used in the lateral system either alone or in conjunction with white lights on black buoys, or on fixed buoys on the same side of the channel, provided that the characteristics of such green lights shall not conflict with the characteristics of lights used on buoys marking wrecks as determined below.

USE OF GREEN LIGHTS IN WRECK-MARKING.

Night signals : subject to the optional exception mentioned below, green lights only will be used for wreck-marking. Their characteristics are the following :

- (1) For wrecks to be passed on starboard (or port) hand : green lights with double flashes ;
- (2) For wrecks to be passed on port (or starboard) hand : green lights with triple flashes ;
- (3)<sup>1</sup> For wrecks to be passed on either side : green scintillating or very quick flashing lights with equal periods of light and darkness (at least 30 per minute).

In the case of a channel marked with green lights on one side and red lights on the other, when a wreck is situated on the side of the red lights and should be passed on the same hand as these red lights, it will be optional, as an exception to the rule laid down above for the marking of such wreck, instead of a green light with double (triple) flashes, to use an alternate red and green light or an alternate white and green light.

Several members of the Sub-Committee stated their readiness to accept this proposal. Another member of the Sub-Committee, while being prepared in principle to introduce green for the day and night buoyage of wrecks, could not consent to the exclusive allocation of certain characteristics of green lights to the buoyage of wrecks, and considered that, in particular, scintillating green lights and occulting green lights were too valuable in ordinary buoyage to be reserved exclusively for the somewhat rare cases in which a wreck had to be marked.

Accordingly, the Sub-Committee was unfortunately unable to reach a unanimous agreement on the second question put to it by the Committee.

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<sup>1</sup> The following alternative proposal was submitted subsequently for the characteristics of the green light:  
(3) For wrecks to be passed on either side : green lights with a single occultation.

ANNEX 2.<sup>1</sup>

[C.B.E.15].

REPORT OF THE SUB-COMMITTEE ON THE CARDINAL SYSTEM.

The Sub-Committee on the Cardinal System, consisting of M. VAN BRAAM VAN VLOTEN (Netherlands), M. GUTMANN (Estonia), M. HÄGG (Sweden), M. MEYER (Germany), M. PURNS (Latvia), Mr. PUTNAM (United States of America) and M. TAINIO (Finland), in pursuance of their terms of reference from the Committee, endeavoured to make a choice of two marks in the cardinal system, and as regards the allocation to the four quadrants of the topmarks and combinations of colours adopted. They endeavoured to find a solution, irrespective of the choice which the Conference might make in regard to the position of the red mark in the lateral system. Nevertheless, one of the members of the Sub-Committee having pointed out that, in his country, the application of the lateral system was closely bound up with that of the cardinal system, the Sub-Committee accepted two solutions, one of which would apply should red be adopted on the port hand in the lateral system, and the other in case red was put to starboard in the lateral system. These two solutions are shown below, under Nos. I and II. It should furthermore be pointed out that the position of the marks allocated to the north and south quadrants would remain exactly the same in both cases, and that the difference between the two solutions consisted in changing over the marks for the east and west quadrants.

One member of the Sub-Committee pointed out that, in view of the interdependence between the cardinal and lateral systems which had been found to exist, should the Conference not arrive at a final agreement on the position of red in the lateral system there would not appear to be any practical need then and there to fix in all its details a cardinal system which could only be applied in practice after the question connected with the lateral system had been settled. For these reasons, the member in question suggested that, for the moment, they should only deal with certain principles of a general character concerning the cardinal system, which might be applied whatever be the solution adopted later for the lateral system.

It was urged in reply to this view that, as it had been possible to arrive at an agreement between those chiefly interested in the cardinal system, they should welcome that agreement and register its terms.

*Cardinal System—Day Signals.*

*Solutions I and II.*

Northern quadrant : Conical buoy with broad white median band ; black spar with white median band, surmounted by a black cone point upwards ; or, alternatively, white spar with broad black median band, surmounted by a black cone point upwards.

Southern quadrant : Red buoy with flat (cylindrical) top with broad white median band ; red spar with broad white median band, surmounted by a red cone point downwards.

*Solution I.*

Western quadrant : Buoy with flat top (cylindrical), half-black half-white, black above white ; spar half-black and half-white, black above white, surmounted by a topmark consisting of two black cones point to point.

Eastern quadrant : Conical buoy, half-red half-white, red above white ; spar half-red, half-white, red above white ; or, alternatively, white above red, surmounted in either case by a topmark consisting of two red cones base to base.

*Solution II.*

Western quadrant : Conical buoy, half-red half-white, red above white ; spar half-red half-white, red above white ; or, alternatively, white above red, surmounted in either case by a topmark consisting of two red cones base to base.

Eastern quadrant : Buoy with flat (cylindrical) top, half-black half-white, black above white ; spar half-black half-white, black above white, surmounted by a topmark consisting of two black cones point to point.

The Sub-Committee agreed that the above-mentioned red and black topmarks could be replaced by brooms of a dark colour in places in which local conditions made such a substitution necessary or desirable. It was furthermore agreed that cases might arise in which the use of topmarks on spars would not be feasible in practice by reason of the climatic conditions or of the special nature of traffic in the waters to be buoyed. Moreover, cases might arise in which the need for differentiation might make it necessary to double certain topmarks or to do away with topmarks or certain spars. The Sub-Committee was of opinion that these various departures from the system set forth above would be covered by the general clause concerning the exceptions allowed as a result of special local conditions.

<sup>1</sup> The text of this report is published in the form in which it was adopted by the Committee on Buoyage

*Cardinal System.—Night Signals.*

*Solution I.*

- Northern quadrant : White lights with even variations.
- Eastern quadrant : Lights with even variations, red (preferably) or white.
- Western quadrant : White lights with odd variations.
- Southern quadrant : Lights with odd variations, red (preferably) or white.

*Solution II.*

- Northern quadrant : White lights with even variations.
- Western quadrant : Lights with even variations, red (preferably) or white.
- Eastern quadrant : White lights with odd variations.
- Southern quadrant : Lights with odd variations, red (preferably) or white.

When fixing the characteristics of lights in cardinal buoyage, the Sub-Committee had naturally no intention of prescribing the compulsory adoption of night signals in the cardinal system. By laying down a uniform system for night signals, the Sub-Committee only meant to signify that, in cases in which luminous buoys or lights on fixed supports were used in the cardinal system, the characteristics of the said lights should correspond to those of the uniform system.

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**ANNEX 3.**

[C.B.E./17.]

**PROPOSAL BY MR. PUTNAM**

**WITH REGARD TO GENERAL PRINCIPLES CONCERNING THE DAY-MARKING OF BUOYS.**

1. Horizontal bands of moderate width are reserved for buoys marking isolated dangers, middle-grounds and bifurcations, obstructions which may be passed on either side.
2. Vertical stripes are reserved for fairway or mid-channel buoys.
3. Broad white sections are reserved to indicate that the buoyage is on the cardinal system.
4. The colour green is reserved for buoys marking wrecks.
5. The spherical shape for buoys or topmarks is reserved for buoys marking isolated dangers, middle-grounds and wrecks, obstructions which may be passed on either side.

Items 4 and 5 are not exclusive as here stated.

**SECTION V.—RECORDS OF THE WORK OF THE COMMITTEE  
ON COASTAL AND PORT SIGNALS.**

**FIRST MEETING.**

*Held at Lisbon on Wednesday, October 15th, 1930, at 10 a.m.*

*Chairman : M. HÄGG (Sweden).*

**I. Congratulations to Commander Norton on his Promotion.**

M. WATIER (France), on behalf of the members of the Committee and of the delegates to the Conference, warmly congratulated Commander Manoel Norton on his promotion to the rank of Captain in the navy.

All the delegates associated themselves with this expression of esteem.

**II. Statement by the Japanese Delegation.**

“The Japanese delegation considers that it would be difficult to achieve too strict a unification of coastal and port signals, in view of the exigencies of special local conditions.

“(a) As regards local storm-warning signals and ‘cautionary’ signals, these signals could not be unified by too detailed provisions.

“In Japan, a red bar or a red light means ‘wind will be strong’. There are also signalling stations for the purpose of indicating the direction and position of the wind.

“(b) As regards tide signals, the use of special local signals should not be forbidden when local circumstances call for special signalling.

“(c) In small ports, the use of special signals for movements of ships should continue to be authorised.”

**III. Storm-warning Signals.**

The following delegations were prepared to conclude an arrangement for putting into practice the system of signals recommended by the International Meteorological Commission, it being understood that questions of detail and the period within which the arrangement should be put into force would not be settled immediately :

Brazil	Latvia	Portugal
Danzig (Free City of)	Monaco	Roumania
France	Morocco	Sweden
Germany	Netherlands	Tunis
Iceland	Norway	Uruguay.
Italy	Poland	

The following delegations were not prepared to assume any obligations in this connection :

Australia	China	New Zealand
British Empire	India	United States of America.
Canada	Japan	

**NOMINATION OF A SUB-COMMITTEE.**

The Committee decided to appoint a Sub-Committee to draw up a proposal with regard to storm-warning signals.

The Sub-Committee was composed as follows :

M. MEYER (Germany) ;  
Commander SAILLANT (France) ;  
Captain SPALICE (Italy) ;  
Captain CARREL (China) ;  
Commander MORNA (International Meteorological Commission).

**IV. Tide and Depth Signals.**

**NOMINATION OF A SUB-COMMITTEE.**

The Committee decided to appoint a Sub-Committee to draw up proposals regarding tide and depth signals.

The Sub-Committee was composed as follows :

Captain CARREL (China) ;  
Captain MACE (British Empire) ;  
M. VAN BRAAM VAN VLOTEN (Netherlands) ;  
M. WATIER (France) ;  
M. URBAIN (Belgium).

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## SECOND MEETING.

*Held at Lisbon on Thursday, October 16th, 1930, at 10 a.m.*

*Chairman : M. HÄGG (Sweden).*

### V: Signals concerning the Movements of Vessels at the Entrance to Harbours or Important Channels.

#### I. NOMINATION OF A SUB-COMMITTEE.

After a short discussion, the Committee appointed a Sub-Committee consisting of Captain MACE (British Empire), M. WATIER (France), M. MEYER (Germany) and M. URBAIN (Belgium), to draw up a system of signals concerning the movements of vessels at the entrance to harbours or important channels, taking into account the observations submitted by the various delegations.

#### 2. PROPOSALS OF THE SUB-COMMITTEE.

The Sub-Committee, having discussed the question, submitted the following proposals to the Committee.

##### "A. *Serious Emergencies or Catastrophes.*

*"Entrance absolutely prohibited :*

*"By day : three balls in a vertical line ;*

*"By night : three red lights in a vertical line.*

##### "B. *In Normal Circumstances.*

*"(a) Entrance prohibited :*

*"By day : cone point upwards between two balls, in a vertical line ;*

*"By night : white light between two red lights, in a vertical line.*

*"(b) Vessels prohibited from entering or leaving :*

*"By day : cone point downwards, cone point upwards, ball, in a vertical line ;*

*"By night : green light, white light, red light, in a vertical line.*

*"(c) Vessels prohibited from leaving :*

*"By day : cone point downwards, cone point upwards, cone point downwards, in a vertical line ;*

*"By night : green light, white light, green light, in a vertical line.*

*"Note.—The component parts of the signal are given from top to bottom."*

*The Sub-Committee's proposals were adopted.*

#### 3. RECOMMENDATIONS AND GENERAL REMARKS.

*The Committee decided :*

(a) That the signals indicated above must be placed sufficiently high to avoid confusion with the other harbour signals ;

(b) That the distance between the component parts of signals should not be less than 2 metres, or 6 feet.

The Committee was unanimously in favour of deleting paragraph 2 of Section III of this report of the Technical Committee (page 31) : "Permission to enter subject to certain restrictions", since a general provision which had already been accepted permitted the use of special signals when local or special circumstances require it.

### VI. Locks, Bridges and Sluices.

Certain delegations having pointed out that, in their countries, there were arrangements different from those proposed by the Technical Committee, and that consequently it was not possible to lay down too absolute a rule, *the Committee decided to refer the question to the Drafting Committee, which would be asked to prepare a formula capable of general acceptance.*

## VII. Signals for Lightships not on Their Stations.

The Committee examined the proposals of the Technical Committee paragraph by paragraph.

### *Paragraph 1.*

*Paragraph 1 was adopted in principle.*

### *Paragraph 2.*

Various delegations pointed out that certain lightships carried no topmarks and others carried fixed topmarks which would be difficult to remove. The Committee accordingly considered that the proposed provision should be modified and should lay down that any lightship not on its station should hoist a special signal, which should preferably be :

By day : two large black balls, one situated forward and the other aft of the ship ;  
By night : a red light forward and another aft.

In all cases in which special circumstances would not permit the use of such signals—either owing to climatic conditions (ice, etc.) or because the same characteristics were already utilised for ordinary topmarks—red flags may be used instead of black balls.

*The final drafting of the first two paragraphs was referred to the Drafting Committee.*

### *Paragraph 3.*

*This paragraph was adopted.*

### *Paragraph 4.*

The following text was adopted for sub-paragraph (a) :

“Fly the signal of the International Code signifying, ‘I am not in my correct position’.”

As regards sub-paragraph (b), certain delegations pointed out that the use of a red light shown for an instant might lead to confusion with signals of distress. The Committee accordingly decided to replace a red light by two simultaneous red and white flares. The use of simultaneous red and white lights was also authorised when local conditions required it.

## VIII. Storm-warning Signals (continued).

*The Committee read the report of the Sub-Committee on Storm-warning Signals (Annex page 82) and adopted its conclusions subject to final drafting.*

## IX. Proposals of the Sub-Committee on Tide and Depth Signals.

The Deputy Secretary-General of the Conference outlined the conclusions of the special Sub-Committee appointed to examine this question.

### (a) *State of Tide.*

The sub-committee proposed that the signals concerning the state of the tide should be reduced to two.

#### *Tide falling :*

By day : elongated cone point downwards ;  
By night : white light above green light.

#### *Tide rising :*

By day : elongated cone point upwards ;  
By night : green light above white light.

The height of the cone must be at least three times the diameter of its base.

### (b) *Height of Water-level.*

The Sub-Committee proposes to adopt two decimetres as unit for countries which employ the metric system, and a foot for other countries.

A height of water of 2 decimetres or of a foot (*unit*) will be indicated :

By day : by a cone point downwards or by a ball ;  
By night : by a green or white light.

(The use of a ball or white light to indicate both a unit and 25 units does not seem likely to cause confusion, and makes it possible to use the most visible signal to indicate the unit.)

A height of water of 1 metre or 5 feet (*five units*) will be indicated :

By day : by a cylinder ;  
By night : by a red light.

A height of water of 5 metres or 25 feet (*twenty-five units*) will be indicated :

By day : by a ball ;  
By night : by a white light.

To permit of a more accurate signalling of the height of the water, a signal has also been provided for half a foot (or 1 decimetre in the metric system). This signal will be :

By day : a cylinder ;  
By night : A red light.

*The proposals of the Sub-Committee were adopted.*

#### X. Recommendations and General Remarks.

The Committee stipulated that signals should be read from left to right for the incoming navigator.

Cones (or balls) indicating units may be placed either in one vertical line or in two vertical lines. The cylinder indicating the subdivision of the unit may be placed either in the same vertical line and below the units or to the left of the vertical line of the units.

The cylinders indicating five units each (metres or multiples of 5 feet) will be placed in a vertical line. The spheres indicating twenty-five units will also be placed in a vertical line. The same rules will apply to night signals.

*The Committee decided that, in the absence of indications to the contrary in nautical instructions, heights of water should be reckoned from the hydrographical zero.*

The signals indicated above are, of course, intended only for countries wishing to employ shape signals or lights to indicate the height of the water. Signalling by semaphore or morse (optical) by means of the signalling code, by wireless telegraphy or wireless telephony, and the indication of the height of water in figures is also authorised.



ANNEX TO SECTION V.

[C.B.E./12.]

REPORT OF THE SUB-COMMITTEE ON STORM-WARNING SIGNALS.

The Sub-Committee on Storm-Warning Signals unanimously *adopted* the following proposals:

*Warning of Gale expected to affect the Locality.*

I. *By day :*

- (a) *Direction of the wind :* The four signals figuring in the Brown Book.
- (b) Instead of "cautionary" signals, read : *Probable bad weather, hurricane or gale.*  
Probable bad weather : one black ball.  
Probable hurricane or gale of great violence : two black balls in a vertical line.

It is understood that the signals of paragraph (a) may be added to these signals if the direction of the wind can be predicted.

(c) *Change of direction of wind :* alternative signals :

To the right : one black flag or one vertical black cylinder.

To the left : two black flags above one another or two black vertical cylinders above one another.

An international agreement open to the greatest possible number of countries might be drawn up on this basis.

It would be understood that the agreement with regard to these signals would not preclude the adoption of additional signals in cases when such signals were necessary. In this connection the Sub-Committee particularly had in mind typhoon signals and thinks it would be well to draw the serious attention of the competent authorities or organisations to the system of signals adopted for this purpose by the Zi-Ka-Wei Observatory.

2. *By night :*

Under paragraph (a), *Direction of wind*, the Sub-Committee proposes the adoption of the four signals mentioned in the Brown Book.

For the new paragraph (b), it proposes :

- 1. For probable bad weather : a red light at the masthead.
- 2. For probable hurricane or gale of great violence : two red lights at the masthead in a horizontal line. These lights can, of course, be combined with the lights showing the direction of the wind, hence the position of the red lights at the masthead has been chosen so that they should be sufficiently far away from the vertical line on which the lights showing the direction of the wind are placed.

The Sub-Committee considered that the provisions regarding night signals should be understood as meaning that these signals would be adopted only if a system of night signals was used. It also considered that, in the case of night signals, it would perhaps be better to employ the procedure of recommendations rather than of agreement between States. A decision on this question might, however, be left until after the end of the Committee's debates.

## SECTION VI. — RECORDS OF THE WORK OF THE COMMITTEE ON LIGHTHOUSES AND RADIO-BEACONS.

### FIRST MEETING.

*Held at Lisbon on Wednesday, October 15th, 1930, at 3.0 p.m.*

*Chairman : Mr. PUTNAM (United States of America).*

#### I. Unification of Lighthouse Signs.

The Committee examined the Technical Committee's proposals, paragraph by paragraph. (Proposal II).

##### *Paragraph 1.*

*This paragraph was adopted.*

##### *Paragraph 2.*

##### *Sub-paragraph (a).*

On the proposal of the British delegation, which was amended in the course of the discussion, the Committee decided to fix the preferential order for the characteristics of the main landfall lighthouses as follows :

The first three characteristics were *adopted*, without change.

The fourth, fifth, and sixth characteristics were defined as follows :

“White flashes in groups of five.

“A signal consisting of a group of white flashes alternating with a single white flash.

“A signal consisting of a group of white flashes alternating with another group of white flashes differing from the first.”

The Committee decided to add a seventh characteristic, defined as follows :

“White flashes in groups of six.”

An amendment by the Chinese delegation, with a view to fixing a minimum duration for flashes was withdrawn, the necessary arrangements being left to the competent authorities.

##### *Sub-paragraph (b).*

At the beginning of the sub-paragraph the Committee decided to replace the words “for landfall lights of lesser importance” by the words “for lighthouses of lesser importance”.

An amendment by the British delegation that the words “the latter (the occulting lights) being as simple as is compatible with the difficulty of navigation on the coast in question”, in the last sentence of sub-paragraph (b), should be replaced by the words “the latter being as simple as provide circumstances permit”, was referred to the Drafting Committee.

##### *Sub-paragraph (c).*

On the proposal of the delegate of Sweden, seconded by the delegates of the United States, Greece, the British Empire and Spain, the passage containing the words “mixed characteristics . . . are no longer admissible” was referred to the Drafting Committee, which was asked to bring it into line with the principle laid down in the second paragraph of the comments, and to provide for the *gradual elimination* of the said mixed characteristics.

The British delegation, supported by the Danish and Chinese delegations, proposed the deletion of the words “. . . or flashes of different colours”.

The Netherlands delegation proposed that the use of “lights with flashes of different colours” should only be authorised when there was no risk of confusion with neighbouring lights of a similar character.

The French delegation proposed to replace the words “fixed lights varied by flashes” by the words “*such as* fixed lights varied by flashes.”

The Greek delegation, seconded by the Portuguese delegation, proposed to delete the reference to sub-paragraph (b), so that sub-paragraph (c) should only refer to sub-paragraph (a) concerning main lighthouses.

*The foregoing proposals were reserved.*

The Belgian delegation proposed that “lights with flashes of different colours” should only be authorised in future if the range of visibility of the different colours could be equalised.

The United States delegation proposed that the use of combinations of lights with different colours having different ranges of visibility should not be recommended.

*The United States proposal, being regarded as similar to the Belgian proposal, was adopted subject to final drafting.*

*Sub-paragraph (d).*

After a discussion in which, among others, the delegates of Canada, the British Empire, the Netherlands and France took part, the Chairman proposed a wording on the following lines :

"It is desirable to avoid, as far as possible, the use of fixed white lights in ports of a certain importance."

*This wording was provisionally approved, the Netherlands delegate reserving the right to submit an amendment at the next meeting.*

On the Spanish delegate's proposal (see Annex 1, page 87) the Committee decided to permit the use of quick rhythm scintillating (or flashing) lights.

*Sub-paragraph (e).*

*The Committee decided also to permit the use of quick rhythm scintillating lights for the purposes of this paragraph.*

*Sub-paragraph (e) was adopted with this addition.*

*Sub-paragraph (f).*

The delegates of the British Empire and France were requested to submit a new text at the next meeting.

*Paragraph 3.*

On the proposal of the Chairman, the first sub-paragraph of paragraph 3 was modified as follows :

"In installing aero-lighthouses, care should be taken to avoid interferences and the risk of confusion with coast lights."

On the Chairman's proposal, seconded by the Swedish delegate, the second sub-paragraph was deleted.

*The Committee also decided that the Drafting Committee should prepare a text introducing into the chapter on the "Unification of Lighthouse Signs" the idea expressed in the second and third paragraphs of the Comments of the Technical Committee.*

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SECOND MEETING.

*Held at Lisbon on Thursday, October 16th, 1930, at 3.30 p.m.*

*Chairman : Mr. PUTNAM (United States of America).*

**II. Unification of Lighthouse Signs (continued).**

The Committee continued the examination of the Committee's proposals.

*Sub-paragraph (d).*

On the proposal of the delegate of the Netherlands, the text which had been provisionally accepted on the previous day was finally adopted in the following form :

"In the more important ports, the use of white lights should be avoided."

**III. Radio-Beacons.**

The Committee successively considered the Memorandum of Mr. Putnam (United States of America) concerning radio-beacons (see Annex 2, page 87), and the desiderata accepted by the Technical Committee, as set forth in the Technical Committee's report (see pages 13 and 14).

**I. MEMORANDUM BY MR. PUTNAM.**

*Paragraph 1.*

*This paragraph was adopted, without change, as follows :*

"The system of radio-beacons should be extended throughout the world so far as helpful for navigation, and as the resources of countries permit."

*It was agreed that the word "radio-beacon" should be used in the English text of this paragraph.*

*Paragraph 2.*

*This paragraph was adopted in the following form :*

"When radio is used in navigation, preference should be given to the system which consists of installing radio-beacons on shore or on lightships, and equipping vessels with means of taking radio bearings."

*Paragraph 3.*

*This paragraph was adopted in the following form :*

"It is desirable that the apparatus for these purposes in radio-beacons should be established in future so that continuous wave signals may be used, but it should be noted that radio direction-finding apparatus on ships is now not generally capable of taking bearings on continuous wave signals."

*Paragraph 4.*

*This paragraph was adopted without change, as follows :*

"It is desirable that special effort be made to avoid interference between radio-beacons, both in one country and between signals in different countries."

*Paragraph 5.*

After a discussion in which a specially prominent part was taken by the delegates of the British Empire, France, Belgium, the representative of the International Shipping Conference and the Deputy Secretary-General of the Conference, *paragraph 5*, on the proposal of the delegate of France, *was adopted in the following form :*

"It is desirable that the competent technical services should carefully study the most efficient and convenient characteristics to be used for radio-beacons, and should communicate the results of their studies to each other."

*Paragraph 6.*

On the proposal of the delegate of the Netherlands, the text of this paragraph was replaced by paragraph (d) of paragraph 6 of the desiderata adopted by the Technical Committee to read as follows :

"The power of radio-beacons should not exceed that which is strictly necessary for their task, which depends mainly on the position of neighbouring stations (whether or not belonging to the same country), due account being taken of the necessary difference in power between stations for fair weather and stations for foggy weather."

*Paragraph 7.*

After a discussion in which a prominent part was taken by the delegates of France, the British Empire and the representative of the International Hydrographic Bureau, *this paragraph was deleted.*

*Paragraph 8.*

*This paragraph was adopted unchanged, as follows :*

"It is considered that, so far as practicable, a system of radio-beacon navigation should be sufficiently simple to be available for use by the navigator directly."

2. DESIDERATA RETAINED BY THE TECHNICAL COMMITTEE.

*Sub-Paragraph (a).*

*The Committee decided to forward to the International Wireless Telegraphy Conference, to be held in Madrid in 1932, a resolution expressing a desire that the present band should be increased from 285 to 315 kilocycles.*

The delegate of Belgium said that he would refrain from expressing any opinion on the technical aspect of the question.

*The Committee also decided to add to paragraph 4 of Mr. Putnam's memorandum an observation concerning the interval of at least 2.7 per cent between wave-lengths of radio-beacons and those of stations of a different nature, such as commercial stations.*

*Sub-paragraph (b).*

*Sub-paragraph (b) was deleted.*

*Sub-paragraph (c).*

*The Committee decided to recommend that the question should be left over for examination by a small committee of experts.*

*Sub-paragraph (d).*

This sub-paragraph had already been adopted as paragraph 6 above.

*Sub-paragraph (e).*

*This sub-paragraph was adopted unchanged.*

*Sub-paragraph (f).*

*This sub-paragraph was adopted, with the exception of the last sentence :*

"If a Governmental Conference is called on to take a decision as to the work of the Committee, it might with advantage take steps to bring about some such result",

*which was deleted.*

As a result of a proposal made by the representative of the International Shipping Conference, the Committee decided to instruct the Drafting Committee to draw up a paragraph to the following effect, to serve as a general introduction to the chapter concerning radio-beacons :

“Experience has shown that it is desirable to comply with the following recommendations with a view to the satisfactory working of radio-beacons”.

#### IV. Unification of Lighthouse Signs (continued).

##### *Paragraph 2.*

##### *Sub-paragraph (f).*

The Committee examined the following text submitted by the French and British delegations :

“In the case of lights capable of being considered as an integral part of the lighting system, according to one of the lateral or cardinal schemes recognised elsewhere, particularly in the case of lights, of channels or harbour entrances without sectors, the allocation of colours and rhythms shall be regulated according to the rules laid down for lighting in the said schemes.

“For the sectors of lights placed on channels or works of harbour entrances, any infringement of the rule of allocation of colours in lights as fixed for lateral marking should be avoided as far as possible. That rule should be interpreted specially from the point of view of the mariner coming from the open sea.

“In doubtful cases, the colours of sectors should, as far as possible, be allocated according to a scheme remaining constant in the same area and under similar conditions.”

After a discussion in which the delegates of the British Empire, Sweden, Belgium, the United States of America and China, and the Deputy Secretary-General of the Conference took a prominent part, the Committee decided, on the Danish delegate's proposal, to postpone a decision on this text until the question of the lateral system had been settled.

#### V. Concordance of the Characteristic Signs of Fog Signals with those of the Lights with which they are associated.

On the proposal of the Chinese delegate, supported by the Canadian delegate, and after a discussion in which the delegates of the British Empire, France and the United States of America took part, the Committee decided to delete this recommendation of the Technical Committee.

ANNEXES TO SECTION VI.

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ANNEX 1.

[C.B.E./10.]

PROPOSAL SUBMITTED BY THE SPANISH DELEGATION  
RELATING TO QUICK-FLASHING LIGHTS.

There is one system of differentiating lights which the Technical Committee for Buoyage and Lighting of Coasts has not included in the general report and the proposals which it drew up at Genoa in February 1929. This is the system of lights, which may be called : "quick rhythm flashing (or scintillating) lights".

These lights are characterised by the great number of flashes emitted in a short space of time ; as many as 150 to 180 flashes per minute may be attained.

These lights have been successfully employed for a number of Spanish maritime signals and have proved entirely satisfactorily. They are preferable to fixed lights—which they are tending to replace—for they characterise signals more clearly, differentiating them from other lights on banks. The cost of their upkeep is small, since the fuel consumption (acetylene) is only about one-eighth of that of a fixed light of the same strength.

As the flashes follow one another very rapidly it is impossible to determine whether the rhythm is odd or even ; hence, so as not to preclude the use of these lights, which present obvious advantages, the Spanish delegation proposes to add to the buoyage rules to be adopted by the Conference a clause permitting the use of quick rhythm scintillating lights instead of fixed lights, whenever the latter are authorised.

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ANNEX 2.

[C.B.E./11.]

MEMORANDUM SUBMITTED BY MR. PUTNAM WITH REGARD TO RADIO-BEACONS.

1. The system of radio-beacons should be extended throughout the world so far as helpful for navigation, and as the resources of countries permit.

2. The system of using radio in navigation by installing radio-beacons on shore or on lightships, and equipping vessels with some means of taking radio-bearings on such stations, is considered preferable.

3. Apparatus for these purposes, both at stations and on ships, should be designed in future so that continuous-wave signals may be used, but it should be noted that radio direction-finding apparatus on ships is now not generally capable of taking bearings on continuous-wave signals.

4. It is desirable that special efforts be made to avoid interference between various radio-beacons within a country and between signals in different countries.

5. It is desirable that special study be made of the most efficient and convenient characteristics to be used for radio-beacons.

6. It is desirable to limit the power of radio-beacons at each station to the power which is essential for the needs of navigation.

7. Because of the wide range of radio-beacons, it is recognised that it would be convenient to navigators—and would be of assistance to navigation—to have outline charts or maps showing the radio-beacons within considerable areas, possibly including signals in more than one country.

8. It is considered that, as far as it is practicable, a system of navigation with the aid of radio-beacons should be sufficiently simple to permit of its direct use by the navigator.

**PART II.**

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**Section I.**

**MEMORANDA COMMUNICATED BY GOVERNMENTS  
AND PROPOSALS SUBMITTED  
TO THE CONFERENCE BY VARIOUS DELEGATIONS.**

**Section II.**

**NOTES SUBMITTED TO THE CONFERENCE.**

SECTION I.—MEMORANDA COMMUNICATED  
BY GOVERNMENTS AND PROPOSALS SUBMITTED TO THE  
CONFERENCE BY VARIOUS DELEGATIONS.

[C.B.E./1.]

1. MEMORANDUM ADDRESSED TO THE SECRETARY-GENERAL OF  
THE LEAGUE OF NATIONS BY HIS EXCELLENCY THE FINNISH  
MINISTER FOR FOREIGN AFFAIRS AND CIRCULATED TO  
GOVERNMENTS OF COUNTRIES INVITED TO THE CONFERENCE.

[*Translation.*]

I have the honour to inform you that the Finnish Government has noted with great interest the report of the Technical Committee of the League of Nations for Buoyage and Lighting of Coasts, dated February 20th, 1929, and welcomes this attempt to simplify these systems of signalling with a view to facilitating the work of navigators. Nevertheless, it would point out that it still feels obliged to maintain its own views on certain—in its opinion, important—points connected with the proposed changes in the system of buoyage, which views do not coincide with those recommended in the report of the Technical Committee.

The essential objection of the competent Finnish authorities to the proposed scheme is that insufficient account has been taken of the fact that, in the cardinal system, two groups of colours are used—a dark group, containing black and red, and a light group, containing only white, with the result that full use is not made of the different colours. It is true that these groups are easily distinguishable from one another, but black and red cannot so easily be distinguished in a bad light; and it follows, in the opinion of the Finnish authorities, that these colours should be so utilised on the buoys that black never appears at the same place as red. This is now, however, laid down in the Technical Committee's proposal, according to which the upper parts of the supports of the buoys in the north and south quadrants are both painted dark, and in the east and west quadrants both the upper and lower parts are dark. In the opinion of the Finnish authorities, the supports of buoys placed opposite one another ought to be painted in alternate colours—that is to say, the corresponding parts of the uprights should be painted in colours belonging to a different group. As the topmarks stand out better if they are painted with a dark colour, the Finnish authorities consider that they ought always to be dark. It follows that if, according to the proposal of the Technical Committee, the upper part of the buoy in the north quadrant is painted with a colour belonging to the dark group (in this case black), the lower part of the buoy in the south quadrant ought also to be painted with a colour belonging to the dark group (in this case red). On the same principle, and assuming that both the upper and lower parts of the buoy in the west quadrant are painted with a dark colour (red), the buoy in the east quadrant ought to be painted with a dark colour (black), the rest of the supports being white.

A clear distinction is thus made between the colours of the dark group and the white group, and it seems clearest and simplest, when examining the question, to proceed on the assumption that there are only two colours—one of a dark shade and the other white.

Finland adopted the buoyage system based on this differentiation for reasons connected with the peculiar conditions of the country and as a result of long experience. The Technical Committee's proposal seems to have ignored the point emphasised in the previous reply from the Finnish Government—that the buoys often lose their topmarks, especially in narrow and difficult channels, such as are so often found in Finnish waters. In cases where the topmarks are lost through being carried off by passing vessels or in any other way, the supports must be so painted that the buoys can be distinguished from one another by their colour alone (dark or light). In the opinion of the competent Finnish authorities, the buoys proposed by the Technical Committee must therefore be judged as they are, even after having lost their topmarks, and it will be seen that the objections raised are well founded, especially if it is borne in mind that, as stated above, black cannot always be distinguished from red. In Finland, at least, the narrowness of the channels in the archipelagoes often causes sailing-vessels and timber-rafts to pass so close to the buoys that they remove their topmarks. This happens so often that it has been necessary to indicate many of the channels by buoys without topmarks. It may be added that, when the buoys have lost their topmarks, they keep their position better, as they are not so apt to be caught by timber-rafts, etc., as are buoys with topmarks. The Technical Committee has dealt with these points in its proposal and suggested that buoys without topmarks might be marked in the manner proposed by the competent Finnish authorities—that is to say, in a manner differing entirely from the system proposed by the Committee for the colouring of buoys with topmarks. The competent Finnish authorities consider, however, that the simultaneous adoption of the two systems would prove difficult in practice. It would be very difficult for navigators, if they saw a buoy without a topmark, to know whether it had lost it or had never had one. Moreover, the adoption of this double system of colouring would make it difficult to learn the system. The Finnish authorities therefore maintain that both the buoys with topmarks and those without should certainly be coloured on the same system.



This applies *mutatis mutandis* to the signalling of wrecks. Here, again, the corresponding parts of the supports of buoys lying opposite one another ought, in the opinion of the Finnish authorities, to be painted in colours belonging to different groups (in this case green and white).

To illustrate the above-mentioned point of view of the Finnish authorities, Diagram No. 1 is enclosed showing the system of buoys adopted in Finland since 1896, as amended by the Decree of 1898 providing that the buoy in the north quadrant should have a black band. However, for the sake of clearer differentiation between the buoys placed in opposite directions and of general uniformity, Finland is prepared to consider whether the buoy in the south quadrant should not have a white band, as shown in enclosed Diagram No. 2. She desires, however, to await the results of international co-operation. Diagram No. 3 will serve to show the confusion produced by the use both of buoys with topmarks and buoys without such marks.

It appears from a comparison between this system and that advocated by the competent Finnish authorities, as shown in Diagram No. 2, that the two schemes differ not only as regards the placing of the colours, but also inasmuch as, in the Technical Committee's proposal, the whole system is shifted through an angle of 90° from east to west. This also applies to the Technical Committee's proposal with regard to the signalling of wrecks according to the cardinal system. In the opinion of the Finnish authorities, it is not desirable that the system of buoyage should be shifted as suggested by the Technical Committee, as such a change would be calculated to lead navigators astray for a long time to come—far more, indeed, than if the system of buoyage were so radically changed as to avoid the possibility of any confusion with the present system. In fact, the Technical Committee points out, in connection with the lateral system, that the new system should be adopted in such a way as to produce the least possible confusion.

The shifting which would result from the adoption of the system of the Technical Committee would, however, produce confusion, especially in Finnish, Estonian, Latvian and Russian waters, where the same buoys are in use as in Finland. We may mention that, incidentally, any such change as that proposed by the Technical Committee would be very difficult to carry out in Finland, as all the charts on which the buoys are marked in silhouette would certainly have to be altered, and it would be very difficult to do this without making mistakes. It is not difficult to realise what disastrous consequences might result, for instance, from neglect to provide with two cones (in accordance with the proposal of the Technical Committee) a buoy shown on a chart in the south quadrant with one cone. It is only for weighty reasons that Finland has maintained her divergent point of view, as there is probably no other country in the world with such a large number of buoys constructed on the cardinal system as Finland. At present, she possesses about 5,000 of them.

Apart from these vital considerations, Finland begs to repeat its previous observation that isolated danger signals should have dark and white bands (preferably red and white alternately) and not alternate red and black horizontal bands, as red and black on the same signal are not easily distinguishable in all lights. The signal in question would be still more easily visible if it had a red cross-bar and, in the larger channels, a black sphere below the cross-bar. The use of the cross-bar and sphere presents this advantage—that the isolated danger signals shown in silhouette on the charts would be more easily seen. To illustrate this point, I enclose Diagram No. 4 representing the isolated danger signal at present in use in Finland.

Finally, mention should be made of the Technical Committee's suggestion that the topmarks should be repeated or several cones used in the same buoy, in order more clearly to indicate the form of the topmarks. In the opinion of the Finnish authorities, an additional topmark of this kind is, on the contrary, liable to lead to mistakes. As, however, this proposal is put forward as an alternative, Finland does not wish to oppose it. Indeed, the Finnish authorities regard it as important that a special mark should be adopted to indicate a buoy which is more important than the other buoys in the neighbourhood—for instance, the one on the outside. A sphere attached below the topmark is used for this purpose in Finland and has proved satisfactory. Spheres seem to be particularly suitable, as they are clearly distinguishable from the cones used in the other buoys as topmarks. The best colour for the spheres would be black, so that it could always be recognised as a special mark indicating a particular buoy.

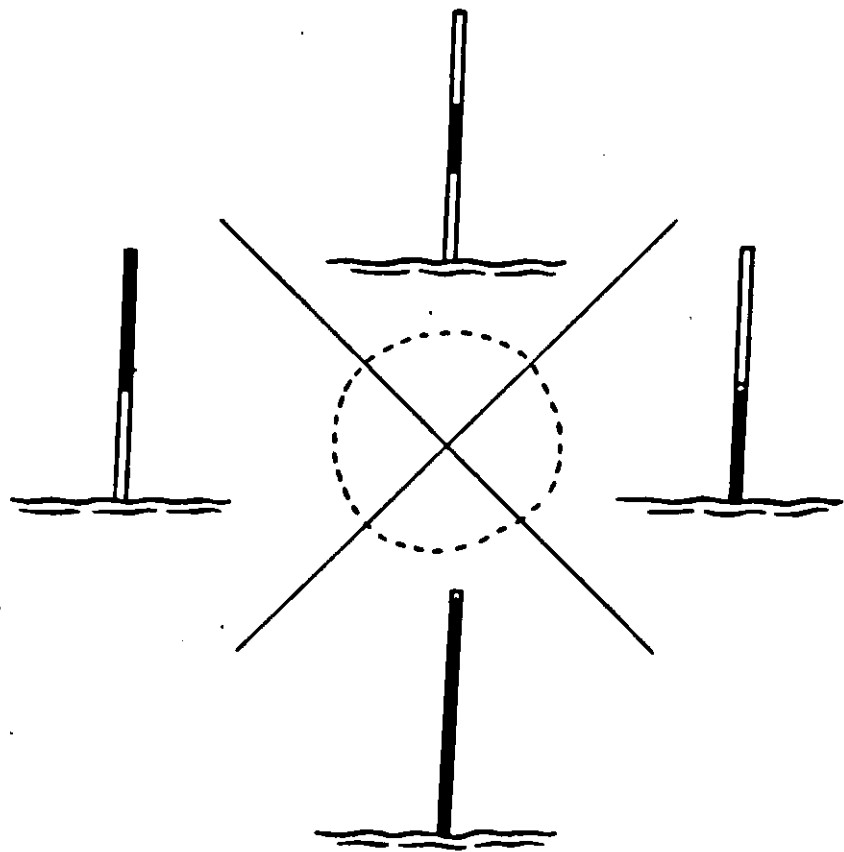
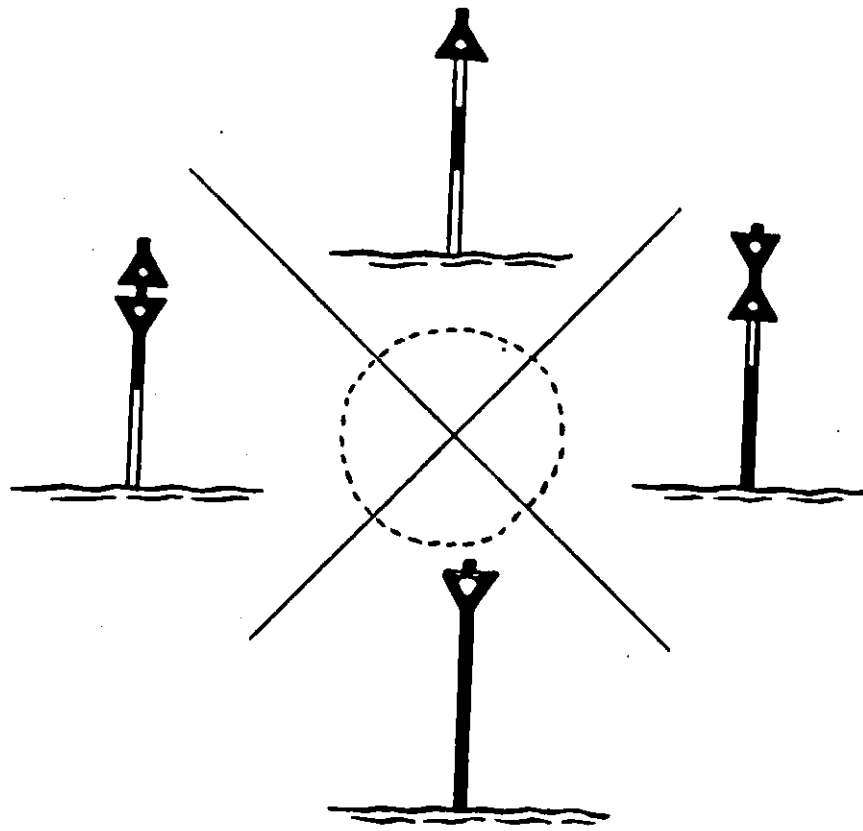
Further, the Finnish Government desires to point out that the system of buoyage at present in use in Finland has, in practice, proved satisfactory for several decades, and has during that time gained the unanimous approval and confidence of all navigators.

Substantially the same system is also in use in certain other Baltic countries—Estonia, Latvia, Lithuania and Russia. In view of this, Finland does not regard it as desirable that any of these countries should change its present system of buoyage unless the others do the same; for, otherwise, there would be different kinds of buoys in contiguous waters to indicate the same thing, which would naturally produce serious confusion in the minds of navigators.

The Finnish Government repeats that it desires to propose no change in or addition to the other points in the proposal so carefully drafted by the Technical Committee, but it does hope that a sufficiently long period of transition will be allowed for the alterations in the present lighthouse signs and lights.

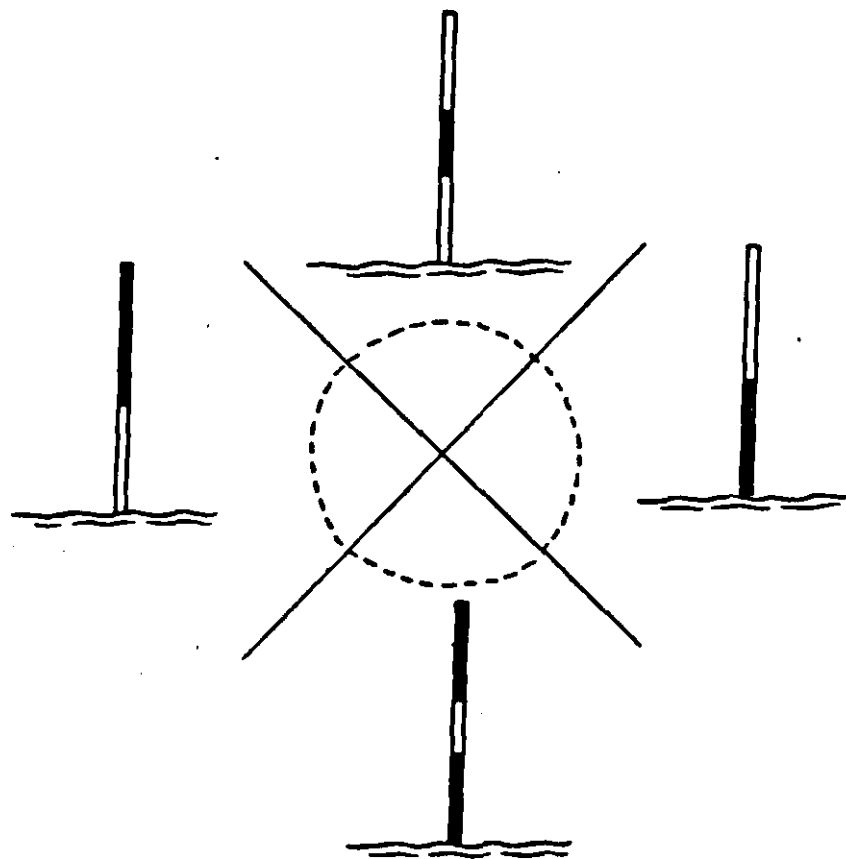
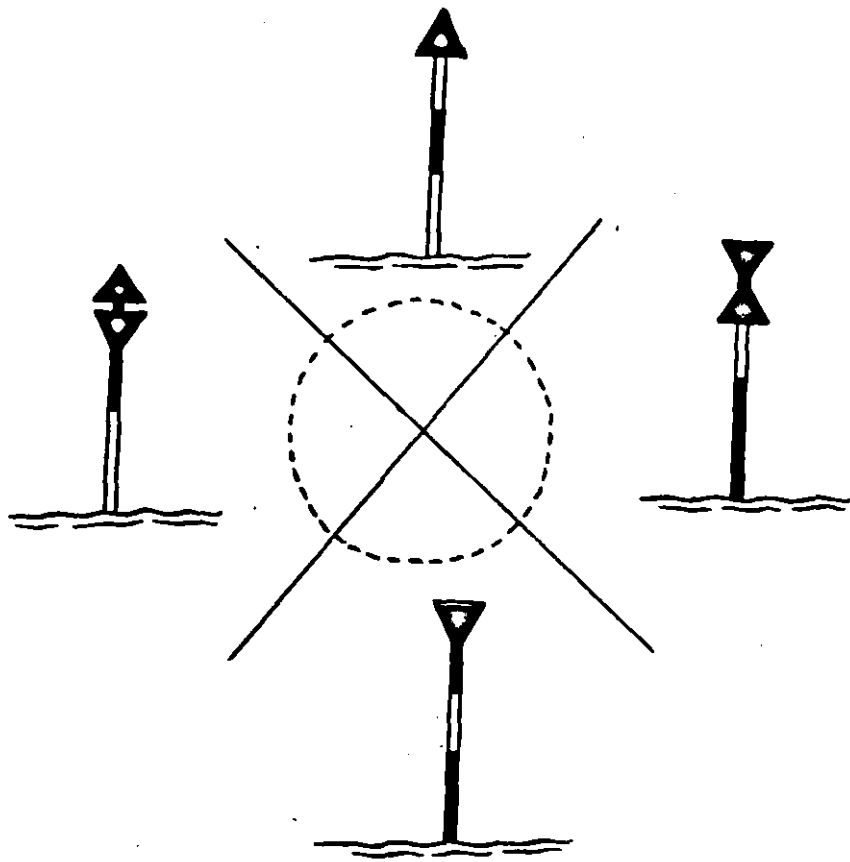
(Signed) J. PROCOPÉ.

Nº 1.



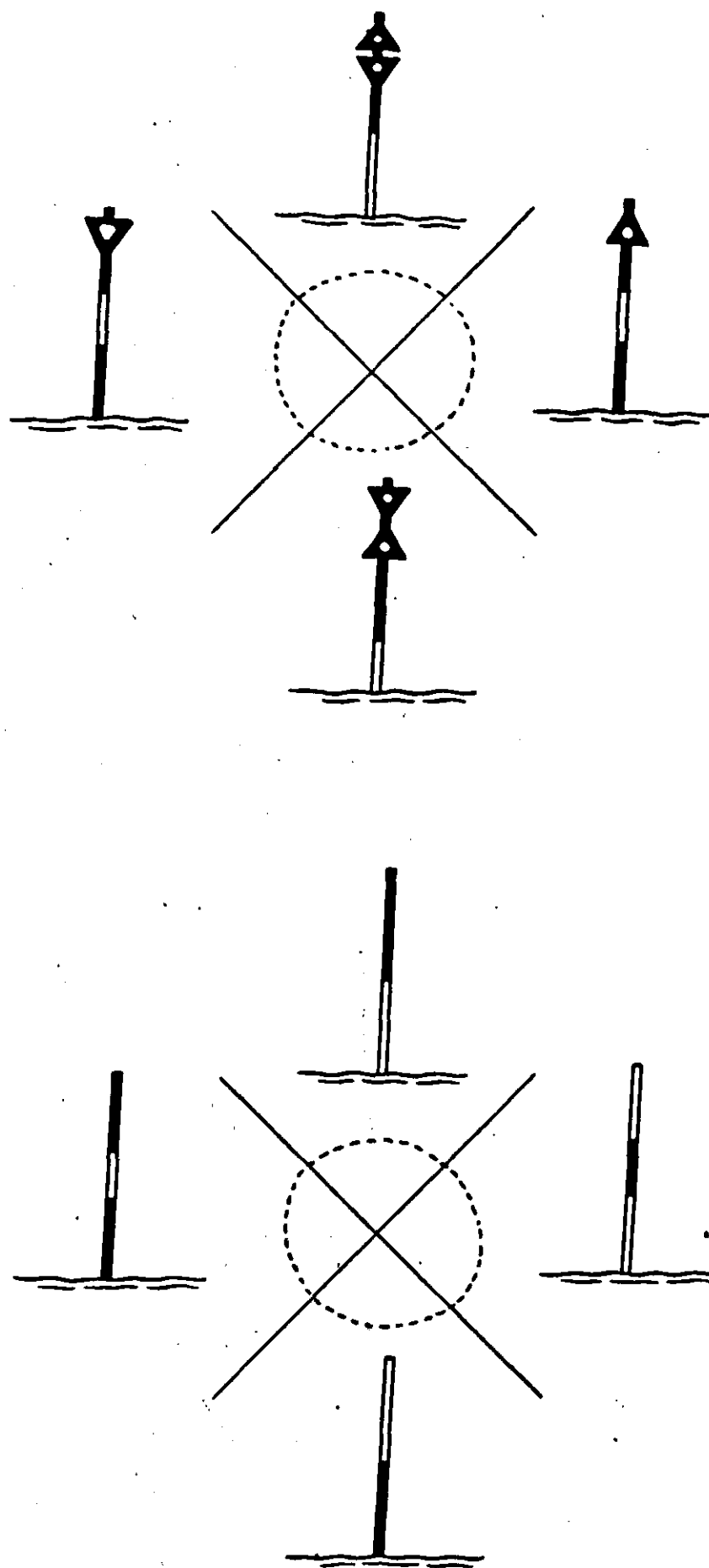
**Système finlandais actuel.**  
**Present Finnish System.**

N° 2.



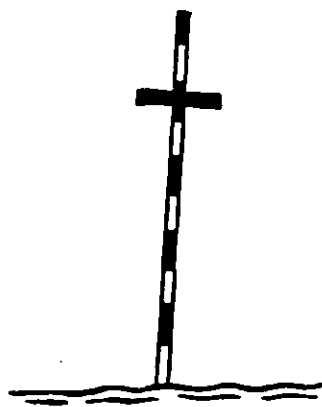
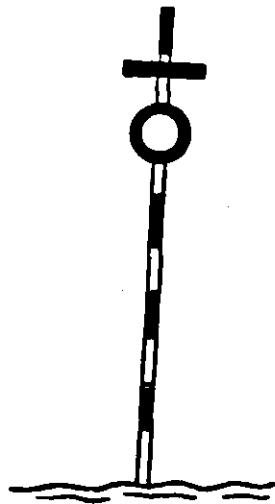
**Systeme que le Gouvernement finlandais serait disposé à accepter en tenant compte des recommandations du Comité technique.**

**System which the Finnish Government would be willing to accept in view of the recommendations of the Technical Committee.**



**Systeme proposé par le Comité technique (avec et sans voyants).**  
**System proposed by the Technical Committee (with and without Top-marks).**

N° 4.



**Signaux de danger isolé actuellement en usage en Finlande.**  
**Isolated Danger Signals at present in use in Finland.**

2. MEMORANDUM SUBMITTED TO THE CONFERENCE BY THE DELEGATION OF THE UNITED STATES OF AMERICA RELATING TO A UNIFORM SYSTEM FOR THE CHARACTERISTICS OF BUOYS AND OF CERTAIN CORRESPONDING AIDS ON FIXED STRUCTURES.

Washington, September 13th, 1930.

I. LATERAL SYSTEM OF SIGNALS FOR CHANNELS AND OTHER ROUTES.

The characteristics are here stated with reference to a vessel coming from the open sea ; or, in the case of passages not having such definite relation to the sea, in a direction determined and announced by the lighthouse authority. The methods of indicating the sides of the channel by the characteristic of the signals are the following :

1. *By colour.*—Red to the right and black to the left. Where there are alternative channels between which it is desirable to distinguish, red and white chequers may be used to the right, or black and white chequers to the left, or chequers may be used on both sides, but with the red always to the right, and the black always to the left.

All lateral buoys, of all types, should conform to the standard colours. Where there is not now conformity, such reasonable time as necessary may be taken for changing over to the standard system.

Fixed structures serving a purpose corresponding to that of lateral buoys may be coloured and lighted, in part or in whole, on the same system ; in any event, reversal of these colours should be avoided.

2. *By shape.*—Conical for buoys to the right and cylindrical for buoys to the left, these shapes referring to the visible portion of the buoy above the water-line. Buoy bodies should conform to these shapes so far as practicable.

It is recognised, however, that such shapes are not conveniently applicable to lighted, bell, whistle and spar buoys. It is not expected, therefore, that the shape characteristic will be applied to these classes of buoys, excepting so far as convenient to any country.

Topmarks, where used, should conform to the same shapes, conical to the right and cylindrical to the left. The use of topmarks is optional.

It is recognised that some countries show the shape characteristic only by topmarks. This is permissible, but it is desirable that ordinary buoys show the shape characteristic in the buoy body itself, because of the liability of destruction of the topmark.

3. *By numbers.*—Where numbers are necessary on buoys, even numbers are to be used on buoys to the right, and odd numbers on buoys to the left. The numbers on both sides are to increase in the direction of arrival, and are to be shown in white figures.

4. *By light colour.*—When the lateral signals, either buoys or fixed structures, carry lights, their colours are to be red or white to the right and white or green to the left ; white should not be used on both sides, unless the distinction by rhythm is used.

5. *By light rhythm.*—When the lateral signals, either buoys or fixed structures, carry lights, such lights may be either flashing, occulting or fixed. Rhythm may also be employed to distinguished lights, using double flashes or, if necessary, a fixed light, to the right, and single flashes or triple flashes to the left. This distinction is not prescribed, excepting where the colour distinction is not used.

II. MIDDLE-GROUND AND ISOLATED DANGER SIGNALS NOT ORIENTED ON THE CARDINAL SYSTEM.

Such signals, usually buoys, mark rocks, shoals, middle-grounds, or other obstructions, with channels on either side. If on the seaward side of an extended obstruction, they are bifurcation marks ; if on the landward side, they are junction marks. The characteristics of such signals are to be as follows :

1. *By colour.*—Alternate red and black horizontal bands. Preferably there will be four horizontal bands of equal width, from the water-line to the top of the buoy. When the top band is black the main or recommended channel is to the right, and when the top band is red the main or recommended channel is to the left.

It is to be noted that horizontal bands are characteristics of all obstruction buoys, and are reserved for this purpose.

2. *By shape.*—For middle-grounds, both bifurcation and junction buoys are to be cylindrical with black band at the top when the main or recommended channel is to the right, and conical with red band at the top when the main or recommended channel is to the left.

For isolated dangers, buoys are to be spherical, cylindrical, conical or spar.

3. *By topmarks.*—When these are used for middle-ground buoys, they are to be a black cylinder over a red sphere when the main channel is to the right, and a red cone, point upwards, over a black sphere when the main channel is to the left.

When it is desired to distinguish a junction buoy, this is to be done by using as a topmark a black sphere over a black cylinder when the main channel is to the right, or a red sphere over a red cone, point upwards, when the main channel is to the left.

The isolated danger buoy topmark will be a sphere, red or black.

No special light characteristics are prescribed for obstruction buoys.

Numbers will not be used on obstruction buoys, but they may carry names or letters.

All markings for obstruction buoys are here described for the vessel entering from the sea, and the meanings are reversed for the vessel departing.

### III. OBSTRUCTION BUOYS ORIENTED ON THE CARDINAL SYSTEM.

The following system is to be used where it is desired to show the direction of the buoy from a rock, obstruction or danger of any character, excepting wrecks. For example, the area about a rock is considered to be divided into four quadrants, and a buoy located anywhere in the quadrant lying between the north-west from the rock and north-east from the rock should have the characteristics stated for the northern quadrant.

#### 1. *Northern Quadrant, from the rock :*

Colour, white, with middle one-third black.

Shape, conical.

Topmark, if used, one black cone, point upwards.

#### 2. *Eastern Quadrant, from the rock :*

Colour, upper half white, lower half red.

Shape, cylindrical.

Topmark, if used, two red cones, point to point.

#### 3. *Southern Quadrant, from the rock :*

Colour, red, with middle one-third white.

Shape, cylindrical.

Topmark, if used, one red cone, point downwards.

#### 4. *Western Quadrant, from the rock :*

Colour, upper half black, lower half white.

Shape, conical.

Topmark, two black cones, base to base.

Spar buoys may be used in this system, with the same colour scheme as for other buoys, but without shape distinction unless topmarks are used.

No light characteristics will at present be prescribed for the cardinal system.

It is to be noted that buoys on the cardinal system do not indicate that there are necessarily passages on both sides of an obstruction.

All buoys on the cardinal system show white horizontal bands or segments, and white thus shown is reserved exclusively to indicate that the buoy is coloured on the cardinal system.

### IV. BUOYAGE OF WRECKS.

At least during the initial period, the buoyage of wrecks should show the special nature of these obstructions. If remaining for a long period, so as to become a somewhat permanent obstruction, wrecks may be marked with the system provided for other obstructions.

Wreck-buoys with channel to one side only should, when lighted, have the same light colours as the corresponding lighted lateral buoys.

No special light characteristics are prescribed for other wreck-buoys, but where lights are used on outside wreck-buoys, not likely to be confused with other lights, green should preferably be used.

1. *Wreck-buoys on the lateral system* are to be the same as lateral buoys, excepting that the upper half of each buoy is to be green, the characteristic distinctions being as follows :

(a) By colour : to the right, upper half green, lower half red ; to the left, upper half green, lower half black.

(b) By shape : conical to the right and cylindrical to the left.

(c) If topmarks are used : to the right a conical green topmark, point upwards, and to the left a cylindrical green topmark.

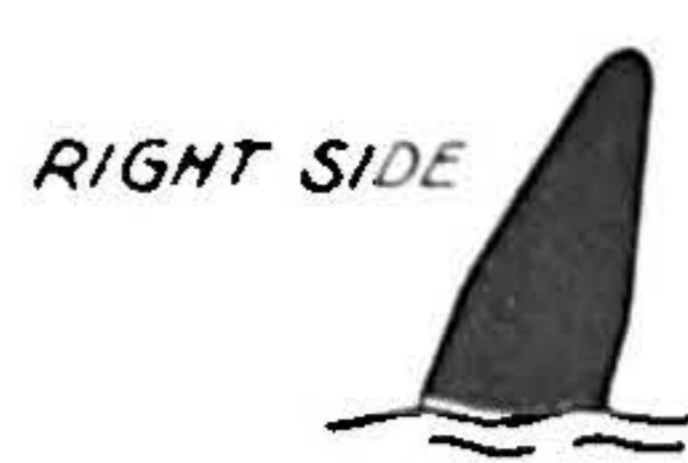
2. *Wreck-buoys on the obstruction and isolated danger system, not oriented.*—These are to be the same as to colour and shape as other obstruction buoys, excepting that the upper one of the four horizontal bands is to be green instead of red or black. The next band below the

# ILLUSTRATIONS OF BUOY CHARACTERISTICS, ETC.

## I LATERAL SYSTEM OF BUOYS FOR CHANNELS



■  
TOP-MARK,  
IF USED

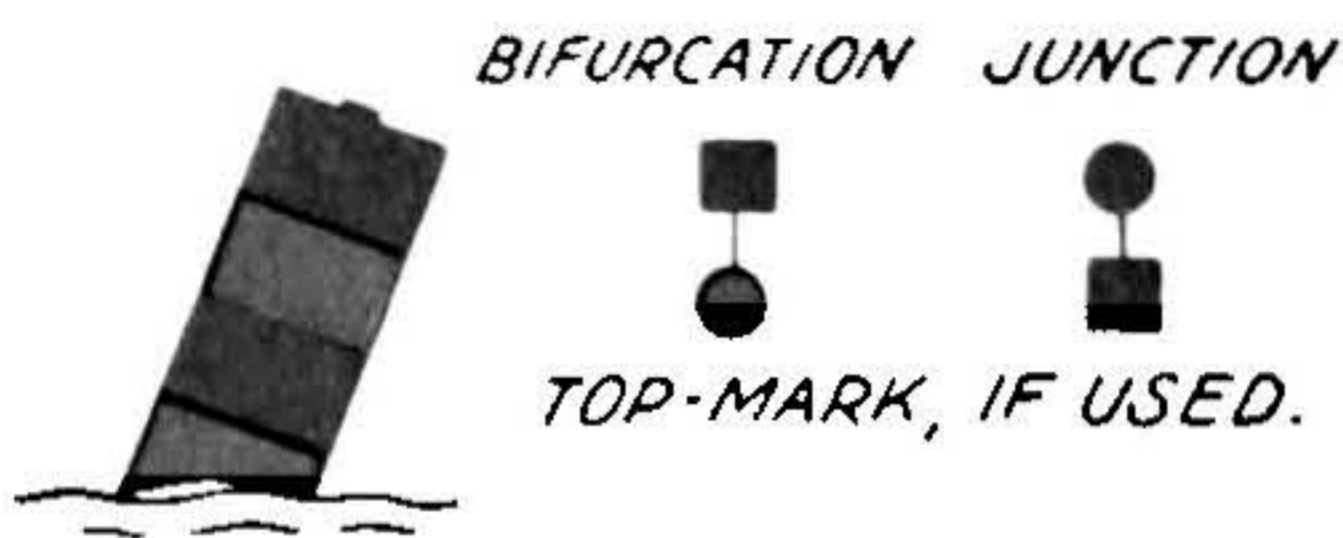


▲  
TOP-MARK,  
IF USED.

OR CHEQUERED BLACK AND WHITE  
WHITE OR GREEN LIGHTS  
ODD NUMBERS ON BUOYS  
ODD NUMBER OF FLASHES

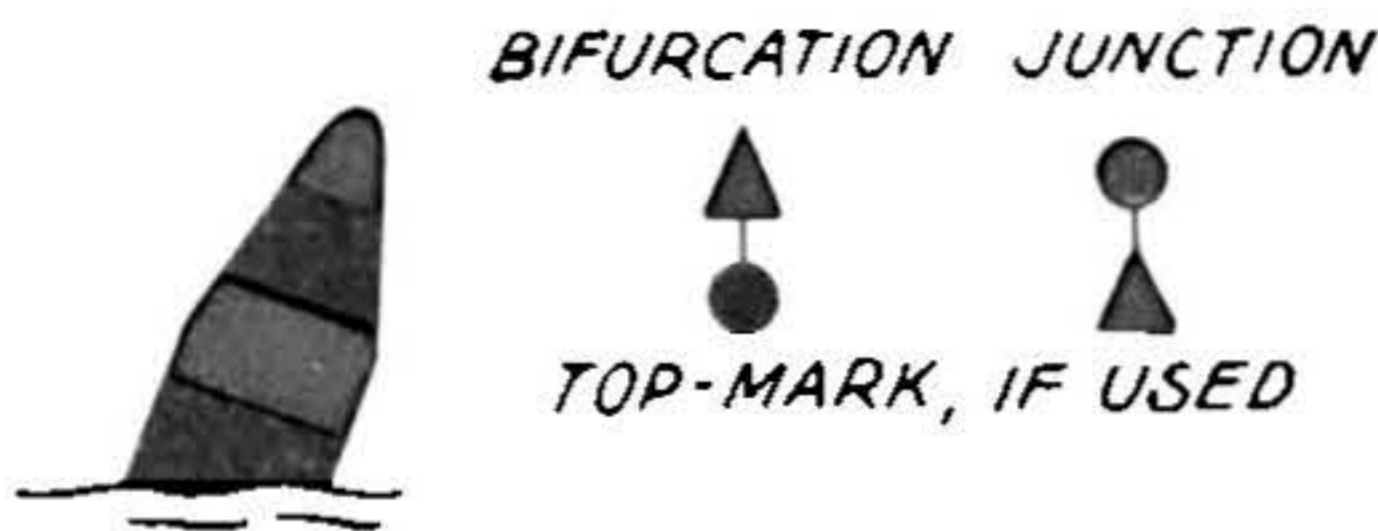
OR CHEQUERED RED AND WHITE  
RED OR WHITE LIGHTS  
EVEN NUMBERS ON BUOYS  
EVEN NUMBER OF FLASHES

## IIa MIDDLE GROUND



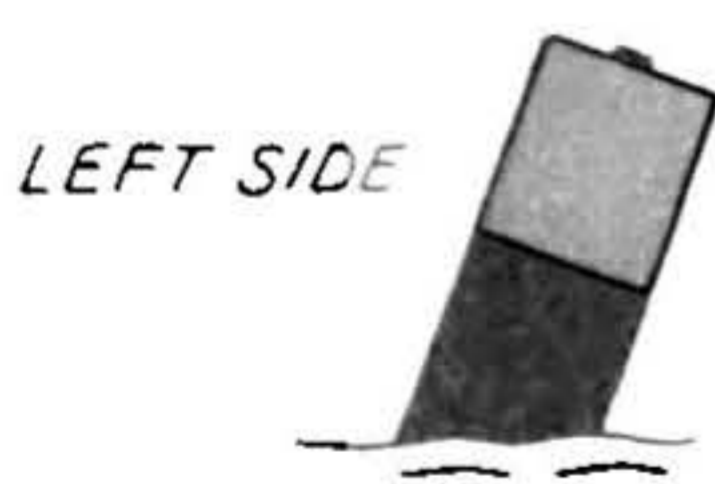
MAIN OR RECOMMENDED  
CHANNEL TO THE RIGHT.

## IIb. ISOLATED DANGER

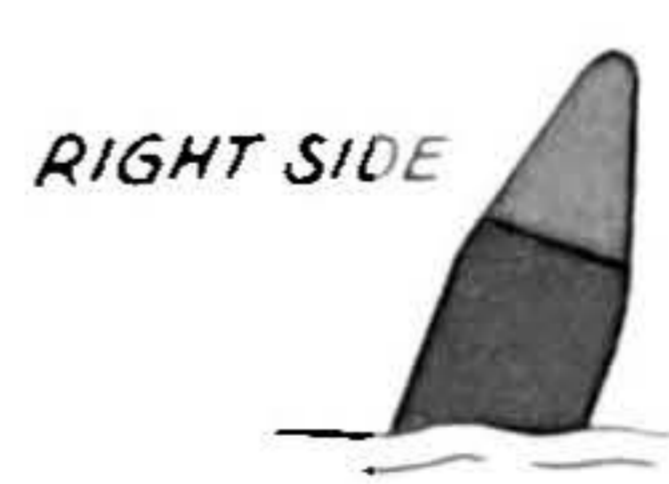


MAIN OR RECOMMENDED  
CHANNEL TO THE LEFT.

## IVa WRECK BUOYS IN THE LATERAL SYSTEM.

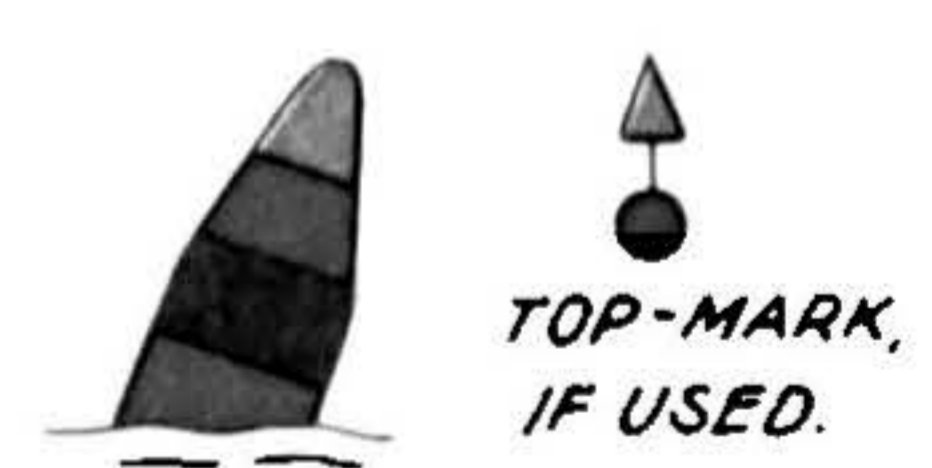
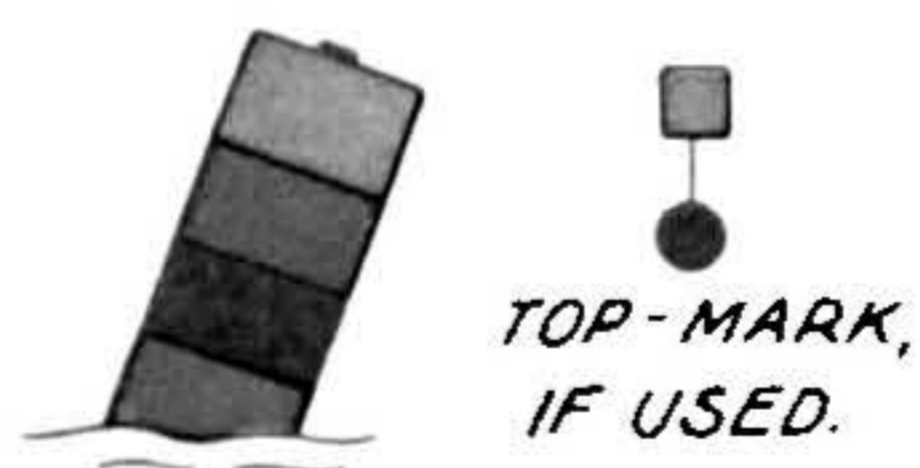


■  
TOP-MARK,  
IF USED



▲  
TOP-MARK,  
IF USED.

## IVb WRECK BUOYS IN THE ISOLATED DANGER SYSTEM.



## V MID-CHANNEL BUOY.



## SPECIAL BUOYS



Note. — The titles numbered in roman numerals correspond to those of the sections similarly numbered in the memorandum.



green will be of colour and significance the same as the top band on the corresponding obstruction buoys.

3. *Wreck-buoys, oriented on the cardinal system.*—These will be the same as for obstruction buoys, oriented in all respects excepting that green will be substituted throughout for red or black as the case may be—that is, the colour will be green and white only.

#### V. MID-CHANNEL BUOYS.

Where it is desirable to place a buoy in mid-channel, or in any position where there is good water, free from danger, it is to be marked with vertical black and white stripes, in four cuts, extending continuously from the water-line to the top, including cage work. Such buoys may be passed close to on either side.

No special shape characteristics are prescribed for mid-channel buoys.

Numbers will not be used on mid-channel buoys, but they may carry names or letters.

No special light characteristics are prescribed for mid-channel buoys.

It is to be noted that vertical stripes are a characteristic of good water, indicating mid-channel or a landfall, and are reserved exclusively for these purposes.

#### VI. SPECIAL BUOYS.

Anchorage buoys, marking the limits of areas for anchorage, are to be white, excepting for quarantine anchorage buoys, which are to be yellow.

Buoys marking submarine cables and pipe-lines are to be blue.

Buoys marking lightship stations should be placed in close proximity to the lightship station, and be coloured in a manner similar to the lightship, and bear suitable descriptive letters.

No special shape characteristics are prescribed for the above special buoys.

No special buoys or other signals shall be given characteristics that are likely to be confused with the signals prescribed herein.

[C.B.E. /9.]

### 3. PROPOSALS OF THE BRITISH DELEGATION.

1. The delegation of the United Kingdom and Northern Ireland has studied with great care the report of the Technical Committee on Buoyage and Lighting of Coasts. It is desirous of assisting towards the international uniformity aimed at, but finds itself unable to agree with a number of the proposals contained in the report. After careful consideration, the delegation has formulated certain proposals as to the characteristics of buoys and their lights in the lateral system and desires to place them before the Conference. These proposals are as follows :

#### 2. UNLIGHTED STARBOARD-HAND SIGNALS.

To be conical in shape, painted black,<sup>1</sup> and, if for purposes of differentiation a topmark is carried, it should be conical in shape, painted black, and the buoy should, if necessary, be named and or lettered or numbered with odd numbers in the direction of the main stream of flood tide.

#### 3. UNLIGHTED PORT-HAND SIGNALS.

To be flat-topped or cylindrical in shape, painted red,<sup>1</sup> and, if for purposes of differentiation a topmark is carried, it should be cylindrical or cage and be painted red, and the buoy should, if necessary, be named and or lettered or numbered with even numbers in the direction of the main stream of flood tide.

#### 4. SIGNALS IN SECONDARY CHANNELS.

To conform in shape to signals in main channels and to be painted plain black or black and white chequers (starboard hand) and plain red or red and white chequers (port hand).

The use of chequers where required should not be limited to secondary channels, but should also be extended to main channels.

#### 5. LIGHTED STARBOARD-HAND SIGNALS.

Each to be a white flashing light showing an odd number of flashes up to three—viz., one or three flashes.

#### 6. LIGHTED PORT-HAND SIGNALS.

Each to be a red flashing light showing any number of flashes up to four—viz., one, two, three or four flashes—or a white flashing light showing an even number of flashes up to four—viz., two or four flashes.

<sup>1</sup> But see also under "Signals in Secondary Channels".

## 7. UNLIGHTED SIGNALS FOR BIFURCATION, JUNCTION AND ENDS OF MIDDLE-GROUNDS.

To be spherical in shape and differentiated as follows :

At outer ends of middle-grounds when main channel is *to the right* : red buoy with white horizontal bands.

Topmark (if required) : cage or cylindrical, painted red.

At outer ends of middle-grounds when main channel is *to the left* : black buoy with white horizontal bands.

Topmark (if required) : conical, painted black.

At inner ends of middle-grounds when main channel is *from the right* : red buoy with white horizontal bands.

Topmark (if required) : two cones (apex to apex) painted red.<sup>1</sup>

At inner ends of middle-grounds when main channel is *from the left* : black buoy with white horizontal bands.

Topmark (if required) : two cones (base to base) painted black.<sup>1</sup>

For channels of *equal importance* : buoys to be painted red with white horizontal bands at both ends of middle-grounds, and to be surmounted by a globe (or sphere) topmark painted red at the outer end and black at the inner end of the middle-ground.

## 8. LIGHTED SIGNALS FOR BIFURCATION, JUNCTION AND ENDS OF MIDDLE-GROUNDS.

The lights to be as follows :

At outer ends of middle-grounds when main channel is *to the right* : five red flashes.

At outer ends of middle-grounds when main channel is *to the left* : five white flashes.

At inner ends of middle-grounds when main channel is *from the right* : a group of two flashes alternating red and white.<sup>2</sup>

At inner ends of middle-grounds when main channel is *from the left* : a group of two flashes alternating white and red.<sup>2</sup>

At outer ends of middle-grounds when channels are of *equal importance* : five red flashes.

At inner ends of middle-grounds when channels are of *equal importance* : a group of two flashes alternating white and red.<sup>2</sup>

*Note.*—If, owing to the form of buoyage illumination in use, it is not reasonably practicable to adopt these lighted signals, occulting lights may be used on buoys marking bifurcations, junctions and ends of middle-grounds, provided that proper notice is given of the system actually in force.

## 9. SIGNALS IN THE MIDDLE OF A CHANNEL.

Shape to be as far as possible distinctive—*e.g.*, pillar buoys. Painting to be red with white vertical stripes or black with white vertical stripes. Topmarks optional, but, if carried, to be globe (or sphere).

## 10. BUOYAGE OF WRECKS.

I. Green shall be the colour for all purposes connected with wreck-marking—*viz.* :

For lights, buoys, balls, shapes, flags, wreck-marking vessels, etc.

II. Green colour should not be used :

(a) For floating lights other than the green starboard side-light carried by ships under way ;

(b) For buoys or other markings afloat not used for wreck-marking purposes.

Wreck-marking vessels and buoys shall have the word "Wreck" or corresponding indication painted in white letters on a green ground on their sides.

When a wreck-marking buoy is used it shall be of one of the following shapes, and (if a light is carried) it shall be lighted in one of the following manners, to indicate to the mariner on which hand he should pass the buoy :

(a) To be passed on the mariner's port hand :

Shape : flat-topped or cylindrical.

Light : if lighted, a green light giving two flashes.

(b) To be passed on the mariner's starboard hand :

Shape : conical.

Light : if lighted, a green light giving three flashes.

<sup>1</sup> The area of the two cones (base to base or apex to apex) not to be greater than that of the cage or globe.

<sup>2</sup> The period in the case of these double alternating characters to be thirty seconds.

- (c) To be passed on either side :  
Shape : spherical.  
Light : a green light giving one flash.

Topmarks to be optional, but, if carried, should be conical on the starboard hand, cage or cylindrical on the port hand, globe (or sphere) when vessels can pass on either side.

## II. OTHER BUOYAGE SIGNALS.

*Isolated Danger Signals.*—Shape to be spherical. Colour to be red above and black below with a white dividing band. Topmark to be optional, but globe (or sphere) if used. If a light is carried, it should be white or red rhythmic.

*Landfall Signals.*—To be painted in black and white vertical stripes.

*Special Buoys.*—Quarantine buoys to be painted yellow.

Buoys painted yellow above and black below may be used for marking outfalls, deposit, areas, etc.

Black or other colours (except green) may be used for mooring-buoys.

Black colouring with the word "Telegraph" in white letters may be used for submarine telegraph buoys.

## 12. GENERAL.

(a) If, owing to local conditions, the foregoing proposals cannot reasonably be carried out, they may be departed from, but such departures from the system should be as slight as possible and proper notice of them must be given to mariners.

(b) The use of fixed lights on buoys is strongly deprecated.

(c) The use of double topmarks is not advocated.

[C.B.E./5.]

## 4. PROPOSALS AND OBSERVATIONS BY THE SWEDISH DELEGATION WITH REGARD TO THE GENERAL REPORT AND THE PROPOSALS MADE BY THE TECHNICAL COMMITTEE, ADOPTED AT GENOA ON FEBRUARY 15th, 1929.

### I. CHARACTERISTICS OF THE LATERAL BUOYAGE SYSTEM.

#### *Signals on Banks or Danger Signals, to Port or to Starboard.*

##### *Sections 1 and 2.*

For technical and economical reasons, the Swedish delegation must, with regard to the expression "whenever their structure so permits", reserve their right to interpret it with extensive freedom as regards the application to forms of lightbuoys.

##### *Section 4.*

In connection with what is indicated later on in this memorandum with regard to sector lights, the Swedish delegation demands under "Special Provisions", Part I, and also under Part III, "Buoyage of Wrecks", an addition to the effect that, in waters in which, according to the stipulations on page 29 of the report of the Technical Committee, a certain freedom is granted concerning sector lights,<sup>1</sup> corresponding freedom should be granted with regard to ordinary lightbuoys or wreck lightbuoys. Otherwise, it will not be possible to arrange for satisfactory lighting of the channels and inner passages of the intricate Swedish archipelagoes.

#### *Special Provisions.*

A further addition is also demanded—*i.e.*, that, after the words "Conical topmarks to starboard may be replaced by conical topmarks point downwards" should be added the words, "and dark in colour (brooms)". The word "brooms" should be added in order to explain briefly the reason for this exception.

### II. CHARACTERISTICS OF THE CARDINAL BUOYAGE SYSTEM.

The illustration on page 35 of the report visualising the cardinal system proposed by the Technical Committee does not correspond with the fundamental rules for the said system, as shown on page 17, a fact which has caused serious misunderstandings and given rise to critical comments. The illustration ought to have represented exactly the same signals as those described in the text of the fundamental rules.

<sup>1</sup> *I.e.* : "They should be placed according to an invariable rule, account being taken of local conditions".

The exceptions allowed from these principles (page 24) ought, if they are maintained in the future, to be explained by a special illustration, the possibility of a misunderstanding thus being removed.

The said exceptions, which involve a reversal of the colours of the signals to the east and to the south of the shoals, have, contrary to the decision which was taken by the Technical Committee, been formulated in the issued text (page 24) as compulsory when topmarks are not used. The resolution to be found on page 17 was that the exception should in any event be regarded as a concession.

If the rule laid down on page 24 is accepted as compulsory, it will not be possible to arrange for satisfactory buoyage in countries where spars are generally used instead of ordinary buoys. The Swedish delegation demands that the regulations in question, in the event of their being maintained, should be in the nature of an exception and not of a recommendation.

It is often a question whether such a concession (special rule) would really be to the advantage of a future international system of buoyage. All sailors know that the habit of seagulls of using buoys as a resting-place very soon causes the upper part of the latter to become white. One need only glance at buoys in the cardinal system which are painted according to the fundamental rule and those which are painted in conformity with the exceptional rule for the great inconvenience of the said exceptional rule to be immediately understood. The buoys painted according to the fundamental principles can always be distinguished one from the other, even if the tops of the buoys should become white on account of the seagulls; but the buoys painted in conformity with the exceptional rule will, under the same circumstances, be confused with one another—*i.e.*, the buoys to the north of the shoals with those to the east, and the buoys to the south with those to the west. The exception must therefore be considered as dangerous and should consequently be excluded.

One of the reasons why the said exception was inserted was that some of the members of the Committee were anxious to be able to give the wreck-buoys in the open sea a purely cardinal character, even without the use of topmarks.

It is doubtful if this line of section is correct with regard to the whole buoyage system. It would seem preferable to solve the problem in another manner.

If it is considered important to maintain the cardinal character of the buoyage of wrecks (there is here no question of the lateral wreck-buoyage) either topmarks should be used, or there should be only two signals—one to be used in the direction north-east from the wreck, and the other in the direction south-west. In Scandinavian waters, which are often very narrow, the latter system has been employed for a considerable time and has proved quite satisfactory.

For the reasons stated above, the Swedish delegation proposes that the exceptional rule and also the question of the cardinal buoyage of wrecks should be discussed in detail by the Conference.

#### *Unification of Lighthouse Signs.*

The text of paragraph 2 (c), according to which "mixed characteristics, etc., are no longer admissible", is in contradiction to the text of paragraph 2 (c) on page 10, where it is stated that those characteristics "must be progressively eliminated". This last wording is to be preferred, and the Swedish delegation demands the adoption of this wording.

During the deliberations of the Technical Committee it was emphasised by the Swedish delegate that the sector lights in the Swedish archipelagoes could not be subordinate to the rules indicated on page 16. The members of the Committee realised the necessity of exceptions to the fundamental principles with regard to the said lights, with the result that the last two sentences of paragraph 2 (f), page 29, were introduced.

Further examination of these last two sentences has shown that the exception allowed must be extended by an additional exception. The Swedish delegation therefore demands that the countries who make use of the exceptions allowed in paragraph 2 (f) may also be authorised to use the same exceptions with regard to small sector lights.

[C.B.E./6.]

## 5. OBSERVATIONS BY THE NORWEGIAN DELEGATION CONCERNING THE GENERAL REPORT AND PROPOSALS OF THE TECHNICAL COMMITTEE.

### A. BUOYAGE AND SPECIAL BUOYS.

1. *Fixed marks.*—In Norway, the majority of fixed marks are iron poles set in holes drilled in the rock. They are painted black, this colour having proved the most practical. Black retains its colour well, and, when visibility is bad, it is fairly distinguishable against the sea, the sky or land covered by snow.

Other fixed marks (iron pillars, beacons of wood, iron or stone) are, for the most part, painted black with horizontal or vertical white bands in some cases.

Experience has shown this rule for the colouring of fixed marks to be most suitable for Norwegian waters, and the Government desires to retain it.

Fixed marks are, when possible, supplied with arms pointing towards the fairway.

2. *Floating marks.*—In Norway, the majority of floating marks are simple wooden spars, consisting of a single tree-trunk. For economical reasons, the Norwegian Government wishes to continue this practice.

These spars do not permit of any variation in shape. It is therefore impossible to adapt them to conform to the regulations laid down for various kinds of buoys.

The use of topmarks is, as a rule, not desirable, as experience has shown without doubt that spars can better be relied upon to remain in place when not provided with topmarks. The special character of the Norwegian coast, with regard to the depth of the water and the nature of the seabed, formation of ice and the exposed position of the spars are important factors.

The only distinction which remains is that of colour.

The type of spar which has proved most suitable is short and thick. It does not rise high above the surface and it is therefore not practicable to use multicoloured marks. We have experimented with spars having a white band, but have been obliged to abandon this practice, since, under certain weather conditions, the spars are submerged in such a way that the white band cannot be distinguished.

In Norway, it has been found that black and red are the two best colours for these marks and it is considered that only these colours should be used.

Floating spars are either entirely black or red. Only a small number, indicating mid-channel shoals of small extension, have horizontal red and black bands.

The Norwegian buoyage system is, therefore, based on the two or three types of marks indicated above.

It should be mentioned that, a few years ago, the regulations concerning buoyage on the Norwegian coast were revised and submitted to a very careful investigation. The general opinion of the interested parties is that the principles resulting from this investigation are well adapted to existing conditions.

The principles adopted are based on a combination of the lateral system and the cardinal system, the colouring of the floating marks being arranged in such a way that vessels arriving from the North Sea and entering the coastal waters at the south-west will, during the voyage northwards (or to Oslo), steer a main course from south to north (or from west to east), always having black spars on the starboard side and red spars on the port side. This is truly a lateral system.

In accordance with this rule, black spars must be used to the west and north of shoals and rocks; red spars to the south and east. This rule also applies to shoals, etc., lying off the coast or in the middle of fairways. This is the cardinal system.

In other words, the colours employed in the cardinal system to the west and north are the same as in the lateral system for starboard.

This system is eminently suited to the conditions of the Norwegian coast, and the Government wishes to retain it.

Careful note has been taken of the fact that the Technical Committee has laid down rules allowing a certain amount of freedom with regard to shape and topmarks, but providing compulsory measures with regard to a large number of different types will still be necessary. Moreover, generally speaking, there are at present so many important deviations from the proposals, caused partly by local and partly by economic considerations, that the authorities do not consider it advisable at the present time to attempt to adapt the Norwegian system to the proposed international rules.

The compulsory differentiation by colour, as laid down in the proposal, will, indeed, not be possible in a combination of the lateral and cardinal systems as explained above, a combination which is so well suited to the characteristic features of the Norwegian coast. (The proposed cardinal system has not, for example, the same principal colour for the west as for the north.)

Finally, it should be mentioned that such a large number of types of marks is not necessary on the coast of Norway. The shoals and sunken rocks lie so near the land that, as a rule, bearings can easily be taken by means of islands, skerries, lighthouses, fixed marks, etc. The only object of buoyage in these waters is to indicate the position of obstacles.

## B. LIGHTHOUSE SIGNS.

The Technical Committee states that it does not intend to lay down absolute rules or to prescribe any immediate alterations in existing provisions which might be contrary to its proposals. Its object was rather to provide rational and uniform directions for the organisation of entirely new lighting systems, or for the amelioration of older systems, by a judicious allocation of available characteristic signs.

The Norwegian Government fully appreciates this object, and agrees to many of the directions and recommendations of the proposal. As regards some of the points, however, the authorities at present apply, and will continue to apply, principles distinct from those adopted by the Committee. This is a consequence of the peculiar conditions on the Norwegian coast.

Generally speaking, the Norwegian Government is able to agree upon the preferential order which is recommended by the Technical Committee with regard to the characteristics of the main landfall lights, and for landfall lights of lesser importance. During the last thirty years the Norwegian Government has been definitely working in this direction, gradually altering landfall lights according to the principles now laid down by the Technical Committee. We have, however,

a number of lights whose characteristics do not correspond to those contained in the proposal, and which cannot, for financial reasons, be altered in the near future.

The Norwegian Government must also make the reservation that, as several Norwegian landfall lights serve at the same time as entrance lights, they have to be—according to the nature of the seaway—sector lights with occulting white light in the fairway sectors and quick-flashing or rather quick-occulting light in the danger sectors. In these cases the characteristics recommended by the Technical Committee cannot be introduced.

There are, on the Norwegian coast, an increasing number of minor sector lights, which are, as a rule, unwatched. White lights are used in the fairway sectors and red or green in the danger sectors. In the most important danger sectors, red lights are usually used, without regard to the position of these sectors in relation to that of the white sectors. The reason is that red light has a greater visibility and is more easily distinguishable than green. Other danger sectors have green lights, and provisions have been made with regard to the distribution of red and green sectors in such a way as to avoid confusion. It is therefore not possible to establish an invariable rule for these sector lights in the manner suggested in the proposal.

Experience has proved that the principles mentioned above are well suited to conditions on the Norwegian coast, and the authorities are not prepared to abandon them.

Due note has been taken of the remaining proposals and recommendations of the report.

[C.B.E./8.]

## 6. OBSERVATIONS BY THE DANISH DELEGATION CONCERNING THE GENERAL REPORT AND PROPOSALS OF THE TECHNICAL COMMITTEE.

Denmark has, in proportion to her inconsiderable size, a very long coast-line which, on account of its character, demands a large amount of buoyage.

Almost every year we may reckon on a greater or smaller part of this buoyage being completely destroyed by ice, and in the more severe icy winters, about every three years, the entire buoyage in our waters is utterly wiped out. It will therefore be understood that Denmark has been compelled to make use of a system which is both satisfactory as buoyage, easy to manage and comparatively inexpensive. The great majority of the topmarks of our day beacons consists of brooms of twigs and bundles of straw. The price of such topmarks is very low; but, if we should go in for topmarks as in the proposed system, this would be tantamount to an expense about thirty times as great as that now incurred every time it was necessary to renew the topmarks after the breaking up of the ice. In addition to this, it would be necessary to furnish the various depots with many kinds of topmarks, whereas, by the existing method, it is sufficient to have a certain quantity of twigs and bundles of straw at each station.

Our system—despite minor defects—has always been satisfactory, and it would not be desirable to change over to a system less adaptable to our waters and considerably more expensive.

Finally, one must not under-estimate the great expenses the alteration of charts, nautical books and documents would entail.

Hence I am of opinion that, from an economical point of view also, it would be undesirable to introduce the proposed system for day buoyage, and that an alteration in the night buoyage would, as far as Denmark is concerned, have considerable financial consequences which I will mention later on.

With regard to the proposals of the Committee, may I be permitted to offer the following remarks?

### I. CHARACTERISTICS OF THE LATERAL BUOYAGE SYSTEM

The proposal would be convenient in the case of Denmark to the extent that, at present, we use red to starboard and half-white and black to port, from the point of view of the mariner arriving from the open sea.

As I shall mention later on, we can, however, scarcely agree to the Committee's proposal as to red lights to starboard for inward-bound vessels; but, in order to get an agreement between the colours for day and night buoyage, there might perhaps be a possibility of Denmark, although with serious misgivings, being able to agree to an exchange of starboard and port day marks.

To paint numbers on the sea-marks must be considered unpractical at most places and, in the case of the principal waters, superfluous. Such a measure would render the rapid exchange or setting up of sea-marks difficult and cause unnecessary expense. As regards our inner waters, it could not be done at all, as the sea-marks here are stakes and have no shape above water.

With regard to topmarks, we are of opinion that cylindrical and conical topmarks are not suited for use in our waters, as has already been explained. At the Conference at Stockholm in 1926, it was mentioned that birch brooms might take the place of cones and that cylinders might also be formed of birch twigs. We do not think that this can be done, as, *inter alia*, such topmarks cannot be painted. Finally, attention must be drawn to the circumstance that the sea-marks

in several Danish waters are so contrived that fishing-nets can drift over them. This can be done with our present system, but would not be possible with the proposed topmarks.

As regards the lateral system of buoyage, we think it essential that it should be permissible to repeat the topmarks on starboard as well as port marks one, two or three times without regard to the situation in the waters; as the sea-marks we employ cannot, as mentioned, be furnished with numbers in the inner waters.

To paint sea-marks like a checker-board must be considered unpractical, nor would it be advisable to introduce a further buoyage system for secondary channels.

Denmark does not consider it advisable to change over to a system under which a red light would be used to starboard for inward-bound vessels. Even if the Committee's arguments in favour of such a system are perhaps theoretically correct, I think it is difficult to ignore a seaman's tradition so deeply rooted in the old seafaring countries. But, even if this were to be ignored, the system would, in the case of Denmark, be very onerous, as in this country we to an extensive degree employ lights with coloured sectors. Thus a change would have to be made in about fifty sector lights, and seventy-five harbour lights would have to be altered to opposite colours. This would entail very considerable work and expense and create insecurity for shipping for a long time.

In Denmark, we have adopted the use of green lights exclusively on lightbuoys for the buoyage of wrecks, whereby confusion between the buoyage of wrecks and the buoyage of the waters is avoided. We should hesitate to revert to green lights on lightbuoys for the buoyage of the waters.

We consider the proposed system far too complicated, and are of opinion that seamen would hardly be able to understand it as a system. At sea, everything ought to be as simple as possible, and I am of opinion that several simple systems, even with certain defects, are preferable to a unified system which, owing to its comprehensive character, is bound to be complicated, even if it is logically constructed, as the proposed system admittedly is. With regard to the proposed "bifurcation and junction signals", such buoyage would not be practicable in our waters, but is, I believe, suitable for rivers and similar channels, where the navigator is guided by the established sea-marks to a greater extent than when navigating in open water. It would be impracticable in our waters to indicate bifurcations and junctions, and the seaman would consult his chart as to which channel he should choose, which would depend *inter alia*, on the draught of his vessel.

## II. CHARACTERISTICS OF THE CARDINAL BUOYAGE SYSTEM.

As we are of opinion that the lateral system is most practicable in our waters and, therefore, do not wish to make use of the cardinal system—at any rate, not to any great extent—I shall not go more closely into the "cardinal system" proposed by the Committee, but merely mention it in connection with the buoyage of wrecks.

## III. BUOYAGE OF WRECKS.

According to the proposed system, a green light must not be used for the buoyage of wrecks to be passed on the starboard side of the vessel, while the green light is to be normally used if the wreck is to be passed on the port side.

Denmark does not wish to agree to such an arrangement.

As previously mentioned, we in Denmark make use of the principle to reserve a green light on light buoys for the marking of wrecks, and the meaning of this is quite clear, because seamen, on meeting with a green lightbuoy with a green light, knew that they are near a wreck.

It must be borne in mind that wrecks are in most cases buoyed without previous notice. They are constantly changing and are not indicated on the charts, and, as seamen are thus often ignorant of the presence of a wreck, they ought immediately to be able to recognise a wreck-buoy. The system should be so simple and easily recognisable as to fix itself firmly in the memory of the seamen.

For similar reasons, we are of opinion that the proposed "cardinal system" for the buoyage of wrecks is not advisable either. The proposed combinations of green and white are very similar; they cannot be remembered and this will give rise to mistakes. The colour-effect will, in practice, be quite different from what appears in the Committee's coloured drawings, for the lightbuoy will lie on a far deeper water-line than shown in the drawing, and many lightbuoys will have only an inconsiderable portion of the float above water, in which case only a comparatively small part of the frame can show the colour.

To paint a particular sign on wreck lightbuoys cannot be considered necessary, and this would entail having at one's disposal a large number of reserve lightbuoys ready for the buoyage of wrecks. With us a lightbuoy is taken on board at short notice and painted green on the way to the site of the wreck, and it would delay the placing of the buoy, if, in addition, a particular sign had to be painted on it.

In Denmark, in virtue of an agreement with Sweden regarding the buoyage of wrecks in the Sound, we make use of a very clear and simple system—a green lightbuoy with two green flashes and a wreck-buoy with two green leather flags signifying that the buoyage is situated in the quadrant north-east of the wreck, while one green flash and one green flag signifies that the buoyage is situated in the quadrant south-east of the wreck.

SECTION II. — NOTES SUBMITTED TO THE CONFERENCE.

[C.B.E./2.]

1. DESCRIPTION OF A UNIFORM SYSTEM OF BUOYAGE AND OF MARKING WRECKS IN THE BRITISH ISLES, COMMUNICATED BY THE BRITISH DELEGATION.

1. The mariner, when approaching the coast, must determine his position on the chart, and must note the direction of the main stream of flood tide.

For the waters in the undermentioned districts the direction of the main stream of flood tide shall, for the purpose of this system of buoyage, be deemed to be as follows :

- |   |  |
|---|--|
| (a) English Channel, North and East Coasts of Great Britain (excluding the Moray Firth, Firth of Forth and the Wash), the Pentland Firth, and between the Orkney and Shetland Islands.                      | } Towards the Estuary of the Thames.   |
| (b) The St. George's Channel and Irish Sea (excluding the Bristol Channel) and on the North Coast of Ireland (Tory Island to Rathlin Island) and South Coast of Ireland (Skelligs Rocks to Carnsore Point). | } Towards the Solway Firth on the east and towards Lough Strangford on the west. |
| (c) West Coast of Ireland from Skelligs Rocks to Tory Island.   | } To the northward.  |
| (d) West Coast of Scotland, North of Mull of Cantyre, including the Hebrides.   | } Towards Cape Wrath.  |
| (e) East and West Coasts of Orkney and Shetland.  | } To the southward.  |

2. The term "starboard hand" shall denote that side which would be on the right hand of the mariner either going with the main stream of flood or approaching a harbour, river or estuary from seaward ; the term "port hand" shall denote the left hand of the mariner under the same circumstances.

3. Buoys showing the pointed top of a cone above water shall be called "conical", and shall always be starboard-hand buoys as above defined.

4. Buoys showing a flat top above water shall be called "can", and shall always be port-hand buoys as above defined.

5. Buoys showing a domed top above water shall be called "spherical", and shall mark the ends of middle-grounds.

6. Buoys having a tall central structure on a broad base shall be called "pillar buoys", and like other special buoys such as bell-buoys, gas-buoys, automatic sounding buoys, etc., shall be placed to mark special positions either on the coast or in the approaches to harbours, etc.

7. Buoys showing only a mast above water shall be called "spar buoys."

8. Starboard-hand buoys shall always be painted in one colour only.

9. Port-hand buoys shall be painted of another characteristic colour, either single or particolour.

10. Spherical buoys at the ends of middle grounds shall always be distinguished by horizontal stripes of white colour.

11. Surmounting beacons, such as staff and globe, etc., shall always be painted of one dark colour.

12. Staff and globe shall only be used on starboard-hand buoys ; staff and cage on port hand ; diamonds at the outer ends of middle-grounds, and triangles at the inner ends.

13. Buoys on the same side of a channel, estuary or tideway may be distinguished from each other by names, numbers or letters, and, where necessary, by a staff surmounted with the appropriate beacon.

14. Buoys intended for moorings, etc., may be of any colour (other than green) and shape, according to the discretion of the authority within whose jurisdiction they are laid, but for marking submarine telegraph cables the colour shall be black, with the word "Telegraph" painted thereon in white letters.



## BUOYING AND MARKING OF WRECKS.

### PART I.

#### *Preliminary.—Caution.*

15.—(a) While it may be assumed that care is taken to moor or anchor wreck-marking vessels and buoys securely and, when lights are used, to fit them with efficient lighting apparatus, yet mariners should not place undue reliance on wreck-marking vessels and buoys being maintained in position or on their lights, as, through heavy weather or other causes, they are liable both to drag their moorings and to break adrift, and their lights are liable to be extinguished.

(b) Mariners should regard these marks and lights merely as aids to navigation, and, while observing all proper precautions, should give due heed to information contained in Notices to Mariners or to messages received by wireless telegraphy or telephony as to the position and bearings of a wreck, and they should not assume that a wreck has been removed from the position given by such notice or message merely because it may not be marked.

16. When two or more vessels and/or buoys are used to mark a wreck, a mariner should not attempt to pass between them.

17. Mariners should always give a wreck-mark a wide berth.

#### *Colour for Wreck-Marking Purposes.*

18.—(a) Green shall be the colour for all purposes connected with wreck-marking—viz. :  
For lights, buoys, balls, shapes, flags, wreck-marking vessels, etc.

(b) Green colour should not be used—

(i) For floating lights other than the green starboard side-light carried by ships under way.

(ii) For buoys or other markings afloat not used for wreck-marking purposes.

19. Vessels and buoys shall have the word "Wreck" painted in white letters on a green ground on their sides.

### PART II.

#### *For the Open Sea.—General.*

20. Throughout the following regulations the words "Port hand" and "Starboard hand" refer to the definition of those words in Regulation 2, and they are to be read in accordance with Regulations 1 to 5 inclusive.

21.—(a) A light on a wreck-marking vessel shall be carried in a lantern so constructed as to show a clear and unbroken light visible all round the horizon at a distance of at least one mile.

(b) If a wreck-marking buoy is lighted, the light shall be carried in a lantern so constructed as to show a clear light visible all round the horizon at a distance of at least one mile.

(c) The word "visible", when applied to lights, shall mean visible on a dark night with a clear atmosphere.

#### *Shapes and Characteristics of Wreck-Marking Buoys.*

22. When a wreck-marking buoy is used it shall be of one of the following shapes, and (if a light is carried) it shall be lighted in one of the manners following, to indicate to the mariner on which hand he should pass the buoy :

(a) To be passed on the mariner's port hand :

Shape : can.

Light : a green light giving two flashes.

(b) To be passed on the mariner's starboard hand—

Shape : conical.

Light : a green light giving three flashes.

(c) To be passed on either side.

Shape : spherical.

Light : a green light giving one flash.

#### *Characteristics of Wreck-Marking Vessels.*

23. When a wreck-marking vessel is used it shall carry the lights and shapes and give the sound signals following, to indicate to the mariner on which hand he should pass the vessel—viz. :

##### *A. Lights—*

(i) Between sunset and sunrise to carry the following lights :

(a) To be passed on the mariner's port hand : two green lights in a vertical line not less than 6 feet apart from the end of a cross-yard, the lower light to be of a height not less than 15 feet above the hull.

(b) To be passed on the mariner's starboard hand : three green lights in a vertical line not less than 6 feet apart from the end of a cross-yard, the lowest light to be of a height not less than 9 feet above the hull.

(c) To be passed on either side : four green lights, two in a vertical line one over the other, not less than 6 feet apart, on each end of a cross-yard with a horizontal distance between the lights at either end of the cross-yard not less than 15 feet and not exceeding 25 feet. The height of the two lower lights to be not less than 15 feet above the hull.

(ii) A wreck-marking vessel shall not carry the ordinary riding light for a vessel at anchor.

B. *Shapes*.—Between sunrise and sunset to carry green balls or shapes corresponding in number and arrangement to the green lights as detailed above.

C. *Sound Signals*.—A wreck-marking vessel during fog, mist, falling snow or heavy rainstorms, whether by day or night, to ring a deep-toned bell at intervals of not more than 30 seconds as follows :

(a) To be passed on the mariner's port hand : two strokes in succession.

(b) To be passed on the mariner's starboard hand : three strokes in succession.

(c) To be passed on either side : four strokes in succession.

### PART III.

*For Narrow Waters and in Rivers, Harbours, Estuaries and the Approaches thereto.*

24.—(a) The regulations for marking a wreck in the open sea (Part II) should be followed, unless the authority having jurisdiction in the locality should in their discretion determine otherwise ; but, if so, the provisions of Regulations 18 and 19 in Part I (Colour for Wreck-Marking Purposes) should be adhered to.

(b)—(i) Where in the discretion of the authority a different method of marking a wreck is adopted, the authority, in the Notice to Mariners which they publish and circulate, shall describe the method of marking, with sufficient particulars to enable the mariner to locate the position of the wreck.

(ii) When a different method of marking a wreck is adopted, if any mark, light or sound signal of the description set out in Part II is used, it shall have the significance attached to it in that part.

[C.B.E./7.]

## 2. VIEWS OF NATIONAL ASSOCIATIONS OF SHIPOWNERS, CONSTITUENTS OF THE INTERNATIONAL SHIPPING CONFERENCE, COMMUNICATED TO THE CONFERENCE BY THE REPRESENTATIVE OF THE INTERNATIONAL SHIPPING CONFERENCE.

### NORWAY.

We are not aware of any practical case proving the necessity of international uniformity of buoyage, etc., nor of anything to show that the present national systems of buoys and lights cause danger to navigation. We therefore feel that endeavours to introduce international uniformity of such systems appear to be based on theoretical rather than practical grounds, and that uniformity would not be worth the expenditure of money involved in an obligatory alteration of existing systems.

We also feel that geographical, hydrographical and climatic, as well as the economic, conditions are so different in the different parts of the world that uniformity of systems is practically impossible. The proposal of the Technical Committee of the League of Nations is, for instance, not applicable on the coasts of Norway.

### DENMARK.

Although not in principle opposed to some international uniformity in buoyage and lighting, we believe that the Technical Committee has not made out a case showing the necessity of introduction of an elaborate scheme, as proposed in its report of February 20th, 1929. In our opinion, an international Convention should only stipulate certain main points to be followed by all countries, whereas details of markings, which in many cases would be dependent on local conditions, should be left to the decision of national authorities.

GERMANY.

German shipowners do not see any necessity, from the nautical point of view, to carry on a study of the report of the League of Nations. As the expenses involved in carrying out the proposal of the report of the League of Nations would be enormous, and the practical effect of it would be hardly feasible, we have invited the Government not to support any proposal for the unification of buoyage and lighting within a fixed period.

GREAT BRITAIN.

The Committee of representative and highly experienced navigating officers adhered to the opinion expressed at their meeting on June 27th, 1919, that no practical case had been made out for the proposals for international uniformity of buoyage, which appeared to be based on theoretical rather than practical grounds; that, so far as they were aware, there was nothing to show that the present national system of buoys and lights caused danger to navigation; that the Governments of those countries who desired a change had not responded to the suggestion of the British Government that they should produce evidence to show that the present system caused either danger or serious inconvenience, and that international uniformity of buoyage and lighting was not worth the expenditure of money and trouble involved in securing it.

The Committee felt that the chief safeguards for shipping were the employment of competent navigators and the provision of accurate charts.

They were, therefore, of the opinion that shipowners should not support any proposal which involves an immediate change of a definite and drastic nature, both on account of the expense involved and of the confusion that must arise from such change; but that, if uniformity is desired, the Lisbon Conference should seek to formulate an ideal system which should be sufficiently elastic to permit of its gradual attainment as existing marks fall due for replacement.

The above arrangement should be accepted as a general ideal, but the right should be reserved to vary this arrangement where local circumstances require it in the interests of safety.

NETHERLANDS.

A small Committee of nautical experts considered the report of the Technical Committee of the League of Nations on Buoyage and Lighting of Coasts.

The Experts' views have been considered by our Board, and, speaking generally, we agree with the British Marine Superintendents' Committee. We fail to see the necessity of alteration of the present system, which has proved to be sufficiently safe and has not caused either damage or serious inconvenience. We are afraid, in spite of the assurance that this will not be the case, that the introduction of uniformity means increase of light dues, where such are levied, or general taxation where not levied. Prospects in shipping business are not favourable and we must do our utmost to prevent new burdens being laid upon our shoulders.

ITALY.

We quite agree as to the necessity of avoiding unnecessary and heavy expenditure by hurrying up international uniformity of buoyage and lighting of coasts; but, on the other hand, we are of opinion that such international uniformity would be desirable and that it should be attained by the formulation, by the Lisbon Conference, of an ideal system which should be sufficiently elastic to permit of its gradual attainment as existing marks fall due for replacement.

SWEDEN.

In our opinion, the most important view to be advocated on behalf of the owners is that any proposed international regulations should not—in the form of increased light dues, etc.—add to the already heavy charges on shipping.

FINLAND.

No alteration of marks is necessary or desirable, where such would either involve extra expenses to the different countries or lead to confusion or disastrous mistakes.

JAPAN.

*Telegram received during the Conference from the Nippon Shipowners' Association of Japan.*

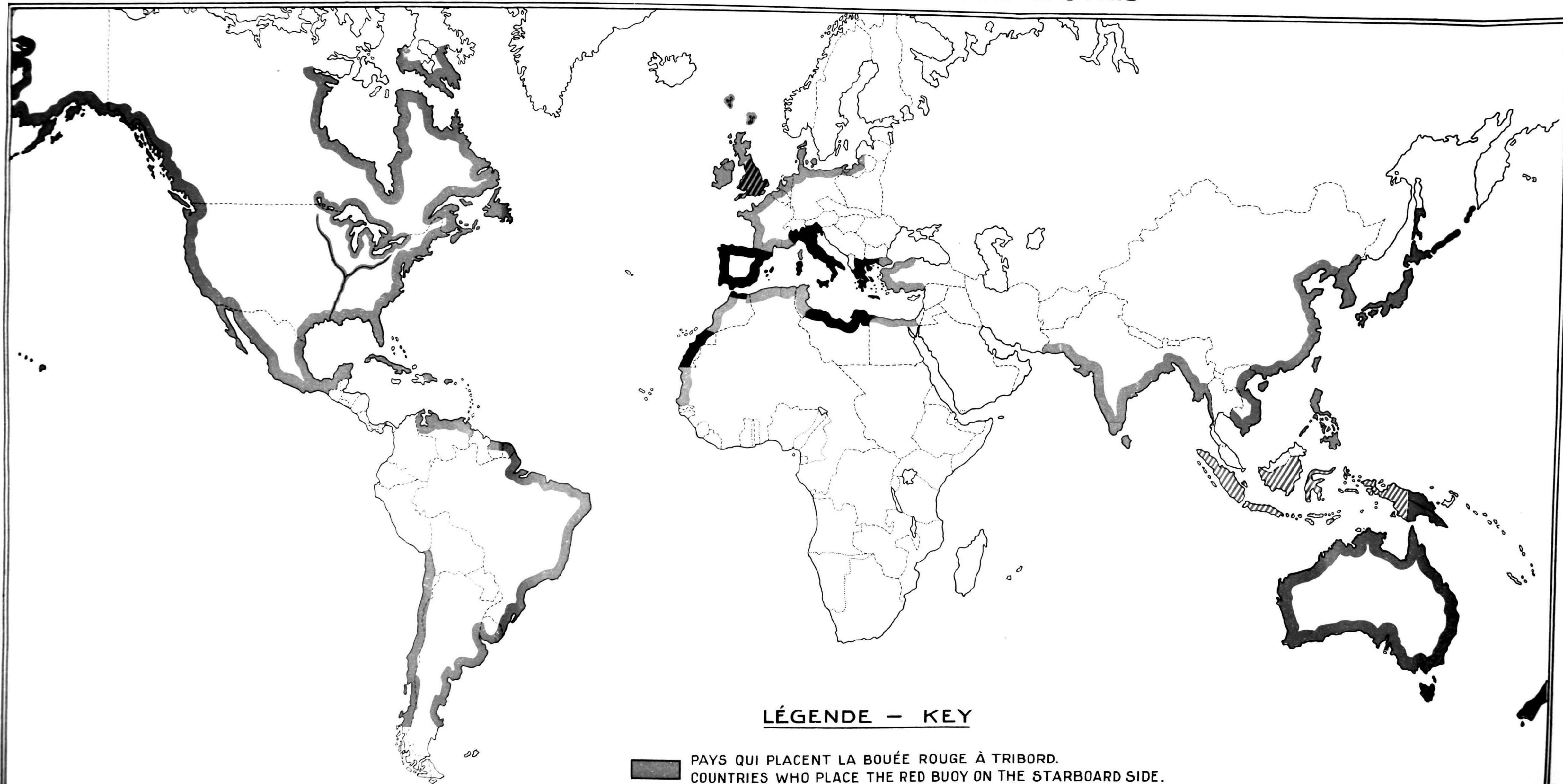
"Disagree with changing present system used by most maritime countries for years. Otherwise, it involves enormous expense. Liable to accidents. Desire take present system as standard."

PERSONAL OPINION OF SIR ALAN ANDERSON.


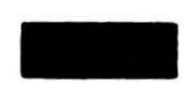
(Sir Alan Anderson was appointed in 1924 to represent the views of the International Shipping Conference on current questions to the League from time to time.)

"I see the Marine Superintendents still advise that there is no good reason to unify the various national systems of buoyage and lighting. I quite agree with them. I think it would involve much expense and confusion, which in sea terms means loss of life and property."

# CARTE DU MONDE - CHART OF THE WORLD



## LÉGENDE - KEY

-  PAYS QUI PLACENT LA BOUÉE ROUGE À TRIBORD.  
COUNTRIES WHO PLACE THE RED BUOY ON THE STARBOARD SIDE.
-  PAYS QUI PLACENT LA BOUÉE ROUGE À BABORD.  
COUNTRIES WHO PLACE THE RED BUOY ON THE PORT SIDE.

N° officiel: **Conf. U. D. F. 57.**

Genève, le 2 mars 1931.

SOCIÉTÉ DES NATIONS

**CONFÉRENCE POUR L'UNIFICATION  
DU DROIT FLUVIAL**

*(Genève, 17 novembre—9 décembre 1930.)*

**CONVENTION SUR L'UNIFICATION DE CERTAINES RÈGLES  
EN MATIÈRE D'ABORDAGE DANS LA NAVIGATION INTÉRIEURE.**

Série de Publications de la Société des Nations

VIII. COMMUNICATIONS ET TRANSIT

1931. VIII, 2.

## CONVENTION SUR L'UNIFICATION DE CERTAINES RÈGLES EN MATIÈRE D'ABORDAGE DANS LA NAVIGATION INTÉRIEURE

Les Hautes Parties contractantes ont nommé pour leurs Plénipotentiaires :

.....

lesquels, après avoir échangé leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes :

### *Article premier.*

En cas d'abordage survenu entre bateaux de navigation intérieure dans les eaux d'un des Etats contractants, les indemnités dues à raison des dommages causés aux bateaux, aux choses ou personnes se trouvant à bord sont réglées conformément aux dispositions suivantes.

### *Article 2.*

(1) Si l'abordage est fortuit, s'il est dû à un cas de force majeure, ou s'il y a doute sur les causes de l'abordage, les dommages sont supportés par ceux qui les ont éprouvés.

(2) Il n'est pas dérogé à cette règle dans le cas où, soit les bateaux, soit l'un d'eux sont au mouillage au moment de l'accident.

### *Article 3.*

(1) Si l'abordage est causé par la faute de l'un des bateaux, la réparation des dommages incombe à celui qui a commis la faute.

(2) En cas de remorquage, chaque bateau faisant partie du convoi n'est responsable que s'il y a faute de sa part.

### *Article 4.*

(1) Si l'abordage est causé par les fautes de deux ou plusieurs bateaux, ces bateaux sont tenus solidairement à la réparation des dommages causés au bateau innocent, ainsi qu'aux personnes et aux choses se trouvant à bord de ce bateau.

(2) Le bateau qui a payé une part supérieure à celle qui est proportionnelle à la gravité de sa faute a, contre les autres bateaux en faute, un droit de recours proportionnel à la gravité des fautes desdits bateaux.

(3) La gravité des fautes est considérée comme équivalente si, d'après les circonstances, une autre proportion ne peut être établie.

### *Article 5.*

(1) Si le bateau endommagé ou à bord duquel se trouvent les personnes ou les choses ayant subi des dommages a, par sa faute, contribué à l'abordage, la responsabilité de chacun des bateaux est proportionnelle à la gravité des fautes respectivement commises ; toutefois, si, d'après les circonstances, la proportion ne peut pas être établie ou si les fautes apparaissent comme équivalentes, la responsabilité est partagée par parts égales.

(2) Les dommages causés soit aux bateaux, soit à leurs cargaisons, soit aux effets ou autres biens des équipages, des passagers ou d'autres personnes se trouvant à bord, sont supportés par les bateaux en faute, dans ladite proportion, sans solidarité à l'égard des tiers.

(3) Les bateaux en faute sont tenus solidairement à l'égard des tiers pour les dommages causés par mort ou blessure, sauf recours de celui qui a payé une part supérieure à celle que, conformément à l'alinéa (1) du présent article, il doit définitivement supporter.

(4) Il appartient aux législations nationales de déterminer, en ce qui concerne ce recours, la portée et les effets des dispositions contractuelles ou légales qui limitent la responsabilité des propriétaires de bateaux à l'égard des personnes se trouvant à bord.

#### *Article 6.*

La responsabilité établie par les articles précédents subsiste dans le cas où l'abordage est causé par la faute d'un pilote, même lorsque celui-ci est obligatoire.

#### *Article 7.*

(1) L'action en réparation des dommages subis par suite d'un abordage n'est subordonnée ni à un protêt ni à aucune autre formalité spéciale.

(2) Il n'y a point de présomptions légales de faute quant à la responsabilité de l'abordage.

#### *Article 8.*

(1) Les actions en réparation de dommages se prescrivent par deux ans à partir de l'événement.

(2) Le délai pour intenter les actions en recours admises par l'alinéa (2) de l'article 4 et par l'alinéa (3) de l'article 5 est d'une année. Cette prescription ne court que du jour du paiement.

(3) Les causes de suspension et d'interruption de ces prescriptions sont déterminées par la loi du tribunal saisi de l'action.

(4) Les Hautes Parties contractantes se réservent le droit d'admettre, dans leurs législations, comme prorogeant les délais ci-dessus fixés, le fait que le bateau défendeur n'a pu être saisi dans les eaux de l'Etat dans lequel le demandeur a son domicile ou son principal établissement.

#### *Article 9.*

Sous réserve de conventions ultérieures, les présentes dispositions ne portent point atteinte aux règles sur la limitation de responsabilité des propriétaires de bateaux, telles qu'elles sont établies dans chaque pays, non plus qu'aux obligations résultant du contrat de transport ou de tous autres contrats.

#### *Article 10.*

La présente Convention s'étend à la réparation des dommages que, soit par exécution ou omission de manœuvre, soit par inobservation des règlements, un bateau a causés soit à un autre bateau, soit aux choses ou personnes se trouvant à leur bord, alors même qu'il n'y aurait pas eu abordage.

#### *Article 11.*

Sont compris, au sens de la présente Convention, sous la dénomination de bateaux : les hydroglisseurs, les radeaux, les bacs, les dragues, les grues et élévateurs flottants, les sections mobiles de ponts de bateaux, et tous engins et outillages flottants de nature analogue.

#### *Article 12.*

Les dispositions de la présente Convention ne préjugent pas des immunités dont jouiraient, dans un des Etats contractants, les bateaux affectés exclusivement à l'exercice, à un titre quelconque, de la puissance publique.

*Article 13.*

Les interprétations et réserves figurant au Protocole-Annexe ci-joint sont adoptées et auront mêmes force, valeur et durée que la présente Convention.

*Article 14.*

La présente Convention, rédigée en français, portera la date de ce jour et sera, jusqu'au 31 mai 1931, ouverte à la signature de tous les États ayant été représentés à la Conférence ou ayant été invités à s'y faire représenter.

*Article 15.*

La présente Convention sera ratifiée. Les instruments de ratification seront transmis au Secrétaire général de la Société des Nations qui en notifiera le dépôt à tous les États signataires ou adhérents.

*Article 16.*

A partir du 1<sup>er</sup> juin 1931, tout État visé à l'article 14 pourra adhérer à la présente Convention. Cette adhésion s'effectuera au moyen d'un instrument communiqué au Secrétaire général de la Société des Nations aux fins de dépôt dans les archives du Secrétariat. Le Secrétaire général notifiera ce dépôt à tous les États signataires ou adhérents.

*Article 17.*

(1) Quatre-vingt-dix jours après le dépôt, le dernier en date, des ratifications ou adhésions de trois États, la présente Convention entrera en vigueur pour chacun des États qui l'aura ratifiée ou qui y aura adhéré au moment dudit dépôt. Cette Convention prendra effet, pour les États qui la ratifieront ou qui y adhéreront par la suite, quatre-vingt-dix jours après le dépôt de leur instrument de ratification ou d'adhésion. Elle sera enregistrée par le Secrétaire général de la Société des Nations le jour de son entrée en vigueur.

(2) Tout État peut subordonner l'effet de sa ratification ou de son adhésion à la ratification ou à l'adhésion par un ou plusieurs États désignés par lui dans son instrument de ratification ou d'adhésion.

*Article 18.*

Après que la présente Convention aura été en vigueur pendant cinq ans, la révision pourra en être demandée à toute époque par trois au moins des États contractants.

*Article 19.*

(1) La présente Convention pourra être dénoncée par l'un quelconque des États contractants après l'expiration d'un délai de cinq ans à partir de la date de son entrée en vigueur pour ledit État.

(2) La dénonciation sera faite sous forme de notification écrite adressée au Secrétaire général de la Société des Nations. Copie de cette notification informant tous les autres États contractants de la date à laquelle elle a été reçue leur sera transmise par le Secrétaire général.

(3) La dénonciation prendra effet un an après la date à laquelle elle aura été reçue par le Secrétaire général et ne sera opérante qu'en ce qui concerne l'État qui l'aura notifiée.

EN FOI DE QUOI les Plénipotentiaires susnommés ont signé la présente Convention.

FAIT à Genève, le neuf décembre mil neuf cent trente, en un seul exemplaire qui sera déposé aux archives du Secrétariat de la Société des Nations; copie conforme en sera remise à tous les États visés à l'article 14.



ALLEMAGNE

Avec la réserve prévue au protocole  
annexe au III *ad* article 14.

Reinhold RICHTER  
D<sup>r</sup> Werner VOGELS  
D<sup>r</sup> ALBRECHT.

BELGIQUE

J. DE RUELLE

VILLE LIBRE DE DANTZIG

Avec la réserve prévue au protocole  
annexe au III *ad* article 14.

Josef SULKOWSKI

FRANCE

Georges RIPERT

HONGRIE

Avec la réserve prévue au Protocole  
annexe *ad* article 14.

DIETRICH

ITALIE

Carlo ROSSETTI

**PAYS-BAS**

Avec la réserve prévue au protocole  
annexe au III *ad* art. 14.

G. NAUTA.

**POLOGNE**

Josef SULKOWSKI

**ROUMANIE**

Const. CONTZESCO

**SUISSE**

Avec la réserve prévue au protocole  
annexe au III *ad* art. 14.

R. HAAB.  
HOHL.

**TCHÉCOSLOVAQUIE**

MÜLLER  
D. SITENSKY

**YOUGOSLAVIE**

Milan M. YOVANOVITCH

Copie certifiée conforme.

Pour le Secrétaire général :

*Conseiller juridique  
du Secrétariat.*

**Protocole-Annexe.**

**I. Ad *article premier.***

A. Les Hautes Parties contractantes déclarent que l'expression « eaux d'un des Etats contractants » ne vise pas les eaux des colonies, protectorats ou territoires placés sous suzeraineté ou mandat.

B. Les Hautes Parties contractantes se réservent le droit de prévoir dans leur législation nationale :

1<sup>o</sup> Que la Convention ne sera pas applicable dans les eaux où la navigation est exclusivement réservée à leurs nationaux ;

2<sup>o</sup> Que la Convention ne sera pas applicable sur les lacs situés à l'intérieur d'un seul Etat et sans communication avec d'autres voies navigables.

**II. Ad *article 2, alinéa (2).***

Les mots « au mouillage » doivent être entendus comme s'appliquant également à des bateaux amarrés ou autrement immobilisés.

**III. Ad *article 14.***

Il est joint à la présente Convention un texte en langue allemande ; les Plénipotentiaires, en signant ladite Convention, peuvent réserver à leur Gouvernement le droit, en la ratifiant, d'adopter ce texte, étant entendu que, dans ce cas, ledit texte vaudra également dans les rapports entre les Etats qui auraient usé du même droit et qu'au cas de différend entre ces Etats sur l'interprétation des textes, le texte de la Convention prévaudra si un des Etats parties ou intervenant au différend le réclame.

Le même droit est reconnu aux Etats qui adhéreront à la Convention.

Copie certifiée conforme.

Pour le Secrétaire général :

*Conseiller juridique  
du Secrétariat.*

N° officiel: **Conf. U. D. F. 58.**

Genève, le 2 mars 1931.

**SOCIÉTÉ DES NATIONS**

**CONFÉRENCE POUR L'UNIFICATION  
DU DROIT FLUVIAL**

*(Genève, 17 novembre—9 décembre 1930.)*

**CONVENTION  
CONCERNANT L'IMMATRICULATION DES BATEAUX  
DE NAVIGATION INTÉRIEURE, LES DROITS REELS  
SUR CES BATEAUX ET AUTRES MATIÈRES CONNEXES**

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1931. VIII. 3. ✓

**CONVENTION**  
**CONCERNANT L'IMMATRICULATION DES BATEAUX**  
**DE NAVIGATION INTÉRIEURE, LES DROITS RÉELS SUR**  
**CES BATEAUX ET AUTRES MATIÈRES CONNEXES**

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Les Hautes Parties contractantes, désireuses de prévenir les difficultés auxquelles donne lieu la diversité de leurs législations en ce qui concerne certaines matières de droit fluvial, ont désigné leurs Plénipotentiaires :

.....

lesquels, après avoir échangé leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes :

**TITRE PREMIER.**

**DE L'IMMATRICULATION.**

*Article premier.*

(1) Les Etats contractants s'engagent à tenir des registres pour l'immatriculation des bateaux de navigation intérieure.

(2) Ces registres, établis conformément à la législation nationale, doivent être publics et répondre aux dispositions de la présente Convention ; des extraits certifiés conformes en sont délivrés, contre paiement des frais, à tous ceux qui le requièrent.

*Article 2.*

Chaque bureau d'immatriculation est désigné, suivant les prescriptions de l'autorité compétente, soit par son nom, soit par une ou plusieurs lettres initiales, ainsi que par la ou les lettres initiales attribuées par l'Annexe I à l'Etat auquel il ressortit.

*Article 3.*

(1) La législation de chaque Etat contractant détermine les conditions qu'un bateau doit remplir pour pouvoir être immatriculé sur ses registres.

(2) Chacun des Etats contractants s'engage à prendre les mesures nécessaires pour qu'un bateau ne puisse être immatriculé simultanément dans deux de ses bureaux.

(3) Toutefois, la disposition de l'alinéa précédent ne met pas obstacle à l'établissement de registres centraux où les inscriptions se trouvent reproduites.

*Article 4.*

(1) Tout bateau doit être immatriculé s'il remplit les conditions d'immatriculation prévues par la législation d'un ou plusieurs Etats contractants. Cette disposition s'applique à tous bateaux, y compris les dragues, de 20 tonnes métriques au moins. Toutefois, elle ne s'applique ni aux grues et élévateurs flottants, ni aux autres engins analogues, ni aux bateaux de plaisance. L'obligation de faire immatriculer le bateau incombe au propriétaire.

(2) Si le bateau remplit les conditions d'immatriculation fixées par la législation d'un seul Etat contractant, le bateau ne peut être immatriculé qu'au bureau compétent de cet Etat.

(3) Si le bateau remplit les conditions d'immatriculation fixées par la législation de deux ou plusieurs Etats contractants, le bateau ne peut être immatriculé qu'au bureau compétent de l'un de ces Etats. Dans ce cas, le propriétaire a le choix du pays où le bateau sera immatriculé. Il conserve ce choix tant que le bateau déjà immatriculé continue à remplir les conditions d'immatriculation fixées par la législation de deux ou plusieurs Etats contractants et l'acquiert si le bateau vient, par la suite, à les remplir.

(4) Chaque Etat contractant se réserve le droit d'exiger que ses ressortissants inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant en même temps les conditions d'immatriculation d'un ou plusieurs autres Etats contractants, si ces ressortissants ont, sur son territoire, leur résidence habituelle, ou, dans le cas de sociétés, la direction principale de leurs affaires.

(5) Chaque Etat contractant se réserve de même le droit d'exiger que les personnes physiques, qui lui ressortissent, même si elles n'ont pas sur son territoire leur résidence habituelle, inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant en même temps les conditions d'immatriculation d'un ou plusieurs autres Etats contractants, si ces bateaux sont exclusivement affectés à la navigation dans les eaux dudit Etat.

#### *Article 5.*

L'obligation prévue à l'article 4 ne vise pas les bateaux non encore immatriculés dans un Etat contractant, qui se rendent du pays où ils ont été construits ou acquis au pays où ils doivent être immatriculés.

#### *Article 6.*

Chaque Etat contractant peut, dans les conditions visées aux articles 3 et 4, prescrire ou admettre que soient immatriculés sur ses registres :

- 1<sup>o</sup> — les grues et élévateurs flottants, ainsi que tous autres engins analogues ;
- 2<sup>o</sup> — les bateaux de plaisance ;
- 3<sup>o</sup> — les bateaux, y compris les dragues, de moins de 20 tonnes métriques.

#### *Article 7.*

(1) Un bateau en construction, lorsque la législation nationale en prescrit ou en admet l'immatriculation, ne peut être immatriculé ailleurs que sur les registres de l'Etat contractant sur le territoire duquel il est en cours de construction, si ce n'est en vertu d'un accord conclu entre cet Etat et un ou plusieurs autres Etats contractants.

(2) Les accords visés ci-dessus seront communiqués à tous les Etats contractants.

(3) L'immatriculation du bateau en construction, en vertu d'un des accords prévus à l'alinéa (1) du présent article, sera à tous égards assimilée à celles qui seraient effectuées dans le pays de construction, même au regard des Etats contractants non parties à cet accord.

#### *Article 8.*

Lorsqu'un des bateaux visés aux articles 6 et 7 est immatriculé, les dispositions de la présente Convention lui sont applicables.

#### *Article 9.*

(1) L'immatriculation des bateaux est effectuée sur demande écrite, signée par le propriétaire, et accompagnée des pièces justificatives nécessaires.

(2) Cette demande doit indiquer au moins :

- 1<sup>o</sup> — le nom ou la devise du bateau ;
- 2<sup>o</sup> — le mode de construction et le type du bateau ; l'année et le lieu de construction et, pour les bateaux à propulsion mécanique même auxiliaire, la nature et la puissance de la machine ;
- 3<sup>o</sup> — la capacité maximum de chargement ou le déplacement, d'après le certificat de jaugeage, ainsi que le numéro et la date de ce certificat ;
- 4<sup>o</sup> — les nom, prénoms, profession et domicile du ou des propriétaires, ces indications étant remplacées pour les sociétés par la dénomination et le siège social ; en outre, en cas de copropriété, la part de chacun des copropriétaires ;
- 5<sup>o</sup> — s'il y a lieu, les faits qui justifient l'immatriculation, conformément aux articles 3 et 4 ;
- 6<sup>o</sup> — le fait que le bateau n'est pas immatriculé ailleurs ou, s'il est déjà immatriculé, le bureau d'immatriculation.

(3) Pour les bateaux en construction, il suffit que la demande contienne les indications qui peuvent être matériellement fournies ; ces indications doivent être complétées après achèvement du bateau.

*Article 10.*

L'immatriculation des bateaux a lieu dans chaque bureau suivant une série continue de numéros matricules. Sous chaque numéro, sont inscrites au moins les données prévues aux chiffres 1 à 5 de l'article 9, ainsi que la date de l'immatriculation.

*Article 11.*

(1) Si des modifications surviennent dans les faits mentionnés dans le registre, ou si le bateau périt, est démoli ou devient définitivement inapte à la navigation, l'inscription en doit être demandée au bureau d'immatriculation. La demande doit être signée du propriétaire et accompagnée des pièces justificatives nécessaires ainsi que du certificat d'immatriculation et éventuellement du duplicata, prévus à l'article 12.

(2) La loi du pays d'immatriculation fixe le délai dans lequel la demande doit être faite, ainsi que les conditions dans lesquelles la radiation d'office peut être opérée, sous réserve de l'observation de la disposition de l'alinéa (1) de l'article 15.

*Article 12.*

(1) Les inscriptions effectuées sur le registre en vertu des articles 10 et 11 doivent être reproduites sur un certificat délivré par le bureau d'immatriculation et sur lequel sont portées l'indication de ce bureau et celle de l'Etat auquel il ressortit.

(2) Tout bateau immatriculé doit être muni de son certificat d'immatriculation. Un duplicata, lorsqu'il en est délivré par le bureau d'immatriculation, peut tenir lieu de certificat. Ce duplicata doit être désigné comme tel, et mention de sa délivrance doit être faite sur le certificat.

*Article 13.*

Le certificat d'immatriculation ou un document distinct se trouvant à bord du bateau contiendra la reproduction des inscriptions hypothécaires, visée à l'article 21, ou la mention, par l'autorité chargée de la tenue du registre pour la publicité des droits, que le bateau n'est pas grevé d'hypothèques. Cette obligation ne vise, sauf disposition contraire de la loi du pays d'immatriculation, ni les bateaux qui ne sortent pas des eaux de l'Etat sur les registres duquel ils se trouvent immatriculés, ni les bateaux de moins de 20 tonnes métriques, en quelques eaux qu'ils naviguent.

*Article 14.*

(1) Tout bateau immatriculé doit porter sur les deux côtés ou sur l'arrière :

1<sup>o</sup> — son nom ou sa devise et, s'il existe plusieurs bateaux appartenant au même propriétaire avec le même nom ou la même devise, un numéro distinctif ;

2<sup>o</sup> — le numéro matricule visé à l'article 10, précédé, en caractères latins, soit de la ou des lettres initiales du bureau d'immatriculation, soit du nom dudit bureau, et suivi, en caractères latins, de la ou des lettres initiales de l'Etat auquel ce bureau ressortit.

(2) Les indications visées à l'alinéa (1) du présent article doivent être faites d'une manière visible et apparente, en caractères ayant au moins quinze centimètres de hauteur.

(3) Il est défendu d'effacer, d'altérer, de rendre méconnaissables, de couvrir ou de cacher par un moyen quelconque ces noms, lettres et numéros, et d'ajouter d'autres inscriptions qui seraient capables de nuire à la clarté de celles indiquées ci-dessus.

*Article 15.*

(1) Si un bateau est immatriculé sur les registres de l'un des Etats contractants, il ne peut pas être immatriculé sur les registres d'un autre sans qu'il soit procédé en même temps à la radiation de la première immatriculation. Le transfert d'immatriculation de même que la radiation de l'immatriculation ne peuvent, lorsqu'il s'agit d'un bateau grevé d'hypothèques, être effectués si ce n'est avec le consentement de tous les créanciers hypothécaires et aux conditions acceptées par eux.

(2) Pour effectuer le transfert d'immatriculation d'un bateau du registre d'un Etat à celui d'un autre, les formalités suivantes doivent être remplies :

a) une demande d'immatriculation doit être adressée, dans les conditions visées à l'article 9, au bureau compétent de l'Etat dans lequel le bateau doit être immatriculé ;

b) une demande de radiation doit être adressée au bureau de l'Etat où le bateau est encore immatriculé ; la demande de radiation indique le bureau où l'immatriculation doit être transférée ; elle doit être accompagnée, s'il y a lieu, du consentement écrit et en double des créanciers, visé à l'alinéa (1).

(3) Au cas où le bureau du premier Etat ne s'oppose pas à la radiation sur son registre, il en informe, au moyen de la formule ci-annexée (voir Annexe II, Formule A), le bureau du second Etat, où la nouvelle immatriculation est demandée, et lui transmet en même temps un extrait certifié du registre et un double du consentement écrit des créanciers hypothécaires ; la signature des créanciers, apposée sur ce double, doit être dûment légalisée. Mention de la demande de transfert est faite alors au registre du premier Etat et aucune inscription ne peut être faite dorénavant audit registre. Si, toutefois, le bureau du premier Etat reçoit, dans les conditions prévues à l'article 38, une demande relative à une exécution forcée après que mention a été faite de la demande de transfert, il est fait application des dispositions dudit article ; copie certifiée de cette demande est transmise immédiatement par le bureau du premier Etat à celui du second Etat qui se conforme également à l'article 38.

(4) Dès réception de l'avis du bureau du premier Etat, l'autorité compétente du second Etat procède, s'il y a lieu, à l'immatriculation du bateau, délivre le certificat visé à l'article 12, et retire en même temps le certificat de l'immatriculation précédente ainsi que, le cas échéant, le duplicata.

(5) Le bureau du second Etat adresse ensuite sans délai au bureau du premier Etat, suivant une formule ci-annexée (voir Annexe II, Formule B), une attestation constatant l'immatriculation sur son registre. Cette attestation doit être accompagnée du certificat de l'immatriculation précédente, et, le cas échéant, du duplicata. Au reçu de cette attestation, l'immatriculation est radiée par le bureau du premier Etat.

#### Article 16.

(1) Sont exclusivement compétentes pour la poursuite et la répression :

1<sup>o</sup> — en ce qui concerne les contraventions à l'obligation d'immatriculer, visée à l'alinéa (1) de l'article 4, les autorités compétentes du pays ou des pays où le bateau peut être immatriculé ;

2<sup>o</sup> — en ce qui concerne les contraventions à l'interdiction d'immatriculer un bateau dans plus d'un Etat, visée à l'alinéa (3) de l'article 4, les autorités compétentes des pays où les immatriculations ont été effectuées ;

3<sup>o</sup> — en ce qui concerne les contraventions à l'article 11, les autorités compétentes du pays d'immatriculation ;

4<sup>o</sup> — en ce qui concerne les contraventions à l'alinéa (2) de l'article 12 et à l'article 14, les autorités compétentes du pays où l'infraction a été constatée.

(2) Dans les cas visés aux 1<sup>o</sup>, 2<sup>o</sup> et 3<sup>o</sup>, si la contravention est constatée dans un autre Etat contractant, les autorités de cet Etat dressent le procès-verbal et transmettent le dossier aux autorités compétentes en vertu des dispositions desdits numéros, pour leur permettre de poursuivre et de réprimer la contravention, et, dans le cas visé au 2<sup>o</sup>, elles en adressent une copie aux bureaux où le bateau est immatriculé.

#### Article 17.

(1) Dans le cas où, d'après la loi nationale, le transfert de propriété dépend de l'inscription au registre, le terme « propriétaire » à l'article 4 doit s'entendre comme visant l'acquéreur.

(2) La loi nationale indique en pareil cas ceux à qui incombe l'obligation de signer les demandes visées aux articles 9 et 11.

### TITRE II.

#### Article 18.

Les dispositions du présent Titre sont applicables à tout bateau immatriculé sur le registre d'un Etat contractant.

#### Article 19.

Les registres pour la publicité des droits sont, soit les registres prévus à l'article premier, soit des registres distincts de ceux-ci et tenus par une autorité du même pays. Dans ce dernier cas, les registres pour la publicité des droits doivent également répondre aux conditions de



publicité spécifiées audit article. Une concordance sera établie entre les deux registres. Le certificat d'immatriculation et les extraits du registre délivrés par le bureau d'immatriculation doivent, dans ce cas, indiquer l'autorité chargée de la tenue du registre pour la publicité des droits.

CHAPITRE I. — DE LA PROPRIÉTÉ, DE L'USUFRUIT ET DES HYPOTHÈQUES.

*Article 20.*

(1) Le transfert volontaire entre vifs des droits de propriété sur un bateau est réglé par la loi du pays d'immatriculation, si cette loi prévoit comme condition du transfert, ou tout au moins pour que ce transfert ait effet à l'égard des tiers, soit l'inscription aux registres pour la publicité des droits, soit la mise en possession de l'acquéreur.

(2) La même règle s'applique à la constitution de l'usufruit.

*Article 21.*

(1) Les effets d'une hypothèque, régulièrement établie sur un bateau d'après la loi du pays d'immatriculation et inscrite sur les registres pour la publicité des droits, sont régis par ladite loi.

(2) Toutefois, l'hypothèque ne peut garantir les intérêts pour une durée de plus de trois années en sus de l'année courante.

*Article 22.*

L'hypothèque s'étend à tous objets qui, sans faire partie intégrante du bateau, lui sont attachés à demeure par leur destination, à l'exception de ceux qui n'appartiennent pas au propriétaire du bateau.

*Article 23.*

(1) L'inscription d'hypothèque doit indiquer au moins le créancier, le montant de la créance, le taux des intérêts et les conditions d'exigibilité de la somme principale et des intérêts.

(2) Un renvoi à l'acte constitutif d'hypothèque peut tenir lieu de la mention dans l'inscription des conditions d'exigibilité, pourvu que cet acte ou une copie certifiée conforme soit déposé au bureau chargé de tenir les registres pour la publicité des droits.

*Article 24.*

(1) Sauf le cas d'exécution forcée, les conditions d'extinction des hypothèques sont déterminées par la loi du pays d'immatriculation.

(2) Toutefois, lorsque les objets visés à l'article 22 sont séparés du bateau, l'hypothèque s'éteint, en ce qui les concerne, dans les conditions fixées par la loi du lieu de leur situation.

*Article 25.*

Aucun Etat contractant n'est tenu d'organiser une procédure de purge ou toute autre procédure spéciale pour assurer l'application des dispositions qui précèdent.

*Article 26.*

Dans le cas, visé à l'alinéa (1) de l'article 15, où les créanciers hypothécaires donnent leur consentement au transfert d'immatriculation du bateau du registre d'un pays sur celui d'un autre, si les conditions posées par lesdits créanciers sont compatibles avec la loi du pays de la nouvelle immatriculation, les inscriptions d'hypothèques sont reportées d'office, avec le rang qu'elles avaient, et les effets des hypothèques sont désormais régis par ladite loi.

*Article 27.*

Les hypothèques constituées sur des portions d'un bateau sont assimilées, pour l'application de la présente Convention, aux hypothèques grevant le bateau lui-même.

CHAPITRE 2. — DES PRIVILÈGES.

Article 28.

Jouissent d'un privilège sur le bateau, y compris les objets visés à l'article 22 :

I — 1<sup>o</sup> — les frais de conservation depuis la saisie; les taxes de navigation ainsi que les droits de port et de pilotage ;

2<sup>o</sup> — a) les créances résultant du contrat d'engagement du capitaine, des gens d'équipage et des autres personnes engagées par le propriétaire ou par le capitaine pour le service du bord, mais, en ce qui concerne les gages, pour une durée de six mois au plus ;

b) les primes d'assurances sociales des personnes visées ci-dessus, si cette créance est privilégiée par la loi du tribunal saisi, mais pour une durée de trois mois au plus ;

3<sup>o</sup> — a) les rémunérations dues pour sauvetage et assistance ;

b) la contribution du bateau aux avaries communes si elle est privilégiée par la loi du pays d'immatriculation et si la responsabilité du propriétaire est limitée, en ce qui concerne cette contribution, par la loi appliquée par le tribunal saisi ;

4<sup>o</sup> — a) les indemnités dues pour dommages causés par abordage ou autre accident de navigation à des navires ou bateaux, à des personnes ou biens autres que les personnes ou biens se trouvant à bord du bateau même, y compris les dommages causés aux ouvrages et aux installations des ports et des voies navigables ;

b) les indemnités dues pour lésions corporelles des personnes se trouvant à bord, pour autant que ces indemnités ne sont pas privilégiées en vertu de la lettre a) du 2<sup>o</sup>, ainsi que pour perte ou avarie de la cargaison et des bagages des passagers, jusqu'à concurrence de leur valeur, si ces indemnités sont privilégiées par la loi du pays d'immatriculation et si la responsabilité du propriétaire est limitée, en ce qui concerne ces indemnités, par la loi appliquée par le tribunal saisi ;

II — les autres créances auxquelles la loi du tribunal saisi accorde un privilège.

Article 29.

(1) Les créances privilégiées en vertu du chiffre I de l'article 28 priment les créances hypothécaires.

(2) Toutefois, les créances mentionnées au 4<sup>o</sup> du chiffre I dudit article passeront après l'hypothèque si les faits constitutifs de ces créances sont postérieurs à l'inscription de l'hypothèque.

Article 30.

(1) Les créances privilégiées en vertu du chiffre II de l'article 28 prennent rang après l'hypothèque.

(2) La loi du tribunal saisi peut toutefois prescrire que certaines de ces créances priment les créances hypothécaires si les faits constitutifs de la créance sont antérieurs à l'inscription de l'hypothèque et si, en outre, avant cette inscription, le créancier est devenu détenteur du bateau ou l'a fait saisir à titre conservatoire.

Article 31.

(1) Le rang des créances privilégiées entre elles est déterminé par l'ordre établi à l'article 28.

(2) Toutes les créances mentionnées sous le même numéro ont le même rang.

(3) Toutefois, les créances mentionnées sous le 3<sup>o</sup> du chiffre I dudit article sont remboursées par préférence dans l'ordre inverse des dates où elles sont nées.

Article 32.

Si un des créanciers visés aux 3<sup>o</sup> et 4<sup>o</sup> du chiffre I de l'article 28 reçoit, du fait que, par suite du jeu des conditions mises à l'existence ou au rang des privilèges par les dispositions de la lettre b) du 3<sup>o</sup>, de la lettre b) du 4<sup>o</sup> et de l'alinéa (2) de l'article 29, sa créance est primée par la créance hypothécaire, une somme inférieure à celle qu'il aurait reçue si sa créance avait primé la créance hypothécaire, le propriétaire est tenu personnellement au paiement de la différence, sans qu'il puisse invoquer une limitation de sa responsabilité, et sans préjudice de l'application d'une loi nationale en vertu de laquelle le propriétaire est tenu de la totalité de sa dette.

Article 33.

Les créances énumérées au chiffre I de l'article 28 donnent naissance à des privilèges sans que, pour être privilégiées, elles soient soumises à des conditions spéciales de preuve. Ces privilèges s'établissent sans formalités et suivent le bateau en quelque main qu'il passe.

*Article 34.*

(1) Les privilèges visés au chiffre I de l'article 28 s'éteignent :

1° En même temps que la créance et au plus tard à l'expiration d'un délai de six mois ;

2° Dans le cas de vente forcée ;

3° En cas de vente volontaire, suivant la procédure prévue par la loi du pays d'immatriculation, si cette procédure se déroule dans ledit pays ;

4° De plus, en ce qui concerne les privilèges mentionnés à la lettre b) du 3° et à la lettre b) du 4°, dans les cas prévus par la loi du pays d'immatriculation.

(2) Le délai de six mois, prévu à l'alinéa précédent, court : en cas de sauvetage ou d'assistance, à partir du jour où les opérations sont terminées ; dans les cas visés à la lettre a) du 4° du chiffre I de l'article 28, ainsi qu'en cas de lésions corporelles, du jour où le dommage a été causé ; en cas de perte ou avarie de la cargaison ou des bagages, à partir du jour de l'arrivée du bateau au port du déchargement ou à partir du jour où le créancier a su ou aurait raisonnablement dû savoir que le bateau a rompu le voyage ; dans tous les autres cas, à partir de l'exigibilité de la créance.

(3) Les causes de suspension et d'interruption du délai sont déterminées par la loi du tribunal saisi.

*Article 35.*

Les dispositions du présent chapitre sont applicables aux créances nées du fait de l'exploitation d'un bateau par une personne autre que le propriétaire, sauf lorsque le propriétaire s'est trouvé dessaisi par un acte illicite et quand, en outre, le créancier n'est pas de bonne foi.

TITRE III.

DE LA SAISIE CONSERVATOIRE ET DE L'EXÉCUTION FORCÉE.

*Article 36.*

Lorsqu'un bateau immatriculé dans un des Etats contractants est l'objet d'une saisie conservatoire sur le territoire d'un autre Etat contractant, la validité et les effets de cette saisie sont réglés par la loi de ce dernier Etat.

*Article 37.*

(1) La procédure d'exécution forcée ne peut se dérouler que dans le pays où le bateau se trouve.

(2) Cette procédure est réglée par la loi dudit pays.

(3) Toutefois, lorsqu'il s'agit d'un bateau immatriculé dans un des Etats contractants, qui se trouve sur le territoire d'un autre Etat contractant, les dispositions qui suivent doivent être observées.

*Article 38.*

(1) Lorsque le bateau est saisi pour être vendu, ou lorsqu'une procédure d'exécution forcée est ouverte sans saisie préalable, l'autorité compétente doit demander au bureau d'immatriculation que mention en soit faite sur le registre pour la publicité des droits.

(2) La demande est établie suivant la formule ci-annexée (voir annexe II, Formule C) ; elle peut être remise au consul du pays d'immatriculation pour être transmise par télégramme audit bureau contre paiement des frais.

(3) Le bureau d'immatriculation est tenu de prendre les mesures nécessaires pour que, dès réception de la demande, toute personne qui vient consulter les inscriptions du registre pour la publicité des droits relatifs au bateau saisi, en ait connaissance, qu'il en soit fait mention sur ce registre, que les créanciers inscrits en soient informés et qu'un extrait certifié conforme du registre, ainsi que la liste des adresses du propriétaire et des créanciers inscrits, indiquées par eux, soient envoyés à l'autorité compétente indiquée dans la demande.

(4) Aucune aliénation n'est opposable au créancier saisissant ou intervenant et à l'adjudicataire, si elle est effectuée après la réception de la demande par le bureau d'immatriculation ou si, lors de l'aliénation, l'acquéreur avait ou devait raisonnablement avoir connaissance de l'ouverture de la procédure ou de la saisie. La même règle s'applique à la constitution d'hypothèques et d'usufruits.

*Article 39.*

(1) La loi du lieu de l'exécution doit prévoir que les créanciers inscrits seront avisés au moins un mois à l'avance de la date jusqu'à laquelle ils pourront, dans les conditions fixées par cette loi, faire valoir leurs droits, et que, au moins un mois d'avance, la date de la vente sera communiquée à ces créanciers et publiée au lieu d'immatriculation.

(2) Le transfert de la propriété et l'extinction des hypothèques s'opèrent dans les conditions prescrites par la loi du lieu de l'exécution.

*Article 40.*

L'inobservation des formalités prescrites à l'article 39 entraîne, suivant la loi du lieu de l'exécution, soit la nullité de la vente, soit la non-opposabilité de la vente à des tiers intéressés, soit la réparation par l'Etat du préjudice causé. L'obligation de réparation ne peut être subordonnée à la condition de réciprocité.

*Article 41.*

(1) Ne seront déduits du prix d'adjudication avant sa distribution, que les frais de justice effectués dans l'intérêt commun des créanciers pour parvenir à la vente et à la distribution du prix, y compris les frais de garde, mais exception faite des frais encourus en vue d'obtenir un titre exécutoire.

(2) Le surplus du prix d'adjudication est distribué aux créanciers, conformément aux règles de procédure de la loi du lieu de l'exécution, et en tenant compte du rang qui leur appartient aux termes de la présente Convention.

*Article 42.*

(1) L'autorité compétente du pays d'immatriculation doit procéder à la radiation des hypothèques éteintes dans les conditions prévues à l'article 39 sur présentation d'une expédition authentique de l'acte d'adjudication et après que l'autorité compétente d'après la loi du pays d'immatriculation aura constaté que l'expédition est authentique, que l'autorité qui a procédé à l'adjudication était compétente et que les stipulations de publicité, visées à l'article 39, ont été observées.

(2) L'autorité compétente du pays d'immatriculation informe les créanciers inscrits de la radiation opérée.

(3) L'expédition de l'acte d'adjudication, vérifiée conformément à l'alinéa (1), constitue à l'égard du bureau d'immatriculation la preuve du transfert de propriété.

TITRE IV.

DISPOSITIONS FINALES.

*Article 43.*

La présente Convention n'est pas applicable aux bateaux affectés exclusivement à l'exercice, à un titre quelconque, de la puissance publique.

*Article 44.*

Les Etats contractants, dont la législation ne serait pas, dès à présent, suffisante pour assurer l'exécution des dispositions de la présente Convention, prendront les mesures et édicteront les sanctions nécessaires à cet effet.

*Article 45.*

(1) En vue de l'application de la présente Convention, les autorités judiciaires et administratives compétentes des Etats contractants sont autorisées à correspondre directement entre elles au moyen des formules annexées à ladite Convention.

(2) A défaut d'accords bilatéraux entre les Gouvernements des Etats contractants, sur la procédure à suivre pour toutes autres communications entre leurs autorités respectives, ces communications se feront par la voie diplomatique ou par toute autre voie admise dans la pratique pour de telles communications.

*Article 46.*

Les Etats contractants s'engagent à se communiquer, par l'intermédiaire du Secrétaire général de la Société des Nations, les dispositions d'ordre législatif ou réglementaire prises par chacun d'eux pour assurer l'exécution de la présente Convention, la liste des autorités chargées de la tenue des registres, ainsi que le nom et les lettres initiales des bureaux d'immatriculation.

*Article 47.*

(1) Chaque Etat contractant prendra les mesures nécessaires pour que, à l'expiration d'un délai de trois ans, à compter de la date à laquelle la présente Convention prendra effet en ce qui le concerne, les inscriptions portées sur ses registres et les certificats délivrés par ses bureaux, antérieurement à cette date, soient mis en concordance avec les dispositions de ladite Convention.

(2) A titre transitoire, les certificats d'immatriculation conformes aux dispositions de la loi du pays d'immatriculation, délivrés avant la date mentionnée à l'alinéa précédent, seront admis, jusqu'à l'expiration du même délai, comme équivalents aux certificats d'immatriculation prévus par la Convention.

(3) Pendant le même délai, les dispositions des alinéas (1) et (2) de l'article 14 ne s'appliqueront pas aux bateaux immatriculés avant la date susmentionnée.

*Article 48.*

La présente Convention ne s'applique pas aux colonies, protectorats ou territoires placés sous suzeraineté ou mandat.

*Article 49.*

Les interprétations et réserves figurant au Protocole-Annexe ci-joint sont adoptées et auront mêmes force, valeur et durée que la présente Convention.

*Article 50.*

La présente Convention, rédigée en français, portera la date de ce jour et sera, jusqu'au 31 mai 1931, ouverte à la signature de tous les Etats ayant été représentés à la Conférence ou ayant été invités à s'y faire représenter.

*Article 51.*

La présente Convention sera ratifiée. Les instruments de ratification seront transmis au Secrétaire général de la Société des Nations qui en notifiera le dépôt à tous les Etats signataires ou adhérents.

*Article 52.*

A partir du 1<sup>er</sup> juin 1931, tout Etat visé à l'article 50 pourra adhérer à la présente Convention. Cette adhésion s'effectuera au moyen d'un instrument communiqué au Secrétaire général de la Société des Nations aux fins de dépôt dans les archives du Secrétariat. Le Secrétaire général notifiera ce dépôt à tous les Etats signataires ou adhérents.

*Article 53.*

(1) Six mois après le dépôt, le dernier en date, des ratifications ou adhésions de trois Etats, la présente Convention entrera en vigueur pour chacun des Etats qui l'aura ratifiée ou qui y aura adhéré au moment dudit dépôt. Cette Convention prendra effet pour les Etats qui la ratifieront ou qui y adhéreront par la suite six mois après le dépôt de leur instrument de ratification ou d'adhésion. Elle sera enregistrée par le Secrétaire général de la Société des Nations le jour de son entrée en vigueur.

(2) Tout Etat peut subordonner l'effet de sa ratification ou de son adhésion à la ratification ou à l'adhésion par un ou plusieurs Etats désignés par lui dans son instrument de ratification ou d'adhésion.

*Article 54.*

Après que la présente Convention aura été en vigueur pendant cinq ans, la revision pourra en être demandée à toute époque par trois au moins des Etats contractants.

*Article 55.*

(1) La présente Convention pourra être dénoncée par l'un quelconque des Etats contractants après l'expiration d'un délai de cinq ans à partir de la date de son entrée en vigueur pour ledit Etat.

(2) La dénonciation sera faite sous forme de notification écrite adressée au Secrétaire général de la Société des Nations. Copie de cette notification informant tous les autres Etats contractants de la date à laquelle elle a été reçue leur sera transmise par le Secrétaire général.

(3) La dénonciation prendra effet un an après la date à laquelle elle aura été reçue par le Secrétaire général et ne sera opérante qu'en ce qui concerne l'Etat qui l'aura notifiée.

EN FOI DE QUOI les Plénipotentiaires susnommés ont signé la présente Convention.

FAIT A GENÈVE, le neuf décembre mil neuf cent trente, en un seul exemplaire qui sera déposé aux archives du Secrétariat de la Société des Nations ; copie conforme en sera remise à tous les Etats visés à l'article 50.

ALLEMAGNE

Avec la réserve prévue au protocole  
annexe au IX *ad* article 50.

Reinhold RICHTER  
D<sup>r</sup> Werner VOGELS  
D<sup>r</sup> ALBRECHT.

BELGIQUE

J. DE RUELLE

VILLE LIBRE DE DANTZIG

*Ad referendum* et avec la réserve  
prévue au protocole annexe au IX  
*ad* article 50.

Josef SULKOWSKI

FRANCE

G. RIPERT

HONGRIE

Avec la réserve prévue au IX *ad*  
art. 50 du Protocole annexe.

DIETRICH

ITALIE

Carlo ROSSETTI

PAYS-BAS

Avec la réserve prévue au protocole  
annexe au IX *ad* article 50.

G. NAUTA.

POLOGNE

*Ad referendum.*

Josef SULKOWSKI.

**SUISSE**

Avec la réserve prévue au protocole  
annexe au IX *ad* article 50.

R. HAAB.  
HOHL.

**TCHÉCOSLOVAQUIE**

MÜLLER  
D. SITENSKY

**YOUGOSLAVIE**

Milan M. YOVANOVITCH

Copie certifiée conforme.  
Pour le Secrétaire général :

*Conseiller juridique  
du Secrétariat.*



**Protocole-Annexe.**

I. Il est entendu que la présente Convention n'a pas pour effet de mettre obstacle au droit d'un Etat de s'opposer, en cas d'événements graves, au transfert d'immatriculation des bateaux inscrits sur ses registres, ni, d'une manière générale, de régler la question des échanges commerciaux d'ordre international auxquels les bateaux donnent lieu, question qui demeure réservée notamment aux traités de commerce et aux conventions générales économiques.

II. Il est entendu qu'aucune des dispositions de la présente Convention ne doit être interprétée comme modifiant les traités, actes et conventions qui régissent les voies d'eau internationales ou d'intérêt international.

III. Ad *article 4, alinéa (4)*.

Il est entendu, pour l'application de l'alinéa (4) de l'article 4, que, en ce qui concerne les sociétés de capitaux, leur nationalité est déterminée par le siège social.

IV. Ad *article 18*.

Chaque Etat contractant peut se réserver le droit, en ratifiant la présente Convention ou en y adhérant, de ne pas appliquer, par dérogation à l'article 18, les dispositions du Titre II aux bateaux immatriculés sur ses registres qui se trouvent sur son propre territoire, à moins qu'il n'existe sur ces bateaux une hypothèque garantissant une obligation contractée dans un autre Etat contractant et stipulée payable dans un autre Etat contractant et à la condition que ces faits soient mentionnés au registre pour la publicité des droits visé à l'article 19.

V. Ad *article 21 et suivants*.

Le terme « hypothèque » au sens de la présente Convention comprend entre autres les droits de gage inscrits sur les bateaux immatriculés visés à l'article 1259 du Code civil allemand, les lettres de gage visées à l'ancien article 315 du Code de Commerce néerlandais, les droits de gages visés aux articles 495 à 499 du Code de Commerce roumain, les hypothèques sur bateaux visées aux lois fédérales suisses du 28 septembre 1923 et du 25 septembre 1917.

Il est entendu que, lorsque, en conformité de la loi du pays d'immatriculation et en exécution d'une clause inscrite du contrat constitutif de l'hypothèque, un créancier hypothécaire aura été envoyé en possession du bateau, les droits que lui confère cet envoi en possession d'après la loi du pays d'immatriculation seront reconnus dans tous les Etats contractants comme étant un effet de l'hypothèque.

VI. Ad *Titre II, chapitre 2*.

Le terme « privilège » au sens de la présente Convention comprend entre autres les gages légaux du droit allemand.

VII. Ad *article 28*.

Il est entendu que la présente Convention ne porte en rien atteinte aux privilèges pouvant appartenir au Trésor public du pays où se trouve le bateau au moment de la vente forcée, non plus qu'au rang de ces privilèges.

VIII. Ad *article 38*.

Il est entendu qu'au cas où, en vertu de la loi du pays d'immatriculation, la conclusion de contrats d'affrètement ou de louage de bateaux serait opposable au créancier saisissant ou intervenant et à l'adjudicataire, la règle visée à l'alinéa (4) de l'article 38 s'appliquera, dans les conditions y mentionnées, également à ces contrats.

IX. Ad *article 50*.

Il est joint à la présente Convention un texte en langue allemande; les Plénipotentiaires, en signant ladite Convention, peuvent réserver à leur Gouvernement le droit, en la ratifiant, d'adopter ce texte, étant entendu que, dans ce cas, ledit texte vaudra également dans les rapports entre les Etats qui auraient usé du même droit et qu'au cas de différend entre ces Etats sur l'interprétation des textes, le texte de la Convention prévaudra si un des Etats parties ou intervenant au différend le réclame.

Le même droit est reconnu aux Etats qui adhéreront à la Convention.

Copie certifiée conforme.

Pour le Secrétaire général :

*Conseiller juridique du Secrétariat.*

**Annexe I.**

**LISTE DES LETTRES INITIALES DES ETATS VISÉS A L'ARTICLE 2.**

D	Allemagne
A	Autriche
B	Belgique
BG	Bulgarie
DA	Dantzig
F	France
GR	Grèce
M	Hongrie
I	Italie
N	Pays-Bas
PL	Pologne
P	Portugal
RM	Roumanie
S	Suède
CH	Suisse
CS	Tchécoslovaquie
Y	Yougoslavie

Annexe II.

FORMULE A.

CONVENTION CONCERNANT L'IMMATRICULATION DES BATEAUX DE NAVIGATION INTÉRIEURE, LES DROITS RÉELS SUR CES BATEAUX ET AUTRES MATIÈRES CONNEXES, EN DATE DU 9 DÉCEMBRE 1930.



*Transfert d'immatriculation.*

Nom du Bureau d'immatriculation.

Etat auquel ressortit ce Bureau.

(Imprimé dans la langue du pays d'envoi, les mentions écrites devant être effectuées au moins en caractères latins et en chiffres arabes.)

Conformément à l'article 15 de la Convention concernant l'immatriculation des bateaux de navigation intérieure, les droits réels sur ces bateaux et autres matières connexes, en date du 9 décembre 1930, nous vous faisons savoir que nous avons reçu une demande de radiation de notre registre d'immatriculation du bateau . . . . . (nom) . . . . ., inscrit sous le N<sup>o</sup> . . . . ., que les intéressés désirent faire immatriculer sur votre registre. Il n'existe, de notre part, aucune opposition à cette radiation. Celle-ci sera effectuée dès que vous nous aurez fait parvenir l'attestation constatant l'inscription dudit bateau sur votre registre, accompagnée du certificat d'immatriculation, délivré par nous, *et du duplicata*<sup>1</sup>.

Nous annexons à la présente les pièces suivantes :

- 1<sup>o</sup> la copie certifiée de l'immatriculation sur notre registre;
- 2<sup>o</sup> un *état des inscriptions existantes* ou un *certificat négatif*<sup>2</sup>;
- 3<sup>o</sup> le consentement écrit et dûment légalisé des créanciers hypothécaires.

<sup>1</sup> Biffer cette mention s'il n'y a pas de duplicata.

<sup>2</sup> Biffer la mention inutile.

FORMULE B.



CONVENTION CONCERNANT L'IMMATRICULATION DES BATEAUX DE NAVIGATION INTÉRIEURE, LES DROITS RÉELS SUR CES BATEAUX ET AUTRES MATIÈRES CONNEXES, EN DATE DU 9 DÉCEMBRE 1930.

*Transfert d'immatriculation.*

Nom du Bureau d'immatriculation.

Etat auquel ressortit ce Bureau.

(Imprimé dans la langue du pays d'envoi, les mentions écrites devant être effectuées au moins en caractères latins et en chiffres arabes.)

Nous référant à votre lettre du . . . . . concernant la radiation de votre registre et l'immatriculation sur notre registre du bateau inscrit sur votre registre sous le nom . . . . . et le numéro . . . . . nous vous faisons savoir que l'immatriculation de ce bateau sur notre registre a été effectuée le . . . . . sous le nom . . . . . et le numéro . . . . .

Nous vous envoyons ci-inclus le certificat d'immatriculation délivré par vous *et le duplicata*<sup>1</sup> que nous avons retiré (s) conformément à l'article 15 de la Convention concernant l'immatriculation des bateaux de navigation intérieure, les droits réels sur ces bateaux et autres matières connexes, en date du 9 décembre 1930.

<sup>1</sup> Biffer cette mention s'il n'y a pas de duplicata.

FORMULE C.



CONVENTION CONCERNANT L'IMMATRICULATION DES BATEAUX DE NAVIGATION INTÉRIEURE, LES DROITS RÉELS SUR CES BATEAUX ET AUTRES MATIÈRES CONNEXES, EN DATE DU 9 DÉCEMBRE 1930.

*Requête à fins de mention de saisie.*

(Imprimé dans la langue du pays d'envoi, les mentions écrites devant être effectuées au moins en caractères latins et en chiffres arabes.)

Le bureau d'immatriculation des bateaux à . . . . .  
. . . . .  
est requis de faire le nécessaire pour que mention soit faite sur le  
registre pour la publicité des droits du fait que le bateau nommé . . .  
appartenant à <sup>1</sup> . . . . .  
inscrit au registre à . . . . .  
portant les lettres et numéros . . . . .  
a fait l'objet d'une saisie-exécution  
à la date du . . . . .  
en vertu de <sup>2</sup> . . . . .  
par <sup>3</sup> . . . . .  
à la requête de . . . . .  
pour une créance d'une somme de . . . . .  
. . . . .  
avec intérêts et frais.

(Signé par l'autorité qui a effectué la saisie.)

<sup>1</sup> Nom du propriétaire s'il est connu.  
<sup>2</sup> Jugement ou autre titre exécutoire.  
<sup>3</sup> L'autorité qui a effectué la saisie.

N° officiel: **Conf. U. D. F. 59.**

Genève, le 2 mars 1931.

SOCIÉTÉ DES NATIONS

**CONFÉRENCE POUR L'UNIFICATION  
DU DROIT FLUVIAL**

*(Genève, 17 novembre—9 décembre 1930.)*

**CONVENTION SUR LES MESURES ADMINISTRATIVES PROPRES  
A ATTESTER LE DROIT AU PAVILLON DES BATEAUX  
DE NAVIGATION INTERIEURE**

Série de Publications de la Société des Nations

VIII. COMMUNICATIONS ET TRANSIT

1931. VIII. 4. ✓

## CONVENTION SUR LES MESURES ADMINISTRATIVES PROPRES A ATTESTER LE DROIT AU PAVILLON DES BATEAUX DE NAVIGATION INTÉRIEURE

Les Hautes Parties contractantes, désireuses de faciliter l'application de toute stipulation des Conventions conclues ou à conclure, ou de tout principe reconnu du droit international qui ferait dépendre certains droits ou certaines obligations du pavillon des bateaux de navigation intérieure, ont nommé pour leurs Plénipotentiaires :

.....  
lesquels, après avoir échangé leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes :

### *Article premier.*

Un bateau de navigation intérieure ne peut avoir droit qu'à un seul pavillon national.

### *Article 2.*

Sous réserve des dispositions de la présente Convention, les Etats contractants conservent le droit de fixer dans leur législation les conditions d'acquisition et de perte du droit au pavillon.

### *Article 3.*

Tout bateau, pour faire la preuve de son droit au pavillon national, doit être inscrit sur un registre désigné pour servir à cette fin, tenu par l'autorité compétente de l'Etat qui octroie le droit au pavillon.

### *Article 4.*

Si le bateau remplit les conditions fixées pour l'octroi du droit au pavillon par la législation de deux ou plusieurs Etats contractants, il ne peut être inscrit que dans le registre de l'un de ces Etats. Dans ce cas, le propriétaire a le choix du pays où le bateau sera inscrit. Il conserve ce choix tant que le bateau déjà inscrit continue à remplir les conditions fixées pour l'octroi du droit au pavillon par la législation de deux ou plusieurs Etats contractants et l'acquiert si le bateau vient, par la suite, à les remplir.

Chaque Etat contractant se réserve le droit d'exiger que ses ressortissants inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant en même temps les conditions fixées pour l'octroi du droit au pavillon, par la législation d'un ou plusieurs autres Etats contractants, si ces ressortissants ont sur son territoire leur résidence habituelle ou, dans le cas de sociétés, la direction principale de leurs affaires. En ce qui concerne les bateaux appartenant à des personnes physiques, chaque Etat contractant se réserve de même le droit d'exiger que ses ressortissants, même s'ils n'ont pas sur son territoire leur résidence habituelle, inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant en même temps les conditions fixées pour l'octroi du droit au pavillon, par la législation d'un ou de plusieurs autres Etats contractants, si ces bateaux sont exclusivement affectés à la navigation dans les eaux dudit Etat.

### *Article 5.*

Lorsqu'un bateau aura été inscrit sur le registre visé à l'article 3, il ne pourra être inscrit sur un autre registre avant que la radiation de son inscription sur le registre primitif ait été effectuée.

### *Article 6.*

Les bateaux justifieront du droit de porter le pavillon par un document permettant de les identifier et délivré par l'autorité visée à l'article 3.

*Article 7.*

Les interprétations et réserves figurant au Protocole-Annexe ci-joint sont adoptées et auront même force, valeur et durée que la présente Convention.

*Article 8.*

La présente Convention, rédigée en français, portera la date de ce jour et sera, jusqu'au 31 mai 1931, ouverte à la signature de tous les Etats ayant été représentés à la Conférence ou ayant été invités à s'y faire représenter.

*Article 9.*

La présente Convention sera ratifiée. Les instruments de ratification seront transmis au Secrétaire général de la Société des Nations qui en notifiera le dépôt à tous les Etats signataires ou adhérents.

*Article 10.*

A partir du 1<sup>er</sup> juin 1931 tout Etat visé à l'article 8 pourra adhérer à la présente Convention. Cette adhésion s'effectuera au moyen d'un instrument communiqué au Secrétaire général de la Société des Nations aux fins de dépôt dans les archives du Secrétariat. Le Secrétaire général notifiera ce dépôt à tous les Etats signataires ou adhérents.

*Article 11.*

Quatre-vingt-dix jours après le dépôt, le dernier en date, des ratifications ou adhésions de trois Etats, la présente Convention entrera en vigueur pour chacun des Etats qui l'aura ratifiée ou qui y aura adhéré au moment dudit dépôt. Cette Convention prendra effet pour les Etats qui la ratifieront ou qui y adhéreront par la suite quatre-vingt-dix jours après le dépôt de leur instrument de ratification ou d'adhésion. Elle sera enregistrée par le Secrétaire général de la Société des Nations le jour de son entrée en vigueur.

Tout Etat peut subordonner l'effet de sa ratification ou de son adhésion à la ratification ou à l'adhésion par un ou plusieurs Etats désignés par lui dans son instrument de ratification ou d'adhésion.

*Article 12.*

Après que la présente Convention aura été en vigueur pendant cinq ans, la revision pourra en être demandée à toute époque par trois au moins des Etats contractants.

*Article 13.*

La présente Convention pourra être dénoncée par l'un quelconque des Etats contractants après l'expiration d'un délai de cinq ans à partir de la date de son entrée en vigueur pour ledit Etat.

La dénonciation sera faite sous forme de notification écrite adressée au Secrétaire général de la Société des Nations. Copie de cette notification informant tous les autres Etats contractants de la date à laquelle elle a été reçue leur sera transmise par le Secrétaire général.

La dénonciation prendra effet un an après la date à laquelle elle aura été reçue par le Secrétaire général et ne sera opérante qu'en ce qui concerne l'Etat qui l'aura notifiée.

**EN FOI DE QUOI** les Plénipotentiaires susnommés ont signé la présente Convention.

**FAIT A GENÈVE**, le neuf décembre mil neuf cent trente, en un seul exemplaire qui sera déposé aux archives du Secrétariat de la Société des Nations ; copie conforme en sera remise à tous les Etats visés à l'article 8.



— 5 —

BELGIQUE

J. DE RUELLE

FRANCE

Georges RIPERT

**HONGRIE**

Avec la réserve prévue au Protocole  
annexe au IV *ad* art. 8.

**DIETRICH**

**ITALIE**

**Carlo ROSSETTI**

**POLOGNE**

**Josef SULKOWSKI**

**TCHÉCOSLOVAQUIE**

**MÜLLER**

**D. SITENSKY**

**YOUGOSLAVIE**

**Milan M. YOVANOVITCH**

Copie certifiée conforme.  
Pour le Secrétaire général :

*Conseiller juridique  
du Secrétariat.*

**Protocole-Annexe.**

I. Il est entendu que la présente Convention n'a pas pour effet de mettre obstacle au droit d'un Etat de s'opposer, en cas d'événements graves, au changement de pavillon des bateaux inscrits sur ses registres, ni, d'une manière générale, de régler la question des échanges commerciaux d'ordre international auxquels les bateaux donnent lieu, question qui demeure réservée notamment aux traités de commerce et aux conventions générales économiques

II. *Ad article 4, alinéa 2.*

Il est entendu, pour l'application de l'alinéa 2 de l'article 4, que, en ce qui concerne les sociétés de capitaux, leur nationalité est déterminée par le siège social.

III. Tout Etat, en signant ou en ratifiant la présente Convention, ou en y adhérant, peut déclarer que la présente Convention n'aura d'effets sur son territoire qu'en ce qui concerne les bateaux affectés à la navigation sur un réseau fluvial déterminé, étant entendu dans ce cas qu'il ne pourra se prévaloir des dispositions de la Convention, dans le territoire des autres Etats contractants, qu'à l'égard des bateaux portant son pavillon national, affectés à la navigation sur ce réseau.

IV. *Ad article 8.*

Il est joint à la présente Convention un texte en langue allemande ; les Plénipotentiaires, en signant ladite Convention, peuvent réserver à leur Gouvernement le droit, en la ratifiant, d'adopter ce texte, étant entendu que, dans ce cas, ledit texte vaudra également dans les rapports entre les Etats qui auraient usé du même droit et qu'au cas de différend entre ces Etats sur l'interprétation des textes, le texte de la Convention prévaudra si un des Etats parties ou intervenant au différend le réclame.

Le même droit est reconnu aux Etats qui adhéreront à la Convention.

Copie certifiée conforme.  
Pour le Secrétaire général :

*Conseiller juridique  
du Secrétariat.*

N° officiel: **Conf. U. D. F. 60.**

Genève, le 2 mars 1931.

SOCIÉTÉ DES NATIONS

**CONFÉRENCE POUR L'UNIFICATION  
DU DROIT FLUVIAL**

*(Genève, 17 novembre—9 décembre 1930.)*

**ACTE FINAL DE LA CONFÉRENCE.**

Série de Publications de la Société des Nations

**VIII. COMMUNICATIONS ET TRANSIT**

1931. VIII. 5. ✓

## ACTE FINAL

### DE LA CONFÉRENCE POUR L'UNIFICATION DU DROIT FLUVIAL

La Conférence pour l'unification du droit fluvial, convoquée en exécution d'une décision prise par le Conseil de la Société des Nations le 15 janvier 1930 sur la proposition de la Commission consultative et technique des communications et du transit, s'est réunie du 17 novembre 1930 au 9 décembre 1930, au Secrétariat de la Société des Nations, à Genève.

La Conférence a élu comme président Monsieur Joseph DE RUELLE, jurisconsulte du Ministère des Affaires étrangères de Belgique.

Les travaux du Secrétariat ont été confiés à M. Robert HAAS, chef de la Section des communications et du transit du Secrétariat de la Société des Nations, assisté de M. J. M. F. ROMEIN, le Secrétariat des Commissions étant assuré par M. J. L. METTERNICH.

L'Albanie, l'Allemagne, l'Autriche, la Belgique, la Grande-Bretagne et l'Irlande du Nord, la Bulgarie, le Danemark, la Ville libre de Dantzig, l'Espagne, l'Estonie, la Finlande, la France, la Grèce, la Hongrie, l'Etat libre d'Irlande, l'Italie, la Lettonie, la Lithuanie, le Luxembourg, la Norvège, les Pays-Bas, la Pologne, le Portugal, la Roumanie, la Suède, la Suisse, la Tchécoslovaquie, la Turquie, l'Union des Républiques soviétistes socialistes et la Yougoslavie avaient été invités à participer aux travaux de la Conférence.

Les Etats dont la liste suit ont pris part à la Conférence et ont, à cet effet, désigné les délégations composées des membres indiqués ci-après :

#### ALBANIE.

*Délégué :*

M. Lec KURTI, Ministre Résident, Délégué permanent auprès de la Société des Nations.

#### ALLEMAGNE.

*Délégués :*

M. Reinhold RICHTER, Conseiller intime de Régence, Chef de Département au Ministère de la Justice du Reich ;

Le docteur Werner VOGELS, Conseiller ministériel au Ministère de la Justice du Reich ;

Le docteur Erich ALBRECHT, Conseiller de Légation au Ministère des Affaires étrangères du Reich.

#### AUTRICHE.

*Délégués :*

Le docteur Jean LAWATSCHER, Conseiller ministériel au Ministère fédéral du Commerce et des Communications ;

Le docteur Charles LISSBAUER, Conseiller ministériel au Ministère fédéral de la Justice.

#### BELGIQUE.

*Délégués :*

M. Joseph DE RUELLE, Jurisconsulte du Ministère des Affaires étrangères ;

M. Henri DE VOS, Inspecteur général de la Marine ;

*Délégué adjoint :*

M. Léon DESCAMPS, Conseiller juridique de l'Administration de la Marine.

*Expert :*

M. François DE STRYKER, Conservateur honoraire des Hypothèques à Anvers.

#### BULGARIE.

*Délégué :*

M. Anguel KARAGUEUSOFF, premier Président de la Cour de Cassation.

VILLE LIBRE DE DANTZIG.

*Délégués :*

- M. Josef SULKOWSKI, Professeur à la Faculté de Droit de l'Université de Poznan (chef de la Délégation) ;  
M. Richard KETTLITZ, Conseiller supérieur de la Cour suprême de Dantzig.

FRANCE.

*Délégués :*

- M. Georges RIPERT, Professeur à la Faculté de Droit de Paris ;  
M. Henri HOUBEURT, Inspecteur général des Ponts et Chaussées, Directeur de l'Office de la Navigation intérieure au Ministère des Travaux publics ;

*Délégué adjoint :*

- M. Paul CHARGUÉRAUD-HARTMANN, Secrétaire de la Délégation française aux Commissions fluviales internationales, Jurisconsulte adjoint du Ministère des Affaires étrangères.

GRÈCE.

*Délégué :*

- M. R. RAPHAEL, Délégué permanent auprès de la Société des Nations.

*Délégué adjoint :*

- M. Alexandre CONTOUMAS, premier Secrétaire de la Délégation permanente auprès de la Société des Nations.

HONGRIE.

*Délégué :*

- Son Excellence M. Alfred DE DIETRICH DE SACHSENFELS, Envoyé extraordinaire et Ministre plénipotentiaire.

ITALIE.

*Délégués :*

- Son Excellence M. Carlo ROSSETTI, Envoyé extraordinaire et Ministre plénipotentiaire ;  
M. Raffaele MONTAGNA, Conseiller d'Etat.

PAYS-BAS.

*Délégués :*

- Le docteur Gerhard NAUTA, Avocat et Notaire, ancien Professeur à l'Ecole des Hautes Etudes commerciales à Rotterdam ;  
Le docteur Guy VAN SLOOTEN Azn., Conseiller à la Cour d'Appel et à la Haute Cour militaire à La Haye.

*Secrétaire :*

- Le docteur J. H. KIEWIET DE JONGE, Avocat, Secrétaire du Bureau central pour la Navigation rhénane et intérieure.

POLOGNE.

*Délégués :*

- M. Josef SULKOWSKI, Professeur à la Faculté de droit de l'Université de Poznan (chef de la Délégation) ;  
M. Alfred KONOPKA, Ingénieur, Chef de Division et Inspecteur général au Ministère des Travaux publics ;  
M. Valenty GARCZYNSKI, Conseiller ministériel au Ministère des Travaux publics ;  
M. Wacław LACINSKI, Conseiller ministériel au Ministère des Affaires étrangères.

PORTUGAL.

*Délégué :*

- M. Alexandre FERRAZ DE ANDRADE, Chef de la Chancellerie portugaise auprès de la Société des Nations.

**ROUMANIE.**

*Délégués :*

Son Excellence M. Constantin CONTZESCO, Ministre plénipotentiaire, Délégué aux Commissions européenne et internationale du Danube ;  
M. Nicolas DASCOVICI, Professeur de Droit international à l'Université de Jassy.

**SUÈDE.**

*Délégué :*

M. Christian DE GÜNTHER, Directeur de la Division commerciale au Ministère royal des Affaires étrangères.

*Délégué adjoint :*

M. Eric DE POST, Secrétaire au Ministère royal des Affaires étrangères.

**SUISSE.**

*Délégués :*

M. Robert HAAB, Professeur à l'Université de Bâle ;  
Le docteur Reinhard HOHL, Chef de Section au Département politique fédéral.

**TCHÉCOSLOVAQUIE.**

*Délégués :*

Son Excellence M. Bohuslav MÜLLER, Envoyé extraordinaire et Ministre plénipotentiaire (chef de la délégation) ;  
Le docteur Frantisek SITENSKY, Conseiller supérieur au Ministère du Commerce.

*Délégué adjoint :*

M. Joseph SUST, Conseiller au Ministère des Affaires étrangères.

*Expert :*

Le docteur Frédéric ANDRES, Secrétaire du Ministère de la Justice.

**YOUGOSLAVIE.**

*Délégué :*

M. Milan YOVANOVITCH, Directeur de la Navigation intérieure au Ministère royal des Communications.

*Délégués adjoints :*

M. Douchan PANTITCH, Chef de Section au Ministère royal des Affaires étrangères ;  
Le docteur Ivan SOUBOTITCH, Chef de Section au Ministère royal des Affaires étrangères.

Les Etats suivants avaient désigné comme observateurs :

**DANEMARK.**

M. William BORBERG, Délégué permanent auprès de la Société des Nations.

**FINLANDE.**

M. Evald GYLLENBÖGEL, Conseiller de Légation à Berne et à la Délégation permanente auprès de la Société des Nations.

Remplaçant :

M. Paul HJELT, Secrétaire de Légation à la Délégation permanente auprès de la Société des Nations.

**TURQUIE.**

Fuat CHEVKET Bey, Consul de la République turque à Genève.

Les représentants suivants de la COMMISSION DE GOUVERNEMENT DU TERRITOIRE DU BASSIN DE LA SARRE :

M. Paul CENTNER, Directeur technique adjoint des Travaux publics, des Chemins de fer et des Postes et Télégraphes ;

M. Max HOFFMANN, Chef du Service de la navigation,

ont pris part aux travaux de la Conférence à titre consultatif.

La COMMISSION CONSULTATIVE ET TECHNIQUE DES COMMUNICATIONS ET DU TRANSIT a été représentée par :

M. Bohdan WINIARSKI, Président du Comité pour l'Unification du Droit fluvial.

Ont été invitées à prendre part aux travaux de la Conférence, à titre consultatif, les Organisations internationales suivantes qui ont désigné à cet effet :

#### COMMISSION CENTRALE POUR LA NAVIGATION DU RHIN.

Son Excellence M. Carlo ROSSETTI, Envoyé extraordinaire et Ministre plénipotentiaire, Commissaire d'Italie, Président du Comité de droit privé de la Commission centrale pour la Navigation du Rhin ;

M. Jan HOSTIE, Secrétaire général de la Commission centrale pour la navigation du Rhin.

#### COMMISSION INTERNATIONALE DU DANUBE.

Son Excellence M. Carlo ROSSETTI, Envoyé extraordinaire et Ministre plénipotentiaire, Délégué de l'Italie à la Commission internationale du Danube ;

Son Excellence M. Constantin CONTZESCO, Ministre plénipotentiaire, Délégué de la Roumanie à la Commission internationale du Danube ;

Assistés de :

M. Alexis BAULE, Secrétaire général de la Commission internationale du Danube.

#### COMMISSION INTERNATIONALE DE L'ELBE.

Son Excellence M. Carlo ROSSETTI, Envoyé extraordinaire et Ministre plénipotentiaire, Délégué de l'Italie à la Commission internationale de l'Elbe ;

M. O. G. VON WESENDONK, Secrétaire général de la Commission internationale de l'Elbe.

#### COMMISSION INTERNATIONALE DE L'ODER.

Son Excellence M. Bohuslav MÜLLER, Délégué de la Tchécoslovaquie à la Commission internationale de l'Oder ;

M. Bohdan WINIARSKI, Délégué de la Pologne à la Commission internationale de l'Oder, Président du Comité de droit fluvial de la Société des Nations ;

M. Paul CHARGUÉRAUD-HARTMANN, Secrétaire général de la Commission internationale de l'Oder.

#### INSTITUT INTERNATIONAL DE ROME POUR L'UNIFICATION DU DROIT PRIVÉ.

M. Hans FICKER, Secrétaire général-adjoint de l'Institut.

#### COMITÉ MARITIME INTERNATIONAL.

M. Albert LE JEUNE, Vice-Président du Comité.

#### CHAMBRE DE COMMERCE INTERNATIONALE.

M. O. H. HOFFMANN, Directeur général de la Société d'Assurances « Unitas » à Düsseldorf, Président de la Commission des Assurances fluviales de l'Union internationale d'Assurances Transports ;

M. HOLBAN, Secrétaire du Comité national roumain de la Chambre de Commerce internationale.



La Conférence a élaboré et adopté trois conventions :

1<sup>o</sup> Une Convention sur l'unification de certaines règles en matière d'abordage dans la navigation intérieure ;

2<sup>o</sup> Une Convention concernant l'immatriculation des bateaux de navigation intérieure, les droits réels sur ces bateaux, et autres matières connexes.

3<sup>o</sup> Une Convention concernant les mesures administratives propres à attester le droit au pavillon des bateaux de navigation intérieure.

La Conférence a également formulé les vœux suivants :

« I. La Conférence émet le vœu que les Hautes Parties contractantes à la Convention sur l'unification de certaines règles en matière d'abordage dans la navigation intérieure, du 9 décembre 1930, qui se prévaudraient de la réserve prévue sous le chiffre I, B, du Protocole-Annexe en ce qui concerne les eaux où la navigation est exclusivement réservée à leurs nationaux, conformément leur législation nationale, applicable à ces eaux, aux dispositions de ladite Convention.

« II. La Conférence émet le vœu que, en attendant la conclusion, reconnue désirable, d'une convention sur l'assistance et le sauvetage en ce qui concerne la navigation fluviale, les législations nationales imposent, après un abordage, au capitaine ou patron de chacun des bateaux entrés en collision, le devoir, autant qu'il peut le faire sans danger sérieux pour son bateau, son équipage et ses passagers, de prêter assistance à l'autre bateau, à son équipage et à ses passagers.

« III. La Conférence émet le vœu que soit élaborée dans un avenir prochain une convention sur la matière de la saisie conservatoire. »

EN FOI DE QUOI les délégués à la Conférence ont signé le présent acte.

FAIT à Genève le neuf décembre mil neuf cent trente, en un seul exemplaire qui restera déposé au Secrétariat de la Société des Nations.

#### ALLEMAGNE

Reinhold RICHTER  
D<sup>r</sup> Werner VOGELS  
D<sup>r</sup> ALBRECHT.

#### AUTRICHE

D<sup>r</sup> Johann LAWATSCHEK  
D<sup>r</sup> Karl LISSBAUER

#### BELGIQUE

J. DE RUELLE

VILLE LIBRE DE DANTZIG

Josef SULKOWSKI  
Richard KETTLITZ.

FRANCE

Georges RIPERT

GRÈCE

CONTOUMAS

HONGRIE

DIETRICH

ITALIE

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DU DROIT PRIVÉ

FICKER

Copie certifiée conforme.  
Pour le Secrétaire général :

*Conseiller juridique  
du Secrétariat.*

11 JUL 1931

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Geneva, April 8th, 1931.

**LEAGUE OF NATIONS**

**Advisory and Technical Committee for Communications  
and Transit**

**PERMANENT COMMITTEE ON PORTS AND MARITIME NAVIGATION**

**ENQUIRY CONCERNING THE MEANING ATTACHED  
TO THE TERM "COASTING TRADE"  
IN THE VARIOUS COUNTRIES.**

In accordance with the request of the Advisory and Technical Committee for Communications and Transit, the Secretary-General of the League of Nations forwarded to Governments, under date of January 17th, 1930, a circular letter, as follows :

[C.L.5.1930.VIII.]

Geneva, January 17th, 1930.

At the request of the Chairman of the Advisory and Technical Committee for Communications and Transit, the Secretary-General has the honour to inform the . . . Government that the Advisory and Technical Committee, when examining the action to be taken on the work of the Third General Conference on Communications and Transit held at Geneva in August and September 1927, decided to refer for examination to its Permanent Committee on Ports and Maritime Navigation the question raised by the Japanese delegate in regard to the problem of maritime coasting trade. The Japanese delegate's proposal, as set forth in a subsequent memorandum addressed to the Chairman of the Advisory and Technical Committee, is that an enquiry should be made concerning the meaning which the different States attach to the term "coasting trade", and the laws and practices relating thereto.

In order to facilitate enquiries to be made by the Committee on Ports and Maritime Navigation, the Chairman of that Committee desires first to collect information, and, to this end, the Secretary-General has the honour to forward to the . . . Government a questionnaire on the subject of coasting trade. He would be very grateful if the reply could reach him before September 1st, 1930.

**QUESTIONNAIRE.**

1. What are the laws prescribing, limiting or defining the vessels that may be employed in the "coasting trade"? Could a summary be given of such laws, regulations or other rules as are in force?

2. If the coasting trade is reserved for the national flag:

(a) Is it absolutely reserved?

(b) Is the right to engage in the coasting trade granted in certain cases to other flags temporarily, or permanently? If so, to the flags of what States has it been granted and on what treaties or agreements is it based? And under what condition as to reciprocity?

3. Do vessels under the national flag employed in coasting trade enjoy preferential treatment? If so, in what form (for instance, reduction of harbour dues, towage charges, pilotage dues, lighthouse charges, etc.) ?

4. Do goods carried in the coasting trade under the national flag enjoy preferential treatment? If so, on what routes and under what condition (for instance, reduction of Customs duties in cases where the coasting trade might include carriage of goods between separate Customs territories) ?

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EXTRACTS FROM REPLIES OF GOVERNMENTS.

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Albania.

[Translation.]

August 25th, 1930.

1. In Albania it is more or less true to say that there are no laws or regulations prescribing, limiting or defining the vessels that may be employed in the coasting trade in Albanian ports.

2. The coasting trade is reserved for the national flag :

(a) It is not absolutely reserved.

(b) The right to engage in the coasting trade in Albanian ports is granted temporarily and on condition of reciprocity to vessels flying the Italian, Yugoslav and Greek flags. This is in pursuance of the provisions of the Treaties of Commerce and Navigation between Albania and Italy concluded in Rome on January 20th, 1924, between Albania and Yugoslavia, signed at Tirana, on June 23rd, 1926, and between Albania and Greece, signed at Athens, on October 13th, 1926.

Article 17 of the Albano-Italian Treaty of Commerce reads as follows :

“ Italian vessels shall, as at present, be allowed to carry passengers and goods from one Albanian port to the other.

“ As regards the unloading at Albanian ports of goods carried by vessels belonging to Italian shipping companies or shipowners, such goods may continue, as at present, to be delivered to Customs warehouses.”

Article 20 of the Treaty of Commerce and Navigation between Albania and Yugoslavia reads as follows :

“ The provisions relating to the assimilation of vessels of the two Contracting Parties may not be extended to the coasting trade, which shall continue to be reserved exclusively for the vessels of the country. Nevertheless, each of the two Contracting Parties shall immediately and unconditionally allow the vessels of the other to engage in coasting trade along its coasts in the event of this concession being accorded to the vessels of a third Power.

“ Likewise, vessels belonging to either of the two Contracting Parties which arrive from one of the national ports or from foreign ports with cargo or carrying passengers will be admitted into the territorial waters of the other Party, either for the purpose of unloading their cargo there or of landing passengers coming directly from foreign countries, or taking cargo consigned to foreign countries or for embarking passengers for foreign countries.”

Article 20 of the Commercial Treaty with Greece reads as follows :

“ The provisions regarding the assimilation of vessels of the two Contracting Parties may not be extended to the coasting trade, which shall continue to be reserved exclusively for national shipping. Nevertheless, either High Contracting Party shall allow the vessels of the other to engage in the coasting trade along its coasts if it has granted this concession to the vessels of a third Power.

“ Vessels flying the Greek flag shall be permitted to continue their present practice of conveying, between Albanian ports, passengers and goods of whatever origin or provenance. The Albanian Government agrees to encourage the establishment of regular Greek navigation services between Albanian ports and to ensure their normal and regular operation.”

All vessels flying the Italian, Yugoslav and Greek flags enjoy the same treatment as vessels flying the national flag, and the rates for harbour dues, towage charges, pilotage dues, health inspection dues and lighthouse charges are the same as for the above-mentioned flags.

All goods carried by vessels of the above-mentioned nationalities enjoy the same privileges and reductions of dues and are subject to the same Customs tariff as goods carried by Albanian vessels.

3. Vessels under the national flag employed in the coasting trade do not enjoy any preferential treatment.

4. Goods carried in the coasting trade under the national flag do not enjoy any preferential treatment.

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Australia.

July 4th, 1930.

1. The coasting trade of Australia is regulated by the provisions of the Commonwealth Navigation Act 1912-1926, Part VI of which deals with the matter. The following are extracts from Part VI of the Act :

“ 284. — This Part of this Act shall, except where otherwise expressed, apply to all ships (whether British or foreign).

“ 287. — (1) A ship shall not engage in the coasting trade which is receiving, or which under any arrangement is to receive, or which in the immediately preceding twelve months has been receiving, directly or indirectly, any subsidy or bonus from any Government other than that of a part of the British Dominions.

“ (2) Any payment for services *bona fide* rendered in the carriage of mails, passengers or goods, at rates based solely on the actual commercial value of these services, shall not be taken to be a subsidy within the meaning of this section.

“ 288. — (1) No ship shall engage in the coasting trade unless licensed to do so.

“ (2) Licences to ships to engage in the coasting trade shall be for such period, not exceeding three years, as is prescribed, and may be granted as prescribed.

“ (3) Every licence shall be issued subject to compliance on the part of the ship, her master, owner, and agent, during such time as she is engaged in the coasting trade, with the following conditions :

“ (a) That the seamen employed on the ship shall be paid wages in accordance with this Part of this Act ; and

“ (b) That, in the case of a foreign ship, she shall be provided with the same number of officers and seamen, and with the same accommodation for them, as would be required if she were a British ship registered in Australia or engaged in the coasting trade.

“ 289. — (1) Every seaman employed on a ship engaged in any part of the coasting trade shall, subject to any lawful deductions, be entitled to and shall be paid, for the period during which the ship is so engaged, wages at the current rates ruling in Australia for seamen employed in that part of the coasting trade, and may sue for and recover those wages.”

2. (a) The coasting trade is not reserved to the national flag. All ships, British and foreign, are placed on a footing of equality. (The term “ British ships ”, it will be noted, includes Australian-registered ships.)

(b) Unlicensed British ships are permitted to engage in the coasting trade only when a licensed ship is not available to perform the service.

The law provides, in effect, that a British ship can engage in the coasting trade under either of two sets of circumstances, (i) by obtaining a licence and complying with Australian conditions as to wages, accommodation, etc., and (ii) by obtaining a permit under section 286. Trading under a permit does not involve compliance on the part of the ship with Australian conditions as to rates of wages, hours, accommodation, etc. Foreign ships, on the other hand, may engage in the coasting trade only by obtaining a licence and by complying with local conditions.

3. No preferential treatment is granted by the Federal Legislature, either as regards light dues or in any other manner, to national vessels engaged in the coasting trade.

As regards port dues and similar charges, certain harbour and other local authorities differentiate in charges as between Australian registered and other ships. For example, at the port of Bunbury, in West Australia, Australian registered ships enjoy cheaper port dues, berthing dues, hire of mooring springs and watermen's fares than do other vessels, but no distinction of this nature is made at any other port. In all States, however, preference is granted to local ships in regard to the issue of certificates (pilotage exemption certificates) to masters possessing the necessary local knowledge and passing the prescribed examination entitling the vessels under their charge to enter and leave the port without a pilot.

4. No preferential treatment of any kind is granted, under either Federal or State law, in respect of goods carried in the coasting trade under the national flag.

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Belgium.

[Translation.]

April 3rd, 1930.

1. No regulations exist in Belgium concerning “ the coasting trade ”. Article 232 of Book II of the Commercial Code defines “ foreign-going vessels ” (*voyage au long cours*). All voyages which are not voyages of foreign-going vessels within the meaning of this article are regarded as coming under the coasting trade.

2. The coasting trade is not reserved for the national flag.

3. Vessels under the national flag employed in the coasting trade enjoy no preferential treatment.

4. Goods carried in the coasting trade under the national flag enjoy no preferential treatment. The absence of regulations concerning the coasting trade in Belgium is caused partly by the configuration of the country, which is not calculated to encourage the development of a national coasting trade, and partly from the protectionist measures put into force in neighbouring countries, the coast line of which is such as to encourage a coasting trade which they promote by means of preferential privileges granted to national vessels.

It is not, however, to be inferred from this absence of regulations that Belgium has no interest in this question. On the contrary, the international coasting trade is of particular interest to Belgium, in view of her geographical position.

### Brazil.

[Translation.]

April 26th, 1930.

1. Article 13 of the Brazilian Constitution says :

“ Navigation in the coasting trade shall be effected by Brazilian vessels.”

The Regulations on the Mercantile Marine and Navigation in the Coasting Trade, approved by Decree No. 10524 of October 23rd, 1913, defines the coasting trade in Article 3 in the following terms :

“ By coasting trade, is meant the direct trade of national or nationalised goods between Brazilian maritime and river ports.”

Articles 16 to 19 of the same regulations lay down the conditions under which a vessel can claim to be regarded as Brazilian and the cases in which it loses this nationality.

2. The reservation is absolute in ordinary times. In cases of public calamity, war or blockade, however, the principle is modified. Thus, paragraphs (e) and (f), of Article 5 of the regulations mentioned, say that foreign ships may “ bring assistance by authorisation of the Government from one port of the country to another in cases of famine, pestilence or other calamity ”, and “ carry any cargo from one port to another in Brazil in cases of external war, civil disturbance and damage caused to the national shipping and maritime trade by the blockade of foreign forces, even if there has been no declaration of war, provided that the public authorities think fit ”.

In all circumstances, however, foreign companies are permitted to transport passengers between Brazilian ports.

3. Yes. Under the name of packet-boat privileges, ships belonging to undertakings or companies which comply with certain conditions, stipulated in Article 159 of the regulations mentioned, are granted the privileges enumerated in Article 157 — *i.e.* (i) the right to sail at any hour of the day or night subject to the provisions of the said regulations ; (ii) the right to be allowed to unload immediately, after the entrance inspections, without need to produce a Customs licence and without the revenue officials being present ; (iii) exemption from lighthouse charges ; (iv) exemption from charity contributions in all ports of the Republic ; (v) passport to be valid if the registration certificate has not been changed and if sufficient space is left for observations ; (vi) free sailing passes or permits subject only to the maximum Federal stamp of 1\$000 (1 milreis) ; (vii) reduction of 50 per cent in dock duties and mooring, loading and unloading fees to which foreign vessels are liable, subject to the observance of the agreements in force on the date of the promulgation of the regulations ; (viii) exemption in Brazilian ports from the double fee for loading, unloading and stowage of goods on Sundays and holidays in cases when the vessels were obliged to call at or remain in the ports on such days in pursuance of a schedule approved by the Government, the above being subject to the observance of the agreements in force on the date of the promulgation of the regulations.

4. No. Foreign goods carried in Brazilian steamers are subject to the same treatment as when carried in foreign vessels.

### Bulgaria.

[Translation.]

March 28th, 1930.

1. There are no special laws in Bulgaria prescribing the vessels that may be employed in the coasting trade.

2. Under the law of February 13th, 1906, concerning coastal navigation, such navigation is reserved for the national flag.

(a) It is absolutely reserved in so far as the coasting service can be provided for by vessels flying the national flag.

(b) The right to engage in the coasting trade is granted to other flags annually when vessels flying the national flag are not sufficient in numbers to provide for such service at least twice a week.



3. Vessels under the national flag employed in the coasting trade do not pay harbour dues in respect of their stay in the ports at which they are registered. In all other places they pay all the charges provided for by the regulations on the subject.

4. Goods carried in the coasting trade under the national flag enjoy no preferential treatment. They pay all the duties and taxes which are required in such cases.

#### Canada.

March 19th, 1930.

1. Part XVI of Chapter 186 of the Revised Statutes of Canada, 1927, an Act respecting shipping in Canada and cited as the Canada Shipping Act, provides (Section 935) that :

“ No goods or passengers shall be carried by water, from one part of Canada to another, except in British ships.”

British ships, for this purpose, are defined as ships belonging wholly to persons qualified or entitled to be owners of British ships under the provisions of the Merchant Shipping Act of 1894, or any other Act of the Parliament of Great Britain in that behalf in force for the time being.

The Merchant Shipping Act of 1894 provides that a ship shall not be deemed to be a British ship unless owned by :

Natural-born British subjects ;  
Legally-naturalised British subjects ;  
Persons made denizens by letter of denization ; and  
Bodies corporate, established under and subject to the laws of His Majesty's Dominions and having their principal place of business in those Dominions.

It is provided that foreign-built British ships must obtain a licence to be entitled to engage in the coasting trade of Canada, and that such licence shall be issued upon application and upon payment of a duty of 25 per centum *ad valorem* on the value of the ship.

It is further provided that the Governor in Council may, from time to time order that the foregoing shall not apply specifically either throughout or in any specified waters of Canada to ships or vessels of any foreign country.

It is further provided that British ships may be licensed to navigate the inland waters of Canada, above Montreal, and may direct that a fee of 50 cents shall be payable for each such licence, and that any vessel navigating the said waters and not having a licence shall, on entering a Canadian port, pay a fee of 50 cents, if not over 50 tons burthen, and of one dollar, if more than 50 tons burthen, and a like fee on clearance, on each occasion.

2. (a) Yes.

(b) Yes, temporarily and occasionally, on inland waters only, to foreign-built British ships and to United States vessels, enabling them to load grain at Canadian ports for transport to other ports, either Canadian or United States, for winter storage on board and or for subsequent unloading. This is purely a domestic arrangement and is made at the instigation of the Board of Grain Commissioners for Canada to facilitate the movement of this commodity and to avoid undue congestion at the head of the Great Lakes.

3. No,

4. No.

#### Chile.

[Translation.]

July 19th, 1930.

1. The laws in force are as follows :

Law on the coasting trade No. 2841, of February 6th, 1922.

Regulations on the application of the law on the coasting trade, Decree by the Ministry of Finance No. 1035, of August 4th, 1922 (this defines the coasting trade as “ the transport of cargoes between ports of the Republic ”).

Law on tonnage No. 3219, of January 29th, 1917.

Regulations for the application of the law on tonnage, Decree No. 1303, of May 20th, 1919.

2. (a) The coasting trade is absolutely reserved for national vessels in regard to the transport of cargoes between the ports of the littoral. Foreign ships may carry passengers between the ports on the Chilian coast, provided they pay the tonnage duties laid down in the law and regulations on tonnage. The duty is \$1.50, per registered ton (the Chilian dollar being worth 6d).

(b) The right to engage in the coasting trade (transport of cargoes) is not granted temporarily or permanently to foreign vessels.

Article 1, paragraph 2, of the law on the coasting trade authorises the President of the Republic to grant the right to engage in the coasting trade on the Chilian coasts, subject to reciprocity, to the vessels of other South-American nations which grant a similar privilege to Chilian vessels.

3. National vessels enjoy no preferential treatment with regard to harbour dues, Customs duty, towage, lighthouse and buoyage dues and hospital charges, and are treated on the same footing as foreign vessels. With regard to pilotage and subsidiary pilotage, the general pilotage regulations, Decree No. 271, dated January 31st, 1930, contain the following provisions :

“ Article 3. — Pilotage is compulsory in the following cases only :

“ (a) Passage of the Kirke Channel (Straits of Patagonia).

“ (b) On entering and leaving certain ports.

“ Article 13. — Subsidiary pilotage (harbour works) is compulsory in certain cases :

“ (a) Mooring to and unmooring from buoys in certain ports.”

4. There are no special provisions applicable to the Chilian mercantile marine in this respect, either in the case of the coasting trade or of foreign navigation.

#### Costa Rica.

[Translation.]

January 28th, 1931.

The legislation of Costa Rica, so far as concerns the coasting trade, only contains the two following articles in the “ Fiscal Code ” dated October 30th, 1885 :

“ Article 7. — The coasting trade can be carried on only by national vessels, and such vessels cannot engage in the said trade when they have brought goods from foreign countries unless they have unloaded the whole of their cargo, in the port to which they were bound, on arrival.

“ Article 8. — National and foreign vessels after having unloaded the whole of their cargo, in the port to which they were bound, on arrival, can proceed to any point on the coast, for the purpose of taking on board national goods, even if there is no Customs office at the said point or no regular coasting trade there, provided that they obtain a permit from the responsible Administrator of Maritime Customs and that they comply with the regulations in force.”

#### Danzig.

[Translation.]

March 27th, 1930.

1. The coastwise goods trade is regulated, as far as the Free City of Danzig is concerned, by the German law on maritime coasting trade of May 23rd, 1881.<sup>1</sup>

2. Under this law, only national vessels have the right to engage in the maritime coasting trade. Foreign ships may be granted this right by international treaty or by decree. The coasting trade of foreign ships is, however, practically negligible as far as the Free City of Danzig is concerned, since there is very little foreign goods traffic on the short Danzig coast. Consequently, the Free City of Danzig has not concluded, so far, any treaties with regard to the coasting trade, or issued any decrees in this connection.

The above also provides a sufficient reply to Questions 3 and 4 of the Questionnaire.

#### Denmark.

[Translation.]

September 16th, 1930.

1. Ordinances of September 1st, 1819, and September 5th, 1820. — Under the provisions contained in these ordinances, the transport of goods between Danish ports by vessels the tonnage of which does not exceed 15 *Commercelæster* (a tonnage corresponding to 30 net register tons) is reserved for vessels owned by Danish subjects.

Law of April 14th, 1865. — Under this law, the Danish Government was authorised on condition of reciprocity to grant the right to engage in the coasting trade to vessels — whatever be their tonnage — whose home port is situated in a country entitled to preferential treatment

<sup>1</sup> See Germany.

in its commercial relations with Denmark, provided that the foreign vessels in question comply with the general regulations in force with regard to the exercise of the coasting trade in Denmark.

2. (a) No.

(b) Under the provisions of Article 6 of the Law of November 30th, 1918, establishing the union between Denmark and Iceland, Icelandic vessels enjoy the same right to engage in the coasting trade in Denmark as Danish vessels.

Under the above-mentioned law of April 14th, 1865, the Danish Government granted vessels having their home port in the following countries the same right to engage in the coasting trade in Denmark as is enjoyed by Danish vessels :

Belgium (Exchange of Notes of August 12th, 14th and 31st, 1867) ;  
Mecklenburg-Schwerin (Declaration of September 7th-14th, 1867) ;  
North German Confederation (Declaration of February 17th-23rd, 1868).

Under the provisions contained in the following treaties, conventions, etc., concerning most-favoured-nation treatment, vessels having their home port in the following countries may also — whatever be their tonnage — engage in the coasting trade in Danish ports :

Dominican Republic (Treaty of Friendship, Commerce and Navigation of July 26th, 1852);  
Portugal (Declaration of December 14th, 1896) ;  
Yugoslavia (Commercial Declaration of November 30th, 1909) ;  
Bulgaria (Declaration of December 10th, 1909) ;  
Japan (Treaty of Commerce and Navigation of January 13th, 1912) ;  
Estonia (Exchange of Notes of September 7th, 1923) ;

Great Britain (Treaty of Peace and Commerce of July 11th, 1670). Nevertheless, British vessels cannot engage in coasting trade between the ports of the Faroe Islands or between those ports and the ports of Denmark proper ;

Spain (Convention of Commerce and Navigation of January 2nd, 1928).

3. No.

4. No.

\* \* \*

As regards Greenland, no vessels, either Danish or foreign, may visit these territories without a special permit, with the exception of certain districts on the east coast which are open to Danish and Icelandic vessels under an Ordinance of July 5th, 1924. These districts also are open to Norwegian vessels (Convention of July 9th, 1924) and to British and French vessels (most-favoured-nation treatment granted by Exchange of Notes of April 23rd-June 4th, 1925, and October 12th-19th, 1925, respectively).

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Egypt.

March 23rd, 1930.

1. Annex V of the Commercial Convention entered into between the Egyptian Government and the Greek Government on March 9th-21st, 1895, to which the Foreign Powers have agreed, allows foreign vessels to trade between Egyptian ports if their tonnage exceeds 400 tons gross.

2. The coasting trade is, therefore, reserved to the national flag for craft of 400 tons gross and under.

The following eight classes of foreign vessels have, however, been allowed to ply between Egyptian ports and to be assimilated to coasters, although of less than 400 tons gross, provided they pay Customs dues on their value, as coasters do :

Fishing vessels, sponge-fishing vessels, vessels attached to the fishing fleets, vessels employed in the transport of fish, provisions, etc., vessels employed in the transport of provisions from Suez to "oil ports" on the Red Sea, vessels employed in transporting oil, vessels trading between Suez and El-Tor, and salvage vessels plying between Egyptian ports.

3. Coasting vessels pay one-half of the port dues payable by commercial vessels. Steam coasters enjoy a 25 per cent rebate in light dues, and sailing coasters pay monthly light dues of 375 *millièmes*. No reduction in pilotage dues is granted to coasters. Pilotage is optional in the Port of Alexandria, but is compulsory for vessels entering or leaving Suez basin. Fishing boats pay yearly light dues of 750 *millièmes*.

4. Goods transported by coasting vessels do not enjoy any preferential treatment and pay the usual Customs dues.

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**Estonia.**

[Translation.]

February 13th, 1930.

1. Under Article 165 of the Commercial Law in force in Estonia, the right to engage in the coasting trade is exclusively reserved for Estonian nationals and ships flying the national flag. Provisions confirming this rule without any exceptions are inserted in all Estonian treaties which grant national treatment to foreign vessels.

2. (a) It is absolutely reserved.

(b) The right to exercise the coasting trade is not granted to other flags in any case.

3. Estonian vessels engaging in the coasting trade are entitled to a reduction of harbour dues.

4. Goods carried in the coasting trade are entitled to a reduction of dues levied in respect of weight. In winter, such goods and the ships carrying them are exempted from all fees payable to ice-breakers.

**Finland.**

[Translation.]

September 25th, 1930.

1. As regards the coasting trade, Article 4 of the Law concerning the "Right to exercise a Profession", dated June 27th, 1919, states :

"The right to the coasting trade as between places in Finland is exclusively reserved for Finnish vessels."

In conventions on navigation concluded with Germany and certain other countries, it is, however, laid down that the provisions forbidding the coasting trade do not apply to navigation connected with Petsamo — that is to say, navigation from Petsamo to another part of the coast of Finland and *vice versa*. This clause only containing one interpretation of the term "coasting trade", all foreign vessels are unconditionally granted the right to carry on the coasting trade between Petsamo and other places on the coast of Finland, even should that right not be granted to them by a most-favoured-nation clause inserted in the conventions concluded with foreign countries.

Furthermore, it should be borne in mind that in conventions on navigation, concluded between Finland and foreign Powers, navigation on inland waterways is also reserved for the national flag. Thus this navigation is put on an equal footing with the coasting trade, even when there is no question of navigation between various places in Finland.

2. The coasting trade has always been reserved for the national flag.

(a) It is absolutely reserved.

(b) The right to engage in the coasting trade cannot be granted to other flags either temporarily or permanently.

3. Since the coasting trade under foreign flags is altogether forbidden, there is no reason to compare the duties payable by national vessels and foreign vessels.

4. For the reasons indicated in paragraph 3, questions concerning the treatment of goods carried under the national flag with those carried under foreign flags does not arise.

**France.**

[Translation.]

November 17th, 1930.

1. The coasting trade, for the purposes of French law, should be defined as navigation carried on over distances shorter than those which constitute distant voyages and longer than those which fall under the definition of "bornage".

The geographical limits of what constitutes a distant voyage were determined by the Law of June 14th, 1854, amending Article 377 of the Commercial Code, and by the Law of January 30th, 1893, Article 1, paragraph 2, concerning the protection of the Merchant Marine. Under these texts, distant voyages are held to be those extending beyond the following limits : To the south, the thirtieth degree of latitude north ; to the north, 72° N. lat. ; to the west, 15° of longitude from the meridian of Paris ; to the east, 44° of longitude from the said meridian.

An exception is made by the Law of April 19th, 1906, Article 15, amending the above-mentioned Law of 1893, to the effect that fishing voyages to the grand banks of Iceland shall be regarded as coastwise navigation.

“Bornage” shall be held to mean navigation of a vessel, the tonnage of which does not exceed 25 tons, with the possibility of touching at various intermediate ports between its home port and another given point, which must not be more than 15 maritime leagues from the home port (46 nautical miles) (Decree-Law of March 24th, 1852).

The coasting trade is itself divided into the “national” coasting trade and the “international” coasting trade, according to whether the voyage is between two French ports or between a foreign port and a French port.

This distinction is most important because under French law the national coasting trade is reserved for the French flag.

2. The national coasting trade is reserved for the French flag by Article 4 of the Decree of September 21st, 1793. The monopoly of navigation has since become even stricter. Spain had formerly the right to engage in the coasting trade between Mediterranean ports under the Family Compact (Treaty of August 15th, 1761), which was once more put into force by the Treaty of Paris of 1814. This right was abolished by the Treaty of December 8th, 1877. Italy also enjoyed a similar privilege under a treaty of commerce of June 13th, 1861; this privilege lapsed when the treaties of commerce were denounced and the Decree of October 21st, 1886, which abolished extra flag charges on Italian vessels, did not re-establish it.

Furthermore, at the time of the abolition of the Colonial Pact, navigation between France and Algeria was opened to vessels of all countries (Law of May 19th, 1866, Article 9). However, the Law of April 2nd, 1889, proclaiming Algeria as French territory, placed navigation between France and Algeria under the regime of the coasting trade and confirmed the monopoly of the French flag.

However, the first article of the Law of July 22nd, 1909, allows the Government provisionally to suspend by decree the application of the Law of 1889 in the case of exceptional circumstances.

During the war of 1914-1918, the Decree of May 29th, 1915, suspended the application of this law for the duration of the war, and after the peace the Law of October 20th, 1919, continued the suspension of the Law of 1889 for a period of two years and placed Tunisian and Moroccan vessels (French zone of the Shereefian Empire) on the same footing as French vessels.

The Decree of September 21st, 1922, also suspended the operation of this law during a strike among French maritime services. It was once more put into force by the Decree of November 25th, 1922.

All these texts have been re-cast and appear in Articles 398 and 399 of the Decree of December 28th, 1926, which codified the legislative texts concerning Customs. These articles read as follows :

“Article 398. — The coasting trade or transport of goods from a French port to another French port, including Algerian ports, is reserved for French vessels.

“For this purpose, vessels of Tunisian nationality and of Moroccan nationality (French zone of Shereefian Empire) are placed on the same footing as French vessels.

“Coasting trade from one Algerian port to another may be engaged in by foreign vessels if a permit is granted by the Governor-General.

“Article 399. — In the case of exceptional circumstances which temporarily interrupt maritime relations under the French flag between one or more ports of France and Algerian or Corsican ports, or *vice versa*, the Government may, by decree issued by the Cabinet and during all the time that this interruption lasts, suspend the application of Article 398 above-mentioned.

“It may also, in the same manner and during the same period, as an exception, grant the privileges to which they are entitled by their origin, to Algerian, Tunisian or French products which, as the result of the interruption of normal relations, cannot be imported into France, Algeria or Tunisia under the conditions laid down by the regulations. The advantages of this regime are exclusively reserved for products accompanied by a certificate of origin under the conditions laid down by the Customs administration.

“The advantages deriving from their origin may be granted to goods which are *en route* if it can be proved that they were despatched before the publication of the decree in the *Official Journal*.

“The return to the normal regime shall be decreed in the same manner as soon as circumstances allow.

“The provisions of the previous paragraphs shall apply to traffic between Corsica and the French mainland.”

It sometimes happens that shippers cannot find the necessary French vessels to carry on the coasting trade, which is reserved for the French flag. The Merchant Shipping Department in such cases grants permission for an exception to be made, such permission being only valid for the particular transport in question after an enquiry carried out in accordance with the provisions of the circular of May 8th, 1923.

3. No.

4. No.

Germany.

[Translation.]

October 17th, 1930.

1. The law regarding the coasting trade dated May 22nd, 1881 (*Legal Gazette*, page 97):

“The right to load goods in a German seaport and transport them to another German seaport with a view to unloading them in the latter (coastal goods trade) is exclusively reserved to German ships.”

This right may be granted to foreign vessels by international treaty or by decree of the German Government with the approval of the Reichsrat.

The master of a foreign ship engaging without authorisation in the coasting trade will be liable to a fine. In addition to the fine, the seizure both of the ship and of the goods which it carries illegally may be ordered, irrespective of whether they belong to the person sentenced or not.

“Existing treaty provisions regarding the coastal goods trade are not affected by the present law.”

According to the definition of the Law (a), the coastal goods trade is therefore in principle reserved to the German flag, but not the coastal passenger trade.

The coastal goods trade does not include the so-called “stage traffic” (*Staffelfahrt*), which consists in visiting several ports in succession in order to unload goods coming from abroad or to load goods for foreign countries. This trade, therefore, is not reserved for the German flag in German commercial treaties.

2. (a) No (compare 1).

(b) Temporary authorisation is not granted. The time-limits for denunciation contained in these treaties are applicable to the coasting trade.

The following countries are at present authorised by decree to engage in the coasting trade: Brazil, Denmark, Norway and the Netherlands.

The coasting trade is expressly authorised by treaty to Czechoslovakia.

Most-favoured-nation treatment in regard to the coasting trade has been agreed upon in commercial treaties with the following countries, subject to reciprocity:

Great Britain (Article 21, Treaty of Commerce, December 2nd, 1924);

Yugoslavia (Article 22, Treaty of Commerce and Navigation, October 6th, 1927);

Latvia (Article 1, Treaty of Commerce, June 28th, 1926);

Austria (Article 25, Treaty of Commerce, April 12th, 1930) (Treaty not yet ratified, January, 1931);

Union of South Africa (Article 19, Treaty of Commerce and Navigation, September 1st, 1928).

In the treaties with the following countries, Germany and the other contracting parties have, in principle, reserved the coasting trade to their own flag or legislation, but have promised each other most-favoured-nation treatment, subject to reciprocity, with regard to any privileges that may be granted:

Belgo-Luxemburg Economic Union (Article 11, Provisional Commercial Arrangement, April 4th, 1925);

Colombia (Article 2, Treaty of Amity, Commerce and Navigation, July, 23rd, 1892);

Greece (Article 24, Treaty of Commerce and Navigation, March 24th, 1928);

Haiti (Article 21, Treaty of Amity and Commerce, March 10th, 1930) (Treaty not yet ratified, January 1931);

Italy (Article 33, Treaty of Commerce and Navigation, October 31st, 1925);

Japan (Article 19, Treaty of Commerce and Navigation, July 20th, 1927);

Panama (Article 10, Treaty of Commerce and Navigation, November 21st, 1927);

Siam (Article 15, Treaty of Commerce and Navigation, August 6th, 1928);

Sweden (Article 16, Treaty of Commerce and Navigation, May 14th, 1926). Germany renounces most-favoured-nation treatment in the coasting trade in so far as Sweden has granted it to other nations in virtue of treaties concluded before January 1st, 1914, and Sweden will not claim the right to engage in the coasting trade in Germany as long as Germany does not exercise this right in Sweden.

With the United States of America (Article 11, Treaty of Amity and Commerce, December 8th, 1923) and Nicaragua (Article 16, Treaty of Commerce, February 4th, 1896) most-favoured-nation treatment with regard to the coasting trade has been agreed upon by treaty.

3. No.

4. No.

Great Britain and Northern Ireland.

May 1st, 1930.

There are no laws in the United Kingdom which can be said to limit or define the vessels employed in the coasting trade. Sections 437 and 438 of the Merchant Shipping Act, 1894, as amended by Section 7 of the Merchant Shipping Act, 1906, and Section 441 of the Merchant Shipping Act, 1894, contain special provisions regarding the marking of deck and load-lines, in the case of ships engaged in the coasting trade. Ships trading coastwise may also be exempted from compulsory pilotage by pilotage authorities under Section 11 (4) (i) of the Pilotage Act, 1913. Attention should, however, be drawn to Section 92 of the Merchant Shipping Act, 1894 (as amended by Section 56 of the Merchant Shipping Act, 1906) which prescribes that foreign steamships carrying passengers between places in the United Kingdom must comply with certain requirements. Under the provisions of Section 78 of the Merchant Shipping Act, 1906, the Board of Trade have power to exempt foreign vessels from these requirements under certain conditions.

The main distinction drawn by the Merchant Shipping Acts, is, however, between home-trade and foreign-going ships, a home-trade ship being defined in Section 742 of the Merchant Shipping Act, 1894, as a ship employed in trading or going within the following limits, that is to say, the United Kingdom, the Channel Islands and Isle of Man, and the Continent of Europe between the River Elbe and Brest inclusive. While the requirements for home-trade ships vary in certain respects from the requirements for foreign-going ships (*i.e.*, in regard to agreement with the crew, engagement and discharge of crew, certificated officers, etc.), there is no distinction between British and foreign vessels as such.

In the circumstances above explained Question 2 does not arise and the answers to Questions 3 and 4 are in the negative.

It should be noted, however, that Sections 324-7 of the Customs Consolidation Act, 1853, give certain powers to restrict the privileges of foreign ships and to impose additional duties on those ships or on goods carried in them where the countries concerned impose prohibitions or restrictions on the voyages in which British ships may engage or otherwise discriminate against British ships.

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Greece.

[Translation.]

June 3rd, 1930.

1 and 2. Under the Royal Decree of 1836 concerning commercial navigation, which has force of law, except in cases where, on condition of reciprocity, conventions signed by Greece provide otherwise, vessels flying the national flag have the exclusive right to carry native products from one port of the country to another.

Furthermore, under the clause of Article 9 of the Statute on the international regime of maritime ports (Geneva, December 9th, 1923), authorising her to do so, Greece has reserved the coasting trade for the national flag in the treaties of commerce and navigation which she has concluded in recent years.

The contracting parties have, however, guaranteed each other most-favoured-nation treatment in this respect on condition of reciprocity.

In practice, and although the above-mentioned Decree does not stand in the way, the right to engage in the coasting trade is at present not recognised in Greece to any foreign flag. Thus, by the coasting trade in Greece is understood the carriage of goods which are either native or naturalised Greek and of passengers under the national flag from one Greek port to another.

There are no regulations defining what Greek vessels may be employed in the coasting trade. Any craft flying the Greek flag and complying with the conditions generally required in respect of safety of passengers and cargo can engage in such trade.

3. Vessels limiting their voyage to the ports of the country and not proceeding to foreign countries (*petit cabotage*) are allowed a reduction on sanitary dues, lighthouse charges and pilotage dues.

No account is taken of the flag in respect of the granting of preferential treatment. Foreign vessels would enjoy the same treatment, if, under the conditions stated above, the right to engage in the coasting trade were extended to them.

4. Goods carried in the coasting trade under the national flag enjoy no preferential treatment.

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Haiti.

[Translation.]

May 20th, 1930.

1. Section 18 of the Law of September 4th, 1905, concerning Customs; Article 50 of the Law of August 9th, 1926.

2. The right to engage in the coasting trade is granted by the services concerned to all foreign flags in certain clearly defined cases. Vessels to which this is granted are completely free from all dues.

3. Vessels intended for the coasting trade desiring to quit the territorial waters for voyages to neighbouring islands will be subject to all the provisions of the law concerning foreign-going merchant vessels with a view to protecting the interests of the fiscal authorities. Nevertheless, such coasting vessels are not liable for light dues, pilotage dues and charges for sanitary inspection.

4. Foodstuffs or products consigned to foreign countries on coasting vessels and the goods which they import from foreign countries are liable for Customs duties.

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India.

April 28th, 1930.

1. The coasting trade of India is open to all comers under the provisions of the Indian Coasting Trade Act, 1850 (V, of 1850).

2. As the Indian coasting trade is not reserved for the national flag, the questions asked do not arise.

3. No.

4. No.

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Irish Free State.

March 24th, 1930.

1. There are no laws in force in the Irish Free State prescribing, limiting or defining the vessels that may be employed in the coasting trade.

Every Irish Free State ship exceeding 15 tons burden, before being employed in the coasting trade, must, however, be registered in accordance with the provisions of the Merchant Shipping Acts and, if not so registered, will not be granted by the Customs authorities a *transire*, which, in effect, is a certificate permitting the vessel to make a coasting voyage.

2. The coasting trade is not reserved for vessels flying the national flag.

3. Vessels under the national flag employed in coasting trade do not enjoy preferential treatment.

4. Goods carried in the coasting trade under the national flag do not enjoy preferential treatment.

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Italy.

[Translation.]

May 6th, 1930.

1. The coasting trade between the ports of Italy is governed by the single article of Law 355, of July 11th, 1904, which reads as follows :

“ The exercise of the coasting trade along the shores of Italy and the maritime service of the ports, roadsteads and beaches of the country are reserved for the national flag, except as otherwise laid down in special treaties or conventions.”

2. (a) The reservation of the coasting trade for the national flag is not absolute, since the law provides that this trade may be engaged in by other flags in virtue of special treaties or conventions.

Italy, like other States, has concluded bilateral agreements governing the exercise of the coasting trade and answering to the special requirements of the contracting States.

(b) The nations which in virtue of the treaties in force are expressly permitted, subject to reciprocity, to engage in the coasting trade along the shores of Italy are the following :

Denmark. — Article 8, Treaty of Commerce and Navigation, May 1st, 1864 ;

Honduras. — Article 7, Treaty of Commerce and Navigation, December 31st, 1868 ;

Norway. — Article 3, Treaty of Commerce and Navigation, June 14, 1862, concluded with the United Kingdom of Sweden and of Norway ;

Netherlands. — Articles 3 and 4, Treaty of Commerce and Navigation, November 24th, 1863 ;

Sweden. — Article 3, Treaty of Commerce and Navigation, June 14th, 1862, concluded with the United Kingdom of Sweden and of Norway ;

Tunisia. — Article 7, Treaty of Commerce and Navigation, September 28th, 1896.



The authorisations are not of a temporary character but remain in force as long as the contracting parties do not revise or denounce the special treaties.

3. Italian vessels, as well as foreign vessels assimilated thereto in virtue of treaties, which engage in the coasting trade enjoy special treatment only in regard to anchorage taxes.

On the basis of Law No. 318, of July 23rd, 1896 (Article 20), modified by Royal Decree-Law No. 2284, dated December 28th, 1924, Italian steamships, and foreign steamships assimilated thereto in virtue of treaties, which anchor in a port or roadstead or at a beach in Italy for commercial purposes are obliged to pay the following anchorage taxes :

- (a) Three lire per ton of their net tonnage, if they come from abroad ;
- (b) One lira, if they ply exclusively between the ports, roadsteads and beaches of Italy (coasting trade).

No other privileges are granted by the laws in force to Italian vessels and assimilated foreign vessels which engage in the coasting trade.

4. Goods carried in the coasting trade under the Italian flag enjoy no preferential Customs treatment.

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### Japan.

[Translation.]

November 18th, 1930.

1. A definition of the vessels that may be employed in the coasting trade in Japan is given by the " Shipping Law ", Article 3 of which states :

" Only Japanese vessels may carry passengers and cargo between Japanese ports unless special provisions appear in laws of treaties or a special permit is granted by the Minister of Communications."

In Article 1 of the said Law, the following are recognised as Japanese vessels :

- (a) Vessels owned by the Government or official authorities of Japan ;
- (b) Vessels owned by Japanese subjects ;
- (c) Vessels belonging to commercial companies having their headquarters in Japan, on condition that all the partners in the case of joint-stock companies, and all the partners with unlimited liability in the case of limited partnership companies and partnership share companies, and all the directors in the case of limited companies, be Japanese subjects ;
- (d) Vessels belonging to persons at law, with headquarters in Japan, all the representatives of which are Japanese subjects. In the case of vessels belonging to limited-partnership companies incorporated in accordance with the provisions of the former commercial code, they shall be regarded as Japanese when all the persons responsible for the management of the affairs of the said companies are Japanese subjects.

2. Even when the coasting trade is reserved for the national flag :

- (a) It is not absolutely reserved.
- (b) The right to engage in the coasting trade can be granted to other flags ;

I. By special provisions in legislation (Article 3 of the Shipping Law). Nevertheless, there is no provision of the law in force granting foreign vessels the right to engage in the coasting trade ;

II. By special clauses in treaties (Article 3 of the Shipping Law) :

(1) No treaty grants this right to foreign flags, but most-favoured-nation treatment is provided for in the following treaties :

A. Article 13 of the Treaty of Commerce and Navigation concluded in 1911 between Japan and the United States of America (this clause is, however, interpreted as being conditional) ;

B. Article 12 of the Treaty of Commerce and Navigation concluded between Japan and Belgium in 1924 (conditional clause) ;

C. Article 19 of the Treaty of Commerce and Navigation concluded between Japan and Germany in 1927 (reciprocity) ;

D. Article 14 of the Treaty of Commerce and Navigation concluded between Japan and Latvia in 1925 ; Article 2 of the Supplementary Convention concluded in 1925 between Japan and Great Britain (reciprocity in cases in which reciprocal conditions are required by the laws and decrees of one of the contracting parties or by treaties concluded with third powers) ;

E. Article 15 of the Treaty of Commerce and Navigation concluded in 1912 between Japan and Denmark; Article 15 of the Treaty of Commerce and Navigation concluded between Japan and France in 1911; Article 13 of the Treaty of Commerce and Navigation concluded between Japan and Norway in 1911; Article 10 of the Treaty of Commerce and Navigation concluded between Japan and Peru in 1895; Article 13 of the Treaty of Commerce and Navigation concluded between Japan and Siam in 1924; Article 14 of the Treaty of Commerce and Navigation concluded between Japan and Sweden in 1911; Article 19 of the Treaty of Commerce and Navigation concluded between Japan and Mexico in 1924 (unconditional);

F. Article 9 of the Treaty of Commerce and Navigation concluded between Japan and Ecuador in 1918 provides treatment equivalent to that given to nationals of European and American countries (unconditional);

(2) Article 19 of the Treaty of Commerce and Navigation concluded between Japan and Germany in 1927; Article 2 of the Supplementary Convention of 1925 between Japan and Great Britain; Article 14 of the Treaty of Commerce and Navigation concluded between Japan and Latvia in 1925 lay down that transport from one port to another of one of the contracting countries of passengers provided with through tickets or of goods shipped on through bills of lading shall not be regarded as constituting the coasting trade;

III. By special permit of the Minister for Communications (Article 3 of the Shipping Law). Should a special permit for the coasting trade be recognised as necessary (for the purpose of encouraging tourist traffic, for reasons of international courtesy, etc.), it is granted to certain ships for a fixed period and between certain ports of call.

3. Vessels engaged in the coasting trade under the national flag enjoy no preferential treatment.

4. Goods carried in the coasting trade by national vessels enjoy no preferential treatment.

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#### Latvia.

[Translation.]

May 23rd, 1930.

1. Article 2 of the Law concerning the right to the coasting trade, published March 16th, 1923, reads as follows:

“ Article 2. — In territorial and inland waters navigation is only allowed in the case of vessels belonging to Latvian nationals or to companies consisting of Latvian nationals.

“ Note. — Should a vessel or part of a vessel belonging to Latvian nationals be acquired through inheritance by a foreign national, one year after the decease of the testator the vessel forfeits the right to engage in navigation in the coastal and inland waters of Latvia.”

2. The right to the coasting trade being thus exclusively reserved for the national flag, the other points of the questionnaire do not arise so far as Latvia is concerned.

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#### Lithuania.

[Translation.]

September 6th, 1930.

The Lithuanian Government has not so far published any laws regarding the coasting trade, as this question is not at present of any great importance to Lithuania.

The laws of the former Russian Empire<sup>1</sup> concerning the coasting trade remain in force in the part of Lithuania which was formerly under Russian sovereignty and the German<sup>2</sup> laws in the Memel Territory.

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<sup>1</sup> Russian Commercial Code (Book II, Section II: “ Commercial Navigation ”: Chapter I. — “ The Right to Navigate ”) contains the following provision:

“ 184. — Only Russian subjects and vessels flying the Russian flag have the right to exercise the coasting trade, that is to say, to carry goods or passengers from one Russian port to another Russian port situated on the same sea.

“ Note. — The fact that a ship proceeds from one Russian port to another shall not be regarded as coasting trade if the two ports are situated on different seas — for example, from a port on the Black Sea or White Sea to the Baltic or vice-versa.

“ Note. — The Governor-General of the Amur province is authorised, as an experiment, to permit foreign nationals to exercise the coasting trade in the Amur country, should it be necessary, for a period of ten years, special dues being levied on such coasting trade.”

<sup>2</sup> See Germany.

**Mexico.**

[*Translation.*]

March 24th, 1930.

1. Article 99 of the Customs Law at present in force says :

“ Mexican vessels only have the right to engage in the coasting trade except in cases in which, in the interests of the public welfare, the Communications Department grants a special permit to a foreign vessel to engage in such trade.”

With regard to the maritime transport of passengers between Mexican ports, this question is governed by the Decree of June 11th, 1925, and the Regulations referring to the said Decree.

Under these provisions, the transport of passengers by sea is reserved to Mexican vessels except when authorisations are granted to foreign vessels in special cases.

2. (a) The coasting trade is not absolutely reserved for the national flag.

(b) The right to engage in the coasting trade between Mexican ports is only granted by the Communications Department to foreign vessels in certain cases when the interests of the public so require, but neither temporary nor permanent permits are granted. The authorisations mentioned are granted irrespective of the nationality of the vessels, and there are no treaties or agreements in existence under which the Mexican Government is obliged to permit foreign vessels to engage in the coasting trade between Mexican ports in particular cases.

3. Mexican vessels engaging in the coasting trade are exempt from the payment of duties on entering or leaving port, and also from registration duties and navigation patents. There are no buoyage charges, pilotage dues or lighthouse charges. As regards pilotage, pilots are paid a fee for their services by the charterers of the vessels they conduct.

4. Goods conveyed in the coasting trade under the Mexican flag enjoy no preferential treatment as compared with those carried in the same traffic by foreign vessels when permits are granted to the latter for this purpose by the Communications Department.

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**The Netherlands.**

[*Translation.*]

September 5th, 1930.

1 to 4. So far as concerns the Netherlands, the Crown, under Article 8a of the Law of August 8th, 1850, as amended by the Law of July 29th, 1912, reserves the right to forbid the exercise of the coasting trade to vessels of States in which the exercise of the coasting trade is forbidden to Netherlands vessels. There are no royal decrees issued in virtue of this legal provision. The treaties of commerce and navigation concluded between the Netherlands and other States provide that the contracting parties reserve the right only to allow the exercise of the coasting trade by national vessels, or else state that the provisions of the treaty shall not apply to the coasting trade.

**THE NETHERLANDS INDIES.**

1 and 2. The provisions concerning the exercise of the coasting trade in the Netherlands Indies are the following :

(a) Article 184 of the Constitution of the Netherlands Indies (Law of June 23rd, 1925 ; *Netherlands Legal Gazette*, 1925, No. 327 ; *Legal Gazette of the Netherlands Indies*, 1925, No. 447).

(b) Articles 6 and 8a of the law of August 8th, 1850 (*Netherlands Legal Gazette*, 1850, No. 47 ; *Legal Gazette of the Netherlands Indies*, 1850, No. 42) ; as modified by the Law of July 29th, 1912 (*Netherlands Legal Gazette*, 1912, No. 208 ; *Legal Gazette of the Netherlands Indies*, 1912, No. 477).

(c) Decree of September 20th, 1912 (*Legal Gazette of the Netherlands Indies*, 1912, No. 479).

Under these provisions, by coasting trade shall be understood the transport by water of goods loaded in a port situated in territory under the direct administration of the Government and consigned to another port situated in the said territory, and the unloading of the said goods in the second port.

Therefore, navigation between the so-called “ native ” ports which are situated in the territory of the autonomous native States and navigation between such ports and a port situated in the territory under the direct administration of the Government do not come under the regulations concerning the coasting trade in the Netherlands Indies. So far as admission is concerned, these ports have been assimilated to ports open to general traffic situated in the territory under the direct administration of the Government.

A distinction should be made between :

(1) Coasting trade between ports open to general traffic. The coasting trade between such ports may be carried on, not only by Netherlands vessels, but also by vessels of States whose flag has been put on the same footing as the Netherlands flag. Nevertheless, the vessels of States whose flags have not been expressly put on the same footing as the Netherlands flag are also authorised to carry on the coasting trade between ports open to general traffic, should such States have concluded a treaty of commerce with the Netherlands on the basis of the most-favoured-nation clause. Thus, in practice, no distinction is made between vessels under foreign flags.

(2) The coasting trade between ports not open to general traffic or between a port open to general traffic and a port not open to such traffic. Such coasting trade is reserved for Netherlands vessels and for vessels domiciled in the Netherlands Indies. Nevertheless, in urgent cases, the Governor-General may allow vessels only authorised to carry on the coasting trade between ports open to general traffic to engage in the coasting trade between other ports for certain voyages or for the transport of certain goods.

The unloading of goods as a result of mishaps at sea or for reasons of necessity shall not be regarded as the exercise of the coasting trade.

3 and 4. There are no special privileges or special preferential treatment so far as concerns vessels carrying on the coasting trade under the national flag or goods carried by such vessels.

#### SURINAM.

1. By the Decree published on December 24th, 1856 (*Surinam Government Gazette*, No. 17), a permit from the Governor is required in respect of the calling of any vessel for the purpose of carrying persons, mail or goods from one place in Surinam to another place in the territory, at times fixed and announced beforehand, or as a regular service, and also for the use of steamships to tow other vessels or goods.

2. Although the coasting trade is not reserved for the national flag by legal provisions, the coasting trade in Surinam has been for years carried on only by Government vessels and by local cutters.

3. Vessels under the national flag enjoy no preferential treatment.

4. Goods carried under the national flag likewise enjoy no preferential treatment or reduction of Customs duties.

#### CURAÇAO.

1. There is no legislation concerning the coasting trade. Article 143 of the General Ordinance concerning import, export and transit (*Curaçao Legal Gazette*, 1908, No. 33) is the only legal provision that contains a few clauses dealing with the carrying on of the coasting trade for transport of certain goods. Such coasting trade can only be carried on with the permission of the Governor.

2. The carrying on of such coasting trade is not specially reserved for vessels under the national flag.

3. Vessels under the national flag enjoy no preferential treatment.

4. Goods carried under the national flag enjoy no preferential treatment.

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#### New Zealand.

April 16th, 1930.

1. A coastal trading ship in New Zealand means a ship :

(a) Employed in trading or going between any ports or places in New Zealand ; or

(b) Plying on any navigable waters in New Zealand ;

(c) Going to or from any port or place in New Zealand, and returning to New Zealand without going more than 50 miles from the coast thereof :

Provided that, for the purposes of this definition, the Cook Islands, the Kermadec Islands, the Chatham Islands, the Auckland Islands, Campbell Island, Antipodes Islands, and Bounty Islands shall be deemed to be places out of New Zealand ;

Provided also that a ship shall not be deemed to be a home-trade ship merely because, in the course of or as preliminary to a voyage to or from any place out of New Zealand, she is employed in going between two places in New Zealand, if she does not take on board at any place in New Zealand, to be landed or delivered at any other place in New Zealand, any cargo or passengers other than cargo consigned on through bills of lading, or passengers holding through tickets, to or from any place out of New Zealand.

This definition is contained in Section 2 of the Shipping and Seamen Amendment Act, 1909.

2. (a) The coasting trade of New Zealand is not absolutely reserved to New Zealand ships.
- (b) Right to engage in the coasting trade is one given to all nations, subject to the requirements that such vessels shall pay the current rate of wages for the time being ruling in New Zealand, and shall be manned in accordance with the manning scale for New Zealand coastal ships. These requirements are provided for in Sections 54 and 75 of the Shipping and Seamen Act, 1908.

3 and 4. There is no preferential treatment in respect of vessels under the national flag employed in the coasting trade.

There is, however, provision in Sections 204, 205 and 206 of the Customs Law Act, 1908, that, if British ships are subject in any foreign country to any prohibition or restriction as to the carrying of passengers or goods coastwise in that country, the Governor-General may, by Order-in-Council, so far as treaty obligations, entered into by His Majesty, permit, impose such prohibitions or restrictions upon the ships of that country as to carrying passengers or goods coastwise in New Zealand, or as to carrying goods from any port in New Zealand to any port in any other British possession where a law similar to this section exists, as appear to him justly to countervail the disadvantages to which British ships are subject as aforesaid; and may also impose such duties on all goods or on any specified classes of goods imported or exported in the ships of that country, as appear to him justly to countervail the disadvantages to which British trade or navigation is so subjected as aforesaid.

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#### Norway.

August 2nd, 1930.

1 and 2. The regulations now in force in Norway regarding the coasting trade are found in the Law of June 17th, 1869, Section 14, on the Customs Regulations. This Section prescribes that foreign vessels may, like Norwegian, carry goods laden in Norway to another port in Norway, unless the King should decide that such permission should not be granted to vessels belonging to a particular foreign nation.

In the new Law on Customs Regulations of June 22nd, 1928, which has not yet come into force, a corresponding regulation exists in Section 126 which says that foreign vessels may, like Norwegian ones, carry goods and passengers between Norwegian ports, unless the King decides otherwise.

3 and 4. In the preamble to the Norwegian Customs Tariff, Section 11 contains the following regulation which applies also to the coasting trade :

“ Foreign vessels and goods imported or exported in them, are not subject to other or higher duties than are Norwegian vessels or goods imported or exported in Norwegian vessels, unless the King should decide that higher duties on goods or vessels should be paid by a particular foreign nation.”

Foreign vessels are treated in the same way as Norwegian vessels as far as the coasting trade is concerned. The King may, however, issue special regulations concerning the treatment of vessels belonging to a foreign nation whose own regulations, for example, on the coasting trade make it difficult or impossible for Norwegian vessels to participate in that trade.

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#### Panama.

March 26th, 1930.

[Translation.]

1. No special provision exists which prohibits vessels flying foreign flags from engaging in the maritime coasting trade ; but in practice only national vessels are allowed to engage in this trade.

2. The coasting trade is absolutely reserved ; the right to engage therein is not granted to the ships of any other nation.

3. Vessels engaging in the coasting trade enjoy no preferential treatment.

4. Answered by the reply to Question 3.

Poland.

[Translation.]

April 15th, 1930.

1. The question of the maritime coasting trade is regulated in Poland by the German Law of May 22nd, 1881, concerning coasting trade in goods (*Küstenfrachtfahrt*) (*Reich Legal Bulletin*, page 97), and by the Ordinance of the Federal Council of the Empire on May 13th, 1912, concerning signals in territorial waters (*Reich Legal Bulletin*, page 302).

Article 1 of the Law of May 22nd, 1881, provides that only national vessels shall be authorised to load cargo in a German port for the purpose of carrying the same to another German port.

2. The treaties of commerce and navigation concluded by Poland with other States all contain a clause reserving the coasting trade between national ports for the national flag of each of the two contracting parties.

One signal exception is provided for by the Warsaw Convention of October 24th, 1921, in respect of vessels under the flag of the Free City of Danzig which enjoy the same treatment as that granted to Polish vessels.

3 and 4. Since the coasting trade on the Polish coast is exclusively reserved for the Polish (and Danzig) flag, and the treaties of commerce and navigation concluded by Poland do not give Polish vessels the right to engage in the coasting trade on foreign coasts, Questions 3 and 4 do not call for any reply so far as Poland is concerned; there is no need to give any other preferential treatment to national vessels since they alone engage in the coasting trade on Polish coasts.

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Portugal.

[Translation.]

February 18th, 1930.

1. Article 5 of the Decree of January 23rd, 1905, contains the following provisions :

“ The following are reserved to Portuguese shipping, when the latter fully complies with the conditions laid down in Article 4 of the Decree of July 8th, 1863, with regard to the complete nationalisation of merchant vessels :

“ (1) Maritime traffic between ports on the mainland of Portugal, between these ports and the ports of the Azores archipelago, and between the ports of the latter ;

“ (2) Maritime traffic between the Portuguese Atlantic possessions and the ports on the mainland of Portugal and of the islands of the Azores and Madeira ;

“ (3) Maritime traffic between the ports of each of the Portuguese possessions in the Atlantic.

“ § 1. Shipping firms and companies which have hitherto carried on the maritime traffic referred to in the present article under the Portuguese flag may continue to carry on such traffic subject to the other provisions of this law.

“ § 2. Maritime traffic between the ports of the province of Angola to the north of the Straits of Loge and the ports situated to the south of 2°30' S. lat., including those in the estuary of the River Zaire (Congo), is allowed on equal terms to all vessels whether Portuguese or foreign.

“ (Consequence of the General Act of Berlin of 1885 and of the Convention of St. Germain-en-Laye.) ”

Article 16 of Decree 8383 of September 25th, 1929, says :

“ Maritime traffic between the mother country, the adjacent islands and the colonies is reserved to the Portuguese flag, to which is also reserved maritime traffic between the ports of the colonies and from one colony to the other, provided that the needs of this traffic are regularly met by Portuguese shipping.

“ An exception to the above rule is constituted by ports the traffic of which is regulated by international agreements.”

Decree 10342 of November 21st, 1924 (which by ministerial decision did not come into force until July 1st, 1930) says :

“ Article 1. — The coasting trade in the province of Mozambique is reserved to the national flag.

“ Article 2. — Portuguese vessels employed in the trade referred to in the foregoing article and belonging to shipping companies which receive Government subsidies may not alter their tariffs without previous authorisation from the Government of the province.”

2. The coasting trade is absolutely reserved for the national flag in Portugal, the adjacent islands, the colony of Angola (with the exception of the area covered by the Act of Berlin of 1885 and the Convention of St. Germain) and the colony of Mozambique.

3. Vessels engaged in the minor coasting trade are exempt from the payment of pilotage dues (Article 130 of the Regulations approved by Decree 11111 of November 19th, 1925) ; they are also exempt from the payment of lighthouse charges under Article 1 of Decree 14664 of December 5th, 1927.

4. Generally speaking, vessels engaged in the coasting trade enjoy preferential treatment as compared with vessels engaged in overseas trade. The preferential treatment also extends to the charges paid by the vessels " on the basis of the goods carried ". Thus, vessels engaged in the minor coasting trade are exempt from the maritime commercial tax on the cargo loaded, but are subject to a small tax on cargo unloaded (Section 3 of Article 1 of Decree 14647 of December 3rd, 1927).

No special Customs treatment is applied to goods carried in vessels engaged in the minor coasting trade when loaded in foreign ports.

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Roumania.

[Translation.]

January 2nd, 1931.

1 and 2. The maritime coasting trade is reserved for the national flag. Nevertheless, special authorisations may be granted in certain clearly-defined cases. This reservation is not established by law, but by usage, and it is expressly stipulated in the commercial treaties concluded by Roumania.

The special authorisations in certain clearly-defined cases, referred to above, are granted by the Higher Navigation Commission, acting in virtue of the Law on the Organisation of the Merchant Marine.

This Commission is solely responsible for deciding whether such authorisations should be granted or not. Up to the present, they have only been granted in the case of goods which, although bound for one Roumanian port, have, for various reasons, been unloaded in another Roumanian port. In such cases, a vessel of the same company, and even a vessel belonging to another company, has been allowed to reload these goods and convey them to the original port of destination.

3. Vessels employed in the coasting trade under the national flag enjoy no preferential treatment in any form.

4. Goods carried in the coasting trade under the national flag also enjoy no preferential treatment.

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Siam.

May 28th, 1930.

1. There are no special laws prescribing, limiting or defining the vessels that may be employed in the " coasting trade ". There is a general Law on Navigation in Siamese waters which applies to the coasting trade as well as international trade.

2. There is no law in Siam reserving coasting trade for the national flag.

There are in force thirteen treaties of friendship, commerce and navigation with foreign powers. The treaties with Denmark, Italy, the Netherlands and Sweden provide that the coasting trade is exempt from the provisions of the treaties and is governed by the respective laws of each of the contracting parties.

The treaties with Belgium, France, Great Britain, Japan, Norway, Portugal, Spain and the United States of America exempt the coasting trade from the provisions of the treaties, but guarantee most-favoured-nation treatment without any conditions.

In the treaty with Germany the coasting trade is exempt from the provisions thereof, but each party may claim for its vessels the same rights and privileges conceded to the vessels of any other country provided that it grants the same rights and privileges to the vessels of the other party.

3. Vessels under the national flag enjoy no preferential treatment in the coasting trade.

4. Goods carried in the coasting trade under the national flag enjoy no preferential treatment.

**Spain.**

[*Translation.*]

March 22nd, 1930.

1. The reservation of the national coasting trade to ships flying the flag of the State concerned, which appeared as a measure of sovereignty in the traditional British legislation, and was then incorporated in the legislation of all maritime countries, thereafter developed along lines peculiar to each State, and was incorporated in the Spanish maritime legislation by the Law of June 14th, 1909, and the Executive Regulations of October 13th, 1913, which, in turn, were embodied in the Royal Decree-Law on Shipping Bounties of August 21st (*Gazette*, of August 25th), 1925, which is still in force.

2. In conformity with Article 2 of this Law and Article 2 of the Royal Decree just mentioned, the traffic of goods and passengers in the national coasting trade between Spanish ports is exclusively reserved to vessels of Spanish flag and construction, the character of this navigation remaining the same between Spanish ports even if foreign ports are touched at during the earlier part of the voyage.

Furthermore, in accordance with these regulations, the traffic of cabin passengers and their baggage is allowed in the national coasting trade to Spanish transatlantic steamers which touch at Spanish ports in the course of their voyages, and to foreign transatlantic steamers provided they belong to a State which grants the same privilege to Spanish vessels. Those enjoying the privilege of engaging in the coasting trade have to undertake an express and concrete obligation to establish these services in a form taking due account of public requirements, the State being entitled to utilise subsidised vessels for national requirements whenever it thinks necessary and on payment of compensation.

3. Other provisions of the laws mentioned, and of supplementary laws, provide that vessels engaging in the national coasting trade enjoy preferential treatment in certain cases, consisting in reductions in harbour dues and exemption from compulsory pilotage when the captain is a qualified pilot of the ports touched at.

4. The goods carried, however, enjoy no reduction of Customs duties since, in the Spanish coasting trade, ships do not touch at ports of different Customs territories.

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**Sweden.**

[*Translation.*]

August 22nd, 1930.

1. The provisions concerning the coasting trade which are in force in Sweden are to be found in the Royal Declaration of February 28th, 1726. It is there stated that "foreign vessels are forbidden to take on board Swedish goods in a port of the Kingdom and to carry them to another port of the Kingdom".

2. Certain States, however, under conventions concluded between them and Sweden have the right to carry on the coasting trade — namely, Argentine, Belgium, China, Denmark (only for ships the gross tonnage of which does not exceed 30 registered tons), France, Great Britain and Northern Ireland, the Irish Free State, Iceland, Italy, Japan, the Netherlands and Portugal. Sweden has also granted by conventions the right to carry on the coasting trade in certain cases of frontier traffic to Finland and Norway. So far as concerns the carrying on of the coasting trade in Sweden with foreign vessels, reference should be made to the Ordinance of the Central Board of Trade, which was published in 1928 as an annex to the yearly collection of Swedish treaties. This Ordinance also mentions the conventions on which the right of foreign vessels to the coasting trade is based.

3. Vessels under the Swedish flag employed in coasting trade have no preferential treatment as compared with foreign vessels allowed to carry on the coasting trade in respect of harbour dues, towage charges, pilotage dues, lighthouse charges, etc.

4. Goods carried in the coasting trade under the Swedish flag likewise enjoy no preferential treatment.



**Turkey.**

[*Translation.*]

October 28th, 1930.

1. Under the law of April 19th, 1926 (No. 815), concerning the carrying on of the coasting trade and the exercise of trade and other professions in Turkish ports and territorial waters :

(a) The right to carry goods, baggage and passengers from any point on the coast of Turkey to any other point on the said coast, and to provide pilotage, towage and all harbour services of any kind, is reserved for vessels and craft flying the Turkish flag.

(b) The right to dispose of means of navigation and transport whether fixed or floating, such as boats, tugs, steamboats, motor-boats, barges, sloops, dinghies, caiques — that is to say, all craft, small or large, propelled by machinery, sails or oars ; or dredgers, lighters, tank vessels, etc., and lifeboats, buoys and ferries, and to engage in trade by using the said means of transport on rivers and lakes, in the Sea of Marmora and the Straits, in gulfs, ports and bays and in all the territorial waters of which the same form part, is reserved for Turkish nationals.

(c) The right to take fish, oysters, mussels, sponges, pearls, coral, mother-of-pearl, etc., to quarry sand and gravel, etc., to salvage wrecked vessels and craft and to collect abandoned debris, whether on the surface or at the bottom of the sea, and to exercise the trades of divers, pilots, bumboat-men, porters on wharves and landing-places, and the professions of captain, engineer, purser, seaman and workman on any Turkish vessel, and the right to exercise any kind of maritime trade is also reserved for Turkish nationals.

(d) Foreign vessels have only the right to unload in Turkish ports such passengers and cargo as they have taken on board in foreign countries and to take on board in Turkish ports such passengers and cargo as are destined to foreign ports.

2. As will be seen from the above-mentioned provisions, since the coasting trade is absolutely reserved for the national flag, the right to engage in it has never been granted to other flags either temporarily or permanently.

Although the Government has provisionally allowed salvage vessels flying a foreign flag to exercise their trade in Turkish waters, such permit will no longer be granted them since a Turkish salvage company has just been formed and has proved itself capable of providing salvage services in Turkey.

3. Vessels engaging in the coasting trade under the national flag enjoy no preferential treatment.

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**Union of South Africa.**

April 3rd, 1930.

1. The terms " coasting trade " and " coasting vessels " are defined in Section 83 of the Union Customs Management Act, 1913. (Act No. 9, of 1913) which reads as follows :

" All trade by sea from any one part of the Union or from any port or place therein to any other part thereof shall, save as is hereinafter provided, be deemed to be coasting trade, and all ships while employed at such trade shall, save as is hereinafter provided, be deemed to be coasting ships :

" Provided that no ship arriving from a port outside the Union, although bound to more than one port in the Union, and no ship clearing outwards from any port in the Union for a port outside the Union, although bound to one or more intermediate ports in the Union, shall be deemed a coasting ship, nor shall her voyage between such ports in the Union be deemed a coasting voyage."

2. The coasting trade of the Union is not reserved for the national flag absolutely, neither is the right to engage therein granted to other flags, temporarily or permanently, but is free to all flags.

Coasting trade is, however, excluded from the provisions of the Treaty of Commerce and Navigation entered into between the Union of South Africa and the German Reich on September 1st, 1928. According to Article 19 of the above treaty, the coasting trade in the territories of either of the contracting parties will be governed by the laws and ordinances of the respective party. The contracting parties, however, grant to each other the treatment of the most favoured nation, provided that reciprocity is assured. The Union Government, therefore, retains the right to reserve its coasting trade for national vessels.

3. Vessels under the national flag employed in the coasting trade enjoy no preferential treatment in respect of Customs, harbour dues, and charges. Ships engaged solely in the coasting

trade, after having paid port dues eight times within any calendar year, at any one port, are exempt from further payment of dues at that port for the remainder of such calendar year, but this tariff is applicable to all vessels and not only to vessels under the national flag.

4. Goods carried in the coasting trade under the national flag enjoy no preferential treatment.

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Union of Soviet Socialist Republics.

[Translation.]

March 31st, 1931.

1. Article 71 of the Merchant Shipping Code of the Union of Soviet Socialist Republics lays down that "the transport of cargoes and passengers between the ports of the Union of Soviet Socialist Republics either on the same sea (minor coasting trade) or on different seas (major coasting trade), may only be effected by vessels flying the flag of the Union of Soviet Socialist Republics".

From the point of view of the coasting trade, the following are regarded as forming a single sea :

- (a) The Black Sea and the Sea of Azov ;
- (b) The White Sea and the Arctic Ocean ;
- (c) The Sea of Japan, the Sea of Okhotsk and the Behring Sea.

Article 72 of the same Code lays down that, should it be impossible to transport cargoes from one port of the Union of Soviet Socialist Republics to another port of the Union of Soviet Socialist Republics in a ship flying the national flag, and should such transport be urgently necessary, a ship flying a foreign flag may be authorised to effect such transport.

The conditions for the granting of such authorisation will be determined by the Council of People's Commissaries.

2. As regards the provisions of the international treaties at present in force for the Union of Soviet Socialist Republics, the following particulars may be given :

(a) The Treaty of Commerce and Navigation concluded between the Union of Soviet Socialist Republics and Italy on April 7th, 1924, grants to Italian vessels the right to "load or complete their cargoes in a port of the Union of Soviet Socialist Republics when bound for another port of the Union situated on another sea" (Article 25). It should be noted that the other provisions of that article are no longer in force.

(b) The Navigation Convention concluded between the Union of Soviet Socialist Republics and Germany on October 12th, 1925, grants to the vessels and cargoes of the two Contracting Parties the same treatment in the ports of the other country as is granted to national cargoes and vessels. This provision of the Treaty does not extend to navigation between the ports of the Contracting Parties situated on the same sea (minor coastal navigation, minor coasting trade) (Articles 1 and 2).

(c) The Treaty of Commerce and Navigation concluded between the Union of Soviet Socialist Republics and Norway on December 15th, 1925, applies the most-favoured-nation principle to the major coasting trade (Article 20).

(d) The provisional Commercial Arrangement concluded between the Union of Soviet Socialist Republics and the United Kingdom on April 16th, 1930, stipulates that, as regards the coasting trade between ports not situated on the same coast, treatment not less favourable than that granted to the vessels of any other foreign State shall be granted to vessels flying the flag of the other Contracting Party (Article 3).

3. The Regulations of February 19th, 1926, on harbour dues and on remuneration for services performed in the ports of the Union of Soviet Socialist Republics, lay down that navigation dues shall not be levied on vessels engaging in the minor coasting trade (Article 3a). As regards vessels flying the national flag and engaging in the major coasting trade, navigation dues will only be charged once a year in the vessel's first port of call in the Union of Soviet Socialist Republics during the year (Article 4a).

4. In accordance with the Law of May 5th, 1927, on the scales of harbour dues, cargoes transported in the major and minor coasting trade will be liable to only one-third of the dues on cargoes bound for or coming from a foreign country (Point Bb).

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United States of America.

April 8th, 1930.

1. The laws covering the coasting trade are as follows :

Section 4311, Revised Statutes, providing that vessels having enrolments and licences in force issued by the United States and no others, shall be entitled to the privileges of vessels employed in the coasting trade.

Section 27 of the Merchant Marine Act 1920, provides for the forfeiture of cargo transported between points in the United States including its districts, territories and possessions, either directly or by way of a foreign port or for any part of the transportation, in a vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States ; or, vessels to which the privilege of engaging in the coastwise trade is extended by Sections 18 and 22 of the same Act.

Section 21 of the Merchant Marine Act 1920, provides that the coastwise laws of the United States shall extend after February 1st, 1922, to the island territories and possessions of the United States not then covered thereby.

Section 588 of the Tariff Act of 1922 provides an additional penalty for attempts to evade the coastwise laws by shipping from one American port to a foreign country and thence to another American port.

The transportation of passengers in the coastwise trade is covered by Section 2 of the Act of February 17th, 1898, providing that no foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port.

2. The coasting trade is reserved for the national flag.
  - (a) It is absolutely reserved.
  - (b) The right to the coasting trade is not in any case extended to other flags.
3. The question of preferential treatment cannot come up, inasmuch as vessels under the national flag and no others may engage in the coastwise trade.
4. As stated in the question next above, there can be no preferential treatment as applied to foreign vessels inasmuch as the trade is reserved to vessels of the United States.

There is no provision of law or Customs regulation under which foreign merchandise is entitled to or receives preferential Customs treatment by reason of being transported in coastwise vessels.

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#### Uruguay.

[Translation.]

April 1st, 1930.

1. The legal provisions on the subject are the law of January 11th, 1912, on Navigation and the National Coasting Trade ; the executive decree implementing this law ; and the Law of July 6th, 1918.

Article 1 of the decree implementing the Law of January 11th, 1912, defines the coasting trade as follows :

“ Maritime and river navigation and trade between Uruguayan ports, operations of towage, assistance and salvage in cases of shipwreck or other shipping accidents, and lighterage services rendered by craft and tugs of whatever power and tonnage in the national ports, coasts, beaches and waters.”

2. The coasting trade is reserved to national vessels by Article 1 of the Law of January 11th, 1912, and Article 2 of the same law states the conditions under which vessels engaging in this class of navigation are regarded as national. Nevertheless, this principle of the coasting trade being exercised by national vessels is not in theory absolute, since Article 6 of the Law of 1912 provides that vessels of other flags may be granted by treaty the same privileges as national vessels, subject to reciprocity. In addition, the Law of July 6th, 1918, is aimed at empowering the executive to grant exceptions to this rule. This power, however, has not been made use of to the extent anticipated. Only vessels flying the Argentine flag have been authorised to ply in Uruguayan ports when public works (wharves, ports, etc.) were being carried out.

The executive decree deals with the same questions — *i.e.*, the reservation of the maritime coasting trade and the conditions which have to be fulfilled by vessels in order to be regarded as national. These provisions are to be found in Article 2, paragraph 1, and in Article 3.

3. Vessels engaging in the coasting trade are exempt from port, lighthouse and stamp duties, provided operations take place between Uruguayan ports (Article 4 of the Law of 1912).

In addition, Article 25 of the executive decree lays down that in all ports a site must be designated by the authorities for coasting-trade operations.

4. The general principle adopted by the legislation in force is not to establish any privilege in respect of Customs duties imposed on goods in transit carried by vessels in the coasting trade flying the national flag, in all cases in which such vessels undertake the transport of these goods between the Customs offices of different territories : nevertheless Article 4 of the Law of 1912 lays down that cargoes which have already paid Customs duty shall be exempt from hoisting and transshipment duties, provided they do not utilise Government cranes, and the same Article 4 goes on to say that the executive will simplify Customs procedure with regard to the coasting trade, and this it has done, as will be seen from the provisions of the executive decree mentioned above.

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**Venezuela.**

[Translation.]

February 24th, 1930.

1 and 2. Under the Customs law of Venezuela, the coasting trade is reserved for national vessels. The coasting trade can only be carried out under the national flag, with the exception of the traffic in passengers and their baggage which can also take place in foreign vessels (Article 359 of the Customs Law).

The coasting trade and foreign trade cannot be carried on simultaneously by the same vessel. The Federal executive may in special circumstances grant permission to passengers proceeding from one port to another in vessels engaging in foreign trade, to carry in their baggage national goods in small quantities and trade samples (Article 360).

As a general rule, in order to engage in the coasting trade without restriction, a vessel must obtain Venezuelan nationality in conformity with Part 15 of the Customs Law. To obtain Venezuelan nationality, the owner of the vessel must apply for navigation letters entitling him to fly the Venezuelan flag. Such letters are only granted to vessels belonging to national or naturalised persons or companies (Article 463, paragraph 3, of the Customs Law). It is also an essential condition that the vessel should exclusively fly the Venezuelan flag, that it should be registered at one of the Customs offices of the Republic, and that the captain and half the crew should be Venezuelan (Article 482 of the Customs Law).

Part 10 of the Customs Law contains the conditions which have to be observed by the coasting trade. Navigation on the Orinoco is governed by the special provisions of a contract concluded with the Venezuelan Incorporated Navigation Company.

3. In the ports vessels pay certain special duties for wharves, lighthouses, buoys administration, watering, etc., which vary in each port, as some of these services are municipal

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**Yugoslavia.**

[Translation.]

April 2nd, 1930.

1. The regulations prescribing, limiting and defining the vessels that may be employed in the coasting trade — exclusively under the national flag — and which enjoy special treatment in Customs matters, are contained in the Maritime Customs Regulations (*Official Journal*, No. 117, XXIV, of May 27th, 1925).

2. (a) In the Kingdom of Yugoslavia the right to engage in the coasting trade is reserved for vessels under the national flag, all foreign vessels being excluded.

(b) No treaties or agreements exist granting the said right to a vessel flying any foreign flag whatsoever.

3. Vessels engaging in the coasting trade under the national flag, that is to say, coasters exclusively used for traffic between the ports, landing-places and other points of the national coast and which do not touch at foreign ports, have only the right to a rebate when harbour dues are levied in accordance with Section 8 of the Law concerning Harbour Dues (cf., *Official Journal*, No. 278, of March 30th, 1922).

4. Goods entering or leaving Yugoslav ports in vessels flying either the national flag or a foreign flag are subject to the same Customs formalities and liable to the same Customs duties.

[Communiqué au Conseil  
et aux Membres de la Société.]

N° officiel: **C. 195. M. 78.** 1931.VIII. Addendum.  
[C.C.T.476.]  
[C.C.T./P. & M./48.]

Genève, 1<sup>er</sup> août 1931.

**SOCIÉTÉ DES NATIONS**

**Commission consultative et technique des Communications  
et du Transit**

**COMITÉ PERMANENT DES PORTS ET DE LA NAVIGATION MARITIME**

**ENQUÊTE SUR LA PORTÉE DE LA NOTION  
DU CABOTAGE DANS LES DIFFÉRENTS PAYS**

A la suite des renseignements complémentaires reçus du Gouvernement portugais, il y a lieu d'ajouter aux informations données dans le document C.195.M.78.1931.VIII en ce qui concerne le Portugal (page 20, paragraphe 1) la disposition suivante:

En ce qui concerne la navigation de cabotage dans la province de Mozambique, l'application des dispositions précitées se trouve subordonnée aux clauses des traités en vigueur conclus par le Portugal antérieurement à la publication des décrets réglant cette matière. L'application du décret du 21 novembre 1924 a d'ailleurs été suspendue.

12 SEP 1931

[Distributed to the Council and  
the Members of the League.]

Official No.: **C.195.M.78.** 1931.VIII. Addendum.  
[C.C.T.476.]  
[C.C.T./P. & M./48.]

Geneva, August 1st, 1931.

LEAGUE OF NATIONS

**Advisory and Technical Committee for Communications  
and Transit**

**PERMANENT COMMITTEE ON PORTS AND MARITIME NAVIGATION**

**ENQUIRY CONCERNING THE MEANING  
ATTACHED TO THE TERM "COASTING TRADE"  
IN THE VARIOUS COUNTRIES.**

In accordance with supplementary information received from the Portuguese Government, the following provision should be added to the particulars given in document C.195.M.78.1931.VIII with regard to Portugal (page 18, paragraph 1):

As regards the coasting trade in the province of Mozambique, the application of the foregoing provisions is subject to the stipulations in existing treaties concluded by Portugal prior to the publication of the decrees regulating this matter. The application of the decree of November 21st, 1924, has, moreover, been suspended.

23 MAY 1931

[Communiqué au Conseil  
et aux Membres de la Société.]

N° officiel: **C. 231. M. 99.** 1931. VIII.

Genève, le, 10 avril 1931.

SOCIETE DES NATIONS

CONFERENCE EUROPEENNE  
SUR LA CIRCULATION ROUTIERE

(Genève, 16-30 mars 1931)

CONVENTION SUR L'UNIFICATION  
DE LA SIGNALISATION ROUTIERE

LEAGUE OF NATIONS

EUROPEAN CONFERENCE ON ROAD TRAFFIC

(Geneva, March 16th-30th, 1931)

CONVENTION CONCERNING  
THE UNIFICATION OF ROAD SIGNALS

Série de Publications de la Société des Nations  
VIII. COMMUNICATIONS ET TRANSIT  
1931. VIII. 7. ✓

## CONVENTION SUR L'UNIFICATION DE LA SIGNALISATION ROUTIÈRE

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Les Hautes Parties contractantes,

Désireuses d'augmenter la sécurité du trafic par route et de faciliter la circulation routière internationale par un système uniforme de signalisation routière,

Ont désigné pour leurs plénipotentiaires:

.....

Lesquels, après avoir produit leurs pleins pouvoirs reconnus en bonne et due forme, ont arrêté les dispositions suivantes:

### *Article premier.*

Les Hautes Parties contractantes adoptent le système international de signalisation routière décrit dans l'annexe à la présente Convention et s'engagent à l'introduire ou le faire introduire le plus tôt possible dans ceux de leurs territoires auxquels s'applique cette Convention. A cet effet, elles procéderont à la mise en service des signaux qui sont prévus dans l'Annexe susdite au fur et à mesure de la mise en place de signaux nouveaux ou du renouvellement de ceux actuellement existants. Le remplacement complet des signaux non conformes au système international sera réalisé au plus tard dans un délai de cinq années, à partir de l'entrée en vigueur de la présente Convention, pour chacune des Hautes Parties contractantes.

### *Article 2.*

Les Hautes Parties contractantes s'engagent à procéder ou à faire procéder, dès l'entrée en vigueur de la présente Convention, au remplacement des signaux qui, tout en présentant les caractéristiques d'un signal du système international, serviraient à fournir une indication différente.

### *Article 3.*

Les signaux décrits et figurés à l'Annexe seront, autant qu'il est possible, les seuls placés sur les routes pour la police de la circulation.

Dans les cas où il serait nécessaire d'introduire quelque autre signal, celui-ci devrait, par ses caractéristiques générales de forme et de couleur, rentrer dans le système des catégories prévues à l'Annexe.

### *Article 4.*

Les Hautes Parties contractantes interdiront que soient placés sur la voie publique des panneaux ou inscriptions quelconques qui pourraient prêter à confusion avec les signaux réglementaires ou rendre leur lecture plus difficile. Elles s'opposeront, autant qu'il est en leur pouvoir, à ce que de tels panneaux ou inscriptions soient placés aux abords de la voie publique.

Les Hautes Parties contractantes, en vue d'assurer à la signalisation toute son efficacité, s'efforceront de limiter le nombre des signaux réglementaires au minimum nécessaire.

Les Hautes Parties contractantes s'opposeront à l'apposition sur un signal réglementaire de toute inscription étrangère à l'objet de celui-ci et qu'elles jugeraient de nature à en diminuer la visibilité ou à en altérer le caractère.

### *Article 5.*

Si un différend surgit entre deux ou plusieurs Hautes Parties contractantes au sujet de l'interprétation ou de l'application des dispositions de la présente Convention et si ce différend ne peut être réglé directement entre les Parties, le différend peut être soumis pour avis consultatif à la Commission consultative et technique des communications et du transit de la Société des Nations.

### *Article 6.*

Chacune des Hautes Parties contractantes peut déclarer, au moment de la signature de la ratification ou de l'adhésion que, par son acceptation de la présente Convention, elle n'assume aucune obligation en ce qui concerne l'ensemble ou toute partie de ses colonies, protectorats et territoires d'outre-mer ou des territoires placés sous sa suzeraineté ou sous mandat; dans ce cas, la présente Convention ne sera pas applicable aux territoires mentionnés dans ladite déclaration.

Chacune des Hautes Parties contractantes pourra ultérieurement notifier au Secrétaire général de la Société des Nations, qu'elle entend rendre la présente Convention applicable à l'ensemble ou à toute partie des territoires ayant fait l'objet de la déclaration prévue à l'alinéa précédent. Dans ce cas, la Convention s'appliquera à tous les territoires visés dans la notification, six mois après réception de cette notification par le Secrétaire général.

De même, chacune des Hautes Parties contractantes pourra, à tout moment, après l'expiration du délai de huit ans mentionné dans l'article 15, déclarer qu'elle entend voir cesser l'application



## CONVENTION CONCERNING THE UNIFICATION OF ROAD SIGNALS.

The High Contracting Parties,

Desiring to increase the safety of road traffic and to facilitate international road traffic by a uniform system of road signalling,

Have appointed as their Plenipotentiaries:

.....

Who, having produced their full powers, found in good and due form, have agreed upon the following provisions:

### *Article 1.*

The High Contracting Parties adopt the international system of road signalling described in the annex to the present Convention and undertake to introduce it, or cause it to be introduced as soon as possible into their territories to which this Convention applies. For this purpose they will adopt the signs set out in the above-mentioned annex as and when new signs are set up or those now in existence are renewed. Signs which do not conform to the international system shall be completely replaced within a period not exceeding five years from the date of the coming into force of the present Convention in respect of each of the High Contracting Parties.

### *Article 2.*

The High Contracting Parties undertake to replace, or cause to be replaced as soon as the present Convention comes into force, signs which, although they have the distinguishing features of a sign belonging to the international system, are used with a different meaning.

### *Article 3.*

The signs described and illustrated in the annex shall, as far as possible, be the only ones placed on the roads for the regulation of traffic.

Should it be necessary to introduce some other sign, it shall conform to the classes mentioned in the annex as regards its general shape and colour.

### *Article 4.*

The High Contracting Parties will prohibit the posting on a public highway of any boards or notices of a description which might be confused with the approved signs or make these more difficult to read. The High Contracting Parties will also, so far as in their power lies, prevent any such boards, or notices, from being placed in the vicinity of a public highway.

The High Contracting Parties, with a view to rendering the system of signals as efficacious as possible, will endeavour to limit the number of approved signs to such as may be strictly necessary.

The High Contracting Parties will prohibit any irrelevant notice from being affixed to an approved sign if in their opinion that notice is such as to obscure the sign or interfere with its character.

### *Article 5.*

Should a dispute arise between any two or more High Contracting Parties concerning the interpretation or application of the provisions of the present Convention, and should such dispute not be settled directly between the Parties, it may be submitted to the Advisory and Technical Committee for Communications and Transit of the League of Nations, for an advisory opinion.

### *Article 6.*

Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect of all or any of his colonies, protectorates and overseas territories, or territories under suzerainty or mandate; and the present Convention shall not apply to any territories named in such declaration.

Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Convention shall apply to all or any of the territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice six months after its receipt by the Secretary-General.

Any High Contracting Party may, at any time after the expiration of the period of eight years mentioned in Article 15 declare that he desires that the present Convention shall cease to

de la présente Convention à l'ensemble ou à toute partie de ses colonies, protectorats et territoires d'outre-mer ou des territoires placés sous sa suzeraineté ou sous mandat; dans ce cas, la Convention cessera d'être applicable aux territoires faisant l'objet d'une telle déclaration, un an après réception de cette déclaration par le Secrétaire général.

Le Secrétaire général communiquera à tous les Membres de la Société des Nations et aux Etats non membres, visés à l'article 7, les déclarations et notifications reçues en vertu du présent article.

*Article 7.*

La présente Convention, dont les textes français et anglais font également foi, portera la date de ce jour.

Elle pourra, jusqu'au 30 septembre 1931, être signée au nom de tout Membre de la Société des Nations et de tout Etat non membre représenté à la Conférence qui a établi cette Convention ou à qui le Conseil de la Société des Nations aura, à cet effet, communiqué un exemplaire de la présente Convention.

*Article 8.*

La présente Convention sera ratifiée.

Les instruments de ratification seront déposés auprès du Secrétaire général de la Société des Nations, qui en notifiera la réception à tous les Membres de la Société des Nations, ainsi qu'aux Etats non membres visés à l'article 7.

*Article 9.*

A partir du 1<sup>er</sup> octobre 1931, il pourra être adhéré à la présente Convention au nom de tout Membre de la Société des Nations ou de tout Etat non membre visé à l'article 7.

Les instruments d'adhésion seront transmis au Secrétaire général de la Société des Nations qui en notifiera la réception à tous les Membres de la Société et aux Etats non membres visés audit article.

*Article 10.*

Chaque Haute Partie contractante peut subordonner l'effet de ses ratifications ou de son adhésion aux ratifications ou adhésions d'un ou de plusieurs Membres de la Société des Nations ou Etats non membres désignés par elle dans l'instrument de ratification ou adhésion.

*Article 11.*

La présente Convention entrera en vigueur six mois après la réception par le Secrétaire général de la Société des Nations de ratifications ou adhésions données au nom de cinq Membres de la Société des Nations ou Etats non membres. Les ratifications ou adhésions dont l'effet est soumis à la condition prévue à l'article précédent ne seront pas comptées dans ce nombre jusqu'à ce que cette condition soit remplie.

*Article 12.*

Les ratifications ou adhésions qui interviendront après l'entrée en vigueur de la Convention produiront leurs effets six mois, soit après la date de leur réception par le Secrétaire général de la Société des Nations, soit après la date à laquelle les conditions visées à l'article 10 se trouvent remplies.

*Article 13.*

Toute Haute Partie contractante pourra en tout temps proposer d'apporter à l'Annexe à la présente Convention telles modifications ou additions qui lui paraîtront utiles. La proposition sera adressée au Secrétaire général de la Société des Nations et communiquée par lui à toutes les autres Hautes Parties contractantes et, si elle est acceptée par toutes les Hautes Parties contractantes (y compris celles ayant déposé des ratifications ou adhésions qui ne seraient pas encore devenues effectives), l'Annexe à la présente Convention sera modifiée en conséquence.

*Article 14.*

Après que la présente Convention aura été en vigueur pendant huit ans, la revision pourra être demandée à toute époque par trois au moins des Hautes Parties contractantes.

La demande visée à l'alinéa précédent serait adressée au Secrétaire général de la Société des Nations, qui la notifierait aux autres Hautes Parties contractantes et en informerait le Conseil de la Société des Nations.

*Article 15.*

Après l'expiration d'un délai de huit ans à partir de la date d'entrée en vigueur de la présente Convention, celle-ci pourra être dénoncée par l'une quelconque des Hautes Parties contractantes.

La dénonciation sera faite sous forme de notification écrite, adressée au Secrétaire général de la Société des Nations, qui en informera tous les Membres de la Société des Nations et les Etats non membres visés à l'article 7.

La dénonciation produira ses effets un an après la date à laquelle elle aura été reçue par le Secrétaire général et ne sera opérante qu'au regard du Membre de la Société ou de l'Etat non membre au nom duquel elle aura été effectuée.

Si, à la suite de dénonciations simultanées ou successives, le nombre des Membres de la Société et Etats non membres, liés par les dispositions de la présente Convention, est réduit à un nombre inférieur à cinq, la Convention cessera d'être en vigueur.

apply to all or any of his colonies, protectorates and overseas territories or territories under suzerainty or mandate and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General.

The Secretary-General shall communicate to all the Members of the League of Nations and non-member States mentioned in Article 7, all declarations and notices received in virtue of this article.

*Article 7.*

The present Convention, of which the French and English texts are both authentic, shall bear this day's date.

Until September 30th, 1931, it may be signed on behalf of any Member of the League of Nations or non-member State represented at the Conference which drew up this Convention or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

*Article 8.*

The present Convention shall be ratified.

The instruments of ratification shall be deposited with the Secretary-General of the League of Nations who shall notify their receipt to all the Members of the League of Nations and non-member States referred to in Article 7.

*Article 9.*

As from October 1st, 1931, the present Convention may be acceded to on behalf of any Member of the League of Nations or non-member State referred to in Article 7.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations who shall notify their receipt to all the Members of the League and non-member States referred to in that article.

*Article 10.*

Each High Contracting Party may render his ratification or accession conditional on the ratifications or accessions of any one or more Members of the League of Nations or non-member States named in the instrument of ratification or accession.

*Article 11.*

The present Convention shall come into force six months after the receipt by the Secretary-General of the League of Nations of ratifications or accessions on behalf of five Members of the League of Nations or non-member States. No ratification or accession to which any conditions are attached in accordance with the preceding article shall count for this purpose until those conditions are fulfilled.

*Article 12.*

Each ratification or accession received after the entry into force of the Convention shall take effect six months after its receipt by the Secretary-General of the League of Nations or six months after the fulfilment of the conditions attached to it in accordance with Article 10 as the case may be.

*Article 13.*

Each High Contracting Party may at any time propose any alterations or additions which he may consider necessary in the Annex to the present Convention. The proposals shall be communicated to the Secretary-General of the League of Nations and by him to all the other High Contracting Parties, and if it is accepted by all the High Contracting Parties (including those High Contracting Parties which have deposited ratifications or accessions which have not yet become operative), the Annex to the present Convention shall be amended accordingly.

*Article 14.*

Revision of the present Convention may be requested by not less than three High Contracting Parties at any moment after it has been in force for a period of eight years.

The request mentioned in the preceding paragraph shall be addressed to the Secretary-General of the League of Nations, who will notify the other High Contracting Parties and inform the Council of the League of Nations of the request made.

*Article 15.*

After the expiration of eight years from the date of its entry into force, the present Convention may be denounced by any High Contracting Party.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations who shall inform all the Members of the League of Nations and non-member States referred to in Article 7 of the denunciation made.

The denunciation shall take effect one year after the date of its receipt by the Secretary-General and shall operate only in respect of the Member of the League or non-member State on whose behalf it has been made.

If, as the result of simultaneous or successive denunciations, the number of the Members of the League or non-member States which are bound by the provisions of the present Convention is reduced to less than five, the Convention shall cease to be in force.

EN FOI DE QUOI les Plénipotentiaires sus-nommés ont signé la présente Convention.

IN FAITH WHEREOF the above-mentioned Plenipotentiaries have signed the present Convention.

FAIT à Genève, le trente mars mil neuf cent trente et un, en un seul exemplaire qui restera déposé dans les archives du Secrétariat de la Société des Nations, et dont des copies certifiées conformes seront délivrées à tous les Membres de la Société et aux Etats non membres mentionnés à l'article 7.

DONE at Geneva, this thirtieth day of March, nineteen hundred and thirty-one, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and non-member States referred to in Article 7.

ALLEMAGNE

GERMANY

*ad referendum*

Dr. ECKARDT.  
Dr. PFLUG

BELGIQUE

BELGIUM

J. DE RUELLE

Sous réserve d'adhésion ultérieure pour les colonies et territoires sous mandat<sup>1</sup>.

DANEMARK

DENMARK

E. SIMONI

VILLE LIBRE DE DANTZIG

FREE CITY OF DANZIG

*ad referendum*

Dr. RASINSKI

FRANCE

FRANCE

WALCKENAER

Je déclare que, par ma signature, la France n'assume aucune obligation en ce qui concerne l'Algérie, les colonies, protectorats et territoires sous mandat<sup>2</sup>.

C. W.

<sup>1</sup> Translation: Subject to subsequent accession on behalf of the colonies and mandated territories.

<sup>2</sup> Translation: I declare that, by my signature, France does not assume any obligation as regards Algeria, colonies, protectorates and mandated territories.

ITALIE

C. DE CONSTANTIN

ITALY

LUXEMBOURG

Ch. G. VERMAIRE

LUXEMBURG

POLOGNE

Dr. RASINSKI

POLAND

SUISSE

ROTHMUND.  
HÄUSERMANN  
RATZENBERGER

SWITZERLAND

TCHÉCOSLOVAQUIE

Ing. Václav ROUBÍK

CZECHOSLOVAKIA

YUGOSLAVIE

I. CHOUMENKOVITCH

YUGOSLAVIA

Copie certifiée conforme.

Certified true copy.

Pour le Secrétaire général:

For the Secretary-General:

*Conseiller juridique  
du Secrétariat.*

*Legal Adviser  
of the Secretariat.*

## ANNEXE.

Le système international de signalisation routière comprend les catégories de signaux définies ci-après. Lorsque les couleurs à employer restent facultatives, il est entendu que, dans un même pays, elles doivent être, sauf motifs exceptionnels, partout les mêmes pour un même signal.

### I. SIGNAUX DE DANGER.

Les signaux de cette catégorie doivent être de forme triangulaire. Leur objet est d'avertir le conducteur de l'approche d'un danger. Ils comprennent :

1<sup>o</sup> Les signaux institués par la Convention internationale du 24 avril 1926 relative à la circulation automobile (figures 1 à 5 et 7 du tableau I);

2<sup>o</sup> Un signal destiné à indiquer les dangers autres que ceux prévus à l'alinéa 1 ci-dessus. Ce signal consiste en un triangle plein, la pointe en haut, portant en son milieu une barre verticale (figure 6 du tableau I).

Lorsque les conditions atmosphériques s'opposent à l'emploi de plaques pleines, la plaque triangulaire peut être évidée. Dans ce cas, elle peut ne pas porter de barre verticale (figure 7 du tableau I).

Le signal est posé perpendiculairement à la route et à une distance de l'obstacle qui ne doit pas être inférieure à 150 mètres ni supérieure à 250 mètres, à moins que la disposition des lieux ne s'y oppose. Lorsque la distance du signal à l'obstacle est notablement inférieure à 150 mètres, des dispositions spéciales doivent être prises;

3<sup>o</sup> Un signal concernant la priorité de passage (figure 8 du tableau I). Ce signal, qui consiste en un triangle plein, la pointe en bas, indique au conducteur qu'il doit céder le passage aux véhicules circulant sur la voie à laquelle il va aboutir. Ce signal est placé à une distance convenable déterminée d'après les circonstances.

Ne sont pas compris dans les dispositions précédentes les signaux placés au voisinage immédiat des passages à niveau des voies ferrées (croix de Saint-André, etc.), sur lesquelles ne portent pas les stipulations de la Convention.

### II. SIGNAUX COMPORTANT DES PRESCRIPTIONS ABSOLUES.

Les signaux de cette catégorie doivent être de forme circulaire. Ils indiquent, soit une interdiction à respecter, soit une obligation à exécuter, édictées par les autorités compétentes.

#### A. SIGNAUX MARQUANT UNE INTERDICTION.

Dans ces signaux, la couleur rouge doit prédominer nettement et faire ressortir la forme générale du signal. Les autres couleurs sont facultatives, sauf les prescriptions indiquées ci-après :

a) *Circulation interdite à tous véhicules* : Disque rouge avec partie centrale circulaire de couleur blanche ou jaune claire (figure 1 du tableau II).

b) *Sens interdit* ou *Entrée interdite* : Disque rouge avec barre horizontale de couleur blanche ou jaune claire (figure 2 du tableau II).

c) *Interdiction de passage pour certaines catégories de véhicules* : Employer le signal a) et indiquer, au moyen d'une figurine appropriée, placée dans la partie centrale de couleur blanche ou jaune claire, la catégorie de véhicules visée par l'interdiction (figures 3 à 5 du tableau II).

d) *Limitation du poids* : Pour interdire le passage de véhicules pesant plus d'un certain poids, le chiffre, exprimant en tonnes le poids-limite, est inscrit sur la partie centrale de couleur blanche ou jaune claire des signaux a) ou c) (figures 6 et 7 du tableau II).

e) *Limitation de la vitesse* : Pour interdire les vitesses supérieures à une limite déterminée, le nombre exprimant cette limite en kilomètres par heure est inscrit sur la partie centrale blanche ou jaune claire du signal a) (figure 8 du tableau II).

f) *Interdiction de stationner* : Ce signal indique que le stationnement est interdit du côté de la voie publique où le signal est placé. La partie centrale du disque est bleue, entourée d'une large

## ANNEX..

The international system of road signalling shall comprise the classes of signs described below. When the colours to be used are optional, it is understood that throughout each country they must always be the same for any one signal, save when used for an exceptional purpose.

### I. DANGER SIGNS.

Signs of this class must be triangular. Their purpose is to warn drivers of the approach of danger. They comprise:

(1) Signs established by the International Convention relating to Road Traffic of April 24th, 1926 (figures 1 to 5 and 7, Table I).

(2) A sign denoting other dangers than those referred to in paragraph 1 above. This sign consists of a full triangle with the point upwards, with a vertical bar in the middle (figure 6, Table I).

When a full sign cannot be used on account of atmospheric conditions, the triangle may be hollow. In this case, it need not have the vertical bar (figure 7, Table I).

The sign must be placed perpendicularly to the road at a distance of not less than 150 metres and not more than 250 metres from the obstacle, unless this is impossible on account of local conditions. When the distance between the sign and the obstacle is considerably less than 150 metres, special arrangements must be made.

(3) A sign for priority of passage (figure 8, Table I). This sign, consisting of a full triangle with the point downwards, informs the driver that he must give way to vehicles moving along the road to which he is coming. This sign must be placed at a suitable distance from the junction of the two roads to be decided by the special circumstances of each case.

Signs placed in the immediate vicinity of level crossings (St. Andrew's Cross, etc.) to which the provisions of the Convention do not refer, are not affected by the preceding provisions.

### II. SIGNS GIVING DEFINITE INSTRUCTIONS.

Signs of this class must be circular. They indicate an order, which may be either in the nature of a prohibition or of an injunction, issued by the competent authorities.

#### A. SIGNS PROHIBITING PASSAGE.

For these signs, *the colour red must clearly predominate* and must be used so as to bring into relief the general contour of the sign. The other colours to be used are optional except in the following cases:

(a) *Road closed to all vehicles*: A red disc with a round white or pale yellow centre (figure 1, Table II).

(b) *One-way road, or "entrance prohibited"*: A red disc with a white or pale yellow horizontal bar (figure 2, Table II).

(c) *Passage prohibited for certain classes of vehicles*: The sign (a) above is to be used but must indicate, by means of a suitable figure placed in the white or pale yellow centre, the class of vehicle to which prohibition refers (figures 3 to 5, Table II).

(d) *Weight-limit*: In order to prohibit the passage of vehicles exceeding a certain weight, a figure expressing the weight-limit in tons must be inscribed on the white or pale yellow centre of signs (a) or (c) above (figures 6 and 7, Table II).

(e) *Speed-limit*: In order to prohibit driving in excess of a certain speed-limit, the figure expressing this limit in kilometres (miles) per hour must be inscribed on the white or pale yellow centre of sign (a) above (figure 8, Table II).

(f) *Waiting prohibited*: This sign shows that waiting is prohibited at the side of the public road where it is placed. The centre of the disc must be blue, surrounded by a wide red border

bordure rouge et barrée diagonalement d'un trait rouge (figure 9 du tableau II). Le signal peut être complété par des indications telles que: heures pendant lesquelles le stationnement est interdit, etc.

g) *Interdiction de parquer*: Disque rouge avec partie centrale circulaire de couleur blanche ou jaune claire portant la lettre P et barrée diagonalement d'un trait rouge (figure 10 du tableau II).

#### B. SIGNAUX MARQUANT UNE OBLIGATION A EXÉCUTER.

h) *Sens obligatoire*: Ce signal indique, au moyen d'une flèche, la direction que les véhicules doivent suivre en exécution de prescriptions réglementaires (figure 11 du tableau II). Le choix des couleurs est facultatif, sous la condition que la couleur *rouge* ne prédomine jamais et qu'elle soit même totalement exclue si le fond du disque est de couleur bleue (afin d'éviter toute confusion avec le signal f).

i) *Arrêt à proximité d'un poste de douane*: Ce signal indique l'approche d'un poste de douane où l'on doit s'arrêter.

Il consiste en un disque rouge avec partie centrale circulaire de couleur blanche ou jaune claire portant une barre horizontale de couleur foncée. Le mot « Douane » est inscrit sur le disque dans les langues nationales des deux pays limitrophes ou tout au moins dans la langue du pays où est placé le signal (figure 12 du tableau II).

#### III. SIGNAUX COMPORTANT UNE SIMPLE INDICATION.

Les signaux de cette catégorie doivent être de forme rectangulaire. Le choix des couleurs est facultatif, étant entendu que la couleur rouge ne doit en aucun cas prédominer.

a) *Signal de parage autorisé*: Ce signal indique les emplacements où les véhicules peuvent être parqués. Une plaque rectangulaire, bleue de préférence, portera la lettre P. Elle peut porter, en outre, des inscriptions donnant des indications complémentaires telles que: durée pendant laquelle le parage est autorisé (figure 1 du tableau III).

b) *Signal de prudence*: Ce signal indique que les conducteurs des véhicules doivent observer une prudence particulière en raison du danger qu'ils sont susceptibles de faire courir à d'autres usagers de la route (par exemple, à l'approche d'une école, d'une usine, etc.).

Ce signal consiste en un rectangle dont le fond est de couleur foncée et sur lequel se détache un triangle équilatéral de couleur blanche ou jaune claire (figure 2 du tableau III).

Une inscription ou une figurine peut en préciser la signification.

c) *Signal indiquant l'emplacement d'un poste de secours*: Ce signal indique la proximité d'un poste de secours organisé par une association officiellement reconnue. *Il est recommandé* de le constituer par un rectangle dont le petit côté, horizontal, mesure les deux tiers du grand côté, le fond de la plaque étant de couleur foncée, encadré d'un filet blanc, et le centre de la plaque portant, dans un carré blanc mesurant au moins 0 m. 30 de côté, un emblème approprié (voir, à titre d'exemples, les figures 3 et 3bis du tableau III).

d) *Signaux de localités et d'orientation*: Ces signaux indiquent, soit une localité, soit la direction vers une ou plusieurs localités avec ou sans notation de distance. Lorsqu'ils indiquent une direction, l'un des petits côtés du rectangle peut être remplacé par une pointe de flèche (voir, à titre d'exemple, figures 4 et 5 du tableau III).



with a diagonal red stroke (figure 9, Table II). It may bear inscriptions giving information as to the hours during which waiting is prohibited, etc.

(g) *Parking prohibited*: Red disc with circular centre in white or pale yellow bearing the letter P. with a diagonal red stroke (figure 10, Table II).

#### B. SIGNS INDICATING AN OBLIGATION.

(h) *Direction to be followed*: This sign shows, by means of an arrow, the direction to be followed by vehicles in accordance with regulations (figure 11, Table II). The choice of colours is optional, provided that *red* shall never predominate. That colour should be entirely excluded if the ground of the disc is blue (in order to avoid any confusion with signal (f) above).

(i) *Stop near a Customs-house*: This sign indicates the presence of a Customs-house, in the vicinity, at which the traveller has to stop.

The sign is a red disc with round centre of white or pale yellow with a dark horizontal stroke. The word "Customs" must appear on the disc in the languages of the frontier countries or at any rate in the language of the country in which the sign is placed (figure 12, Table II).

#### III. SIGNS GIVING INDICATIONS ONLY.

Signs of this category should be rectangular in shape. The choice of colours is optional, it being understood that the colour red should never predominate.

(a) *Sign indicating authorised parking-place*: This sign shows the place where vehicles may be parked. Rectangular plate, blue for choice, bearing the letter P. It may also have inscriptions giving further information such as the period during which parking is allowed (figure 1, Table III).

(b) *Sign recommending caution*: This sign shows that drivers of vehicles must take particular care by reason of the danger which may be caused to other users of the road (for instance, when approaching a school, a factory, etc.).

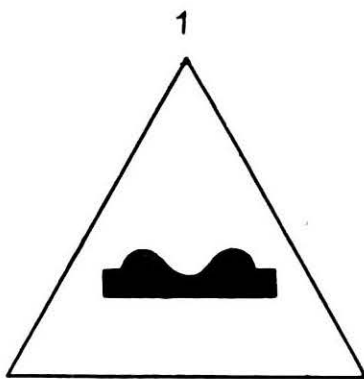
The sign consists of a rectangle, the body of which is of a dark colour, on which is shown a white or pale yellow equilateral triangle (figure 2, Table III).

The purport of the sign may be shown by a notice in writing or a figure.

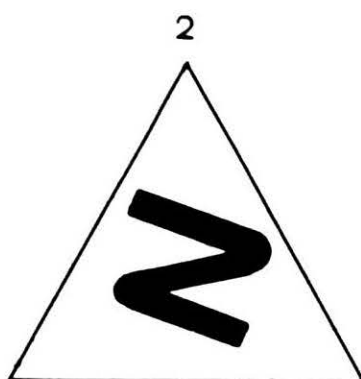
(c) *Sign showing place at which a first-aid station can be found*: This sign indicates that there is a first-aid station in the neighbourhood, organised by an officially recognised association. *It is recommended* that it should consist of a rectangle, the shorter (horizontal) side of which should measure two-thirds of the longer side, the body of the plate being of a dark colour, surrounded by a white stripe, and the centre of the plate bearing an appropriate emblem within a white square, the sides of which are not less than 0.30 metre in length (see, as an example, figures 3 and 3bis, Table III).

(d) *Place or direction signs*: These signs either indicate a place or else the direction of one or more places with or without specifying the distance. When they indicate direction, one of the shorter sides of the rectangle may be replaced by an arrow-head (see as an example figures 4 and 5, Table III).

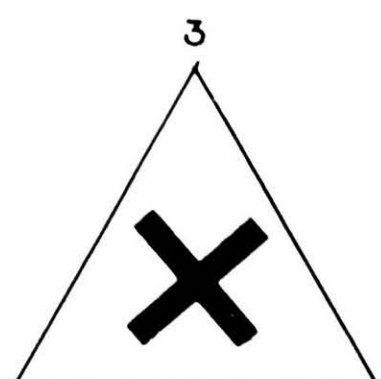
SIGNAUX DE DANGER.  
DANGER SIGNS.



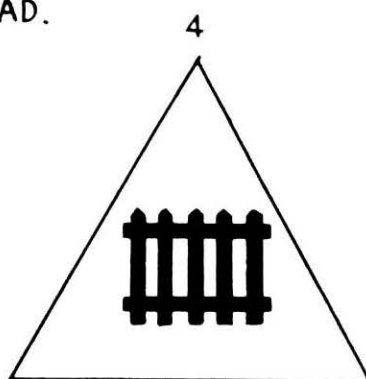
CASSIS  
UNEVEN ROAD.



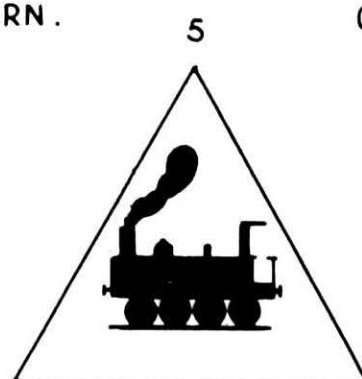
VIRAGE  
SHARP TURN.



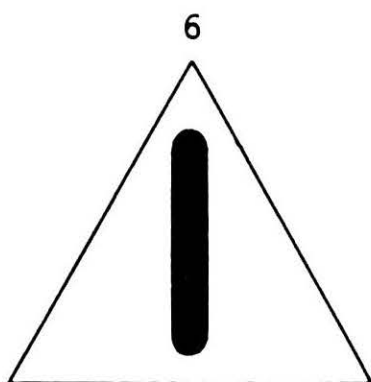
CROISEMENT  
CROSS-ROAD.



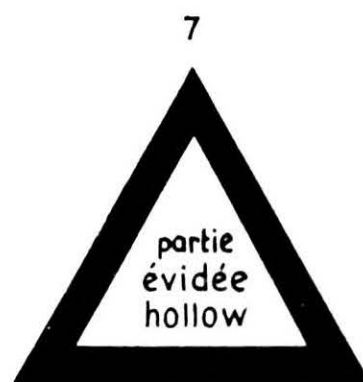
PASSAGE À NIVEAU GARDÉ  
GUARDED LEVEL-CROSSING.



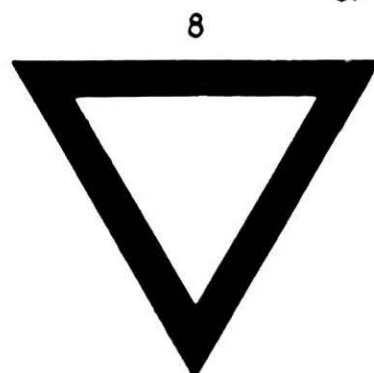
PASSAGE À NIVEAU NON GARDÉ  
UNGUARDED LEVEL-CROSSING.



DANGER AUTRE QUE CEUX  
INDIQUÉS PAR LES SIGNAUX  
1-5 DU PRÉSENT TABLEAU.  
DANGERS OTHER THAN THOSE  
INDICATED BY SIGNS 1 TO 5  
OF THE PRESENT TABLE.



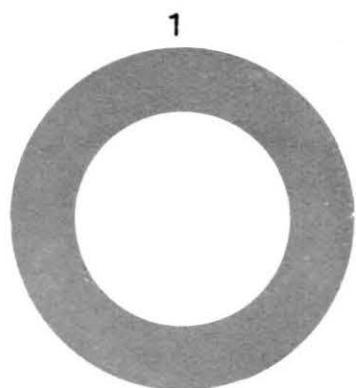
SIGNAL ALTERNATIF GÉNÉRAL DE  
DANGER DESTINÉ À ÊTRE EMPLOYÉ  
LORSQUE LES CONDITIONS ATMOSPHÉRI-  
QUES NE PERMETTENT PAS L'EMPLOI  
DE PLAQUES PLEINES.  
ALTERNATIVE SIGN INDICATING DANGER,  
TO BE EMPLOYED WHEN ATMOSPHERIC  
CONDITIONS DO NOT PERMIT OF THE USE  
OF A FULL SIGN.



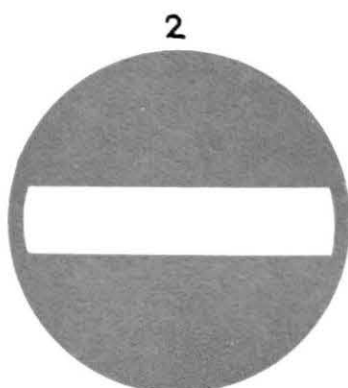
SIGNAL CONCERNANT LA  
PRIORITÉ DE PASSAGE.  
SIGN CONCERNING RIGHT-OF-WAY.

SIGNAUX COMPORTANT DES PRESCRIPTIONS ABSOLUES.  
SIGNS GIVING DEFINITE INSTRUCTIONS.

SIGNAUX MARQUANT UNE INTERDICTION.  
 SIGNS PROHIBITING PASSAGE.



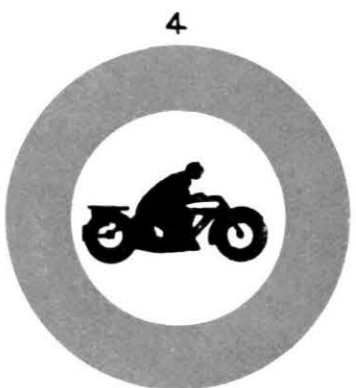
CIRCULATION INTERDITE À TOUS VÉHICULES.  
 CLOSED TO ALL VEHICLES.



SENS INTERDIT OU ENTRÉE INTERDITE. ONE-WAY ROAD OR ENTRY PROHIBITED.



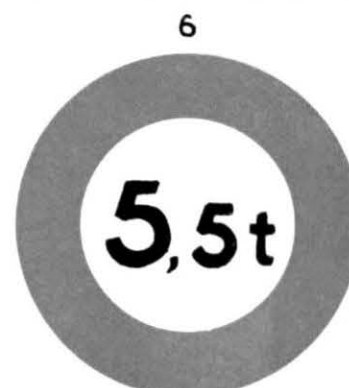
CIRCULATION INTERDITE AUX AUTOMOBILES.  
 MOTOR VEHICLES PROHIBITED.



CIRCULATION INTERDITE AUX MOTOCYCLETTES.  
 MOTOR CYCLES PROHIBITED.



INTERDIT POUR TOUS VÉHICULES AUTOMOBILES.  
 ALL MOTOR VEHICLES PROHIBITED.



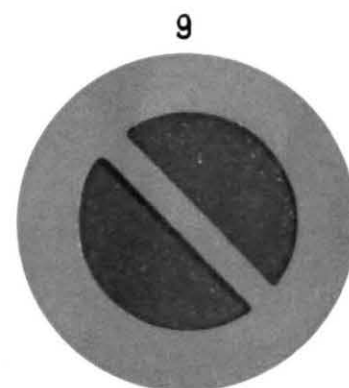
LIMITATION DU POIDS.  
 WEIGHT LIMIT.



INTERDIT AUX AUTOMOBILES DONT LE POIDS DÉPASSE 5,5t.  
 MOTOR VEHICLES WEIGHING OVER FIVE AND A HALF TONS PROHIBITED.



VITESSE MAXIMUM  
 MAXIMUM SPEED.

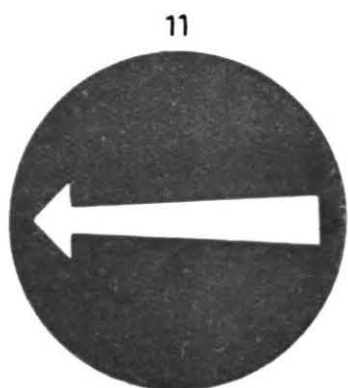


INTERDICTION DE STATIONNER.  
 WAITING PROHIBITED.

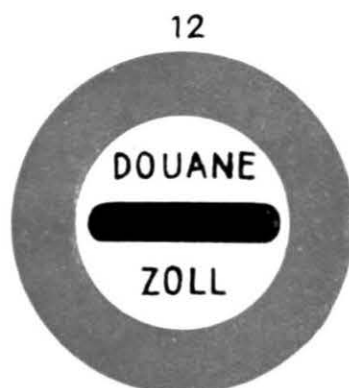


INTERDICTION DE PARQUER.  
 PARKING PROHIBITED.

SIGNAUX MARQUANT UNE OBLIGATION À EXÉCUTER.  
 SIGNS INDICATING AN OBLIGATION.



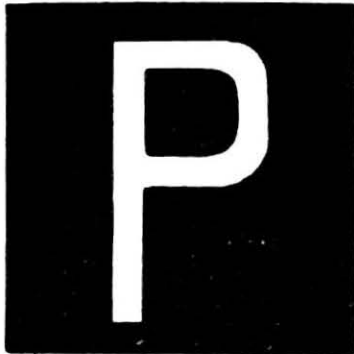
SENS OBLIGATOIRE.  
 DIRECTION TO BE FOLLOWED.



ARRÊT À PROXIMITÉ D'UN POSTE DE DOUANE.  
 STOP NEAR CUSTOMS HOUSE.

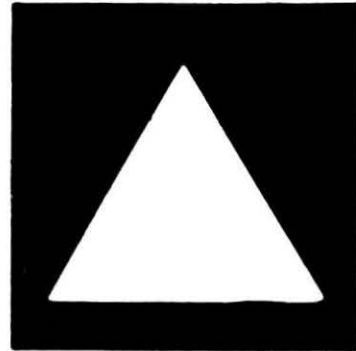
SIGNAUX COMPORTANT UNE SIMPLE INDICATION.  
SIGNS GIVING ONLY ONE INDICATION.

1



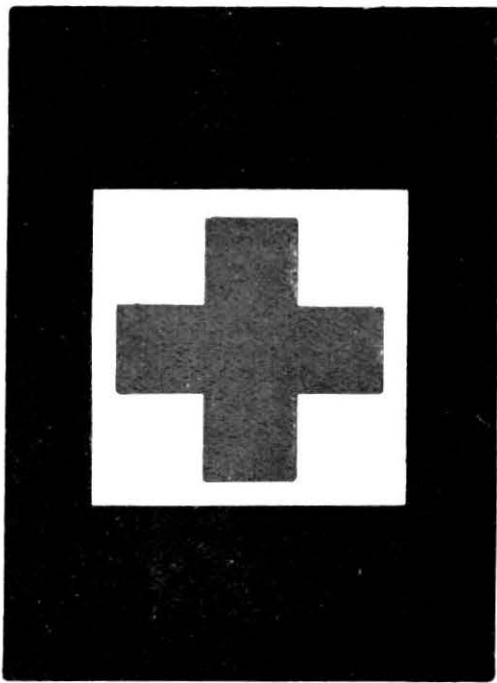
SIGNAL DE PARCAGE AUTORISÉ.  
 SIGN INDICATING AUTHORISED PARKING PLACE.

2



SIGNAL DE PRUDENCE.  
 SIGN RECOMMENDING CAUTION.

3



SIGNAUX INDIQUANT L'EMPLACEMENT D'UN POSTE DE SECOURS  
 (à titre d'exemple)

SIGNS SHOWING PLACE AT WHICH A FIRST-AID STATION CAN  
 BE FOUND. (as an example)

3 bis



4



5



SIGNAUX DE LOCALITÉ ET D'ORIENTATION  
 PLACE SIGN AND DIRECTION SIGN

Genève, le 20 mai 1931.

**SOCIÉTÉ DES NATIONS**

**CONFÉRENCE EUROPÉENNE SUR LA CIRCULATION ROUTIÈRE**

(Genève, 16-30 mars 1931.)

**CONVENTION SUR L'UNIFICATION  
DE LA SIGNALISATION ROUTIÈRE**

**NOTE EXPLICATIVE CONCERNANT LES VARIATIONS ADMISES DANS  
LES COULEURS UTILISÉES POUR LES TABLEAUX DE L'ANNEXE A LA  
CONVENTION SUR L'UNIFICATION DE LA SIGNALISATION  
ROUTIÈRE.**

Afin d'éviter des malentendus au sujet du caractère obligatoire ou facultatif des couleurs utilisées pour les différents signaux des tableaux I à III de l'Annexe à la Convention sur l'unification de la signalisation routière (document C.231.M.99.1931.VIII), le Secrétariat, sur la demande de certaines délégations à la Conférence européenne sur la circulation routière, croit utile de fournir les précisions suivantes quant à la signification de ces couleurs:

*Tableau I.* — Les signes symboliques des signaux 1 à 6 ont été indiqués en noir sur fond blanc. Aucune prescription quant aux couleurs de cette catégorie de signaux n'ayant été insérée dans la Convention, il est bien entendu qu'à la place du blanc, toute autre couleur claire peut être utilisée. En outre, l'emploi de bordures de couleur quelconque reste permis et peut même être utile en vue d'augmenter la visibilité du signal. D'autre part, lesdits signaux 1 à 6 peuvent également être constitués par des signes symboliques blancs sur fond foncé.

Le triangle évidé du signal 7 peut être peint en n'importe quelle couleur.

Pour le signal 8, indiqué dans le tableau avec une partie centrale blanche entourée d'une bordure noire, il peut être fait usage de toute teinte claire, y compris le blanc pour la partie centrale, et de toute teinte foncée, y compris le noir pour la bordure. D'autre part, rien n'empêche de peindre toute la plaque triangulaire d'une seule couleur.

*Tableau II.* — Conformément aux dispositions de l'Annexe, la partie figurée en blanc des signaux 1 à 8, 10 et 12 peut être peinte en couleur jaune clair.

Les couleurs du signal 11 sont facultatives, tant pour la flèche que pour le fond. Toutefois, la couleur rouge ne doit jamais prédominer pour ce signal, et même doit en être exclue complètement tant pour la flèche que pour la bordure éventuelle, dans le cas où la couleur bleue est utilisée pour le fond du signal.

*Tableau III.* — Les couleurs du signal 1 sont facultatives, étant entendu que le rouge ne doit jamais prédominer. L'annexe marque cependant une préférence pour la couleur bleue comme teinte de fond.

Dans le signal 2, le triangle blanc peut également être peint en jaune clair et le fond peut être d'une couleur foncée quelconque.

Pour les signaux 3 et 3 bis, il est recommandé que l'emblème utilisé figure dans un carré blanc; le fond du signal peut être d'une couleur foncée quelconque.

Pour les signaux 4 et 5, les couleurs sont entièrement facultatives.

[Distributed to the Council and  
the Members of the League.]

Official No.: **C. 231 (a). M. 99 (a).** 1931. VIII.

Geneva, May 20th, 1931.

**LEAGUE OF NATIONS**

**EUROPEAN CONFERENCE ON ROAD TRAFFIC**

(Geneva, March 16th-30th, 1931)

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**CONVENTION CONCERNING  
THE UNIFICATION OF ROAD SIGNALS**

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**EXPLANATORY NOTE WITH REFERENCE TO ADMISSIBLE VARIATIONS  
IN THE COLOURS SHOWN IN THE TABLES ACCOMPANYING THE ANNEX  
TO THE CONVENTION CONCERNING THE UNIFICATION  
OF ROAD SIGNALS.**

To avoid misunderstanding as to the compulsory or optional nature of the colours used for the different signs in Tables I to III of the Annex to the Convention concerning the unification of road signals (document C.231.M.99.1931.VIII), the Secretariat, at the request of certain delegations to the European Conference on Road Traffic, considers it desirable to give the following explanations as to the meaning of these colours:

*Table I.* — The symbols of signs 1 to 6 are given in black on a white ground. Since the Convention prescribes no special colours for signs of this category, any other light colour may of course be used instead of white. The employment of a border of any colour is also allowed and even useful in order to increase the visibility of the sign. Signs 1 to 6 can equally well be shown with white symbols on a dark ground.

The hollow triangle of sign 7 may be of any colour.

Sign 8, shown in the table with a white centre surrounded by a black border, may have a centre of any light colour, white included, and a border of any dark colour, black included. There is nothing to prevent the painting of the whole of the triangular plate in a single colour.

*Table II.* — In accordance with the provisions contained in the Annex, the parts of signs 1 to 8, 10 and 12 shown in white can be painted light yellow.

The colours of sign 11, both for the arrow and ground, are optional. Red, however, should never predominate in this sign, and in fact should even be entirely excluded both for the arrow and for the border, if such exists, when the ground of the sign is blue.

*Table III.* — The colours of sign 1 are optional, it being understood that red should never be the predominating colour. Preference is, however, given in the Annex to the colour blue for the ground.

In sign 2, the white triangle may be light yellow and the ground any dark colour.

In signs 3 and 3bis, it is recommended that the symbol used shall be shown on a white square. The ground of the sign may be of any dark colour.

The colours of signs 4 and 5 are entirely optional.

23 MAY 1931

[Communiqué au Conseil  
et aux Membres de la Société.]

N<sup>o</sup> officiel: **C. 232. M. 100.** 1931. VIII.

Genève, le 10 avril 1931.

SOCIÉTÉ DES NATIONS

CONFÉRENCE EUROPÉENNE  
SUR LA CIRCULATION ROUTIÈRE

(Genève, 16 au 30 mars 1931)

CONVENTION SUR LE RÉGIME FISCAL  
DES VÉHICULES AUTOMOBILES ÉTRANGERS

(avec Protocole annexe)

LEAGUE OF NATIONS

EUROPEAN CONFERENCE ON ROAD TRAFFIC

(Geneva, March 16th-30th, 1931)

CONVENTION ON THE TAXATION  
OF FOREIGN MOTOR VEHICLES

(with Protocol-Annex)

Série de Publications de la Société des Nations  
VIII. COMMUNICATIONS ET TRANSIT  
1931. VIII. 8. ✓

## CONVENTION SUR LE RÉGIME FISCAL DES VÉHICULES AUTOMOBILES ÉTRANGERS

Les Hautes Parties contractantes,

Désireuses de faciliter la circulation internationale des automobiles;

Considérant qu'une exonération fiscale aussi étendue que possible des véhicules automobiles étrangers présenterait à cette fin un intérêt essentiel,

Ont désigné pour leurs Plénipotentiaires:

.....

Lesquels, après avoir produit leurs pleins pouvoirs reconnus en bonne et due forme, ont arrêté les dispositions suivantes:

### *Article premier.*

Les véhicules automobiles immatriculés dans le territoire de l'une des Hautes Parties contractantes, qui circulent temporairement sur le territoire d'une autre, sont exemptés, dans les conditions précisées par les articles ci-après, des impôts ou taxes qui frappent la circulation ou la détention des automobiles dans tout ou partie du territoire de cette dernière Haute Partie contractante. Cette exemption ne s'étend pas aux impôts ou taxes de consommation.

Sont toutefois exclus de la présente Convention les véhicules servant, moyennant rémunération, au transport des personnes, ainsi que les véhicules affectés au transport des marchandises.

### *Article 2.*

L'exonération établie par l'article premier est accordée, dans le territoire de chaque Haute Partie contractante, pour un ou plusieurs séjours représentant une durée totale de quatre-vingt-dix jours passés dans ce territoire dans le délai d'un an; ce délai est compté, jour pour jour, à partir de la date de la délivrance du carnet fiscal visé à l'article 3.

Pour le calcul de la durée de l'exonération, le jour est compté de minuit à minuit, toute fraction de jour comptant pour un jour entier. Toutefois, le jour de sortie n'est pas compté lorsque le jour d'entrée et le jour de sortie sont séparés par plus d'un jour intermédiaire.

Pour le calcul des impôts et taxes afférents à la partie du séjour dépassant la durée de l'exonération, le traitement accordé ne sera pas moins favorable que celui appliqué aux véhicules immatriculés dans le territoire où les impôts et taxes sont prélevés.

### *Article 3.*

Pour bénéficier de l'exonération visée aux articles précédents, le véhicule doit être muni d'un carnet fiscal international établi d'après le modèle figurant en annexe à la présente Convention et délivré par l'autorité compétente du territoire d'immatriculation ou par un organisme habilité à cet effet par ladite autorité.

Le carnet est présenté pour visa aux bureaux de douane frontière à l'entrée et à la sortie du territoire de la Haute Partie contractante intéressée.



## CONVENTION ON THE TAXATION OF FOREIGN MOTOR VEHICLES.

The High Contracting Parties,

Being desirous of facilitating international motor traffic,

Considering that as wide an exemption as possible of foreign motor vehicles from taxation is of essential importance for this purpose,

Have appointed as their Plenipotentiaries:

.....

Who, having produced their full powers, found in good and due form, have agreed upon the following provisions:

### *Article 1.*

When a motor vehicle registered in the territories of one of the High Contracting Parties circulates temporarily in the territories of another, it shall, under the conditions laid down in the following articles, be exempted from the taxes or charges levied on the circulation or possession of motor vehicles in the territories of that High Contracting Party or in any part of those territories. This exemption shall not include taxes or charges on consumption.

The present Convention shall not, however, apply to vehicles used for the public carriage of passengers for hire or reward, or for the conveyance of goods.

### *Article 2.*

The exemption provided by Article 1 shall be granted in the territories of each High Contracting Party for one or more periods of stay totalling in all ninety days passed in those territories within a period of one year. This latter period shall be reckoned from the day of the issue of the fiscal permit provided for in Article 3 to the corresponding day in the following year.

In calculating the period of exemption, each day shall be reckoned from midnight to midnight, every fraction of a day counting as a whole day. The day of exit shall, however, not be counted when the day of entry and the day of exit are separated by a period of more than one day.

In calculating the taxes and charges payable for the part of the stay which is in excess of the period of exemption, treatment shall be accorded not less favourable than that granted to vehicles registered in the territories in which the charges and taxes are levied.

### *Article 3.*

In order to claim the benefit of the exemptions provided in the preceding articles, the vehicle must be furnished with a fiscal permit drawn up in the form set out in the Annex to the present Convention and issued by the competent authority of the territory of registration or by some organisation designated for the purpose by that authority.

The permit shall be presented for endorsement at the frontier Customs offices on arrival in and departure from the territories of the High Contracting Party concerned.

*Article 4.*

Lorsqu'un véhicule entré dans le territoire d'une des Hautes Parties contractantes sous le couvert d'un carnet fiscal en sort sans que le visa de sortie ait été apposé et sans qu'on puisse établir la date de sortie, ce carnet peut être considéré comme sans valeur dans ledit territoire.

*Article 5.*

Le carnet fiscal est valable durant un an à partir de la date de sa délivrance. Si le véhicule change de propriétaire ou de détenteur, ou si le numéro d'immatriculation en est changé, les modifications nécessaires sont apportées au carnet par l'autorité compétente ou par l'organisme habilité par celle-ci.

Avant l'expiration de la durée de validité susindiquée, il ne peut pas être délivré, pour le même véhicule, un nouveau carnet, hormis le cas d'immatriculation dans le territoire d'une autre Haute Partie contractante. Il n'est jamais fourni de duplicata d'un carnet fiscal.

*Article 6.*

En matière de péages ou autres rétributions analogues payables sur place, les véhicules visés au premier alinéa de l'article premier ne seront pas traités moins favorablement que les véhicules immatriculés dans le territoire où ces péages ou rétributions sont perçus.

*Article 7.*

Si un différend surgit entre deux ou plusieurs Hautes Parties contractantes au sujet de l'interprétation ou de l'application des dispositions de la présente Convention et si ce différend ne peut être réglé directement entre les Parties, le différend peut être soumis pour avis consultatif à la Commission consultative et technique des communications et du transit de la Société des Nations.

*Article 8.*

Chacune des Hautes Parties contractantes peut déclarer, au moment de la signature, de la ratification ou de l'adhésion que, par son acceptation de la présente Convention, elle n'assume aucune obligation en ce qui concerne l'ensemble ou toute partie de ses colonies, protectorats et territoires d'outre-mer ou des territoires placés sous sa suzeraineté ou sous mandat; dans ce cas, la présente Convention ne sera pas applicable aux territoires mentionnés dans ladite déclaration.

Chacune des Hautes Parties contractantes pourra ultérieurement notifier au Secrétaire général de la Société des Nations qu'elle entend rendre la présente Convention applicable à l'ensemble ou à toute partie des territoires ayant fait l'objet de la déclaration prévue à l'alinéa précédent. Dans ce cas, la Convention s'appliquera à tous les territoires visés dans la notification, six mois après réception de cette notification par le Secrétaire général.

De même, chacune des Hautes Parties contractantes pourra, à tout moment, après l'expiration du délai de deux ans mentionné dans l'article 17, déclarer qu'elle entend voir cesser l'application de la présente Convention à l'ensemble ou à toute partie de ses colonies, protectorats et territoires d'outre-mer, ou des territoires placés sous sa suzeraineté ou sous mandat; dans ce cas, la Convention cessera d'être applicable aux territoires faisant l'objet d'une telle déclaration un an après réception de cette déclaration par le Secrétaire général.

Le Secrétaire général communiquera à tous les Membres de la Société des Nations et aux Etats non membres visés à l'article 10 les déclarations et notifications reçues en vertu du présent article.

*Article 9.*

Les interprétations et réserves figurant au Protocole Annexe ci-joint sont adoptées et auront même force, valeur et durée que la présente Convention.

*Article 10.*

La présente Convention, dont les textes français et anglais font également foi, portera la date de ce jour.

Elle pourra, jusqu'au 30 septembre 1931, être signée au nom de tout Membre de la Société des Nations et de tout Etat non membre représenté à la Conférence qui a établi cette Convention ou à qui le Conseil de la Société des Nations aura, à cet effet, communiqué un exemplaire de la présente Convention.

*Article 4.*

When a vehicle which has entered the territories of one of the High Contracting Parties under cover of a fiscal permit leaves those territories without an exit visa having been stamped on the permit and without its being possible to establish the date of exit, that permit may be treated in those territories as having no further validity.

*Article 5.*

The fiscal permit shall be valid for one year from the date of its issue. Should the vehicle to which the permit relates pass into the hands of a new proprietor or possessor, or should the registration number be changed, the necessary modifications shall be made in the permit by the competent authority or by some organisation designated for the purpose by that authority.

No new permit may be issued for the same vehicle before the expiration of the period of validity indicated above, except in the event of the vehicle's becoming registered in the territories of another High Contracting Party. No duplicate copy of the permit may in any event be issued.

*Article 6.*

As regards tolls or other similar charges payable on the spot, the vehicles referred to in the first paragraph of Article 1 shall be treated not less favourably than vehicles registered in the territories in which the tolls or charges are levied.

*Article 7.*

Should a dispute arise between any two or more High Contracting Parties concerning the interpretation or application of the provisions of the present Convention, and should such dispute not be settled directly between the Parties, it may be submitted to the Advisory and Technical Committee for Communications and Transit of the League of Nations for an advisory opinion.

*Article 8.*

Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligations in respect of all or any of his colonies, protectorates and overseas territories, or territories under suzerainty or mandate; and the present Convention shall not apply to any territories named in such declaration.

Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he desires that the Convention shall apply to all or any of the territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice six months after its receipt by the Secretary-General.

Any High Contracting Party may, at any time after the expiration of the period of two years mentioned in Article 17, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates and overseas territories or territories under suzerainty or mandate and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General.

The Secretary-General shall communicate to all the Members of the League of Nations and non-member States mentioned in Article 10 all declarations and notices received in virtue of this article.

*Article 9.*

The interpretations and reservations set out in the Protocol-Annex attached hereto shall be adopted and shall have the same force, effect and duration as the present Convention.

*Article 10.*

The present Convention, of which the French and English texts are both authentic, shall bear this day's date.

Until September 30th, 1931, it may be signed on behalf of any Member of the League of Nations or non-member State represented at the Conference which drew up this Convention or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

*Article 11.*

La présente Convention sera ratifiée.

Les instruments de ratification seront déposés auprès du Secrétaire général de la Société des Nations, qui en notifiera la réception à tous les Membres de la Société des Nations, ainsi qu'aux Etats non membres visés à l'article 10.

*Article 12.*

A partir du 1<sup>er</sup> octobre 1931, il pourra être adhéré à la présente Convention au nom de tout Membre de la Société des Nations ou de tout Etat non membre visé à l'article 10.

Les instruments d'adhésion seront transmis au Secrétaire général de la Société des Nations, qui en notifiera la réception à tous les Membres de la Société et aux Etats non membres visés audit article.

*Article 13.*

Chaque Haute Partie contractante peut subordonner l'effet de ses ratifications ou de son adhésion aux ratifications ou adhésions d'un ou plusieurs Membres de la Société des Nations ou Etats non membres désignés par elle dans l'instrument de ratification ou adhésion.

*Article 14.*

La présente Convention entrera en vigueur six mois après la réception par le Secrétaire général de la Société des Nations de ratifications ou adhésions données au nom de cinq Membres de la Société des Nations ou Etats non membres. Les ratifications ou adhésions dont l'effet est soumis aux conditions prévues à l'article précédent ne seront pas comptées dans ce nombre jusqu'à ce que ces conditions soient remplies.

*Article 15.*

Les ratifications ou adhésions qui interviendront après l'entrée en vigueur de la Convention produiront leurs effets six mois, soit après la date de leur réception par le Secrétaire général de la Société des Nations, soit après la date à laquelle les conditions visées à l'article 13 se trouvent remplies.

*Article 16.*

Après que la présente Convention aura été en vigueur pendant deux ans, la revision pourra être demandée à toute époque par trois au moins des Hautes Parties contractantes.

La demande visée à l'alinéa précédent serait adressée au Secrétaire général de la Société des Nations, qui la notifierait aux autres Hautes Parties contractantes et en informerait le Conseil de la Société des Nations.

*Article 17.*

Après l'expiration d'un délai de deux ans à partir de la date d'entrée en vigueur de la présente Convention, celle-ci pourra être dénoncée par l'une quelconque des Hautes Parties contractantes.

La dénonciation sera faite sous forme de notification écrite adressée au Secrétaire général de la Société des Nations qui en informera tous les Membres de la Société des Nations et les Etats non membres visés à l'article 10.

La dénonciation produira ses effets un an après la date à laquelle elle aura été reçue par le Secrétaire général et ne sera opérante qu'au regard du Membre de la Société ou de l'Etat non membre au nom duquel elle aura été effectuée.

Si, à la suite de dénonciations simultanées ou successives, le nombre des Membres de la Société et Etats non membres liés par les dispositions de la présente Convention est réduit à un nombre inférieur à cinq, la Convention cessera d'être en vigueur.

*Article 11.*

The present Convention shall be ratified.

The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League of Nations and non-member States referred to in Article 10.

*Article 12.*

As from October 1st, 1931, the present Convention may be acceded to on behalf of any Member of the League of Nations or non-member State referred to in Article 10.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and non-member States referred to in that article.

*Article 13.*

Each High Contracting Party may render his ratification or accession conditional on the ratification or accession of any one or more Members of the League of Nations or non-member States named in the instrument of ratification or accession.

*Article 14.*

The present Convention shall come into force six months after the receipt by the Secretary-General of the League of Nations of ratifications or accessions on behalf of five Members of the League of Nations or non-member States. No ratification or accession to which any conditions are attached in accordance with the preceding article shall count for this purpose until those conditions are fulfilled.

*Article 15.*

Each ratification or accession received after the entry into force of the Convention shall take effect six months after its receipt by the Secretary-General of the League of Nations or six months after the fulfilment of the conditions attached to it in accordance with Article 13, as the case may be

*Article 16.*

Revision of the present Convention may be requested by not less than three High Contracting Parties at any moment after it has been in force for a period of two years.

The request mentioned in the preceding paragraph shall be addressed to the Secretary-General of the League of Nations, who will notify the other High Contracting Parties and inform the Council of the League of Nations of the request made.

*Article 17.*

After the expiration of two years from the date of its entry into force, the present Convention may be denounced by any High Contracting Party.

Denunciation shall be effected by a notification in writing addressed to the Secretary-General of the League of Nations, who shall inform all the Members of the League of Nations and non-member States referred to in Article 10 of the denunciation made.

The denunciation shall take effect one year after the date of its receipt by the Secretary-General and shall operate only in respect of the Member of the League or non-member State on whose behalf it has been made.

If, as the result of simultaneous or successive denunciations, the number of the Members of the League or non-member States which are bound by the provisions of the present Convention is reduced to less than five, the Convention shall cease to be in force.

EN FOI DE QUOI les Plénipotentiaires sus-nommés ont signé la présente Convention.

IN FAITH WHEREOF, the above-mentioned Plenipotentiaries have signed the present Convention.

FAIT à Genève, le trente mars mil neuf cent trente et un, en un seul exemplaire, qui restera déposé dans les archives du Secrétariat de la Société des Nations, et dont des copies certifiées conformes seront délivrées à tous les Membres de la Société et aux Etats non membres mentionnés à l'article 10.

DONE at Geneva, the thirtieth day of March, nineteen hundred and thirty-one, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations, and certified true copies of which shall be delivered to all the Members of the League and non-member States referred to in Article 10.

BELGIQUE

BELGIUM

J. DE RUELLE

Sous réserve d'adhésion ultérieure pour les colonies et territoires sous mandat <sup>1</sup>.

GRANDE-BRETAGNE  
ET IRLANDE DU NORD

GREAT BRITAIN  
AND NORTHERN IRELAND

ainsi que toute partie de l'Empire britannique non Membre séparé de la Société des Nations.

and all parts of the British Empire which are not separate Members of the League of Nations.

I declare that my signature does not include any colonies, protectorates or overseas territories or territories under suzerainty or mandate. <sup>2</sup>

P. C. FRANKLIN.

DANEMARK

DENMARK

E. SIMONI

VILLE LIBRE DE DANTZIG

FREE CITY OF DANZIG

*ad referendum*

Dr. RASINSKI

ITALIE

ITALY

C. DE CONSTANTIN

<sup>1</sup> Translation: Subject to subsequent accession on behalf of the colonies and mandated territories.  
<sup>2</sup> Traduction: Je déclare que ma signature ne s'applique pas aux colonies, protectorats, territoires d'outre-mer ou territoires sous suzeraineté ou mandat.

LUXEMBOURG

Ch. G. VERMAIRE

LUXEMBURG

PAYS-BAS

F. SCHÖNFELD  
M. L. MEIJERS

THE NETHERLANDS

POLOGNE

Dr. RASINSKI

POLAND

SUISSE

ROTHMUND.  
HAUSERMANN.  
RATZENBERGER

SWITZERLAND

TCHÉCOSLOVAQUIE

Ing. Václav ROUBÍK

CZECHOSLOVAKIA

Copie certifiée conforme.  
Pour le Secrétaire général:

Certified true copy.  
For the Secretary-General:

*Conseiller juridique du Secrétariat.*

*Legal Adviser of the Secretariat.*

## PROTOCOLE ANNEXE.

### I. Ad Article 2.

Il est entendu que la Suisse, tout en laissant aux autres Hautes Parties contractantes la faculté d'appliquer vis-à-vis d'elle le système de la présente Convention, pourra continuer à appliquer le système actuellement en vigueur sur son territoire d'une exemption pour quatre-vingt-dix jours consécutifs renouvelable à chaque entrée. Au cas où cette période d'exonération serait dépassée, l'impôt y afférent pourra être prélevé conformément à la législation suisse.

Si la Suisse était amenée à introduire le système de la présente Convention, il serait bien entendu qu'elle serait tenue de prélever l'impôt suivant les dispositions de cette Convention.

### II. Ad Article 3.

Les Hautes Parties contractantes se réservent le droit de prescrire l'accomplissement des formalités prévues au dernier alinéa de l'article 3 dans un bureau frontière autre que le bureau de douane.

## PROTOCOL-ANNEX.

### I. Ad Article 2.

It is understood that Switzerland may, while recognising the right of the other High Contracting Parties to apply the regime of the present Convention as between themselves and Switzerland, continue the system at present in force on Swiss territory of periods of 90 days' exemption renewable at each separate entry. In the event of this period of exemption being exceeded, the tax in respect of it may be levied in conformity with Swiss law.

Should Switzerland decide to apply the system of the present Convention, it is understood that she will be under an obligation to levy the tax in accordance with its provisions.

### II. Ad Article 3.

The High Contracting Parties reserve the right to require that the formalities provided for in the last paragraph of Article 3 shall be carried out at some frontier office other than a Customs office.



**ANNEXE A LA CONVENTION  
SUR LE RÉGIME FISCAL DES VÉHICULES AUTOMOBILES ÉTRANGERS**

---

**MODÈLE DE CARNET FISCAL INTERNATIONAL**

Ce carnet est libellé dans la langue ou les langues officielles du pays qui le délivre. La couverture, de couleur bleu clair, portera traduction, dans chacune des langues des Hautes Parties contractantes, de ces mots : « Carnet fiscal international ».

Les indications manuscrites portées sur ce carnet doivent au moins être écrites en caractères latins ou en cursive, dite anglaise.

Ce carnet contient 48 pages numérotées.

Le format est celui du modèle ci-joint (environ 135 mm. × 218 mm.)

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**ANNEX TO THE CONVENTION  
ON THE TAXATION OF FOREIGN MOTOR VEHICLES.**

---

**MODEL OF INTERNATIONAL FISCAL PERMIT.**

This permit is drawn up in the official language or languages of the country of issue. The cover, pale blue in colour, shall bear a translation into each of the languages of the High Contracting Parties, of the words: "International Fiscal Permit".

Entries in writing on the permit shall be written in Latin characters or in English cursive hand, but may, in addition, be written in other characters.

This permit contains 48 numbered pages.

The format is that of the model attached hereto (approximately  $5 \frac{5}{16} \times 8 \frac{9}{16}$  inches).

(Cover.)

[Name of Country.]

**INTERNATIONAL FISCAL PERMIT**

No. \_\_\_\_\_

**INTERNATIONAL CONVENTION SIGNED AT GENEVA ON  
MARCH 30TH, 1931.**

---

(Page 1.)

[Name of Country.]

## INTERNATIONAL FISCAL PERMIT

No. ....

INTERNATIONAL CONVENTION SIGNED AT GENEVA ON  
MARCH 30th, 1931.

---

The present permit is issued with a view to the exemption from taxes or charges on the circulation or possession of motor vehicles granted for one or more periods of stay representing a total period of not more than ninety days spent in each of the countries to which the said Convention applies. The permit is only valid for one year from the date of issue.

The present fiscal permit is issued to ..... \*

living at ..... \*\*

for the motor vehicle with the following description:

Type of vehicle ..... (1)

Make of chassis ..... (2)

Number of chassis ..... (3)

Number of engine ..... (4)

Registration number on the plates of the country issuing the  
permit ..... (5)

Place and date of issue ..... (6)

Stamp of  
authority.

\*\*\*

\*\*\*\*

- \* Christian names and surname of the owner or possessor.
- \*\* Town, street, number.
- \*\*\* Signature of authority or of the organisation designated for the purpose.
- \*\*\*\* Visa of authority.

(Page 2.)

The present permit is valid in all the countries mentioned below for one year from the date of its issue. *Before the expiration of this period, no new certificate or duplicate copy can be issued for the same vehicle.*

**LIST OF COUNTRIES.**

|

**CHANGE OF OWNER OR POSSESSOR.**

M. \_\_\_\_\_ (1)

living at \_\_\_\_\_ (2)

is entered as the owner or possessor of the vehicle for which the present permit has been issued.

Stamp of authority.

(At) \_\_\_\_\_ (date) \_\_\_\_\_ (3)

\_\_\_\_\_ (4)

M. \_\_\_\_\_ (1)

living at \_\_\_\_\_ (2)

is entered as the owner or possessor of the vehicle for which the present permit has been issued.

Stamp of authority.

(At) \_\_\_\_\_ (date) \_\_\_\_\_ (3)

\_\_\_\_\_ (4)

M. \_\_\_\_\_ (1)

living at \_\_\_\_\_ (2)

is entered as the owner or possessor of the vehicle for which the present permit has been issued.

Stamp of authority.

(At) \_\_\_\_\_ (date) \_\_\_\_\_ (3)

\_\_\_\_\_ (4)

M. \_\_\_\_\_ (1)

living at \_\_\_\_\_ (2)

is entered as the owner or possessor of the vehicle for which the present permit has been issued.

Stamp of authority.

(At) \_\_\_\_\_ (date) \_\_\_\_\_ (3)

\_\_\_\_\_ (4)

- (1) Christian names and surname of the owner or possessor.
- (2) Town, street, number.
- (3) Place and date.
- (4) Signature of authority or of the organization designated for the purpose.

**CHANGE OF REGISTRATION NUMBER.**

The vehicle in respect of which this permit is issued has received the following new registration number: .....

Stamp of authority.

(At) ..... (date) ..... (1)

..... (2)

---

The vehicle in respect of which this permit is issued has received the following new registration number: .....

Stamp of authority.

(At) ..... (date) ..... (1)

..... (2)

---

The vehicle in respect of which this permit is issued has received the following new registration number: .....

Stamp of authority.

(At) ..... (date) ..... (1)

..... (2)

---

The vehicle in respect of which this permit is issued has received the following new registration number: .....

Stamp of authority.

(At) ..... (date) ..... (1)

..... (2)

---

(1) Place and date.

(2) Signature of authority or of the organisation designated for the purpose.

**ENTRANCE AND EXIT VISAS.**

(Name of country visited)

Entrance or exit	Date	Number of days to be counted	Total number of days to be counted since first entrance	Signature of competent official or stamp of office	
				Entrance	Exit
Entrance					
Exit					
Entrance					
Exit					
Entrance					
Exit					
Entrance					
Exit					
Entrance					
Exit					

For continuation, *vide* page No. \_\_\_\_\_

**Note:** In calculating the period of exemption, each day shall be reckoned from midnight to midnight, every fraction of a day counting as a whole day. The day of exit shall, however, not be counted when the day of entry and the day of exit are separated by a period of more than one day.

(Pages 6 and following.)

(Name of country visited)

Entrance or exit	Date	Number of days to be counted	Total number of days to be counted since first entrance	Signature of competent official or stamp of office	
				Entrance	Exit
Entrance					
Exit					
Entrance					
Exit					
Entrance					
Exit					
Entrance					
Exit					
Entrance					
Exit					

For continuation, *vide* page No. \_\_\_\_\_



[Communiqué au Conseil  
et aux Membres de la Société.]

N° officiel: **C. 233. M. 101.** 1931. VIII.

Genève, le 10 avril 1931.

SOCIETE DES NATIONS

CONFERENCE EUROPEENNE  
SUR LA CIRCULATION ROUTIERE

(Genève, 16 au 30 mars 1931)

ARRANGEMENT ENTRE AUTORITES  
DOUANIERES POUR FACILITER L'APUREMENT  
DE TRIPTYQUES NON DECHARGES OU PERDUS

LEAGUE OF NATIONS

EUROPEAN CONFERENCE ON ROAD TRAFFIC

(Geneva, March 16th-30th, 1931)

AGREEMENT BETWEEN CUSTOMS  
AUTHORITIES IN ORDER TO FACILITATE THE  
PROCEDURE IN THE CASE OF UNDISCHARGED  
OR LOST TRIPTYCHS.

Série de Publications de la Société des Nations  
VIII. COMMUNICATIONS ET TRANSIT  
1931. VIII. 9. ✓

## ARRANGEMENT

Les représentants des administrations douanières de

.....

dûment autorisés à cet effet, sont convenus des dispositions suivantes:

### I.

Toutes les fois que, dans l'un des pays susmentionnés, la production d'un certificat consulaire pour apurer un triptyque ou carnet de passages en douane est permise, l'intéressé pourra, s'il le préfère, fournir un certificat émanant de l'autorité douanière d'un autre de ces pays, établissant que le véhicule se trouve dans le pays de cette autorité douanière.

Ce certificat douanier devra contenir toutes les spécifications d'identité inscrites au triptyque ou au carnet de passages en douane, et ne devra pas être délivré avant que le véhicule ait été identifié, au cours d'une inspection, comme étant celui qui est mentionné dans ces documents.

### II.

Le présent Arrangement, dont les textes français et anglais feront tous deux foi, portera la date de ce jour et restera ouvert à la signature des représentants des autorités douanières de tout gouvernement invité à la Conférence européenne sur la circulation routière tenue à Genève du 16 au 30 mars 1931.

Le Secrétaire général portera à la connaissance des gouvernements des pays susmentionnés toutes les signatures qui auront été apposées au présent Arrangement.

### III.

Le présent Arrangement entrera en vigueur quatre-vingt-dix jours après qu'il aura été signé au nom de trois administrations douanières, et, par la suite, il deviendra opérant pour tout signataire quatre-vingt-dix jours à partir de la date de sa signature.

### IV.

Le présent Arrangement peut être dénoncé par l'un quelconque des signataires, après l'expiration d'un délai d'un an à partir de la date de son entrée en vigueur pour ledit signataire, par voie de notification écrite adressée au Secrétaire général de la Société des Nations. Copie de cette notification, informant tous les autres signataires de la date à laquelle elle a été reçue, leur sera transmise par le Secrétaire général.

La dénonciation prendra effet six mois après la date à laquelle elle aura été reçue par le Secrétaire général et ne sera opérante qu'en ce qui concerne l'administration douanière au nom de laquelle la notification aura été faite.

## AGREEMENT.

The representatives of the Customs administrations:

.....

duly authorised for the purpose, have agreed to the following provisions:

### I.

In all cases where, in one of the above-mentioned countries, the production of a consular certificate for the purpose of verifying a triptych or a Customs carnet is permitted, the party concerned may, if he should so prefer, furnish a certificate from the Customs authority of another of those countries stating that the vehicle is within the country of that Customs authority.

The Customs certificate shall contain all the particulars of identity entered in the triptych or Customs carnet, and shall not be issued unless the vehicle has been identified by inspection as being that referred to in those documents.

### II.

The present Agreement, of which both the English and French texts shall be authentic, shall bear to-day's date and shall remain open for signature by the representatives of the Customs administrations of all the Governments invited to the European Conference on Road Traffic held at Geneva from March 16th to 30th, 1931.

The Secretary-General shall notify the Governments of all the above-named countries of the signatures which are appended to the present Agreement.

### III.

The present Agreement shall come into force ninety days after it has been signed on behalf of three Customs administrations and it shall thereupon take effect, as regards any one signatory, ninety days after the date of signature.

### IV.

The present Agreement may be denounced by any signatory at any moment after the expiry of a period of one year from the date on which it came into force in respect of that signatory, by a notification to the Secretary-General of the League of Nations. A copy of this notification informing all the other signatories of the date on which it was received shall be transmitted to them by the Secretary-General.

Denunciation shall take effect six months after the date on which it was received by the Secretary-General and shall only operate in respect of the Customs Administration on behalf of which such notification has been transmitted.

EN FOI DE QUOI les représentants susnommés  
ont signé le présent Arrangement.

IN FAITH WHEREOF the above-named repre-  
sentatives have signed the present Agreement.

FAIT à Genève, le vingt-huit mars mil neuf  
cent trente et un.

DONE at Geneva this twenty-eighth day of  
March nineteen hundred and thirty-one.

ALLEMAGNE

Dr. PFLUG

GERMANY

BELGIQUE

J. DE RUELLE

BELGIUM

GRANDE BRETAGNE  
ET IRLANDE DU NORD

GREAT BRITAIN  
AND NORTHERN IRELAND

P. C. FRANKLIN.

DANEMARK

E. SIMONI

DENMARK

FRANCE

LAFARGUE.

FRANCE

LUXEMBOURG

Ch. G. VERMAIRE

LUXEMBURG

PAYS-BAS

M. L. MEIJERS  
*ad referendum.*

THE NETHERLANDS

SUISSE

ROTHMUND.  
HAUSERMANN.  
RATZENBERGER

SWITZERLAND

YUGOSLAVIE

FOTITCH Gj.  
*ad referendum.*

YUGOSLAVIA

Copie certifiée conforme.

*Pour le Secrétaire général :*

*Conseiller juridique  
du Secrétariat*

Certified true copy.

*For the Secretary-General :*

*Legal Adviser  
of the Secretariat.*

[Communiqué au Conseil  
et aux Membres de la Société.]

N° officiel: **C. 234. M. 102.** 1931. VIII.

Genève, le 10 avril 1931.

**SOCIETE DES NATIONS**

**CONFERENCE EUROPEENNE  
SUR LA CIRCULATION ROUTIERE**

(Genève, 16 au 30 mars 1931)

---

**ACTE FINAL**

---

**LEAGUE OF NATIONS**

**EUROPEAN CONFERENCE ON ROAD TRAFFIC**

(Geneva, March 16th-30th, 1931)

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**FINAL ACT**

Série de Publications de la Société des Nations  
VIII. COMMUNICATIONS ET TRANSIT  
1931. VIII. 10.

## ACTE FINAL

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L'ALLEMAGNE, l'AUTRICHE, la BELGIQUE, le DANEMARK, la VILLE LIBRE DE DANTZIG, l'ESPAGNE, la FRANCE, la GRANDE-BRETAGNE et l'IRLANDE DU NORD, la GRÈCE, la HONGRIE, l'ETAT LIBRE D'IRLANDE, l'ITALIE, la LETTONIE, la LITHUANIE, le LUXEMBOURG, MONACO, les PAYS-BAS, la POLOGNE, le PORTUGAL, la ROUMANIE, la SUÈDE, la SUISSE, la TCHÉCOSLOVAQUIE, la TURQUIE et la YOUGOSLAVIE, ayant accepté l'invitation qui leur a été adressée en vertu de la résolution du Conseil de la Société des Nations en date du 18 septembre 1930 de participer à une Conférence européenne sur la circulation routière,

Ont, en conséquence, désigné comme délégués, conseillers techniques et secrétaires:

### ALLEMAGNE

*Délégués :*

Le D<sup>r</sup> Paul ECKARDT, Envoyé extraordinaire et Ministre plénipotentiaire.  
Le D<sup>r</sup> Ing. eh. F. PFLUG, Conseiller ministériel au Ministère des Communications.  
Le D<sup>r</sup> R. WAHL, Conseiller ministériel au Ministère des Finances.  
Le D<sup>r</sup> G. HEIN, Conseiller ministériel au Ministère des Communications.  
Le D<sup>r</sup> B. ERAS, Conseiller supérieur de régence au Ministère des Communications.

*Conseillers techniques :*

M. P. VON ELERT, Secrétaire général de l'Automobile-Club d'Allemagne.  
M. R. FILSER, de l'« Allgemeiner Deutscher Automobil Club ».  
M. A. REITZ, du Syndicat général des ouvriers du transport de personnes et de marchandises.

### AUTRICHE

*Délégués :*

Son Excellence M. Emerich VON PFLÜGL, Envoyé extraordinaire et Ministre plénipotentiaire, représentant permanent auprès de la Société des Nations.  
Le D<sup>r</sup> Anton RIEHL, Conseiller ministériel au Ministère fédéral du Commerce et des Communications.

*Délégué adjoint :*

M. Franz SCHNEIDER, Ingénieur, Conseiller architecte de la municipalité de Vienne.

### BELGIQUE

*Délégués :*

M. J. DE RUELLE, Jurisconsulte du Ministère des Affaires étrangères, Chef de la délégation.  
M. J. G. CRISPIELS, Inspecteur général à l'Administration des Douanes et Accises.  
M. A. J. PERSYN, Chef de l'Office de la circulation au Ministère des Travaux publics.  
M. CAMU, Attaché au Cabinet de M. le Ministre des Transports, en qualité de Secrétaire général du Conseil supérieur des Transports.

*Conseillers techniques :*

M. DUCHAINE, Conseiller au Conseil des Mines, Président du Touring-Club de Belgique.  
M. L. LEMAIRE, Membre du Comité exécutif de la Centrale des ouvriers du transport.  
M. C. DUVIVIER, Administrateur du Touring-Club de Belgique.

## FINAL ACT.

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GERMANY, AUSTRIA, BELGIUM, DENMARK, the FREE CITY OF DANZIG, SPAIN, FRANCE, GREAT BRITAIN AND NORTHERN IRELAND, GREECE, HUNGARY, the IRISH FREE STATE, ITALY, LATVIA, LITHUANIA, LUXEMBURG, MONACO, NETHERLANDS, POLAND, PORTUGAL, ROUMANIA, SWEDEN, SWITZERLAND, CZECHOSLOVAKIA, TURKEY and YUGOSLAVIA, having accepted the invitation which was addressed to them in accordance with the resolution of the Council of the League of September 18th, 1930, to take part in the European Conference on Road Traffic,

Have accordingly appointed as delegates, technical advisers and secretaries:

### GERMANY.

*Delegates:*

Dr. M. Paul ECKARDT, Envoy Extraordinary and Minister Plenipotentiary;  
Dr. Ingenieerh. F. PFLUG, Ministerial Councillor at the Ministry of Communications;  
Dr. R. WAHL, Ministerial Councillor at the Ministry of Finance;  
Dr. G. HEIN, Ministerial Councillor at the Ministry of Communications;  
Dr. B. ERAS, "Oberregierungsrat" at the Ministry of Communications.

*Technical Advisers:*

M. P. VON ELERT, Secretary-General of the Automobile Club of Germany;  
M. R. FILSER, of the "Allgemeiner Deutscher Automobil Club";  
M. A. REITZ, of the General Trades Union of Passenger and Goods Transport Workers

### AUSTRIA.

*Delegates:*

His Excellency M. Emerich VON PFLÜGL, Envoy Extraordinary and Minister Plenipotentiary, Permanent Representative accredited to the League of Nations;  
Dr. Anton RIEHL, Ministerial Councillor at the Federal Ministry of Commerce and Communications.

*Assistant Delegate:*

M. Franz SCHNEIDER, Engineer, Architectural Adviser to the Municipality of Vienna.

### BELGIUM.

*Delegates:*

M. J. DE RUELLE, Legal Adviser to the Ministry of Foreign Affairs; Head of the Delegation;  
M. J. G. CRISPIELS, Inspector-General at the Customs and Excise Administration;  
M. A. J. PERSYN, Chief of the Traffic Department at the Ministry of Public Works;  
M. CAMU, attached to the Secretariat of the Ministry of Transport, as Secretary-General of the Central Transport Board.

*Technical Advisers:*

M. DUCHAINE, Member of the Mines Board, President of the Touring Club of Belgium;  
M. L. LEMAIRE, Member of the Executive Committee of the Transport Workers' Union;  
M. C. DUVIVIER, Administrator of the Touring Club of Belgium.

## DANEMARK

*Délégués :*

M. O. E. F. BILFELDT, Chef de section au Ministère de la Justice.  
M. E. SIMONI, Sous-Chef de section au Ministère des Travaux publics.

## VILLE LIBRE DE DANTZIG

*Délégués :*

Le Dr Wladyslaw RASINSKI, ancien Directeur du Département des Douanes au Ministère des Finances de Pologne, Chef de la Délégation.  
M. Lebrecht MUNDT, Conseiller supérieur de régence auprès du Sénat de la Ville libre de Dantzig.

## ESPAGNE

*Délégué :*

Son Excellence M. Carlos RESINES, Secrétaire général de l'Automobile-Club Royal d'Espagne, Chef de la Délégation.

*Conseiller technique :*

M. Rafael SILVELA, Ingénieur des Ponts et Chaussées.

*Secrétaire :*

M. Gerardo GASSET, Secrétaire d'Ambassade.

## FRANCE

*Délégué :*

M. C. WALCKENAER, ancien Inspecteur général des Mines.

*Conseillers techniques :*

M. F. BLANC, Administrateur des Contributions indirectes.  
M. M. F. LAFARGUE, Administrateur des Douanes.  
M. P. LE GAVRIAN, Inspecteur général des Ponts et Chaussées.  
M. René MAYER, Maître des requêtes honoraire au Conseil d'Etat, Membre du Comité juridique permanent de l'Organisation des Communications et du Transit.  
M. E. CHAIX, Président du Conseil central du Tourisme international.

*Secrétaire :*

M. DE PANAFIEU, Attaché d'Ambassade.

## GRANDE-BRETAGNE ET IRLANDE DU NORD

ainsi que toutes parties de l'Empire britannique  
non Membres séparés de la Société des Nations.

*Délégué :*

M. Percival Charles FRANKLIN, du Ministère des Transports.

*Délégué adjoint :*

M. R. H. TOLERTON, du Ministère des Transports.

*Conseillers techniques :*

M. G. G. FITZMAURICE, Conseiller juridique au « Foreign Office ».  
M. A. D. ALLEN, Directeur du Tourisme à l'Association automobile de Grande-Bretagne.

## GRÈCE

*Délégués :*

M. R. RAPHAËL, Délégué permanent auprès de la Société des Nations.  
M. Antoine STATHATOS, Président de l'Automobile et Touring-Club de Grèce.



DENMARK.

*Delegates:*

M. O. E. F. BILFELDT, Chief of Section at the Ministry of Justice;  
M. E. SIMONI, Assistant Chief Inspector at the Ministry of Public Works.

FREE CITY OF DANZIG.

*Delegates:*

Dr. Władysław RASINSKI, former Director of the Customs Department in the Polish Ministry of Finance; Head of the Delegation;  
M. Lebrecht MUNDT, "Oberregierungsrat" at the Senate of the Free City of Danzig.

SPAIN.

*Delegate:*

His Excellency M. Carlos RESINES, Secretary-General of the Royal Automobile Club of Spain; Head of the Delegation.

*Technical Adviser:*

M. Rafael SILVELA, Civil Engineer of Bridges and Roads.

*Secretary:*

M. Gerardo GASSET, Secretary of Embassy.

FRANCE.

*Delegate:*

M. C. WALCKENAER, former Inspector-General of Mines.

*Technical Advisers:*

M. F. BLANC, Administrator of Indirect Taxes;  
M. M. F. LAFARGUE, Administrator of Customs;  
M. P. LE GAVRIAN, Inspector-General of Roads and Bridges;  
M. René MAYER, Honorary Master of Requests at the Council of State; Member of the Permanent Legal Committee of the Communications and Transit Organisation;  
M. E. CHAIX, President of the Central International Tourist Council.

*Secretary:*

M. DE PANAFIEU, Attaché of Embassy.

GREAT BRITAIN AND NORTHERN IRELAND

and all parts of the British Empire which  
are not separate Members of the League of Nations.

*Delegate:*

Mr. Percival Charles FRANKLIN, of the Ministry of Transport.

*Assistant Delegate:*

Mr. R. H. TOLERTON, of the Ministry of Transport.

*Technical Advisers:*

Mr. G. G. FITZMAURICE, Legal Adviser at the Foreign Office;  
Mr. A. D. ALLEN, Director of Touring of the Automobile Association of Great Britain.

GREECE.

*Delegates:*

M. R. RAPHAËL, Permanent Delegate accredited to the League of Nations;  
M. Antoine STATHATOS, President of the Automobile and Touring Club of Greece.

*Délégué adjoint :*

M. Alexandre CONTOUMAS, premier Secrétaire de la Délégation auprès de la Société des Nations.

HONGRIE

*Délégué :*

M. Jean PELÉNYI, Ministre-résident de la Délégation permanente auprès de la Société des Nations.

*Délégués adjoints :*

M. Zoltán BARANYAI, Conseiller de Légation à la Délégation permanente auprès de la Société des Nations.

M. Antoine GÉBER, Conseiller ministériel au Ministère du Commerce.

ETAT LIBRE D'IRLANDE

*Délégué :*

M. Sean LESTER, Délégué permanent auprès de la Société des Nations.

*Délégué adjoint :*

M. F. G. CAWLEY, Secrétaire de la Légation de l'Etat libre d'Irlande à Paris.

ITALIE

*Délégués :*

Son Excellence M. A. GIANNINI, Ministre plénipotentiaire, Conseiller d'Etat, Professeur de droit, Chef de la Délégation.

Le D<sup>r</sup> G. ZAPPALA, Chef de division au Ministère des Finances.

M. E. MELLINI, Ingénieur, Inspecteur supérieur au Ministère des Communications.

Le D<sup>r</sup> F. LA FARINA, Directeur administratif de l'A.A.S.S. (Agence autonome nationale de la Route).

Le D<sup>r</sup> A. MANDOLINI, Inspecteur en Chef supérieur des chemins de fer de l'Etat.

*Conseiller technique :*

M. G. OTTONE, Ingénieur, désigné par la Confédération nationale fasciste des Transports terrestres.

LETTONIE

*Délégué :*

Son Excellence M. Jules FELDMANS, Ministre plénipotentiaire, Délégué permanent auprès de la Société des Nations.

LITHUANIE

*Délégués :*

M. Juozas JANKEVICIUS, Ingénieur, Secrétaire général du Ministère des Communications, Chef de la Délégation.

M. Vledas MERKYS, Ingénieur des Ponts et Chaussées du Ministère des Communications, Chef régional des routes.

LUXEMBOURG

*Délégué :*

M. Charles VERMAIRE, Consul de Luxembourg à Genève.

MONACO

*Délégué :*

M. Conrad HENTSCH, Consul général de la Principauté à Genève.

*Délégué adjoint :*

M. P. LE GAVRIAN, Inspecteur général des Ponts et Chaussées de France.

*Assistant Delegate:*

M. Alexandre CONTOUMAS, First Secretary of the Delegation accredited to the League of Nations.

HUNGARY.

*Delegate:*

M. Jean PELÉNYI, Resident Minister of the Permanent Delegation accredited to the League of Nations.

*Assistant Delegates:*

M. Zoltán BARANYAI, Councillor of Legation at the Permanent Delegation accredited to the League of Nations;

M. Antoine GÉBER, Ministerial Councillor at the Ministry of Commerce.

IRISH FREE STATE.

*Delegate:*

Mr. Sean LESTER, Permanent Delegate accredited to the League of Nations.

*Assistant Delegate:*

Mr. F. G. CAWLEY, Secretary of the Irish Free State Legation at Paris.

ITALY.

*Delegates:*

His Excellency M. A. GIANNINI, Minister Plenipotentiary, Councillor of State, Professor of Law; Head of the Delegation;

Dr. G. ZAPPALA, Chief of Division at the Ministry of Finance;

M. E. MELLINI, Engineer, Chief Inspector at the Ministry of Communications;

Dr. F. LA FARINA, Administrative Director of the A.A.S.S. (Independent National Road Agency);

Dr. A. MANDOLINI, Chief Inspector of the State Railways.

*Technical Adviser:*

M. G. OTTONE, Engineer, appointed by the National Fascist Land Transport Federation.

LATVIA.

*Delegate:*

His Excellency M. Jules FELDMANS, Minister Plenipotentiary, Permanent Delegate accredited to the League of Nations.

LITHUANIA.

*Delegates:*

M. Juozas JANKEVICIUS, Engineer, Secretary-General of the Ministry of Communications; Head of the Delegation;

M. Vledas MERKYS, Engineer for Bridges and Roads, Ministry of Communications; District Chief of Roads.

LUXEMBURG.

*Delegate:*

M. Charles VERMAIRE, Consul of Luxemburg at Geneva.

MONACO.

*Delegate:*

M. Conrad HENTSCH, Consul of the Principality at Geneva.

*Substitute Delegate:*

M. P. LE GAVRIAN, Inspector-General of Roads and Bridges of France.

## PAYS-BAS

### *Délégués :*

- M. J. F. SCHÖNFELD, Administrateur au Ministère du Waterstaat, Chef de la Délégation.  
M. L. MEIJERS, Administrateur, Chef de la division des Douanes et Accises au Ministère des Finances.  
M. J. TAKKEN, Administrateur, Chef de la division des Contributions directes au Ministère des Finances.

### *Conseillers techniques :*

- M. G. A. POS, Vice-président du Touring-Club.  
Baron B. W. VAN WELDEREN RENGERS, Secrétaire général de l'Automobile-Club royal des Pays-Bas.  
M. A. J. J. W. BEERS, Vice-président de l'Association de détenteurs d'automobiles de commerce aux Pays-Bas.

## POLOGNE

### *Délégués :*

- Le D<sup>r</sup> L. RASINSKI, ancien Directeur du Département des Douanes au Ministère des Finances, Chef de la Délégation.  
M. Richard MINCHEJMER, Ingénieur, Conseiller ministériel au Ministère des Travaux publics, Chef adjoint de la Délégation.  
Le D<sup>r</sup> André MARCHWINSKI, Rapporteur au Ministère des Affaires étrangères.

## PORTUGAL

### *Délégué :*

- M. A. M. FERRAZ D'ANDRADE, Chef de la Chancellerie portugaise auprès de la Société des Nations.

## ROUMANIE

### *Délégué :*

- Son Excellence M. C. ANTONIADE, Envoyé extraordinaire et Ministre plénipotentiaire auprès de la Société des Nations.

### *Conseiller technique :*

- M. Pierre Al. GHICA, Membre du Comité de l'Association internationale des Automobile-Clubs reconnus.

## SUÈDE

### *Délégués :*

- M. W. BAGGE, Chef de section au Ministère des Affaires étrangères.  
M. T. PETERSSON, Chef de section au Ministère des Finances.  
M. F. EGNELL, Ingénieur, Représentant suédois à l'Association internationale des Automobile-Clubs reconnus.

## SUISSE

### *Délégués :*

- M. Henri ROTHMUND, Chef de la division de la Police du Département fédéral de Justice et Police.  
M. Samuel HÄUSERMANN, Inspecteur général des Douanes et suppléant du Directeur général des Douanes.  
M. Max RATZENBERGER, Chef adjoint de la division des Affaires étrangères du Département politique fédéral.

### *Conseillers techniques :*

- M. Robert PLUMEZ, Juriste à la division de la Police du Département fédéral de Justice et Police.  
M. Paul GIRARDIN, Expert à la Direction générale des Douanes.

## TCHÉCOSLOVAQUIE

### *Délégué :*

- M. V. ROUBIK, Directeur au Ministère des Travaux publics, ancien Ministre, Chef de la Délégation.

NETHERLANDS.

*Delegates:*

- M. J. F. SCHÖNFELD, Administrator at the Waterstaat; Head of the Delegation;
- M. L. MEIJERS, Administrator, Chief of the Customs and Excise Division at the Ministry of Finance;
- M. J. TAKKEN, Administrator, Chief of the Direct Taxation Division at the Ministry of Finance.

*Technical Advisers:*

- M. G. A. POS, Vice-President of the Touring Club;
- Baron B. W. VAN WELDEREN RENGERS, Secretary-General of the Royal Automobile Club of the Netherlands;
- M. A. J. J. W. BEERS, Vice-President of the Netherlands Association of Commercial Motor-car Owners.

POLAND.

*Delegates:*

- Dr. L. RASINSKI, former Director of the Customs Department at the Ministry of Finance; Head of the Delegation;
- M. Richard MINCHEJMER, Engineer, Ministerial Councillor at the Ministry of Public Works; Assistant Head of the Delegation;
- Dr. André MARCHWINSKI, Rapporteur at the Ministry of Foreign Affairs.

PORTUGAL.

*Delegate:*

- M. A. M. FERRAZ D'ANDRADE, Chief of the Portuguese Chancellery accredited to the League of Nations.

ROUMANIA.

*Delegate:*

- His Excellency M. C. ANTONIADE, Envoy Extraordinary, Minister Plenipotentiary accredited to the League of Nations.

*Technical Adviser:*

- M. Pierre AL. GHICA, Member of the Committee of the International Association of Recognised Automobile Clubs.

SWEDEN.

*Delegates:*

- M. W. BAGGE, Chief of Section at the Ministry of Foreign Affairs;
- M. T. PETERSSON, Chief of Section at the Ministry of Finance;
- M. F. EGNELL, Engineer, Swedish Representative at the International Association of Recognised Automobile Clubs.

SWITZERLAND.

*Delegates:*

- M. Henri ROTHMUND, Chief of the Police Division of the Federal Department of Justice and Police;
- M. Samuel HAUSERMANN, Inspector-General of Customs and Deputy of the Director-General of Customs;
- M. Max RATZENBERGER, Assistant Chief of the Foreign Affairs Division of the Federal Political Department.

*Technical Advisers:*

- M. Robert PLUMÉZ, Legal Adviser of the Police Division of the Federal Department of Justice and Police;
- M. Paul GIRARDIN, Expert at the General Customs Directorate.

CZECHOSLOVAKIA.

*Delegate:*

- M. V. ROUBÍK, Director at the Ministry of Public Works, former Minister; Head of the Delegation.

*Délégués adjoints :*

M. R. REZNY, Ingénieur, Conseiller ministériel au Ministère des Travaux publics.  
Le Dr A. STARY, Conseiller ministériel au Ministère des Travaux publics.  
Le Dr Z. HAJEK, Commissaire supérieur ministériel au Ministère des Finances.

*Conseiller technique :*

Le Dr E. PAUCEK, Secrétaire général de l'Automobile-Club de la République tchécoslovaque.

## TURQUIE

CEMAL HÜSNÜ bey, Envoyé extraordinaire, Ministre plénipotentiaire en Suisse, ancien Ministre.

## YUGOSLAVIE

*Délégué :*

Son Excellence M. Iliya CHOUMENKOVITCH, Délégué permanent du Royaume auprès de la Société des Nations.

*Délégué adjoint :*

Le Dr Ivan SOUBBOTITCH, Chef de section au Ministère des Affaires étrangères.

*Conseillers techniques :*

M. Ciril ZIZEK, Chef de section du Tourisme au Ministère du Commerce et de l'Industrie.  
M. G. FOTITCH, Chef de section au Ministère des Finances.  
M. G. PETZITCH, Ingénieur au Ministère des Communications.

*Ont pris part à la Conférence à titre consultatif :*

## COMMISSION DE GOUVERNEMENT DU TERRITOIRE DU BASSIN DE LA SARRE

M. Paul CENTNER, Directeur technique adjoint des Travaux publics.

## COMITÉ PERMANENT DE LA CIRCULATION ROUTIÈRE DE L'ORGANISATION DES COMMUNICATIONS ET DU TRANSIT

M. A. STIÉVENARD, Président du Comité.

## COMITÉ FISCAL

M. M. BORDUGE, Conseiller d'Etat, Directeur général des Contributions directes, de l'Enregistrement, des Domaines et du Timbre au Ministère des Finances de France, Président du Comité fiscal.  
Le Dr J. H. R. SINNINGHE DAMSTÉ, Directeur général des Contributions au Ministère des Finances des Pays-Bas.

## ALLIANCE INTERNATIONALE DE TOURISME

M. Paul DUCHAINE, Secrétaire général de l'Alliance.  
M. C. DUVIVIER, Membre du Bureau permanent.

*Assistant Delegates:*

M. R. REZNY, Engineer, Ministerial Councillor at the Ministry of Public Works;  
Dr. A. STARY, Ministerial Councillor at the Ministry of Public Works;  
Dr. Z. HAJEK, Chief Ministerial Commissioner at the Ministry of Finance.

*Technical Adviser:*

Dr. E. PAUCEK, Secretary-General of the Automobile Club of Czechoslovakia.

**TURKEY.**

CEMAL HÜSNÜ Bey, Envoy Extraordinary and Minister Plenipotentiary in Switzerland,  
former Minister.

**YUGOSLAVIA.**

*Delegate:*

His Excellency M. Iliya CHOUMENKOVITCH, Permanent Delegate of the Kingdom accredited  
to the League of Nations.

*Assistant Delegate:*

Dr. Ivan SOUBBOTITCH, Chief of Section at the Ministry of Foreign Affairs.

*Technical Advisers:*

M. Ciril ZIZEK, Chief of the Tourist Section at the Ministry of Trade and Industry;  
M. G. FOTITCH, Chief of Section at the Ministry of Finance;  
M. G. PETZITCH, Engineer at the Ministry of Communications.

*Attended the Conference in an advisory capacity:*

**SAAR TERRITORY GOVERNING COMMISSION**

M. Paul CENTNER, Assistant Technical Director of Public Works.

**PERMANENT COMMITTEE ON ROAD TRAFFIC OF THE COMMUNICATIONS  
AND TRANSIT ORGANISATION.**

M. A. STIÉVENARD, Chairman of the Committee.

**FISCAL COMMITTEE.**

M. M. BORDUGE, Councillor of State, Director-General of Direct Taxes, Registration, Domains  
and Stamp Duties at the French Ministry of Finance, Chairman of the Committee;  
Dr. J. H. R. SINNINGHE DAMSTÉ, Director-General of Taxes at the Netherlands Ministry of Finance.

**INTERNATIONAL TOURIST ALLIANCE.**

M. Paul DUCHAINE, Secretary-General of the Alliance;  
M. C. DUVIVIER, Member of the Permanent Bureau.

## ASSOCIATION INTERNATIONALE DES AUTOMOBILE-CLUBS RECONNUS

- M. J. HANSEZ, Président de la Commission internationale de circulation et des douanes de l'Association.  
M. le Colonel C. G. PERON, Secrétaire général de l'Association.

## CHAMBRE DE COMMERCE INTERNATIONALE

- M. A. KÜNDIG, Président de l'Association suisse des propriétaires d'auto-camions, Président de la Fédération internationale des Transports commerciaux automobiles.  
M. C. DE DUMAS, Directeur de l'Office des transports des Chambres de Commerce et de l'Agriculture de la région du Sud-Est de France.  
M. M. RIESEN, Directeur de la Société suisse des hôtels, représentant de l'Alliance internationale de l'hôtellerie.  
M. BREGI, Administrateur de la maison Thiercelin aîné et Boissée.  
M. P. WOHL, Directeur du Service des transports et communications de la Chambre de Commerce internationale,

accompagné de

- M. Gebhard HOLZ, attaché au Service des transports et communications.

*Expert :*

- M. E. MONTEIL, Directeur de l'Association suisse des propriétaires de camions.

## COMMISSION INTERNATIONALE PERMANENTE DE SECOURS SUR ROUTE

*Délégué :*

- M. Pierre BEHAGUE, Président de la Commission.

*Expert :*

- M. E. CLOUZOT, Chef du Secrétariat du Comité international de la Croix-Rouge.

## FÉDÉRATION INTERNATIONALE DES OUVRIERS DU TRANSPORT

- M. A. FORSTNER, Conseiller national.  
M. J. E. CORRIN.  
M. C. G. SORMANI, Secrétaire de la Fédération.

## FÉDÉRATION INTERNATIONALE DES SYNDICATS CHRÉTIENS D'OUVRIERS D'USINE ET DE TRANSPORT

- M. J. FENSKI, Secrétaire de la Fédération.  
M. Fred. BRUSSEL, Secrétaire général de la Fédération.



**INTERNATIONAL ASSOCIATION OF RECOGNISED AUTOMOBILE CLUBS.**

**M. J. HANSEZ**, Chairman of the International Traffic and Customs Commission of the Association;  
**Colonel C. G. PERON**, Secretary-General of the Association.

**INTERNATIONAL CHAMBER OF COMMERCE.**

**M. A. KÜNDIG**, President of the Swiss Association of Motor-lorry Owners, President of the International Commercial Motor Transport Federation;  
**M. C. DE DUMAS**, Director of the Transport Office of the Chambers of Commerce and Agriculture of South-Eastern France;  
**M. M. RIESEN**, Director of the Swiss Hotel Society, Representative of the International Hotel-keepers' Alliance;  
**M. BREGI**, Director of the Firm Thiercelin Aîné et Boissée;  
**M. P. WOHL**, Director of the Transport and Communications Service of the International Chamber of Commerce;

Accompanied by:

**M. Gebhard HOLZ**, attached to the Transport and Communications Service.

*Expert:*

**M. E. MONTEIL**, Director of the Swiss Association of Lorry Owners.

**PERMANENT INTERNATIONAL COMMITTEE FOR FIRST AID ON ROADS:**

*Delegate:*

**M. Pierre BEHAGUE**, President of the Commission.

*Expert:*

**M. E. CLOUZOT**, Head of the Secretariat of the International Red Cross Committee.

**INTERNATIONAL TRANSPORT WORKERS' ASSOCIATION.**

**M. A. FORSTNER**, National Councillor;  
**M. J. E. CORRIN**;  
**M. C. G. SORMANI**, Secretary of the Federation.

**INTERNATIONAL FEDERATION OF CHRISTIAN TRADE UNIONS OF FACTORY AND TRANSPORT WORKERS.**

**M. J. FENSKI**, Secretary of the Federation;  
**M. Fred. BRUSSEL**, Secretary-General of the Federation.

## UNION INTERNATIONALE DES VILLES ET POUVOIRS LOCAUX

M. G. DE SCHULTHESS, Directeur de l'Union des Villes suisses.

M. A. J. PERSYN, Chef de l'Office de la circulation au Ministère des Travaux publics de Belgique.

## FÉDÉRATION INTERNATIONALE DES TRANSPORTS COMMERCIAUX PAR AUTOMOBILE

M. A. KÜNDIG, Président de la Fédération.

La Conférence s'est réunie à Genève du 16 au 30 mars 1931, au Secrétariat de la Société des Nations. Elle a élu comme président Son Excellence le Dr Paul ECKARDT, Envoyé extraordinaire et Ministre plénipotentiaire d'Allemagne, et comme vice-présidents Son Excellence M. A. GIANNINI, Ministre plénipotentiaire, Conseiller d'Etat, Professeur de Droit, et Son Excellence M. V. ROUBIK, Directeur au Ministère des Travaux publics de Tchécoslovaquie, ancien Ministre.

Pour l'examen des quatre questions à l'ordre du jour, à savoir: transports automobiles commerciaux, signalisation routière, régime fiscal des véhicules automobiles étrangers et apurement des triptyques non déchargés ou perdus, la Conférence a institué trois Commissions et un Comité douanier. La Commission des transports automobiles commerciaux a été présidée par M. le Dr L. RASINSKI (Pologne); la Commission de la signalisation routière par M. A. STIÉVENARD, Président du Comité permanent de la circulation routière; la Commission du régime fiscal des véhicules automobiles étrangers par M. M. BORDUGE, Président du Comité fiscal, et le Comité douanier par Son Excellence M. Carlos RESINES (Espagne).

Les travaux du secrétariat ont été confiés à M. J. M. F. ROMEIN, de la Section des communications et du transit du Secrétariat de la Société des Nations, comme secrétaire général de la Conférence, assisté de M. L. C. TOMBS, de la Section du transit; de M. H. BOISSARD, de la Section financière; de M<sup>lle</sup> H. KEY-RASMUSSEN et de M. G. CIRAULO, de la Section du transit, qui ont assuré respectivement le secrétariat des trois commissions et du Comité douanier. Le Dr BARANDON, de la Section juridique, a agi en qualité de conseiller juridique de la Conférence.

La Conférence a élaboré et adopté deux Conventions et un Arrangement: 1<sup>o</sup> une Convention sur l'unification de la signalisation routière; 2<sup>o</sup> une Convention sur le régime fiscal des véhicules automobiles étrangers; 3<sup>o</sup> un Arrangement entre les autorités douanières pour faciliter l'apurement des triptyques non déchargés ou perdus.

La Conférence a adopté également la résolution suivante sur les résultats de ses délibérations et la poursuite de ses travaux relatifs aux transports automobiles commerciaux:

« La Conférence européenne sur la circulation routière,

« Ayant procédé à un examen attentif du projet de convention sur le régime international des transports automobiles commerciaux et après en avoir délibéré;

« Constatant que les débats qui ont eu lieu devant sa première Commission ont mis en lumière un certain nombre de problèmes juridiques concernant, notamment, la notion des services publics de transport susceptibles d'être soumis à une réglementation et concernant également la liberté du transit;

« Considérant que ces problèmes ne pourraient être élucidés sans de nouvelles études fondées sur un examen comparé des législations internes des différents Etats représentés à la Conférence;

« Considérant qu'une convention qui interviendrait avant qu'il ait pu être procédé à ces études et à un moment où les législations des différents pays sont en voie d'évolution, ne pourrait embrasser que quelques points fragmentaires, négligeant les principes fondamentaux qui dominent la matière;

« Considérant que semblable convention présenterait le très grave inconvénient de rester en deçà de la pratique de plus en plus libérale qui tend à s'établir dans beaucoup de pays;

« Qu'au lieu de favoriser le développement du droit interne, elle serait plutôt de nature à le faire rétrograder,

« Et que l'inconvénient ne serait pas moindre du point de vue du développement du droit international des communications, dont la tendance est aussi nettement orientée vers une liberté croissante,

« Adopte la résolution suivante:

« La Conférence décide de suspendre ses travaux en ce qui concerne la Convention sur le Régime international des transports automobiles commerciaux;

INTERNATIONAL UNION OF TOWNS AND LOCAL AUTHORITIES.

M. G. DE SCHULTHESS, Director of the Union of Swiss Towns;  
M. A. J. PERSYN, Chief of the Traffic Office at the Belgian Ministry of Public Works.

INTERNATIONAL COMMERCIAL MOTOR TRANSPORT FEDERATION:

M. A. KÜNDIG, Chairman of the Federation.

The Conference met at the Secretariat of the League of Nations from March 16th to 30th, 1931. His Excellency M. Paul ECKARDT, Envoy Extraordinary and Minister Plenipotentiary of Germany, was elected President and His Excellency M. A. GIANNINI, Minister Plenipotentiary, Councillor of State, Professor of Law, and His Excellency M. V. ROUBIK, Director at the Ministry of Public Works, former Minister, were elected Vice-Presidents.

For the examination of the four questions on the agenda—that is to say, commercial motor-transport, road signalling, taxation of foreign motor vehicles and undischarged or lost triptychs—the Conference appointed four Committees. The Committee on Commercial Motor Transport was presided over by Dr. L. RASINSKI (Poland); the Committee on Road Signalling by M. A. STIÉVENARD, Chairman of the Permanent Committee on Road Traffic; the Committee on Taxation of Foreign Motor Vehicles by M. M. BORDUGE, Chairman of the Fiscal Committee and the Customs Committee by His Excellency M. Carlos RESINES (Spain).

The secretarial work was entrusted to M. J. M. F. ROMEIN, of the Communications and Transit Section of the Secretariat of the League of Nations, as Secretary-General of the Conference, assisted by Mr. L. C. TOMBS, of the Transit Section; M. H. BOISSARD of the Financial Section; Mlle. H. KEY-RASMUSSEN and M. G. CIRAOLO as secretaries of the four Committees. Dr. BARANDON, of the Legal Section, acted as legal adviser of the Conference.

The Conference drew up and adopted two Conventions and an Agreement: (1) a Convention concerning the Unification of Road Signals; (2) a Convention on the Taxation of Foreign Motor Vehicles; (3) an Agreement between Customs Authorities in order to facilitate the Procedure in the Case of Undischarged or Lost Triptychs.

The Conference also adopted the following resolution on the result of its discussions and the pursuit of its work with regard to commercial motor transport:

" The European Conference on Road Traffic,

" Having carefully examined the Draft Convention of the International Regime of Commercial Motor Transport and having deliberated thereon;

" Observing that the discussions in the First Commission of the Conference have brought to light a number of legal problems, particularly, in regard to what public transport services may properly be made the subject of international regulation, and also in regard to the question of freedom of transit;

" Believing that these problems cannot be elucidated without further investigation based on a comparative examination of the domestic law of the different countries represented at the Conference;

" Being of opinion that any Convention that might be concluded before there has been time to carry out such investigation and at a time when the laws of the various countries are in process of evolution, could cover only a few isolated points and must neglect the fundamental principles governing the subject;

" That such a Convention would have the grave disadvantage of being less progressive than the increasingly liberal practice which is tending to become established in many countries;

" That, so far from encouraging progress in the municipal law of countries, it would be more likely to retard such progress; and,

" That this disadvantage would be equally serious as regards the progress of the international law of communications, which also shows a definite tendency towards increasing liberality:

" Adopts the following resolution:

" The Conference decides to suspend its work on the Convention on the International Regime of Commercial Motor Transport;

« Elle émet le vœu que l'Organisation des communications et du transit, en rendant compte au Conseil de la Société des Nations du résultat de ses délibérations, fasse ressortir l'opportunité de réserver à une conférence ultérieure les solutions qu'il conviendrait d'adopter internationalement après qu'auraient été menées à bonne fin, par les soins de la susdite organisation, les études complémentaires qui se sont révélées indispensables;

« Elle émet d'autre part le vœu qu'en attendant la conclusion d'une convention internationale, des accords particuliers puissent intervenir entre Etats et que, dans l'élaboration de tels accords, il soit tenu le plus grand compte, en ce qui concerne le régime douanier et le régime fiscal des véhicules commerciaux, des projets de textes établis par des sous-commissions de la Conférence relativement aux véhicules affectés au transport international des voyageurs et de leurs bagages (articles 4 et 7 du projet de convention). »

La Conférence a, en outre, formulé les vœux suivants:

« I. En vue d'assurer une application aussi uniforme que possible des dispositions de l'alinéa 2 de l'article 3 de la Convention sur l'unification de la signalisation routière, prévoyant l'adoption de signaux complémentaires entrant dans le cadre général du système adopté, la Conférence exprime le vœu que, dans tous les cas où cela paraîtra possible, les gouvernements, préalablement à l'introduction d'un tel signal complémentaire, demandent à ce sujet l'avis du Comité permanent de la circulation routière. »

« II. La Conférence:

« Considérant que le problème de la signalisation lumineuse est très complexe, puisqu'il englobe à la fois la réglementation de la circulation aux carrefours à l'aide de feux automatiques ou commandés, à fonctionnement régulier ou progressif, avec ou sans intervention des agents de la police, et aussi l'éclairage des refuges, l'indication du sens unique, les avertissements et renseignements, etc.;

« Considérant qu'en particulier, lorsqu'il s'agit de régler la circulation aux carrefours à l'aide de signaux lumineux colorés, l'on peut se servir d'une couleur (rouge ou vert), de deux couleurs (rouge et vert) ou de trois couleurs, (rouge, vert et jaune); mais qu'il est désirable de ne point en employer d'autres, sous peine de confusion;

« Considérant que, dans ces hypothèses et en thèse générale, l'interdiction de passage doit être marquée par la couleur *rouge*; que si l'on emploie une couleur pour annoncer la liberté de passage, ce devra être le *vert*, et que le *jaune* sera utilisé comme une couleur auxiliaire;

« Considérant qu'en combinant entre elles ces couleurs ou avec l'extinction de toute lumière et ajoutant, le cas échéant, des indications au moyen de signaux sonores, on peut réaliser des systèmes divers dont l'efficacité, au point de vue de la facilité et de la sécurité de la circulation des véhicules et des piétons, est expérimentée en plusieurs pays; mais que les résultats de ces expériences ne sont pas jusqu'ici suffisants pour que l'on puisse aujourd'hui justifier une préférence en faveur de tel ou tel de ces systèmes;

« Emet le vœu que le Comité permanent de la circulation routière, en s'inspirant des expériences en cours, poursuive une étude approfondie du problème de la signalisation lumineuse en vue de déterminer exactement les qualités respectives des différents systèmes ainsi que, éventuellement, les éléments du choix à faire entre eux, étant entendu que si l'adoption d'un système unique ne paraissait pas compatible avec les circonstances de fait propres à chaque cas particulier, les systèmes de signaux à recommander pour les différents cas ne devraient jamais être contradictoires entre eux. »

« III. La Conférence,

« Après examen de la situation aujourd'hui existante en ce qui regarde les signes faits, dans les divers pays, par les agents chargés de la police de la circulation, et les signes à faire par les conducteurs de véhicules, après examen des nécessités qui se révèlent quotidiennement plus urgentes à cet égard,

« Constatant les troubles et accidents que peuvent causer les incertitudes provenant du défaut d'une systématisation qui serait internationalement acceptée, de ces différents signes,

« Emet le vœu:

« 1<sup>o</sup> Qu'une codification de ces signes — sans en excepter les signes faits par le moyen d'appareils mécaniques — soit établie internationalement aussitôt qu'il sera possible;

« 2<sup>o</sup> Que le Comité permanent de la circulation routière de la Société des Nations s'efforce d'obtenir ce résultat, notamment en étudiant les systèmes actuellement usités et en gardant à la base de cette étude les signes présentés par le tableau V du document C.23.M.17.1929.VIII., C.C.T.331. »

« IV. La Conférence estime qu'il est éminemment désirable que, dans tous les pays, les gouvernements assurent à l'enfance et à la jeunesse un enseignement suffisant des dangers de la route et des moyens d'y parer en comprenant notamment dans cet enseignement les signaux et signes réglementaires qui servent à la circulation. »

« V. La Conférence émet le vœu que les Hautes Parties contractantes s'efforcent, soit par voie de législation interne, soit par des ententes entre elles, d'accentuer et d'étendre, dans la plus large mesure, le régime d'exonération fiscale fixé par la présente Convention et d'en perfectionner, si possible, les modalités d'application. »

" It recommends that the Communications and Transit Organisation, when reporting to the Council of the League of Nations on the results of proceedings of the Conference, should lay emphasis on the expediency of reserving to a future Conference the task of providing the international solutions to be adopted after the additional investigations which have been found to be indispensable have been carried out by that Organisation;

" It also recommends that pending the conclusion of an international Convention, separate agreements should be made between States, and that, in drawing up such agreements, the utmost possible regard should be paid, in matters connected with the Customs treatment and taxation of commercial vehicles, to the drafts prepared by the Sub-Committees of the Conference with reference to vehicles engaged in the international transport of passengers and their baggage (Articles 4 and 7 of the Draft Convention). "

Further, the Conference formulated the following recommendations:

" I. With a view to ensuring as uniform an application as possible of the provisions of paragraph 2 of Article 3 of the Convention concerning the Unification of Road Signals, providing for the adoption of additional signs coming within the general scheme of the system adopted, the Conference recommends that, in all cases where this appears possible, Governments should, before introducing any such additional sign, ask the opinion of the Permanent Committee on Road Traffic."

" II. The Conference,

" Considering that the problem of light signals is very complicated since it covers both the regulation of traffic at cross-roads by means of automatic or controlled lights with regular or periodical operation and with or without the intervention of police officials; and also the lighting of refuges, the indication of one-way streets, warnings and information etc.;

" Considering in particular that, when it is desired to regulate traffic at cross-roads with the help of coloured light signs, use can be made of one colour (red or green), two colours (red and green) or three colours, (red, green and yellow); but that it is desirable not to use others for fear of confusion;

" Considering that, on the above hypotheses, and as a general rule, prohibition of passage should be indicated by the colour *red*; that if a colour is used to indicate freedom of passage this should be *green* and that *yellow* should be utilised as an auxiliary colour;

" Considering that, by combining these colours in various ways, with or without the extinction of all lights, or by utilising, in addition, if occasion arises, indications given by means of sound signals, different systems can be evolved, the effectiveness of which from the point of view of facilitating and making safe the passage of vehicles and pedestrians has been tested in several countries, but that the results of these tests are not yet sufficient to justify preference being given to any one system:

" Recommends that the Permanent Committee on Road Traffic should, in the light of the experiments now being made, conduct a thorough enquiry into the problem of light signals with a view to determining what exactly are the respective qualities of the different systems and, if necessary, the factors to be borne in mind in making a choice among them, it being understood that, if the adoption of a single system should not appear to be compatible with the circumstances attending each particular case, the systems of signals to be recommended for the different cases should never be mutually contradictory."

" III. The Conference,

" After examining the present situation in regard to the signals made in different countries by officials directing traffic and the signals to be made by drivers of vehicles, and after considering the needs which, in this connection, are seen to be more urgent every day;

" Noting the difficulties that may arise and the accidents that may occur through uncertainty due to the lack of an internationally recognised systematic regulation of the different signals:

" Recommends:

" (1) That a system of codification should, as soon as possible, be internationally established with regard to such signals including signals made by means of mechanical appliances;

" (2) That the Permanent Committee of the League of Nations on Road Traffic should endeavour to achieve this result—in particular, by studying the systems at present in use and by adopting as a basis for this study the signals illustrated in Table V of document C.23.M.17.1929.VIII., C.C.T.331."

" IV. The Conference considers it highly desirable that, in all countries, Governments should take steps to see that children and young persons are sufficiently instructed as to the dangers of the road and the means of guarding against such dangers, this instruction to include, in particular, information concerning the regulation road traffic signs and signals."

" V. The Conference recommends that the High Contracting Parties should endeavour, either by means of domestic legislation or by agreements among themselves, to further and extend as widely as possible the system of fiscal exemption laid down in the present Convention, and to render more perfect the methods of applying that system."

EN FOI DE QUOI les délégués à la Conférence ont signé le présent Acte.

IN FAITH WHEREOF, the Delegates to the Conference have signed the present Act.

FAIT à Genève, le trente mars mil neuf cent trente et un, en un seul exemplaire qui restera déposé dans les archives du Secrétariat de la Société des Nations.

DONE at Geneva this thirtieth day of March, one thousand nine hundred and thirty-one, in a single copy which will remain deposited with the Secretariat of the League of Nations.

*Le Président de la Conférence :*

*Le Secrétaire général de la Conférence :*

Dr. ECKARDT.

J. M. F. ROMEIN

ALLEMAGNE

GERMANY

Dr. ECKARDT.  
Dr. PFLUG

BELGIQUE

BELGIUM

J. DE RUELLE

DANEMARK

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GRANDE-BRETAGNE  
ET IRLANDE DU NORD

GREAT BRITAIN  
AND NORTHERN IRELAND

ainsi que toutes parties de l'Empire  
britannique non Membres séparés  
de la Société des Nations.

and all parts of the British Empire  
which are not separate Members  
of the League of Nations.

P. C. FRANKLIN.  
Gerard FITZMAURICE

GRÈCE

GREECE

R. RAPHAËL  
CONTOUMAS

HONGRIE

PELÉNYI  
BARANYAI Zoltán  
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Dr. ZIZEK Ciril  
Ing. G. PETZITCH

YUGOSLAVIA

Copie certifiée conforme.

Pour le Secrétaire général:

Certified true copy.

For the Secretary-General:

*Conseiller juridique du Secrétariat.*

*Legal Adviser of the Secretariat.*



11 JUL 1931

[Distributed to the Council  
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Geneva, April 20th, 1931.

**LEAGUE OF NATIONS**

**ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS  
AND TRANSIT**

**PERMANENT COMMITTEE ON PORTS AND MARITIME NAVIGATION**

**Comparative Study of National Laws governing the Granting  
of the Right to fly a Merchant Flag.**

In accordance with the request of the Advisory and Technical Committee for Communications and Transit, the Secretary-General of the League of Nations forwarded to Governments, under date of April 24th, 1930, a circular letter, as follows :

" C.L.66.1930.VIII.

" Geneva, April 24th, 1930.

" The Secretary-General of the League of Nations has the honour to inform the . . . Government that, at its last session held at Geneva from March 10th to 15th, 1930, the Advisory and Technical Committee for Communications and Transit, desiring to undertake a comparative study of the laws of different countries governing the granting of the right to fly a merchant flag, instructed its secretariat to obtain from the Governments concerned all the information required on this subject. In pursuance of the Transit Committee's decision, the Secretary-General requests the . . . Government to send him—if possible, before December 31st, 1930—the following information concerning legislative measures and practice governing the right to fly its national flag :

" A. What are the conditions laid down in your country's legislation for the granting of the right to fly the national merchant flag, with special reference to the nationality and domicile of the owner (nationality and registered offices in the case of companies), the nationality of the captain and crew, registration and tonnage measurement ?

" B. Which authorities at home and abroad are competent to issue nationality certificates, and under what conditions are these certificates granted ? In the case of certificates issued abroad, are the home authorities informed of their issue and the conditions under which it was effected ?

" C. As regards the competent authorities abroad, are the certificates, if any issued by them, provisional or final and how is the vessel's home port determined in such case ? Are the competent authorities of the home port informed of the issue of the nationality certificate abroad ? "

EXTRACTS FROM REPLIES OF GOVERNMENTS.

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ALBANIA.

[Translation.]

November 10th, 1930.

A. Until the entry into force of the new Maritime Code, the granting of the right to fly the national merchant flag is governed by the provisions of the Ottoman law. When this Code is published, the document in question will be delivered by the Head of the Mercantile Marine Department. It is only issued to Albanian vessels and those which are the property of Albanians to the extent of three-quarters of their value.

B and C. Nationality certificates are at present issued in Albania by the civil authorities and the various offices of the port where the vessel is registered, and abroad by the consular authorities, who issue provisional certificates which only become final when the vessel has been registered in the Kingdom. The consular authorities must advise the maritime authorities of the port at the office of which the vessel is to be registered.

GERMANY.

[Translation.]

August 26th, 1930.

A. Section 2 of the Law of June 22nd, 1899, on the right to fly the flag (*Reichsgesetzblatt*, page 319) stipulates that merchant vessels are not entitled to fly the Reich flag unless they are owned exclusively by nationals of the Reich. Private partnerships (*offene Handelsgesellschaften*), commandite companies and commandite joint-stock companies (*Kommanditgesellschaften auf Aktien*) if the partners with personal liability are all German nationals, are considered to be German nationals for this purpose. Other partnerships, registered co-operative societies and legal persons if domiciled in Germany, are also considered to be German nationals for this purpose.

The nationality of the captain and crew has little relevance to the right to fly the Reich flag. Under Sections 4 to 12 of the Ordinance of July 25th, 1925, regarding captains and officers of German merchant vessels (*Reichsgesetzblatt*, page 709), captains and ship's officers must hold German certificates of competence. Merchant vessels with a capacity of over 50 cubic metres may not exercise the right to fly the Reich flag until a ship's certificate (*Schiffszertifikat*) has been issued to them. For the issue of the ship's certificate, registration in the shipping register is required. Before registration the ship-owner has to show proof that the ship has not been entered in the register of a foreign country. Ships with a capacity of under 50 cubic metres may exercise the right to fly the Reich flag even without registration, if they are owned exclusively by Germans.

Section 7 of the Law enumerates the particulars and the legal conditions which have to be proved to the satisfaction of the registration authority before the registration of a maritime vessel: these include the results of the official measurement.

The results of measurement by a foreign authority on the basis of the certificate of measurement or any other reliable proof may be registered pending the official registration in Germany.

The official measurement of German maritime vessels is effected by the authorities for the measurement of shipping.

B. *At home*, the shipping register authorities (Sections 10 and 11 of the Flag Law) are competent to issue certificates for ships (*Schiffszertifikate*) which prove their right to fly the Reich flag.

*Abroad*, when a ship passes into German possession in a foreign country, the consul in whose district the ship is at the time of the change of ownership is competent to issue a flag certificate (*Flaggenzeugnis*); but such certificate is not valid for more than one year (Section 12 of the Flag Law). The consul informs the authority of the German home port. For the issue of such a flag certificate, it is necessary to prove that the owner of the ship is a German national, and that the vessel has been shown to be seaworthy.

Where the sailings of the vessel are from a foreign port or from a port within the jurisdiction of a consular court, the ship-owner is free to choose registration in the port which suits him best (Section 6 of the Flag Law).

C. Flag certificates issued in foreign countries are provisional in character. The shipping register authorities of the home port, if the ship-owner specifies a German port as the home port, are informed of the issue of the flag certificate (Section 12 of the Flag Law).

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### AUSTRALIA.

October 3rd, 1930.

A. The right to fly the Australian merchant flag is, by Section 406 of the Commonwealth Navigation Act, granted to such merchant ships only as are registered in Australia.

As to the nationality and domicile of the owner, and the registration and tonnage measurement of an Australian ship, these matters are governed by the provisions of Part I of the British Merchant Shipping Act 1894, which part has force in Australia and all other constituent parts of the British Empire.

The nationality of the master and crew of an Australian registered ship, however, is a matter subject to Australian legislation. As regards masters and officers of Australian ships, Section 26 of the Commonwealth Navigation Act provides as follows :

“ 26. No person shall engage or go to sea as an officer in any ship registered in Australia or engaged in the coasting trade, who is not : (a) A British subject and (b) thoroughly conversant with the English language. ”

The term “ officer ”, as here used, includes master.

No restriction as regards nationality is made in the case of seamen, but all members of the crew are required by Section 47 of the Act to have a knowledge of the English language sufficient to enable them to fully understand the necessary orders that may be given to them in the performance of their duties.

B. The authority empowered by the Merchant Shipping Act 1894 to register a ship as British and to issue a certificate of registry, is known as the “ Registrar of British Ships ”. Section 4 of the Act specifies the persons who shall be Registrars, as follows :

“ 4. (1) The following persons shall be Registrars of British ships :

“ . . . . .

“ (e) At any other port in any British possession approved by the Governor of the possession for the registry of ships, the chief officer of Customs, or if there is no such officer there resident, the Governor of the possession in which the port is situate, or any officer appointed for the purpose by the Governor ;

“ (f) At a port of registry established by Order in Council under this Act, persons of the description in that behalf declared by the Order. ”

“ (2) Notwithstanding anything in this section, Her Majesty may by Order in Council declare, with respect to any British possession named in the Order, not being the Channel Islands or the Isle of Man, the description of persons who are to be Registrars of British ships in that possession. ”

The conditions governing the issue of certificates of registry as British ships are those prescribed by the Act mentioned. Where certificates of registry are issued at ports outside the United Kingdom, the Registrar-General of Shipping and Seamen, London, is fully advised.

C. The certificates of registry issued at ports outside the United Kingdom are either provisional or final, as the case requires, the conditions determining the matter being those prescribed by the Merchant Shipping Act.

Section 13 of the Act provides that the port at which a British ship is registered for the time being shall be deemed her port of registry, and the port to which she belongs.

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## AUSTRIA.

[Translation.]

September 29th, 1930.

A. The legal position in Austria with regard to the right to fly the national flag is governed by the Law of March 17th, 1921 (*Bundesgesetzblatt*, No. 176) and by the Ordinance of June 4th, 1921, on the subject (*Bundesgesetzblatt*, No. 304).

Under these regulations, all Austrian merchant ships—i.e., privately owned vessels operated for profit, are required to fly the flag of the Austrian Republic as their national flag. The regulations cover all privately owned ships or vessels of whatever size or kind, employed in coastal traffic, sea-fishing, towage, pilotage or salvage, if operated for profit.

The authority to fly the national flag is subject to the vessel's being to the extent of more than 50 per cent owned by Austrians. The Law has no provisions in regard to the domicile of individuals who are ship-owners. If the owner consists of a private partnership, commandite company or commandite joint-stock company, more than half of the partners with personal liability must be Austrian nationals domiciled in Austria. If the owner is a joint-stock or limited liability company, or registered co-operative society or other legal person, the owner must be domiciled in Austria.

Another condition is that the captain (commanding officer), ship's officers and at least half the crew must be of Austrian nationality. The Federal Minister of Commerce and Transport may, however, make general or special exceptions to this rule, if such action is held to be in the interest of Austrian shipping.

Lastly, the right to fly the national flag may not be exercised before the registration certificate (*Registerbrief*) or flag certificate (*Flaggenzeugnis*) has been issued to and received by the vessel.

B. The registration certificate is a document attesting the registration of the vessel in the shipping register, and its purport is the same as the entry in the shipping register. The Shipping Register Office in Vienna under the Federal Ministry of Commerce and Transport keeps a register of all vessels entitled to fly the national flag, and is the only body competent to issue registration certificates. Registration in the shipping register is effected on the application of the ship-owner, and may not take place until the vessel's right to fly the national flag has been proved and evidence given as to the nature, construction and certain technical particulars, the material of which the vessel is constructed, description of the engines, number and system of the boilers, principal measurements, the gross and net capacity in cubic metres and in tons, corresponding to the tonnage certificate, place and date of launching of the vessel and name of the yard in which it was built : surnames and christian names, description, nationality and ordinary domicile of the owner or owners, and title of ownership of the vessel or shares in the vessel.

C. In the event of it being impossible to obtain the registration certificate before the departure of the vessel on her first voyage, after the acquisition of the ownership of the vessel by an Austrian, the certificate attesting the authority to fly the national flag (*Flaggenzeugnis*) may take the place of the registration certificate. The flag certificate is issued on application in writing, the necessary particulars being attached, by the consulate in the district of which the vessel is at the time of transfer of the right of ownership. A copy of the flag certificate is sent by the consulate to the Shipping Register Office in Vienna. Flag certificates are provisional in character, and are not valid in any circumstances for more than one year. On receipt of the registration certificate, the commanding officer of the vessel is required to transmit the flag certificate by sure means, either to the consulate in the district of which the vessel is at the moment, or to the Shipping Register Office in Vienna. The authority receiving the returned certificate has to inform the consulate of the place where it was issued. The returned certificates have to be sent by the consulates to the Shipping Register Office, where they are preserved. The office keeps a special register for vessels carrying these certificates. Vienna is, in any case, shown as the home port.

The right to fly the national flag ceases as soon as the conditions indicated above are no longer fulfilled.

The above provisions also cover merchant ships belonging to the Federal Administration and pleasure yachts, so far as applicable.

## BELGIUM.

[Translation.]

May 28th, 1930.

The Department for Foreign Affairs has the honour to communicate to the Secretariat of the League of Nations, in reply to its Circular Letter 66.1930.VIII, of April 24th, 1930, asking for information with regard to the Belgian laws governing the granting of the right to fly a merchant flag, the amended text of the Law of September 20th, 1903, and that of the the executory decrees relating to passes.<sup>1</sup>

The Transport Ministry is at present engaged on the preparation of a draft Bill relating to :

- (1) The introduction of compulsory registration of vessels and boats ;
- (2) Amendments to the law relating to nationality certificates ;
- (3) The introduction of the certificate of registry for boats.

In the new law it will be registration and not the issuing of a nationality certificate which will confer nationality, and consequently the right to fly the national merchant flag, the latter pass merely indicating the existence of this right.

The Department for Foreign Affairs will advise the Secretariat of the League of Nations as soon as the new provisions in question have been passed by the Legislature.

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## BRAZIL.

[Translation.]

September 16th, 1930.

A. Only Brazilian vessels may fly the Brazilian flag. The following are deemed to be Brazilian vessels : (a) Every vessel built in a Brazilian yard or in a foreign yard for the account of Brazilians, which is the property of a Brazilian or of a Brazilian civil or commercial company, with its registered offices in Brazil and exclusively administered by Brazilians ; the captain, the second in command, the pilot, the medical officer, the engineer and the wireless operator of the vessel must be Brazilians and at least two-thirds of the crew must be composed of Brazilians (Article 3 of Decree No. 15788, of November 8th, 1922 ; regulations mentioned in Article 391 of Decree No. 17096, of October 28th, 1925) ; (b) Every vessel built abroad and legally acquired by a Brazilian or by one of the Brazilian corporations mentioned under (a) ; every vessel captured from an enemy and declared to be lawful prize ; and every vessel seized and acquired in pursuance of Brazilian legislation. In each of these cases, the provisions mentioned under (a) relating to the nationality of the owner, captain and crew (above-mentioned Decrees, Articles 4 and 392) must be observed.

The following are regarded as Brazilian companies :

- (1) Societies of persons constituted in Brazil and registered there ;
- (2) Societies of persons exclusively composed of Brazilians, even if they are constituted outside the Republic, provided that their statutes are deposited in Brazil, the firm is registered in Brazil, and the management is entrusted to a Brazilian ;
- (3) Societies of persons constituted abroad but established in Brazil ;
- (4) Incorporated joint-stock companies or commandite joint-stock companies constituted abroad if, after obtaining permission to carry out transactions in Brazil, they have transferred their registered offices to Brazilian territory and the directors or managers are Brazilians ;
- (5) Incorporated joint-stock companies or commandite joint-stock companies legally constituted and established in Brazil.

B. Every Brazilian vessel must be registered at the harbour-master's office of the port where the owner is domiciled.

The following exceptions are allowed : Vessels engaged in coastal fishing ; those engaged in towage work in harbours and on navigable rivers ; those to be used in harbours for passenger transport and loading and unloading ; pilot boats and pleasure boats ; masted pontoons, water-pontoons, mud-barges, floating cranes, hulks, diving-bells and dredgers ; floating works and boats in the service of public departments ; canoes, lighters, gigs, pirogues and barges. All these vessels are regarded as Brazilian and must be registered, whoever the owner or owners may be (Article 330 of the Regulations approved by Decree 11505, of March 4th, 1915 ; Article 397 of the Regulations of October 28th, 1924).

In ports where there is no harbour-master, the registration of the vessels shall be effected by the respective fiscal administrations, Customs authorities, tax offices and other revenue offices, and in Brazilian consulates if the vessel has been acquired abroad (1915 Regulations, Article quoted, 1924 Regulations, Article quoted).

When the owner of the vessel has his residence abroad, registration shall be carried out where it may be most convenient.

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<sup>1</sup> A copy of the above-mentioned texts has been deposited in the archives of the Secretariat, where it may be consulted.

The tonnage is measured in Brazil by Customs officials and abroad by competent persons chosen by the Brazilian consuls. In ports where there is no Customs administration, the tonnage is measured by the registration officials.

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## CANADA.

December 11th, 1930.

A. There are two national merchant flags available for use by Canadian vessels—namely, the Red Ensign and the Red Ensign with the Canadian coat-of-arms in the fly. Accordingly, it is necessary to consider the conditions governing the right to fly both of these flags.

The Red Ensign may be flown by all British ships, with the exception of British ships that are required by law to be registered and which have not been registered in accordance with the requirements of the law.

British ships are vessels which belong wholly to British owners—that is, to persons qualified to be owners of British ships—namely :

- (a) Natural-born British subjects ;
- (b) Persons naturalised by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession ;
- (c) Persons made denizens by letters of denization ; and,
- (d) Bodies corporate established under and subject to the laws of some part of His Majesty's dominions, and having their principal place of business in those dominions :

Provided that any person who either :

(i) Being a natural-born British subject, has taken the oath of allegiance to a foreign sovereign or State or has otherwise become a citizen or subject of a foreign State ;

(ii) Has been naturalised or made a denizen as aforesaid ;

shall not be qualified to be owner of a British ship unless, after taking the said oath, or becoming a citizen or subject of a foreign State, or on or after being naturalised or made denizen as aforesaid, he has taken the oath of allegiance to His Majesty the King, and is, during the time he is owner of the ship, either resident in His Majesty's dominions, or partner in a firm actually carrying on business in His Majesty's dominions.

All British ships must be registered, subject to the following exceptions :

(1) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom or on the rivers or coasts of some British possession within which the managing-owners of the ship are resident ;

(2) Ships not exceeding thirty tons burden and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of St. Lawrence, or on such portions of the coasts of Canada as lie bordering on that gulf ;

(3) Certain British ships in Great Britain which do not require registration, such as lighters, barges, or like vessels used in non-tidal waters, and vessels that are under local port regulations for measurement and registration, recognised by the Board of Trade.

There are additional requirements applicable to British ships in Canada which require all but the following vessels to be registered :

(a) Ships having a whole or fixed deck, not propelled wholly or in part by steam, and not exceeding ten tons burden ; and,

(b) Ships not propelled wholly or in part by steam, and not having a whole or fixed deck, whatever their burden.

As a result of these requirements, there is a category of British ships that do not require to be registered, although, out of this category, certain ships require registration, if they are in Canadian waters.

Summing up the result of the foregoing considerations, the Red Ensign may be flown by all ships which belong wholly to British owners as defined above, whether or not they are

registered, with the exception of those ships which are required by law to be registered and which have not complied with such requirement.

The Red Ensign, with the shield of the Canadian coat-of-arms in the fly, is authorised to be used on board vessels registered in Canada.

It is assumed that the questionnaire does not extend to special flags, such as the Blue Ensign defaced by the shield of the Canadian coat-of-arms, which is authorised to be used by vessels in the Canadian Government service. By special warrant, it is authorised to be used, in a few instances, by yacht clubs.

The domicile of the owner, the registered offices in the case of companies, the nationality of the captain and crew, are not relevant considerations. Registration and tonnage measurement only affect the right to fly the national merchant flag in special circumstances, as set forth above.

B. It is assumed that nationality certificates referred to in the questionnaire correspond to certificates of registry.

In Canada, certificates of registry are issued to ships registered in Canada by registrars of shipping who are collectors of Customs at ports which have been established as ports of registry by the Governor in Council, and this work is under the direction and supervision of the Minister of Marine.

The conditions precedent to registry are as follows :

(1) Survey and production of the Survey Certificate ;

(2) Marking ;

(3) A declaration of ownership must be made ;

(4) On the first registry of a ship there must be produced, in the case of a British-built ship, a builder's certificate and the bill of sale ; in the case of a foreign-built ship, the same, unless the person who makes the declaration of ownership states that the time and place of building are unknown to him, or that the builder's certificate cannot be procured, in which case there is only required the bill of sale ; in the case of a ship condemned by a competent court, an official copy of the condemnation.

Where certificates of registration are issued abroad, they are issued by the consular officer at the place where the ship becomes the property of persons qualified to own a British ship and the registrar at the intended port of registry in Canada is informed of the issue and of the conditions under which it was effected.

C. The only certificates of registration issued abroad, are provisional in character and the vessel's home port of registry is determined by the owners. The competent authorities at the home port are informed of the issue of the certificates of registry abroad. The procedure is as follows :

If at a port not within His Majesty's dominions, and not being a port of registry under the Merchant Shipping Act, a ship becomes the property of persons qualified to own a British ship, the British consular officer there may grant to her master, on his application, a provisional certificate, stating : (a) the name of the ship ; (b) the time and place of her purchase, and the names of her purchasers ; (c) the name of her master ; and (d) the best particulars respecting her tonnage, build, and description, which he is able to obtain.

A copy of the certificate thus granted is forwarded to the Registrar-General of Shipping and Seamen.

The declaration of ownership is forwarded to the registrar at the intended port of registry. The vessel proceeds and the provisional certificate is valid for the period of six months, or until the arrival of the ship at a port of registry. Upon arrival at a port of registry, the registration is completed at the port of registry selected by the owners. The ship cannot proceed until such registry has been completed.

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## CHILE.

[Translation.]

September 24th, 1930.

A. Every vessel is regarded as Chilean which has been registered in the Chilean mercantile marine and navigates in accordance with the provisions of the Shipping Law of June 24th, 1878 (Article 1 of the Shipping Law).

The owner of a Chilean vessel must be a Chilean citizen by birth or naturalisation (Article 2 of the Shipping Law). Any foreigner domiciled in Chile who owns a commercial undertaking established in the country or exercises any professional or industrial occupation there may also own a Chilean vessel (Article 3 of the Shipping Law).

A Chilean domiciled outside the territory of the Republic may only own a Chilean vessel in whole or in part in the following cases :

(1) If he is the owner of or an active or sleeping partner in a commercial concern established in Chile and holds capital or interest in such concern equivalent to half the value of the vessel.

(2) If he makes a deposit in respect of half the value of the vessel, in agreement with the Department of Marine (now the Maritime Territory Department at Valparaiso ; each time that the Department of Marine is mentioned hereinafter it shall be understood to mean the Maritime Territory Department).

(3) If he is a consul or vice-consul of the Republic (Article 4 of the Shipping Law).

A Chilean who has lost his civic rights for the reasons mentioned in the Constitution may not own a Chilean vessel in whole or in part unless he is rehabilitated (Article 5 of the Shipping Law).

At least one-third of the crew of every national vessel must be composed of Chileans. No person belonging to a country which is at war with the Republic may form part of the crew of a Chilean vessel, under penalty of a fine of 100 to 1,000 pesos to be paid by the owner of the vessel (Article 6 of the Shipping Law).

The President of the Republic may declare, in the event of the special equipment of warships or other similar vessels, that the proportion of the crew employed in national vessels who must be Chileans may be less than the proportion laid down in the present Law and, as long as this declaration remains in force (and it shall be made for an unlimited period), vessels navigating in accordance with that declaration shall be regarded as having a properly constituted crew (Article 7 of the Shipping Law).

For the purpose of Law 3841, of February 6th, 1922, Article 1 of which provides that the transport of goods between ports of the Republic must be reserved for Chilean vessels, every vessel shall be regarded as Chilean if its owner is a Chilean and resides in Chile, if it is commanded by a Chilean captain and Chilean officers and at least three-quarters of the members of the crew are Chileans. If the owner of the vessel is a company, such company shall be regarded as Chilean if three-quarters of its capital belongs to Chileans (Article 2 of Law 3841).

The documents attesting the nationality of Chilean vessels are the registration certificate, the navigating licence, the muster-roll of the crew and the pass, the latter being issued only in the cases specially laid down in the present Law (Article 8 of the Shipping Law).

B. In order to register a vessel in the national merchant fleet, the owner or owners or their legally appointed representatives shall produce for the inspection of the Department of Marine a legalised copy of the contract, award or other valid title of ownership, in accordance with Article 833 of the Commercial Code (Article 9 of the Shipping Law), the tonnage measurement certificate and the particulars relating to the conditions of the vessel required in accordance with Article 10 of the Shipping Law (Article 11 of the Shipping Law).

The Head of the Department of Marine shall issue a registration certificate made out by him and bearing the seal of the Department of Marine. This certificate shall be forwarded to the Government so that it may be endorsed by the Minister of Marine and so that the navigating permit allowing the vessel to fly the Chilean flag and enjoy the rights attaching to Chilean nationality may be issued by the President of the Republic, in accordance with the said certificate (Article 28 of the Shipping Law).

In the case of vessels built or purchased in any port of the Republic other than that where the Department of Marine is situated, the formalities required before they can be registered as Chilean vessels may be carried out before the competent departmental authority. When the conditions and formalities have been complied with, the competent departmental authority shall forward the file containing the record of the whole proceedings to the Head of the Department of Marine, who, after endorsing the file and effecting the registration of the vessel, shall draw up the registration certificate and obtain from the President of the Republic the corresponding navigating licence in the form specified. The maritime authority of the port where the vessel is situated may, if this is rendered necessary by special circumstances, issue a pass to enable the vessel to proceed to the port where the offices of the Department of Marine are situated and there receive the navigating licence (Article 18 of the Shipping Law).

Vessels built in Chilean yards and intended for sale in Chilean or foreign ports may navigate from the port in which they were built to the port where they are to be sold, without any navigating document other than a pass issued by the authority of the province concerned and the permission to sail issued by the maritime authority, which shall contain a list of the crew.

Only vessels whose displacement is more than 25 tons, with the exception of those intended for internal traffic in the ports and rivers, canals and lakes of the Republic, are registered in the national mercantile marine (Article 27 of the Shipping Law).

A register is established in each of the principal municipal and maritime centres for vessels whose displacement is less than 25 tons and for those which are exempted from the provisions of the preceding article (Article 28 of the Shipping Law).

C. When a vessel is built or purchased abroad for registration in the mercantile marine, the owner must produce for the inspection of the competent Chilean consul the documents attesting the ownership of the vessel and the consul shall legalise these documents, so that they may be valid when submitted to the Department of Marine (Article 19 of the Shipping Law).

The vessels mentioned in the preceding article shall be taken from the port where they were built or purchased to a Chilean port with a pass issued by the Minister or consul of the Republic, authorising the vessel to fly the Chilean flag; in this case, the crew may be composed entirely of foreign seamen (Article 20 of the Shipping Law).

The provisional licences issued by consuls are only granted for two months and for a voyage to a specified Chilean port where the vessel is to be finally registered. If, on the



expiration of two months, the vessel has not been registered in a Chilean port, the first consul of the Republic to take part in the formalities attendant upon the departure of the vessel shall cancel the provisional licence and inform the maritime authorities of the port in which the vessel was to be registered, as also the consul who issued the provisional licence (Circular No. 26 of December 30th, 1916, addressed to the Chilean consul, by the Minister for Foreign Affairs).

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## DENMARK.

[Translation.]

July 3rd, 1930.

A. For the owner's nationality and domicile as a condition of the right to fly the Danish flag, attention is directed to the Maritime Law (§ 1) and the Law on the Registration of Vessels (§ 7, paragraphs 2 and 3, and for vessels of less than 20 tons gross register § 8, paragraph 2, point 2).<sup>1</sup>

The right of a vessel to fly the Danish flag is conditional on the vessel being registered in the shipping register and furnished with nationality and registration certificates (see Registration Law, § 7, paragraph 5). Vessels of less than 20 tons must be registered in the shipping register and be furnished with a nationality certificate (§ 8, paragraph 4, point 1). Detailed regulations with regard to registration appear in §§ 13 and 14 of the same Law. The tonnage measurement of a vessel is required for its registration (§ 7, paragraphs 1 and 6, and § 15). Detailed regulations with regard to the measurement of ships' tonnages will be found in the Law of March 13th, 1867, on the Tonnage Measurement of Vessels (see also Law of May 4th, 1927).

For the conditions with regard to the nationality of the captain and crew, see Law on the Shipping Industry, §§ 6, 7, 8, 9, 16, 17 and 23, paragraph 3, which stipulates that the commanding officer of a Danish vessel must be of Danish nationality.

B and C. For the authorities competent to issue nationality and registration certificates see Registration Law, § 10, under which the central registration office in Copenhagen issues these certificates; but nationality certificates for vessels of less than 20 tons are issued by local registration offices. Provisional nationality and registration certificates may be issued by Danish consuls in the case of vessels acquired in a foreign country (§ 12), or where a certificate has been lost in a foreign country, or a vessel has undergone alterations in a foreign country which make the issue of a new certificate necessary (§§ 31 and 45). Copies of such provisional certificates together with the particulars required in connection with their issue have to be forwarded to the central registration office in Copenhagen (§ 12, paragraph 5). Provisional certificates cease to be valid as soon as the vessel casts anchor for the first time in a Danish port.

Lastly, a vessel registered in the shipping register must have a Danish port as its home port (Maritime Law, § 4, and Registration Law, § 7, paragraph 4). Subject to this condition the owner is free to choose the vessel's home port. This rule applies equally to vessels carrying provisional nationality and registration certificates.

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## DANZIG.

[Translation.]

November 28th, 1930.

A. The legislative provisions applicable in the territory of the Free City of Danzig are contained in the Law of June 22nd, 1899, concerning the flag rights of merchant ships, as amended by the Decree of the Staatsrat dated March 18th, 1920, and the Danzig Law of June 20th, 1923. Under these provisions, merchant vessels are entitled to fly the Danzig flag only when they are the exclusive property of Danzig nationals.

Public commercial companies and partnership companies are also treated as Danzig nationals when the partners personally liable are all Danzig nationals. Other commercial companies, registered corporations and legal persons are assimilated to Danzig nationals only when they have their headquarters in the territory of the Free City of Danzig and when, in the event of their being obliged or entitled under the national law to have a supervisory board or other similar supervisory organ, their articles of association or statutes provide that (a) the majority of the supervisory board or other supervisory organ must consist of Danzig nationals, and (b) the shareholders' meeting (general meeting) must be held in the territory of the Free City of Danzig.

In the case of shareholders' companies it is further stipulated that the shareholders personally liable must all be Danzig nationals.

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<sup>1</sup> A copy of the text of these laws has been filed with the Secretariat, where it is available for consultation.

The right to fly the Danzig flag is established by the ship's certificate, which is issued after the entry in the shipping register. Ships of not more than 50 cubic metres gross capacity may fly the Danzig flag without being registered and without a ship's certificate.

B. The competent authority for the issue of ship's certificates at Danzig is the *Amtsgericht*, Section 10 (Shipping Register).

C. No authorities for the issue of ships' certificates to Danzig vessels exist abroad, so that no reply is needed to question C.

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## EGYPT.

[Translation.]

December 22nd, 1930.

A. According to Egyptian law, the right to fly the Egyptian merchant flag can only be accorded to vessels belonging entirely and exclusively to persons of Egyptian nationality. Persons of nationality other than Egyptian are expressly precluded from having any right which might be at variance with this condition (see Articles 1 and 2 of the Mixed and Native Maritime Commerce Codes).<sup>1</sup>

If a vessel belongs to a company, all the members or partners must be of Egyptian nationality (Article 1 of the Mixed and Native Maritime Commerce Codes).

Nevertheless, the expression "belongs to a company" used in this article has been interpreted by the Legal Disputes Committee of the Egyptian Government as covering only partnerships, as opposed to joint-stock companies. Consequently, an incorporated joint-stock company, which is the standard form of joint-stock company; established in accordance with Egyptian laws and regulations, and constituting a juristic person of Egyptian nationality, may obtain the right to fly the Egyptian flag.

The Egyptian nationality of the owner or owners, on which the nationality of the vessels depends, must be established in accordance with the Law on Egyptian Nationality (Law No. 10, of 1929).

Companies owning vessels flying the Egyptian flag must be Egyptian and have their registered offices in Egypt (see Article 41 of the Native Maritime Commerce Code and Article 47 of the Mixed Maritime Commerce Code).

Egyptian legislation contains nothing relating to the nationality of the captains and crews of Egyptian vessels.

There exists no legislation governing the registration of Egyptian merchant vessels, but the usual practice is to register them in an Egyptian home port, so that they may be regarded as Egyptian vessels, and consequently enjoy the privileges accorded to such vessels.

Nor is there in Egypt any legislation governing tonnage measurement. In practice, however, there are two kinds of tonnages: national tonnage and international tonnage. The former is obtained by the tonnage measurement of vessels in accordance with the rules applied in England, and the latter by their tonnage measurement in accordance with the rules applied by the Universal Maritime Canal Company of Suez, laid down by the International Congress held at Constantinople in 1873.

B and C. The authorities competent to issue Egyptian nationality certificates for vessels are, in Egypt, the Administration of Harbours and Lighthouses and, abroad, Egyptian consuls, in countries where there are Egyptian consuls, or if there is no Egyptian consul, then the British consul.

Certificates issued abroad are provisional and are only valid for a maximum period of six months. They must be notified to the Administration of Harbours and Lighthouses at Alexandria or at the home port.

Before issuing a certificate of this kind, the authorities must satisfy themselves of the nationality of the owner or owners and of the seaworthiness of the vessel. Certificates of seaworthiness shall only be issued after the examination of the vessel by experts appointed *ad hoc* by the competent mixed and native tribunal (see Article 40 of the Mixed Maritime Commerce Code).

The home port of the vessel is the port in which it is registered or all the tonnage measurement formalities are carried out, etc., or where the owner usually resides or, in the case of companies, where they have their registered offices.

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## ECUADOR.

[Translation.]

August 11th, 1930.

A. The maritime police regulations, a copy of which is annexed, expressly determines the nationality of the vessel, the use of the merchant flag, the conditions to be complied with before merchant captains and crews can perform their duties on board the vessels, and also the methods and the form of procuring registration and the ship's licence.

B. As regards the naturalisation of persons, the law on foreigners clearly lays down that no Ecuadorian authority abroad can issue a naturalisation certificate, though, in the case of a vessel, consuls may issue a nationality certificate (see Consular Law).

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<sup>1</sup> An extract from the Mixed Maritime Commerce Code and the Law on Egyptian Nationality has been deposited in the archives of the Secretariat, where it may be consulted.

C. The question of change of flag has been fully dealt with in the section relating to registration and ship's licences, which provide that a vessel is free to navigate along the whole coast of the Republic on the strength of certificates issued provisionally by consuls, as far as the port of destination, when these certificates must be replaced by other final certificates after compliance with the formalities of tonnage measurement and the entering of the new owner and of the crew in the register.

EXTRACTS FROM THE MARITIME POLICE REGULATIONS.

*Article 26.*—Registration establishes the nationality of vessels, while the ship's licence gives them the right to navigate freely on the high seas and on the coasts, gulfs, bays and harbours of the Republic and of all civilised nations.

*Article 27.*—No vessel of whatever class or type may fly the national flag or claim the protection of the laws of the Republic unless it has been previously registered in one of the principal ports; nor may it engage in any kind of traffic until it has obtained the proper licence.

*Article 31.*—Registration certificates are granted by the harbour-masters in the principal ports after the tonnage of the vessels has been measured; canoes, launches and other vessels of less than five tons may be registered by the harbour-masters of secondary ports and of places of disembarkation. These certificates expire on December 31st of each year and must be renewed during the first fortnight of January of the next year; they must also be renewed each time the vessel changes its owner, name, rigging, captain, pilot or master.

*Article 33.*—In order to register a vessel of any class or type, the owner must produce for the inspection of the harbour-master his title of ownership—namely, a deed of purchase or sale, contract or gift—if the vessel has been built for the account of its owner, he shall produce a certificate from the harbour-master of the port in which the vessel was built and another certificate from the builder. The harbour-master shall measure the tonnage of the vessel, assign it a registration number corresponding to the name indicated by the owner, note the latter's name and his nationality, the name of the builder, the yard and the year in which the vessel was built, its dimensions (length, width and depth), its tonnage, and the name of the captain, pilot or master who will be in command of it. These particulars shall be entered in the register and shall be used for the issue to the person concerned of the registration certificate in accordance with model A.

*Article 37.*—In order to obtain the navigating licence, owners of Ecuadorian vessels of all classes, with the exception of mountain canoes, shall apply to the harbour-master of the port in which these vessels are registered for a tonnage measurement certificate, which they shall submit to the Governor of the province, together with their titles of ownership and of the certificate attesting payment to the revenue office of the province of the fees chargeable for the granting of the licence and for registration. The licences shall be drawn up in accordance with model B.

*Article 38.*—The navigating licences shall be issued by the provincial Governors on paper of the eighth class for vessels of not more than 50 tons, and by the President of the Republic, on paper of the ninth class, for vessels of more than 50 tons. The period of validity of the licences shall be two years; if the vessel is sold within this period, its licence shall be transmitted by endorsement to the new owner through the harbour-master of the port, who shall enter the transfer in the corresponding register.

*Article 39.*—When licences are issued, they are transmitted to the harbour-master of the port to be entered in the register. When the President of the Republic is asked to grant a licence, the vessel may undertake voyages on the strength of a pass issued by the Governor of the province and registered by the harbour-master of the port. These passes shall be made out on paper of the sixth class and shall be valid for 90 days. They shall be in accordance with model C.

*Article 42.*—The harbour-masters of the principal ports shall withdraw expired registration certificates, licences and passes for national vessels and shall require these documents to be renewed and suspend all traffic until they have been renewed. When such renewals are effected, all the conditions laid down in Articles 34 and 38 shall be observed.

*Article 52.*—If an Ecuadorian national acquires possession of a vessel in a foreign port, the consular agent of the Republic shall provide him with a pass allowing him to go to a port in Ecuador and have the vessel nationalised there.

*Article 53.*—Only citizens of Ecuador and foreigners resident in the territory of Ecuador may acquire and possess an Ecuadorian vessel, provided always that they comply with the laws and regulations of the Republic.

*Article 64.*—The captain, pilot or master of a national vessel must be a national of Ecuador, by birth or naturalisation, and possess a regular captain's, pilot's or master's certificate, showing that he has the theoretical and practical capacity and knowledge required for navigation on the high seas, coasting trade and navigation on inland waterways; he must also have been registered with the corresponding corporation.

*Article 71.*—No member of the crew, whether an Ecuadorian national or a foreigner, may embark on an Ecuadorian vessel without having been previously registered and without producing his certificate of discharge from the vessel on which he previously served, duly endorsed by the harbour-master in the port where he was last signed off.

EXTRACT FROM THE CONSULAR LAW.

*Article 85.*—When a vessel of foreign nationality is purchased by a national of Ecuador, the consul shall require the production of the documents establishing the validity and legality of the sale and a deposit guaranteeing the observance of the obligations imposed by the Ecuador Shipping Law. The consul shall legalise these documents, so that they may be regarded as valid by the Department of Marine.

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SPAIN.

[Translation.]

September 17th, 1930.\*

A. The right to fly the national flag can only be granted if the shiptowner or shipping company owning the vessel is Spanish ; in the case of persons, this is proved by their registration as persons domiciled in the country and by the registration of their domicile, and, in the case of companies, by their being entered in the commercial register.

The captain must always be of Spanish nationality, in view of the duties which he has to perform. The same applies to the crew, the members of which must be of Spanish nationality and be entered in the shipping register ; in exceptional cases only, one-third of the members of the crew of a merchant vessel may be composed of foreigners.

Registration must be effected in a Spanish port, and the tonnage measurement and identity of merchant vessels must be verified in Spanish ports.

B. The authorities at home and abroad competent to issue nationality certificates for vessels are the local shipping authorities, the harbour-masters of ports (with the approval of the Director-General for Shipping, Fisheries and Maritime Industries), the vessels being required to fulfil the technical conditions laid down by law, and the shiptowners being required to prove their Spanish nationality. Spanish consuls abroad may only issue provisional certificates or grant permission to fly the national flag until these documents have become definitive by the approval in Spain of the nationalisation of the vessel in question.

C. Spanish legislation requires that a duplicate of the provisional nationality certificates issued by consuls shall be transmitted to the shipping authorities in the Spanish port in which the shiptowner desires finally to register his vessel, if this port is the port which the shiptowner has indicated to the shipping authorities. If the vessel has been purchased abroad, he must produce a title of ownership attesting the cancellation of the vessel's previous registration.

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ESTONIA.

[Translation.]

October 28th, 1930.

A. In accordance with § I of the Regulations relating to Tonnage Measurement and the Registration of Merchant Vessels (Law No. 45, *Riigi Teataja (Official Journal)*, No. 18, of 1919), the right to fly the Estonian flag is accorded only to Estonian vessels—that is to say, to vessels which are : (a) The property of an Estonian citizen or Estonian citizens ; (b) The property of a commandite company or a limited company, all the personally responsible members of which are Estonian citizens and hold at least 50 per cent of the share-capital.

The Law relating to seamen's domicile, adopted on January 31st, 1928 (*Riigi Teataja (Official Journal)*, No. 13, of 1928), requires that the captain, the officers and at least three-quarters of the other members of the crew must be of Estonian nationality.

In accordance with the above-mentioned regulations relating to the tonnage measurement and registration of merchant vessels, registration is effected by the Navigable Waterways Administration, on the request of the owner of the vessel.

The question of the tonnage measurement of vessels has been settled by the Law of June 20th, 1924, supplemented by the Regulations of November 7th of the same year<sup>1</sup>.

B. Nationality certificates are issued by the Navigable Waterways Administration subject to the conditions mentioned above for the registration of vessels. If a vessel has been built or purchased abroad by Estonian nationals, the Estonian consuls are authorised to issue a provisional nationality certificate, on condition that the owner of the vessel undertakes to bring the vessel into an Estonian port to have its tonnage measured or to have the tonnage measured on the spot by a competent Estonian official, whose fees shall be paid by the said

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<sup>1</sup> A copy of the text of this Law has been deposited in the archives of the Secretariat, where it may be consulted.

owner. In the former case, the vessels are required to go to an Estonian port for tonnage measurement, within a period of three months if they are in the Baltic, or six months if they are in the North Sea. If they are navigating further afield, a period of one year is allowed them. If they do not observe these periods, Estonian consuls may, if the owner of the vessel proves that there have been special circumstances, issue a certificate extending such periods, so as to give the vessel time to proceed direct to an Estonian port. If, however, the non-observance of the periods laid down is not found to be justified, the consuls have the right to prevent the departure of the vessel, and to have the tonnage measured on the spot, at the owner's cost, by a competent Estonian official. In every case, the consuls must advise the competent Estonian authorities that they have issued or extended provisional certificates.

C. The certificates issued abroad by consuls are, as has been shown above, only provisional. The owner of the vessel can choose his home port. It shall be for the consul to inform the competent authorities of the choice made by the owner.

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### UNITED STATES OF AMERICA.

August 6th, 1930.

A and B. The American Government is not aware of any legislative measures or of any standard practice governing the flying of the national flag on merchant vessels. It is customary, however, for some American merchant vessels to fly the national flag at the stern and the flag of the country to which the vessel is bound at the bow.

Collectors and deputy collectors of Customs issue certificates of registry, certificates of enrolment, and licences to merchant vessels and yachts belonging to citizens of the United States. Certificates of registry are granted to vessels in foreign trade, certificates of enrolment and licences to vessels in domestic trade and in the fisheries. Licences are granted to vessels measuring less than 20 tons. These three classes of national papers are called marine documents. They are not issued by American consuls.

Marine documents may be issued only to vessels owned by citizens of the United States or to corporations created under the laws of the United States or of any of the States. All of the officers of vessels of the United States who shall have charge of a watch, including pilots, must in all cases be citizens of the United States.

In the case of a new vessel which is built in the United States, the owner presents the builder's certificate and certificate of inspection, if the vessel is subject to inspection under the navigation laws, to a collector of Customs, who thereupon issues a marine document to the vessel. In the case of a vessel which is not new, the same procedure is followed, except that, instead of a builder's certificate, the new owner presents a bill of sale from the owner of record.

C. Provisional certificates of registry are issued by the American consuls and such other persons as may from time to time be designated by the President for the purpose to vessels purchased abroad by American citizens. Their existence is limited to six months from the date of issue or until ten days after the vessels arrive at a port of the United States, whichever happens first, and no longer. At the time of the issue of a provisional certificate of registry, the home port is not necessarily determined. When the vessel arrives in the United States, a marine document will be granted to her upon the surrender of the provisional certificate of registry, and the home port will then be fixed upon application of the owner. The home port is usually a port of documentation in the Customs district in which the owner resides.

A duplicate of the provisional certificate of registry is forwarded to the Department of State and by that department to the Department of Commerce for its information. The Customs authorities at the port at which the owner resides are not necessarily notified of the issue of a provisional certificate of registry.

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### FINLAND.

[Translation.]

September 25th, 1930.

A and B. As regards the use of the Finnish flag by merchant vessels, it is provided by Article 3 of the Law of May 29th, 1918, relating to the Finnish flag, that the merchant flag must be flown by Finnish merchant vessels when they are required, according to the provisions relating to maritime traffic, to show their nationality either on the high seas or in port.

The question as to what vessels must be regarded as of Finnish nationality is governed by Article 5 of the Maritime Law of June 9th, 1873, as incorporated in the Law of November 11th, 1889. A vessel is to be regarded as Finnish when it is the property of one or more Finnish nationals or of an open company whose personally responsible partners are Finnish nationals residing in Finland or of a legally-constituted incorporated joint-stock company with its headquarters in Finland, all the members of whose administrative board

are Finnish nationals. Article 31 of the Maritime Law mentioned above provides that the captain of a Finnish merchant vessel must be a Finnish national and must have the qualifications required for such a position. The subordinate officers and crew may, according to the law in force, be foreigners. The subordinate officers (mates and chief engineers) must, however, have the qualifications demanded by Finnish law—that is to say, they must have passed professional examinations in Finland and have the necessary certificates.

A Finnish merchant vessel of at least 19 registered tons must be entered in the tonnage register in the manner specified in the Law of July 29th, 1927, relating to tonnage register. This register is kept at the municipal offices. The country is, for this purpose, divided into districts. The vessel is entered in the register of the municipal offices in the district in which it is domiciled. The domicile of the vessel may be fixed by the owner himself (Article 6 of the Maritime Law of November 11th, 1889).

The application for registration must, in accordance with Article 6 of the Law on Tonnage Register, be made by the owner ; on behalf of a company, by the manager or—if none has been appointed—by the several owners ; in the case of succession, by the executor, and, in the case of a company, or a co-operative society, by the person or persons who have a right to sign, but not by proxy. The application must be made in writing and signed by hand, and must contain particulars regarding the method of construction, tonnage measurement, the domicile of the vessel, the owner, etc. As soon as the application has been made, the mayor shall issue a nationality certificate for the vessel.

C. In accordance with Article 10 of the Law on Tonnage Register, a provisional nationality certificate may be issued when the vessel has been built abroad and has passed from a foreign owner to an owner of Finnish nationality. Before the consul issues a provisional nationality certificate, he must satisfy himself that the vessel has become Finnish property and that the necessary legal formalities have been complied with. According to Article 53 of the Decree relating to legations and consulates, the consul shall issue a provisional nationality certificate for six months, if the vessel is in a European port or in a Mediterranean port outside Europe, and for a period not exceeding one year, if the vessel is in some other non-European port. As soon as the provisional nationality certificate has been issued, the consulate is required to send a copy to the Ministry for Foreign Affairs, which shall forward it to the Shipping Department. When a provisional nationality certificate is to be issued for a vessel which has passed from a national of a belligerent State into Finnish hands, the authorisation of the Ministry for Foreign Affairs is required. An unpaid vice-consul is not empowered to issue a provisional nationality certificate.

A provisional nationality certificate issued by a consulate is only valid for the period indicated on it, after which the vessel must be notified for registration in the manner specified above, whereupon a final nationality certificate is issued. If the owner of the vessel desires, he may indicate as the domicile of the vessel a place other than that which he previously indicated for the provisional certificate. Moreover, he is entitled, if he so desire, to change the domicile of the vessel by making a declaration to this effect to the registration authorities, who shall issue a new nationality certificate. It is to be noted that the domicile of a vessel must be a place in Finland (Article 6 of the Maritime Law).

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## FRANCE.

[Translation.]

July 8th, 1930.

A. Before a vessel can be nationalised, it must be of French origin or satisfy certain conditions to be enumerated hereinunder and belong to French citizens to the extent of more than half its value, and its officers and at least three-quarters of the crew must be French.

The following are certain detailed regulations regarding the said conditions :

*Origin.*—Only the following vessels can be nationalised :

- (1) Vessels built in France or in French colonies or possessions ;
- (2) Vessels imported from abroad ;
- (3) Vessels captured from an enemy ;
- (4) Vessels confiscated for an infringement of French laws ;
- (5) Wrecks of foreign vessels salvaged by French seamen ;
- (6) A foreign vessel which has become French property and been purchased after being wrecked on the coasts of France, when the cost of repairs is four times the sale price (Decree of December 28th, 1926, Article 334 ; based on Laws of September 21st, 1793, Article 2, and 27 Vendémiaire, Year II, Article 7).

*Nationality and Domicile of the Owners.*—The minimum proportion of the value of the vessels which must be owned by French citizens has been reduced to 50 per cent by the Law of June 9th, 1845, Article 11 (Decree of December 28th, 1926, Article 334).

French citizens who own vessels which are to be or have been nationalised must reside in France or in French colonies or possessions. If they reside abroad, they must be partners in

a French commercial firm engaged in trade in France or a French possession, and must prove by production of a certificate issued by the French consul in the foreign country where they reside, that they have not taken an oath of allegiance to that State and that they are subject to the consular jurisdiction of France (Decree of December 28th, 1926, Article 337; based on Laws of 2 Vendémiaire, Year II, Article 12, and June 9th, 1845, Article 11).

*Proof of Ownership.*—Shipowners must prove that they own vessels by producing deeds of sale. These deeds must be registered and be deposited at the Customs office of the place where the vessels are to be nationalised.

*Nationality and Registered Offices of Incorporated Joint-Stock Companies.*—Vessels belonging to incorporated joint-stock companies enjoy the benefits of nationalisation, subject to compliance with the following conditions :

- (1) The registered office must be established in France ;
- (2) The director of the company must prove that he is the director and a French citizen and that the vessels belong to the company of which he is director, and must sign in his capacity of director the nationalisation statements provided for in the Decree of December 28th, 1926, Article 342 ;
- (3) The majority of the members of the managing board of the company must be French citizens : besides the chairman of the managing board, the managing director or manager must be French.

The nationalisation of vessels belonging to general partnerships (other than those which are joint-stock companies) is subject to the following conditions : The french partners must own at least half of the interest, and if the statutes of the company do not fix the proportion of shares to be held by each partner, the number of French partners must be at least equal to that of the foreign partners.

*Nationality of the Crew.*—Before the vessel has the right to fly the French flag, all the officers and three-quarters of the crew must be French (Decree of September 21st, 1793, Article 2). This proportion must be observed separately for the navigating staff and the engineering staff.

The Customs service must satisfy itself that this condition has been fulfilled, by requesting the production of the muster-roll.

*Registration of Vessels.*—The Customs administration keeps a register of the written undertakings acquired for nationalisation, containing descriptions of the vessels and any changes in their legal position. This register constitutes a real " civil status " record of the vessels.

The Customs collectors of each port also keep an " open account " of the strength of the merchant fleet, account being taken of incidents concerning the vessels of the district (vessels changing hands, cancellations, etc.).

Apart from this open account, a file is kept in each port for each vessel.

The Ministry of Mercantile Marine also keeps a separate central register of the vessels, drawn up on the strength of information supplied by the maritime authorities in the ports where the vessels are registered with the Customs authorities. The registration figures are different from the figures given by the Customs and are based on the local registers kept by the maritime registration authorities.

*Conditions governing the Issue of the Nationality Certificate.*—Assuming that the above-mentioned conditions for the granting of the right to fly the French flag have been fulfilled, nationalisation is accorded after compliance with the following formalities: (1) tonnage measurement ; (2) payment of the duties ; (3) statement on oath ; (4) signing of the nationalisation undertaking ; (5) drawing up of the inventory.

*Tonnage Measurement of the Vessels.*—Vessels to be nationalised have their tonnage measured, on the request of the owners and in their presence, by the Customs Service. Tonnage is measured according to the Moorsom system. Measurement may be effected in a port other than the port of nationalisation. In that case, after the certificate has been controlled by the administration, it will be transmitted to the competent office of the home port—that is, the office where the formalities for nationalisation must be fulfilled.

*B and C. Competent Authorities at Home.*—The Customs office which has received the written undertaking required for nationalisation sends the provisional nationality certificate to the head Customs authorities. The certificate is drawn up on the strength of this provisional certificate and signed by the head of the Customs, acting for the Finance Minister. It is forwarded to the office at the home port and handed by the collector to the owner of the vessel.

*Provisional Certificate.*—To avoid holding up the vessel in the port until the issue of the nationality certificate, the collector in the home port is authorised to issue, on the strength of the undertakings already signed, a provisional certificate drawn up on unstamped paper. This certificate is identical in form with the final nationality certificate, and has the same effect. It is valid for four months or for the duration of the voyage should the voyage last more than four months.

*Competent Authorities abroad : Provisional Certificate.*—Before vessels purchased abroad are nationalised, they may be authorised by French consuls provisionally to fly the French flag, after it has been ascertained that they have been acquired by one or more French citizens.

For this purpose, the consuls issue to the captains permits entitling the vessels to be treated as French vessels on arrival in France.

The vessels may also be despatched from the place of purchase either to a French port (with permission to call at foreign ports situated on the way), or to a foreign port. In the former case, the nationalisation fees must be paid on arrival in France; in the latter case, the shiptowners are required to pay to the consul in cash or by draft, cheque or postal order made payable to the principal Customs collector at Paris, the amount of the nationalisation fees, calculated on the basis of the net tonnage entered in the vessel's former nationality certificate. The shiptowner also gives a written undertaking to pay in France, on the arrival of the vessel, any balance which may be due on the nationalisation fees.

When the vessel returns to France, the authorities measure the tonnage and issue the final nationality certificate. They also, if necessary, adjust the original settlement.

If, one year after the issue of the provisional nationality certificate, the vessel has not returned to France, the Customs authorities settle the fees and issue a final nationality certificate. When, however, the vessel proceeds to a French port, the authorities measure the tonnage and, if necessary, rectify the results of the settlement (Decision of March 30th, 1909).

*Obligation to advise the Authorities in France and the Authorities of the Home Port.*—The person who acquires the vessel or his representative must inform the consul of the vessel's future home port.

The consul issues a certified copy of the official tonnage measurement certificate of the vessel, which he forwards, together with the deed of sale, the written undertaking and the amount of the fees, to the Department for Foreign Affairs, which transmits them to the Customs Department.

*Special Case of Navigation in Distant Seas.*—The following provisions have been adopted (Circular of February 8th, 1923, of the Minister for Foreign Affairs):

“ Those concerned must submit an application to the consul at their place of domicile, who shall transmit it, with his report, to the Department for Foreign Affairs. They must, at the same time, pay the import duties chargeable on vessels, which shall be reimbursed to them without interest or compensation in the event of a negative decision by the central authority. The final authorisation shall be accorded by the Department for Foreign Affairs on the recommendation of the Under-Secretary of State for the Mercantile Marine.

“ This authorisation is subject to compliance with the following conditions :

“ (1) The vessels must belong to French citizens to the extent of at least half their value ;

“ (2) They must never come back to France ;

“ (3) The captain must be French. Nevertheless, an exception may be made to this rule in the case of small vessels, and also for others on the proposal of the consular authorities, who must give their reasons.

“ If the Minister for Foreign Affairs takes a favourable decision, the consul shall issue to those concerned a permit, valid for one year, to fly the French flag in distant seas, and this permit shall exempt them from the necessity of obtaining a regular nationality certificate and from the obligation to observe the general rules relating to the composition of crews. He shall also provide them with a muster-roll. The names of all the men, whether foreigners or not, who embark, must appear in the muster-roll, which shall be renewed each year, together with the permit.”

*Special Case of Colonial Navigation.*—When the home port is situated in French colonies or protectorates other than Algeria and Tunis, the provisions of Articles 4, 5, 6, 7 and 8 of the Decree of December 21st, 1911, shall apply.

“ *Article 4.*—The vessels are entered at their home port in the registers of the service responsible for keeping the general register of seamen for the Navy or, failing this, in the registers kept by the navigation police service, and also in those kept by the Customs authorities.

“ The Governor shall designate those ports in the colonies which may be chosen as home ports.

“ *Article 5.*—In colonies, the nationality certificate is issued by the Governor.

“ The issue of this certificate is subject to compliance with the following conditions :

“ (1) The vessel must have been built in the colony, unless it has been adjudged to be lawful prize, or has been confiscated for infringement of the laws, or has been found on the high seas, or has been stranded on the coasts and the necessary repairs have cost four times the sale price.

“ (2) If the vessel has been imported from abroad, payment of the Customs duties levied in the colony must be proved.

“ (3) The vessel must belong to persons of French nationality to the extent of at least half its value.

“ If the vessel belongs to a company, this company must comply with the conditions laid down in Article 1 of the Law of April 7th, 1902.

“ The owners mentioned in the present article must, if none of them reside



in France or in French colonies, have a responsible representative, acknowledged by the Customs service, in the colony where the vessel has its home port.

"(4) The owner of the vessel must declare on oath before a magistrate designated by the Governor that the conditions specified above have been complied with : he shall transmit to the Customs service the affidavit, together with the written undertaking required by Article 11 of the Law of 27 Vendémiaire, Year II; should he fail to observe these provisions he is liable to the penalties laid down in Articles 15 and 16 of the said Law.

"If the vessel belongs to more than one owner, the formalities specified above must be carried out by one of the owners who has the necessary powers, or by any other representative. If the vessel belongs to a company, they shall be carried out by the representative of the company.

"(5) The tonnage of the vessel must have been measured according to the method in use in France.

"(6) Payment of the nationalisation fees chargeable in the colony must be proved by production of the receipt.

"Article 6.—As soon as the undertaking mentioned in Article 5 has been signed, the Customs service which has received it shall issue a provisional nationality certificate.

"Vessels built or purchased abroad are provided by the consuls with provisional ship's papers (under the same conditions as vessels to be nationalised in a port of France) in order to enable them to proceed to the colony where they are to be registered.

"If the nationality certificate is lost, the owner of the vessel is required to make a statement regarding this loss to the magistrate designated by the Governor, sign a fresh undertaking and, if necessary, pay the nationalisation fees again.

"If there is any change in the structure or tonnage of the vessel, the nationalisation certificate shall be renewed.

"Article 7.—Exemption from nationalisation may be accorded by a decree of the Governor for those categories of vessels which enjoy the same exemption in France and vessels with a gross tonnage of less than 30 tons which do not navigate beyond the limits of the minor coasting trade and are not employed in the transport industry, provided that these various vessels belong, to the extent of at least half their value, to owners of French nationality, to French citizens or to French protected persons, belonging to the protectorates, and provided that they have, if necessary, been nationalised by payment of the Customs duties.

"Article 8.—When the home port of a vessel nationalised in France is transferred to a colony or vice versa, the nationality certificate of this vessel must be renewed at its new home port.

"The same applies to a transfer from one colony to another.

"The legislation applicable to the vessel is that of the place of its home port, subject to the provisions of Article 18 below.

"The change of home port shall take effect as from the day of the signing of the new nationalisation undertaking."

## GREAT BRITAIN.

June 2nd, 1930.

A. The qualifications for the ownership of a British ship are prescribed by Section 1 of the Merchant Shipping Act, 1894, of which a copy is attached. This Act requires that the owner or owners of any ship who comply with the provisions of Section 1 of the Act shall register the ship as a British ship. Before a ship can be registered (except in the case of provisional registration referred to in C below) she must be measured by a surveyor of ships in accordance with certain rules prescribed by the Act and certain information and declarations must be furnished to the registrar at a port of British registry. Practically all the important British ports are ports of registry. On completion of these formalities the registrar of shipping will issue a certificate of registry which is the document showing the nationality of the ship. This certificate must be surrendered in the event of the ship ceasing to be owned by persons entitled, under the section referred to above, to be owners of a British ship or in the event of total loss. Immediately a ship is registered as a British ship, she is entitled to fly the British national colours.

The right of a ship to fly the British flag does not depend on the nationality of the captain and crew. Certain restrictions on the employment of aliens as officers, however, are imposed by Section 5 (1) of the Aliens Restriction (Amendment) Act, 1919, which provides that no alien shall be employed or shall act as master, chief officer, or chief engineer of a British ship registered in the United Kingdom, or as skipper or second hand of a fishing boat registered in the United Kingdom, except in the case of a ship or boat employed habitually in voyages between ports outside the United Kingdom, but this prohibition does not apply to any alien

who has acted as master, chief officer or chief engineer of a British merchant ship, or as skipper or second hand of a British fishing boat, at any time during the war, and is certified by the Admiralty to have performed good and faithful service in that capacity.

B. As indicated above, certificates of British registry may be issued by a registrar of shipping at any port of British registry. Particulars of registrations effected at all ports of registry are notified to a central registry in London.

C. Certificates of British registry issued at a British port of registry are final. Provision is, however, made for the alteration at any port of registry of a certificate, irrespective of where it was originally issued, should there be any change in the tonnage or in the description of the ship to which it has been issued. A British ship may be registered at any port of British registry selected by the owners and this port is shown on the certificate. Vessels may also be transferred from one port of British registry to another at the owners' request.

In the case of foreign ships purchased at foreign ports by persons qualified to own British ships, a provisional certificate of British registry may be issued, without survey or measurement, by the British consular officer within whose jurisdiction the purchase is made. This certificate enables the ship to sail under the British flag for a period not exceeding six months or until she first arrives at a port of British registry if this occurs before the end of six months. On arrival at a port of registry, the ship must be finally registered as described in A above. As in the case of permanent registration, particulars of all provisional certificates of British registry issued abroad are reported to the central registry in London.

## Merchant Shipping Act, 1894.

### PART I.—REGISTRY.

#### *Qualifications for owning British Ships:*

1. A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as "persons qualified to be owners of British ships")—namely :

(a) Natural-born British subjects ;

(b) Persons naturalised by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession ;

(c) Persons made denizens by letters of denization ; and,

(d) Bodies corporate established under and subject to the laws of some part of Her Majesty's dominions and having their principal place of business in those dominions ;

Provided that any person who either :

(i) Being a natural-born British subject has taken the oath of allegiance to a foreign sovereign or State or has otherwise become a citizen or subject of a foreign State ; or,

(ii) Has been naturalised or made a denizen as aforesaid ;  
shall not be qualified to be owner of a British ship unless, after taking the said oath, or becoming a citizen or subject of a foreign State, or on or after being naturalised or made denizen as aforesaid, he has taken the oath of allegiance to Her Majesty the Queen, and is during the time he is owner of the ship either resident in Her Majesty's dominions, or partner in a firm actually carrying on business in Her Majesty's dominions.

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## GREECE.

[*Translation.*]

December 29th, 1930.

A. It is obligatory for all vessels of the Greek mercantile marine to fly the national flag. The law does not recognise the Greek nationality of vessels which are not, as to fifty per cent at least, owned by Greek nationals.

The owner's domicile is not taken into account in determining the nationality of the vessel. Foreigners, whether domiciled in the country or not, may not have a share of more than fifty per cent in the ownership of a Greek vessel.

Greek law does not deal with the question of the nationality of the companies owning the capital concerned, but the general principle followed in legal practice is to make the nationality dependent on the domicile.

The captain, all the officers and at least three-quarters of the crew of Greek vessels must be Greek nationals.

Registration constitutes nationalisation. The shipping register also serves as a register of nationality. Nationalisation is thus in practice an automatic consequence of registration, which confers the right of flying the national flag. Both are equally compulsory for Greek shipowners.

Measurement of the tonnage must precede registration and nationalisation.

B. Nationality certificates attesting the right of vessels to fly the Greek national flag are issued at home by the port authorities and abroad by (1) an officer in the port service attached to the Greek Consulate General in London and (2) the Greek Consulate General in Constantinople. The powers of the latter authority extend only to small vessels of less than 10 tons, and to tugs navigating solely in the Bosphorus and the Sea of Marmora.

The procedure in regard to nationalisation and registration on which the issue of the nationality certificate depends is as follows :

The owner is required to submit to the authority of the port in which he desires his vessel to be registered—the selection of which is left to him—the following particulars :

(1) Specification of himself and of his title to the ownership of the vessel with particulars as to his acquisition of the title ;

(2) A magistrate's certificate based on the owner's affidavit for the purpose, confirming the right of ownership in whole or in part with (in the latter case) particulars of the other owners of shares in the vessel and their nationality. The magistrate's certificate must also show that no parties have claims on the vessel other than the applicant.

On the production of these documents, the competent authority proceeds to measure the tonnage and to enter the vessel in the shipping register, the entry in the latter constituting (as already explained) the recognition of the vessel as having Greek nationality.

The issue of the nationality certificate, which serves at the same time as a certificate of registration, does not take place until a subsequent additional formality has been complied with in the shape of a "written undertaking" signed by the owner and accompanied by the deposit of security, the forms of which are laid down by law. The object of this formality is to ensure the observance by shipowners of the regulations in regard to the mercantile marine in general and nationality certificates in particular.

The authorities empowered by the law to issue nationality certificates in foreign countries are required, like the home authorities (port authorities) to give notice of the vessels registered by them to the Administration of the Mercantile Marine (Ministry of Marine) at Athens, at the same time forwarding the tonnage certificates.

C. The consular authorities above referred to in London and Constantinople are alone regarded as territorial authorities for purposes of nationalisation, registration and issue of nationality certificates.

All other Greek consular authorities are empowered to issue provisional nationality certificates, in order to enable foreign vessels purchased abroad by Greek nationals to proceed to Greece under the national flag with a view to registration in Greece. In exceptional cases, provisional certificates may also be used for the completion of a voyage, or even for a whole voyage if the vessel was under contract to make the voyage before its acquisition.

Provisional certificates are exchanged for permanent nationality certificates after the vessel has been registered in a Greek port, to be selected by the party acquiring the vessel. The duration of the validity of provisional certificates is always limited.

The consular authority is required to inform the Administration of the Mercantile Marine of the issue of all provisional certificates.

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## HUNGARY.

[Translation.]

November 24th, 1930.

A. Any vessel entered in the shipping register or furnished with provisional bills of lading (provisional ship's pass) may be regarded as a vessel of the Hungarian merchant fleet—that is to say, as a vessel authorised and obliged to fly the Hungarian merchant flag in accordance with Decree No. 371 M.E., of 1922, of the President of the Hungarian Council.

Only vessels which are the property of Hungarian nationals to the extent of at least half their value may be entered in the shipping register. All joint-stock companies whose registered offices are in Hungary are treated on the same footing as Hungarian nationals.

All Hungarian maritime shipping concerns whose registered offices are not at Budapest are required to maintain proper directing organisations or agencies at Budapest to represent them before the courts and other authorities.

The captain and at least four-fifths of the navigating officers and engineer officers must be Hungarian nationals. When the crew is engaged, Hungarian nationals must be given preference over foreigners.

Shipowners are required to apply in writing for registration of the vessel and satisfactorily to prove the particulars to be entered in the register. Every vessel must be entered in the register under a separate number.

The principal measurements, as also the gross and net tonnage, must therefore be proved, either by a tonnage-measurement certificate issued by a classification institution or by a foreign authority, or by a recognised tonnage-measurement certificate, provided that the certificate in question has been issued according to the British method of tonnage measurement or some other equivalent method.

B. The registration of vessels of the Hungarian merchant fleet is effected in Hungary by the Royal Hungarian Marine Office (*Magyar királyi Tengerészeti Hivatal*). On the strength of the entry of the vessel in the shipping register, the office issues a registration certificate containing particulars corresponding to those in the register.

If a Hungarian national acquires the complete ownership, or at least half the ownership, of a foreign vessel and cannot obtain the registration certificate before the commencement of the first voyage after such acquisition, this certificate must be replaced by a provisional pass. A provisional pass must also be issued in cases where the registration certificate is lost and it is impossible to issue another copy.

The provisional pass is issued by the consulate in the district in which the vessel was lying at the time of the transfer of ownership or after the loss of the registration certificate.

C. The provisional pass may only be issued for one year, after which it may be extended for a further period of one year at most.

The home port of the vessel is Budapest, even when a provisional pass has been issued.

Consulates must always attach to provisional passes issued by them two legalised copies, one of which they shall immediately send to the Royal Hungarian Marine Department, the other being kept in the consular archives.

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## INDIA.

July 17th, 1930.

A. The right to fly the national merchant flag is not governed by an Act of the Indian Legislature, but by the provisions of the Merchant Shipping Act, 1894 (57 and 58 Vic. c. 60) passed by the British Parliament in London. This Act is applicable to the whole of His Majesty's dominions. The relevant provisions of the Act are to be found in Sections 67, 72 and 73 read with Sections 1, 2 and 3. According to these sections, a British ship, other than a British ship which is required to be registered under the Act but is not so registered, is entitled to fly the national merchant flag. A ship is not deemed a British ship unless she is owned wholly by persons who are, according to Section 1 of the Act, persons qualified to be owners of British ships. All British ships are required to be registered under the Act except the ships specified in Section 3 of the Act.

B. The authorities competent to issue nationality certificates are the registrars named in Section 4 of the Merchant Shipping Act, 1894, and officers appointed as registrars by virtue of the power of appointment given by that section. In India, there are registrars at the following ports which are also ports of registry in India for British ships: Aden, Akyab, Bassein, Bombay, Calcutta, Cochin, Coringa, Madras, Moulmein and Rangoon. Nationality certificates, called certificates of registry, are issued only to ships which are British ships in accordance with the provisions of Section 1 of the said Act. Every ship, before being registered, is required to be surveyed and her tonnage ascertained. Registrars in India transmit at regular intervals to the Registrar-General of Shipping and Seamen in London returns of all ships registered. These returns give full particulars of each ship including the names of the owners.

C. The certificates of registry issued by the registrars in India are final. The port in India at which the ship is registered is the port of registry of that ship. The ports of registry in India are those given in the reply to question B above.

## IRISH FREE STATE.

March 17th, 1931.

Since the establishment of the Irish Free State, no legislation has been enacted by the Oireachtas with reference to the particular matters which form the subject of the enquiries made in the circular letter. The law regulating those matters in the Irish Free State is, therefore, the Merchant Shipping Act, 1894, and the Acts amending the same, passed before the establishment of the Irish Free State—in so far as those Acts are in force in the Irish Free State by virtue of Article 73 of the Irish Constitution and in so far as they are adapted by, or under, the Adaptation of Enactments Act, 1922.

Comprehensive legislation on the subject of merchant shipping is at present in draft and it is proposed to introduce it into Oireachtas as soon as the state of Parliamentary business so permits.

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## ITALY.

[Translation.]

July 9th, 1930.

### EXTRACT FROM THE MERCANTILE MARINE CODE, 1877.

A. No vessel may be considered Italian or fly the national flag unless it is furnished with a nationality certificate (Article 39)

To obtain a nationality certificate, vessels must belong to nationals of the Italian State or to foreigners domiciled or resident for not less than five years therein. Nevertheless, foreigners not domiciled or resident in Italy may have a share in the ownership of Italian vessels up to one-third of the total.

For the purposes of the present article, private partnerships or commandite companies, even though they have their headquarters abroad, shall be considered to be Italian if anyone of the joint owners who give their name to the firm is an Italian subject. Limited liability companies shall be considered to be Italian, if their headquarters are situated in Italy and if the general meetings take place in Italy. Branches of foreign companies authorised by the Government to transact business in Italy shall be treated on the same footing as foreigners domiciled or resident in Italy, provided that they have a representative in Italy holding general powers (Article 40).

In order to obtain a nationality certificate, the tonnage of a vessel must be measured according to the methods and rules laid down in the regulations (Article 43).

(Note.—The regulations for the tonnage measurement of vessels were approved by the *Decreto Luogotenenziale* of January 27th, 1916, No. 202. The measurement is normally made by the *Registro Italiano Navale ed Aeronautico* on the basis of the Royal Decree of April 5th, 1928, No. 929. For the organisation of this institution, see the Royal Decree-Law of November 11th, 1926, No. 2138.)

The captain or master and at least two-thirds of the crew of vessels must be Italian. Consular officials in foreign countries may, in case of necessity, authorise the engagement of foreign sailors in excess of the above proportion. Foreigners may not be engaged as captain, master or chief mate unless it is impossible to find Italians for the purpose. In the absence of foreigners of the required rank, or if the consul does not consider it desirable to appoint such, an Italian of rank lower than that required may be appointed to command the vessel, or to act as first or second mate, if considered by the said consul to be capable of performing the duties of the post. Such appointments shall be restricted to the duration of the voyage for which they are made, and shall lapse even before the end of the voyage if Italian nationals are found having the required qualifications for the command of the vessel, or for the posts of first or second mate (Article 71).

No Italian national may belong to the crew of a merchant ship unless entered in the shipping registers or in the registers of seamen (Article 72).

B and C.—Nationality certificates shall be issued by the commandants of the *Regie Direzioni Marittime* under the Royal Decree of December 20th, 1923, No. 3235.

If, in the course of a voyage, a ship's papers are lost as a result of accident or act of God, the captain or master must inform the port office or consular officer at the first port of call. If the port of call is in a foreign country, the consular official shall supply him with provisional papers to enable him to continue his voyage. Ships constructed or acquired in foreign countries with a view to being given Italian nationality shall also be furnished with provisional nationality certificates and a provisional list of the crew (Article 102).

In execution of Article 102 of the Mercantile Marine Code, consular officials may provisionally authorise for navigation vessels acquired or constructed in foreign countries for Italians or for foreigners having the qualifications prescribed in Article 40 of the said Code, or vessels already furnished with nationality certificates which can prove the loss or destruction of the said certificates or of the list of crew or of both these documents (Article 438 of the Regulations in execution of the unified text of the Mercantile Marine Code, approved by Royal Decree of November 20th, 1879).

The authorisation referred to in the preceding article shall be issued by means of a provisional permit taking the place of the nationality certificate and the list of the crew. Such permit shall contain authority to fly the national flag (Article 439 of the Regulations).

The provisional permit shall be valid until the vessel has been furnished with regular ship's papers or has returned to Italy. Nevertheless, the period of its validity shall in no case exceed two years from the date of issue (Article 443 of the Regulations).

On issuing provisional permits, the consular official must forward copies of them to the Ministry with the other documents enumerated in Article 444 of the Maritime Regulations. All these papers shall be forwarded by the Ministry to the *Regia Capitaneria* of the port in which the vessel is to be registered.

The owners shall specify the port of registration of the vessel in accordance with the service which the vessel is to perform, and the charterer or a representative of the owners must be habitually resident in such port. Vessels shall be registered in the shipping registry of the Maritime Department in which the owner is domiciled or, failing the owner, the party principally interested or the charterer or his representative (Article 46 of the Mercantile Marine Code).

The shipping registers and the registers for the transcription of the relevant papers shall be kept by the *Capitaneria di porto* and by the district offices appointed for the purpose by the Ministry of Marine.

(Note.—The Mercantile Marine Services are at present under the Ministry of Transport Under-Secretariat of State for the Mercantile Marine.)

The shipping and other registers to which reference is made above shall be :

- (a) The register of sailing-ships ;
- (b) The register of steamships and vessels propelled by both sail and steam ;
- (c) The daily register for the transcription of papers declaring or transferring the ownership of vessels, and papers with regard to the pledging of vessels or bottomry loans ;
- (d) The register for the transcription of papers relating to the construction of vessels ;
- (e) The list of sailing-ships, steamships and ships propelled by both sail and steam.

The above registers shall be in accordance with the forms expressly laid down in Article 241 of the Maritime Regulations of 1879.

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## JAPAN.

[Translation.]

December 22nd, 1930.

A. *Granting of the Right to fly the National Flag.*—Only Japanese vessels may fly the Japanese flag (Article 2 of the Shipping Law).

Japanese vessels may only fly the Japanese flag or navigate at sea after being provided with the nationality certificate or the provisional nationality certificate, without prejudice to special provisions of laws and decrees (Article 6 of the same law).

In the following cases, vessels may navigate with the permission of the nearest competent shipping authorities, even before they have been provided with the nationality certificate or provisional nationality certificate :

- (1) For the trial trip ;
- (2) For the purpose of tonnage measurement ;
- (3) When there is a good and sufficient reason (Article 4 of the Detailed Regulations governing the entry into force of the Shipping Law).

The provisions of Articles 4 to 19 do not apply to vessels of a gross tonnage of less than 20 tons, or less than 200 koku loading capacity, or to small craft or boats propelled solely or principally by oars (Article 20 of the Shipping Law).

(I) *Nationality and Domicile of the Owner (Nationality and Registered Offices in the Case of Companies).*—The following are recognised as Japanese vessels :

- (1) Vessels belonging to Japanese governmental or official authorities ;
- (2) Vessels belonging to Japanese subjects ;
- (3) Vessels belonging to commercial companies having their registered offices in Japan, provided that all the partners in the case of general partnerships, all the partners whose responsibility is limited in the case of commandite companies and commandite joint-stock companies, and all the directors of joint-stock companies, are Japanese subjects ;
- (4) Vessels belonging to corporations having their registered offices in Japan, whose representatives are all Japanese subjects.

Vessels belonging to commandite companies founded in accordance with the provisions of the former Commercial Code are Japanese when all the managing partners of such companies are Japanese subjects (Article 1 of the Shipping Law).

The provisions of Articles 1 to 3, 22 and 23 of the Shipping Law are applicable to Karafuto. Nevertheless, the duties of the competent Minister enumerated in Article 3 of the said Law are performed by the Governor of Karafuto (Imperial Decree, No. 93, of the thirteenth year of Taisho (1924), concerning the application to Karafuto of part of the Shipping Law).

Vessels belonging to Japanese corporations having their principal offices in China, are recognised, notwithstanding the provisions of Article 1 of the Shipping Law, as being Japanese vessels, in the cases mentioned in the Imperial Decree, provided that, in the case of general partnerships, at least half the partners, in the case of commandite companies and commandite joint-stock companies, at least half the members whose liability is unlimited, in the case of joint-stock companies, at least half the directors, and, in the case of other corporations, at least half the representatives, are Japanese subjects.

The Imperial Decree may lay down special rules with regard to the home port and the tonnage measurement of Japanese vessels mentioned in the preceding paragraph and of those belonging to Japanese subjects domiciled in China (Law No. 52, of the fourteenth year of Taisho (1925), concerning vessels belonging to Japanese corporations in China).

In accordance with Law No. 52, of the fourteenth year of Taisho (1925), vessels belonging to the Japanese corporations mentioned in the said Law and recognised as capable of possessing Japanese vessels by the consul having jurisdiction for the place where such corporations have their registered offices, may be recognised as Japanese vessels (Article 1 of Imperial Decree No. 327, of the fourteenth year of Taisho (1925), concerning vessels belonging to Japanese corporations in China).

(II) *Nationality of the Captain and Crew.*—No legislation.

(III) *Registration and Tonnage Measurement.*—The owner of the Japanese vessel must fix the home port in Japan and must apply to the competent maritime authorities having jurisdiction over that home port to measure the tonnage of the vessel.

Before a vessel acquired in a foreign country can navigate between foreign ports, the owner of the vessel may have the tonnage measured by the Japanese consul or commercial agent (Article 4 of the Shipping Law).

The owner of the Japanese vessel must, after having it entered, apply for its registration in the shipping register kept by the competent maritime authorities having jurisdiction over the home port.

When the registration referred to in the preceding paragraph has been effected, the competent maritime authorities shall issue the nationality certificate (Article 5 of the same law).

The Japanese corporations mentioned in Article 1, or Japanese subjects domiciled in China, may fix the home port in China for vessels belonging to them of a gross tonnage of less than 500 tons, which only navigate in Chinese lakes, rivers, harbours and bays.

The owner of vessels whose home port has been fixed in China in accordance with the provisions of the preceding paragraph must have the tonnage of the vessel measured or re-measured by the consuls having jurisdiction for the home port. However, to enable a vessel acquired outside China to proceed to its home port in China, the owner may have the tonnage of the vessel measured by the competent maritime authorities or the consuls having jurisdiction for the place where the vessel was acquired.

The consul for the home port may entrust the competent maritime authorities or other consuls resident in China with the tonnage measurement or re-measurement (Article 3 of Imperial Decree No. 327 of the fourteenth year of Taisho (1925), concerning vessels belonging to Japanese corporations in China).

Owners of vessels which must have licences are required to submit an application in writing for the issue of licences (in accordance with form 1) to the local authorities having jurisdiction over the home port.

As regards vessels whose tonnage has been measured by the competent shipping authorities, Japanese consulates, commercial agents or other competent authorities, the owner must attach the tonnage-measurement certificate to the application in writing mentioned in the preceding paragraph.

If the written application mentioned in paragraph 1 is sent by Japanese corporations having their registered offices in China, the owner must attach to his written application the documents certifying the consular authorisation in accordance with the provisions of Article 1 of Imperial Decree No. 327 of the fourteenth year of Taisho (1925) (Article 2 of the regulations regarding ships' licences).

On receipt of the application referred to in the preceding article, the local authorities are required to have the vessel's tonnage measured. However, they need not do so if the certificate mentioned in paragraph 2 of the preceding article is produced (Article 3 of the same regulations).

*B. Authorities at Home and Abroad Competent to issue Nationality Certificates : Conditions under which the Issue is effected.*—The owner of a Japanese vessel must, after having the vessel entered, apply for its registration in the shipping register kept by the competent maritime authorities having jurisdiction over the home port.

When this registration has been effected, the competent maritime authorities must issue the nationality certificate (Article 5 of the Shipping Law).

If the nationality certificate is lost, or if any change occurs in the particulars contained in it during the stay of Japanese vessels in foreign ports, the captain may request the issue in these ports of the provisional nationality certificate.

If any of the conditions mentioned in the preceding paragraph arise while a Japanese vessel is making for a foreign port, the captain may ask for the provisional nationality certificate at the first port of call.

If the provisional nationality certificate cannot be applied for in accordance with the provisions of the two preceding paragraphs, it may be applied for at the next port of call (Article 13 of the same law).

Persons who have acquired vessels abroad may ask for a provisional nationality certificate at the place of acquisition.

The provisions of Article 13, paragraph 3, are applicable *mutatis mutandis* to cases coming under the preceding paragraph (Article 16 of the same law).

The duties of the competent shipping authorities are performed abroad by Japanese consuls or commercial agents (Article 32 of the same law).

In cases where the Shipping Law applies to vessels which have fixed their home port in China, in accordance with the provisions of Article 3, paragraph 1, the competent shipping authorities referred to in that Law are replaced by the consuls residing in China, the word "Japan" used in Articles 15 and 17 is replaced by "China" and the word "abroad" is replaced in Articles 13, 16 and 17 by the words "outside China".

The duties of the consuls residing in China referred to in the preceding paragraph are performed outside China by the competent shipping authorities or consuls (Article 5 of Imperial Decree No. 327 of the fourteenth year of Taisho (1925), regarding vessels belonging to Japanese corporations in China).

When the tonnage has been measured by the local authorities in accordance with the provisions of the preceding article, or when the certificate submitted in accordance with the provisions of Article 2, paragraph 2, is recognised as adequate, the local authorities are required to issue the ship's licence in accordance with form 2 (Article 4 of the regulations regarding ships' licences).

(II) There are no provisions stating whether the competent authorities at home are informed of the issue of certificates abroad and the conditions under which such issue was effected.

*C. Nature of the Nationality Certificates issued by the Competent Shipping Authorities Abroad.*—The period of validity of the provisional nationality certificate issued abroad may not exceed one year.

The period of validity of the provisional nationality certificate issued in Japan may not exceed six months.

Even if the period laid down in the two preceding paragraphs is exceeded, the captain may again apply for the provisional certificate, if there are urgent reasons (Article 17 of the Shipping Law).

The provisional nationality certificate is no longer valid when the vessel arrives at the home port, even if the period of validity has not expired (Article 18 of the same law).

The period of validity of the provisional nationality certificate is determined by the respective competent shipping authorities within the period fixed in Article 17 of the Shipping Law, taking into account the period required, in the case of a voyage to the vessel's home port, for the return journey, and, in other cases, for securing the certificate (Article 38 of the detailed regulations regarding the entry into force of the Shipping Law).

(I) *Fixing of the Vessel's Home Port.*—The owner of a Japanese vessel must fix the home port in Japan and have the tonnage measured by the competent shipping authorities having jurisdiction over the home port (Article 4, paragraph 1, of the Shipping Law).

Notwithstanding the provisions of the preceding paragraph, the home port may be fixed in China for vessels belonging to the corporations mentioned in Article 1 or to Japanese subjects domiciled in China (Imperial Decree No. 327, of the fourteenth year of Taisho (1925), regarding the entry into force of Law No. 52, of the fourteenth year of Taisho (1925), relating to vessels belonging to Japanese corporations in China).

(II) There is no clause stating whether the competent authorities of the home port are informed of the issue of the nationality certificate abroad.

#### LEGISLATION OF CHOSEN (KOREA), TAIWAN (FORMOSA), AND KWANTOSHU (KWANTUNG), REGARDING THE GRANTING OF THE RIGHT TO FLY THE NATIONAL MERCHANT FLAG.

Chosen, Formosa and Kwantung have special laws differing from Japanese legislation on this question. These laws are: In Chosen, the Decree of the Governor-General of Chosen regarding shipping and the detailed regulations under that Decree; in Formosa, the regulations issued by the Governor-General of Formosa with regard to the nationality of ships, and the detailed rules made under those regulations; and in Kwantung, the Decree of the Governor-



General of Kwantung regarding the nationality of ships. In this reply these enactments will be referred to by the following abbreviations :

- L.N. : Shipping Law.  
R.N. : Detailed regulations under the Shipping Law.  
C.N. : Decree of the Governor-General of Chosen regarding shipping.  
R.C.N. : Detailed regulations under the above Decree.  
T.N. : Regulations issued by the Governor-General of Formosa regarding the nationality of ships.  
R.T.N. : Detailed rules made under the above regulations.  
K.N. : Decree of the Governor-General of Kwantung regarding the nationality of ships.

(a) In order to have the right to fly the national merchant flag, vessels must :

(1) Be Japanese vessels (Article 2, paragraph 1, C.N. ; Article 2, L.N. ; Article 2, K.N.) ;

(2) Have the regulation certificate of Japanese nationality, unless otherwise provided.

(I) Chosen and Kwantung.—Vessels must have the nationality certificate or the provisional nationality certificate (Article 2, paragraph 1, C.N. ; Article 6, L.N. ; Article 8, K.N.). This rule does not, however, apply to vessels of less than 20 tons displacement or less than 200 koku loading capacity, nor to small boats or boats propelled solely or principally by oars (Articles 20 and 21, L.N. ; Article 17, K.N. ; Shipping Licence Regulations for Chosen and Kwantung). All these vessels are exempt from the regulations referred to below for Chosen and Kwantung.

(II) Formosa.—The vessels referred to in paragraph 1 below are required to obtain the nationality certificate or the provisional nationality certificate, and those referred to in paragraph 2 must have the ship's licence or the provisional ship's licence (Articles 2 and 4, T.N.).

(1) Vessels of the European type exceeding 15 tons gross displacement ; vessels of the Japanese or Chinese type exceeding 150 koku loading capacity, except vessels which only navigate within harbours and bays and on rivers ; store-ships ; small boats and boats propelled solely or principally by oars ;

(2) Vessels of the European type of less than 15 tons gross displacement ; vessels of the Japanese or Chinese type of less than 150 koku loading capacity ; and the vessels referred to as exceptions in the preceding paragraph.

(b) *Nationality and Domicile of the Owner (Nationality and Registered Offices in the Case of Companies)*.—The following are recognised to be Japanese vessels (Article 1, C.N. ; Article 1, paragraphs 1 and 2, T.N. ; Article 1, K.N.) :

1. Chosen, Formosa and Kwantung :

(1) Vessels belonging to the governmental or official authorities of the territorial division in question ;

(2) Vessels belonging to Japanese subjects domiciled in the territory in question ;

(3) Vessels belonging to commercial companies having their head offices in the territory in question, provided that all the partners (in Kwantung not less than two-thirds of the partners) in the case of private partnerships, all the partners whose liability is unlimited (in Kwantung not less than two-thirds of the partners whose liability is unlimited) in the case of commandite companies and commandite joint-stock companies, and all the directors of joint-stock companies (in Kwantung not less than two-thirds of the directors) are Japanese subjects ;

(4) Vessels belonging to corporations whose head offices are situated in the territory in question and all of whose representatives (in Kwantung not less than two-thirds of whose representatives) are Japanese subjects.

2. Special cases for Formosa and Kwantung.—Vessels which belong to Japanese subjects not domiciled in the territory, or to any corporation mentioned in sub-section 3 or 4 of the previous paragraph which has its head offices in Japan (in the case of Kwantung, in Japan, Sakhalin, Formosa or Chosen), are recognised to be Japanese vessels if their home port has not been fixed in Japan (in the case of Kwantung, in Japan, Sakhalin, Formosa or Chosen), and if they ply between the coasts of their own territory or between their own territory and Japan or foreign countries.

For Kwantung, however, there is exceptional legislation—namely, Imperial Ordinance No. 137 of the fourteenth year of Taisho (1925) :

Vessels conveying goods or passengers between Japan and ports other than those of

Kwantung without the authority of the Governor of Kwantung may not be recognised to be Japanese vessels unless they fall into one of the following classes :

- (1) Vessels which were built in Japan, Chosen, Formosa, Kwantung or Karafuto (Sakhalin) ;
- (2) Vessels which were built abroad and imported into Japan, Chosen or Formosa ;
- (3) Vessels belonging to persons engaged in maritime transport who have their head offices in Kwantung and are chiefly engaged in conveying goods or passengers to and from Kwantung.

(c) *Nationality of the Captain and Crew.*—No legislation.

(d) *Tonnage Measurement.*—1. Chosen.—Every owner of a Japanese vessel must fix his ship's home port in Chosen and must apply to the competent shipping authorities having jurisdiction over that home port to measure the tonnage of the vessel (Article 2, paragraph 1, C.N. ; Article 4, paragraph 1, L.N.).

The competent shipping authorities having jurisdiction over the home port may desire other competent shipping authorities to measure the tonnage (Article 4, paragraph 2, L.N.).

In the case of a voyage made between non-Chosen ports by a vessel acquired outside Chosen, if the owner of the vessel has had the tonnage measured by the consular authorities or the competent shipping authorities in Japan, Formosa, Sakhalin, or Kwantung, the tonnage is deemed to have been measured by the competent shipping authorities of Chosen (Article 3, C.N.).

2. Formosa.—Every owner of a Japanese vessel must fix its home port in Formosa and apply to the local authorities having jurisdiction over that home port to measure the tonnage of the vessel (Article 1, T.N.).

3. Kwantung.—Every owner of a Japanese vessel must fix the home port of his vessel at Dairen or Ryojun and apply to the Shipping Department to measure the tonnage of the vessel (Article 4, K.N.).

(e) *Registration.*—1. Chosen and Kwantung.—Every owner of a Japanese vessel must, after having the vessel entered, apply for its registration ; in the case of Chosen, to the competent shipping authorities having jurisdiction over the home port, and, in the case of Kwantung, to the Shipping Department (Article 2, paragraph 1, C.N. ; Article 5, L.N. ; Article 5, K.N.).

2. Formosa.—When the local authorities receive an application for tonnage measurement for the purpose of acquiring nationality they must measure and register the tonnage (Article 2, R.T.N.).

B. (a) *Authorities Competent to issue Nationality Certificates.*—1. Chosen (Article 2, paragraph 1, C.N. ; Article 5, paragraph 2 ; Articles 13, 15 and 16, L.N. ; Articles 37 and 38, R.C.N. ; Article 32, L.N. ; Imperial Ordinance No. 48 of the Sixth Year of Taisho (1917)) :

- (1) Nationality certificate—competent shipping authorities having jurisdiction over the home port ;
- (2) Provisional nationality certificate :
  - (a) Inland—competent shipping authorities of the place where the vessel is ;
  - (b) Abroad—Japanese Consul or commercial agent in the place where the vessel is.

2. Formosa (Article 2, Article 3, paragraph 1 ; and Article 7, T.N.) :

- (1) Nationality certificate—Governor-General of Formosa ;
- (2) Ship's licence—local authorities having jurisdiction over the home port ;
- (3) Provisional nationality certificate and provisional ship's licence :
  - (a) Inland—local authorities of the place where the vessel is ;
  - (b) Abroad—Japanese consulate in the place where the vessel is or in the neighbourhood.

3. Kwantung (Article 5, paragraph 2, Article 6, paragraph 1 ; and Article 14, K.N.) :

- (1) Nationality certificate—Shipping Department ;
- (2) Provisional nationality certificate :
  - (a) Kwantung—Shipping Department ;
  - (b) Japan, Sakhalin, Formosa and Chosen—local authorities of the place where the vessel is ;
  - (c) Abroad—Japanese consulate in the place where the vessel is or in the neighbourhood.

(b) *Conditions under which the Nationality Certificate is issued.*—1. Chosen and Kwantung :

- (1) Nationality certificate :

When registration takes place after entry (Article 2, paragraph 1, C.N. ; Article 5, L.N. ; Article 5, K.N.) ;

(2) Provisional nationality certificate :

(a) If the persons who acquired the vessel elsewhere than in the home port, and did not fix the home port within the area of the competent shipping authorities having jurisdiction over the place in which the vessel was acquired, have made an application in proper form, accompanied by vouchers for the acquisition of ownership (Articles 15 and 16, L.N. ; Article 38, R.C.N. ; Article 6, paragraph 1 ; Article 18, K.N. ; Article 37, R.N.) ;

(b) If the nationality certificate is lost abroad (in the case of Kwantung, elsewhere than in the home port) or, should there be any change in the particulars given therein, if the captain makes application in writing giving the reasons, accompanied, if possible, by documents certifying the particulars which must appear on the provisional certificate (Article 13, L.N. ; Article 37, paragraph 1, R.C.N. ; Articles 12 to 14, K.N. ; Article 36, paragraph 1, R.N.).

2. Formosa :

(1) Nationality certificate and ship's licence :

When the application for issue is made after entry, accompanied by the regulation particulars (Articles 2 and 4, R.T.N.).

(2) Provisional nationality certificate and provisional ship's licence :

When the vessel was acquired elsewhere than in the home port, when the nationality certificate and ship's licence are lost or rendered useless, or when the application for issue is made, accompanied by the regulation particulars (Article 7, T.N. ; Article 6, R.T.N.).

(c) Notification to the home authorities of the issue of certificates abroad and the conditions under which they were issued is not required.

C. (a) Certificates issued abroad are provisional, their validity being limited to one year (Article 2, paragraph 1, C.N. ; Article 17, paragraph 1, L.N. ; Article 3, paragraph 2, T.N., Article 6, paragraph 2, K.N.).

(b) For the determination of the vessel's home port when the provisional certificate was issued abroad, the usual procedure is as follows : The owner of a Japanese vessel must fix the home port within the administrative area to which he belongs (Dairen or Ryojun in the case of Kwantung), and must apply for tonnage measurement, in the case of Chosen, to the competent shipping authorities having jurisdiction over the home port, in the case of Formosa, to the local authorities having jurisdiction over the home port, and, in the case of Kwantung, to the Shipping Department (Article 2, paragraph 1, C.N. ; Article 4, paragraph 1, L.N. ; Article 1, T.N. ; Article 4, K.N.).

(c) Notification to the competent authorities of the home port of the issue of the nationality certificate abroad is not required.

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LATVIA.

[Translation.]

December 16th, 1930.

A. 1. *Right to fly the National Flag.*—In conformity with Article 1 of the Law of 1923, concerning the registration of vessels and the right to fly the national flag (*Official Journal*, No. 59, dated March 20th, 1923), the right to navigate under the Latvian flag may be conferred on vessels belonging to individuals, companies or legal persons of Latvian or foreign nationality, provided that the vessels are registered in a Latvian port or have already been registered with one of the Latvian consular representatives abroad, and provided that the permanent residence of the general managers of such vessels or the domicile of the boards of management of the shipping companies is in Latvia. Further, at least one-third of the members of the boards of management of shipping companies must be of Latvian nationality.

2. *Nationality of the Master and of the Crew.*—The administrative personnel—i.e., the master, the pilot, the mechanics, the wireless operators and the doctor—must be of Latvian nationality, and it is only in exceptional cases that Latvian consuls have the right to authorise the master to employ in his ship qualified pilots, engineers or wireless operators of foreign nationality, and then only for a period which may not exceed three months. Foreign nationals must not form more than a quarter of the crew. These restrictions do not apply : (1) to vessels purchased abroad, until their first arrival in a Latvian port ; (2) to vessels which have been unable to engage a crew of Latvian nationals in foreign ports without delaying the departure of the vessel ; (3) to vessels which have had to engage or complete their crew in a port outside Europe (Articles 1, 24 and 25 of the Law relating to the administrative personnel of merchant vessels—*Collection of Laws and Decrees of 1927*, Section 39, and Article 25 (1) of the amendments relative thereto ; *Collection of Laws and Decrees of 1929*, Section 142).

3. *Registration of Vessels.*—Under Article 2 of the Law of 1923, registration is compulsory for all vessels of the mercantile marine with a tonnage measurement of over 20 tons gross.

Since 1925, the registration of vessels has been carried out by the Navigation Section of the Marine Department. Vessels with a tonnage measurement of less than 20 tons gross, and other kinds of craft, must be entered in the special registers kept by the Harbour Administration and by other competent authorities.

4. *Tonnage measurement.*—The tonnage of vessels of the mercantile marine is measured in Latvia according to the Moorsom system.<sup>1</sup>

B and C. *Issue of Certificates of Nationality in Latvia and Abroad.*—Certificates of nationality are issued in Latvia by the Navigation Section after the vessel has been registered by the Marine Department. In order to have a ship registered, the owner must send in an application to the Navigation Section accompanied by : (1) a document proving his right of ownership to the vessel ; (2) the tonnage measurement certificate ; (3) a certificate of seaworthiness or classification ; (4) if the vessel has been purchased abroad, a certificate showing that the vessel has been struck off the foreign registers.

Provisional nationality certificates are issued abroad by Latvian consuls *de carrière* in accordance with Article 125 of the Consular ordinance,<sup>2</sup> the home authorities having to be informed of such issue. The certificates thus issued are only provisional, and remain valid for one year if the vessel is in European waters, and for two years if it was acquired in another continent.

If the vessel has been acquired abroad from a foreign national, its home port until registration is considered to be that indicated in the provisional certificate. The competent authorities of the home port are not informed of the issue of the nationality certificate, information of this kind only being sent by the consuls to the Ministry of Foreign Affairs and the Marine Department.

#### CONSULAR ORDINANCE (PARAGRAPH 125).

##### *Provisional Flag Patent.*

(1) To ships which have been built abroad at the expense of Latvian citizens, or have, in a foreign country, passed from foreign to Latvian ownership, the consul may, upon an application in writing, issue a provisional Latvian flag patent (certificate of nationality), provided all lawful qualifications exist for doing so. The validity of such provisional flag patent shall hold good until the arrival of the ship at the first Latvian port, but for no longer period than provided by the maritime laws. The provisions of the latter shall also be applied in extending the validity of the flag patent. However, in case of such ships as are owned by citizens of belligerent Powers and as should, during war, either directly or indirectly, become the property of Latvian citizens, the consul shall issue provisional flag patents not otherwise than with the permission of the Marine Department.

##### *Regulations for Issue of Temporary Flag Patents.*

(2) The conditions on which the consul may issue provisional Latvian flag patents are as follows :

(a) Evidence concerning the ship and right of ownership to the same, if such evidence furnishes proof that no obstacles exist in the way of hoisting the Latvian flag on the ship ;

(b) Proof of the seaworthiness of the ship by possessing a Government classification certificate or a certificate granted by classification societies approved by the Government, such as the British "Lloyd's Register of British and Foreign Shipping", the German Society "Germanischer Lloyd", the French "Bureau Veritas", etc., and provided the stipulations of paragraph 126 of this Ordinance, regarding radio stations, are observed ;

(c) Evidence proving that a vessel, which had formerly sailed under a foreign flag, has been deleted from the shipping registers of the foreign country in question.

(4) When all the requirements of Article 2 of this paragraph have been complied with, the consul shall issue to the ship a provisional Latvian flag patent (certificate of nationality), drawn up, as nearly as possible, in conformity with the prescribed form ; however, in every instance when giving the necessary permission to hoist the Latvian flag on the ship and to sail and navigate certain seas and waters, and when requesting the authorities of foreign countries to extend the requisite protection, the consul shall include in the flag patent the following particulars :

(a) Name, class and type of the ship and the trade for which she is intended ;

(b) Construction (material) of the ship, and, in conformity with the ship's register, the registered tonnage, adding also the name of the place where the ship was measured and whether such measurements appear in cubic metres ; such computation should be effected in accordance with Latvian laws governing the system of measurement of ships ;

<sup>1</sup> A copy of the Tonnage Measurement Law of 1923 has been placed in the archives of the Secretariat, where it may be consulted.  
<sup>2</sup> A copy of this ordinance has been placed in the archives of the Secretariat, where it may be consulted.

- (c) Place and date of construction or sale of the ship ;
- (d) Name or names of the present owner or owners ;
- (e) Port of registry in Latvia ;
- (f) Period of validity of the flag patent.

(5) Having issued the provisional flag patent, the consul shall transmit, without delay, to the Ministry for Foreign Affairs, and simultaneously to the Marine Department, the following documents :

- (a) Copies of the flag patent issued, copies of the declaration of the applicant, stating the means used for verifying the accuracy of the declaration, and copies of the petition submitted to the consul ;
- (b) Copy of builder's certificate, certificate of ownership and of the ship's register ;
- (c) Copy of the classification certificate and certificate of survey of seaworthiness ;
- (d) If the ship is not newly built, but has been purchased from foreign owners, a copy of the title-deed of the former owner or a copy of the bill of sale should be forwarded, but in every instance the price paid for the ship should be stated ;
- (e) Copy of the document showing that the purchased ship has been deleted from the shipping registers of the foreign country ;
- (f) Copy of the written undertaking, as required by the maritime laws, by the terms of which the owners undertake to register the ship at a Latvian port within the specified period. The authenticity of all the aforesaid copies shall be certified by the consul in his notarial capacity and transmitted by him to the proper quarter, adding his report about what has been done.

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### LITHUANIA.

[Translation.]

September 15th, 1930.

A. The owner and the captain and crew of a vessel flying the Lithuanian national flag must be of Lithuanian nationality and domiciled in Lithuanian territory. Exceptions are allowed with the consent of the Government, especially in cases where the owner of a vessel is a Lithuanian company with foreign partners. The vessels must be registered in a Lithuanian port and their tonnage measurement verified there.

B. The Ministry of Communications is authorised to issue, through its officials, nationality certificates for vessels navigating in the territorial waters. Abroad, its functions are exercised by the Lithuanian consular officers. The Ministry of Communications is immediately informed of the delivery of a nationality certificate to a vessel abroad.

C. Ship's certificates issued by authorities abroad are provisional and a vessel in possession of such a certificate must, when it goes to a Lithuanian port, procure a permanent certificate. Information received by the Ministry of Communications through the Ministry for Foreign Affairs with regard to certificates issued by a Lithuanian authority abroad shall be immediately communicated to the administrative authorities of the ports in question.

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### MEXICO.

June 3rd, 1930.

#### EXTRACTS FROM THE REGULATIONS REGARDING THE NATIONALISATION AND REGISTRATION OF MEXICAN MERCHANT VESSELS. <sup>1</sup>

A. *Article 1.*—The vessels which fulfill the following conditions are regarded as national merchant vessels :

- (a) Vessels which belong exclusively to Mexican citizens residing in the Republic ;
- (b) Vessels which are the property of a company or concern constituted in accordance with the laws of the country and domiciled in the Republic ;
- (c) Vessels abandoned on the high seas or in the territorial waters of the country and found by Mexican citizens ;
- (d) Vessels confiscated on account of infringements of the laws of the Republic ;
- (e) Vessels acquired by Mexican citizens at a sale by public auction or as a result of cession in cases of insolvency ;
- (f) Vessels taken from an enemy and declared to be lawful prize ;
- (g) Vessels built in the Republic.

<sup>1</sup> A copy of these regulations is deposited in the archives of the Secretariat, where it may be consulted.

**Article 2.**—As regards the vessels mentioned in (a), (b), (c), (d), (e) and (f) of the preceding article, proof must be brought to show their condition before they can be registered. The same applies to the vessels mentioned under (g), although the fact of not complying with this condition does not warrant the assumption that the vessel is of foreign nationality.

**Article 3.**—The following may own national vessels :

- (a) Mexican citizens by birth or naturalisation ;
- (b) A woman who is Mexican by birth or naturalisation and who has the free administration of her property ;
- (c) Mexican minors, on condition that those who exercise parental authority over them and those who administer their property are also Mexicans ;
- (d) The estate of the persons mentioned above, whether they have left a will or have died intestate, until the distribution of the property, if the whole or most of the estate is inherited by Mexicans, and until the declaration by the heirs, if most of the estate is inherited by foreigners ;
- (e) Companies or societies constituted in accordance with the laws of the country.

**Article 4.**—Private persons and companies of foreign nationality that have established their domicile, branches or agencies in the Republic may only possess vessels to be used for river traffic or traffic within the harbours of the Republic, whether pleasure boats or commercial craft ; but they may in no case own vessels to be used for navigation on the high seas or for coasting trade, or pleasure boats or fishing boats navigating on the high seas.

**Article 5.**—The owners of vessels complying with the conditions enumerated in Article 3 of the present regulations must prove their nationality, with a view to registration, by producing legal evidence that they come under one of the cases enumerated above.

**Article 6.**—The nationality of every merchant vessel is attested :

- (a) By the documents established by the competent authority—viz., the navigating licence or the registration certificate, as the case may be ;
- (b) By the name of the vessel written on both sides of the prow and on the poop, together with the name of the home port ; these names shall be written in Latin characters in light colour on a dark background or *vice versa*, and must be clearly visible. The smallest must be not less than 10 cm. in height and must always be kept in good condition.

B and C. **Article 7.**—Every national vessel must be registered on the request of the owner or his representative at the harbour-master's office of the port where the owner or representative has his domicile. The vessels mentioned in Article 4 shall be officially registered without this implying the exemption of the owners of the vessels from payment of the respective duties or of the performance of any of the obligations devolving upon them in their capacity as owners of national vessels.

**Article 8.**—For the purpose of the present regulations, Mexican vessels are classified as follows :

*Division A.*

- Class I : Steamships and vessels propelled by internal-combustion engines, navigating abroad and used for the conveyance of emigrants.
- Class II : Steamships and vessels propelled by internal-combustion engines, navigating abroad and used for the conveyance of passengers.
- Class III : Steamships and vessels propelled by internal-combustion engines, navigating abroad and not used for the conveyance of passengers.
- Class IV : Steamships and vessels propelled by internal-combustion engines, exclusively used for the long-distance coasting trade and conveying passengers.
- Class V : Steamships and vessels propelled by internal-combustion engines, exclusively used for the long-distance coasting trade and not conveying passengers.
- Class VI : Steamships and vessels propelled by internal-combustion engines, exclusively used for the lesser coasting trade and conveying passengers.
- Class VII : Steamships and vessels propelled by internal-combustion engines, exclusively used for the lesser coasting trade and not conveying passengers.
- Class VIII : Steamships and vessels propelled by internal-combustion engines, exclusively used for inland navigation in lagoons and on navigable rivers and conveying passengers.
- Class IX : Steamships and vessels propelled by internal-combustion engines, exclusively used for inland navigation in lagoons and on navigable rivers and not conveying passengers.
- Class X : Steamships and vessels propelled by internal-combustion engines, used for high-sea fisheries.
- Class XI : Steamships and vessels propelled by internal-combustion engines, used as pleasure boats and navigating on the high seas.
- Class XII : Steamships and vessels propelled by internal-combustion engines, used for towage and salvage work on the coasts.
- Class XIII : Steamships and vessels propelled by internal-combustion engines, employed by the Confederation or the States.

*Division B.*

- Class I : Sailing vessels navigating abroad and used for the conveyance of passengers and emigrants.
- Class II : Sailing vessels navigating abroad and not used for the conveyance of passengers.
- Class III : Sailing vessels used exclusively for the long-distance coasting trade and for the conveyance of passengers.
- Class IV : Sailing vessels used exclusively for the long-distance coasting trade on a large scale and not for the conveyance of passengers.
- Class V : Sailing vessels used exclusively for the lesser coasting trade and for the conveyance of passengers.
- Class VI : Sailing vessels used exclusively for the lesser coasting trade and not for the conveyance of passengers.
- Class VII : Sailing vessels used exclusively for navigation on rivers or navigable waterways and for the conveyance of passengers.
- Class VIII : Sailing vessels used exclusively for navigation on rivers or navigable waterways and not for the conveyance of passengers.
- Class IX : Sailing vessels used for high sea fisheries.
- Class X : Sailing vessels used as pleasure boats and navigating on the high seas.
- Class XI : Sailing vessels for regattas navigating on the high seas.
- Class XII : Sailing vessels employed by the Confederation or by the States.

*Divisions C, D and E.*

(These three divisions include steamships and sailing vessels used exclusively for inland navigation within harbours and on rivers or for fishing along the coasts, within harbours and on rivers.)

*Article 9.*—The vessels included in Divisions A and B shall be registered and nationalised in their respective home ports or before the consular authority abroad, with the exception of vessels of Classes VIII and IX of Division A and VII and VIII of Division B. Nevertheless, all documents drawn up by the said consular authority shall only be provisional until the vessel arrives at the Mexican port where it is to be registered. Only the vessels included in Divisions C, D and E and in Classes VIII and IX of Division A and VII and VIII of Division B are obliged to be registered, as they are regarded as Mexican vessels, and cannot consequently fly any other flag. The vessels included in Classes XIII, XII, X and IX of Divisions A, B, C and D are not bound to comply with the formality of registration.

The vessels included in Divisions A and B, with the exception of those of Classes VIII and IX and VII and VIII respectively of the said divisions, must be provided, before they can navigate, with the licence which shall be issued to them by the Executive of the Mexican Union, and those of Classes VIII and IX of Division A and VII and VIII of Division B, as also those of Divisions C, D and E, shall be provided with the corresponding registration certificate, the maritime or consular authority being authorised to issue passes to enable these vessels to navigate regularly until the final registration certificate is issued.

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**PRINCIPALITY OF MONACO.**

[*Translation.*]

June 3rd, 1930.

I have the honour to send Your Excellency the text of the Sovereign Decree of October 15th, 1915, relating to the Monegasque naturalisation of vessels, and also that of Circular No. 3 issued to the consuls of Monaco abroad.<sup>1</sup>

These texts show that, apart from the exceptions provided in Articles 24 and 25 of the Decree, a vessel may only fly the Monegasque flag if half the vessel belongs to persons of French or Monegasque nationality, the president and half the members of the managing board are French or Monegasque, and the officers and three-quarters of the crew are French or Monegasque.

The authority competent to issue the certificate of naturalisation, is the Minister of State, the consuls of Monaco abroad being authorised to issue provisional certificates only.

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**NORWAY.**

[*Translation.*]

July 2nd, 1930.

A. 1. A vessel is a Norwegian vessel when it is the exclusive property of Norwegian subjects.

2. If the vessel belongs to a joint-stock company whose sole business is shipping or shipping combined with forwarding, or to a joint-stock company whose regular business includes shipping, deep-sea fishing or salvage work, the vessel is Norwegian, provided that the

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<sup>1</sup> A copy of the above-mentioned texts has been deposited in the archives of the Secretariat, where it may be consulted.

principal offices of the company and the seat of the administration are in the Kingdom of Norway, that the members of the administration are Norwegian subjects who hold shares and are domiciled in the Kingdom, and that shares representing at least six-tenths of the capital are held by Norwegian subjects.

3. If the vessel belongs to a joint-stock company whose business is not of the nature mentioned under No. 2, the vessel is Norwegian when the principal offices of the company and the seat of the administration are situated in the Kingdom and the administration is composed of Norwegian subjects who hold shares.

4. The provisions of 2 and 3 apply *mutatis mutandis* to vessels belonging to "commandite" share companies. The provisions relating to administration and capital apply, in the case of commandite companies, to the responsible partners and to the capital held by them respectively.

As regards the nationality of the crew, a law of August 26th, 1854, provides that the majority of the crew of Norwegian vessels must be Norwegians, if the crew is engaged in Norway. If, on the other hand, it is engaged abroad, there are no restrictions as regards the engagement of seamen of foreign nationality.

It is not necessary that the captain, the second in command and the engineers (officers) shall be Norwegian, but they must all have the prescribed Norwegian certificates. The captain must also have obtained the Norwegian master's certificate in a town (kjöpstad) or a port (ladested).

A vessel which is to be registered must, in order to obtain a final certificate of Norwegian nationality, comply with the above-mentioned conditions, its tonnage must be measured in Norway, and it must be entered in the final Norwegian register.

In accordance with Article 1 of the Law of May 4th, 1901, relating to the registration of vessels, all steamers and motor vessels of 25 gross registered tons or more and all decked sailing vessels of 50 gross registered tons or more must be registered. An exception is made in the case of Norwegian warships and other vessels belonging to the Norwegian Government, which are not used for the transport of goods.

Final registration must be effected by the competent registration official in the district of the vessel's home port, after a statement has been made by the owner of the vessel, in accordance with Article 5 of the Law relating to the registration of vessels.

B. After the final registration of the vessel, the Customs collector of the vessel's home port shall issue a final nationality certificate. If the vessel has to leave before the registration can be effected, he may issue a provisional nationality certificate.

On the transfer of a vessel to the Norwegian flag in a foreign country, the vessel may, without being measured and registered in Norway, obtain a provisional nationality certificate,<sup>1</sup> which shall, in each particular case, on the authority of the Ministry of Commerce, be issued by the agent of the external service in the district where the vessel happens to be.

(A paid agent of the external service, holding the rank of vice-consul or secretary of legation, or a higher rank, as also consuls-general and honorary consuls whose district includes a maritime port have the right to issue a provisional nationality certificate.)

Before issuing such a nationality certificate, the Ministry and the agent of the external service must satisfy themselves that the vessel complies with the above-mentioned conditions laid down in Article 1 of the shipping law and with the requirements as to category and seaworthiness stipulated in the law regarding the official supervision of the seaworthiness of Norwegian vessels. Further, a certificate issued by the officials of the country to which the vessel previously belonged, showing that they have no objection to the vessel changing its nationality, must be produced.

The agent of the external service shall thereupon inform the Ministry of Commerce of the steps taken by him. His report will be accompanied by a certified copy of the provisional nationality certificate, which will be transmitted to the registration official of the vessel's home port. The registration official shall enter the ship in the provisional register on the strength of the particulars contained in the nationality certificate.

The validity of a provisional nationality certificate issued by an agent of the external service must not be for more than two years. Upon the expiration of the period fixed for the validity of this certificate, the certificate may be renewed on the authorisation of the Ministry. It expires, however, on the entry of the vessel into a Norwegian port, when the obligation in regard to the tonnage measurement, and therefore the obligation in regard to final registration, arise.

C. An agent of the external service may only issue the provisional nationality certificate. Both the provisional nationality certificate and the final nationality certificate must mention the vessel's home port chosen by the owner. Such port may be any Norwegian port which has a Customs office.

<sup>1</sup> Copies of the above-mentioned nationality certificates have been deposited in the archives of the Secretariat, where they may be consulted.



## NEW ZEALAND.

July 24th, 1930.

A. Section 3 of the New Zealand Shipping and Seamen Act 1908<sup>1</sup> prescribes the flag to be used on all merchant ships registered in New Zealand, and also the New Zealand Ensign, which is allowed to be used on shore within New Zealand, and on all vessels belonging to His Majesty's Government in New Zealand, or which are from time to time permitted under an Admiralty warrant to use it. There are no restrictions as to the nationality of the captain and crew, or special provisions as to registration or tonnage measurements. As regards nationality and domicile of the owner, Section 1 of the Imperial Merchant Shipping Act 1894 prescribes the qualifications for owning British ships, and, as this section is in force in New Zealand, it applies to all British ships in New Zealand which are entitled to fly the national flag.

B. In so far as New Zealand is concerned, the authority which deals with this matter is the Marine Department, which administers the New Zealand Shipping and Seamen Act and the Imperial Merchant Shipping Act in so far as it is applicable to New Zealand.

No nationality certificates are issued in respect of a vessel's right to fly the national flag, the authority to do so being statutory, as set out above; except, of course, in the cases where an Admiralty warrant is issued pursuant to sub-section (3) of Section 3 of the Shipping and Seamen Act 1908. A copy of the regulations as to flying the flag under Admiralty warrant is attached.<sup>2</sup>

C. As stated in B above, no certificates are issued. The vessel's home port is the port where she is registered.

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## PANAMA.

July 16th, 1930.

### EXTRACT FROM THE LAW OF JANUARY 12TH, 1925, ON NATIONALISATION AND TONNAGE MEASUREMENT OF VESSELS.

A and B. *Article 1.*—Owners or agents of vessels who desire to secure for these vessels the rights and obligations provided for in the laws and treaties relating to national merchant vessels must :

- (1) Enter their vessels in one of the registers kept in the harbour inspectors' offices of the Republic ;
- (2) Procure the necessary navigating licence ; and
- (3) Fly the flag of Panama.

Apart from the vessels to be used for the transport of goods and passengers, the following are regarded as merchant vessels, for the purpose of registration : pontoons, dredges, floating docks and all other floating constructions made of wood, cement, iron, steel or a mixture of these materials or any other material, which are used or may be used in maritime commerce.

*Articles 2 and 3.*—In order to secure the nationalisation of a vessel, its owners or agents must submit to the competent harbour inspector a written application for the registration of the vessel and also inform him of all the particulars which must be entered in the register. The applicant must attach to his application the document or documents attesting, in accordance with the law, his ownership of the vessel in question.

*Article 7.*—In the case of a vessel which has not been previously registered in another country, the harbour inspector shall appoint two experts to measure the tonnage of the vessel. These experts shall certify upon oath and minutely describe the structure of the vessel, its condition, its rig, its length, breadth, depth, its tonnage and all other details which may serve to show the character or identity of the vessel ; if it is a steamship, they shall further certify that it is provided with all the apparatus and accessories necessary to ensure its being safely steered and navigated.

If it is a vessel already registered in another country, the particulars mentioned in this article shall be ascertained by means of an affidavit sworn by the applicant and verified by the harbour inspector after perusal of the ship's papers.

*Article 8.*—When the particulars mentioned in the preceding articles have been obtained, an entry is made in the shipping register kept in each inspector's office. This entry must mention the registration of the vessel under the corresponding number, and the particulars enumerated in the statement of the applicant and in the experts' report, and, if necessary, the affidavit mentioned in the preceding article, as also a declaration to the effect that the vessel has been incorporated in the national mercantile marine.

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<sup>1</sup> A copy of the above-mentioned section has been deposited in the archives of the Secretariat, where it may be consulted.

<sup>2</sup> This document has been deposited in the archives of the Secretariat, where it may be consulted.

This entry shall be signed by the harbour inspector, and a certified copy forwarded to the Secretariat of Finance and the Treasury and to the Secretariat for Foreign Affairs.

*Article 10.*—When the registration is verified, and before the navigating licence is issued, the harbour inspector and the experts appointed to carry out the inspection and tonnage measurement of the vessel shall confirm : (1) that the vessel contains on each of its sides and on the poop its name and that of the home port, legibly written in white or yellow letters in the case of vessels painted black or a dark colour, and in dark letters in the case of vessels painted in light colours. The letters shall be of a minimum height of 16 cm. and of proportionate breadth.

*Article 12.*—In the event of the sale or mortgage of a vessel belonging to a person or corporation not domiciled in the country for the purpose of exercising trade therein, and not yet entered in the public register, the relevant entry shall not be made in the personal register (*Registro de las Personas*), commercial section, unless the notarial act drawn up in the country where the domicile of the owner of the vessel is situated, and in virtue of which the contracting party is legally empowered to sell or mortgage the said vessel, is at the same time produced.

*Article 16.*—National vessels engaged in international traffic must be manned by a crew at least 10 per cent of whose members are citizens of Panama, provided that those who apply for employment as members of the crew possess the physical and moral qualifications required.

*Article 17.*—The Executive is authorised to found, organise and maintain a school of navigation, which shall issue certificates to persons qualified to serve as officers in the national mercantile marine.

Every national merchant vessel must accept in its service a number of pupils of the said school not exceeding 2 per cent of the total number of the members of the vessel's crew, but in any case not less than two.

The pupils shall be designated by the director of the school and a board of masters.

When the pupils have obtained their certificate, the vessels in question must always employ the same number of young persons as officers, the choice to be made by the captain of the vessel in the form laid down in the regulations.

C. *Article 18.*—Consuls of Panama abroad are authorised to issue provisionally the right to fly the merchant flag and may, on payment of the registration fee, draw up a provisional navigating licence for vessels which are abroad and which it is desired to bring to Panama with a view to having them finally entered in the register of the national mercantile marine.

Provisional navigating licences drawn up in accordance with the present article by consuls of Panama abroad are issued for a period of six months, during which period the final registration of the vessel must be effected. The Secretariat of Finance and the Treasury may, however, extend the period laid down in the said licences for a good and sufficient reason ; it may also, if it thinks fit, render such licences permanent.

The Executive shall issue a Decree governing the provisional granting of the right to fly the national flag, and shall indicate the formalities which consular officials must observe for this purpose.

*Article 19.*—Harbour inspectors of the Republic and consuls of Panama abroad may issue permits for the performance of the duties of captain, pilot, engineer and other employees for whom a permit is required on vessels belonging to the national mercantile marine, under conditions to be laid down by the Executive.

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## NETHERLANDS.

[*Translation.*]

July 22nd, 1930.

A. 1. Sea-going vessels have the right to fly the Netherlands flag if they are provided with a certificate of registry issued in accordance with the Law of June 10th, 1926 (*Collection of Laws*, No. 178<sup>1</sup>).

2. The stipulation to the effect that the vessel must be provided with a certificate of registry does not apply if the vessel is engaged in the public service or, in the case of a new vessel built in the Netherlands, for trial trips.

Article 4 makes the issue of a certificate of registry (not including the provisional and extraordinary certificates of registry mentioned in Article 11 and 12 of this law) conditional upon the vessel being entered in the shipping register mentioned in Article 314, paragraph 1, of the Commercial Code, which reads as follows :

“ There is a public register for the registration of Netherlands vessels of at least 20 gross cubic metres. Detailed provisions will be issued by Government Decree.”

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<sup>1</sup> A copy of the text of the Netherlands laws quoted in this memorandum has been deposited in the archives of the Secretariat, where it may be consulted.

The Government Decree required by this article provides that registration shall only be effected on production of a statement authorised by the competent authority to the effect that it is a Dutch vessel.

According to Article 311 of the Commercial Code, a vessel is regarded as Dutch if it belongs entirely to Dutch nationals, or if it belongs to Dutch nationals to the extent of two-thirds of its value and the other owners are resident in the Kingdom, provided that the accountant (Boekhouder), if any, is a Dutch national residing in the Netherlands.

The following are regarded as Dutch within the meaning of this article :

(1) General partnerships and commandite companies established in the Netherlands, whose jointly and severally liable partners are Dutch nationals;

(2) Incorporated joint-stock companies founded in accordance with Dutch law and established in the Netherlands, provided that shares representing at least two-thirds of the capital invested stand in the name of Dutch nationals and, in addition, the majority of the directors and commissioners are Dutch nationals resident in the Kingdom, or all the directors are Dutch nationals (at least three-quarters of them being resident in the Kingdom) and, in addition, three-quarters of the commissioners are Dutch nationals (at least two-thirds of them being resident in the Kingdom);

(3) Civil companies founded in accordance with Dutch law, which enjoy civil law standing and all of whose directors are Dutch nationals (at least three-quarters of them being resident in the Kingdom) and at least three-quarters of whose commissioners, in addition, are Dutch nationals (at least two-thirds of them being resident in the Kingdom).

The following are deemed to be "resident in the Kingdom" :

(1) General partnerships and commandite companies established in the Netherlands, whose jointly and severally liable members are resident in the Kingdom;

(2) Incorporated joint-stock companies founded in accordance with Dutch law, provided that two-thirds of the share capital invested stand in the name of persons resident in the Kingdom and, in addition, the majority of the directors and commissioners are resident therein, or that all the directors and commissioners are resident in the Kingdom;

(3) Civil companies founded in accordance with Dutch law, which enjoy civil law standing, all of whose directors and commissioners are resident in the Kingdom.

In any case, the registered offices of the shipping concern must be in the Netherlands.

As regards tonnage measurement, the above-mentioned authorisation by the competent authority is only issued after the issue of the tonnage measurement certificate.

These laws contain no provisions relating to the nationality of the captain and crew, but the bill relative to the engagement of the captain and crew, which has already been adopted by the Second Chamber of the States-General, contains a clause to the effect that the captain must be a Dutch subject.

B. In accordance with Article 6 of the Law of 1926 relating to certificates of registry, these are issued by the Minister of the Waterstaat on production of a copy of the entry in the register and of the tonnage measurement certificate.

The production of a copy of the entry in the register is not required for the issue of provisional and extraordinary certificates of registry, as provided for in Articles 11 and 12 in the above-mentioned Law of 1926. The former are issued so that vessels purchased or built abroad for Netherlands account may be imported into the Netherlands under the Dutch flag; the latter are issued so that vessels built, purchased or equipped in the Netherlands for foreign account may be taken direct and within a definite period to their country of destination under the Dutch flag.

In principle, the Netherlands authorities abroad are not empowered to issue certificates of registry. For exceptions in the case of consular officers or other authorities, see under C.

C. Article 13 of the above-mentioned Law of 1926 allows Netherlands consular officers designated by Royal Decree to issue temporary permits to fly the Dutch flag—valid for a particular area mentioned in the permit—for vessels exclusively employed in inland navigation and in the coasting trade outside the Netherlands in which Dutch interests preponderate. Detailed provisions relating to this matter are contained in the Government Decree of April 13th, 1927 (*Legal Gazette*, No. 84).

As the registration of these vessels is not compulsory, they cannot be regarded as having a home port in the Netherlands.

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## NETHERLANDS INDIES.

[Translation.]

January 7th, 1931.

A. Under the provisions regarding the granting of nationality certificates and annual licences in the Netherlands Indies, contained in Royal Decree No. 16 of January 30th, 1874 (*Legal Gazette*, 1905, No. 316<sup>1</sup>), as subsequently amended (*Legal Gazette*, 1918, No. 763),

<sup>1</sup> Copies of the laws mentioned in this memorandum may be consulted in the Secretariat files.

seagoing vessels of the Netherlands Indies flying the Netherlands flag must hold a document establishing their nationality (Article 1)—a nationality certificate in the case of a European-rigged vessel and an annual licence in the case of a native-rigged vessel (Article 2). Vessels which, under Article 1, (a) to (f), do not require a nationality certificate or annual licence—except Government vessels, which do not require any nationality document—must obtain, before they can be used for navigation at sea, a police licence, which gives them the right to fly the Netherlands flag (*Legal Gazette*, 1915, No. 342). As a rule, these vessels do not engage in traffic elsewhere than in the Netherlands Indies.

Nationality certificates and annual licences are issued only if the seagoing vessel is for the greater part the property :

- (a) Of a denizen of the Netherlands Indies ;
- (b) Of a denizen of the Kingdom in Europe ;
- (c) Of a shipping company established in the Netherlands Indies ;
- (d) Of a private partnership or commandite company established in the Netherlands Indies, provided that not less than half the members of the partnership or the jointly and severally liable members of the commandite company are denizens of the Netherlands Indies or of the Kingdom in Europe ;
- (e) Of a commercial joint-stock company or an association possessing corporate status, provided that the company or association is established in the Netherlands Indies or in the Kingdom in Europe, and has been constituted in accordance with the laws in force at the place of its establishment, and provided that not less than half the directors of the company or association are denizens of the Netherlands Indies or of the Kingdom in Europe (Article 3).

In every case owners must be duly represented in the Netherlands Indies and the management of all business relating to maintenance, equipment and cargo must be conducted in the Netherlands Indies. Exceptions to this last provision may be made by royal authority in special cases.

By the expression “ denizens of the Netherlands Indies ” is to be understood in this memorandum :

- (a) Netherlands subjects domiciled in the Netherlands Indies ;
- (b) All other persons who, having obtained authority to establish themselves in accordance with the regulations in force, have resided in the Netherlands Indies throughout the year ending on the day on which application was made for a nationality certificate or annual licence.

By the expression “ denizens of the Kingdom in Europe ” is to be understood all persons who are held to be such under the legal provisions in force in the Kingdom in Europe regarding the grant of nationality certificates (Article 4).

A nationality certificate or annual licence may not be issued except on production of the tonnage certificate and the ownership certificate (Articles 10 and 22). Consequently, in view of Article 1 of the Transfer Ordinance (*Legal Gazette*, 1834, No. 27), all seagoing vessels of 20 cubic metres or over navigating in possession of a nationality certificate or annual licence must be entered in the public property registers.

There are no rules regarding the nationality of the captain or the crew.<sup>1</sup> A vessel navigating in possession of a nationality certificate or annual licence may not, however, navigate on the high seas unless the captain, officers and engineer officers hold the Netherlands Indies certificates required by the Shipping Ordinance and the Shipping Decree (*Legal Gazette*, 1917, Nos. 33 and 34), obtained after examination in the Kingdom in Europe or in the Netherlands Indies.

#### B. Nationality certificates are issued by the Governor-General (Article 9).

If a vessel has been bought or built elsewhere than in the Netherlands Indies on behalf of any of the persons or companies mentioned above (see Article 3), the Minister of the Colonies or the Governor-General issues a provisional nationality certificate. As soon as the vessel arrives at its home port in the Netherlands Indies, the formalities necessary to obtain an ordinary nationality certificate must be discharged (Article 14).

The Governor-General may, if necessary, issue extraordinary nationality certificates in respect of vessels which have been built, bought or equipped in the Netherlands Indies for persons or companies established elsewhere, so that such vessels may be taken under the Netherlands flag, within a specified period, direct to the country of destination (Article 15).

If a vessel has been built or bought abroad, the Netherlands Consul may, pending the decision of the Minister of the Colonies or the Governor-General as to the granting of the provisional nationality certificate for which application was made to him through the Consul, issue a certificate for the voyage to the Netherlands Indies (Article 16).

Annual licences are issued by the heads of regional Governments and local Governments, and by certain other officials appointed by the Governor-General (Article 20).

“ Small ” licences are issued by harbour-masters (Article 2 of the Ordinance in *Legal Gazette*, 1915, No. 342).

<sup>1</sup> In consequence of the revision of maritime law now in progress, it will probably be laid down that a vessel navigating with a nationality certificate or annual licence must be commanded by a Netherlands subject.

C. It will be seen from A and B that a nationality certificate issued abroad is purely provisional.

*Note.*—The provisions mentioned above will shortly be revised. The new regulations will lay down more exacting conditions to be fulfilled by a seagoing vessel before it is held to be a Netherlands Indies vessel. These conditions will be broadly the same as those in force in the Kingdom in Europe.

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**PERU.**

[*Translation.*]

June 10th, 1930.

A. Article 329 of the Regulations relating to the merchant fleet and the harbour-masters' offices states :

“ Every merchant vessel must, before it can be regarded as Peruvian and fly the Peruvian flag or enjoy the advantages and exemptions granted by Peru, be nationalised and acquire a ship's licence and a certificate of registration. ”

The certificate of registration is the certificate issued by the harbour-master's office of the port attesting the registration of the vessel in that port, and this certificate is indispensable if the ship is to navigate freely in the waters of the Republic or outside those waters.

The owner of a vessel must be a Peruvian by birth or naturalisation and must be domiciled in Peru ; if the owner is a company, it must have its registered offices in Peru.

The captain must be a Peruvian by birth or at least by naturalisation, and three-quarters of the crew of Peruvian vessels must also be Peruvians.

Article 10 of Law No. 6207 relating to national coasting trade says :

“ When a vessel nationalised in Peru belongs to a company, it shall be regarded as Peruvian if three-quarters of the capital belong to Peruvians and if the company in question complies with the conditions laid down in the regulations. ”

B. The nationality certificate or merchant shipping licence of a vessel is issued by the President of the Republic if the vessel is of a tonnage of more than 100. If it is less, the licence is issued by the head of the Naval General Staff and may be withdrawn every four years.

If an application is made for nationalisation and the right to fly the merchant flag, the harbour-master of the port gives instructions for the tonnage of the vessel to be measured and for the vessel to be assessed, whereupon the head tonnage-measurement expert draws up the corresponding report and attaches three tonnage-measurement certificates thereto.

C. Peruvian consuls abroad can only issue a provisional certificate to allow the vessel to go direct to Callao or Iquitos to be nationalised if the vessel has been purchased abroad ; the Peruvian consul must forward to the Ministry concerned all the ship's papers which have been cancelled, together with a record of the vessel.

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**PORTUGAL.**

[*Translation.*]

January 31st, 1931.

A. In accordance with our legislation, the owner or owners must be Portuguese by birth or naturalisation.

Vessels belonging to shipping or towage companies established in Portugal are regarded as Portuguese and belonging to Portuguese.

As regards the domicile of the owner, nothing is laid down in our legislation unless the owner is a shipping or towage company or a commercial company, in which cases the registered offices of the company must be in Portugal.

The captain must be Portuguese by birth or naturalisation. At least two-thirds of the crew must, unless otherwise provided in treaties, be Portuguese by birth or naturalisation.

As regards coastal fishing vessels, all persons constituting the company must be Portuguese by birth or naturalisation with the exception of one boatswain or a technical expert, who may be a foreigner, subject to the permission of the Ministry of Marine. As regards fishing vessels, the following conditions must also be complied with where the owner is an association, a concern or a company ; general partnerships or commandite companies or associated companies must have their registered offices in Portuguese territory and be composed exclusively of persons who are Portuguese by birth or naturalisation.

All partners with unlimited liability in commandite joint-stock companies, whose registered offices must be in Portuguese territory, must be of Portuguese nationality, and the share capital must further be composed of registered securities drawn up in the name of persons who are Portuguese by birth or naturalisation.

Incorporated joint-stock companies must have their administrative offices in Portuguese territory, and their capital must be composed of registered shares all belonging to persons who are Portuguese by birth or naturalisation.

The management and administration of societies, companies, associations or concerns owning fishing vessels may be exercised only by persons who are Portuguese citizens by birth or naturalisation.

B. The tonnage measurement of a vessel is carried out by the harbour-master of the port where the vessel is registered.

The registration of the vessel is effected by the harbour-master's office of the port.

A certificate of registration constitutes a title of ownership, which must be produced for the inspection of the clerk of the respective commercial court where it is registered.

When the Department of Marine has inspected the titles of ownership duly registered with the commercial court, it issues a document which constitutes the nationality certificate of the vessel.

C. If the vessel has been acquired abroad, the consul, after inspecting the documents proving the Portuguese nationality of the owner or owners and also the deed of purchase, issues a provisional document, which is usually only valid as far as the port indicated by the owner in which the vessel is to be registered.

As soon as he has issued a provisional certificate, the consul must send a duly registered copy of this certificate and of the sale contract to the Department of Marine.

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## ROUMANIA.

[Translation.]

February 26th, 1931.

A. The right to fly the national flag is granted in accordance with the Law of April 1st, 1907, regarding the organisation of the merchant fleet, as amended on December 21st, 1922 :

- (a) To owners who are Roumanian nationals domiciled in the country ;
- (b) To foreigners if they are born in the country and in fact reside there for at least eight months in the year ;
- (c) To companies, provided that :

(1) In the case of a private partnership firm, all its members are Roumanian nationals ;

(2) In the case of a commandite company, the sleeping and active partners and the managers are Roumanian nationals and two-thirds of the capital is Roumanian ;

(3) In the case of an incorporated joint-stock company, at least two-thirds of the statutory capital is in the hands of Roumanian nationals in the form of registered shares only transferable to Roumanian nationals, and the chairman of the managing board, the assistant managers, the director and three-quarters of the members of the managing board are Roumanian.

Moreover, the registered offices of the company must be situated within the country, where the general meetings must also be held.

At least one-third of the navigating officers and engineers and at least one-third of the other members of the crew must be of Roumanian nationality.

Registration must be effected at the harbour-master's office at the home port.

Tonnage measurement is governed by the rules recommended by the Constantinople International Tonnage Commission in 1873, which were also adopted by the European Commission of the Danube.

B and C. The authorities competent to issue nationality certificates are :

(a) At home.—The Ministry for Foreign Affairs on the strength of a report of the Harbours Department, drawn up after consultation with a Higher Navigation Commission and after an enquiry by the harbour-master of the port where it is desired to register the vessel.

(b) Abroad.—The Roumanian consuls. However, the certificates which consuls are authorised to issue are provisional and are only valid for one voyage from a foreign port to the Roumanian port where the vessel is to be registered, and only on condition that the vessel has been built or purchased abroad and is making its first voyage to Roumania. As soon as such certificate has been issued, the consul must advise the harbour authorities of the port where the vessel is to be registered, through the Ministry for Foreign Affairs.

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## SIAM.

October 7th, 1930.

A. There is no express provision in Siamese laws with regard to the matter under reference. However, according to the practice of His Majesty's Government, persons or companies domiciled in Siam and foreign companies having a registered office in Siam may be granted the right to fly a Siamese national merchant flag on their vessels, provided that such vessels are duly registered with the competent authorities of His Majesty's Government.

Generally speaking, in registering a vessel, the nationality of the captain and the crew is immaterial. The captain, however, must possess a certificate of competency issued by the Harbour Department in Bangkok or by other competent authorities approved of by His Majesty's Government.

Due compliance must be given to the Rules for Survey issued by the Harbour Department in Bangkok in the matter of registration and tonnage measurement.

B. In Siam, the harbour-master is the competent authority for the issue of certificates and licences of vessels, in pursuance of the Law on Navigation in Siamese Waters, B.E. 2456. Every steam vessel must be surveyed and approved of by a Government surveyor previous to the issue of a licence, in pursuance of the Rules for Survey issued by the Harbour Department.<sup>1</sup>

A Siamese consular representative abroad may issue a provisional certificate upon the production of a certificate of survey issued by the competent authorities of the foreign country concerned.

The home authorities need not receive a notification of the issue of such a provisional certificate until the vessel concerned arrives in Siam.

C. A certificate which is so issued by a Siamese consular representative abroad is provisional only, in order to enable the vessel concerned to proceed to Siam. Upon its arrival in Siam, a final certificate issued in pursuance of the Rules for Survey shall be obtainable from the Harbour Department in Bangkok.

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### SWEDEN.

[Translation.]

December 17th, 1930.

A. Before a vessel can be regarded as Swedish and thus fly the Swedish flag, it must belong to Swedes to the extent of at least two-thirds of its value or to a joint-stock company whose managing board has its registered offices in Sweden and is composed of Swedish shareholders, who must have their domicile in Sweden, save for exceptions authorised by the King in each particular case. The owner-manager must always be Swedish and be domiciled in Sweden.

The captain of every Swedish vessel and at least two-thirds of the crew, including the captain, must be of Swedish nationality.

All Swedish vessels used for commercial shipping or the transport of passengers and with a tonnage of 20 registered tons or more must be registered. The register is kept by the Central Commercial Administration.

Every vessel which is so built that it can be used for commerce and the transport of passengers and goods, must be measured in accordance with the provisions of the Swedish law on tonnage measurement. The following are exempt from this obligation: vessels of not more than 10 tons, vessels built and exclusively employed for fishing, and vessels, armed or not, belonging to the State.

It should be noted, however, that the observance of the above-mentioned provisions relating to the nationality of the captain and crew and to registration and tonnage measurement does not constitute a condition on which the granting of Swedish nationality to a vessel must depend.

B. Every Swedish vessel which is obliged to be registered must be provided, for voyages to foreign countries, with a document showing its Swedish nationality. There are various nationality documents—viz.:

(a) The nationality and registration certificate, issued by the Central Commercial Administration;

(b) The temporary nationality and registration certificate, also issued by the Central Commercial Administration, but valid only for a fixed period specified in the certificate;

(c) The temporary nationality certificate, also issued by the Central Commercial Administration and only valid for certain voyages indicated in the certificate;

(d) The temporary nationality and registration certificate, issued by a Swedish consul on the authority of the Central Commercial Administration, and only valid for a fixed period specified in the certificate;

(e) The temporary nationality certificate, also issued by a Swedish consul, on the authority of the Central Commercial Administration, and only valid for a fixed period specified in the certificate;

(f) The temporary nationality certificate, which a Swedish consul may issue without special authority from the said administration, exclusively for the voyage to Sweden either direct or with a call at one intermediate port;

(g) The provisional nationality certificate, also issued by a Swedish consul.

As regards the certificates mentioned under (a) to (e) and the conditions to be fulfilled in order to obtain the issue thereof, see the attached translation of the Decree of October 18th, 1901, on the registration of Swedish vessels.\*

\* A copy of the above-mentioned laws and regulations has been deposited in the archives of the Secretariat, where it may be consulted.

\* A copy of this Decree has been deposited in the archives of the Secretariat, where it may be consulted.

C. The temporary nationality certificates mentioned under (f) are issued by Swedish consuls in accordance with the following provisions of Article 45, Section 1, of the Royal Decree of February 3rd, 1928, relating to legations and consulates :

" If, in a foreign port, a vessel has been built for the account of Swedes, or if a foreign vessel has become Swedish property therein, the consul may, after satisfying himself that, in accordance with the terms of Article 1 of the Maritime Law, the said vessel is to be regarded as Swedish and that the State whose flag the vessel last flew has no objection to the change of nationality, provide the vessel with a provisional nationality certificate valid for the voyage to a Swedish port, either direct or with a call at one intermediate port. Before the issue of such certificate for a vessel having a gross tonnage of 100 or more registered tons, an inspection must be carried out in accordance with the special provisions in order to make sure of the seaworthiness of the vessel.

" The consul shall immediately inform the Central Commercial Administration of the issue of the certificate and shall see to it that the expert or experts who have carried out the inspection for seaworthiness submit a report without delay to the said administration.

" The certificate referred to in the present article may not be issued by an unpaid vice-consul."

The provisional nationality certificate mentioned under (g) may be issued, if the nationality certificate of the vessel has been lost and there has been no time to submit to the Central Commercial Administration in advance the question of the issue of a new certificate. In such a case, the Swedish consul may, after entering in the consular register the statement relating to the loss of the document, issue a certificate attesting the nationality of the vessel, but only valid for its next voyage and containing the necessary particulars concerning the owner, the home port and the tonnage of the vessel. The consul must immediately advise the Central Commercial Administration of any steps of the kind mentioned above taken by him, and at the same time forward to the said administration a copy of the certificate issued.

As will be seen from the above, the certificates issued by the consuls are always of a provisional nature.

Every owner of a vessel must decide what place in the Kingdom shall constitute the vessel's home port and make a declaration to this effect, if the vessel is one which must be entered in the shipping register kept by the Central Commercial Administration, to the said authority or, if in the other case, to the municipal authority of the town chosen as the home port, or, again, if this place is situated in the country, to the district bailiff. If the owner of the vessel has omitted to make this declaration, the place of his Swedish domicile is deemed to be the vessel's home port.

The authorities of the home port are not informed of the issue of the nationality certificate either at home or abroad.

#### CZECHOSLOVAKIA.

[Translation.]

October 25th, 1930.

A. The conditions of the acquisition and loss of the right to fly the national flag (the Czechoslovak merchant flag) are laid down in the Law of April 15th, 1920 (Collection of Laws and Decrees No. 316). This right may only be acquired by vessels of at least 15 tons which belong to Czechoslovak nationals to the extent of at least two-thirds of their value, or to Czechoslovak corporations or commercial companies at least two-thirds of whose fully responsible partners are Czechoslovak nationals, or to Czechoslovak co-operative societies. The companies or corporations deemed to be Czechoslovak within the meaning of this provision are those which have their registered offices in the territory of the Czechoslovak Republic.

The nationality of the captain and crew and the place where the tonnage measurement of the vessel has been effected do not affect the acquisition of the right to fly the Czechoslovak merchant flag.

B. Any person desiring to acquire the right to fly the Czechoslovak merchant flag on his vessel must take an application to the Czechoslovak Navigation Office at Prague which, after satisfying itself that the conditions laid down in the Law are fulfilled, issues the ship's certificate to the applicant. If, however, the vessel has to be entered in the shipping register, the certificate is not issued until this has been done.

In urgent cases, permission to employ the Czechoslovak flag may be given by Czechoslovak consulates by means of a provisional document (temporary pass), if the conditions laid down in the law are fulfilled and if at the same time the issue of the certificate is applied for through the same consulate. This provisional document replaces the certificate for a year at the most. The consulate immediately informs the Czechoslovak Navigation Office at Prague of the issue of the provisional document, and at the same time submits to it the above-mentioned application regarding the issue of the certificate with all the annexed documents. At the same time, the consulate which has issued the temporary pass informs all the Czechoslovak consulates in the ports to be visited during the next voyage.



C. According to the Law of April 15th, 1920, regulating questions connected with the flag to be flown by Czechoslovak vessels and the registration of Czechoslovak vessels, all Czechoslovak vessels have their home port at Prague. The competent authority of the home port is therefore always the Czechoslovak Navigation Office at Prague. Consequently, question C has already been answered under B.

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**TURKEY.**

[Translation.]

December 1st, 1930.

A and B. 1. The tonnage measurement of vessels, and, therefore, the fixing of their tonnage, is effected by the merchant shipping authorities.

The harbour-master of the port may carry out the tonnage measurement of ships of less than 50 tons and issue provisional certificates against payment of the tonnage measurement fee. These certificates are exchanged by the competent merchant shipping authorities for tonnage-measurement certificates, provided they are found to be in good and due form.

The system of measuring the tonnage of vessels, which consists in fixing the tonnage of the part of the vessel situated below the upper deck, and also the method of making the deductions for the determination of the gross tonnage, are practically the same as those employed in the British mercantile marine. Articles 165 to 175 of the Regulations relating thereto are similar to Articles 77 to 80 of the British Merchant Shipping Act.

2. The formalities for the registration of Turkish vessels are carried out by the harbour-master's offices of the port in question, designated by the Department for Economic Affairs. A vessel belonging to a Turkish citizen may fly the national flag.

3. The right to engage in coasting trade is reserved, in accordance with Article 3 of the law relating thereto, to vessels flying the national flag. Foreigners may not be engaged as officers or seamen in Turkish vessels.

C. When a vessel is acquired abroad by a Turkish citizen, the certificate of nationality issued provisionally by the Turkish consul of the place takes the place of the ship's certificate, and must be registered in one of the Turkish ports specified for the purpose. These nationality certificates are only valid for a period of one year, which may be extended in case of necessity. The port in which the vessel is registered and that from which it leaves is called the home port.

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**UNION OF SOUTH AFRICA.**

November 5th, 1930.

In the absence of any special Union regulations, the flying of the national flag would be governed by the British Merchant Shipping Act of 1894.

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**URUGUAY.**

[Translation.]

July 8th, 1930.

A. *Nationality and Domicile or Registered Offices of the Owners.*—The owner must be a citizen of the country, except in the case of a concern established in the country and entered in the commercial register.

*Nationality of the Captain and Crew.*—The captain must be a citizen of the country, though it is only when the vessel is to be used for coasting trade that a third of the members of the crew must be citizens of the country.

*Registration* consists of the entry of the ship's licence in the register kept for that purpose at the Harbours Department.

*Tonnage.*—The only cases in which a simplified procedure is employed for the granting of the right to fly a merchant flag are those relating to small vessels used exclusively for traffic between Uruguayan and Brazilian ports in the Laguna Merin, and small yachts and pleasure craft belonging to Uruguayan citizens.

B. *Competent Authority at Home.*—Registrations are effected at the Harbours Department attached to the Ministry of War and Marine.

*Competent Authorities Abroad.*—These are the consulates-general and, in exceptional cases, district consulates.

*Conditions.*—Apart from the above-mentioned conditions regarding the nationality of the owners, captain and crew, and the residence of the owners, the following documents are required :

- (a) The title of ownership of the vessel ;
- (b) The tonnage measurement certificate, which must be drawn up by the Harbours Department ;
- (c) The foreign licence in the case of a vessel registered elsewhere, or a certificate issued by the consul of the same nationality as the vessel and attesting the change of flag.

C. The authorities abroad advise the home authorities by forwarding to the Ministry of War and Marine, through the Ministry for Foreign Affairs, a copy of the whole file to the Harbours Department.

The period of validity of the nationality certificate issued abroad is short, and lapses six months from the date on which it has been transmitted to the person concerned.

*Port of Registration.*—The only port of registration in the Republic is Montevideo.

The authorities who issue the documents advise the authorities at the port of registration by forwarding a copy of the file to the Harbours Department, which has direct jurisdiction over the port of Montevideo.

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## YUGOSLAVIA.

[*Translation.*]

May 28th, 1930.

A. In order to have the right to fly the national flag, every Yugoslav merchant vessel must first obtain a certificate and be entered in the shipping register or obtain a provisional certificate from a Yugoslav consulate.

Before a vessel can be entered in the shipping register, at least two-thirds of the owners must be Yugoslav nationals. Incorporated joint-stock companies which have been founded and have their registered offices in the Kingdom of Yugoslavia are regarded as Yugoslav.

The vessel's home port is entirely independent of the domicile of the owner or of the registered offices of the company, as these have the right to give any port situated in the territory of the Kingdom as the vessel's home port.

The owner of the vessel may choose as his domicile any part of the Kingdom or of a foreign country, but companies must have their registered offices in the Kingdom.

The captain, the officers and two-thirds of the crew of the vessel must be of Yugoslav nationality.

The question of tonnage measurement is governed by the Law of March 30th, 1922 (see *Official Journal*, No. 258, XXXIV, 1922).

B and C. The shipping authorities are competent to issue nationality certificates to Yugoslav vessels, and they keep special registers for each category of merchant vessels. The Merchant Shipping Department at Split is competent for ocean-going vessels, vessels engaged in the distant coasting trade, and yachts. The harbour-masters' offices at Sušak, Šibenik, Dubrovnik, Split and Meljinje are competent for vessels engaged in the short-distance coasting trade, each for his own province, according to the home port of these vessels.

When a vessel is acquired abroad, a provisional certificate is issued by the Yugoslav consulate. This certificate is valid until a final certificate issued by the competent authorities has been obtained; and the validity of the provisional certificate may not in any circumstances exceed one year.

On the occasion of the issue of a provisional certificate, the consulate immediately informs the competent Yugoslav authorities entrusted with the registration of vessels. For this purpose it attaches an application for the vessel to be entered in the registers, and names, in agreement with the applicant, the person domiciled in the country who will have to pay the costs of registration and the person to whom the certificate for the vessel is to be sent.

All the questions contained in the present questionnaire are governed by the Law of March 30th, 1922, relating to the registration of merchant vessels (see *Official Journal*, No. 251, of November 9th, 1922).

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<sup>2</sup> The texts of laws relating to the issue abroad of nationality certificates are deposited in the archives of the Secretariat, where they may be consulted.

10 AUG 1931

Official No. : 4<sup>th</sup> C. G. C. T. 1.

Geneva, June 17th, 1931.

LEAGUE OF NATIONS

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FOURTH GENERAL CONFERENCE  
ON COMMUNICATIONS AND TRANSIT

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PREPARATORY DOCUMENTS

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Volume I

CALENDAR REFORM

Series of League of Nations Publications

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VIII. TRANSIT  
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<sup>1</sup> See also the Analytical Table, page 26.

# REPORT OF THE PREPARATORY COMMITTEE.

*Adopted on June 13th, 1931.*

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## Section 1.

### TERMS OF REFERENCE OF THE PREPARATORY COMMITTEE AND SCOPE OF THE DISCUSSIONS IN THE CONFERENCE.

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1. At the request of the Advisory and Technical Committee for Communications and Transit, the Council of the League of Nations has placed on the agenda of the fourth General Conference on Communications and Transit the following question :

Examination of the Expediency from an Economic and Social Standpoint :

- (a) Of fixing movable feasts,
- (b) Of simplifying the Gregorian calendar.

2. To assist the Conference in its work, the Advisory and Technical Committee appointed this Committee with instructions to draw up a general report summarising the results of the enquiries made in the several countries into the problems submitted to the Conference, specifying the questions which the Conference would have to discuss and placing before it, as regards both its procedure and the actual subjects submitted for discussion, any suggestions that might facilitate its work.

3. As the Governments invited to the Conference are aware, questions relating to calendar reform have already been reported on by a Special Committee set up by the Advisory and Technical Committee for Communications and Transit (document A.33.1926.VIII). This Special Committee had carried out specific enquiries concerning the fixing of what are at present movable feasts ; as regards, however, the more general question of the possibility of establishing a perpetual calendar so as to admit of more exact comparison between years and between the different periods of any one year, the Special Committee was of opinion that, before there could be any international examination of the question, it was necessary to institute a more complete enquiry among representatives of the various interests concerned within the individual countries. For this reason, national committees or unofficial committees of enquiry, consisting of persons representative of the various interests concerned, have been constituted in the majority of countries. A list of these committees is appended to this report (see Annex).

4. At the date when this Preparatory Committee met, the reports of the following Committees had been received by the Secretary-General of the League of Nations : Belgian, Brazilian, British, French, German, Hungarian, Italian, Netherlands, Polish, Portuguese, Swedish, Swiss, United States of America, as well as a telegraphic communication from the Czechoslovak Committee.

The Preparatory Committee has been able to take into consideration the views expressed in these reports. The Committee has also received additional oral information from its members as to the work done in their respective countries and the state of public opinion there. Furthermore, with reference to the fixing of movable feasts, it has had before it the results of the enquiry undertaken by the Special Committee referred to above.

5. The Preparatory Committee sat at Geneva from June 8th to 13th, under the chairmanship of M. Djouritchitch, former Director-General of the Yugoslav State Railways and a member of the Advisory and Technical Committee. The Chairman was appointed by the latter Committee. It comprised the following :

- Professor Giuseppe ARMELLINI, Director of the Royal Astronomical Observatory at Rome, Rapporteur of the Italian National Committee on Calendar Reform ;
- M. André F. BERTAUT, Member of the Paris Chamber of Commerce, Member of the Permanent Committee of the French National Economic Council ;
- Professor Honorato DE CASTRO, Director-General of the Geographical, Cadastral and Statistical Institute, Madrid, nominated by the Spanish National Committee on Calendar Reform ;
- M. Rudolf FERNEGG, Secretary-General of the German Industrial Federation in Czechoslovakia, Member of the Czechoslovak National Committee on Calendar Reform ;

Captain Abel FONTOURA DA COSTA, Professor at the Naval School, Lisbon, Chairman of the Portuguese National Committee on Calendar Reform ;

M. T. KOBAYASHI, Secretary at the Japanese Ministry of Communications (Observer) ;

Dr. Charles F. MARVIN, United States Weather Bureau, Department of Agriculture, Washington, U.S.A., Vice-Chairman of the United States National Committee on Calendar Simplification ;<sup>1</sup>

Count Paul MORSTIN, Counsellor of Legation at the Permanent Delegation of Poland accredited to the League of Nations (Observer) ;

Dr. Hans PLATZER, Director at the Statistical Office of the Reich, Vice-Chairman of the German National Committee on Calendar Reform ;

M. Honorio ROIGT, Publicist, nominated by the Argentine National Committee on Calendar Reform ;

Sir Amherst SELBY-BIGGE, Bart., K.C.B., formerly Permanent Secretary to the Board of Education, Member of the British Calendar Reform Committee of Enquiry ;

M. E. R. SJÖSTRAND, Counsellor at the Central Administration on Social Questions ; Permanent Representative of the Swedish Government at the International Labour Office ;

M. Affonso A. DE VASCONCELLOS, nominated by the Brazilian National Committee on Calendar Reform ;

M. Vassa U. YOVANOVITCH, Vice-Chairman of the Chamber of Industry, Belgrade, Chairman of the Yugoslav National Committee on Calendar Reform.

Also present was M. STEUERNAGEL, Director of the Railway Company of the Reich, member of the Committee for the Unification of Transport Statistics of the Communications and Transit Organisation and member of the Statistical Sub-Committee of the International Railway Union which had previously conducted an enquiry into the calendar question.

6. At their own request, the following gave evidence before the Committee :

The Chief Rabbi Israel LEVI, President of the Israelite Committee concerning the Reform of the Calendar ;

Dr. HERTZ, Chief Rabbi of the United Hebrew Congregations of the British Empire ;

Rev. Dr. M. HYAMSON, President of the League for Safeguarding the Fixity of the Sabbath ;

Dr. Pinchas KOHN, delegate of the " Agudas Jisroël " ;

Dr. F. LEWENSTEIN, Chief Rabbi, Zurich ;

Professor Adolf KELLER, Secretary-General of the Œcumenical Council for Practical Christianity ;

Mr. A. S. MAXWELL, Mr. L. H. CHRISTIAN and Dr. J. NUSSBAUM, nominated by the General Conference of Seventh-Day Adventists ;

Miss ACHELIS, President of the World Calendar Association ;

Mr. Broughton RICHMOND, Secretary of the International Calendar Association ;

Mr. Moses B. COTSWORTH, Director of the International Fixed Calendar League.

7. The Committee felt that, as its members did not represent the Governments of their respective countries and did not look upon themselves as the spokesmen of the whole public opinion of those countries, it could not possibly express any preference or offer any opinion on such problems as may become controversial in the Conference. The delegates at the latter are alone competent to express with authority the views of the nations which they represent. The Committee held that this report should merely put before the Conference a systematic summary of the questions with which the latter would have to deal and the ideas advanced, more particularly in the report of national committees on those questions, and submit to the Conference any suggestions the Committee might think desirable as to the Conference's procedure.

8. The Preparatory Committee would remind the Conference that, in the view of the Advisory and Technical Committee, which requested the Council to place on the Conference's agenda the questions relating to the fixing of movable feasts and the simplification of the Gregorian calendar, questions of an essentially religious character which may arise out of the discussion of such matters should be left entirely to the decision of the religious authorities concerned. The Conference would be called upon simply to co-ordinate and sanction the views of the various lay circles concerned, by placing on record the opinion of Governments from a purely economic and social standpoint. The Committee has adhered to this principle. While its enquiries might cover the possible effects of any particular proposed reform on the economic and social life of certain religious communities, the Committee felt that neither it nor the Conference itself had any authority to consider whether any particular proposed reform was incompatible with any particular religious belief.

<sup>1</sup> The National Committee of the United States of America proposes that the adjustment of the date for the vernal equinox and the adoption of an improved leap year rule be examined by the fourth General Conference on Communications and Transit. A document giving the views of the National Committee on this subject will be circulated separately.

## Section 2.

### FIXING OF MOVABLE FEASTS.

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#### A. INCONVENIENCES OF THE PRESENT SITUATION AND PLANS FOR REFORM.

9. The report of the Special Committee of Enquiry into the Reform of the Calendar (document A.33.1926.VIII) gives a general survey of the disadvantages of the non-fixity of Easter and the other movable feasts. The date of Easter varies at present between March 22nd and April 25th — *i.e.*, over a period of thirty-five days, and involves a corresponding displacement of other movable festivals. This causes many inconveniences. School, university and judicial work and commercial interests, including those relating to transport, are particularly affected. The beginning of the scholastic year and some of its holidays are fixed, whereas others are movable. The same disadvantages apply to the judicial, administrative, industrial or popular holidays. Many commercial transactions and the transport services connected with them are severally prejudiced by the changing date of Easter; in particular, business dealing with textiles, articles of fashion and the hotel-keeping industry. In a general way, the organisation of traffic and transport is disturbed by the changing date of Easter.

While the Special Committee of Enquiry felt that no decision on what is essentially a religious question was practicable without an agreement among the various high religious authorities concerned, it suggested that Easter should be fixed for the Sunday following the second Saturday in April. Naturally, if the question of Easter is separated from that of the general reform of the calendar or, to be more accurate, that of establishing a perpetual calendar, the term "fixing" in the strict sense of the word could not be applied to the reform scheme; the expression "stabilisation" is the only correct term, because, if the calendar is not perpetual and if, as is almost universally considered, Easter must fall on a Sunday, its date will unavoidably oscillate within a seven-day period.

#### B. STATE OF PUBLIC OPINION.

10. With regard to the stabilisation of movable feasts, the Special Committee of Enquiry had already sought information from Governments and international organisations and, in its opinion, this information led to very definite conclusions.

11. The Special Committee consulted the International Chamber of Commerce which, in March 1923, adopted the following resolution confirmed by the resolution of its subsequent Congress in 1925:

"Whereas the Chambers of Commerce have repeatedly asserted both severally and collectively at different Congresses and Conferences that the adoption of a fixed date for Easter would be in the general interest, the Congress supports the recommendation of the London Chamber of Commerce and expresses the hope that the International Chamber of Commerce will take all necessary steps to bring about this long overdue reform."

The Congress held in Amsterdam in 1929 adopted the following resolution:

"The International Chamber of Commerce, earnestly desiring that the date of Easter should be fixed without delay and that the calendar should be reformed, reaffirms at its fifth congress in Amsterdam its previous resolutions at the first congress at London, 1921, the second congress at Rome, 1923, and the third congress at Brussels, 1925.

"The Chamber notes with satisfaction that several nations at the instance of the League of Nations have organised special committees to study calendar improvement and the fixing of Easter. The Chamber urges that other nations should follow that same practical course and that the League should convene an International Conference to secure without further delay the improvement for which the world's commerce has so often asked."

12. The Special Committee also collected information from all the administrations which are members of the International Railway Union. The railways of Czechoslovakia, Estonia, France, Germany, Great Britain, Greece, Hungary, Luxemburg, Poland, Spain (Madrid-Saragossa-Alicante), Switzerland and the Oriental railways pronounced in favour of the stabilisation of Easter. Since the close of the work of the Special Committee of Enquiry, this investigation has been continued by the International Railway Union.

The Union, of which all the principal European railway administrations and certain others are members, arrived at the following conclusions: If all the public holidays were fixed, the preparations for working and traffic on those holidays could be more regularly and simply

made ; Whitsuntide would always come under the summer time-table and not, as at present, sometimes before and sometimes after the change of time-table. Nearly all the administrations affected by the non-fixity of Easter think that the date should be fixed, and those which are not affected raise no objection. The administrations which are members of the International Railway Union are in favour of Easter being fixed on the Sunday following the second Saturday in April.

13. The Special Committee thought it particularly important to obtain on this question, in as many countries as possible, the views of persons concerned with education. A circular was accordingly sent to Governments. A great majority of Governments and educational authorities pronounced strongly in favour of the principle of stabilisation. In particular, secondary school authorities were of opinion that the stabilisation of Easter offered large advantages inasmuch as the curricula could remain unchanged from year to year and the school terms could be more satisfactorily distributed over the year.

Certain Governments stated that, in their view, the principle of fixity or stabilisation was entirely a matter for the religious authorities to decide. The German Government, referring to a previous reply in favour of stabilisation, said that, before giving its opinion, it had consulted the various circles affected, including education authorities. The proposal for stabilisation had also been approved by the Governments of all the countries of the German Reich. The Danish Government said that, while the question presented no great importance for institutions of higher education, the inspectors of secondary schools most strongly recommended the stabilisation of Easter in view of its effect on curricula and holidays. Similar views were expressed by the Estonian and Spanish Education Departments, the Ministries of Education of Finland and France, and the Governments of Canada, Czechoslovakia, Greece, India, the Netherlands, New Zealand, Roumania, Sweden and Switzerland.

14. The same general demand for the stabilisation of Easter is found in the reports received by the Preparatory Committee from most national committees. According to the German Committee's report, the necessity of stabilising Easter is unanimously recognised in Germany, even by those who are not in favour of a more extensive reform. This question is regarded as of the first importance and it is felt that it must be settled even if a general reform cannot be carried through. The Belgian Committee unanimously pronounces in favour of fixing Easter on the Sunday following the second Saturday in April. The United States Committee finds opinion favourable for a fixed Easter.

According to the French Committee's report, French opinion is particularly favourable to the stabilisation of Easter ; indeed, opinion is unanimous on this point. Religious circles refer to the decisions of religious authorities, scientific circles raise no objection, economic and administrative circles do not merely approve the suggestion but urge that it should be speedily carried into effect, whether or not they are in favour of a general reform of the calendar, and all request that Easter should be fixed on the second Sunday in April. The Committee accordingly submitted to the French Government an opinion entirely favourable to the stabilisation of Easter and expressed the desire that every effort should be made to carry out this suggestion without waiting for a general reform of the calendar.

15. According to the British Committee's report, public opinion in Great Britain attaches more importance to this question than to any of the other changes that calendar reform would involve. Any scheme that did not include this stabilisation would be badly received and if the other proposed changes are to be seriously considered, it is important that the public should have an assurance that the reform in connection with the movable feasts will be carried through. Moreover, an Act of Parliament was passed in 1928 fixing the date of Easter on the first Sunday after the second Saturday in April. This Act was to come into effect on a date to be fixed by Order-in-Council. It provided for a draft order to be submitted to both Houses and approved by them. Before the draft order was framed, consideration was to be given to the official views expressed by any Christian church or institution. The Hungarian National Committee held that the only question it was desirable to settle was that of the fixing of Easter and the other movable feasts. The Italian Committee, being opposed to a general reform of the calendar, expressed itself disinterested in the question of the stabilisation of Easter and preferred to abide by the decisions of the Roman Catholic Church.

16. The Netherlands National Committee's report advocates the fixing of Easter between April 8th and 15th — *i.e.*, either on the second Sunday or on the Sunday following the second Saturday in April. The Portuguese Committee is of opinion that, with regard to the stabilisation of Easter, the Portuguese public would accept the decision of the Holy See and of the other competent religious authorities.

17. According to the Swedish Committee's report, Swedish opinion generally seems favourable to the scheme for the stabilisation of Easter. With regard to the date it agrees to the Sunday following the second Saturday in April. The Swiss National Committee considers



that the stabilisation of Easter should be carried out whether in conjunction with the reform of the calendar or independently ; it regards the Sunday following the second Saturday in April as the best date. The Polish National Committee also expresses itself in favour of the stabilisation of Easter but suggests, in view of the Polish climate, that Easter should be fixed on the Sunday following the third Saturday in April.

### C. INFORMATION RECEIVED AS TO THE ATTITUDE OF RELIGIOUS AUTHORITIES.

18. At the close of its work, the Special Committee of Enquiry stated that the stabilisation of Easter was a reform on which the Christian religious communities would have to pronounce before anything decisive could be done.

19. On November 2nd, 1923, at the request of the Advisory and Technical Committee for Communications and Transit, a circular letter was sent out to the religious authorities. This circular referred to the resolution adopted by the Advisory and Technical Committee, sitting in conjunction with persons appointed by the Holy See, by His Holiness the Œcumenical Patriarch and by His Grace the Archbishop of Canterbury. The resolution stated that it was clear from the declarations made :

(1) That, from the point of view of dogma, strictly speaking, the idea of the reform of the calendar both with regard to the fixing of Easter and the more general question of the reform of the Gregorian calendar, did not meet with difficulties that could be considered insuperable ;

(2) That, in the opinion of all, no reform of the calendar and, in particular, no decision regarding the fixing of Easter — a question which is essentially a religious one — was practicable without an agreement between the various high religious authorities concerned ;

(3) That any disturbances in existing traditions, such as are involved by a reform, would not be justifiable and acceptable unless such changes were definitely demanded by public opinion for the improvement of public life and economic relations.

20. In reply to a circular letter, the Holy See, by means of a letter dated March 7th, 1924, from the Apostolic Nuncio at Berne, stated that any changes which might be made as regards the fixing of Easter, though they would meet with no difficulties from the point of view of dogma, would nevertheless involve the abandonment of deeply rooted traditions from which it would be neither legitimate nor desirable to depart except for weighty considerations connected with the general interest ; it added that it did not consider there was sufficient reason for changing what has been the perpetual usage of the Church handed down by immemorial tradition and sanctioned by Councils from early times. Even if, therefore, it were shown that some change in these traditions were demanded by the general good, the Holy See would not be prepared to consider the question except on the advice of an Œcumenical Council.

21. In a letter dated February 18th, 1924, the Œcumenical Patriarchate of Constantinople informed the Special Committee that the Pan-Orthodox Congress had decided at meetings held on May 23rd and June 5th, 1923, subject to a common agreement being reached between the Christian Churches, that the Orthodox Church would be prepared to pronounce in favour of the fixing of the date of Easter.

22. By a resolution of the Convocation of the Church of England dated April 28th, 1925, this Church expressed the opinion that, from the point of view of dogma, there was no reason why the Church should object to the choice of a fixed date for Easter ; but the Church of England could only consent to the proposed modification if it were accepted by the other Christian communities.

23. The Archbishop of York has since drawn the British Committee's attention to the following resolution adopted by the Upper House of the Canterbury Convocation and endorsed by the Upper House of the York Convocation :

“ Should a general agreement be arrived at in the Church on the object of the Easter Act of 1928, the Assembly is of opinion that the first Sunday following the second Saturday in April should be adopted as the date of Easter.”

24. The Federal Council of the Churches of Christ in America, the German Evangelical Church Committee and the Council of the Federation of Swiss Protestant Churches have shown themselves in favour of the reform or have declared themselves ready to accept it. The same opinion was forwarded to the Special Committee by the representative of eighty-two Protestant Churches or Federations of Churches in America, Austria, Belgium, Czechoslovakia, Denmark, France, Germany, Great Britain, Hungary, Italy, Lithuania, the Netherlands, Norway, Poland, Roumania, Spain, Sweden and Switzerland.

25. To sum up, as the Special Committee of Enquiry found, the majority of the Christian Churches have declared their willingness to accept the stabilisation of the date of Easter on condition that such a step should simultaneously be accepted by all the Churches.

26. The Holy See emphasised that it did not think it possible, without very serious reasons, to depart from a time-honoured religious tradition, but agreed that if it were demonstrated that the fixing of the date of Easter would be universally beneficial it was ready to submit the question to an Œcumenical Council.

27. The Preparatory Committee has thought it advisable to lay this information once more before the Conference, without prejudice to the observations it has submitted in Section I of the present report, with regard to the main object of the Conference's discussions on the exclusively economic and social aspects of the stabilisation of Easter and of the reform of the calendar.

28. In order to meet the views of the Holy See, the object of the Conference, so far as the stabilisation of Easter is concerned, would be to ascertain whether the Governments represented consider, from a purely civil point of view, that, in the words of the above-mentioned letter from the Holy See, the stabilisation of the date of Easter is or is not " demanded by the general good ".

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### Section 3.

## GENERAL REFORM OF THE CALENDAR.

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### A. DISADVANTAGES OF THE PRESENT CALENDAR AND SCHEMES FOR REFORM.

#### 1. DEFECTS OF THE PRESENT CALENDAR.

29. The Special Committee of Enquiry pointed out the main defects, which, moreover seem to be undisputed, of the present Gregorian calendar. It drew attention to :

(a) *The Inequality in the Length of the Divisions of the Year.*

The divisions of the year, the months, quarters and half-years, are of unequal length. The months contain from 28 to 31 days. As a result, the number of days in the quarters are respectively 90 (91 in a leap year), 91, 92 and 93. The first half-year, therefore, contains two or three days less than the second.

Another result is that the months, quarters and half-years do not consist of a whole number of weeks. The weeks are usually split at the beginning and end of months, quarters, half-years and years.

The unequal length of months, quarters and half-years is a cause of confusion and uncertainty in economic relations, in the arrangement of all statistics and especially statistics concerning trade production, sales, transport accountancy, etc.

30. The fact that the months contain 28, 29, 30 or 31 days is responsible for the fact that all calculations of salaries, interest, insurance, pensions, leases and rent which are fixed on a monthly, quarterly, or half-yearly basis are inaccurate and do not correspond with one-twelfth, one-quarter or half of the year. In order to make daily calculations in current accounts with comparative certainty and speed, banks are obliged to make constant use of special tables. Moreover, in most of the countries of Europe, the unequal length of the months has led financial concerns to calculate deposit and current accounts on the basis of a year of twelve months of thirty days, or a year of 360 days, whereas in the discounting of bills the year is still reckoned at its exact number of days. Finally, the months, quarters and half-years do not contain an exact number of weeks.

(b) *Want of Fixity in the Calendar.*

31. The Calendar is not perpetual ; it changes each years. The year, in fact, consists of 52 weeks plus one or two days. Thus, if first day of the year is a Sunday, in the following year it is a Monday (or even a Tuesday in the case of a leap year). Were it not for the extra day of leap year the calendar would only have seven different alternatives corresponding to the seven days of the week on which the year can begin ; owing, however, to the extra day of the leap year, the exact reproduction of the calendar of any year only takes place once every 28 years. Thus, the day of the month falls each year on a different day of the week from the one on which it fell the previous year.

32. In consequence :

(a) The dates of periodical events can never be fixed with precision. Such a date can, in fact, only be determined in two ways — either by the day of the month (August 13th for example) or by the day of the week in the month (the third Tuesday in October). With the present Gregorian calendar, this double method is not precise, for, if the day of the month is fixed for periodical events, this day may sometimes fall on a Sunday or general holiday.

Each year, therefore, the authorities have to make a special decision, as for instance, for the meeting of a tribunal, the convocation of Parliament, the dates of holidays, fairs, markets, administrative assemblies, the fixing of summer-time, etc. On the other hand, if a special day (the first Monday in the month, for example) is fixed for these events, other difficulties arise, as the date corresponding to this day varies continually from month to month and from year to year.

If the calendar were perpetual, the dates of these events could be fixed once for all. They would fall on the same dates as well as on the same days of the week.

(b) The position of the weeks in the quarters varies each year — that is to say, the weeks overlap the divisions of a year in a different way each time, and complications accordingly arise in the reckoning of accounts, statistics, etc.

(c) The first, fifteenth or last days of a month are sometimes Sundays.<sup>1</sup> When the first of a month falls on a Sunday, it is not possible to revise and verify immediately all the work of the previous months and quarters and to establish without delay the various comparisons which are essential from a business point of view. This is a serious disadvantage in respect of accounts and statistics. The fifteenth and the last day of the month are very important dates as regards the falling due and the payment of rents. When these dates are Sundays, the payments must be postponed or advanced.

(d) Finally — and this is perhaps the greatest drawback from a statistical and commercial point of view — since the various days of the week are not of the same value as regards the volume of trade, and the years and the months do not from year to year include the same number of individual weekdays, there can be no genuine statistical comparison between one year and another, while the various subdivisions of the year itself — the half-years, quarters and months — are likewise incapable of comparison.

## 2. SCHEMES OF REFORM.

### (a) *Equalisation of the Quarters without establishing a Perpetual Calendar.*

33. In order to remedy, to a certain extent, the inequality in the length of the divisions of the year, without, however, instituting an unchanging calendar, it was proposed simply to carry out an approximate equalisation of the quarters. Each quarter would consist of two months of 30 days each and one month of 31 days and one of the quarters would include a "supplementary" day<sup>2</sup>. It is contended by the promoters of this scheme that regularisation of the quarters would bring very real advantages as regards statistics of quarterly transactions, such as returns of stock-exchange transactions, bank accounts, etc., and for the comparison of statistics of meteorological averages. It would also simplify calculations to determine the day of the week on which a given date in a month falls in the course of a year. A less perfect and still simpler reform of this kind was proposed. It was suggested that the 31st day of August should be transferred to the end of February of the following year. These proposed reforms involve less disturbance of tradition than others. They involve only the difficulties inherent in any reform of whatever nature. The only question which they raise and which, indeed, has been raised, is whether their advantages would justify a change.

### (b) *Perpetual Calendar involving 364 Days bearing Weekday Names, plus one "Supplementary" Day (Two in Leap Years) not bearing the Name of a Weekday.*

34. As already explained, the reason why the calendar is not perpetual is that a year consists of 52 weeks plus 1 day (or 2 days in leap year). This difficulty could be remedied by reducing ordinary years to 364 days and adding a "supplementary" week in certain years; but such a calendar — proposed by certain representatives of religious authorities opposed to a break in the continuity of the week — would, in the opinion of the Special Committee of Enquiry — and the Preparatory Committee acted in conformity with that opinion — be inferior to the existing calendar and cannot be considered at all. Any scheme of reform instituting a perpetual calendar without changing the length of the Gregorian year thus necessarily means that one day in the year (or two in leap years) must be regarded as "supplementary". The "supplementary" day which would be added annually to the days of the 52 weeks might be inserted at the end of the year (December 31st, if the 12-month year were kept, when quarters would be 31, 30 and 30 days long respectively, or December 29th, if 13 months of 28 days were adopted. The "supplementary" day in leap years would be inserted at a date to be selected).

35. Eliminating, as was done by the Special Committee, any scheme which changes the beginning of the year or divides the year into months of considerably different length, the Special Committee and National Committees, in considering calendar proposals involving

<sup>1</sup> The Preparatory Committee notes that this disadvantage subsists and seems even to be aggravated in certain plans for calendar reform. Thus, in the plan of the International Fixed Calendar League, all months begin on a Sunday and in the plan favoured by the Brazilian Committee they all end on a Sunday. The supporters of this scheme states however, that in case of a perpetual calendar, this state of affairs would not really give rise to such serious inconveniences, as business would necessarily and easily adapt itself to a state of affairs which would always remain the same.

<sup>2</sup> An additional day would be added to one of the quarters in leap years.

the introduction of a " supplementary " day or days, devoted their consideration exclusively to the two following plans of reform :

(1) *Thirteen Months of Twenty-eight Days.* — The advantages claimed for this scheme as compared with the present calendar are as follows :

(1) Each month has the same number of days ; each month has the same number of days of the same name ; each month has, with the exception of civil and religious holidays, the same number of working days.

(2) Each month has the same number of whole weeks and no month contains fractions of a week at the beginning or the end. Each quarter has thirteen weeks.

(3) Discrepancies between the days of the week and the dates in successive months and years are avoided. It is easier to fix permanent dates for public meetings, law court sessions, educational courses, etc.

(4) The periods for which monthly salaries are calculated correspond with the periods of expenditure. Family and business budgets are simplified.

(5) The months are all comparable with the exception of holidays, and, since they contain an equal number of days and no fractions of weeks, require no adjustment. Wage payments for parts of weeks (in the case of monthly salaries) are avoided. Office work is considerably lessened and economy can be made when preparing book-keeping or statistical reports, in private or public business and certain scientific occupations, and in reckoning servants' wages.

36. It is contended, on the other hand, that this plan would involve the following disadvantages :

(1) The number thirteen is not divisible by 2, 3, 4 or 6.

(2) The quarters and half-years (at present comprising three months and six months respectively) would not contain a whole number of months.

(3) There would be thirteen monthly business balancings and thirteen monthly payments instead of twelve, involving to a certain extent increased work in connection with book-keeping and payments.

(4) During the period of transition, this plan would mean a greater number of adjustments in comparing statistics and dates than would be necessary under the twelve-month system.

37. (2) *Twelve Months each containing Thirty or Thirty-one Days.* — In this scheme, the twelve months are retained, each quarter consisting — subject to the above-mentioned addition of one or more supplementary days — of two months of thirty days and one month of thirty-one days.

The advantages claimed for this system as compared with the present calendar are as follows :

(1) The half-years and quarters are equal and have a whole number of months and weeks — *i.e.*, thirteen weeks in the quarter.

(2) Quarters and half-years, with the exception of civil and religious holidays, can be statistically compared without adjustments for varying lengths.

(3) This system would involve little disturbance in established traditions and would involve less difficulty in the period of transition.

38. On the other hand, the following disadvantages have been pointed out :

(1) The months are not of the same length and are not directly comparable. Moreover, they differ as to the number and economic value of individual weekdays — *e.g.*, one may have five Saturdays and another five Sundays.

(2) It would seem less essential to equalise the half-years and quarters than the months, since accountings for these periods are less frequent and less important than monthly accountings.

(3) The months do not contain a complete number of weeks, thus involving, for instance, payments for fractions of a week at the end of a month where payments are made monthly.

(4) The dates do not fall on the same day of the week in each month.

## B. STATE OF PUBLIC OPINION.

39. The following is a summary of public opinion in the several countries so far as it can be collected from the reports of National Committees : in some cases, the opinion recorded is that of particular circles or interests rather than that of the public at large.

Most of the reports indicate the methods of work of the National Committees, whereas others do not contain any indication as to how the Committees have arrived at their conclusions.

The German Committee made a very extensive enquiry to ascertain the attitude of the German people towards calendar reform and obtained replies from the principal organisations of industry, commerce and transport, from the big industrial leaders and from the Chambers of Commerce. The Association of German Teachers, the Association of Civil Servants, the Organisation of Commercial Employees and labour organisations have also stated their opinion on the question.

The Brazilian Committee set up four Sub-Committees, each of which was entrusted with the examination of one or more aspects of the question. These Sub-Committees were composed of persons especially competent to represent the different authorities or groups concerned ; such as, for instance : the Commercial Association of Rio de Janeiro, the Centre for Commerce and Industry, the Banking Association of Rio de Janeiro, the Associations of Commercial Employees, the Geographical and Agricultural Society, the Society of Engineers, women's associations, the Railway Accountancy Office, the Statistical and Meteorological Services, the Navigation Office, the Astronomical Observatory and labour organisations.

The British Committee drafted a memorandum summarising the principal disadvantages of the Gregorian calendar and explaining the two possible methods of reform and their advantages and disadvantages. A questionnaire accompanied this memorandum and both documents were sent to 601 organisations representing industry, commerce and various professions, including the chambers of commerce, rotary clubs and women's associations.

The United States Committee conducted three enquiries and drew up two reports, the first in 1929 and the second in 1931. Questionnaires were sent to a large number of State or local organisations representing industry, commerce and finance, science, public education, labour, journalism, agriculture and social interests. From these organisations, 1,433 replies were received. Further, a considerable number of individuals in America, distinguished in different fields of business and professional life have stated their opinions. The enquiry also asked for an opinion on the desirability for the United States of America to participate in an international conference on the question of calendar reform.

The French Committee undertook an enquiry into the attitude of the religious authorities (including the Protestant Federation of France and Israelite communities), of scientific circles ; Bureau des Longitudes, Academy of Science and Astronomical Society of France, and of economic organisations representing the interests of producers and consumers ; of city and country life, of transport and tourism and of labour organisations. The Confederation of Intellectual Workers was also consulted.

The Hungarian Committee first drew up a report explaining the question of calendar reform and the work done by the League of Nations in this matter, reproducing also three plans for calendar reform which had been selected by the Committee of Enquiry. This report was sent to religious authorities and to organisations representing economic interests, banking, transport (inland and maritime navigation, aviation, railways, post, telegraph and telephone services) to the automobile club and the touring club, asking them for an opinion on the matter.

The Netherlands Committee issued a circular letter to which two comprehensive questionnaires were attached. This letter was sent to organisations representing industry and commerce, navigation, railways and tramways, banks, insurance companies, educational authorities, the Press, labour and women in charge of households.

The Polish Committee tried to ascertain through lectures, meetings and the circulation of questionnaires, the opinion of institutions and organisations representing the majority of the populations interested in the question. Among the organisations consulted were the following : the Institute for Scientific Organisation of Labour, the Polish Committee on Standardisation, the Chamber of Commerce and Industry and the Warsaw Observatory. On the other hand, representatives of all the confessions in Poland had the opportunity of giving their opinion.

The Portuguese Committee first drew up a report explaining the work done by the League of Nations in order to educate public opinion. It then organised lectures and published articles in the Press for the same purpose. Finally, a questionnaire was sent out to 299 institutions and organisations representing public administrations, scientific and educational institutions, commercial, industrial and agricultural interests, finance, journalism, religious authorities and organisations, women's associations and labour organisations.

The Swiss Committee sent out a circular letter with an explanatory report and a questionnaire to different authorities and organisations, especially to ecclesiastical and political authorities, representatives of science and schools, commercial and industrial associations, arts and crafts, agriculture, banks, insurance associations, transport undertakings, hotel businesses, employers and employees.

The International Railway Union made two enquiries among the administrations which form the Union : the first in May 1930 and the second at the beginning of 1931. 22 administrations communicated their opinions.

#### 1. DESIRABILITY OF A REFORM REMEDYING THE DISADVANTAGES OF THE EXISTING CALENDAR.

The disadvantages of the existing calendar are not disputed in any report, but, as regards public opinion in their respective countries, it would appear from the reports submitted by the French, British and Italian Committees, as well as from oral information given by the representative of the Argentine National Committee to the Preparatory Committee, that public opinion as a whole does not seem keenly interested in calendar reform.

The British Committee finds that public opinion, whether general or particular, is little interested in plans of calendar reform, apart from the stabilisation of Easter.

All the members of the Italian Committee including the member representing overland transport and inland navigation, while considering that Italy cannot remain outside a movement for the simplification of the calendar if such a movement is of an international character, thinks that the time is not yet favourable for carrying out this reform and that its advantages still appear problematical and its disadvantages serious. On the other hand, according to the German Committee's report, the necessity for a reform of the existing calendar is generally recognised in Germany. Among the replies received from the organisations consulted by that committee, nine-tenths are in favour of calendar reform, and these organisations in general display a keen interest in the question. The work of the United States Committee gives a similar impression as regards the interest taken in the question of calendar reform by the American public. Of the 1,433 replies received to the questionnaire, 80.5 per cent are in favour of calendar simplification and 82 per cent declared themselves in favour of the participation of the United States in an international conference on calendar reform. The Swedish Committee considers that it is essential to proceed cautiously in the matter and that no change should be made in the existing system unless it is to bring definite and important advantages. The Committee is of opinion, however, that the enquiries undertaken must be carried on with a view to elucidating all aspects of the problem. The Swiss National Committee is of opinion that the simplification of the Gregorian calendar is both desirable and expedient, so long as no more changes are made in the habits and customs of the people than are really necessary. Of the replies received, 93 per cent are in favour of a simplified calendar. The Portuguese Committee states that, although the public is somewhat apathetic with regard to the question, the replies received to the questionnaire which it sent out show, in its opinion, that the Portuguese public as a whole is favourable to calendar reform. Lastly, the Brazilian Committee's report seems to show that public opinion in Brazil is favourable to reform. The International Railway Union reports that the great majority of the administrations were in favour of a reform, but that opinions were divided as to the solution to be adopted.

## 2. EQUALISATION OF QUARTERS WITHOUT ESTABLISHMENT OF A PERPETUAL CALENDAR.

40. The French Committee sets aside any scheme of reform which would not make the calendar perpetual, as it considers that a universal and perpetual calendar alone would justify a reform. On the other hand, the British and Argentine Committees consider that, as public opinion in Great Britain and the Argentine is not prepared for an extensive change such as would be involved by the establishment of a perpetual calendar, it would be desirable to study a plan involving only the equalisation of the quarters. In the case of there being a universal movement in favour of the adoption of one blank day in normal years and two blank days in leap years, the Argentine Committee would prefer a plan for a twelve-month calendar with four equal quarters. The Hungarian Committee is in favour of a plan for the equalisation of quarters as, in its opinion, it would remove the most serious drawbacks of the Gregorian calendar, while the proposals involving the introduction of "supplementary" days seem to it contrary to tradition and to religious sentiment. The Italian Committee similarly recommends that the reform at the most should be confined to rounding off the number of days composing each month, so as to have three equal quarters of 91 days and one supplementary quarter of 92 days. The Netherlands Committee is also opposed to "supplementary" days and states that it has no objection to the equalisation of the quarters. The Swiss Committee thinks that if a perpetual calendar were not established — which it would consider a great disadvantage — a relative equalisation of the twelve months of the year would still be desirable.

## 3. ESTABLISHMENT OF A PERPETUAL CALENDAR.

41. The reports of the Committees of Belgium, Brazil, Czechoslovakia, France, Germany, Poland, Portugal, Switzerland and the United States of America think the establishment of a perpetual calendar desirable. The Committees of Hungary, Italy and the Netherlands declare themselves opposed to the institution of a perpetual calendar involving the introduction of "supplementary" days.

42. The opposition to the introduction of "supplementary" days was particularly marked in the case of two religious confessions, whose representatives were heard by the Preparatory Committee — viz., the Jews and the Seventh-Day Adventists. These communities consider that this reform would result in serious drawbacks from the economic and social points of view. The Jewish religious authorities, for example, although keeping for religious purposes a separate calendar of their own and believing that the Sabbath should always be celebrated on the seventh day of each week in uninterrupted succession, the disturbance made in the regular cycle of weeks by the introduction of one or two "supplementary" days would have the result that the Sabbath would no longer always coincide with the Saturday of the civil calendar, as is the case at present but would have to be celebrated in turn on different days of the week. It would be the same for the Seventh-Day Adventists. The representatives of Jewish circles declare that this situation would render the observance of

the Sabbath difficult to reconcile with social requirements such as school attendance for children, and economic necessities such as the exercise of professions, etc.<sup>1</sup>

The representatives of the Seventh-Day Adventists also consider that a reform involving days outside the week would have serious consequences for the religious groups from the point of view of the strict observance of the seventh day.

43. The advocates of the institution of a perpetual calendar, on the other hand, urge that the drawbacks from the economic and social points of view which would be suffered by a minority as a result of the reform, should not prevail against the advantages which such a reform might have for a large majority. They also pointed out that, in their opinion, the fears expressed above were perhaps exaggerated; that, for example, in the case of the Jews, the obligation of school attendance on Saturdays, which at present exists in a certain number of countries, has not given rise to any protest on the part of the Jews in these countries and that, as regards the exercise of professions, if the Sabbath did not necessarily coincide with Saturday, the situation would not be materially different for Jews from that which existed a few years ago when business activities were pursued on Saturdays in the same way as on other days.

44. The two plans of reform implying the principle of the introduction of "supplementary" days have met with a reception in the different countries which may be described as follows:

45. (1) *Thirteen Months of Twenty-eight Days.* — In Germany, in the course of the enquiries undertaken by the German National Committee, one-third of the replies received were in favour of this proposal. The Committee adds that it has not been possible to appraise the relative value of the replies received in favour of one or other of the two proposals, owing to the disproportion which exists between the bodies consulted from the point of view of their importance. The German railways particularly, as well as many other large business concerns, declared themselves to be in favour of the thirteen-month plan.

In the United States of America the enquiries conducted by the National Committee elicited a majority of replies in favour of this plan. The Committee observed that a considerable number of commercial and industrial undertakings in the United States and other countries used auxiliary calendars to remedy the drawbacks of the present calendar and that in most cases these calendars divided the year into thirteen months of 28 days. The adoption of these auxiliary calendars, despite the drawback for these undertakings of having to use two calendars — since they need the ordinary calendar for their outside transactions — seems to show the superiority of the thirteen-month calendar from the economic point of view. The number of undertakings using such a calendar is said to be rapidly increasing. Nevertheless, the adoption of auxiliary calendars can only provide a solution for very big undertakings, small ones being unable to bear the drawbacks and expenses involved by the use of two calendars. All the replies received from undertakings having made practical use of a thirteen-month calendar are favourable to this system; and the great majority of these undertakings ask for its universal adoption in the form of a perpetual calendar.

The French Committee has recommended that the question of the total reform of the calendar at present in use should be submitted to public opinion in France, as it has been in other countries, through their National Committees and that active propaganda should be carried on in order to enlighten the public as to the benefits of such reform, which could only be carried out with the unanimous approval of all civilised countries. It expressed its preference for a total reconstruction of the Gregorian calendar and the adoption of a thirteen-month calendar which it considers to be the most logical solution.

Similarly, the Portuguese Committee has declared in favour of a year of thirteen months.

The same applies to the Committees of Poland and Czechoslovakia. The Polish Committee, in particular, expressed the opinion that the thirteen-month plan distinguished itself by its clearness and simplicity, which would facilitate international relations, and that the advantages of this plan would justify the reform of the calendar and the sacrifices which large masses of the population opposed to reform would be called upon to make. The Brazilian National Committee has declared itself to be entirely in favour of this plan, which conforms to the tradition of Auguste Comte — who, in 1849, proposed his historical calendar of 13 months of 28 days — which tradition is particularly alive in Brazil. The Belgian and Swiss Committees, on the other hand, while being favourable to a perpetual calendar, are opposed to a thirteen-month calendar.

In the course of the studies undertaken by the International Railway Union, the majority of the railway administrations were in favour of a thirteen-month calendar, especially the railways of Germany, Great Britain, Italy and Poland.

(2) *Twelve Months of 30 or 31 Days each.* — The German Committee noted that, in Germany, subject to the reservation indicated above, the greater part of the replies given in the course of its investigations were in favour of this proposal. The Belgian Committee also supports this plan. The Swiss Committee proposes that the year should consist of twelve months divided into four quarters, the first three of 91 days (31, 30, 30) and the last of 92 days (by the insertion of one "supplementary" day); the three hundred and sixty-fifth day of the year would follow December 30th and would be called Silvester; the leap-year day would follow June 30th and the year would always begin on Sunday, January 1st.

The French railways expressed a similar opinion in connection with the enquiry conducted by the International Railway Union.

<sup>1</sup> It was urged on behalf of the Jews that the employer of labour might have to dispense with the services of his Jewish employees on the weekday coinciding with the Jewish Sabbath. The employee would have to sacrifice his wages on that day; and the difficulty of finding employment would be greatly increased for the Jewish applicant.

### C. ATTITUDE OF THE RELIGIOUS AUTHORITIES.

46. The communication made by the Holy See, in reply to an enquiry on the part of the Advisory and Technical Committee for Communications and Transit, which has been mentioned above, appears to refer, not only to the question of the stabilisation of Easter, but also to the general reform of the calendar. The statements made to the Special Committee of Enquiry appear to show, however, that the general reform of the calendar, apart from the stabilisation of Easter, would perhaps not be regarded by the Holy See as of such a pre-eminently religious nature as the question of the stabilisation of movable feasts.

The reply from the Œcumenical Patriarchate to the same enquiry states that the Œcumenical Patriarchate will agree to the reform if it is accepted by all the other Christian churches. Similarly, the Archbishop of York, in a letter dated February 12th, 1931, addressed to the British Committee, stated that he did not think it was possible to say that the opinion of the Anglican Church on the reform of the calendar was accurately known, but that he was nevertheless convinced that no objection would be raised on the Anglican side, provided it was certain that the adoption of this reform would not lead to divergent practices among Christians.

The opinion of the Israelite groups and the Seventh-Day Adventist group on the reform has already been given in connection with the economic and social repercussions of the reform in the case of those communities.

The Preparatory Committee has received from the Federal Council of the Churches of Christ in America a communication to the effect that, in the Federal Council's opinion, the proposals for the simplification of the calendar do not involve any question of morality or religion and are outside the sphere of action of the Federal Council. With the co-operation of this Council, the National Committee subsequently sent a questionnaire to the ministers at the head of the various sects, asking for their personal opinions. Out of 1,500 replies received, not including the Seventh-Day Adventists and Seventh-Day Baptists, who are opposed to the reform, 75 per cent were in favour of the simplification of the calendar and the adoption of a fixed perpetual calendar.

The foregoing particulars in regard to the attitude of the religious authorities are submitted to the fourth general Conference on Communications and Transit, in the same way as those concerning the attitude of the religious authorities towards the stabilisation of Easter, without prejudice to the observations submitted by the Preparatory Committee at the beginning of its report with regard to the scope of the discussions of the Conference.

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## Section 4.

### PROCEDURE OF THE FOURTH GENERAL CONFERENCE.

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47. The Advisory and Technical Committee for Communications and Transit asked the Preparatory Committee to submit to the Conference helpful suggestions in regard to the procedure to be followed by the latter in discussing the questions dealt with in the present report.

Like the Advisory and Technical Committee, the Preparatory Committee considers that, in examining problems which have rarely been the subject of official international discussion, and are thus likely to be of a somewhat delicate nature, it would be expedient for the Conference to sit in committee from the outset, according to the precedent adopted by the first general Conference on Communications and Transit, for the examination of certain questions. The discussions would be freer, and the opinions expressed would not bind the Governments immediately. The results of the discussions in committee would then be communicated to the Conference at a plenary meeting, and at the second stage the latter might with advantage set up a small committee to consider the points on which an agreement could be reached between the Governments, and the form which it might take.

The Preparatory Committee would suggest to the Conference sitting in committee that the question of the economic and social aspects of the stabilisation of Easter and the question of the economic and social aspects of the general reform of the calendar should be examined separately and consecutively. As regards the general reform of the calendar, it might perhaps be advisable to discuss the following points separately and in turn: (1) the drawbacks of the present calendar; (2) the principle of the establishment of a perpetual calendar and the respective merits of the perpetual calendar and of the calendar simply involving the equalisation of the quarters, without the introduction of "supplementary" days; (3) the respective advantages and inconveniences of the two definite plans for a perpetual calendar — *i.e.*, a year of thirteen months and a year of twelve months.

In the Preparatory Committee's opinion it would also be advantageous for the Conference, during its discussions, to distinguish between two groups of questions — namely, those relating to the desirability of the reform of the calendar either in general or according to some particular plan, and those questions concerning the possibility of the immediate introduction of the reform.

At the conclusion of its work, the Conference will have to consider what action could be taken on the results of its discussions as regards decisions within the competence of the religious authorities. In accordance with the decision of the Council of the League, the religious authorities concerned will have the right to be represented at the Conference by observers.



It would nevertheless be useful if the Conference could make suggestions as to the manner in which — possibly following the procedure of the Advisory and Technical Committee with regard to the work of the Special Committee of Enquiry — the observations or decisions of the religious authorities concerned might be transmitted to Governments, in order that the competent organs of the League might assist the Governments, immediately upon receipt of communications from the religious authorities, to take such action as, from a non-religious point of view, may be involved by the decisions of the Conference.

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Annex.

[4th/C.G.C.T./C.P.9.]

LIST OF MEMBERS OF NATIONAL COMMITTEES OF ENQUIRY.

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ARGENTINE.

- M. LEGUIZAMON, representing overland transport interests.
- M. Alberto DODERO, shipowner.
- M. ALMONACID, Director of the Argentine Air Post Company.
- M. Luis COLOMBO, Chairman of the Argentine Industrial Union.
- M. Nicolas BRUZZONE, Vice-Chairman of the Argentine Rural Society.
- M. MENDEZ CASARIEGO, Chairman of the Federation of Commerce and Industry.
- M. Alejandro SHAW, Co-Director of the Tornquist Bank.
- M. Honorio ROIGT, publicist.
- M. Jean BAYETTO, Professor of State Accountancy, Secretary-General of the Academy of Economic Science, Secretary-General of the Argentine Social Museum.
- M. Alejandro UNSAIN, Director of the National Labour Department, formerly representative of the Argentine Government at the International Labour Office.
- M. Ernesto NELSON, Inspector of Secondary-school Instruction.
- M. Clodomiro ZAVALIA, formerly Federal Judge.
- M. Alejandro BUNGE, formerly Director-General of Statistics.

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BELGIUM.

- M. P. STROOBANT, President of the science class at the Academy, Director of the Royal Observatory of Belgium, Professor at the University of Brussels, *Chairman*.
- M. ALLIAUME, Professor at the University of Louvain.
- M. A. BAAR, engineer.
- M. DEHALU, Administrator-Inspector at the University of Liège.
- M. F. MOREAU, Astronomer at the Royal Observatory of Belgium, *Secretary*.

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BOLIVIA.

- M. Emilio VILLANUEVA, Minister of Education, *Chairman*.
  - M. Roberto ZAPATA, Director of the Department of Labour.
  - M. Victor MUNOZ REYES, Director of the Budget and Statistical Department.
  - M. Arturo PENARANDA, Director-General of Agriculture.
  - M. R. P. DESCOTES, Director of the National Observatory.
  - M. José Aguirre ACHA, Counsellor at the Ministry for Foreign Affairs.
  - M. Fausto CARRASCO, Director of Health.
  - M. Alberto PALACIOS, President of the Central Bank.
  - M. Moises ORMACHEA.
  - M. Juan CABRERA GARCIA, President of the Press Association.
  - Mme. Maria Luisa BUSTAMANTE DE URIOSTE, President of the National Council of Women.
  - M. Antonio HARTMANN, Rector of the University of St. André.
  - M. Augusto SIEFERT, Bishop of La Paz.
  - M. Alberto DE VILLEGAS, Director of the National Museum.
  - M. Nicasio CARDOZO, Chairman of the League of Commercial Employees.
  - M. Rafael SALVATIERRA, President of the Labour Federation.
  - M. Arturo POSNANSKY, Professor of Archæology.
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BRAZIL.

Dr. Octavio MANGABEIRA, *Honorary Chairman*.  
Dr. Amaro DA SILVEIRA, *Chairman*.  
Dr. Julio Eduardo DA SILVA ARAUJO, *Vice-Chairman*.  
M. Fortunato BULCÃO, *Vice-Chairman*.  
Mme. Jeronyma MESQUITA, of the National Council of Women.  
Mlle. Bertha LUTZ, of the Brazilian Federation of Feminine Progress.  
Mme. Cacilda MARTINS, National Council of Women.  
Mlle. Carmen PORTINHO, of the University Union of Women.  
Dr. Bulhões DE CARVALHO, Director of the Department of Statistics.  
Dr. Sampaio FERRAZ, Director of the Meteorological Service.  
Dr. Sodré DA GAMA, Director of the Astronomical Observatory.  
Dr. Lobato KELLER.  
Dr. Mario MARTINS COSTA, of the Accountancy Service of the Federal Railways.  
Dr. F. V. de Miranda CARVALHO.  
M. Tasso B. GARCIA PAULA, representative of the Labour Organisation.  
M. Hildebrando Gomes BARRETO.  
Dr. João Guilherme-HESSE.  
M. Lupercio HOPPE.  
M. José DE AVELLAR WERNECK.  
Colonel Alipio DE PRINIO, Director of the Military Geographical Service.  
Dr. Edgard ROQUETTE PINTO, Director of the National Museum.  
Admiral Julio Cesar DE NORONHA, Director of Navigation.  
Dr. Eder JANSEN DE MELLO, of the National Department of Public Health.

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CHILE.

M. Armando QUEZADA ACHARAN, Rector of the University of Chile, *Chairman*.  
M. Luis BARROS BORGONO, Director of the Caisse de Crédit hypothécaire.  
M. Guillermo SUBERCASEAUX, former Minister of Finance.  
M. Tomas LAWRENCE, Inspector-General of Labour.  
M. Oscar FENNER, Director of *La Nación*.  
M. Carlos A. ILLANES, Director of the Department of Public Health.  
M. Rosauro CASTRO, Director of the National Observatory.  
M. Raul SIMON, Director-General of Taxes.  
M. Luis LARRAIN PRIETO, President of the National Society of Agriculture.  
M. Manuel GUZMAN MATURANA, President of the National Society of Professors.  
Mme. Elena OLIVEIRA DE CASTRO, President of the National Council of Women.  
M. Juan LAGARRIGUE, Director-General of the State Railways.  
M. Alberto EDWARDS.

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COSTA RICA.

Dr. Rafael Oton CASTRO, Archbishop of San Jose.  
M. Leon Cortes CASTRO, lawyer and politician, Province of Alajuela.  
M. Miguel Obrigon LICANO, Professor, former Minister of Public Instruction.  
M. Juan Katamoros LORIA, of the American School of Engineers.

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CUBA.

Dr. Evilis Rodriguez LENDIAN, Professor at the University of Havana.  
Dr. Juan Manuel PLANAS, President of the National Geographical Society of Cuba.  
Dr. Jose MILLAS, Director of the National Observatory.  
Dr. Salvador MASSIP, Professor of Geography at the University of Havana.  
M. Mario Torres MENIAR, Captain in the Cuban Army.  
The Rev. Guierrez LANZA, of the Belon College of Havana.

CZECHOSLOVAKIA.

- M. Jan TŘEBICKÝ, member of the Administrative Commission of the Prague Chamber of Commerce and Industry, *Chairman*.  
M. Karel SLAVIK, Vice-President of the Czech Department at the Agricultural Council, Prague, *Vice-Chairman*.  
M. Josef LACHOUT, *Rapporteur* of the Chamber of Commerce and Industry, Prague, *Secretary*.
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ECUADOR.

- M. Manuel Maria SANCHEZ (Minister for Education), *Chairman*.  
Dr. Ricardo RUIZ, representative of the Central Bank.  
Dr. Luis R. ESCALANTE, representative of the churches.  
M. Rafael Andrade RODRIGUEZ, Dean of the Faculty of Science at the Central University.  
M. Manuel SOTOMAYOR Y LUNA, representative of *El Debate*.  
M. Alejandro COELLO, representative of *El Comercio*.  
M. Luis DE ASCAZUBI, representative of the National Society of Agriculturists.  
M. Tomas ROUSEAU, Professor of Physics at the Central University.  
M. Nicolas G. MARTINEZ, Director of the Astronomical and Meteorological Observatory of Quito.  
Mme. Zoila UGARTE DE LANDIVAR, representative of Feminist groups.  
M. Pastor PERES, representative of the Artistic and Industrial Society of Pinchincha.  
M. R. JARAMILLO, representative of *El Dia*.  
M. Fernando PEREZ PALLARES, representative of the Chamber of Commerce and Agriculture of Quito.  
Colonel Luis T. PAZ Y MINO, Chief of General Headquarters.
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ESTONIA.

- M. NEY, of the Ministry of Education and Social Welfare.  
M. NEREP, of the Ministry of Education and Social Welfare.  
M. JURGENSON, of the Ministry of Communications.  
M. GUTMAN, Ministry of Economic Affairs.  
M. PULLERITS, Ministry of Economic Affairs.  
M. HURT, of the Chamber of Commerce.  
M. TANNEBAUM, of the Exchange Committee.  
M. RAUDSEPP, of the State Railways.  
M. LAABAN, of the General Post Office.  
M. WELLNER, of the Office of Waterways.  
M. TOOMS, of the Central Bureau of Statistics.  
M. POOM, of the Bank of Estonia.  
M. RAHAMAGI, Professor at the University of Tartu (Lutheran Church).  
M. KIROTAR, of the Ministry for Foreign Affairs.  
The PRESIDENT of the National Council of Women.
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FINLAND.

- M. Eero JÄRNEFELT, Counsellor of Legation, Ministry for Foreign Affairs.  
M. Ivar GRUNDSTRÖM, Counsellor at the Ministry of Education.  
M. Elis HULTIN, Chief of Section at Central Chamber of Commerce.  
M. Karl F. SUNDMAN, Professor of Astronomy at the University of Helsingfors.  
M. Väinö TANNER, former Prime Minister, Managing-Director of Co-operative Society "Elanto", leader of the Social Democratic Party, Member of Parliament.  
Mme. Tilma HAINARI, President of National Council of Women.  
M. Jalmar CASTRÉN, Director-General of the Administration of the Railways.  
M. Verner LINDGREN, Director of Statistics and Economic Adviser to the Customs Board.

GERMANY.

- Dr. PLATZER, Director of the Official Statistical Bureau of the Reich : representing the Institute for "Konjunkturforschung", *Secretary-General of the Committee.*
- Dr. KAISENBERG, Ministerial Councillor, Ministry of the Interior of the Reich.
- Dr. REICHARDT, Ministerial Director, Ministry of Economy of the Reich.
- M. SOBERNHEIM, Counsellor of Legation, Foreign Office.
- Dr. OPPENHEINER, Government Counsellor at the Ministry of Labour of the Reich.
- M. GOTTHOLD, Ministerial Counsellor, Ministry of Reich Communications.
- M. SACKERSDORFF, Ministerial Counsellor, Ministry of Posts of the Reich.
- M. TRILOFF, Ministerial Counsellor, Ministry of Posts of the Reich.
- M. ROHDE, of the German Reichsbahn.
- Dr. STEUERNAGEL, Director of the German Reichsbahn.
- Dr. HAMMER, Director of the German Reichsbahn.
- M. KAEMMEL, Superior Government Counsellor at the Ministry of Finance of the Reich.
- M. SEYBOTH, Ministerial Counsellor, Deputy representative of Bavaria on the Reichsrat.
- Dr. STÖSSEL, Central Statistical Bureau.
- Dr. SCHNEIDER, Bureau of the Reich for Employment and for Unemployment Insurance.
- M. KONETZKI, Instructor at the Central Institute for Education and Instruction.
- M. GUSTAVUS, Ecclesiastical Counsellor, representing the German Committee of Evangelical Churches.
- M. SCHREIBMAYR, Civil Engineer, "Reichskuratorium für Wirtschaftlichkeit".
- Dr. VON KELTSCH, Civil Engineer, "Reichskuratorium für Wirtschaftlichkeit".
- Dr. LOENING, Association of German Industries of the Reich.
- M. BAARE (replacing Dr. Schlenker) "Langnamverein" (*i.e.*, north-western group of the Association of German Steel and Iron Industrialists).
- M. A. KNOLL, General Association of German Syndicates.
- M. ECHTERNACH, Superior Technical Counsellor at the Ministry of Posts ; Association of High Officials of the Reich.
- Dr. WIENER, Rabbi, representing the General Association of Rabbis.
- M. WALTKE, Association of German Communications Administrations.
- M. KLAPETEK, German Officials Association.
- Dr. MEYER, German Union of Towns.
- M. VON SAFFT, Reich Federation of German Artisans.
- M. SCHWARZKOPFF, Reich Federation of German Wholesale and Overseas Traders.
- Dr. TREMÖHLEN, Federation of German Communications Associations.
- Dr. LANGE, Corporation of German Retail Traders.
- M. Alfred LANGE, representing the "Gewerkschaftsring".
- M. SUHR, of the "AFA" Association.
- Dr. GROSSE, "Deutscher Industrie- und Handelstag".
- M. HENSCHEL, Agriculturist, representing the German Rural Economic Council.
- Dr. HUBER, Agriculturist, representing the Association for Social Reform.
- M. MAX MENZEL, Association of German Syndicates.
- M. HEILMANN, Association of German Savings Banks and "Girokassen".
- Dr. MOLLAT, Technical Mining Group of the Reich Association of German Industries.
- M. TKOTSCH, Secretary of the Bishop's Ordinary.
- Dr. GAMBKE, Reich Association of Private Insurance Companies.

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GREAT BRITAIN.

- The Right Hon. Viscount BURNHAM, C.C.M.G., C.H., *Chairman.*
- Mr. Wilfred ANDREWS, President of the Rotary International.
- Mr. C. W. COWEN, M.A., former President of the National Union of Teachers.
- Dr. Winifred CULLIS, C.B.E., Professor of Physiology, University of London, President of the International Federation of University Women.
- Mr. R. B. DUNWOODY, C.B.E., Secretary of the Association of British Chambers of Commerce.
- Sir Frank DYSON, K.B.E., Astronomer Royal.
- Mrs. F. A. KEYNES, J.P., President of the National Council of Women.
- Sir Basil KEMBALL-COOK, K.C.M.G., C.B., Managing Director of the British Tanker Co., Ltd.
- Sir Stanley MACHIN, J.P., President of the Association of British Chambers of Commerce.
- Mr. Ernest SYKES, British Bankers' Association.
- Sir Amherst SELBY-BIGGE, Bart., K.C.B., former Permanent Secretary to the Board of Education 1911 to 1925.
- Mr. A. G. WALKDEN, M.P., of the General Council of the Trade Union Congress.
- Sir Herbert A. WALKER, K.C.B., General Manager, Southern Railway.
- Mr. George H. WOOD, F.S.S., nominated by the Federation of British Industries.
- Mr. Ralph MORLEY, M.P., *Secretary of the Committee.*

GUATEMALA.

Representing Commerce :

M. Arturo STEIN, M. R. Felipe SOLARES, M. José GOUBAND.

Representing Finance :

M. Arturo GARCIA, M. José LINARES, M. Marcial GARCIA SALAS.

Representing Industry :

M. Carlos F. NOVELLA, M. Arturo CASTILLO A., M. Rufino IBARGUEN.

Representing Agriculture :

M. Faustino PADILIA, M. Guillermo LAVAGNINO, M. Jorge GARCIA SALAS.

Representing Labour :

M. Manuel MORENO, M. Nicolas REYES O., M. Juan Ernesto PEREZ.

Representing Railways :

M. Charles MYRS, M. Roberto M. AYLWARD, M. Roberto A. NANNE.

Representing the Press :

M. Alejandro CORDOVA, M. Federico HERNANDEZ DE LEON, M. Carlos BAUER AVILES.

Representing the Catholic Church :

The Rev. Mateo D. PERRONI, The Rev. Salvador CORDOVA ZECENA, The Rev. Luis MONTENEGRO Y FLORES.

Representing feminine interests :

Mme. Natalia G. V. DE MORALES, Mlle. Alicia AGUILAR C., Mlle. Margarita LLOREDA.

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ITALY.

Professor Amedo GIANNINI, National Research Council, *Chairman*.

Professor Filippo ANGELETTI, of the Astronomic Observatory of Palermo.

M. Luigi BIAMONTI, Head of the Legal Office of the General Fascist Confederation of Italian Industry.

Professor Giuseppe TASSINARI, of the Royal Institute of Agriculture, Bologna.

M. Carrado MARCHI, of the National Fascist Confederation of Transport by Land and of Inland Navigation.

M. Mario ZAMBONI, of the National Fascist Confederation of Maritime and Air Transport Undertakings.

Dr. Adolfo NESI, of the General Fascist Confederation of Banks.

Professor Giuseppe ARMELLINI, Director of the Royal Astronomical Observatory of Rome, *Rapporteur*.

Professor Carlo Alfonso NALLINO, Professor of Oriental Studies at the University of Rome.

Professor Antonio PELLIZZOLA, Ecclesiastical Counsellor at the Royal Italian Embassy accredited to the Vatican City.

Captain Mario BARENGHI, of the National Board for Social Assistance.

M. Antonio NAVARRA, National Fascist Confederation of Retail Traders.

M. Gian Battista TOFFOLO, Vice-Consul, *Secretary*.

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LATVIA.

Dr. Alexander KACENS, Director of the Department of Commerce and Industry.

Mme. M. SANDERS, Chief of the League of Nations Section, Ministry for Foreign Affairs.

M. Walter HELD, Director of the Syndicate of Stock Exchange Committees.

M. V. BANDREVITCH, Deputy-Director of the Latvian Bank.

M. Morgens SKUJENEKS, Director of the Bureau of Statistics and former President of the Council.

M. Felix CIELENS, leader of the Social Democrats.

M. Voldemars SALMAIS.

THE NETHERLANDS.

- Dr. A. A. NIJLAND, Professor of Astronomy at the University of Utrecht, *Chairman*.  
M. P. A. ARRIËNS, Director of the Navigation Company "Hollandsche Stoomboot Mj.", Ltd., Amsterdam.  
M. A. ASSCHER, Member of the Amsterdam Chamber of Commerce (Large Industrial Undertakings Section).  
Dr. P. J. L. DE CHATELEUX, Secretary of the Association for the Scientific Investigation of Insurance Questions, Arnhem.  
Dr. L. P. LE COSQUINO DE BUSSY, Director of the Commercial Museum of the Colonial Institute, Amsterdam.  
Dr. K. DIJK, Second President of the Supervisory Board of Denominational Schools (Scholen met den Bijbel), The Hague.  
Dr. E. VAN EVERDINGEN, Director of the Royal Netherlands Institute of Meteorology, De Bilt.  
M. F. J. H. GERAETS, official at the Ministry of Labour, Commerce and Industry, The Hague (*Secretary of the Committee*).  
Dr. J. Th. GROOSMULLER, Science Lecturer at the Secondary School of Velzen.  
M. D. HANS, President of the Netherlands Journalists Club, The Hague.  
Dr. H. A. HARTOGH, Director of the "Bank-Assocatie", Amsterdam.  
Dr. L. G. KORTENHORST, Member of the Second Chamber of the States-General; Member of the Board of Industry, The Hague.  
Dr. H. W. METHORST, Director-General of the Central Statistical Office; Member of the Central Statistical Commission, The Hague.  
Dr. H. MOLHUYSEN, Secretary of the Royal Netherlands Committee of Agriculture, The Hague.  
Madame D. OPPENHEIMER-BELINFANTE, Secretary of the Netherlands Housewives Association, The Hague.  
M. H. SCHUTJES, Secretary of the Netherlands General Association of Commercial Employees, Amsterdam.  
M. C. J. G. STRUYCKEN, Member of the Middle Classes Representative Council, The Hague.  
M. Ir. H. E. VERSCHOOR VAN SLEEUWIJK, Head of Transport Service of the Netherlands Railway, Hilversum.

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NICARAGUA.

- M. J. Ramon SEVILLE, Minister of Education, *Chairman*.  
Monseigneur J. A. LEZCANO, Archbishop of Managua.  
M. Alberto GAMEZ, *Secretary*.

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PANAMA.

- M. Napoleon ARCE.  
M. Fabricio DE ALBA.  
Dr. Aurelio A. DUTARI.

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PERU.

- Monseigneur LISSON, Archbishop, *Chairman*.  
Vice-Admiral Meliton CARVAJAL.  
Captain Jose R. GALVEZ.  
Dr. Godofredo GARCIA.  
M. Ricardo LLONA, Deputy.  
M. Scipion LLONA, *Secretary*.

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POLAND.

- Professor E. LIPINSKI, Director of the Institute of Research with regard to the General Movement of Business and Price Formation, *Chairman*.  
M. R. DEBICKI, Counsellor at the Ministry for Foreign Affairs.  
M. L. DOWSIN, Engineer at the Ministry of Communications.  
M. P. DRZEWIECKI, Vice-President of the Institute for the Scientific Organisation of Labour.  
Professor M. HANDELSMAN.  
Professor M. KAMIENSKI, Director of the Astronomical Observatory of Warsaw.  
M. K. TCHÓRZNICKI, Chief of Section at the Ministry of Education and Public Worship.  
M. W. SKRZYWAN, Chief of Service at the Institute of Research with regard to the Movement of Business and Price Formation, *Secretary*.

PORTUGAL.

- Captain Abel FONTOURA DA COSTA, former Minister, Professor at the Naval School, *Chairman*.  
Dr. Antonio Vicente FERREIRA, former Minister of Finance, former High Commissioner of Angola, Professor at the Higher Technical Institute at Lisbon.  
Dr. Francisco DE MIRANDA DA COSTA LOBO, Professor at the Faculty of Science at the University of Coimbra.  
Dr. Edoardo Ismael DOS SANTOS ANDREA, Professor at the Faculty of Science at the University of Lisbon.  
M. Alberto DE MELO E SOUSA, representative of the Commercial Association of Lisbon.
- 

SALVADOR.

- Dr. Pedro S. FONSECA, Director-General of Statistics.  
Dr. José E. ALCAINE, engineer.
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SPAIN.

- M. Emilio COTARELO Y MORI, Permanent Secretary of the Academy.  
M. Victoriano ASCARZA, Sub-Director of the National Observatory of Madrid.  
M. José Maria PLAUS, Professor of the Central University.
- 

SWEDEN.

- For the Department of Commerce :  
M. ÖSTERBERG, Secretary of State.
- For the Ministry for Foreign Affairs :  
M. Fritz HENRIKSSON, Head of Section.
- For the Department of Public Worship and Education :  
M. H. J. LINDSKOG, Rector of Parish.
- For the High Court of Appeal, Stockholm :  
M. S. O. G. SON BJURNER, Counsellor.
- For the Department of Social Questions :  
M. E. G. HUSS, Director-General.
- For the General Post Office :  
M. A. E. ÖRNE, Director-General.
- For the Central Telegraphic Department :  
M. Seth LJUNGQVIST, Head of Section.
- For the Board of Administration of the State Railways :  
M. A. M. GRANHOLM, Director-General.
- For the Central Statistical Bureau :  
M. R. J. SANDLER, Director-General.
- For the Central Educational Board :  
M. Karl KÄRRE, Councillor of Education.
- For the Central Administration for Trade and Industry :  
M. K. A. FRYXELL, Director-General.
- For the Bank of Sweden :  
M. C. H. G. TÖRNBLADH, General Secretary.
- For the Chamber of Commerce of Stockholm :  
M. Holger ROSMAN, General Trader.  
M. John JOSEPHSON, Wholesale Trader.  
Captain J. O. WALLENBERG.

For the Academy of Science :

M. Bertil LINDBLAD, Professor of Astronomy.

For the Association of Swedish Industrialists :

M. V. G. LUNDBIK, Director-General.

For the Central Organisation of Swedish Trade Unions :

M. Karl Edvard JOHANSON, President.

M. Johan-Olov JOHANSSON, Treasurer.

For the Swedish Employers' Association :

M. A. Hj. VON SYDOW, General Manager.

For the Swedish Railway Association :

M. Olof BÄRNHEIM, General Manager.

For the Swedish Banking Association :

M. Knut DAHLBERG.

For the Swedish Aviation Association :

Captain Adrian FLORMAN.

For the Stockholm Shipowners' Association :

M. J. A. APPELQVIST, General Manager.

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#### SWITZERLAND.

Professor E. MARCHAND, Doctor of Science of the Federal Polytechnic School, Director of the "Société suisse d'Assurances générales sur la vie humaine", *Chairman*.

M. Edouard HOFMEISTER, former Director of the "Société du Crédit suisse", Zurich, *Vice-Chairman*.

Dr. R. COTTIER, Secretary-General of the Federal Railways, Berne.

M. Charles SCHURCH, Secretary of the "Union syndicale suisse", Berne.

Dr. A. BOREL, Sub-Director of the "Union suisse des paysans", Brugg.

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#### UNITED STATES OF AMERICA.

Mr. George EASTMAN, Eastman Kodak Company, *Chairman*.

Dr. C. F. MARVIN, Chief, United States Weather Bureau, Department of Agriculture, *Vice-Chairman*.

Dr. G. K. BURGESS, Director, Bureau of Standards, Department of Commerce.

Mr. Haley FISKE †, President, Metropolitan Life Insurance Company.

Mr. A. H. HARRIS, Chairman of the Executive Committee, New York Central Railroad Company.

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LEAGUE OF NATIONS

**FOURTH GENERAL CONFERENCE  
ON COMMUNICATIONS AND TRANSIT**

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**PREPARATORY DOCUMENTS**

**Supplement to Volume I**

**CALENDAR REFORM**

**PROPOSAL BY THE NATIONAL COMMITTEE OF THE UNITED STATES  
OF AMERICA RELATING TO :**

- 1. THE IMPROVEMENT OF THE LEAP-YEAR RULE ;**
- 2. THE ADJUSTMENT OF THE DATE OF THE VERNAL EQUINOX.**

Series of League of Nations Publications

VIII. TRANSIT

1931. VIII. 12/1 Supplement.

## Extract from the Supplementary Report of the National Committee on Calendar Simplification for the United States.

### THE LEAP-YEAR RULE AND DATE OF THE VERNAL EQUINOX

The National Committee on Calendar Simplification for the United States recommends that the adjustment of the date of the vernal equinox and the adoption of an improved leap-year rule be given full and careful consideration in connection with the problem of a more perfect calendar for the present and future generations.

It is recognised that one of these questions, a change in the leap-year rule, came before the original Committee of Enquiry of the League of Nations, but received only cursory examination, chiefly because of the dominant importance of other more pressing needs for change. These latter, however, have now been thoroughly analysed in all their aspects and have been brought to the attention of the public throughout the world by the Press and by means of informative literature. As a basis for further consideration of both the leap-year rule and the date of the vernal equinox, the Committee for the United States here presents a discussion prepared by the Vice-Chairman of the Committee, and Chief of the United States Weather Bureau, Dr. Charles F. Marvin. In so doing, the Committee recognises the historic interest and authority of the Roman Catholic and Greek Churches in both these questions, and that they should be considered at an international conference from a purely scientific point of view. Moreover, in the matter of the Gregorian leap-year rule, the text emphasises its great accuracy as applied to calendar reckoning over many millenniums of the past and up to the present time. It is also made obvious that the whole purpose of a change is to adjust the rule to the present and future solar conditions, so as to preserve the same high accuracy of reckoning hereafter.

#### DISCUSSION BY DR. CHARLES F. MARVIN

A calendar is a device of civilisation which should register the passage of time for a great many centuries in close accord with solar and astronomical conditions. Never before in history has the question of perfecting the calendar received such worldwide consideration with reference to all its features, as in the present day. It is, therefore, important that no feature of the calendar should be overlooked in seeking a universal form for adoption in the twentieth century, in order that this generation may pass on to posterity the most perfect time-measuring device science and the ingenuity of man permit.

Two important questions require consideration, but they are quite distinct and may be acted upon separately or together. Furthermore, they are of a purely technical nature and may therefore be best appraised by astronomers and mathematicians. The questions are :

(1) It will be shown in the explanation of the accompanying diagrams that the Gregorian leap-year rule furnishes almost perfect reckoning for all past time from 9000 B.C. to the present, but that the rule is now beginning to fail—it is outliving its usefulness. Shall a new rule be adopted, which will preserve any future calendar in the closest possible accord with solar conditions, if and when the calendar is changed ?

(2) The nominal date of the vernal equinox is now March 21st, intended to be the same as at the time of the Council of Nicæa, A.D. 325. However, its actual average date is more nearly March 20th. Shall this date be changed, and, if so, what shall the date be ?

#### Question 1.

##### CHANGE OF LEAP-YEAR RULE

A brief review of the history of the present world calendar (the Gregorian) is essential to an understanding of this question. Of purely pagan origin and design, this calendar began with or before the founding of Rome. From history we glean that the primitive tribes it served liked to have the springtime of their seasons (in astronomical language, the date of the vernal equinox) come in the latter part (about the 25th) of March. Their calendar was so crude, however (apparently it had but ten months), and they were so ignorant as to the number of days in a year, that, in little more than a score of years, the winter season lingered far on into March, and spring moved over into the summer months. Authorities tell us the Emperor Numa, after the death of Romulus, added the new month February to follow December and January to precede March. This change would tend to restore the

dislocated date of the equinox to its desired place. From Numa's to Cæsar's time the Roman calendar was of the lunisolar form, with a nominal year of 355 days. To keep the calendar approximately in step with the seasons, a thirteenth month, well known among the Romans of those days as Mercedonius, was intercalated at intervals of two or three years. Even to-day, just how to make a thirteenth-month intercalation in lunisolar calendars is an unsolvable riddle, except on the basis of very crude approximations, with many large variations in the date of the equinox. Lacking any trustworthy rule to guide them, the efforts of the early Romans to control their calendar were in vain.

About 452 B.C. it is said the Decemvirs changed the position of February at the end of the year to its present place between January and March. This adjustment was doubtless made in a way which corrected a dislocation of the dates of the equinox.

About the time of the Decemvirs, the Greek astronomer, Meton, proclaimed his nineteen-year rule (subsequently named the Metonic cycle) for the adjustment of lunar calendars to solar reckoning. Rome did not then know of this cycle, and never used it later. The irregular intercalation of the thirteenth month, without known rule of any kind, was left to the secret control of the Pontiffs, whose negligent, ignorant, and not to omit corrupt, practices introduced, by Cæsar's time, intolerable dislocation of the equinox and other uncertainties of reckoning. These brought about Cæsar's great reform.

While all modern nations have now forever discarded the Julian calendar, after continuous use by some for nearly twenty centuries, yet it claims our fullest praise and commendation. The mighty Cæsar, guided by Egyptian astronomical science, abolished completely all lunar controls on the calendar, restored the date of the equinox to its chosen place, and set up as nearly perfect a fixed solar calendar of 365 days on the twelve-month plan as it was humanly possible for any man to devise in his day. The new calendar began with January 1st, 46 B.C., and this year was made to contain a total of 445 days, which was the means employed by Cæsar to restore the date of the equinox in the following year, 45 B.C., to its proper place, which we now know to have been in the afternoon of March 23rd.

The serious defect in Cæsar's leap-year rule consists in adding one whole day too many in about every 128 years at the present time, formerly one in about 130 years. Every leap year too many added dislocated the date of the equinox one day toward January. The dislocation became intolerable in the sixteenth century, and resulted in the Gregorian reform, which attained for the first time in all history the primary objective of all previous reforms, especially those of the Roman calendar — namely, a rule for the intercalation of days or other units which would hold the calendar date of the equinox nearly fixed throughout centuries of operation. The author of Gregory's simple and effective leap-year rule was a learned Neapolitan named Aloysius Lilius, who died, however, before his rule could be introduced.

Counting from the beginning of the Christian era, the dislocation of the equinox amounted to over twelve days in Gregory's time, only a part of which was adjusted by dropping ten days when the Gregorian reform went into effect in October of 1582.

While far superior to the Julian rule, especially for calendar reckoning over past centuries, Gregory's rule also intercalates too many leap days, especially in the future, and the date of the equinox is gradually falling earlier.

The last reform of the European calendar occurred in 1923, when the Greek Church abandoned the old Julian calendar and adjusted its reckoning to agree for a few centuries with the Gregorian reckoning. A notable feature of this reform, however, is that it includes a new leap-year rule which is a bit more accurate for future reckoning than the Gregorian one.

. . . . .

SUMMARY.

Summarising this brief historical review it must be noted that :

(1) The Gregorian calendar now in nearly universal use throughout civilisation is of purely human and pagan origin. It is a direct lineal descendant of the ten-month calendar Romulus introduced at the founding of Rome.

(2) The present calendar, originally lunisolar, later purely solar, is the ultimate result of several reforms, the primary objective of which was twofold. First, to re-adjust intolerable dislocations in the date of the vernal equinox amounting in most cases to many days. Second, to introduce new rules of intercalation which were expected to stop future dislocations. All these efforts and expectations were in vain, however, until the adoption of the Lilius' rule with the Gregorian reform.

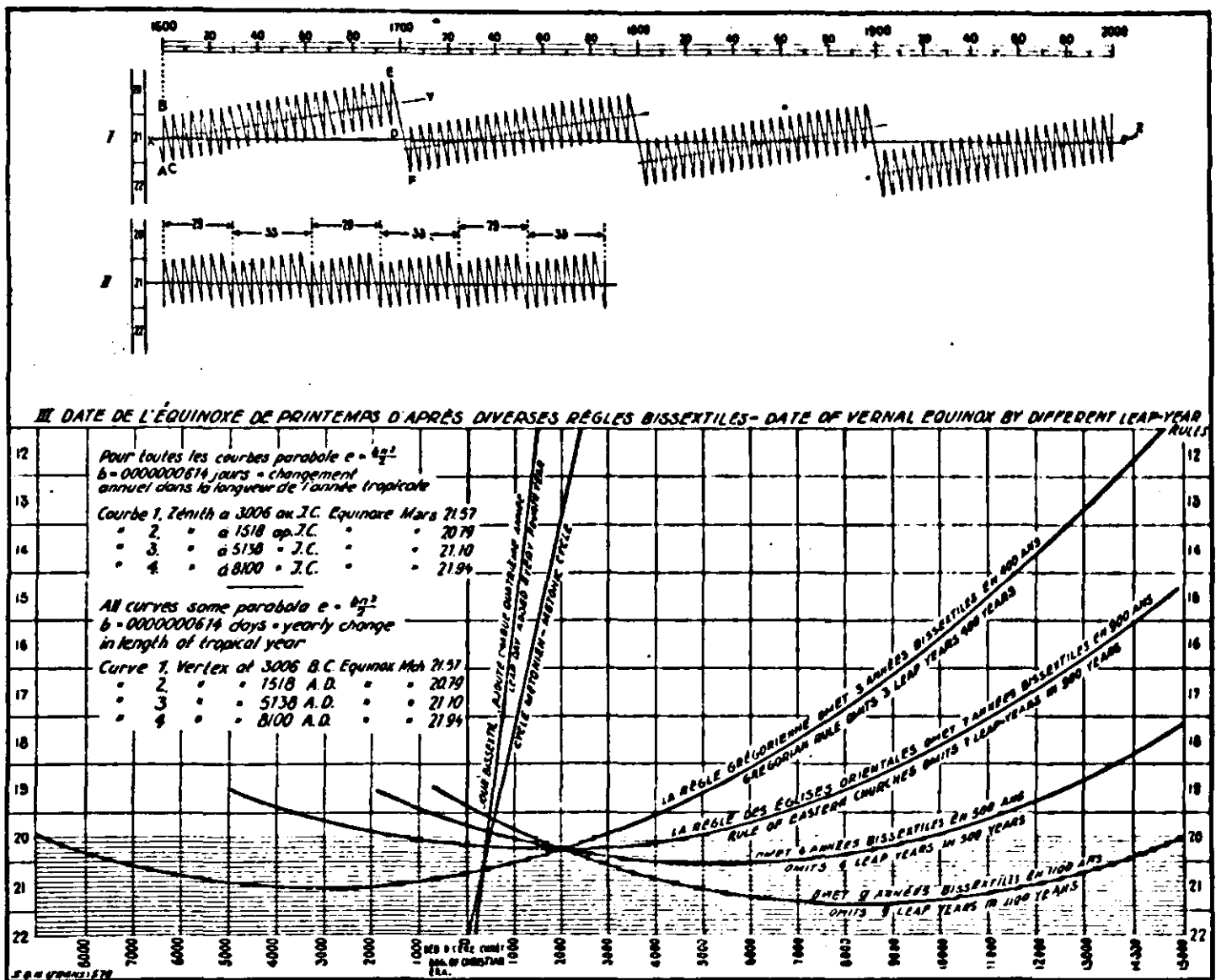
(3) Whatever may be the antiquity of the Fourth Commandment, when issued it was a command for the chosen tribes of Israel alone, not for the Gentile world. On the basis of known history, the present calendar week of six work days and a seventh of rest, each day individually named, is found to be of mixed Christian and pagan origin gradually superposed upon the legal Roman calendar during the second and third centuries A.D.

In so far as yet pointed out, it was never accorded any official Church or State sanction other than tolerance of its persistent and increasing usage by the whole populace. However, then strongly entrenched in public usage, the Christian week was legalised by the Emperor Constantine, about A.D. 321, and the elegant *fixed* Roman calendar was soon completely lost and forgotten.

(4) Calendar reckoning to-day is in nearly universal accord among the principal nations. However, the Gregorian and the Greek leap-year rules which control this reckoning differ appreciably, and it is only a question of time before a drift of the equinox which both rules entail will exceed a day, and when one or more days of difference in the reckoning by the two parties will arise. Although one of these rules is appreciably better than the other, neither is as good for the distant future reckoning as other rules now well known.

No more potent considerations than the foregoing are needed to justify including the betterment of the leap-year rule among the important questions involved in the simplification of the calendar. This course is recommended.

*Leap-Year Calendar Errors, as caused by Intercalation of Days.*



EXPLANATIONS OF DIAGRAMS.

To facilitate clearer understanding of the intricate short- and long-time features of operation of various leap-year rules, attention is invited to the diagrams above. Part I represents short-time influences of the date of the equinox, which attend the quadrennial intercalation of leap day and its omission in non-leap-year centuries over the Gregorian cycle from 1600 to the year 2000. The normal date of the equinox over this period is represented by the horizontal straight line starting out at X, chosen for simplicity of the diagram, as of midday March 21st. (The actual astronomical normal or average date is, of course, slightly different.) Starting at A, which represents February 28th, 1600, the date of the equinox is at midnight March 21st-22nd. This being a leap-year century, the intercalation of February 29th causes the equinox to fall at B as of the date of midnight March 20th-21st. During the next four years the date of the equinox



progressively advances from B to C, and again falls as of midnight March 21st. From this point onward the date of the equinox zigzags back and forth across the line XY, reaching E after February 29th in the year 1696, when the equinox falls in the forenoon of March 20th. The line XY represents the natural average dislocation of the date of the equinox (1 day in 128 years) by the rigid Julian rule. The year 1700 being a non-leap-year century, the drift of the equinox is arrested, and by February 28th, 1704, the reckoning is carried to F and the equinox falls in the forenoon of March 22nd. Similar changes repeat themselves during the ensuing three centuries, with the result that the normal reckoning is restored at the end of 400 years, except for a small fraction of a day, as indicated by Z at the year 2000. This is the small outstanding error of the Gregorian reckoning, which slowly follows a parabolic law as shown in curve 1 of the lower diagram.

Part II of the diagram shows the lesser fluctuations of the equinox under two alternating short-time adjustments—namely, first seven years in twenty-nine years, then eight in thirty-three years. The latter is the Omar Khayyám rule. The two in sequence, fifteen leap years in sixty-two years, leave nothing to be desired in either short-time accuracy or the small dislocation of the equinox over many centuries to come. Its only and fatal defect is the necessity for elaborate tables to segregate leap years and common years.

Part III of Plate I shows how the date of the equinox is dislocated by several old and new rules. The time embraced by the diagram ranges from 9000 B.C. to A.D. 15000. Each line represents the normal or average date of the equinox under the rule. For example, the line XY in I is a very small part of the Julian rule marked "Leap Day added every Fourth Year" in III.

The Gregorian rule and the Julian rule intersect at a common point, which represents the date of the equinox at the time of the Council of Nicæa, A.D. 325. Merely for purposes of comparison, the curve for the Metonic cycle is shown as if adjusted to the date of the equinox A.D. 325.

In considering the remaining curves of Part III, it is all important to *think, not of the past or present, but far forward into the future*, if a proper choice is to be given either to retaining old rules or selecting an appropriate new rule. It was stated in the opening words of this section that the Gregorian rule is a rule for the accurate reckoning over past ages. The shaded band on the diagram may be regarded as a band of tolerance two days wide. We would like to have the normal date of the equinox remain within this band (the actual dates will necessarily range over more than two days). Note how the sweep of the Gregorian rule from A.D. 2000 backward to 9000 B.C. lies wholly within the band of tolerance. Note in contrast, however, that its sweep in the future carries it rapidly outside the band of tolerance. The rule of the Eastern churches fits present conditions admirably, but its sweep also carries the reckoning too rapidly outside the band of tolerance to make the rule worthy of acceptance for long distant future use.

Curves 3 and 4 are only two of several possible rules for the future which tell their own story. Rule 3 is merely an adjustment of the Gregorian rule to meet future needs. This rule intercalates leap days at the rate of 121 days in 500 years. The quick adjustment rule shown in Part II (fifteen leap days in sixty-two years) intercalates at the rate of 119.04 days in 500 years. This curve is not shown in the diagrams, but its sweep remains within the band of tolerance more than 1000 years beyond the point where curve 3 passes out. As already pointed out, however, its fatal defect is that a table is indispensable to list the leap years by it.

#### MATHEMATICAL BASIS OF DIAGRAMS.

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From the rules of the calculus, we know that the accumulated sum of all such small errors over a range of time 0 to  $t$  years is given by the equation,

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To find the proper value of  $D_0$  we must have one exact known value of  $D_t$  for a particular year — say the year 1900. This we can easily get from the dates of the equinox over several years, as given in the nautical almanacs. Correcting these for the temporary calendar errors, we find the normal date of the equinox as of the year 1900 to be March 20.8281, Greenwich civil time. With this value, when  $t = 1900$ , we easily find  $D_0 = \text{March } 21.2896$ , and the fixed working equation for the Gregorian curve is

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## Question 2.

### CHANGE OF THE DATE OF THE VERNAL EQUINOX.

This question will require very little discussion and its technicalities will be easily grasped after the very full explanation of the operation of leap-year rules already given.

All chronological events in history are now dated on the Julian or Gregorian calendar, reckoning from the adopted epoch of the birth of Christ.<sup>1</sup> At and about that time the date of the equinox fell in the afternoon of March 23rd by the Julian calendar. From that point it drifted earlier to the 21st in A.D. 325, then to March 11th in 1582. The ten days stricken from the calendar by Gregory may be regarded as the excess leap days the Julian rule intercalated in the centuries which should have been non-leap years—namely :

#### Non-Leap-Year Centuries

$$3 \quad 5-6-7 \quad 9-10-11 \quad 13-14-15 = 10.$$

May we not ask, should we not be consistent and also strike out two more days to represent the excess century leap days added by the Julian rule in the years 100 and 200? Unless something like this is done, an anomalous situation in chronological reckoning by the Gregorian calendar will continue indefinitely, because the starting-point of the calendar is as of the year A.D. 325, whereas the *count of years* is reckoned from a point of time 325 years earlier. If two more days are omitted, the dates in the first 99 years A.D. become strictly comparable with corresponding dates to-day. For example, the year A.D. 30 is generally regarded as the last year of Christ's ministry. While the week-day names were not then known or used, January 1st of that year was the first day of the Jewish week—our Sunday. If we now drop out two additional days, and if we *fix* the present calendar so that January 1st is always Sunday, then each day of the year of our new calendar will perpetually be an exact duplicate in day name and year-day number of the corresponding day in the year A.D. 30. Each day of the new calendar will also be an exact *anniversary day* of the corresponding day in the year A.D. 30.

It will be impressive to know in this twentieth century that, when we celebrate Good Friday—for example, on Friday, April 7, which is the ninety-seventh day of the year—it will be impressive to know that the Good Friday in question is the exact anniversary, day name, year number, and all, of the original day of the Crucifixion. In the same way, Easter Sunday, Whitsunday, and every other day of the year A.D. 30 will have exact counterparts in the day names and year numbers in the new *fixed* calendar.

If the days are not omitted, the disparity of two days in anniversary dates and the incongruity in calendar and chronological reckoning must prevail indefinitely. If the calendar is changed without omitting two days and with all years beginning on Sunday, then, if Easter is fixed on the Sunday nearest the exact anniversary of the day of the Resurrection as many desire, that Sunday will be April 9th (April 15th in a thirteen-month calendar), but the day will be the *exact* anniversary of the Crucifixion, not of the Resurrection.

The foregoing facts of reckoning are submitted for mature consideration.

*Note.* — For additional details, see "Supplementary Report of the National Committee on Calendar Simplification for the United States", Section IV.

<sup>1</sup> Some may advocate that the recognised error of about four years in this epoch should be corrected. Strictly speaking, that is a question of chronology and not of simplification or correcting the calendar. Adjusting the date of the equinox, however, is purely a question of calendar reform.

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LEAGUE OF NATIONS

**FOURTH GENERAL CONFERENCE  
ON COMMUNICATIONS AND TRANSIT**

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**PREPARATORY DOCUMENTS**

**Supplement to Volume I**

**CALENDAR REFORM**

**PROPOSAL BY THE NATIONAL COMMITTEE OF THE UNITED STATES  
OF AMERICA RELATING TO :**

- 1. THE IMPROVEMENT OF THE LEAP-YEAR RULE ;**
- 2. THE ADJUSTMENT OF THE DATE OF THE VERNAL EQUINOX.**

<p>Series of League of Nations Publications VIII. TRANSIT 1931. VIII. 12/1 Supplement.</p>
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## **Extract from the Supplementary Report of the National Committee on Calendar Simplification for the United States.**

### **THE LEAP-YEAR RULE AND DATE OF THE VERNAL EQUINOX**

The National Committee on Calendar Simplification for the United States recommends that the adjustment of the date of the vernal equinox and the adoption of an improved leap-year rule be given full and careful consideration in connection with the problem of a more perfect calendar for the present and future generations.

It is recognised that one of these questions, a change in the leap-year rule, came before the original Committee of Enquiry of the League of Nations, but received only cursory examination, chiefly because of the dominant importance of other more pressing needs for change. These latter, however, have now been thoroughly analysed in all their aspects and have been brought to the attention of the public throughout the world by the Press and by means of informative literature. As a basis for further consideration of both the leap-year rule and the date of the vernal equinox, the Committee for the United States here presents a discussion prepared by the Vice-Chairman of the Committee, and Chief of the United States Weather Bureau, Dr. Charles F. Marvin. In so doing, the Committee recognises the historic interest and authority of the Roman Catholic and Greek Churches in both these questions, and that they should be considered at an international conference from a purely scientific point of view. Moreover, in the matter of the Gregorian leap-year rule, the text emphasises its great accuracy as applied to calendar reckoning over many millenniums of the past and up to the present time. It is also made obvious that the whole purpose of a change is to adjust the rule to the present and future solar conditions, so as to preserve the same high accuracy of reckoning hereafter.

#### **DISCUSSION BY DR. CHARLES F. MARVIN**

A calendar is a device of civilisation which should register the passage of time for a great many centuries in close accord with solar and astronomical conditions. Never before in history has the question of perfecting the calendar received such worldwide consideration with reference to all its features, as in the present day. It is, therefore, important that no feature of the calendar should be overlooked in seeking a universal form for adoption in the twentieth century, in order that this generation may pass on to posterity the most perfect time-measuring device science and the ingenuity of man permit.

Two important questions require consideration, but they are quite distinct and may be acted upon separately or together. Furthermore, they are of a purely technical nature and may therefore be best appraised by astronomers and mathematicians. The questions are :

(1) It will be shown in the explanation of the accompanying diagrams that the Gregorian leap-year rule furnishes almost perfect reckoning for all past time from 9000 B.C. to the present, but that the rule is now beginning to fail—it is outliving its usefulness. Shall a new rule be adopted, which will preserve any future calendar in the closest possible accord with solar conditions, if and when the calendar is changed ?

(2) The nominal date of the vernal equinox is now March 21st, intended to be the same as at the time of the Council of Nicæa, A.D. 325. However, its actual average date is more nearly March 20th. Shall this date be changed, and, if so, what shall the date be ?

#### **Question 1.**

##### **CHANGE OF LEAP-YEAR RULE**

A brief review of the history of the present world calendar (the Gregorian) is essential to an understanding of this question. Of purely pagan origin and design, this calendar began with or before the founding of Rome. From history we glean that the primitive tribes it served liked to have the springtime of their seasons (in astronomical language, the date of the vernal equinox) come in the latter part (about the 25th) of March. Their calendar was so crude, however (apparently it had but ten months), and they were so ignorant as to the number of days in a year, that, in little more than a score of years, the winter season lingered far on into March, and spring moved over into the summer months. Authorities tell us the Emperor Numa, after the death of Romulus, added the new month February to follow December and January to precede March. This change would tend to restore the

dislocated date of the equinox to its desired place. From Numa's to Cæsar's time the Roman calendar was of the lunisolar form, with a nominal year of 355 days. To keep the calendar approximately in step with the seasons, a thirteenth month, well known among the Romans of those days as Mercedonius, was intercalated at intervals of two or three years. Even to-day, just how to make a thirteenth-month intercalation in lunisolar calendars is an unsolvable riddle, except on the basis of very crude approximations, with many large variations in the date of the equinox. Lacking any trustworthy rule to guide them, the efforts of the early Romans to control their calendar were in vain.

About 452 B.C. it is said the Decemvirs changed the position of February at the end of the year to its present place between January and March. This adjustment was doubtless made in a way which corrected a dislocation of the dates of the equinox.

About the time of the Decemvirs, the Greek astronomer, Meton, proclaimed his nineteen-year rule (subsequently named the Metonic cycle) for the adjustment of lunar calendars to solar reckoning. Rome did not then know of this cycle, and never used it later. The irregular intercalation of the thirteenth month, without known rule of any kind, was left to the secret control of the Pontiffs, whose negligent, ignorant, and not to omit corrupt, practices introduced, by Cæsar's time, intolerable dislocation of the equinox and other uncertainties of reckoning. These brought about Cæsar's great reform.

While all modern nations have now forever discarded the Julian calendar, after continuous use by some for nearly twenty centuries, yet it claims our fullest praise and commendation. The mighty Cæsar, guided by Egyptian astronomical science, abolished completely all lunar controls on the calendar, restored the date of the equinox to its chosen place, and set up as nearly perfect a fixed solar calendar of 365 days on the twelve-month plan as it was humanly possible for any man to devise in his day. The new calendar began with January 1st, 46 B.C., and this year was made to contain a total of 445 days, which was the means employed by Cæsar to restore the date of the equinox in the following year, 45 B.C., to its proper place, which we now know to have been in the afternoon of March 23rd.

The serious defect in Cæsar's leap-year rule consists in adding one whole day too many in about every 128 years at the present time, formerly one in about 130 years. Every leap year too many added dislocated the date of the equinox one day toward January. The dislocation became intolerable in the sixteenth century, and resulted in the Gregorian reform, which attained for the first time in all history the primary objective of all previous reforms, especially those of the Roman calendar — namely, a rule for the intercalation of days or other units which would hold the calendar date of the equinox nearly fixed throughout centuries of operation. The author of Gregory's simple and effective leap-year rule was a learned Neapolitan named Aloysius Lilius, who died, however, before his rule could be introduced.

Counting from the beginning of the Christian era, the dislocation of the equinox amounted to over twelve days in Gregory's time, only a part of which was adjusted by dropping ten days when the Gregorian reform went into effect in October of 1582.

While far superior to the Julian rule, especially for calendar reckoning over past centuries, Gregory's rule also intercalates too many leap days, especially in the future, and the date of the equinox is gradually falling earlier.

The last reform of the European calendar occurred in 1923, when the Greek Church abandoned the old Julian calendar and adjusted its reckoning to agree for a few centuries with the Gregorian reckoning. A notable feature of this reform, however, is that it includes a new leap-year rule which is a bit more accurate for future reckoning than the Gregorian one.

. . . . .

#### SUMMARY.

Summarising this brief historical review it must be noted that :

(1) The Gregorian calendar now in nearly universal use throughout civilisation is of purely human and pagan origin. It is a direct lineal descendant of the ten-month calendar Romulus introduced at the founding of Rome.

(2) The present calendar, originally lunisolar, later purely solar, is the ultimate result of several reforms, the primary objective of which was twofold. First, to re-adjust intolerable dislocations in the date of the vernal equinox amounting in most cases to many days. Second, to introduce new rules of intercalation which were expected to stop future dislocations. All these efforts and expectations were in vain, however, until the adoption of the Lilius' rule with the Gregorian reform.

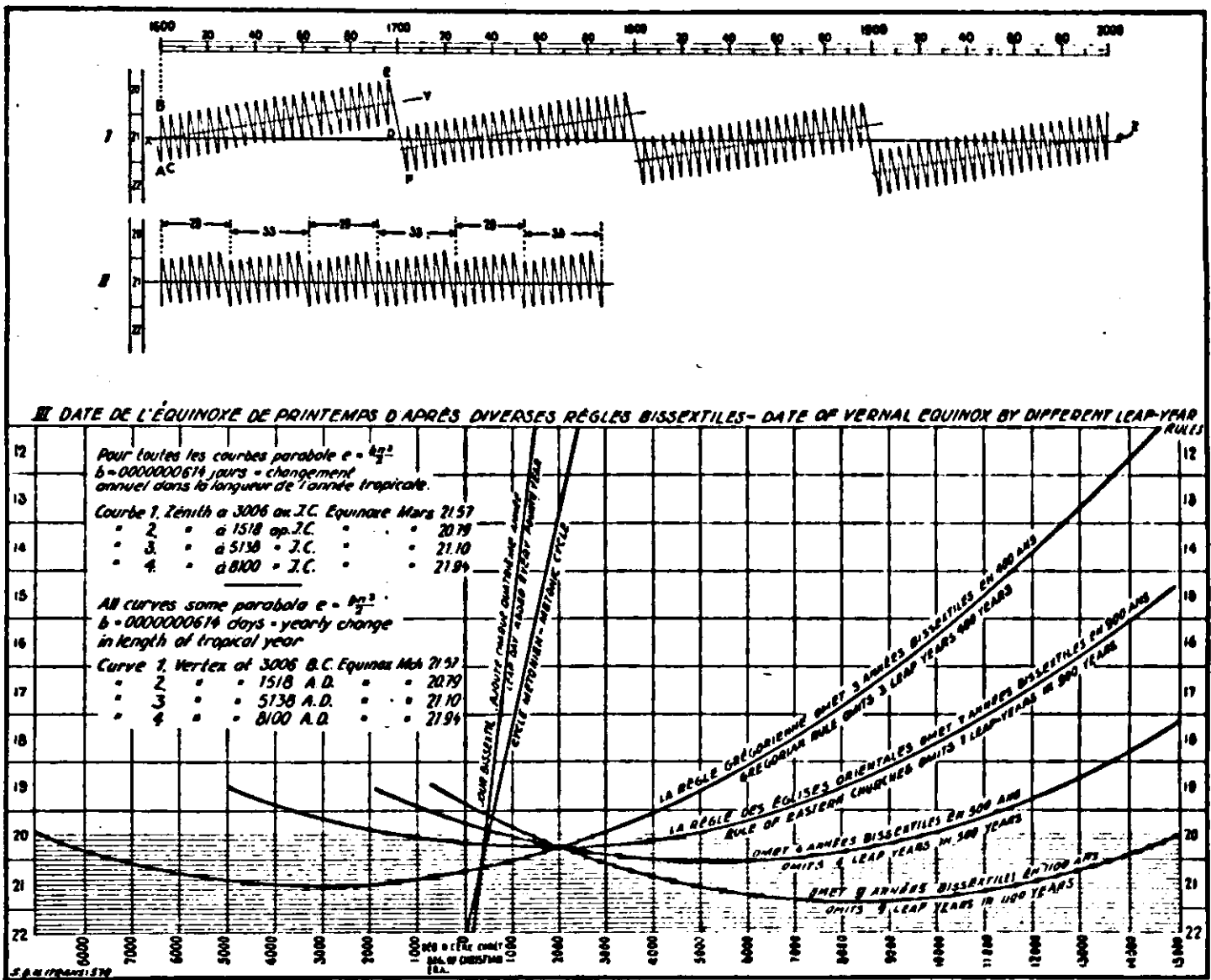
(3) Whatever may be the antiquity of the Fourth Commandment, when issued it was a command for the chosen tribes of Israel alone, not for the Gentile world. On the basis of known history, the present calendar week of six work days and a seventh of rest, each day individually named, is found to be of mixed Christian and pagan origin gradually superposed upon the legal Roman calendar during the second and third centuries A.D.

In so far as yet pointed out, it was never accorded any official Church or State sanction other than tolerance of its persistent and increasing usage by the whole populace. However, then strongly entrenched in public usage, the Christian week was legalised by the Emperor Constantine, about A.D. 321, and the elegant *fixed* Roman calendar was soon completely lost and forgotten.

(4) Calendar reckoning to-day is in nearly universal accord among the principal nations. However, the Gregorian and the Greek leap-year rules which control this reckoning differ appreciably, and it is only a question of time before a drift of the equinox which both rules entail will exceed a day, and when one or more days of difference in the reckoning by the two parties will arise. Although one of these rules is appreciably better than the other, neither is as good for the distant future reckoning as other rules now well known.

No more potent considerations than the foregoing are needed to justify including the betterment of the leap-year rule among the important questions involved in the simplification of the calendar. This course is recommended.

*Leap-Year Calendar Errors, as caused by Intercalation of Days.*



**EXPLANATIONS OF DIAGRAMS.**

To facilitate clearer understanding of the intricate short- and long-time features of operation of various leap-year rules, attention is invited to the diagrams above. Part I represents short-time influences of the date of the equinox, which attend the quadrennial intercalation of leap day and its omission in non-leap-year centuries over the Gregorian cycle from 1600 to the year 2000. The normal date of the equinox over this period is represented by the horizontal straight line starting out at X, chosen for simplicity of the diagram, as of midday March 21st. (The actual astronomical normal or average date is, of course, slightly different.) Starting at A, which represents February 28th, 1600, the date of the equinox is at midnight March 21st-22nd. This being a leap-year century, the intercalation of February 29th causes the equinox to fall at B as of the date of midnight March 20th-21st. During the next four years the date of the equinox

progressively advances from B to C, and again falls as of midnight March 21st. From this point onward the date of the equinox zigzags back and forth across the line XY, reaching E after February 29th in the year 1696, when the equinox falls in the forenoon of March 20th. The line XY represents the natural average dislocation of the date of the equinox (1 day in 128 years) by the rigid Julian rule. The year 1700 being a non-leap-year century, the drift of the equinox is arrested, and by February 28th, 1704, the reckoning is carried to F and the equinox falls in the forenoon of March 22nd. Similar changes repeat themselves during the ensuing three centuries, with the result that the normal reckoning is restored at the end of 400 years, except for a small fraction of a day, as indicated by Z at the year 2000. This is the small outstanding error of the Gregorian reckoning, which slowly follows a parabolic law as shown in curve 1 of the lower diagram.

Part II of the diagram shows the lesser fluctuations of the equinox under two alternating short-time adjustments—namely, first seven years in twenty-nine years, then eight in thirty-three years. The latter is the Omar Khayyám rule. The two in sequence, fifteen leap years in sixty-two years, leave nothing to be desired in either short-time accuracy or the small dislocation of the equinox over many centuries to come. Its only and fatal defect is the necessity for elaborate tables to segregate leap years and common years.

Part III of Plate I shows how the date of the equinox is dislocated by several old and new rules. The time embraced by the diagram ranges from 9000 B.C. to A.D. 15000. Each line represents the normal or average date of the equinox under the rule. For example, the line XY in I is a very small part of the Julian rule marked "Leap Day added every Fourth Year" in III.

The Gregorian rule and the Julian rule intersect at a common point, which represents the date of the equinox at the time of the Council of Nicæa, A.D. 325. Merely for purposes of comparison, the curve for the Metonic cycle is shown as if adjusted to the date of the equinox A.D. 325.

In considering the remaining curves of Part III, it is all important to *think, not of the past or present, but far forward into the future*, if a proper choice is to be given either to retaining old rules or selecting an appropriate new rule. It was stated in the opening words of this section that the Gregorian rule is a rule for the accurate reckoning over past ages. The shaded band on the diagram may be regarded as a band of tolerance two days wide. We would like to have the normal date of the equinox remain within this band (the actual dates will necessarily range over more than two days). Note how the sweep of the Gregorian rule from A.D. 2000 backward to 9000 B.C. lies wholly within the band of tolerance. Note in contrast, however, that its sweep in the future carries it rapidly outside the band of tolerance. The rule of the Eastern churches fits present conditions admirably, but its sweep also carries the reckoning too rapidly outside the band of tolerance to make the rule worthy of acceptance for long distant future use.

Curves 3 and 4 are only two of several possible rules for the future which tell their own story. Rule 3 is merely an adjustment of the Gregorian rule to meet future needs. This rule intercalates leap days at the rate of 121 days in 500 years. The quick adjustment rule shown in Part II (fifteen leap days in sixty-two years) intercalates at the rate of 119.04 days in 500 years. This curve is not shown in the diagrams, but its sweep remains within the band of tolerance more than 1000 years beyond the point where curve 3 passes out. As already pointed out, however, its fatal defect is that a table is indispensable to list the leap years by it.

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From the rules of the calculus, we know that the accumulated sum of all such small errors over a range of time 0 to  $t$  years is given by the equation,

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If now  $D_0$  is the date of the equinox when the reckoning starts — that is, when  $t = 0$  — then after  $t$  years the date will be  $D_t = D_0 + E_t$  or

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### CHANGE OF THE DATE OF THE VERNAL EQUINOX.

This question will require very little discussion and its technicalities will be easily grasped after the very full explanation of the operation of leap-year rules already given.

All chronological events in history are now dated on the Julian or Gregorian calendar, reckoning from the adopted epoch of the birth of Christ.<sup>1</sup> At and about that time the date of the equinox fell in the afternoon of March 23rd by the Julian calendar. From that point it drifted earlier to the 21st in A.D. 325, then to March 11th in 1582. The ten days stricken from the calendar by Gregory may be regarded as the excess leap days the Julian rule intercalated in the centuries which should have been non-leap years—namely :

#### Non-Leap-Year Centuries

$$3 \quad 5-6-7 \quad 9-10-11 \quad 13-14-15 = 10.$$

May we not ask, should we not be consistent and also strike out two more days to represent the excess century leap days added by the Julian rule in the years 100 and 200? Unless something like this is done, an anomalous situation in chronological reckoning by the Gregorian calendar will continue indefinitely, because the starting-point of the *calendar* is as of the year A.D. 325, whereas the *count of years* is reckoned from a point of time 325 years earlier. If two more days are omitted, the dates in the first 99 years A.D. become strictly comparable with corresponding dates to-day. For example, the year A.D. 30 is generally regarded as the last year of Christ's ministry. While the week-day names were not then known or used, January 1st of that year was the first day of the Jewish week—our Sunday. If we now drop out two additional days, and if we *fix* the present calendar so that January 1st is always Sunday, then each day of the year of our new calendar will perpetually be an exact duplicate in day name and year-day number of the corresponding day in the year A.D. 30. Each day of the new calendar will also be an exact *anniversary day* of the corresponding day in the year A.D. 30.

It will be impressive to know in this twentieth century that, when we celebrate Good Friday—for example, on Friday, April 7, which is the ninety-seventh day of the year—it will be impressive to know that the Good Friday in question is the exact anniversary, day name, year number, and all, of the original day of the Crucifixion. In the same way, Easter Sunday, Whitsunday, and every other day of the year A.D. 30 will have exact counterparts in the day names and year numbers in the new *fixed* calendar.

If the days are not omitted, the disparity of two days in anniversary dates and the incongruity in calendar and chronological reckoning must prevail indefinitely. If the calendar is changed without omitting two days and with all years beginning on Sunday, then, if Easter is fixed on the Sunday nearest the exact anniversary of the day of the Resurrection as many desire, that Sunday will be April 9th (April 15th in a thirteen-month calendar), but the day will be the *exact* anniversary of the Crucifixion, not of the Resurrection.

The foregoing facts of reckoning are submitted for mature consideration.

*Note.* — For additional details, see "Supplementary Report of the National Committee on Calendar Simplification for the United States", Section IV.

<sup>1</sup> Some may advocate that the recognised error of about four years in this epoch should be corrected. Strictly speaking, that is a question of chronology and not of simplification or correcting the calendar. Adjusting the date of the equinox, however, is purely a question of calendar reform.

### **Erratum to Volume I.**

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Insert after "Finland", page 19 :

#### **FRANCE.**

The National Economic Council has been constituted  
the National Committee of Enquiry.

Rapporteur : M. André F. BERTAUT, Member of the Paris  
Chamber of Commerce.

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Official No. : 4th C. G. C. T. 1.

Geneva, July 14th, 1931.

**LEAGUE OF NATIONS**

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**FOURTH GENERAL CONFERENCE  
ON COMMUNICATIONS AND TRANSIT**

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**PREPARATORY DOCUMENTS**

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**Volume II.**

- 1. REPORT BY THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS ON ACTION TAKEN ON THE DECISIONS OF PREVIOUS CONFERENCES.**
  
  - 2. MEMORANDUM ON THE PRINCIPAL QUESTIONS DEALT WITH BY THE ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT SINCE THE THIRD GENERAL CONFERENCE.**
  
  - 3. GRAVE OCCURRENCES OF A GENERAL CHARACTER AFFECTING ROUTES OF COMMUNICATION.**
- 

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**1. REPORT BY THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS ON ACTION TAKEN ON THE DECISIONS OF PREVIOUS CONFERENCES.**

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**I. PRESENT SITUATION AS TO SIGNATURES AND RATIFICATIONS OF THE CONVENTIONS DRAWN UP BY THE ORGANISATION FOR COMMUNICATIONS AND TRANSIT AND ACCESSIONS TO THESE CONVENTIONS.**

All States Members of the League of Nations receive periodically through the Secretary-General of the League a statement of ratifications of Agreements and Conventions concluded under the auspices of the League of Nations. It is therefore unnecessary to insert a list of such ratifications in the present report. An up-to-date statement will however be submitted at the opening of the Conference.

**II. ACTION TAKEN ON THE RECOMMENDATIONS OF THE THIRD GENERAL CONFERENCE ON THE SUBJECT OF IDENTITY AND TRAVEL DOCUMENTS FOR PERSONS WITHOUT NATIONALITY OR OF DOUBTFUL NATIONALITY.**

In accordance with the request of the Advisory and Technical Committee for Communications and Transit, the Secretary-General of the League of Nations on May 9th, 1928, sent the Governments the following circular letter :

“ At the request of the Chairman of the Advisory and Technical Committee for Communications and Transit, I have the honour to ask you to be good enough to inform me what action has been taken in ..... on the recommendations of the Third General Conference for Communications and Transit concerning identity and travelling documents for persons without nationality or of doubtful nationality. At its twelfth session, held in Geneva from February 27th to March 2nd, 1928, the Advisory and Technical Committee for Communications and Transit expressed a desire that the replies to this request should be sent in, if possible, before November 1st, 1928.

“ I venture to remind you that the Assembly, in a resolution adopted on September 26th, 1927, and forwarded on November 2nd, 1927, in C.L.153, asked the Members of the League to give favourable consideration to the recommendations of the Conference.”

The replies to the circular letter (document C.245.M.84.1929.VIII) may be summarised as follows :

The majority of the Governments state that they have already adopted, or are prepared to adopt, the recommendations of the Third General Conference. These are : Australia, Austria, Belgium, Bulgaria, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Luxemburg, Norway, Portugal, Union of South Africa, Uruguay, Yugoslavia. Several Governments suggest modifications on points of detail, especially with reference to the period of validity of such documents.

Replies unfavourable to the adoption of identity and travel documents for persons without nationality or of doubtful nationality may be divided into two groups. The first of these comprises the Governments which consider that this question has no longer any practical importance (this is the opinion of Latvia, for example), or which, like Egypt and Roumania, prefer to place such persons on the same footing as their own nationals.

The second group of replies emanates from Governments which, though prepared to grant travel facilities to the persons referred to in the recommendations of the Conference, prefer to continue the various systems in force in their respective countries, which consist in providing such persons with special certificates, foreigners' passports or Nansen passports. This group includes Canada, Denmark, Estonia, the Netherlands, Siam, Sweden, Switzerland, United States of America.

## 2. MEMORANDUM ON THE PRINCIPAL QUESTIONS DEALT WITH BY THE ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT SINCE THE THIRD GENERAL CONFERENCE.

The Transit Committee considered that a full account of the work of the Communications and Transit Organisation since the Third General Conference<sup>1</sup> was unnecessary in view of the fact that the Governments invited to the Conference have already received official documents covering all the work undertaken. With a view, however, to facilitating the discussions of the Fourth General Conference, the following summary is submitted of the principal questions, not placed separately on the agenda of the Conference, discussed by the Committee since the last General Conference or by Conferences whose work has been prepared by the Committee.

### I. *Ports and Maritime Navigation.*

- (a) International Conference for the Unification of Buoyage and Lighting of Coasts.
- (b) Unification of Maritime Tonnage Measurement.
- (c) Penal Consequences of Collision at Sea.
- (d) Coasting Trade.
- (e) The Right to fly a Merchant Flag.

### II. *Inland Navigation.*

### III. *Road Traffic.*

### IV. *Rail Transport.*

- (a) Negotiability of Railway Transport Documents.
- (b) Application of Article 304 of the Treaty of Trianon and of Article 320 of the Treaty of St. Germain.
- (c) Application of Article 107 of the Treaty of Lausanne.
- (d) Railway Organisation at Danzig.

### V. *Air Transport.*

### VI. *Communications of Importance to the League at Times of Emergency.*

- (a) Wireless Station.
- (b) Facilities to be granted to Aircraft and Motor Vehicles, carrying out Transport of Importance to the League.
- (c) Construction of an Aerodrome near the Seat of the League.

### VII. *Communications Questions affecting Relations between Poland and Lithuania.*

### VIII. *Legal Questions.*

- (a) Interpretation of the St. Petersburg Telegraphic Convention.
- (b) Codification of International Law in Matters of Communications and Transit.

### IX. *General Questions.*

- (a) Obstacles to Freedom of Transit : Recommendation adopted by the Third General Conference on the Latvian Delegation's Proposal.
- (b) Unification of Transport Statistics.
- (c) Passports and Identity Documents.
- (d) Transport of Newspapers and Periodicals.
- (e) Competition between Railways and Waterways.
- (f) Adoption of a Standard Horse-power Measurement for Aeroplane and Dirigible Engines.

### X. *Collaboration between the National Government of China and the Communications and Transit Organisation.*

<sup>1</sup> The Agenda of the Conference includes, *ipso facto*, under Article 8 of the Statute : (a) a report on the work of the advisory and Technical Committee since the last ordinary general Conference.

I. PORTS AND MARITIME NAVIGATION.

(a) INTERNATIONAL CONFERENCE FOR THE UNIFICATION OF BUOYAGE AND LIGHTING OF COASTS.

Following the preparatory work of the Technical Committee on Buoyage and Lighting of Coasts, the Council convened an international Conference, which met at Lisbon from October 6th to 23rd, 1930. Thirty-two States were represented.

1. Agreement concerning Maritime Signals.

The contracting Governments, in order to unify certain descriptions of maritime signals, undertake that only measures in conformity with the regulations attached to the Agreement will be accepted by the competent authorities in their territories who will communicate to navigators by means of visual signals the information or warnings described. The provisions of these regulations may be departed from only in cases where, owing to local conditions or exceptional circumstances, they cannot well be applied. The Agreement was signed by Belgium, Cuba, Estonia, Finland, France, Germany, Greece, Monaco, Morocco, the Netherlands, Portugal, Spain, Sweden and Tunis.

2. Agreement concerning Manned Lightships not on Their Stations.

The contracting parties undertake to unify certain rules in respect of manned lightships not on their stations and to put into force a series of provisions attached to the Agreement, which was signed by Belgium, Cuba, Estonia, Finland, France, Germany, Great Britain and Northern Ireland, Greece, India, Monaco, Morocco, the Netherlands, Portugal, Spain, Sweden and Tunis.

3. Recommendations on Lighthouse Characteristics and Radio-Beacons.

These were framed to provide for new lighthouse systems, or to improve existing systems, without laying down absolute rules or necessitating immediate changes in existing systems. It was recommended that radio-beacons should be established throughout the world at all points where they were likely to be useful to maritime navigation.

The recommendations were signed by Belgium, Brazil, China, Cuba, the Free City of Danzig, Estonia, Finland, France, Germany, Great Britain and Northern Ireland, Greece, India, Italy, Japan, Mexico, Monaco, Morocco, the Netherlands, Poland, Portugal, Roumania, Spain, Sweden, Tunis and the United States of America.

4. Resolution concerning the Continuation of Work relating to the Unification of Buoyage.

The Conference was unable to establish an Agreement on the unification of buoyage characteristics. Believing that a further discussion would bring about agreement, the Conference adopted a resolution, which was, in part, as follows :

“ Expressing its satisfaction that the work of its Buoyage Committee and of its Drafting Committee has permitted uniform rules to be drawn up regarding a certain number of buoyage questions capable of facilitating the elaboration of a complete international buoyage system, and that these rules have been unanimously agreed upon with a view to the organisation of such a system ;

“ Noting, however, that it hardly seems possible to apply these rules except as part of a sufficiently general agreement dealing with the main questions of buoyage as a whole ;

“ Noting, further, that no immediate agreement seems possible with regard to certain of these important questions, such as the allocation of colours by day and by night of odd and even numbers in the lateral buoyage system ;

“ Believing that further efforts must be made to secure agreement between all the maritime nations of the world before the expediency of examining the possibilities of agreement between certain of these nations only is considered ;

.....

“ Decides to postpone its work on buoyage questions, and expresses the hope that it will be given an opportunity of resuming its work in about a year's time with a view to allowing the Governments concerned to make fresh efforts to reach complete agreement after consideration of the proceedings of the present Conference.”

.....

(b) UNIFICATION OF MARITIME TONNAGE MEASUREMENT.

Draft regulations for the tonnage measurement of ships which were drawn up at the beginning of 1931 by a Drafting Committee were examined by the Technical Committee for Maritime Tonnage Measurement in July last. The proposed regulations will be examined later by the Permanent Committee for Ports and Maritime Navigation and the Advisory



and Technical Committee. The draft regulations consist of the following six parts : Administrative Provisions, Determination and Definition of Tonnage, Measurement and Calculation of Gross Tonnage under Rule I, Measurement and Calculation of Deductions under Rule I, Measurement and Calculation of Tonnage under Rule II, and Identification Dimensions. They will serve as the basis of discussion for an International Conference on Maritime Tonnage Measurement, which will probably be convened in 1933.

*(c)* PENAL CONSEQUENCES OF COLLISIONS AT SEA.

On the proposal of the Permanent Committee for Ports and Maritime Navigation, the Advisory Committee adopted a resolution on the question of the penal consequences of collisions at sea. The Committee did not think it should undertake the examination of this question of international criminal law. Nevertheless, it was of opinion that the following points might with advantage be brought to the attention of the Governments without touching on the legal questions at issue :

“ 1. Strict observance of the International Regulations for the Prevention of Collisions is of the utmost importance to the safety of life and property at sea.

“ 2. Such observance can be best attained without recourse to criminal law by :

“ (a) Establishing and maintaining a high standard of professional skill and conduct among those entrusted with the duties of navigation ;

“ (b) Within the limits recognised by international maritime law, holding the owners of a vessel responsible to other vessels met with in the course of the voyage for loss resulting from the breach of such regulations by those in their employment.

“ 3. It is the duty of each nation to establish and maintain such standards of professional skill and conduct among those it entrusts with the navigation of vessels under its own flag. Apart from the question as to what, if any, may be the conditions under which the criminal jurisdiction of a country may be exercised over the crew of a vessel under another flag, it is desirable that . . . there should be left exclusively in the hands of the nation whose flag the vessel flies the enforcement of disciplinary measures for the purpose of establishing and maintaining such standards of professional skill and conduct, such as suspension of the national certificate of competency given to an officer, or other disciplinary action.

“ 4. International maritime law already provides means by which the owners of vessels may be made responsible to other vessels met with in the course of the voyage for loss resulting from a breach of the collision regulations by those in their employ.

“ The above considerations and recommendations in no way affect the question of collisions due to criminal intention or criminal neglect ; and the Committee is fully aware that the distinction between cases of a disciplinary character and those of a criminal nature may sometimes be difficult to make and, in the rare cases when this question arises, it could only be settled after criminal proceedings had been set on foot.”

.....

*(d)* COASTING TRADE.

A preliminary study has been made to enable the Committee for Ports and Maritime Navigation to consider the possibility of an international definition of the term “ coasting trade ”.

*(e)* COMPARATIVE STUDY OF NATIONAL LAWS GOVERNING THE GRANTING OF THE RIGHT TO FLY A NATIONAL FLAG.

The Transit Committee examined in March 1930, at the request of the Economic Committee, certain measures studied by that Committee for the suppression of alcohol-smuggling into Finland. The Transit Committee, realising that some of the difficulties arose from the conditions under which the right to a flag was sometimes granted to ships engaged in smuggling, instructed the Secretariat to undertake a comparative study of national laws and practice, which was completed in the early part of 1931.

II. INLAND NAVIGATION.

The Council convened the European Conference for the Unification of River Law, which met at Geneva from November 17th to December 9th, 1930. The Transit Committee had been engaged upon preliminary work for this Conference since 1922, when it secured the co-operation of the River Commissions of the Danube, the Elbe and the Rhine. A Committee of Jurists drew up three draft Conventions for the unification of certain rules of river law applicable to navigation on the main systems of European navigable waterways.

Twenty-two countries were represented at the Conference, as well as the Central Commission for Rhine Navigation, the International Commissions for the Danube, the Elbe and the Oder, the International Maritime Committee (Antwerp), the Institute of Private Law (Rome) and the International Chamber of Commerce.

The Conference adopted :

1. A Convention for the unification of certain rules concerning collisions in inland navigation. It lays down that if the collision is an accident, if due to *vis major*, or if there is doubt as to its causes, the damage shall be borne by the person suffering it. If due to an error on the part of one of the vessels, that vessel shall be liable for compensation for damage ; if caused by two or more vessels, such vessels shall be jointly and severally liable for compensation for damage caused to innocent vessels and to persons and objects on board such vessels. The liability of each vessel is proportionate to the gravity of its error, and arises notwithstanding that the collision may be caused by error on the part of the pilot, even if a pilot be compulsory. The provisions of the Convention do not affect the rules governing the limitation of the liability of owners of vessels laid down in each country or the obligations arising from transport or other contracts.

The Convention was signed by Belgium, Czechoslovakia, Danzig, France, Germany, Hungary, Italy, the Netherlands, Poland, Roumania, Switzerland and Yugoslavia.

2. The Convention on the registration of inland navigation vessels deals with the registration of inland navigation vessels, ownership, mortgages, liens, seizures and enforcement. It is provided that registers for inland navigation vessels shall be established by the parties in accordance with their national laws which shall determine the conditions which a vessel must fulfil in order to be registered. All vessels with a displacement of at least 20 metric tons must be registered if they fulfil the conditions laid down by the laws of one or more parties, but they can only be registered in the territory of a single State to be chosen by the owner of the vessel. A vessel registered in one State cannot be registered in another unless the first registration is cancelled.

The provisions relating to ownership and mortgages lay down generally that the regulations in respect of these matters shall be governed by the law of the country of registration. Certain general provisions, however, secure adequate publicity and a certain degree of uniformity. The provisions relating to liens define the claims which are to be regarded as privileged, establish the priority of such claims among themselves and determine the conditions for their extinction.

The provisions relating to seizure and enforcement lay down that the validity of the effects of these measures shall be governed by the law of the country in which the vessel is seized. The record of the seizure or enforcement must, however, be forwarded to the office of registration, and a certain procedure followed for the publication of the seizure.

The Convention does not apply to vessels exclusively employed in any capacity by the public authorities.

The contracting parties whose laws are not adequate to ensure the execution of the Convention undertake to make the necessary arrangements for the purpose. They agree in particular to communicate to each other through the Secretary-General of the League the legislative provisions or regulations severally adopted to ensure the execution of the Convention, a list of the authorities responsible for keeping the registers and the initial letters used by the registration offices.

The Convention was signed by Belgium, Czechoslovakia, Danzig, France, Germany, Hungary, Italy, the Netherlands, Poland, Switzerland and Yugoslavia.

3. The Convention on administrative measures for attesting the right of inland navigation vessels to a flag provides that a vessel employed in inland navigation may only have the right to a single national flag. The contracting parties reserve their right to prescribe the conditions governing the acquisition and loss of the right to a flag. Vessels must be entered on a special register kept by a competent authority of the State granting the right. A vessel complying with the conditions prescribed by the law of two or more contracting parties may only be entered on the register of one of the parties, to be chosen by the owner of the vessel.

Each party reserves its right to require its nationals to enter on its register vessels of which they own more than one-half, fulfilling the conditions prescribed by two or more States, if such nationals are habitually resident or, in the case of companies, if the chief seat of management of their business is situated in the territory of their home State. For vessels belonging to physical persons similar conditions obtain in respect of nationals not residing habitually in their home territory, if their vessels are used solely for navigation in the waters of that territory. A vessel entered on one register cannot be entered on another, before its name is removed from the first.

The Convention was signed by Belgium, Czechoslovakia, France, Hungary, Italy, Poland and Yugoslavia.

Three recommendations were attached to the Final Act :

1. That countries availing themselves of the reservation to the Convention relating to collisions in respect of waters in which navigation is exclusively reserved for their nationals should bring their laws applicable to these waters into conformity with the provisions of the Convention ;

2. That, pending the conclusion of a Convention on assistance in saving of life and property in river navigation, the laws of every State should impose on the captain or master of each ship involved in a collision the duty of rendering to the other ship and its crew and passengers such assistance as he can without serious danger to his own ship, crew and passengers ;

3. That a Convention should in the near future be concluded on the subject of attachment (*saisie conservatoire*).

The Transit Organisation, in continuation of the work of the unification of river law, is dealing with a number of problems such as assistance and saving of life, and property in river navigation, question of procedure, responsibility in matters of river law, insurance and other technical subjects.

### III. ROAD TRAFFIC.

The Transit Committee for some years had under consideration the framing of agreements to facilitate international road traffic. The Committee on Road Traffic and the Fiscal Committee of the League had considered jointly the taxation of foreign motor vehicles.

The European Road Traffic Conference met in Geneva on March 16th, 1931. In addition to the twenty-four States represented, delegates from international tourist associations and organisations interested in tourist or commercial traffic also attended.

1. The Conference adopted a Convention on the Unification of Road Signals providing for danger signals (triangular) ; signs prohibiting passage (circular) ; and information signs (rectangular).

The Convention was signed by Belgium, Czechoslovakia, Danzig, Denmark, France, Germany, Italy, Luxemburg, Poland, Switzerland and Yugoslavia.

2. The Conference adopted a Convention on the Taxation of Foreign Motor Vehicles. It provides that touring-cars registered in the territory of one of the contracting parties and circulating temporarily in the territory of another contracting party shall be exempt from the taxes and charges levied in the country visited for a period of ninety days in the year. The exemption does not apply to vehicles used commercially for the public conveyance of passengers for payment or for the transport of persons and goods on a commercial basis. Persons claiming exemption will be required to hold a fiscal permit valid for one year from the date of issue. The permit may be issued, not only by the competent authority of the country in which the vehicle is registered, but by any organisation to which this authority has delegated the necessary competence.

The Convention was signed by Belgium, Czechoslovakia, Danzig, Denmark, Great Britain, Luxemburg, the Netherlands, Poland and Switzerland. The French delegate announced that his Government would sign the Convention subsequent to a pending re-organisation of the system of motor-car taxation in France.

3. The Conference approved an Agreement between Customs authorities to facilitate the procedure relating to triptychs. The Agreement is designed to remove certain practical difficulties which have arisen for tourists under the present system.

The Agreement was signed by Belgium, Denmark, France, Germany, Great Britain, Luxemburg, the Netherlands, Switzerland and Yugoslavia.

The Conference adopted a recommendation to the effect that a system of codification should, as soon as possible, be internationally established for signals used by officials directing traffic and by drivers of vehicles.

The Conference, in approving the Convention on the Taxation of Foreign Motor Vehicles, recommended that the contracting parties should endeavour, either through internal legislation or by agreements among themselves, to extend as widely as possible the system of tax exemption laid down in the Convention and to improve the methods of applying it.

The Conference was unable to come to an agreement upon a convention on international commercial motor transport. Owing to the very considerable development of motor traffic during recent years, it was impossible for any of the delegates to appreciate the exact legal consequences of a convention dealing with the matter. The Conference, therefore, decided to suspend its work on the Convention on International commercial motor Transport, but proposed that a future conference should endeavour to find an international solution of the problem, after supplementary investigations into the legislation of the various countries had been made. It recommended that, pending the conclusion of an international convention, separate agreements should be made between States on as liberal a basis as possible.

#### IV. RAIL TRANSPORT.

##### (a) NEGOTIABILITY OF RAILWAY TRANSPORT DOCUMENTS.

The Transit Committee appointed a Special Committee to study the question of the negotiability of railway transport documents which met for the first time in October 1930.

Representatives of the International Chamber of Commerce and the International Union of Railways were present at this meeting in an advisory capacity. These bodies had for some time been studying the question on their own behalf.

The Special Committee noted that the negotiable transport document used in a large number of countries in America and recognised by the legislation of certain European countries is formally prohibited by the International Convention of Berne regulating the transport of goods by railway. The International Convention of Berne recognises only the waybill, which is essentially a different class of transport document, particularly in respect of the right of disposing of the goods in course of consignment.

It was pointed out that persons interested in production and trade have recognised the great utility of negotiable transport documents guaranteeing payment of the goods and enabling them to be sold in course of consignment, delivery being effected by handing over the document to the person acquiring the goods. Such documents also permit credit to be obtained on the goods transported and, in particular, enable the document to be given as security for bills which the bearer of the negotiable document may draw. These credit operations are of special advantage during the present credit crisis. It was observed, on the other hand, that the creation of these negotiable documents would involve a number of difficulties of a legal, administrative and technical character.

The Committee considered that it would be well for the International Chamber of Commerce and the International Union of Railways to continue their study of the question. It decided to meet again, as soon as the two Organisations had communicated the result of their enquiries.

##### (b) APPLICATION OF ARTICLE 304 OF THE TREATY OF TRIANON AND ARTICLE 320 OF THE TREATY OF ST. GERMAIN.

The Committee has, at the request of the Council, considered several requests addressed by railway companies situated in the territories of the Successor States of the former Austro-Hungarian Monarchy for the appointment of arbitrators to decide, under Article 304 of the Treaty of Trianon and Article 320 of the Treaty of St. Germain respectively, upon disputes between the States concerned and the companies. The Council has, on several occasions, adjourned the appointment of arbitrators in the hope that a friendly agreement might be reached between the parties.

In the majority of cases such agreements have been concluded, and the Council, at the request of the railway companies, definitely withdrew from its agenda the relevant requests during its session in May 1931.

In two cases only the Council has appointed arbitrators who, in the absence of any agreement concluded before March 15th, 1931, between the States territorially concerned and the railway companies, have constituted themselves as an arbitral tribunal. Negotiations between the parties concerned have, however, resulted in preliminary agreements, and the arbitral tribunal has adjourned its first meeting to allow of the accomplishment of the formalities necessary to put these agreements into force.

##### (c) APPLICATION OF ARTICLE 107 OF THE TREATY OF LAUSANNE.

At the joint request of the Greek and Turkish Governments, who had concluded a general treaty of arbitration, the services of the League Commissioner in Istanbul were terminated in 1931 by the Council's decision. He had been stationed there since 1925 to see that freedom of transit was maintained on the international railway running from Bulgaria to Istanbul. Both Governments expressed their appreciation of his services.

##### (d) RAILWAY ORGANISATION AT DANZIG.

The Permanent Legal Committee and the administrative section of the Permanent Rail Transport Committee were asked in 1930 to advise the High Commissioner of the League of Nations at Danzig on certain questions concerning railway organisation in the Free City. The question was examined at meetings held in Paris and Geneva with the assistance of a Committee of Enquiry which conducted investigations on the spot. The representatives of Poland and the Free City of Danzig have on several occasions furnished explanations and indicated the views of their Governments. A final report was sent to the High Commissioner on September 29th, 1930.

## V. AIR TRANSPORT.

The Eighth Assembly (1927) adopted a resolution urging economic co-operation between air transport undertakings in accordance with a recommendation of the Committee of Experts on Civil Aviation of the Preparatory Disarmament Conference. The Transit Committee referred the question to a Special Committee which was also asked to examine the questions relating to the international organisation of air navigation raised at the Third General Conference. The Air Transport Co-operation Committee held its first session at Geneva in July 1930. It used as the basis of discussion a document prepared by well-known experts which contained the following studies : (1) Present Economic Conditions of Civil Air Navigation ; (2) The Relations between Civil and Military Aviation ; (3) International Commercial Aviation and National Administration ; (4) Principles of Public International Law applicable to Air Transports.

Owing to the complexity of the problems before it, the Committee decided that its first task was to draw up a definite programme of study. The Committee felt strongly that close international co-operation was essential to the real progress of civil aviation.

The Committee, realising the necessity of closer co-ordination between the various organisations dealing with air navigation, requested the Secretariat to submit a report for its next session.

The Committee considered it desirable :

1. That the Governments should request the competent international organisations to find the means of affording greater freedom than is at present enjoyed by regular international air transport.

2. That henceforth :

- (a) The Governments should examine in the most liberal spirit requests for authorisation to fly over their territories submitted to them for the purpose of regular transport by air ;

- (b) The Governments should endeavour to conclude among themselves agreements granting the most favourable treatment possible to regular international air transport.

The Committee further considers it desirable that air navigation undertakings carrying on services in territories other than the national territory should maintain relations of cordial co-operation with the national air organisations of the countries flown over, with a view to ensuring the greatest possible efficiency of the international service.

Believing that the existing " pools " system of co-operation between international aviation undertakings has developed satisfactorily, the Committee :

1. Considers that the present state of legislation, and of economic and political conditions under which civil aeronautics are developing, makes it difficult to reach a more fully developed measure of co-operation ;

2. Recommends the Governments and companies to extend and improve the present system by means of bilateral or multilateral agreements aimed to avoid unnecessary competition, increase the economic efficiency of the international air service and develop among the different undertakings a spirit of friendliness which will prepare the ground for closer co-operation.

The Committee felt that the question of the relations between civil and military aviation lay within the province of the Preparatory Disarmament Commission. The Committee also considered that, in view of the negotiations in progress between the States parties and not parties to the International Air Convention, it would be inadvisable to take any action for the moment regarding the unification of public international law on air navigation.

A programme of study prepared by the Committee included the following subjects, the study of which has been undertaken by qualified experts :

1. The regulations for the registration of aircraft, the administrative formalities to be complied with and the conditions laid down regarding the nationality of aircraft crews, with a view to ascertaining what alterations in existing law would be likely to lead to better international co-operation in air transport.

2. The social insurance of staff employed by air companies on the international lines.

3. Air insurance.

4. The simplification of Customs and statistical formalities in connection with air traffic, particularly as regards the documents and affidavits required by the various national authorities.

5. Special police rules for super-maritime air traffic and assistance in case of distress.

Recognising that the question of postal air transport required immediate attention, the Committee set up a Sub-Committee early in 1931. A questionnaire, which took into account all leading aspects of the problem, was sent to the European States in February 1931, the replies to which will be examined later in the year. The Transit Committee is anxious that this question should be examined from every angle by the various European authorities in the near future.

## VI. COMMUNICATIONS OF IMPORTANCE TO THE LEAGUE OF NATIONS AT TIMES OF EMERGENCY.

### (a) THE LEAGUE WIRELESS STATION.

The Committee, on the instructions of the Assembly, examined the question of setting up a wireless station at the seat of the League.

The Tenth Assembly (1929) decided to set up a wireless station with a worldwide range, composed of a short-wave station built at the expense of the League, combined with the long-wave station already operated by the Société Radio-Suisse, the whole plant to fall under the sole authority of the League, whenever the Secretary-General notified the Swiss Government that an emergency had arisen.

The Secretary-General on October 4th, 1930, signed four contracts for the purchase of equipment for the League wireless station with the Marconi, Telefunken and Bell Telephone Companies and the Société générale de T. S. F. Under these contracts the cost of equipping the station will be 2,280,264 francs, to which must be added 50,000 francs for additional equipment considered desirable by the experts.

The construction of the buildings, carried out by the Société Radio-Suisse, commenced on April 1st, 1931, was to be completed by July 15th. The purchase of the necessary sites was made during the month of May.

Under the contracts the installation and equipment of the station should be completed by December 1st, 1931. The station will be worked by the Société Radio-Suisse for itself and on behalf of the League of Nations according to the principles laid down in the agreement concluded between the Secretary-General of the League and the Société Radio-Suisse on June 9th, 1930.

### (b) FACILITIES TO BE GRANTED TO AIRCRAFT AND MOTOR VEHICLES CARRYING OUT TRANSPORT OF IMPORTANCE TO THE LEAGUE.

The proposals submitted by the International Air Navigation Commission to the Transit Committee were communicated by the latter to the Committee on Arbitration and Security, in accordance with the resolution of the Tenth Assembly (1929) and the Council's decision. The Transit Committee suggested to the Committee on Arbitration and Security that a draft resolution should be adopted for submission to the Assembly, and it communicated a preliminary text of this draft to the Arbitration Committee.

The Eleventh Assembly (1930) adopted resolutions on the regime applicable to aircraft and that applicable to motor vehicles carrying out transport duties of importance to the League at times of emergency. The Secretary-General has requested the various States to inform him what steps they intend to take to carry out these resolutions. On the basis of the replies received, negotiations will be initiated between the Secretary-General and the Governments concerned.

### (c) CONSTRUCTION OF AN AERODROME NEAR THE SEAT OF THE LEAGUE.

New proposals were submitted by the cantonal authorities of Geneva in March 1931. A new report of the Committee of Experts will be examined by the Twelfth Assembly.

## VII. COMMUNICATIONS QUESTIONS AFFECTING RELATIONS BETWEEN POLAND AND LITHUANIA.

The Council adopted the following resolution in December 1928 on the question of communications between Poland and Lithuania :

“ The Council,

“ Considering that the Covenant of the League of Nations lays down that :

“ “ Subject to, and in accordance with, the provisions on international Conventions existing or hereafter to be agreed upon, the Members of the League will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League; ”

“ Noting, on the other hand, that the documents before the Council mention obstacles in the way of freedom of communications and of transit ;

“ Considering that, by the Assembly’s resolution of December 9th, 1920, the Advisory and Technical Committee for Communications and Transit was charged ‘ to consider and propose measures calculated to ensure freedom of communications and transit at all times ’ :

“ Decided to request the Advisory and Technical Committee for Communications and Transit to present a report to the Council on the practical steps which might be adopted, account being taken of the international agreements in force, in order to remedy the situation above referred to or to lessen its international repercussions ;

“ Instructs the Secretary-General to communicate the present resolution and all the previous documents to the Advisory and Technical Committee for Communications and Transit.”

The Transit Committee arranged for an economic and technical survey of the situation by a Committee of Experts in 1929 and also for a study of the juridical scope of the agreements in force. The report was communicated to the Council in September 1930, which invited the two Governments to present their observations.

As no agreement could be reached at the Council, the following resolution was adopted on January 24th, 1931 :

“ The Council

“ Requests the Permanent Court of International Justice to give an advisory opinion under Article 14 of the Covenant on the following question :

“ ‘ Do the international engagements in force oblige Lithuania in the present circumstances — and if so, in what manner — to take the necessary measures to open for traffic, or for certain categories of traffic, the Landwarow-Kaisiadorys railway sector ? ’

“ The Secretary-General is authorised to submit this request to the Court, to give all necessary assistance in the examination of the question and, if necessary, to make arrangements to be represented before the Court.

“ The Advisory and Technical Committee for Communications and Transit is requested to provide the Court with any assistance it may need for the examination of the question submitted to it.”

At the Committee’s meeting in May-June 1931, the Chairman was instructed to give the Permanent Court of International Justice such assistance as it may desire.

## VIII. LEGAL QUESTIONS.

### (a) INTERPRETATION OF THE ST. PETERSBURG TELEGRAPHIC CONVENTION.

The Permanent Legal Committee was instructed by the Council in January 1930 to examine the question of the interpretation of the St. Petersburg Telegraphic Convention of 1875, and of the Washington Radiotelegraphic Convention of 1927 from the point of view of the exchange of facsimiles of telegrams despatched in connection with the smuggling of opium and other dangerous drugs.

The Committee reached the conclusion that neither the St. Petersburg Convention with its International Service Regulations, which are of equal validity with the Convention itself, nor the Washington Radiotelegraphic Convention, admit of an interpretation permitting the contracting Governments to comply with Resolution IV adopted by the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs in 1928. Article 2 of the St. Petersburg Convention formally engages the contracting States to ensure absolute secrecy for international telegrams, and Article 74 of the Service Regulations emphasises the peremptory nature of Article 2 of the Convention by authorising the production of the originals or copies of telegrams only to the sender or the addressee, subject, moreover, to special guarantees. The Permanent Legal Committee nevertheless added certain suggestions. It concurred with the view which is at the root of Resolution IV of the Advisory Committee on the Traffic in Opium in thinking that international co-operation, the development of which is one of the cardinal principles of the Covenant of the League, is no longer compatible with the entire secrecy of international telegraphic correspondence. The Committee recognised that the judicial authorities of a country should, in certain circumstances to be determined, be able to obtain originals or copies of international telegrams which are in another country, and that this right should not be confined to cases in which there are criminal proceedings for traffic in narcotics.

### (b) CODIFICATION OF INTERNATIONAL LAW ON COMMUNICATIONS AND TRANSIT.

The Permanent Legal Committee has dealt with the question of the codification of international law on communications and transit, in virtue of a resolution adopted by the Assembly on September 24th, 1929, and also of a decision taken by the Transit Committee at its fourteenth session.

The Committee has made certain proposals for determining what precisely are the texts in force of important conventions and which are the States that are parties thereto, not only in the case of conventions concluded under League auspices, but also in the case of multilateral conventions in force not so concluded. It also contemplates a study of the question of the possibility and desirability of publishing classified indexes of treaties, conventions or agreements concerning communications and transit, including provisions inserted in bilateral conventions regarding communications and transit.

The Committee has instructed the Secretariat, with qualified experts, to make a comparative study of the principles of the most important conventions covering the various fields of communications. This survey should comprise both multilateral conventions in force as well as bilateral conventions of special interest, more particularly commercial treaties.

## IX. GENERAL QUESTIONS.

### (a) OBSTACLES TO FREEDOM OF TRANSIT: RECOMMENDATION ADOPTED BY THE THIRD GENERAL CONFERENCE ON THE LATVIAN DELEGATION'S PROPOSAL.

A draft recommendation of the Latvian delegation at the Third General Conference, as amended by the French delegation, was adopted by the Conference. The recommendation read as follows :

“ The Conference,

“ Noting that, by Article 23(e) of the Covenant of the League of Nations, every Member of the League has undertaken to secure and maintain freedom of communications, transit and international commerce ;

“ Considering that this is a primary duty of the Organisation for Communications and Transit and one which quite recently has been emphatically endorsed by the World Economic Conference ;

“ Recognising that, wherever freedom of communications and international transit is still obstructed by circumstances of an international character, this situation is calculated to paralyse and impoverish economic life :

“ Hopes that, thanks to efforts instinct with the spirit of the League of Nations, the near future will see the removal from international traffic of such obstacles to freedom of transit and of international commerce ;

“ And recommends that the Advisory and Technical Committee for Communications and Transit should closely examine the situation created by such obstacles, wherever these are still to be met, and its effect upon international traffic and commerce.”

At its twelfth session in February-March 1928, the Transit Committee, acting on this recommendation, adopted the following resolution :

“ The Advisory and Technical Committee.

“ Having noted the recommendation adopted by the Third General Conference on Communications and Transit, in which the Advisory and Technical Committee was asked to examine closely the situation created by obstacles to freedom of communications and transit, wherever these were still to be met, and its effect upon international traffic and commerce :

“ Notes that, in pursuance of the Assembly's resolution of December 9th, 1920, it is its duty ‘to consider and propose measures calculated to ensure freedom of communications and transit at all times’ ;

“ Considers that it is therefore entitled to examine, according to the methods it deems most suitable, any situation created by obstacles to the freedom of transit and brought to its attention by a Government, by the Council or Assembly, or by one of its members, without prejudice to the general enquiries entrusted to it in pursuance of the resolutions of the Genoa Conference, and independently of the cases calling for the application of the definite procedure laid down in the Statute of the Organisation for Communications and Transit with regard to the settlement of disputes.

“ To this effect, in order to assist the Committee in the performance of its duties, and to supplement, if need be, the information of all kinds already at the disposal of the members of the Committee, the Chairman of the Committee shall forward to the members of the Committee for their personal information the communications received by him or by the Secretariat which in his opinion may contain information likely to be regarded by the members of the Committee as worthy of the Committee's attention.

“ The questions mentioned in the present resolution shall not be considered, as to their substance, by the Advisory and Technical Committee until the proposal for placing them on the agenda has been notified to the Government or Governments concerned, and until the latter have had an opportunity of submitting any observations they may desire to make.”



**(b) UNIFICATION OF TRANSPORT STATISTICS.**

A draft Convention on the statistics relating to the transport of goods, together with regulations to be applied to statistics covering maritime, inland navigation and railway transport, has been established by the Drafting Committee for the Committee for the Unification of Transport Statistics. Under this Convention the statistics compiled would include, for each of the three methods of transport, annual statements of the transports effected from one territory to another and within a single territory. For maritime navigation they would also include an annual statement of the movements of maritime shipping. For the establishment of transport statistics the territories of the States concerned would be divided into districts, this division being made principally on economic and technical grounds without being necessarily governed by administrative boundaries.

The draft Convention will be submitted to the Committee for the Unification of Transport Statistics for approval, and subsequently to the Transit Committee. It will serve as a basis of discussion for an International Statistical Conference, which will probably meet in 1933.

The Transit Committee considered a report drafted by the International Institute of Statistics, which was asked to co-ordinate the work undertaken. This report fully confirms the conclusions reached by the Committee for the Unification of Transport Statistics, and the recommendations of the Joint Committee of the two bodies reproduce almost in their entirety those which were formulated by the Unification Committee.

**(c) PASSPORTS AND IDENTITY DOCUMENTS.**

Following two Conferences held in 1920 and 1926 respectively, and the work of the Third General Conference on International Passport Regulations and Kindred Questions, a European Conference on Cards for Emigrants in Transit met at Geneva in June 1929. It resulted in the conclusion of an Agreement abolishing visas for emigrants in transit, these visas being replaced by cards issued by shipping companies. The Agreement was signed by Belgium, France, Great Britain and Northern Ireland and the Saar. It was signed *ad referendum* by the Free City of Danzig, Finland, Greece, Hungary, the Netherlands, Poland, Roumania and Switzerland. The number of signatures obtained enabled it to come into force in September 1929, without the usual ratifications.

**(d) TRANSPORT OF NEWSPAPERS AND PERIODICALS.**

A European Conference on the Circulation of Newspapers and Periodicals met at Geneva in November 1929, following a Conference of Press Experts held in August 1927. The Conference advocated the use of the speediest form of rail transport, and the application to newspapers of the regulations applied to goods traffic, particularly with regard to the abolition of Customs formalities. The Transit Organisation will later take up the question of defining the term "periodical" as opposed to "newspaper" with a view to extending similar facilities to the carriage of periodicals. Steps have also been taken to see whether the circulation of newspapers can be relieved from fiscal, Customs and other duties. The Conference studied the question of dropping parcels of newspapers from aircraft in flight.

At its session of May-June 1931, the Transit Committee requested the Secretary-General to communicate to the Governments invited to this Conference the text adopted by the International Railway Union regarding the transport of newspapers and periodicals. The Committee also requested the Governments concerned to consider as quickly as possible the introduction of measures to permit of the application in their territories of the regulations adopted by the International Railway Union.

**(e) COMPETITION BETWEEN RAILWAYS AND WATERWAYS.**

Following Mr. Walter D. Hines' mission to the Danube and the Rhine, the Transit Committee referred the question of competition between railways and waterways raised in Mr. Hines' report to a special Sub-Committee under the chairmanship of Professor Heckscher. Its report, containing a statistical enquiry and an examination of the general conditions under which, in its opinion, tariff policy should comply, could serve as a basis for any subsequent studies to be undertaken by the Committee.

**(f) ADOPTION OF A STANDARD HORSE-POWER MEASUREMENT FOR AEROPLANE AND DIRIGIBLE ENGINES.**

In accordance with a resolution of the Council on January 24th, 1931, a Committee of Experts appointed by the Chairman of the Transit Committee met in Geneva in April 1931, to study the fixing of rules for the adoption of a standard horse-power measurement for aeroplane and dirigible engines in preparation for the Disarmament Conference to be called in 1932. The Committee sought a simple formula which would not result in an appreciable distortion of engine design. The Committee decided to combine the formulæ suggested on the weight of the power unit and the "volume swept".

## X. COLLABORATION BETWEEN THE NATIONAL GOVERNMENT OF CHINA AND THE COMMUNICATIONS AND TRANSIT ORGANISATION.

On the invitation of the Chinese Government, and on the authority of the Council in January 1931, the Director of the Communications and Transit Section went on mission to China in connection with problems of inland navigation and land reclamation. At its session in May-June 1931, the Transit Committee expressed its gratification that it has been considered possible to establish practical co-operation between the Chinese Government and the Communications and Transit Organisation of the League.

The Chairman of the Transit Committee is authorised to forward to a Committee of Enquiry, which will study the training of public works engineers, all questions submitted by the Secretary-General of the Transit Committee concerning the organisation of the civil engineering field station. All questions raised between the Transit Organisation and the Chinese National Economic Council concerning the establishment of a programme of public works and technical equipment should similarly be forwarded to another Committee of Enquiry which will deal with public works.

The Chairman of the Transit Committee will ensure co-ordination between the work of these two Committees.

The Chairman of the Transit Committee is authorised to name the experts appointed to give opinions to the Chinese Government concerning the scheme for the development of the Hwai River ; such experts will also be responsible for the other duties mentioned in the correspondence between the Chinese Government and the Director of the Transit Section. The Chairman of the Transit Committee is further authorised to furnish any other experts whose services may be required.

The Chairman of the Transit Committee may apply to one or more members of that Committee to assist him in these duties.

The Transit Committee provided for the constitution of the two Committees of Enquiry by the adoption of the following resolutions :

### “ A.

“ The Advisory and Technical Committee,

“ Considering it desirable to study the methods of training public works engineers in order to be able to comply more easily with requests for opinions such as that submitted by the Chinese Government ;

“ Being of opinion that such study should be entrusted to a special body consisting of persons in touch with a number of the principal institutions for the training of public works engineers :

“ Requests its Chairman to take the necessary steps without delay, with a view to the creation of a Committee of Enquiry to study questions relating to the training of public works engineers.”

### “ B.

“ The Advisory and Technical Committee,

“ Being anxious to be able to comply more easily with requests for opinions on general questions relating to public works and national technical equipment such as that submitted by the Chinese Government ;

“ Considering it advisable to have at its disposal for this purpose the services of a Committee of Enquiry, composed as far as possible, of experts already belonging to the permanent Committees of the Advisory and Technical Committee :

“ Requests its Chairman to take the necessary steps without delay with a view to the creation of a Committee of Enquiry to study general questions relating to public works.”

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## 3. GRAVE OCCURRENCES OF A GENERAL CHARACTER AFFECTING ROUTES OF COMMUNICATION.

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On August 29th, 1927, the Third General Conference on Communications and Transit adopted the following recommendation on the Hungarian delegation's proposal :

“ The Conference,

“ Recognising how extremely important it is that freedom of transit should not be interfered with by the effects of grave occurrences of a general character affecting routes of communication ;

“ And considering that the Advisory and Technical Committee for Communications and Transit has been entrusted with the duty of studying and proposing suitable measures for securing freedom of communications and transit *at all times* :

“ Recommends that the Advisory and Technical Committee for Communications and Transit should make an exhaustive study of the best means of ensuring as far as possible, in the event of grave occurrences of a general character affecting routes of communication, the maintenance of international transit by the preconcerted utilisation of auxiliary routes capable of being used temporarily in place of the routes through any country in which transit has been interrupted.”

In accordance with this recommendation, the Advisory and Technical Committee for Communications and Transit made a study of the entire question. As a result of the suggestion made by a small Committee, the composition of which is given, together with its report, in Annex 1, and of a report by the Permanent Committee on Transport by Rail, the text of which is also annexed (see Annex 2), the Advisory and Technical Committee, after a very detailed discussion at its twelfth, thirteenth and fourteenth sessions, adopted the following resolution on March 15th, 1930 :

“ The Committee considers that the question of the steps to be taken in case of grave occurrences of a general character affecting routes of communication would be better dealt with in the form of a recommendation than in the text of a convention.

“ It nevertheless resolves to forward to the Fourth General Conference the annexed draft recommendation and draft Additional Protocol (see Annex 3) to the Convention on the International Regime of Railways, which have been framed to carry out the resolution of the Third General Conference.”

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#### Annex 1.

The small Committee, consisting of M. SINIGALIA, President of the Advisory and Technical Committee, M. DIETRICH VON SACHSENFELS, member of the Permanent Committee on Inland Navigation, M. HEROLD, President of the Permanent Committee on Transport by Rail, and M. René MAYER, member of the Permanent Legal Committee, made a preliminary survey of the question from December 13th to 15th and drew up the following report, which was submitted to the Advisory and Technical Committee :

#### TEXT ADOPTED BY THE SMALL COMMITTEE.

The main purpose of the recommendation adopted by the Third General Conference on Communications and Transit, on the Hungarian delegation's proposal, seems to have been to facilitate the execution of the provisions of Article 7 of the Convention on the International Regime of Railways, and particularly to guarantee international traffic in cases where that traffic is impeded over a large area — possibly an entire State.

It would seem that the first steps to be considered for the practical application of this resolution should be in relation to railways. The development of wireless telegraphy and the greater ease with which telegraphic and telephonic communications can be diverted to another route make enquiry into telegraph and telephone communications less urgent. The part that road transport might play in international traffic under the circumstances referred to in the recommendation gives rise to problems which are mainly legal. Facilities would be required in respect of Customs and frontier police control, but these have no direct connection with the special difficulties which the Committee is considering.

As regards railways, two solutions can be considered. They are not of equal value, but for various reasons they both deserve the attention of the Advisory and Technical Committee. Both contemplate the conclusion of a convention between States which would complete the provisions of Article 7 of the Geneva Convention.

According to the first solution, the new contractual undertaking would merely lay down general rules which, however, would involve a more definite obligation than has yet been accepted, since it would provide that States, whose territory adjoined the territory in which traffic was for the moment blocked, should give effective assistance in re-establishing international traffic. The following text gives some idea of this first solution :

“ Should a grave occurrence of a general character totally or partly interrupt international traffic through the territory of any State, those of the contracting States whose lines could be of help in re-establishing the interrupted traffic, undertake, each in their respective territories, and under the conditions laid down in the Convention on Freedom of Transit, to co-operate in the re-establishment of such traffic.

“ Subject to the provisions of international undertakings concerning transport by rail, the transport of passengers and mails will be provided for by the shortest and speediest route and transport of goods by the most economical route. In all cases, traffic will be made to rejoin its normal route as close as possible to the point at which it has had to be diverted.”

According to the second solution, the Convention would include an annex containing a certain number of examples of hindrances to traffic affecting the principal routes of international

concern. For the moment such example would only be given for Europe ; mention would also be made of the various auxiliary routes which the contracting States would undertake to offer for transport of passengers and goods.

This second solution might be expressed as follows :

“ Should a grave occurrence of a general character totally or partly interrupt international traffic on the main routes enumerated in the annex attached to the present Convention, the contracting States undertake, in their respective territories and under the conditions laid down in the Convention on Freedom of Transit, to ensure the re-establishment of traffic by offering the use of the auxiliary lines mentioned in the annex.”

The Advisory and Technical Committee will realise that the second solution is the only one which fully meets the intentions of the authors of the Hungarian resolution, proposed at the Third General Conference on Communications and Transit. In this case previous technical investigations would, however, be necessary so as to determine whether it would be possible in practice to draw up such an annex in view of the number of different examples to be given and of solutions to be proposed. Such an annex would naturally have to be revised periodically and kept up to date by the organisation responsible for the application of the new Convention.

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### Annex 2.

The Permanent Committee on Transport by Rail, having noted the report prepared by the small Committee on the question of serious occurrences of a general character affecting routes of communication, adopted the following resolution at its seventh session held at Geneva from March 13th to 15th, 1929 :

“ The Permanent Committee for Transport by Rail, after examining the Memorandum by the Secretary-General of the Committee on the question of serious occurrences of a general character affecting routes of communication, considers that, in order to comply with the recommendation adopted by the Third General Conference on Communications and Transit, the only practical course would be to propose a new contractual undertaking of a quite general nature. This undertaking would simply lay down general rules involving, however, a more definite obligation than at present, and would ensure effective co-operation, for the re-establishment of international traffic, on the part of States bordering on the region in which traffic has been temporarily interrupted.

“ The following text gives an idea of this solution :

“ Should a serious occurrence of a general character interrupt international transit by rail over the territory of a State, those contracting States whose systems might be used in re-establishing the interrupted communications undertake, each for its part, to co-operate in re-establishing such communications.

“ Subject to the provisions of the international agreements on transport by rail, transport shall be effected over another route ; every effort shall be made, however, to reduce the length of the alternative route as far as the interests of the transported passengers or goods allow.”

“ The final text should include certain of the restrictions contained in the Convention on the Freedom of Transit, particularly provisions identical with, or similar to, those of Articles 5, 7, 8 and 9 of the Statute on the Freedom of Transit.

“ The Permanent Committee for Transport by Rail has naturally only considered questions connected with railway transport.”

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### Annex 3.

#### I. DRAFT RECOMMENDATION.

The General Conference on Communications and Transit considers it desirable that, in the event of grave occurrences of a general character affecting routes of communication, all necessary steps should be taken to lessen the effects of such occurrences on international traffic.

It is of opinion that, should a grave occurrence of a general character interrupt international traffic through the territory of one or more States, those States whose lines could be of help in re-establishing the interrupted traffic should co-operate, each in its own territory, in the re-establishment of such traffic. It should be understood that, subject to the provisions of international undertakings concerning transport by rail, traffic would, as far as possible, and as far as is compatible with the interests of the passengers or goods carried, be forwarded by a new route involving the shortest possible detour.

In addition, consideration should be given to any suitable plan for using the transport services (other than railways), operated by the State, under concession or with its authority, in order to facilitate the resumption of traffic.

## II. DRAFT ADDITIONAL PROTOCOL TO THE CONVENTION ON THE INTERNATIONAL REGIME OF RAILWAYS.

The Governments of the States, contracting parties to the Convention on the International Regime of Railways, signed at Geneva on December 9th, 1923, whose representatives, being duly authorised, have appended their signatures to the present Protocol.

Being desirous of facilitating the application of Article 7 of the Statute on the International Regime of Railways and of supplementing its provisions,

Agree as follows :

### *Article 1.*

Should a grave occurrence of a general character interrupt international railway traffic through the territory of one or more contracting States, those of the contracting States whose lines can be of help in re-establishing the interrupted traffic shall co-operate, each in its own territory, in the re-establishment of such traffic.

### *Article 2.*

Subject to the provisions of international undertakings concerning transport by rail, traffic shall, as far as possible and as far as is compatible with the interests of the passengers or goods carried, be forwarded by a new route involving the shortest possible detour.

### *Article 3.*

In the cases contemplated in Article 1 above, the contracting States shall, with a view to assisting in the re-establishment of traffic, take the steps required to obtain the assistance of transport services, other than railway services, operated by the State, under concession or with its authority.

### *Article 4.*

The provisions of the present Protocol are to be construed as subject to Articles 29, 30, 32, 43 and 44 of the Statute on the International Regime of Railways.

Genève, le 1<sup>er</sup> avril 1931.

SOCIÉTÉ DES NATIONS

ORGANISATION DES COMMUNICATIONS ET DU TRANSIT

CONFÉRENCE POUR  
L'UNIFICATION DU DROIT FLUVIAL

Tenue à Genève du 17 novembre au 9 décembre 1930.

COMPTES RENDUS ET TEXTES

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## Première Partie.

# COMPTES RENDUS DES SÉANCES PLÉNIÈRES DE LA CONFÉRENCE

## 1. LE BUREAU DE LA CONFÉRENCE ET LES DÉLÉGATIONS

*Président de la Conférence* : M. Joseph DE RUELLE, juriconsulte du Ministère des Affaires étrangères de Belgique.

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*Président de la deuxième Commission* : M. le professeur Robert HAAS (Suisse).

*Président de la troisième Commission* : S. E. M. Constantin CONTZESCO (Roumanie).

*Président du Comité de rédaction* : M. J. HOSTIE (Commission centrale pour la navigation du Rhin).

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M. J. L. METTERNICH, secrétaire des Commissions.

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### ALLEMAGNE

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Le docteur Erich ALBRECHT, Conseiller de Légation au Ministère des Affaires étrangères du Reich.

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GRÈCE

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**SUÈDE**

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**SUISSE**

*Délégués :*

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Le docteur Reinhard HOHL, Chef de Section au Département politique fédéral.

**TCHÉCOSLOVAQUIE**

*Délégués :*

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*Délégué :*

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*Délégués adjoints :*

M. Douchan PANTITCH, Chef de Section au Ministère royal des Affaires étrangères ;

Le docteur Ivan SOUBOTITCH, Chef de Section au Ministère royal des Affaires étrangères.

Les États suivants avaient désigné comme observateurs :

**DANEMARK**

M. William BORBERG, Délégué permanent auprès de la Société des Nations.

**FINLANDE**

M. Evald GYLLENBÖGEL, Conseiller de Légation à Berne et à la Délégation permanente auprès de la Société des Nations.

Remplaçant :

M. Paul HJELT, Secrétaire de Légation à la Délégation permanente auprès de la Société des Nations.

**TURQUIE**

Fuat CHEVKET Bey, Consul de la République turque à Genève.

Les représentants suivants de la COMMISSION DE GOUVERNEMENT DU TERRITOIRE DU BASSIN DE LA SARRE :

M. Paul CENTNER, Directeur technique adjoint des Travaux publics, des Chemins de fer et des Postes et Télégraphes ;

M. Max HOFFMANN, Chef du Service de la navigation,

ont pris part aux travaux de la Conférence à titre consultatif.

La COMMISSION CONSULTATIVE ET TECHNIQUE DES COMMUNICATIONS ET DU TRANSIT a été représentée par :

M. Bohdan WINIARSKI, Président du Comité pour l'Unification du Droit fluvial.

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Ont été invitées à prendre part aux travaux de la Conférence, à titre consultatif, les Organisations internationales suivantes qui ont désigné à cet effet :

#### COMMISSION CENTRALE POUR LA NAVIGATION DU RHIN

Son Excellence M. Carlo ROSSETTI, Envoyé extraordinaire et Ministre plénipotentiaire, Commissaire d'Italie, Président du Comité de droit privé de la Commission Centrale pour la Navigation du Rhin ;

M. Jan HOSTIE, Secrétaire général de la Commission centrale pour la navigation du Rhin.

#### COMMISSION INTERNATIONALE DU DANUBE

Son Excellence M. Carlo ROSSETTI, Envoyé extraordinaire et Ministre plénipotentiaire, Délégué de l'Italie à la Commission internationale du Danube ;

Son Excellence M. Constantin CONTZESCO, Ministre plénipotentiaire, Délégué de la Roumanie à la Commission internationale du Danube ;

Assistés de :

M. Alexis BAULE, Secrétaire général de la Commission internationale du Danube.

#### COMMISSION INTERNATIONALE DE L'ELBE

Son Excellence M. Carlo ROSSETTI, Envoyé extraordinaire et Ministre plénipotentiaire, Délégué de l'Italie à la Commission internationale de l'Elbe ;

M. O. G. VON WESENDONK, Secrétaire général de la Commission internationale de l'Elbe.

#### COMMISSION INTERNATIONALE DE L'ODER

Son Excellence M. Bohuslav MÜLLER, Délégué de la Tchécoslovaquie à la Commission internationale de l'Oder ;

M. Bohdan WINIARSKI, Délégué de la Pologne à la Commission internationale de l'Oder, Président du Comité de droit fluvial de la Société des Nations ;

M. Paul CHARGUÉRAUD-HARTMANN, Secrétaire général de la Commission internationale de l'Oder.

#### INSTITUT INTERNATIONAL DE ROME POUR L'UNIFICATION DU DROIT PRIVÉ

M. Hans FICKER, Secrétaire général adjoint de l'Institut.

#### COMITÉ MARITIME INTERNATIONAL

M. Albert LE JEUNE, Vice-Président du Comité.

#### CHAMBRE DE COMMERCE INTERNATIONALE

M. O. H. HOFFMANN, Directeur général de la Société d'Assurances « Unitas » à Dusseldorf, Président de la Commission des assurances fluviales de l'Union internationale d'Assurances Transports ;

M. HOLBAN, Secrétaire du Comité national roumain de la Chambre de Commerce internationale.

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## 2. PROCÈS-VERBAUX DES SÉANCES PLÉNIÈRES DE LA CONFÉRENCE

### PREMIÈRE SÉANCE PLÉNIÈRE

*Tenue le lundi 17 novembre 1930, à 15 heures.*

*Président: M. DE RUELLE (Belgique).*

#### I. Élection du président de la Conférence et des présidents des trois commissions.

M. VAN SLOOTEN (Pays-Bas) propose à la Conférence d'élire comme président M. de Ruelle, juriste au Ministère des Affaires étrangères de Belgique, en raison de sa notoriété et de ses grandes capacités d'expert.

*M. DE RUELLE est élu président par acclamation.*

Le PRÉSIDENT déclare qu'il n'entre nullement dans ses intentions de prononcer un discours ; il tient seulement à remercier spécialement M. van Slooten de l'aimable pensée, sans doute un peu téméraire, de l'avoir proposé comme président de la Conférence.

A vrai dire, son premier réflexe, en entendant suggérer sa candidature, a été de se dérober. En parcourant la liste des délégués des pays représentés à la Conférence, on voit figurer des personnalités dont la compétence est universellement connue, tandis que le président qui vient d'être élu n'aura aucune compétence et ne pourra apporter aux travaux que le concours de sa bonne volonté.

En réfléchissant, le Président se demande si la pensée à laquelle a obéi la Conférence ne s'est pas quelque peu inspirée de l'idée qu'il convient, pour assurer l'indépendance des débats, d'avoir un président dégagé de toute idée préconçue et de toute opinion doctrinale ou autre au sujet des questions à résoudre. Quoi qu'il en soit, il fera de son mieux. Certainement, lorsqu'à la lumière de leur science et de leur expérience, les délégués ici présents à la Conférence auront examiné les propositions qui leur sont soumises, afin de dégager le point de vue qui répond davantage aux intérêts de leurs pays respectifs, il est fort peu probable que les opinions qui se feront ainsi jour soient toutes concordantes. Peut-être donc est-il utile que la Conférence ait un président dont la tâche consiste essentiellement à tenter de faire jaillir la lumière de l'échange des idées et à essayer de trouver des solutions conciliantes, ce qui ne signifie d'ailleurs nullement des solutions moyennes. Les solutions moyennes sont en effet souvent médiocres, mais on peut fort bien trouver, entre des conceptions juridiques divergentes, des solutions transactionnelles qui ne soient pas des solutions moyennes. Le Président ajoute qu'il se tient tout entier à la disposition de la Conférence, et il remercie celle-ci de la pensée qui a guidé son choix.

Il déclare ensuite, en ce qui concerne les travaux de la Conférence, que la première préoccupation de celle-ci doit être d'arrêter la procédure à suivre. A cet égard, trois matières doivent être examinées, dont deux présentent entre elles des points de contact.

Il conviendrait d'abord de permettre aux délégations de faire l'exposé général de leur point de vue, exposé qui n'appellerait pas, de prime abord, de réplique de la part des diverses délégations. La discussion des points de vue serait réservée pour les séances des commissions. En effet, il serait indiqué de constituer des commissions au sein desquelles on se livrerait à un travail plus approfondi.

Si la Conférence est de cet avis, il sera procédé à la désignation de celles-ci et au choix de leurs présidents. Elles seraient donc au nombre de trois, pour chacun des trois points de l'ordre du jour.

La première de ces commissions traiterait de la question de la nationalité des bateaux ; la deuxième, de l'immatriculation, de la propriété et des droits réels ; la troisième de l'abordage.

Le président propose que S. E. M. Carlo ROSSETTI (Italie) soit nommé président de la Commission de la nationalité (première Commission).

Il propose ensuite de nommer président de la Commission de l'immatriculation, de la propriété et des droits réels (deuxième Commission) M. le professeur HAAB (Suisse).

Il propose enfin de nommer comme président de la Commission de l'abordage (troisième Commission) S. E. M. Constantin CONTZESCO (Roumanie).

*Les présidents des trois commissions sont élus par acclamation.*

Le PRÉSIDENT déclare que chaque délégation sera représentée dans chacune des trois commissions.

#### II. Programme des travaux.

M. RIPERT (France) demande s'il est entendu que tout délégué peut siéger dans les commissions sans délégation spéciale.

Le PRÉSIDENT répond affirmativement. Il existe, en effet des délégations peu nombreuses, composées d'un ou de deux membres. Il convient, par conséquent, que les trois commissions siègent à des moments différents, pour que leurs membres puissent tous participer aux débats des

différentes commissions. Ainsi la Commission de l'immatriculation et des droits réels pourrait siéger dans la matinée et les autres, alternativement, l'après-midi.

Le Président ajoute que, suivant une suggestion du Secrétaire général de la Conférence, le règlement à adopter en ce qui concerne les travaux de celle-ci pourrait être celui qui est en vigueur pour les Conférences générales de l'Organisation des communications et du transit. Si, à l'expérience, ce règlement se révélait insuffisant sur tel ou tel point, il serait temps encore d'examiner, à ce moment, ce cas particulier et de pourvoir à la lacune.

M. RIPERT (France) dit que certains délégués paraissent avoir des doutes quant à leur droit de déposer des amendements aux projets de conventions. M. Ripert estime qu'il n'y a pas lieu de limiter ce droit, mais il se déclare opposé à toute proposition qui prévoirait que les amendements devraient être nécessairement présentés au début des travaux de la Conférence.

Le Secrétaire général de la Conférence déclare qu'une autre question peut se poser. En effet, il est de règle générale que toute déclaration en français doit être traduite en anglais et *vice versa*. Or, dans le cas présent, aucune délégation n'a demandé à se servir de la langue anglaise. Le Secrétaire général demande donc à la Conférence confirmation de ce fait afin d'éviter la nécessité de traduire les délibérations.

*La Conférence confirme ce fait.*

En réponse à la question posée par M. Ripert concernant les futurs amendements, le Président dit qu'il fera son possible pour que les documents soient distribués en temps utile.

Le Président invite ensuite la Conférence à commencer la discussion générale.

### III. Discussion générale.

M. WINIARSKI, président du Comité pour l'unification du droit fluvial, fait observer que de toutes les branches du droit international, celle qui a pris, à l'époque la plus récente, un développement vraiment extraordinaire, c'est le droit international des communications. Une activité dévorante, peut-être même quelque peu fiévreuse, règne dans ce domaine. Les conférences se succèdent et de nombreuses conventions ont couronné leurs efforts. Le droit maritime a fait un grand pas en avant avec la Convention de Bruxelles et la Convention sur les ports maritimes. Le régime international des chemins de fer a été grandement amélioré par la révision de la Convention de Berne, par la Convention de Genève et les accords techniques conclus, pour la plupart directement, entre les administrations intéressées. Le droit aérien est en plein développement, malgré la nouveauté des problèmes, et peut-être même grâce à leur nouveauté, car il n'existe pas de réglementation aérienne nationale ou internationale qui ait pu entraver leur solution. On peut en dire autant des communications par route et spécialement de l'automobilisme. Enfin, on a fait des innovations en matière de droit fluvial et le travail créateur, dans ce domaine, est loin d'être terminé.

On peut se demander si cette marche continuera avec la même rapidité. Il se peut que, les premiers besoins de la communauté des nations une fois satisfaits, l'évolution du droit international des communications se ralentisse ou même connaisse des moments d'arrêt. Toutefois, cette succession de périodes d'accélération et de ralentissement est fort naturelle. Ce qui est rassurant, c'est qu'aujourd'hui, les travaux du droit international répondent aux besoins qui se font sentir aujourd'hui : cette tâche n'est, d'ailleurs, pas encore accomplie.

Dans l'histoire du développement du droit international des communications, pendant les dix dernières années, l'Organisation des communications et du transit de la Société des Nations aura toujours une place d'honneur qu'elle a bien méritée. Si déjà, en 1922, elle porta son attention sur le problème de l'unification du droit privé, applicable à la navigation intérieure, c'est que ses décisions répondaient bien aux préoccupations toujours plus pressantes des divers milieux intéressés à cette navigation. Plusieurs commissions fluviales internationales n'avaient-elles pas porté ce problème à leur ordre du jour ? Il est vrai que seule la Commission centrale pour la navigation du Rhin a pu soumettre le problème à une étude approfondie. C'est d'ailleurs cette étude qui a servi de base aux travaux du Comité institué par l'Organisation des communications et du transit, sous le nom de Comité de droit fluvial. Pendant plusieurs années, les travaux du Comité rhénan et de celui de la Société des Nations se poursuivaient presque parallèlement. Les problèmes discutés au sein du premier étaient discutés ensuite au sein du second. Les projets de conventions arrêtés par le premier étaient soumis aux trois lectures successives par le second. Si ces projets diffèrent assez sensiblement sur certains points, c'est que le Comité rhénan était composé de délégués d'un nombre restreint d'États riverains d'un seul fleuve, tandis que le Comité de la Société des Nations, où les États riverains de nombreuses voies navigables étaient indirectement représentés, pouvait considérer les mêmes problèmes sur une base beaucoup plus large. Or, il y a des raisons très sérieuses pour qu'un accord européen soit tenté. Les pays d'Europe ont réglé le grand problème de la liberté de la navigation d'une manière plus complète qu'il ne l'était jusqu'à présent. La navigation fluviale qui a beaucoup à souffrir actuellement de la concurrence des chemins de fer et de la crise économique que notre vieux continent traverse, se relèvera un jour pour devenir un puissant instrument de la vie économique. De nombreux pays européens sont déjà reliés par le réseau de leurs voies navigables. Quand le « Mittellandkanal » aura été terminé, quand le canal du Rhin au Danube aura été construit, sans parler des canaux projetés pour relier le Danube à d'autres fleuves de l'Europe centrale et occidentale, l'Europe deviendra un seul vaste réseau ouvert à la navigation fluviale. Les besoins auxquels M. Winiarski a fait allusion se font d'ailleurs déjà sentir avec une force toujours croissante. Les États pour lesquels les bateaux de navigation fluviale sont un élément constitutif des ressources nationales, les propriétaires, les créanciers, les

assureurs, le personnel occupé à bord de ces bateaux, tous ont un intérêt majeur à ce qu'il soit mis de l'ordre dans les rapports juridiques et économiques créés par la navigation internationale. C'est une tâche formidable que celle qui a été entreprise ; elle demandera un travail de longue haleine et, on le voit dans le rapport du Comité du droit fluvial<sup>1</sup>, de nouveaux problèmes sont déjà mis à l'étude. Cela ne doit nullement décourager.

La Conférence sait de quelle manière le Comité a compris sa tâche et conduit ses travaux. Il a tenu compte, dans la plus grande mesure, des législations nationales et des situations juridiques existantes. C'est dans ce but que des questionnaires ont été adressés aux gouvernements intéressés. Les réponses que ces gouvernements ont eu l'obligeance de transmettre ont grandement facilité le travail du Comité. Il est permis d'exprimer l'espoir que ce contact déjà établi entre les gouvernements intéressés et le Comité rendra plus aisés des accords au sein de cette Conférence.

La Conférence sait également quel rôle ont joué dans ce travail les conventions de droit maritime. Quelquefois, il est vrai, on a été amené à constater que la diversité des conditions de fait ne permet pas d'adopter les solutions consacrées par les conférences de droit maritime et que, d'autre part, la limite entre le domaine du droit maritime et celui du droit fluvial est de nature à mettre un juriste dans le plus grand embarras. M. Winiarski n'entrera pas dans le détail des projets de conventions soumis. La Conférence est mieux qualifiée que personne pour apercevoir le lien logique qui unit intimement les trois projets entre eux et surtout l'importance que présente, dans toute cette construction, la notion de la nationalité des bateaux de navigation intérieure. Les rapports ont eu soin d'expliquer comment le Comité a été amené à dissocier la question de la nationalité des autres questions de droit privé fluvial et comment, dans le second projet, on a dû introduire des dispositions réglant le problème de l'immatriculation des bateaux fluviaux, indépendamment de toute solution que pourrait recevoir la question de la nationalité. Enfin, la Conférence appréciera les solutions que le Comité a donné aux nombreux problèmes qui surgissaient à chaque instant, en cette matière quasi totalement inexplorée. Cette *novitas rerum* servira au Comité d'exuse dans la plupart des cas où la Conférence aura trouvé que les solutions par lui préconisées ne seraient pas particulièrement heureuses.

En effet, le Comité n'a pas la présomption de prétendre avoir fait œuvre parfaite. Tout au plus, a-t-il déblayé le terrain pour permettre à cette première Conférence de poser les fondations solides sur lesquelles l'avenir élèvera l'édifice complet du droit privé fluvial.

M. WINIARSKI déclare qu'il lui reste encore un devoir à remplir, devoir qui est pour lui un grand honneur et un grand plaisir à la fois. Délégué de la Pologne à la Commission internationale de l'Oder, il est chargé, avec le Secrétaire général de la Commission, M. Charguéroau-Hartmann, de la représenter à cette Conférence. M. Winiarski se permet de présenter à la Conférence, au nom de la Commission internationale de l'Oder, tous ses vœux pour le succès que mérite une tâche aussi grande et aussi ardue que celle qui lui est confiée.

Le PRÉSIDENT remercie M. Winiarski.

M. ROSSETTI (Italie) parlant surtout en sa qualité de représentant de la Commission centrale pour la navigation du Rhin, insiste sur l'excellente préparation des travaux de la Conférence. Il rappelle qu'en 1922 la Commission consultative et technique des communications et du transit de la Société des Nations s'est occupée de la nécessité d'entreprendre des études en vue d'unifier le droit fluvial privé et a demandé aux secrétaires généraux des trois Commissions fluviales de documenter complètement la Commission sur le progrès de l'œuvre accomplie par ces commissions. Il rappelle également que de ces trois commissions, la Commission centrale pour la navigation du Rhin fut la seule qui procéda à l'étude systématique de l'unification du droit fluvial.

Le Comité rhénan de droit fluvial a adressé d'abord aux gouvernements représentés dans son sein un certain nombre de questionnaires. Depuis, il a tenu six sessions, à Paris, à Genève, à Paris, à La Haye, à Berlin et à Bruxelles, au cours desquelles on a travaillé à déblayer le terrain, et les résultats de ces travaux ont été transmis à la Société des Nations. Le Comité de droit fluvial de la Société des Nations s'est réuni à Strasbourg, à Hambourg, deux fois à Genève et deux fois à Vienne.

Il a examiné les travaux du Comité rhénan après avoir adressé d'autres questionnaires à tous les États européens, de sorte qu'il possède une documentation très étendue. Il a essayé de concilier tous les points de vue et l'on peut même dire que cette conciliation avait été complètement réalisée au sein du Comité. C'est sur cette base que les articles du projet soumis à la Conférence actuelle ont été rédigés, et certains d'entre eux témoignent des progrès accomplis pour concilier les opinions divergentes.

M. Rossetti estime donc qu'il n'y a pas lieu de remettre en cause les résultats acquis. S'il en était autrement, il lui semble qu'il n'y aurait plus de Conférence possible. Jamais, d'ailleurs, rapport n'a été empreint d'une clarté comparable, au point de vue et de la majorité et de la minorité des opinions, à celle qui caractérise les documents préparatoires de la Conférence pour l'unification du droit fluvial. Aussi M. Rossetti souhaite-t-il à ces excellents travaux, un bon et cordial accueil de la part de la Conférence.

M. MÜLLER (Tchécoslovaquie) déclare que, d'une manière générale, son pays est intéressé à la navigation sur plusieurs fleuves internationaux qui lui donnent l'accès libre à la mer et le Gouvernement tchécoslovaque attache, en conséquence, un intérêt primordial aux questions qui font l'objet des conventions dont la Conférence doit s'occuper. Pour les membres des commissions internationales fluviales, les difficultés résultant des différences des législations nationales en matière du droit fluvial sont bien connues. La Tchécoslovaquie a appuyé dans lesdites commissions toute tentative d'unification du droit fluvial et a même pris une initiative dans ce sens. C'est pour cela

<sup>1</sup> Document C.541(a).M.195(a).1929.VIII.

que son gouvernement est très satisfait de ce que ces difficultés aient fait l'objet de l'étude approfondie de la Commission des communications et du transit dans le but d'élaborer des projets de conventions réglant certaines questions. M. Müller est heureux de pouvoir rendre hommage aux Comités de la Commission centrale du Rhin et de la Commission des communications et du transit pour le travail qu'ils ont accompli et surtout à la clarté et à l'objectivité avec lesquelles les questions sont exposées dans les rapports. Il espère que sur la base de projets si soigneusement préparés il sera possible d'arriver à un résultat heureux et déclare que son Gouvernement, tout en étant prêt à collaborer de son mieux à ce but, est en principe favorable aux projets de conventions et les accepte comme base de discussion.

M. HOHL (Suisse) estime que les projets de codification soumis constituent une base excellente pour les travaux de la Conférence.

Il a cependant quelques doutes en ce qui concerne le projet relatif à la nationalité des bateaux. La délégation suisse ne se prononce pas encore sur la question de savoir s'il convient de l'examiner en détail, mais elle se demande si, pour la bonne marche des travaux de la Conférence, il ne serait pas préférable de renvoyer à la fin de la session les séances de la Commission de la nationalité.

M. ROSSETTI (Italie) appuie cette proposition. Il estime en effet qu'il est nécessaire de connaître tout d'abord quels sont les résultats obtenus en ce qui concerne la question de l'immatriculation avant de se prononcer sur la question de la nationalité. Le projet relatif à la nationalité des bateaux a subi une évolution très considérable. On avait dit tout d'abord : tous les bateaux fluviaux auront une nationalité ; puis, dans l'espoir de concilier les opinions divergentes de certaines délégations, on s'est borné à déclarer que là où la nationalité est accordée, les États contractants s'engagent à la reconnaître ; on a établi des règles pour éviter la double nationalité.

M. Rossetti estime donc qu'il y aura lieu de n'examiner le projet de convention qu'après avoir traité la question de l'immatriculation.

Le PRÉSIDENT croit comprendre que les propositions suisse et italienne visent à surseoir à l'étude de la question de la nationalité.

M. SUŁKOWSKI (Pologne) déclare qu'il craint que si l'on rouvre les débats sur le projet concernant la nationalité des bateaux, la Conférence manque du temps nécessaire pour approfondir l'examen de cette question qui présente pourtant, pour plusieurs États, un intérêt capital. C'est pourquoi il propose de poursuivre l'examen du projet en question parallèlement avec les deux autres projets de convention soumis à la Conférence.

M. CONTZESCO (Roumanie) déclare qu'en ce qui concerne la Roumanie la situation est rendue plus facile par le fait que la législation roumaine contient déjà bien des dispositions qui cadrent avec les lignes générales des projets soumis à la Conférence. Il accédera donc, tout en se proposant de formuler certains amendements, à la plupart des solutions proposées. Il espère que, quelle que soit la marche des travaux, la Conférence pourra parvenir à des résultats satisfaisants. Il convient, en effet, de réaliser sans retard une unification aussi parfaite que possible du droit fluvial, unification vivement souhaitée par les navigateurs pour leurs relations internationales.

M. RICHTER (Allemagne) constate que les questions de l'immatriculation et de la nationalité, telles qu'elles sont traitées dans le projet, donnent lieu à des divergences d'opinions. Il estime, au contraire, que la question de l'abordage ne donnera pas lieu à discussion.

M. RIPERT (France) constate que la Conférence se trouve en présence de trois projets : l'un relatif à la nationalité, l'autre à l'immatriculation et le troisième à l'abordage. Ces questions peuvent paraître compliquées et de nature à donner lieu à des discussions, mais on peut calmer les inquiétudes en rappelant les excellents rapports préparatoires qui ont été élaborés. En effet, le Comité pour l'unification du droit fluvial, qui constituait un comité d'experts, a travaillé en se tenant en relations constantes avec les gouvernements de tous les pays d'Europe, de sorte qu'on peut considérer qu'un accord de principe est actuellement réalisé quant à l'utilité et aux bases de l'unification pour les trois matières en question.

La tâche de la Conférence paraît longue, mais s'il ne s'agit que d'améliorer les projets, il sera possible de parvenir rapidement à un accord. Les experts sont parvenus à élaborer des projets qui consacrent un véritable accord de principe. C'est cet accord qu'il convient de respecter.

M. YOVANOVITCH (Yougoslavie) souhaite, au nom de la délégation yougoslave, aux travaux de cette importante Conférence tout le succès qu'ils méritent.

Il espère que ses délibérations permettront d'aboutir à des conclusions heureuses et à un règlement satisfaisant des questions à l'ordre du jour. Il est convaincu que tous les délégués sont animés de cet esprit de conciliation et de bonne entente qui est indispensable à tout travail de collaboration internationale. Ceci devrait être d'autant plus facile que certaines des matières du droit fluvial dont s'occupe la Conférence sont d'une importance toute particulière pour le fonctionnement satisfaisant de la navigation sur les grands fleuves internationaux de l'Europe, et que leur règlement sur la base internationale sera d'une grande utilité, tant pour les usagers de ces voies navigables que pour les entreprises des transports fluviaux elles-mêmes et les différents intérêts qui s'y rattachent.

La Yougoslavie est en état de se rendre pleinement compte de l'importance du travail projeté, étant donné sa situation géographique et l'importance que présente pour elle la navigation intérieure. En effet, elle possède sur son territoire un réseau de voies fluviales de caractère international,

d'une longueur d'environ 1.000 kilomètres, ouvert à la grande navigation, et sa batellerie fluviale est d'une importance analogue.

Pour certains pays, les résultats positifs auxquels la Conférence compte aboutir représenteront plus qu'une simple unification du droit fluvial, étant donné que leur législation n'a pas encore codifié les matières en question et qu'elle pourra donc s'inspirer des résultats obtenus en procédant à ce travail.

Mais même pour ceux des États dans lesquels les questions que la Conférence examinera sont déjà toutes réglées par la législation nationale, une unification partielle et la coordination internationale de certaines matières de droit fluvial ne présenteront pas moins une très grande utilité vu les conditions si particulières de la navigation sur les grands fleuves internationaux européens, ainsi que la composition internationale de la batellerie de ces fleuves.

La délégation yougoslave salue donc l'initiative prise par l'Organisation des communications et du transit de la Société des Nations ; elle prêtera son concours à l'œuvre entreprise.

M. ROSSETTI (Italie) déclare que s'il a appuyé la proposition suisse, c'est parce qu'il considère le projet relatif à la nationalité des bateaux comme le plus important, bien qu'à vrai dire tous soient très importants, et non parce qu'il soit désireux de subordonner un projet à l'autre. Il estime qu'il existe une liaison étroite entre la question de l'immatriculation et celle de la nationalité. Si l'on admettait la loi du pavillon, d'autres questions se trouveraient par là réglées et simplifiées, mais il n'y a pas lieu de compter sur une telle décision.

M. VAN SLOOTEN (Pays-Bas) déclare qu'il est prêt à collaborer loyalement à l'étude des trois projets soumis à la Conférence. Toutefois, il témoigne de peu d'enthousiasme à l'égard du premier projet relatif à la nationalité. Il émet, en effet, des doutes personnels sur la compétence de la Conférence en cette matière. C'est un principe connu, en procédure civile, que le déclinatoire d'incompétence doit être présenté avant toute autre défense ; or, si un délégué voulait proposer un déclinatoire de ce genre dans une commission, on pourrait lui objecter qu'on aurait dû formuler ce déclinatoire en séance plénière. Aussi, tout en se déclarant d'accord avec la proposition suisse, M. van Slooten se réserve-t-il de parler de la compétence de la Conférence aux séances de la troisième Commission.

M. ROSSETTI (Italie) déclare qu'il convient d'éviter les équivoques. Il serait bon, à son avis, de trancher dès maintenant la question soulevée quant à la compétence de la Conférence. Il convient de ne pas oublier que le Conseil a réuni une Conférence internationale dont l'ordre du jour est fixé. Aussi, ne peut-il s'expliquer comment M. van Slooten peut formuler ses objections.

M. CONTZESCO (Roumanie) croit qu'il serait utile que le Président continuât de demander à toutes les délégations de formuler leurs vues générales sur l'ensemble de la question. Or, la proposition suisse constitue une proposition nouvelle. Deux questions étant donc discutées à la fois — la proposition suisse et le déclinatoire de compétence — peut-être pourrait-on examiner ultérieurement la proposition suisse.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE rappelle qu'il existe une analogie en ce qui concerne la procédure de travaux de la Conférence et celle suivie lors de la Conférence générale du transit : si quelque question d'ordre général est soulevée, elle doit être réglée en séance plénière. En ce qui concerne l'ordre du jour, celui-ci n'est pas fixé par le Conseil, mais la Conférence est saisie d'un projet à transformer en ordre du jour définitif. D'ailleurs, en cas de doute, il suffit de consulter l'article 8 du Statut de l'Organisation du transit, qui est très explicite.

Le PRÉSIDENT se demande s'il ne s'agit pas d'une question de méthode. Déblayera-t-on d'abord le terrain en traitant le premier projet avant les deux autres, ou bien les discutera-t-on parallèlement tous les trois ? Telle est l'idée formulée par la délégation suisse. Quant à la délégation des Pays-Bas, elle préjuge une question de fond, en demandant si la Conférence a compétence pour traiter du problème de la nationalité des bateaux.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE déclare qu'il ne saurait y avoir de malentendu. Au point de vue compétence, la décision du Conseil est définitive et la Conférence a le droit de discuter toute question qui figure sur le projet d'ordre du jour. Si la Conférence décide d'inscrire la question de la nationalité des bateaux à son ordre du jour, toute la question est réglée.

M. VAN SLOOTEN (Pays-Bas) rappelle que, au Comité de droit fluvial de la Société des Nations, le membre néerlandais s'est abstenu de discuter désormais la question de la nationalité. Ce membre a estimé, en effet, que c'était là un sujet qui échappait à la compétence du Comité. Si l'on remonte à l'origine des travaux du Comité, l'exposé des motifs démontre clairement le bien-fondé de cette thèse. A la page 3 des documents préparatoires<sup>1</sup>, on lit, en effet, au paragraphe 2 de la résolution de la Commission des communications et du transit :

« La Commission décide de charger le Secrétaire général... de tenir la Commission complètement documentée sur le progrès de l'œuvre des Commissions fluviales à chacun des stades de ce progrès, ainsi que sur toutes informations relatives au droit *privé* de la navigation intérieure. »

Ce texte parle donc expressément de droit privé. Or, la présente Conférence s'annonce comme Conférence pour l'unification du droit fluvial en général, et l'on pourrait croire qu'elle soit appelée

<sup>1</sup> Document C.541(a).M.195(a).1929.VIII.

à traiter des questions aussi bien d'ordre privé que public ; mais le doute disparaît en lisant la décision précédemment citée qui émane de la Commission consultative et technique des communications et du transit de la Société des Nations. Cette Commission a insisté sur le mot « privé ». Lorsqu'elle a décidé de constituer un organisme d'étude, elle a également insisté sur l'importance du droit privé.

Le projet soumis à la Conférence actuelle vise-t-il à l'unification de ce droit ? En lisant le projet de convention, on constate qu'il est conçu en termes généraux et qu'il s'applique, par conséquent, au droit privé et au droit public. C'est là la seule conclusion à tirer de la lecture de ce projet. Or, si l'on a étudié la question de l'unification du droit fluvial privé, le moment n'est pas opportun pour établir des règles de droit fluvial public. C'est là la base juridique qui fait douter M. van Slooten de la compétence de la conférence en matière de nationalité des bateaux. Peut-être, en s'abstenant de soumettre un déclinatoire d'incompétence formelle, pourrait-on proposer que la Conférence émit le vœu que la question de la nationalité des bateaux fût traitée par une autre Commission, par exemple celle nommée pour traiter d'importants problèmes de droit public et privé. Elle a siégé déjà trois fois à Genève et serait plus compétente en cette matière spéciale.

M. ROSSETTI (Italie) constate que M. van Slooten s'est borné à citer le texte de la décision prise par la Commission des communications et du transit en 1922. Il estime que ce n'est pas là une méthode admissible. En lisant, en effet, le procès-verbal de la première séance, en mars 1924, du Comité pour l'unification du droit fluvial, on est frappé du fait que la question de droit public y a tout de suite été soulevée et retenue. D'ailleurs, ne serait-il pas inconcevable de vouloir étudier le droit civil sans connaître au préalable les questions relatives à la nationalité ? Il est vrai qu'à la première séance du Comité pour l'unification du droit fluvial, une discussion assez animée s'est produite au cours de laquelle un membre néerlandais a soutenu une opinion divergente de celle de la majorité. Mais à la suite, un autre membre néerlandais a déclaré qu'il aurait été plus facile de discuter sur un texte précis. Ce texte fut donné par M. Fromageot, et l'on ne peut pas dire que le délégué néerlandais ait refusé de le discuter. Les deux Comités intéressés ont toujours été d'accord qu'une question de droit public devait se trouver à la base de toute règle conventionnelle pour la solution des conflits de lois en matière de droit privé fluvial.

M. RIPERT (France) déclare qu'après s'être félicité tout d'abord de voir tant de membres des comités ayant préparé la Conférence assister à celle-ci, il le regrette presque maintenant. En effet, il lui semble que certains membres oublient qu'aujourd'hui la Conférence doit délibérer souverainement, en vertu de convocations gouvernementales. L'objet de ces délibérations est nettement précisé, non seulement dans le titre de la Conférence pour l'unification du droit fluvial, mais encore dans la convocation elle-même.

Dans le projet de convention sur la nationalité, il n'est nullement question des conditions dans lesquelles la nationalité peut être acquise, mais de sa reconnaissance au cas de conflits de lois.

Il ne s'agit pas de se livrer à des discussions théoriques sur les limites qui peuvent séparer le droit privé et le droit public, mais bien de régler certaines matières déterminées de droit fluvial.

Le PRÉSIDENT croit se rappeler qu'il a entendu formuler, au sujet de la récente Conférence de La Haye sur la codification du droit international, une objection inverse de celle soutenue actuellement par M. van Slooten. La Conférence avait à son ordre du jour la responsabilité des États, le régime des eaux territoriales, et la nationalité. On se plaignait de ce que la Conférence, qui était consacrée à la codification du droit public, ait retenu une matière, la nationalité, qui touchait plutôt au droit privé et obligeait à faire appel à des spécialistes du droit privé. Tout dépend donc un peu de l'aspect sous lequel on considère la question.

M. VAN SLOOTEN (Pays-Bas) estime que s'il était établi que les conséquences de la nationalité seraient uniquement de droit privé (question d'un renvoi au droit du pavillon), un accord serait peut-être réalisable, mais il éprouve de grandes hésitations s'il s'agit aussi de la possibilité d'empiéter dans le domaine du droit public. Il convient en effet de ne pas oublier que la convention soumise à la Conférence pourra servir de base aux règlements de police, de douanes. Elle pourra devenir une arme entre les mains d'hommes politiques. S'il est vrai qu'en physiologie, le besoin crée l'organe, on peut dire qu'en jurisprudence, l'organe crée le besoin. Il est possible qu'on se plaigne un jour de ce que la Conférence ait adopté la Convention sans avoir réfléchi suffisamment sur ses conséquences. Il semble donc à M. van Slooten que la question pourrait être renvoyée à la première Commission, où l'on pourrait discuter les mesures à prendre afin de réduire le champ d'application de la question de la nationalité des bateaux au domaine du droit privé. Ainsi la délégation néerlandaise aurait satisfaction.

Le PRÉSIDENT estime qu'il serait peut-être possible de discuter cette question de nationalité en prenant acte de la réserve de M. van Slooten tendant à lui permettre de soumettre ultérieurement à la Conférence certaines observations sur les conséquences de l'introduction de la notion de la nationalité en droit fluvial.

M. RIPERT (France) déclare qu'il est rallié lui-même à l'idée de reprendre en détail l'examen de la Convention, afin de voir s'il est possible d'en restreindre les conséquences au droit privé. Il propose de renvoyer cette question à une commission.

M. Ripert rappelle que M. van Slooten a dit être opposé à l'idée de la nationalité des bateaux. Peut-être ferait-on tomber cette objection de principe, si l'on entendait que la nationalité est simplement une qualité juridique ayant des effets de droit privé. Il conviendrait donc de tenir une séance qui réglerait les questions suivantes : quel est le principe de la nationalité des bateaux et quels en sont les effets ? Si la question est examinée en dernier lieu, il sera trop tard.

M. ROSSETTI (Italie) voudrait d'abord voir discuter l'article 3 du projet de convention sur certaines matières de droit fluvial, puis entamer les discussions relatives à la question de la nationalité.

Le PRÉSIDENT estime qu'on pourrait demander au président du Comité de droit privé de la Commission centrale pour la navigation du Rhin et au président du Comité de l'Organisation des communications et du transit quel a été, dans leur pensée, le domaine d'application prévu en ce qui concerne les effets de la nationalité des bateaux. A-t-on envisagé ces effets au point de vue des droits réels seulement, ou bien, également, à d'autres points de vue et notamment à celui des conventions internationales intéressant la navigation ?

M. ROSSETTI (Italie) estime qu'on s'est rangé à cet égard au point de vue des conventions internationales. Or, maintenant, cette question même est mise en doute. Il faut savoir ce qu'elle devient. Le projet de convention sur la nationalité des bateaux est bien simple et clair. Il y est dit simplement dans quelles conditions, non obligatoires, la nationalité peut être accordée et doit être reconnue. D'ailleurs, cette conception se trouve déjà formulée dans l'Acte de Vienne et dans bien d'autres documents diplomatiques successifs. Tous les traités de paix parlent de l'égalité des pavillons. L'introduction du rapport sur cette question est particulièrement intéressante à cet égard et explique bien pourquoi certains États envisagent la nécessité d'établir une convention relative à la nationalité.

M. RIPERT (France) propose que les deux séances suivantes soient consacrées à la question de l'immatriculation des bateaux.

Le PRÉSIDENT propose à M. Haab, président de la Commission de l'immatriculation, que celle-ci se réunisse le 18 novembre, à 10 heures du matin.

*Il en est ainsi décidé.*

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## DEUXIÈME SÉANCE PLÉNIÈRE

*Tenue le jeudi 4 décembre 1930, à 15 h. 30.*

*Président: M. DE RUELLE (Belgique).*

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### IV. Vérification des pouvoirs.

Le PRÉSIDENT, avant de passer à l'objet principal de la discussion, demande à la Conférence de vouloir bien entendre le rapport qu'il a à présenter concernant la vérification des pleins pouvoirs des délégués<sup>1</sup>. A cet égard, il indique que les délégations qui ont, jusqu'à présent, fait parvenir leurs pleins pouvoirs au Secrétariat de la Société des Nations sont celles de : la Belgique, la France, la Grèce, la Hongrie, l'Italie, les Pays-Bas, la Pologne et Dantzig, la Roumanie, la Tchécoslovaquie, et la Yougoslavie.

En ce qui concerne la délégation hellénique, pleins pouvoirs lui ont été donnés pour signer *ad referendum*. Toutefois, cette réserve n'est pas très importante ; généralement, en effet, les pleins pouvoirs ne sont donnés par le chef de l'État que sous réserve de ratification, ce qui équivaut en fait à un référendum.

En ce qui concerne les pleins pouvoirs donnés à la délégation yougoslave, il convient de remarquer qu'ils lui ont été délivrés non pas par le chef de l'État lui-même, mais par le ministre des Affaires étrangères. Or, selon une jurisprudence constante à la Société des Nations, les pleins pouvoirs de ce genre sont reconnus valables. En effet, un ministre des Affaires étrangères a qualité pour donner pleins pouvoirs au nom du chef d'État, qu'il représente dans les relations internationales.

Les pouvoirs produits par la délégation autrichienne ne permettent aux délégués que de prendre part aux délibérations de la Conférence, sans leur donner le droit de signer la Convention. Il en est de même en ce qui concerne les pouvoirs de la délégation suisse. Ces deux délégations se réservent toutefois de remettre ultérieurement des pouvoirs qui leur permettent de signer.

Quant au délégué du Portugal, il a remis seulement au Secrétariat de la Société des Nations un télégramme émanant du Gouvernement portugais, l'autorisant à représenter ce Gouvernement à la Conférence. Aussi cette autorisation devra-t-elle être complétée ultérieurement par des pleins pouvoirs en règle. Elle est, en effet, rédigée en termes très laconiques, sans même exprimer formellement que des pouvoirs réguliers aient été demandés.

Enfin, en ce qui concerne la délégation du Territoire de la Sarre, elle a produit simplement une lettre de la Commission de gouvernement autorisant MM. Centner et Hoffmann à la représenter.

Le président déclare d'ailleurs qu'il se réserve de donner ultérieurement à la Conférence la liste complète des délégations munies de pleins pouvoirs.

M. ROSSETTI (Italie) constate que le président a bien indiqué quelles délégations sont munies de pleins pouvoirs, mais non celles qui en sont dépourvues. Or, il est extrêmement important de connaître l'étendue exacte des pouvoirs conférés. Se trouve-t-on en présence de représentants dûment autorisés ou simplement de personnes n'ayant pas un intérêt officiel à la Conférence ?

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<sup>1</sup> Pour la composition du Comité pour la vérification des pouvoirs, voir page 163.

Étant donné les nombreuses opinions divergentes des diverses délégations, la fin essentielle que s'est proposée la Conférence a visé à parvenir à des solutions conciliantes. Mais est-il vraiment opportun de s'entendre avec des délégués dépourvus de pouvoirs officiels ? Personnellement, le délégué italien a été mandaté par son chef d'État, et ce afin de discuter avec les représentants d'autres chefs d'État. Il importe donc de savoir si ces représentants sont dûment qualifiés à cette fin. S'il est vrai que, par habitude de courtoisie, il est d'usage de discuter même avec des délégués dépourvus de pleins pouvoirs, il est toujours entendu, en ce cas, que des pleins pouvoirs réguliers devront parvenir ultérieurement.

En ce qui concerne particulièrement les pouvoirs délivrés par d'autres que par le chef d'État lui-même, M. Rossetti ne tient nullement à discuter les usages de la Société des Nations, mais il tient à faire remarquer que si on libelle le préambule de la Convention en y mentionnant que les différents chefs d'État ont nommé leurs plénipotentiaires à l'effet de la conclure, cette formule pourra être inexacte à l'égard de certains délégués. C'est là une question de forme, il est vrai, mais le respect de cette forme ne sauvegarde-t-il pas le droit et les obligations de tous ? A vrai dire, M. Rossetti ne formulerait aucune objection si les délégations, qui n'ont pas encore reçu leurs pleins pouvoirs, déclaraient qu'elles seront bientôt en possession de pleins pouvoirs émanant du chef d'État. Il ne s'opposerait même pas à ce que ces délégations puissent signer la Convention dans l'attente de l'arrivée de leurs pouvoirs, à condition qu'elles déclarent solennellement que ceux-ci seront effectivement déposés au Secrétariat de la Société des Nations. L'essentiel est de mettre toutes les délégations sur le même plan, de manière à rendre possible la signature finale. °

Le PRÉSIDENT estime que, dans ces conditions il serait opportun de demander quelles sont leurs intentions aux délégations dépourvues actuellement de pleins pouvoirs. Peut-être serait-il également utile de demander aux délégations qui ne sont autorisées par leurs gouvernements qu'à prendre part aux délibérations de la Conférence si elles recevront ultérieurement des pouvoirs qui leur permettent également de signer la Convention. Toutefois, cette dernière question peut sembler prématurée. En effet, les diverses conventions ne seront pas signées à jour fixe, mais un certain délai sera laissé à cet effet. Aussi serait-il opportun d'admettre que les délégations qui, au moment de la première signature n'auraient encore pleins pouvoirs que pour négocier, pourraient recevoir ultérieurement des pouvoirs complets leur permettant de signer. Ce pourrait être le cas notamment pour la Suisse, l'Autriche et la Yougoslavie.

M. RIPERT (France) demande que soit indiqué quels sont les délégués qui n'ont même pas pouvoir pour négocier.

Le PRÉSIDENT répond qu'il s'agit des délégations de l'Albanie, de l'Allemagne, de la Bulgarie, du Danemark, de la Finlande, de la Suède et de la Turquie. A cet égard, il fait remarquer que l'Albanie n'a pas pris part aux délibérations.

M. ROMEIN, membre de la Section des communications et du transit, fait remarquer que les délégués du Danemark, de la Finlande et de la Turquie ont déclaré qu'ils n'assistaient à la Conférence qu'à titre de simples observateurs. Il ne saurait donc être question pour eux de demander des pleins pouvoirs.

M. RIPERT (France) déclare que la question des pleins pouvoirs ne se posait pas au sein des diverses commissions, mais qu'elle présente maintenant, en séance plénière, une importance capitale. En effet, lors des votes auxquels la Conférence devra procéder, les délégués des États devront pouvoir prendre l'engagement que leur parole lie leurs gouvernements respectifs. S'il en était autrement, on ne saurait plus, à vrai dire, qui a le droit de voter à la Conférence. Il convient donc de savoir en vertu de quels pouvoirs les délégués vont délibérer et négocier.

Le PRÉSIDENT constate que la question posée par M. Ripert s'adresse essentiellement aux délégations de l'Allemagne, de la Bulgarie et de la Suède. Quant aux délégations de l'Autriche, du Portugal et de la Suisse, elles ont été mandatées pour négocier : aussi la question de savoir quels sont leurs pleins pouvoirs pour signer ne se posera-t-elle que lors de la signature de la Convention.

M. ROMEIN, membre de la Section des communications et du transit, déclare qu'il ignore si la Commission de vérification a examiné les lettres adressées par les divers gouvernements au Secrétaire général de la Société des Nations, informant celui-ci que telles ou telles personnalités ont été désignées pour participer aux travaux de la Conférence.

M. RIPERT (France) fait remarquer que « participer » est un mot vague.

M. ROMEIN, membre de la Section des communications et du transit, expose qu'aux termes des statuts en vigueur à la Société des Nations, le droit de vote est conféré aux divers délégués, même en l'absence de pleins pouvoirs et que ces pouvoirs ne sont requis que pour signer les conventions.

Le PRÉSIDENT expose que les pleins pouvoirs ne sont généralement produits que lors de la clôture des négociations. Strictement parlant, M. Ripert a raison, mais la pratique suit un système différent de celui qu'il préconise.

M. RIPERT (France) déclare qu'il lui est indifférent que des délégués aient ou bien déjà déposé leurs pleins pouvoirs ou bien les attendent, ou encore ne soient autorisés à signer que *ad referendum*. L'essentiel est qu'ils engagent leurs gouvernements par leurs votes. Il convient donc que les délégations actuellement dépourvues de pouvoirs déclarent que leurs votes et leurs signatures engageront leurs gouvernements.



M. RICHTER (Allemagne) explique que la délégation allemande vient de recevoir du chef de l'État les pleins pouvoirs nécessaires, lesquels seront déposés immédiatement.

M. FERRAZ DE ANDRADE (Portugal) se déclare prêt à se mettre en communication avec son gouvernement. Il fait remarquer, toutefois, que la procédure actuellement suivie par la délégation portugaise n'a jamais soulevé d'objections, notamment lors de la Conférence économique qui vient de terminer ses travaux et à laquelle il a également représenté son gouvernement.

Le PRÉSIDENT estime qu'il conviendrait, en effet, que la délégation portugaise se mit en rapport avec son gouvernement en vue de faire confirmer le télégramme qui autorise cette délégation à assister à la Conférence. Ainsi, la réponse du Gouvernement portugais serait versée au dossier y relatif, et la situation de la délégation serait régularisée jusqu'à la date de la signature de la Convention. A ce moment, des pouvoirs spéciaux seraient nécessaires.

*La Conférence prend acte du compte rendu du Président au sujet des travaux du Comité de vérification des pouvoirs.*

#### V. Établissement de l'Acte final.

Le PRÉSIDENT expose ensuite que certains délégués ont soulevé la question de savoir si la Conférence a l'intention de rédiger un Acte final de ses travaux. Ce document serait signé non seulement par les représentants des divers gouvernements, mais encore par ceux d'organismes tels que les Commissions fluviales internationales et l'Institut international de Rome pour l'unification du droit privé. L'Acte constituerait simplement un procès-verbal, qui contiendrait les titres des conventions adoptées, le texte du Protocole de clôture et des vœux émis. D'après un usage suivi, cet Acte est signé par les délégués, avant la signature de la Convention même. Aussi pourrait-on se préoccuper de dresser cet Acte final dès à présent sans attendre que le texte des conventions soit arrêté et que celles-ci soient prêtes à être signées ? Il faut cependant admettre qu'il peut être difficile de dresser un procès-verbal avant que l'on soit d'accord sur son contenu.

M. RIPERT (France) estime qu'après trois semaines de travaux, il semble que le moment soit venu de dresser cet Acte. Il serait donc opportun que le Secrétariat rassemblât et rédigeât les vœux émis. Ce texte pourrait être signé par les délégués qui le désireraient.

Le PRÉSIDENT constate que la Conférence se rallie à cette suggestion.

*Il est décidé que le Secrétariat établira aussitôt que possible l'Acte final sous réserve de compléter celui-ci à la fin des travaux de la Conférence.*

#### VI. Projet de convention sur l'unification de certaines règles en matière d'abordage dans la navigation intérieure.

Le PRÉSIDENT passe ensuite à la lecture des divers articles du projet de Convention sur l'unification de certaines règles en matière d'abordage dans la navigation intérieure. Il fait remarquer tout d'abord, que, contrairement à la règle suivie habituellement, la Commission chargée de traiter la question de l'abordage s'est abstenue d'adresser un rapport à ce sujet à la Conférence plénière. C'est qu'en effet, on a voulu accélérer les travaux. Les délégations ont d'ailleurs assisté nombreuses aux séances de la Commission, ce qui rend un rapport moins indispensable.

Le Président invite ensuite la Conférence à voter sur les différents articles du projet de Convention préparé par le Comité de rédaction (voir Annexe 1, page 70). Il annonce que chaque fois que l'occasion s'en présentera, il donnera la parole au Président du Comité de rédaction afin de lui permettre d'exposer les motifs qui ont guidé celui-ci dans sa tâche.

##### Article 1.

*Cet article est adopté sans modification.*

##### Article 2.

###### Alinéa 1.

M. DE DIETRICH DE SACHSENFELS (Hongrie) déclare qu'à son avis cet alinéa contient toujours une certaine lacune. Il lui semble donc nécessaire, non seulement dans l'intérêt de son propre pays mais aussi dans celui de la Convention, de formuler un certain nombre d'observations. Il rappelle qu'il lui semble tout d'abord que le cas de force majeure et celui d'abordage fortuit visés à l'alinéa premier, sont du même ordre ; à son avis, il n'y a pas lieu d'établir une distinction entre ces deux cas. Par contre, aucune distinction n'a été faite en ce qui concerne les personnes ou objets qui éprouvent des dommages à la suite d'un abordage. On a répondu déjà, il est vrai, aux objections de la délégation hongroise que la Convention ne s'occupait que des rapports entre bateaux et qu'il convenait d'examiner à part la question des responsabilités. Or, l'alinéa en question ne parle pas de ces responsabilités et traite seulement des rapports entre bateaux. Enfin, en ce qui concerne la question du doute sur les causes de l'abordage, on a estimé, contrairement à la proposition de la délégation hongroise, qu'il était impossible de supprimer ce membre de phrase qui figure dans la Convention de Bruxelles.

M. de Dietrich de Sachsenfels constate également que la rédaction actuelle de l'article 5 ne donne pas satisfaction à ses propositions primitives<sup>1</sup> puisque cet article 5 est resté tel quel. Ainsi, la délégation hongroise se trouve isolée et dans une situation difficile. Étant donné que la législation hongroise est plus favorable que le projet de convention à l'égard de ceux qui ont subi des dommages à la suite d'un abordage, il serait difficile pour la Hongrie de se rallier à un système moins généreux. Il est indubitable en effet que dans tous les cas d'abordage, sauf celui de force majeure, la responsabilité envers les personnes et les choses existe. On trouve d'ailleurs confirmation de cette idée en lisant notamment les articles 3 et 4 du projet de convention. Il est dit en effet dans ce dernier article que si l'abordage est causé par les fautes de deux ou plusieurs bateaux, ces bateaux sont tenus solidairement à la réparation des dommages causés non seulement au bateau innocent, mais encore aux personnes et aux choses qui se trouvent à son bord. N'y a-t-il pas une certaine incohérence à parler des personnes et des choses dans le cas où l'abordage est causé par les fautes de deux ou plusieurs bateaux, et non dans le cas où il est causé par la faute de l'un des bateaux seulement? La délégation hongroise croit donc devoir revenir sur sa proposition qui tend à ce qu'en cas de force majeure et d'abordage fortuit seulement, aucune responsabilité ne sera encourue, les dommages étant, dans cette hypothèse, supportés par ceux qui les ont subis.

M. HOSTIE, président du Comité de rédaction, répond qu'à la suite des discussions qui s'étaient produites au sein de la troisième Commission, le Comité de rédaction n'a pu envisager aucune modification ni du fond ni de la forme des dispositions de la Convention de Bruxelles qu'a critiquées le délégué de la Hongrie. Malgré les imperfections du texte, le système voulu par cette Convention est clair. Lorsqu'il y a faute, les dommages causés par un abordage donnent lieu à réparation au profit des victimes, qu'il s'agisse d'un bateau de marchandises ou de personnes, mais la Convention ne modifie en rien les relations dérivant du contrat de transport telles qu'elles résultent de la loi applicable à ce contrat.

M. DE DIETRICH DE SACHSENFELS (Hongrie) ne se déclare pas satisfait de cette explication, car il estime toujours qu'il convient de discuter le projet actuel indépendamment de la Convention de Bruxelles. L'essentiel est de savoir par qui seront réparés les dommages causés à la suite d'un abordage. Or, cette question n'est pas résolue clairement.

M. RIPERT (France) déclare qu'il convient de faire à M. de Dietrich de Sachsenfels une concession de pure forme. En effet, la phrase de l'alinéa 1 de l'article 2 « les dommages sont supportés par ceux qui les ont éprouvés » peut être interprétée conformément aux idées de la délégation hongroise, mais le Comité de rédaction n'a pas cru devoir supprimer ce membre de phrase qui figure dans la Convention de Bruxelles et dont la suppression pourrait donner lieu à des interprétations divergentes dans les différents pays. D'ailleurs, l'article 9 donne pleine satisfaction à M. de Dietrich de Sachsenfels. Cet article indique clairement que la Convention laisse entière la responsabilité contractuelle envers les personnes lésées à la suite d'un abordage, responsabilité réglée par la loi nationale, en l'espèce la loi hongroise.

M. DE DIETRICH DE SACHSENFELS (Hongrie) se déclare satisfait de cette interprétation.

*L'alinéa 1 de l'article 2 est adopté.*

#### *Alinéa 2.*

Le PRÉSIDENT déclare qu'il convient d'examiner également, en liaison avec cet alinéa, le Protocole de clôture du projet de convention, qui porte que les mots « au mouillage » doivent être entendus comme s'appliquant également à tout bateau amarré ou autrement immobilisé.

M. ROSSETTI (Italie) rappelle que la délégation allemande avait proposé de fusionner cette clause du Protocole avec l'article 2 et que cette suggestion avait été approuvée par la Commission. Aussi demande-t-il pour quelle raison il n'y a pas été donné suite.

M. HOSTIE, président du Comité de rédaction, répond que malgré son désir d'alléger le Protocole de clôture, le Comité de rédaction a été unanime à estimer qu'il est plus prudent de laisser dans ce Protocole le texte en question. En effet, son addition à l'article 2 pourrait donner lieu à un argument *a contrario* qui tendrait à interpréter restrictivement l'expression « au mouillage » qui se trouve dans la Convention de Bruxelles.

M. ROSSETTI (Italie) déclare que dans ces conditions, il retire son amendement.

*L'alinéa 2 est adopté.*

*L'article 2 est donc adopté, en son ensemble sans modification.*

#### *Article 3.*

##### *Alinéa 1.*

M. DE DIETRICH DE SACHSENFELS (Hongrie) rappelle qu'il voudrait voir modifier le texte de la façon suivante :

« La réparation des dommages causés aux bateaux innocents ainsi qu'aux personnes et aux choses se trouvant à bord incombe à celui qui a commis la faute. »

<sup>1</sup> Voir P.-V.1 de la troisième Commission.

M. HOSTIE, président du Comité de rédaction, fait observer que le Comité de rédaction n'a en rien modifié cet alinéa.

M. CONTZESCO (Roumanie) fait remarquer que d'ailleurs, l'article n'a pas été renvoyé au Comité de rédaction par la troisième Commission.

Le PRÉSIDENT constate qu'en effet, cet article n'a donné lieu à aucune objection.

*L'alinéa 1 est adopté.*

*Alinéa 2.*

*Adopté avec une correction de forme tendant, conformément à la proposition de M. Ripert (France), à remplacer les mots « formant partie du convoi » par les mots « faisant partie ».*

*L'article 3 est donc adopté sous réserve de cette dernière correction.*

#### *Article 4.*

*Alinéa 1.*

*L'alinéa 1 est adopté.*

*Alinéa 2.*

*Adopté avec une correction de forme tendant, conformément à la proposition de M. Ripert (France), à remplacer les mots « recours proportionné » par le mot « recours proportionnel ».*

*Alinéa 3.*

*L'alinéa 3 est adopté.*

*L'article 4 est adopté sous réserve de la correction ci-dessus.*

#### *Article 5.*

*Alinéa 1.*

M. HOSTIE, président du Comité de rédaction, expose que la question a été posée au Comité de rédaction de savoir s'il convenait de maintenir dans la rédaction de cet article les mots qui se trouvent au début de l'alinéa correspondant du document préparatoire, ou bien de remplacer ces mots par l'expression « faute commune » qui se trouve dans la Convention de Bruxelles. Cette question a été examinée d'une manière approfondie. Finalement, les partisans de l'insertion du terme « faute commune » ont accepté le texte actuel, étant entendu qu'il avait la même signification que l'expression « faute commune » telle que ces membres la comprennent.

M. RIPERT (France) déclare que l'expression « transporteur de personnes ou choses endommagées » doit être modifiée, étant entendu qu'elle ne donne satisfaction ni du point de vue juridique ni du point de vue de la forme. En effet, il se peut que des choses se trouvent sur un bateau sans que ce fait implique qu'un contrat régulier de transport soit intervenu. Aussi propose-t-il de modifier l'article comme suit :

« Si le bateau endommagé ou à bord duquel se trouvent les personnes ou les choses ayant subi des dommages a, par sa faute, contribué à l'abordage... »

M. VAN SLOOTEN (Pays-Bas) fait remarquer, en réponse aux explications données en dernier lieu par M. Hostie, que même les partisans de la rédaction actuelle ont été unanimes à reconnaître l'identité de signification qui règne entre les premiers mots de l'alinéa 3 du texte des documents préparatoires et l'expression « faute commune » du texte de la Convention de Bruxelles.

M. HOSTIE, président du Comité de rédaction, répond que s'il a dit « telle que ces membres la comprennent », c'est que certains membres du Comité de rédaction estiment que les mots « faute commune » n'ont pas le sens que leur attribue M. van Slooten et qu'il ne semble pas que ce soit le rôle de cette Conférence de fixer l'interprétation de la Convention de Bruxelles.

M. ROSSETTI (Italie) ne croit pas non plus qu'il appartienne à la Conférence de provoquer une interprétation authentique de la Convention.

M. VAN SLOOTEN (Pays-Bas) estime, au contraire, que c'est précisément afin de provoquer cette interprétation authentique que les déclarations du Comité de rédaction ont été formulées, autrement, les divers pays intéressés se trouveront dans une situation embarrassante. Il est possible en effet qu'un abordage se produise sur un fleuve entre un bateau et un navire. Dans ce cas, la Convention de Bruxelles sera applicable, mais si, quelques instants après, un abordage se produit entre deux bateaux de navigation intérieure, on devra avoir recours à la Convention actuelle. Ainsi, le juge aurait à appliquer deux conventions différentes. Il y a donc un intérêt primordial à éviter des possibilités de doute dans ces hypothèses.

M. ROSSETTI (Italie) se déclare d'accord avec ces idées ; il estime toutefois qu'il incombe à la jurisprudence et non pas à la Conférence de procéder à une interprétation authentique de la Convention.

*La proposition de M. Ripert, tendant à la modification du texte de l'alinéa 1, est adoptée.  
Les alinéas 2, 3 et 4 sont adoptés.*

*L'article 5 est adopté dans son ensemble avec la modification suivante au premier alinéa :*

*Remplacer les deux premières lignes par le texte suivant :*

« Si le bateau endommagé ou à bord duquel se trouvent les personnes ou les choses ayant subi des dommages a, par sa faute, contribué à l'abordage... »

*Article 6.*

*Cet article est adopté.*

M. ROSSETTI (Italie) expose qu'il avait été décidé par la troisième Commission que la première partie de l'article de la Convention de Bruxelles, relative à l'assistance obligatoire à la suite d'abordage, serait intercalée dans la Convention actuelle après les dispositions sur la prescription et que le Protocole de clôture subordonnerait la mise en vigueur de cette disposition à la conclusion d'une nouvelle convention relative à l'assistance et au sauvetage en navigation fluviale. Le Comité de rédaction s'est borné à rédiger un vœu. Ainsi, la décision prise précédemment a été modifiée et ce, bien que la Chambre de Commerce internationale ait été informée que le vœu qu'elle avait formulé en ce sens avait été approuvé par la Conférence.

Le PRÉSIDENT déclare qu'en effet, à l'origine, les diverses délégations s'étaient déclarées très favorables à l'expression de cette obligation d'assistance, mais que le Comité de rédaction a éprouvé des doutes et des craintes au sujet de l'effet qu'aurait une obligation dépourvue de sanction.

M. ROSSETTI (Italie) constate que le Comité de rédaction a pris une décision qui modifie celle de la troisième Commission.

Le PRÉSIDENT rappelle que la disposition en question présente un réel intérêt, mais que de toute façon, elle n'aurait qu'une valeur morale, puisqu'aucune sanction ne serait prévue.

M. HOSTIE, président du Comité de rédaction, relit le passage du procès-verbal de la troisième Commission relatif à ce point. Il constate que d'après la décision prise, la disposition qui constitue la première partie de l'article de la Convention de Bruxelles ne devait entrer en vigueur qu'après la conclusion d'une convention relative à l'assistance et au sauvetage. Il résultait de là qu'en attendant la conclusion d'une telle convention où la disposition envisagée trouverait sa place beaucoup mieux que dans une convention sur l'abordage, la décision n'avait aucun effet. D'autre part, après l'entrée en vigueur d'une convention sur l'assistance, cette disposition risquait de donner lieu à des interprétations fâcheuses quant à la responsabilité civile des propriétaires de bateaux par le fait que le troisième alinéa de l'article de Bruxelles se trouvait omis.

Dans ces conditions, le Comité de rédaction a cru que le désir de la Commission d'inviter les gouvernements à insérer dès à présent dans leurs législations l'obligation d'assistance à la suite d'un abordage se trouverait plus efficacement réalisé en formulant expressément un vœu dans ce sens, vœu que le Comité de rédaction propose de rédiger comme suit :

« La Conférence émet le vœu qu'en attendant la conclusion, reconnue désirable, d'une convention sur l'assistance et le sauvetage en ce qui concerne la navigation fluviale, les législations nationales imposent, après un abordage, au capitaine ou patron de chacun des bateaux entrés en collision, le devoir, autant qu'il peut le faire sans danger sérieux pour son bateau, son équipage et ses passagers, de prêter assistance à l'autre bateau, à son équipage et à ses passagers. »

Le président du Comité de rédaction attire l'attention de la Conférence sur le fait que ce vœu reconnaît en outre la conclusion d'une convention sur l'assistance comme désirable.

Le PRÉSIDENT se rallie à l'idée exposée par M. Hostie. Il estime également que si l'on exprime simplement le vœu en question, celui-ci aura plus de force que s'il est inséré dans la Convention sous forme d'une disposition dépourvue de toute sanction.

M. ROSSETTI (Italie) reconnaît que les deux thèses en présence sont défendables. Toutefois, il craint que les gouvernements ne fassent dépendre de l'entrée en vigueur d'autres actes diplomatiques, la réalisation du vœu formulé. Il eût donc été préférable d'insérer le principe de l'assistance obligatoire dans la Convention, procédure qui aurait évité toute discussion lors de la conclusion de nouveaux textes. Néanmoins, M. Rossetti déclare admettre la solution préconisée par le Comité de rédaction, tout en estimant que sa propre suggestion était préférable.

*Le vœu rédigé par le Comité de rédaction, destiné à être inséré dans l'Acte final et relatif à l'assistance en cas d'abordage est adopté.*

*Article 7.*

*Cet article est adopté sans modification.*

Article 8.

*Cet article est adopté sans modification.*

Article 9.

*Cet article est adopté, le mot « atteintes », à la deuxième ligne, devant être au singulier.*

Article 10.

*Cet article est adopté sans modification.*

Article 11.

*Cet article est adopté, les trois dernières lignes devant être lues de la façon suivante, conformément à la proposition de M. Nauta (Pays-Bas) :*

« ... les hydroglisseurs, les radeaux, les bacs, les dragues, les grues et élévateurs flottants, les sections mobiles de ponts de bateaux et tous engins et outillages flottants de nature analogue ».

M. CONTZESCO (Roumanie) regrette que la Commission ait cru devoir mentionner les radeaux, contrairement à l'idée de la délégation roumaine.

Article 12.

*Cet article est adopté sans modification.*

PROTOCOLE DE CLÔTURE.

I. Ad article 1.

M. ROSSETTI (Italie) expose que lorsque la troisième Commission a discuté la réserve proposée par la délégation yougoslave concernant le champ d'application de la Convention, elle a jugé opportun qu'un vœu fût émis par la Conférence recommandant aux États qui désirent se prévaloir de cette réserve de mettre leur législation nationale relative à l'abordage qui se produit dans les eaux exclusivement réservées à la navigation nationale en concordance avec les principes de la Convention. Peut-être serait-il opportun d'introduire ce vœu dans le Protocole de clôture.

Le PRÉSIDENT estime qu'il serait mieux à sa place dans l'Acte final.

M. ROSSETTI (Italie) se rallie à cette idée.

*Il est décidé que le Comité de rédaction présentera à la Conférence le texte de ce vœu.*

CHAMP D'APPLICATION DE LA CONVENTION.

M. RIPERT (France) tient à poser une question. L'article 1 de la Convention déclare que celle-ci est applicable dans les eaux d'un des États contractants. Que faut-il entendre par ces eaux ? Doit-on y comprendre également celles qui baignent des territoires coloniaux ? Il semble, au contraire, que la Convention ne doive s'appliquer que dans les eaux métropolitaines, aussi, M. Ripert demande-t-il que soit insérée dans le Protocole de clôture une disposition restreignant le champ d'application de la Convention aux eaux métropolitaines.

Le PRÉSIDENT déclare qu'il semble en effet que la Conférence n'ait pas eu l'intention de légiférer pour des territoires autres que ceux de l'Europe.

M. ROMÉIN, membre de la Section des communications et du transit, déclare que cette restriction doit jouer pour toutes les conventions que la Conférence se propose de conclure.

Le PRÉSIDENT résume le débat en déclarant qu'il conviendra de prévoir dans le Protocole de clôture une disposition exprimant que la Convention ne s'applique pas aux eaux coloniales des divers États contractants.

M. RIPERT (France) précise sa pensée en expliquant qu'il est bien entendu que si, par exemple, un bateau immatriculé dans le port d'un fleuve colonial pénètre dans un fleuve européen, la Convention lui sera applicable. Il suffirait, à son avis, de préciser dans le Protocole de clôture que par « eaux des États contractants », il convient d'entendre exclusivement les eaux des territoires métropolitains.

M. ROSSETTI (Italie) propose d'insérer dans l'article 1 la phrase « dans les eaux européennes des États contractants » puisqu'il a été entendu avec les Puissances asiatiques et d'autres Puissances que la Convention ne s'appliquerait qu'aux territoires européens.

M. VAN SLOOTEN (Pays-Bas) rappelle que la solution adoptée par la Convention de Bruxelles cadre en somme avec la proposition de M. Ripert. En effet, si la Convention de Bruxelles s'applique

aux colonies, néanmoins, dans le Protocole de clôture, certains États se sont réservés le droit de ne pas adhérer à cette clause. On pourrait donc dire inversement dans le cas présent que la Convention ne s'applique qu'aux eaux des territoires métropolitains, mais que les divers États auraient la faculté de prévoir une réserve étendant son champ d'application aux territoires coloniaux.

Le **SECRETARE GÉNÉRAL DE LA CONFÉRENCE** fait ressortir que pour la présente Convention, comme pour les deux autres, il est indispensable d'indiquer que le champ d'application est limité au territoire métropolitain, car c'est sur cette base que les divers États ont été invités à la Conférence.

Si la nécessité d'une convention plus large se fait sentir ultérieurement, une autre conférence pourra être convoquée.

Aucun texte d'article protocolaire, formulant une réserve en ce qui concerne les eaux des territoires coloniaux, n'a été prévu, mais, si la Conférence le juge utile, le Secrétariat en préparera un.

**M. RIPERT (France)** estime que la détermination du champ d'application de la Convention doit être territoriale. A son avis, la Convention doit être appliquée, par exemple, au cas d'un bateau immatriculé dans une colonie d'un des États contractants et qui navigue sur un fleuve européen.

**M. SITENSKY (Tchécoslovaquie)** déclare partager cet avis, mais il estime nécessaire de définir ce qu'on entend par « les eaux d'un État ».

Il propose que l'article 1 de la Convention dise « les eaux tant intérieures que territoriales ».

Le **PRÉSIDENT** répond que le Comité de rédaction n'a pas voulu employer l'expression « eaux territoriales » qui aurait été trop limitative.

**M. ROSSETTI (Italie)** rappelle que la Commission a décidé de ne restreindre que dans le Protocole de clôture l'interprétation à donner aux termes « les eaux ». Si l'article premier devait faire mention des « eaux territoriales », la Conférence s'engagerait dans des discussions interminables.

**M. DE DIETRICH DE SACHSENFELS (Hongrie)** demande que le paragraphe 2<sup>o</sup> du chiffre I du Protocole soit supprimé, ou tout au moins la dernière partie de ce paragraphe: «...et sans communication avec d'autres voies navigables.»

Il signale que l'expression « eaux intérieures » est employée en Hongrie pour désigner certaines eaux stagnantes qui doivent être drainées.

**M. RIPERT (France)** fait ressortir que la nouvelle Convention est destinée à compléter dans une certaine mesure la Convention de Bruxelles sur l'abordage. Or, si la nouvelle Convention ne prend en considération que le lieu où l'abordage se produit, il restera des cas qui ne seront couverts ni par la Convention de Bruxelles ni par la nouvelle Convention, par exemple le cas d'un abordage en haute mer entre deux bateaux de navigation intérieure.

**M. LAWATSCHKE (Autriche)** rappelle que dans le rapport relatif au projet de Convention, le Comité préparatoire déclare qu'à son avis, « la Convention doit prévoir que les règles fixées doivent être d'application générale sur le territoire des États contractants ». Or, en acceptant la double réserve du chiffre I du Protocole de clôture élaboré par la troisième Commission et soumis à l'approbation de la Conférence, celle-ci irait à l'encontre de cette recommandation.

La délégation autrichienne estime que la première partie de cette réserve (paragraphe 1<sup>o</sup>) n'est pas justifiée. En effet, le régime des voies navigables, qu'il s'agisse de voies internationales ou nationales, ne touche pas à la législation en matière de droit privé.

Aussi, la réserve du paragraphe 1<sup>o</sup>, qui vise les eaux où la navigation est exclusivement réservée aux nationaux, n'est-elle pas plus justifiée qu'elle ne le serait si elle visait des eaux ouvertes à la navigation internationale. En effet, les voies d'eau réservées à la navigation nationale peuvent communiquer avec des voies d'eau internationales, et des abordages dans lesquels des navires étrangers sont impliqués sont alors possibles. D'ailleurs, il faut dans tous les cas tenir compte des passagers étrangers et des cargaisons appartenant à des étrangers.

La délégation autrichienne attire l'attention de la Conférence sur le fait que la réserve du paragraphe 1<sup>o</sup> restreint le champ d'application de la Convention dans une mesure telle que cette Convention perd beaucoup de son intérêt.

Quant à la réserve du paragraphe 2<sup>o</sup>, elle est née du désir de la délégation suisse de pouvoir conserver, pour les bateaux faisant un service régulier sur les lacs intérieurs, les dispositions spéciales de la législation suisse qui sont plus favorables aux intérêts des personnes ayant subi des dommages. Or, on pourrait tenir compte de ce désir en insérant dans la Convention une disposition spécifiant que pour les lacs intérieurs sans communication avec d'autres voies navigables, chaque État serait libre d'établir des dispositions plus favorables que ne le prévoit la Convention à l'égard des personnes ayant subi des dommages du fait d'un abordage.

La délégation autrichienne propose en conséquence : 1<sup>o</sup> de supprimer purement et simplement la double réserve du chiffre I du Protocole de clôture ; 2<sup>o</sup> si la Conférence juge indispensable de faire une réserve, d'insérer dans la Convention les deux dispositions suivantes :

« a) La Convention ne modifie en rien le régime de la navigation des différentes voies d'eau navigables ;

« b) Les États se réservent le droit d'établir des dispositions plus favorables que ne le prévoit la Convention à l'égard des personnes ayant subi des dommages en cas d'abordage sur les lacs intérieurs sans communication avec d'autres voies navigables. »

M. SOUBOTITCH (Yougoslavie) estime que l'application de la Convention doit être limitée aux cas prévus par le texte actuel, c'est-à-dire aux abordages survenus dans les eaux d'un des États contractants.

Il est vrai que de la sorte, certains cas d'abordage entre bateaux d'États contractants ne sont pas couverts par la Convention, tel un abordage survenu sur un fleuve de Russie entre un bateau italien et un bateau roumain. Toutefois, si l'on voulait étendre l'application de la Convention à tous les cas d'abordage survenus entre bateaux d'États contractants, même dans les eaux d'un État non contractant, on se heurterait à des inconvénients considérables.

M. Soubotitch estime en conséquence qu'il n'est pas nécessaire de préciser dans l'article 1, ainsi que l'a proposé M. Sitsensky, qu'il s'agit d'eaux territoriales et d'eaux intérieures.

M. RIPERT (France) reconnaît que le cas qu'il avait envisagé d'un abordage en haute mer entre deux bateaux de navigation intérieure se présentera très rarement en pratique. Par contre, il estime que la Convention doit préciser le point suivant : lorsqu'il y a abordage dans les eaux d'un État non contractant entre deux bateaux d'États contractants et que le procès est porté devant un tribunal de l'un de ces États contractants, la Convention doit-elle être appliquée ou non ?

M. HAAB (Suisse), faisant allusion à la déclaration de M. Lawatchek, désire préciser que la navigation sur les lacs intérieurs de la Suisse est réservée à ses nationaux en fait, mais non en droit.

Quant aux bateaux assurant un service régulier, il signale que la question des abordages est régie en ce qui concerne les dommages aux personnes par la loi spéciale sur la responsabilité qui est appliquée aux chemins de fer et, en ce qui concerne les dommages aux choses, par le droit ordinaire.

La délégation suisse a demandé que soit faite la réserve indiquée au paragraphe 2<sup>o</sup> du chiffre I du Protocole de clôture parce qu'en fait, il ne peut y avoir d'abordage international sur les lacs intérieurs suisses. Elle demande en conséquence le maintien de ce paragraphe 2<sup>o</sup>, à moins que les mots « en fait ou en droit » soient insérés dans le paragraphe 1<sup>o</sup> après les mots « où la navigation est ».

Le PRÉSIDENT constate que la Conférence doit choisir entre deux solutions : 1<sup>o</sup> la Convention ne serait applicable qu'aux abordages survenus dans les eaux métropolitaines ; il faudra préciser, en ce cas, si les abordages en haute mer ou sur les voies fluviales européennes des pays non contractants, doivent être exclus ; 2<sup>o</sup> la Convention serait applicable aux abordages survenus entre bateaux d'États contractants, quel que soit le lieu de l'abordage.

M. RICHTER (Allemagne) déclare partager l'opinion de M. Ripert.

Si l'article premier, au lieu de stipuler que la Convention s'applique à tous les cas d'abordage survenus dans les eaux d'un des États contractants, stipulait simplement que la Convention doit s'appliquer aux cas d'abordage survenus entre bateaux d'États contractants, le champ d'application de la Convention serait en réalité restreint. En effet, la Convention ne pourrait être appliquée aux abordages dans lesquels sont impliqués les petits bateaux non immatriculés.

Il fait observer que l'abordage peut être considéré comme un quasi-délit, et que par conséquent, c'est le lieu de l'accident qui doit déterminer la loi à appliquer.

Quant aux abordages en haute mer entre bateaux de navigation intérieure, le cas se présente si rarement en pratique que la Commission doit le laisser de côté.

La délégation allemande déclare appuyer la proposition autrichienne, tendant à la suppression du chiffre I du Protocole de clôture. En effet, même dans les eaux exclusivement réservées à la navigation nationale, il y a lieu de tenir compte des cas d'abordage où le bateau transporte des passagers ressortissants d'un autre État ou une cargaison appartenant à un ressortissant d'un tel État.

M. SOUBOTITCH (Yougoslavie) constate avec étonnement que la discussion reprend sur un principe que la troisième Commission avait accepté. Le point de vue de la délégation yougoslave a été exposé à plusieurs reprises au cours des débats de cette Commission et a été accepté en fin de compte par toutes les délégations. Il s'agit d'une question que la délégation yougoslave estime tellement importante que si la réserve n'était pas maintenue, cette délégation pourrait hésiter à signer la Convention.

M. Soubotitch ne désire pas rouvrir la discussion, mais il prie les délégués à la Conférence de se reporter aux procès-verbaux de la troisième Commission, où il est fait mention des arguments par lesquels la délégation yougoslave a démontré le bien-fondé de son amendement, amendement que plusieurs délégations ont bien voulu appuyer.

Le PRÉSIDENT invite la Conférence à se prononcer sur le principe de la proposition de M. Richter tendant à limiter l'application de la Convention aux abordages survenus dans les eaux métropolitaines.

M. ROSSETTI (Italie) déclare que la délégation italienne approuve cette proposition quant au fond. Il estime d'ailleurs que la Conférence ne peut que se prononcer dans ce sens, étant donné que les convocations à la Conférence ont été limitées aux États européens, précisément à cause du champ d'application envisagé pour les conventions.

Toutefois, il demande que ne soit pas employée l'expression « eaux métropolitaines » car le terme « métropole » peut avoir différentes acceptions. Si la Conférence entend limiter l'application de la Convention à l'Europe, elle doit le dire expressément et distinguer entre l'Europe et les colonies.

Le PRÉSIDENT fait procéder à un vote et constate : 1° que la Conférence est d'accord pour que la Convention soit appliquée aux abordages survenus dans les eaux métropolitaines des États contractants ; 2° que la Conférence décide d'exclure les cas d'abordage survenus en haute mer ; 3° que la Conférence décide d'exclure les cas d'abordage survenus dans les eaux des territoires coloniaux.

Il demande à la Conférence de préciser en dernier lieu si la Convention doit être applicable aux abordages survenus dans les eaux européennes d'un État non contractant, lorsque le procès est porté devant un tribunal d'un État contractant.

M. RICHTER (Allemagne) est d'avis que la Convention ne doit pas être appliquée dans ce dernier cas, car c'est le lieu de l'abordage qui doit déterminer la loi à appliquer. Un doute ne serait d'ailleurs possible que si les bateaux impliqués dans l'abordage appartenaient tous au même État. Si la Conférence voulait envisager ce cas, il faudrait reprendre la question de la nationalité des bateaux.

M. NAUTA (Pays-Bas) déclare que la délégation néerlandaise se prononce également pour l'exclusion du dernier cas envisagé, c'est-à-dire celui d'un abordage survenu dans les eaux européennes d'un État non contractant, lorsque le procès est porté devant un tribunal d'un État contractant.

M. RIPERT (France) se déclare d'accord en principe avec M. Richter. Toutefois, il fait observer que cette manière de voir présente le grave inconvénient d'encourager en somme les États à ne pas ratifier la Convention pour conserver le bénéfice de leur législation nationale dans les cas d'abordage survenant dans les eaux de leur territoire.

M. CONTZESCO (Roumanie) demande quelle serait la formule employée si la Conférence décidait de ne pas exclure ce cas d'abordage dans les eaux européennes d'un État non contractant, lorsque le procès est porté devant un tribunal d'un État contractant.

M. RIPERT (France) répond qu'il faudrait faire entrer en ligne de compte le lieu d'immatriculation.

Le PRÉSIDENT suggère que l'application de la Convention soit limitée aux abordages survenus dans les eaux métropolitaines des États contractants, mais qu'un article du Protocole de clôture fasse ressortir qu'il appartient toujours à deux États contractants de s'entendre éventuellement pour élargir, au moyen d'un accord bilatéral, le champ d'application de la Convention.

M. ROSSETTI (Italie) ne voit pas d'inconvénient à ce que l'article 1 prévoie le cas d'un abordage survenu dans les eaux européennes d'un État non contractant, lorsque le procès est porté devant un tribunal d'un État contractant.

M. SITENSKY (Tchécoslovaquie) réplique qu'il faudrait alors définir ce qu'on entend par bateaux appartenant à un État contractant si, d'après la suggestion de M. Rossetti, on introduisait cette notion à l'article 1. Cela ne pourrait être que les bateaux immatriculés dans un de ces États. Mais alors, les abordages dans lesquels les petits bateaux non immatriculés sont impliqués ne seraient pas couverts par la Convention.

M. RICHTER (Allemagne) signale un autre inconvénient : il peut arriver qu'un abordage donne lieu à plusieurs procès portés devant des tribunaux de pays différents.

M. NAUTA (Pays-Bas) tient à appuyer cette dernière objection de M. Richter. Chaque propriétaire citera les autres parties devant le tribunal du pays dont la loi lui assure le traitement le plus favorable.

C'est pour cette raison également que M. Nauta ne croit pas pouvoir appuyer la suggestion du président en ce qui concerne les conventions bilatérales entre États contractants.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE rend hommage à la grande prudence dont fait preuve la Conférence en prévoyant l'insuccès éventuel de ses travaux et le cas où un grand nombre d'États ne ratifieraient pas la Convention. Toutefois, il fait observer qu'il semble vraisemblable, d'après la physionomie des débats, que la totalité ou la presque totalité des États représentés à la Conférence ratifieront la Convention. Est-il bien nécessaire, dans ces conditions, de compliquer le texte en prévision d'un insuccès éventuel ?

D'ailleurs, une des clauses protocolaires prévoit que la Convention peut être dénoncée à l'expiration d'un délai de cinq ans. Si donc, par malheur, elle n'était appliquée que dans un petit nombre d'États, il serait toujours temps d'examiner à nouveau la situation.

Le PRÉSIDENT déclare que l'observation du Secrétaire général de la Conférence est d'autant plus fondée que tous les articles de la Convention ont été adoptés à l'unanimité.

M. RIPERT (France) estime, étant donné la déclaration du Secrétaire général de la Conférence, que celle-ci peut adopter sans modification le texte actuel de l'article 1, à condition de spécifier, dans le Protocole de clôture, que la Convention ne s'applique pas aux abordages survenus dans les eaux des territoires coloniaux des États contractants.



Le PRÉSIDENT constate que la Conférence est d'accord sur ce point, c'est-à-dire que l'article 1 est adopté sans modification, mais qu'une réserve devra être insérée dans le Protocole de clôture, visant l'exclusion des cas d'abordages survenus dans les eaux des territoires coloniaux des États contractants.

Il rappelle que la Conférence doit encore se prononcer en ce qui concerne le chiffre I du Protocole de clôture, dont le maintien est demandé par les délégations suisse et yougoslave.

M. CONTZESCO (Roumanie) déclare que la délégation roumaine demande également le maintien de cette clause.

Le PRÉSIDENT fait procéder à un vote et constate que la Conférence se prononce pour le maintien sans modification du chiffre I du Protocole de clôture.

M. RIPERT (France) demande qu'il soit bien entendu que le Protocole de clôture fait partie intégrante de la Convention et que même les délégations ayant voté contre le maintien du chiffre I de ce Protocole l'accepteront en signant la Convention.

Le PRÉSIDENT répond qu'il en est bien ainsi. Il invite la Conférence à aborder l'examen des dispositions protocolaires figurant aux articles 13 et suivants de la Convention.

#### Articles 13, 14 et 15.

Le PRÉSIDENT constate que la Conférence est d'accord pour réserver l'examen des articles 13, 14 et 15. Des articles identiques devant figurer dans les deux autres conventions, la Conférence examinera tous ces articles ensemble.

#### Article 16.

Le PRÉSIDENT donne lecture de l'article 16.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE fait observer que la seule question de fond est celle du nombre des ratifications nécessaires pour l'entrée en vigueur de la Convention, tout le reste de l'article étant rédigé conformément à la formule habituelle.

M. NAUTA (Pays-Bas) fait valoir contre l'article 16 les deux objections suivantes : 1° si deux États voisins, ayant ratifié la Convention, estiment avoir intérêt à son entrée en vigueur, ils doivent pouvoir convenir de son application sur leurs territoires ; 2° la ratification de la Convention par quatre États ne doit pas obliger un cinquième État, qui l'aurait ratifiée également, à appliquer la Convention, lorsqu'il n'aurait aucune voie navigable en commun avec les quatre premiers pays.

M. Nauta recommande à la Conférence la procédure prévue par la Convention de Bruxelles. Un organisme central (qui ici pourrait être le Secrétariat de la Société des Nations) serait chargé de s'informer auprès des États contractants, à l'expiration d'un délai déterminé (qui ici pourrait être d'un an), pour savoir quels sont ceux d'entre eux qui sont disposés à ratifier la Convention. Les réponses seraient communiquées à tous les États, qui examineraient alors l'opportunité de faire entrer la Convention en vigueur.

Une telle procédure serait également très recommandable pour les deux autres conventions.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE répond que le système indiqué dans l'article 16 a déjà été utilisé pour un grand nombre de conventions. Sans doute présente-t-il certains inconvénients, mais le système proposé par M. Nauta en présente certainement aussi.

Le Secrétaire général de la Conférence estime qu'il serait possible de remédier aux inconvénients signalés par M. Nauta d'une façon simple et qui n'apporterait pas une modification trop radicale au texte soumis à la Convention. Tout d'abord, on pourrait réduire le nombre des ratifications nécessaires. D'autre part, et conjointement avec une telle réduction, on peut prévoir qu'un État se réserve de faire dépendre sa ratification de celles d'un certain nombre d'autres États nommément désignés. Une telle disposition a été adoptée dans certaines conventions signées sous les auspices de la Société des Nations.

M. ROSSETTI (Italie) propose qu'il soit stipulé que la Convention entrera en vigueur après réception des ratifications de « trois États riverains d'un même réseau fluvial ».

M. MÜLLER (Tchécoslovaquie) fait observer qu'il y a des fleuves internationaux ou d'intérêt international où il n'y a que deux États riverains, comme par exemple l'Elbe.

M. DE DIETRICH DE SACHSENFELS (Hongrie) déclare appuyer la proposition de M. Rossetti.

Le PRÉSIDENT constate que la Commission accepte le principe de la proposition de M. Rossetti. Un texte sera préparé qui sera examiné par la Conférence en même temps que les trois articles réservés.

#### Article 17.

Le PRÉSIDENT donne lecture de l'article 17.

Il constate que la Conférence adopte cet article 17 sans modification.

*Article 18.*

Le PRÉSIDENT donne lecture de l'article 18.

M. CONTZESCO (Roumanie) estime qu'il serait plus logique d'invertir l'ordre des articles 17 et 18.

M. ROSSETTI (Italie) et M. RIPERT (France) proposent que la revision de la Convention puisse être demandée à toute époque par « trois États contractants » et non par « un tiers des États contractants » comme prévu dans le texte actuel.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE signale à titre documentaire le système suivant lequel la revision pourrait être demandée à toute époque par un tiers ou un quart des États contractants et, à l'expiration de certaines périodes déterminées, par un seul État.

Il fait observer qu'en pratique, si le Secrétariat était saisi d'une demande de revision sérieuse, il serait toujours facile de consulter les États intéressés et de convoquer éventuellement une conférence.

M. VAN SLOOTEN (Pays-Bas) estime qu'il ne faut pas réduire un État à menacer les autres de sa dénonciation pour obtenir la revision de la Convention. Chaque État devrait pouvoir s'adresser au Secrétariat de la Société des Nations pour demander une telle revision.

M. MÜLLER (Tchécoslovaquie) demande des précisions en ce qui concerne la portée de l'article 18, notamment si c'est l'obligation de convoquer une conférence qui résulterait d'une demande de revision formulée par le nombre requis d'État contractants.

Le PRÉSIDENT estime que dans la pensée des rédacteurs, il y a obligation morale de convoquer une conférence.

M. SOUBOTITCH (Yougoslavie) fait ressortir qu'il faut tenir compte de deux considérations contradictoires qui sont toutes deux dignes d'intérêt : 1° assurer la stabilité d'une réglementation internationale, c'est-à-dire ne pas permettre qu'un État puisse remettre en question à tout moment les décisions acceptées, signées et ratifiées par tous les autres États ; 2° conserver le plus grand nombre d'États contractants, c'est-à-dire ne pas les acculer à la dénonciation en les privant du droit de demander la revision de la Convention, lorsqu'ils peuvent justifier cette demande par des arguments valables.

La proposition de M. Rossetti, réduisant à trois le nombre des ratifications nécessaires, semble tenir compte de ces deux considérations.

M. SUŁKOWSKI (Pologne) signale la solution adoptée dans la Convention de Genève portant loi uniforme sur les lettres de change et billets à ordre du 7 juin 1930. Il donne lecture de l'article IX de cette Convention :

« Tout Membre de la Société des Nations et tout État non membre, à l'égard duquel la présente Convention est en vigueur, pourra adresser au Secrétaire général de la Société des Nations, dès l'expiration de la quatrième année suivant l'entrée en vigueur de la Convention, une demande tendant à la revision de certaines ou de toutes les dispositions de cette Convention.

« Si une telle demande, communiquée aux autres Membres ou États non membres entre lesquels la Convention est alors en vigueur, est appuyée, dans un délai d'un an, par au moins six d'entre eux, le Conseil de la Société des Nations décidera s'il y a lieu de convoquer une conférence à cet effet. »

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE fait observer que cette disposition ne présente pas une différence de fond avec l'article 18 qui permet implicitement d'avoir recours à une procédure analogue.

M. SITENSKY (Tchécoslovaquie) estime qu'il faut tenir compte non seulement du nombre des États demandant la revision, mais aussi de la valeur des motifs invoqués. En conséquence, il se prononce en faveur d'une formule analogue à celle de l'article IX de la Convention de Genève.

M. WINIARSKI, président du Comité de droit fluvial, estime que l'article 18 doit être interprété comme imposant l'obligation de la convocation d'une conférence, lorsque la revision de la Convention est demandée par le nombre requis d'États contractants.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE estime inutile d'envisager des difficultés qui ne se présenteront pas en pratique. Il est certain que le Conseil fera toujours de son mieux pour éviter des dénonciations d'une convention signée sous les auspices de la Société des Nations.

M. SOUBOTITCH (Yougoslavie) fait ressortir, comme M. Contzesco, que l'ordre des articles 17 et 18 devrait être inversé.

Le PRÉSIDENT constate que la Commission décide d'invertir l'ordre des articles 17 et 18.

Il constate également que la Commission décide de modifier la fin de l'article 18 en remplaçant « un tiers au moins des États contractants » par « trois au moins des États contractants ».

Pour clôturer les débats, il fait procéder à un vote nominal par délégation sur l'adoption de l'ensemble des articles 1 à 12.

*L'ensemble des articles 1 à 12 est adopté, par appel nominal, à l'unanimité sauf une abstention<sup>1</sup>.*

### TROISIÈME SÉANCE PLÉNIÈRE

*Tenue le samedi 6 décembre 1930, à 10 heures.*

*Président: M. DE RUELLE (Belgique).*

#### VII. Projet de convention sur certaines matières de droit fluvial.

Le PRÉSIDENT invite la Conférence à aborder l'examen du texte du projet de Convention sur certaines matières de droit fluvial, qui lui est soumis par le Comité de rédaction<sup>2</sup>.

##### Article 1.

*Cet article est adopté avec la modification de forme suivante:*

Le mot « seront », à l'avant-dernière ligne, est remplacé par le mot « sont ».

##### Article 2.

*Cet article est adopté sous la forme suivante:*

« Chaque bureau d'immatriculation est désigné, suivant les prescriptions de l'autorité compétente, soit par son nom, soit par une ou plusieurs lettres initiales, ainsi que par la ou les lettres initiales attribuées par l'Annexe I à l'État auquel il ressortit. »

##### Article 3.

*Cet article est adopté sans modification.*

##### Article 4.

Après un échange de vues entre divers membres de la Conférence, l'alinéa 1 est adopté sous la forme suivante:

« 1. Tout bateau doit être immatriculé s'il remplit les conditions d'immatriculation prévues par la législation d'un ou plusieurs États contractants. Cette disposition s'applique aux bateaux de vingt tonnes métriques au moins, y compris les dragues, mais à l'exception des grues, élévateurs flottants et de tous autres engins analogues, ainsi que des bateaux de plaisance. L'obligation de faire immatriculer le bateau incombe au propriétaire. »

*L'alinéa 2 est adopté sans modification.*

*L'alinéa 3 est adopté sans modification mais avec l'addition du mot « contractants » à la fin.*

*L'alinéa 4 est adopté sous la forme suivante:*

« Chaque État contractant se réserve le droit d'exiger que ses ressortissants inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant en même temps les conditions d'immatriculation d'un ou de plusieurs autres États contractants, s'ils ont, sur ce territoire, leur résidence habituelle, ou, dans le cas de sociétés, la direction principale de leurs affaires. »

*Il est décidé que la phrase suivante sera à insérer au Protocole de clôture:*

« Il est entendu que, en ce qui concerne les sociétés de capitaux, la nationalité est déterminée par le siège social. »

*L'alinéa 5 est adopté dans la forme suivante:*

« En ce qui concerne les bateaux appartenant à des personnes physiques, chaque État contractant se réserve de même le droit d'exiger que ses ressortissants, même s'ils n'ont pas sur son territoire leur résidence habituelle, inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant en même temps les conditions d'immatriculation d'un ou de plusieurs États contractants, si ces bateaux sont exclusivement affectés à la navigation dans les eaux dudit État. »

M. RICHTER (Allemagne) précise que l'acceptation définitive par la délégation allemande des articles 3 et 4 dépendra de l'ensemble des résultats des travaux de la Conférence.

<sup>1</sup> Voir document Conf./U.D.F./57.

<sup>2</sup> Voir Annexe 19 aux procès-verbaux de la deuxième Commission, page 208.

Le PRÉSIDENT répond que la Conférence prend acte de cette réserve qui figurera au procès-verbal de la séance.

Article 5.

Sur la proposition de M. Ripert, appuyée par MM. Richter et Sitensky, la Conférence décide de supprimer les mots « dans un État contractant » dans le texte de l'article 5, qui est adopté avec cette seule modification.

Article 6.

Cet article est adopté, étant entendu que le 1<sup>o</sup> sera rédigé comme suit :

« 1<sup>o</sup> Les grues et élévateurs flottants, ainsi que tous autres engins analogues. »

Article 7.

Après un échange de vues entre divers membres de la Conférence, celle-ci adopte l'alinéa 1 sous la forme suivante :

« 1. Un bateau en construction, lorsque la législation nationale en prescrit ou admet l'immatriculation, ne peut être immatriculé ailleurs que sur les registres de l'État contractant sur le territoire duquel il est en cours de construction, si ce n'est en vertu d'un accord conclu entre cet État et un ou plusieurs autres États contractants.

Les alinéas 2 et 3 sont adoptés sans modification, étant entendu que le dernier membre de phrase de l'alinéa 3 doit se lire : « États contractants non parties à cet accord. »

M. SOUBOTITCH (Yougoslavie) ayant attiré l'attention de la Conférence sur le danger que présentent des modifications de rédaction apportées en séance plénière, le PRÉSIDENT prie le Comité de rédaction d'examiner les textes adoptés et de soumettre à la Conférence les observations qu'il jugerait nécessaires.

Article 8.

Cet article est adopté sans modification.

Article 9.

Cet article est adopté avec la modification de forme suivante :

Le 2<sup>o</sup> est remplacé par : « Le mode de construction et le type du bateau ».

Article 10.

Cet article est adopté sans modification.

Article 11.

M. SOUBOTITCH (Yougoslavie) précise qu'il doit être bien entendu que la signature du propriétaire peut être remplacée par celle d'une personne dûment mandatée par lui.

Le PRÉSIDENT répond que c'est là une notion générale de droit commun qui s'applique également dans le cas d'espèce.

L'article 11 est adopté avec la modification suivante :

A la première ligne de l'alinéa 2, le mot « désigne » est remplacé par le mot « fixe ».

Article 12.

M. HOSTIE, président du Comité de rédaction, signale que, partout où les exigences de la langue française permettaient de le faire, le Comité de rédaction a employé le terme « registre » au singulier, pour désigner, soit le registre d'immatriculation, soit le registre pour l'inscription des droits réels.

Le PRÉSIDENT constate que la Conférence accepte que le terme « registre » figure au singulier dans toute la Convention, lorsqu'il n'y aura pas de raison particulière pour l'employer au pluriel.

M. ROSSETTI (Italie) estime que le terme « duplicata » devrait être remplacé par celui de « duplicatum », qui lui paraît plus correct, étant donné que le mot « duplicata » donne l'idée qu'il s'agit de plus d'un document.

Le PRÉSIDENT répond que cette observation figurera au procès-verbal.

M. RICHTER (Allemagne) fait observer que le paragraphe 2, qui stipule que « Tout bateau immatriculé doit être muni de son certificat d'immatriculation », sera parfois impossible à appliquer,

étant donné que l'article 11 stipule que toute demande visant à modifier les inscriptions au registre doit être accompagnée du certificat d'immatriculation.

Il propose, en conséquence, que soit insérée dans l'article 12 la réserve figurant dans les projets d'amendement allemands :

« Tout bateau immatriculé doit être muni de son certificat d'immatriculation, sauf le cas où le certificat doit être présenté au bureau d'immatriculation. »

M. HOSTIE, président du Comité de rédaction, dit que le Comité de rédaction a jugé préférable de ne pas introduire cette réserve, étant donné qu'il pouvait peut-être y avoir d'autres cas où un bateau se trouverait démuné de son certificat par un fait indépendant de la volonté du propriétaire ou de ses représentants.

M. RICHTER (Allemagne) n'insiste pas. Il rappelle, d'autre part, que la délégation allemande avait proposé un amendement tendant à l'insertion de la disposition suivante :

« Si l'autorité compétente délivre un duplicata du certificat d'immatriculation, ce duplicata doit être désigné comme tel, et mention de sa délivrance doit être faite sur l'exemplaire principal. »

Bien que cet amendement ait été adopté par la deuxième Commission, il n'a pas été retenu par le Comité de rédaction.

M. HOSTIE, président du Comité de rédaction, ayant déclaré que le Comité de rédaction ne voyait pas d'inconvénient à ce que cette disposition fût insérée, du moment que certaines délégations la désiraient, le PRÉSIDENT constate que la Conférence adopte la proposition de M. Richter. En conséquence, l'alinéa 2 de l'article 12 sera complété par la phrase suivante :

« 2. Ce duplicata doit être désigné comme tel et mention de sa délivrance doit être faite sur le certificat. »

L'alinéa 1 est adopté avec les modifications suivantes :

Première ligne, remplacer « les registres » par « le registre ». Quatrième ligne, remplacer « du pays dont il ressort » par « de l'État auquel il ressortit ».

### Article 13.

M. HOSTIE, président du Comité de rédaction, précise que, dans la pensée du Comité de rédaction, il va de soi que l'article 13 prévoit une mesure d'ordre purement administratif devant permettre aux intéressés de se renseigner plus facilement sur la situation hypothécaire d'un bateau. Le Comité de rédaction considère comme évident que l'absence à bord du bateau d'un document contenant la reproduction des inscriptions hypothécaires, ou la non-conformité d'un tel document avec les indications du registre, ne peut affecter en aucune manière la validité ou l'opposabilité d'une hypothèque.

M. RIPERT (France) souligne que les indications qui seraient portées par le certificat d'immatriculation ou un document hypothécaire spécial ne pourraient jamais faire connaître que la situation hypothécaire du bateau lors de la délivrance de ce certificat ou de ce document spécial.

M. RICHTER (Allemagne) propose que soient supprimés des premiers mots de l'article 13, « La loi du pays d'immatriculation peut prescrire que, soit », et que cet article débute comme suit :

« Le certificat d'immatriculation ou un document distinct se trouvant à bord du bateau contiendra... »

La délégation allemande estime, en effet, indispensable que soit rendue obligatoire, à bord du bateau, l'existence d'un document (certificat d'immatriculation ou autre) qui contienne la reproduction des inscriptions hypothécaires. La délégation allemande subordonne à cette condition son acceptation des articles 3 et 4.

Il reste bien entendu que la validité ou l'opposabilité de l'hypothèque ne dépend pas du document en question.

M. SITENSKY (Tchécoslovaquie) fait observer que la modification de l'article 13, demandée par M. Richter, porte sur une question de fond importante. La délégation allemande avait déjà présenté une première proposition en ce sens, proposition qui a donné lieu à de très longs débats au sein de la deuxième Commission. Les délégations n'ont pu se mettre d'accord que sur un texte qui laisse les législations nationales libres de prescrire ou non la reproduction des inscriptions hypothécaires sur un document devant se trouver à bord du bateau. Or, la délégation allemande présente maintenant à nouveau une proposition tendant à rendre cette reproduction obligatoire. Les mêmes arguments que les diverses délégations ont déjà fait valoir contre la première proposition allemande pourraient être répétés contre la nouvelle proposition.

M. SOUBOTITCH (Yougoslavie) appuie la déclaration de M. Sitenky. Il estime que tous les arguments ont déjà été produits de part et d'autre, sans que la délégation allemande ait pu rallier les autres délégations à sa manière de voir.

M. Soubotitch répète que, dans l'opinion de la délégation yougoslave, la mention des inscriptions hypothécaires sur le certificat d'immatriculation ou sur un document distinct aurait une

valeur pratique nulle, étant donné que les indications portées par un tel document ne pourraient pas être à jour à tout moment et tenir compte des constitutions ou extinctions d'hypothèque intervenant pendant les voyages.

L'obligation demandée par la délégation allemande ne contribuerait donc pas à améliorer le crédit fluvial, et aurait l'inconvénient, déjà signalé, de mettre inutilement le capitaine du bateau et certaines autorités de port au courant de la situation hypothécaire du bateau. Après de longs débats, la deuxième Commission a adopté un texte transactionnel, et M. Soubotitch s'étonne de voir la discussion reprendre sur ce point.

M. VAN SLOOTEN (Pays-Bas), bien que la question de fond ait été déjà discutée par la deuxième Commission et que le projet d'amendement allemand ait été rejeté, considère qu'il peut être utile de revenir, sinon sur le principe même, du moins sur le texte de l'article 13 soumis à l'approbation de la Conférence.

Ce texte n'indique pas d'une façon claire la portée de la faculté laissée à la loi du pays d'immatriculation. Il ne précise pas si cette faculté concerne simplement la présence obligatoire à bord du bateau d'un document contenant la reproduction des inscriptions hypothécaires, ou bien si elle vise également la nature et la forme de ce document.

M. van Slooten rappelle que, dans la Convention de Bruxelles, le principe du certificat obligatoire est admis, les législations nationales étant laissées libres de déterminer comme elles l'entendent la nature et la forme de ce certificat. Il considère qu'il serait désirable d'établir une certaine uniformité sur ce point entre la navigation maritime et la navigation fluviale.

M. van Slooten croit en conséquence que la Conférence devrait, dans l'intérêt du crédit fluvial, prendre en considération la proposition allemande, qui donnerait une certaine garantie contre la possibilité de mauvaise foi de la part du propriétaire.

M. RIPERT (France) estime que tout a été dit sur cette question. Il tient simplement à préciser quelle est la position de la délégation française, position qui est peut-être aussi celle d'autres délégations.

La législation française ne connaît pas l'obligation d'avoir à bord du bateau un document contenant la reproduction des inscriptions hypothécaires. La mise en vigueur d'une telle disposition présenterait de grosses difficultés pour les administrations françaises ; toutefois, ces difficultés ne seraient pas insurmontables, étant donné qu'il resterait entendu que la validité de l'hypothèque ne serait en aucun cas affectée par sa non-inscription au certificat. La délégation française considère en conséquence qu'elle pourrait éventuellement, en présence de la demande pressante de la délégation allemande, lui donner satisfaction ; toutefois, elle entend réserver son vote, car elle ferait un sacrifice important qui ne serait justifié que si elle obtenait satisfaction sur d'autres points.

M. ROSSETTI (Italie) rappelle que la délégation italienne s'était prononcée en faveur de la première proposition allemande. A son avis, un certificat portant mention des inscriptions hypothécaires, même s'il ne devait pas avoir une valeur probante bien grande, pourrait, dans certains cas, prouver l'intention de fraude du propriétaire.

Si la Conférence n'accepte pas ce principe, M. Rossetti estime que l'article 13 tout entier devient inutile.

M. SOUBOTITCH (Yougoslavie) s'excuse de reprendre la parole, mais il se voit obligé de faire observer que l'argument principal présenté en faveur de la proposition allemande n'a, à son avis, aucune valeur. En effet, le document envisagé ne pourrait en aucune façon donner des renseignements dignes de foi sur la situation hypothécaire du bateau. M. Soubotitch cite l'exemple de certains bateaux voyageant sur le Danube et qui ne reviennent à leur port d'attache que tous les deux ans.

D'autre part, il signale que la loi yougoslave prescrit l'immatriculation de tout bateau sans distinction de tonnage ; si donc la proposition allemande était adoptée, elle mettrait les administrations yougoslaves en présence d'une tâche extrêmement ardue.

M. NAUTA (Pays-Bas) croit comprendre que la délégation allemande, en présentant sa proposition, est guidée par le désir de protéger les intérêts des réparateurs de bateaux. M. Nauta admet qu'un document reproduisant les inscriptions hypothécaires pourrait avoir pour ces réparateurs une certaine valeur. Mais, d'autre part, il reconnaît le bien-fondé des objections présentées par M. Soubotitch. Il estime qu'il serait peut-être possible de concilier ces deux points de vue, en introduisant une réserve qui permettrait à chaque État de ne pas appliquer la disposition en question aux bateaux circulant exclusivement sur les eaux intérieures de leur territoire.

Le PRÉSIDENT constate que la Conférence est en présence de trois propositions : 1<sup>o</sup> maintien du texte actuel de l'article 13 ; 2<sup>o</sup> proposition allemande tendant à modifier le fond de l'article et à rendre obligatoire la présence à bord du bateau d'un document contenant la reproduction des inscriptions hypothécaires ; 3<sup>o</sup> proposition transactionnelle de la délégation néerlandaise consistant à adopter la proposition allemande, mais en réservant à chaque État le droit de ne pas appliquer la disposition prévue aux bateaux circulant exclusivement sur les eaux intérieures de son territoire.

M. RICHTER (Allemagne) déclare se rallier à la proposition transactionnelle.

M. ROSSETTI (Italie) s'y rallie également, toutefois avec comme alternative la suppression pure et simple de l'article 13.

En réponse à la remarque de M. Soubotitch, au sujet de la valeur des arguments présentés en faveur de la proposition allemande, M. Rossetti tient à faire observer que ce sont ces mêmes

arguments qui ont amené la Conférence de Bruxelles à adopter, pour la navigation maritime, une disposition analogue à celle demandée maintenant pour la navigation fluviale.

M. SITENSKY (Tchécoslovaquie) estime que la proposition soi-disant transactionnelle de la délégation néerlandaise ne diminue pas l'importance des objections présentées contre la thèse allemande. A son avis, il n'y a pas lieu de revenir sur les débats qui ont amené la deuxième Commission à adopter l'article 13, dont le texte actuel constitue déjà une transaction entre les divers points de vue exprimés.

M. CONTZESCO (Roumanie) rappelle que la délégation roumaine avait soutenu la thèse allemande avant de se rallier au texte actuel de l'article 13. Si la Conférence revenait sur la décision de la deuxième Commission, la délégation roumaine se rallierait volontiers à une majorité qui se prononcerait pour l'acceptation de la proposition allemande.

M. SOUBOTITCH (Yougoslavie) souligne que la proposition de la délégation néerlandaise introduit dans la matière une notion toute nouvelle : celle d'un bateau exclusivement affecté à la navigation intérieure d'un pays.

M. ROSSETTI (Italie) réplique que le paragraphe 5 de l'article 4, adopté par la Conférence, se termine par la phrase suivante : « Si ces bateaux sont exclusivement affectés à la navigation dans les eaux dudit Etat ».

Le PRÉSIDENT fait procéder à un vote, et constate que la Conférence se prononce pour l'acceptation de la proposition de M. Nauta, et qu'elle adopte l'article 13, sous la forme suivante :

« Le certificat d'immatriculation ou un document distinct se trouvant à bord du bateau contiendra la reproduction des inscriptions hypothécaires visées à l'article 21, ou la mention, par l'autorité chargée de la tenue du registre pour la publicité des droits, que le bateau n'est pas grevé d'hypothèques.

« Cette disposition n'est pas obligatoire en ce qui concerne les bateaux qui ne sortent pas des eaux de l'État sur les registres duquel ils se trouvent immatriculés. »

L'adjonction proposée par M. Nauta sera toutefois soumise à l'examen du Comité de rédaction.

M. RIPERT (France) déclare que le vote de la délégation française est subordonné à l'acceptation par la Conférence de l'ensemble des articles de la Convention.

M. DESCAMPS (Belgique) déclare que la délégation belge fait la même réserve que la délégation française.

M. SOUBOTITCH (Yougoslavie) et M. SITENSKY (Tchécoslovaquie) demandent que le procès-verbal de la séance spécifie que les délégations yougoslave et tchécoslovaque désiraient maintenir le texte primitif de l'article 13 et qu'elles ont voté contre la proposition de M. Nauta.

M. RICHTER (Allemagne) croit nécessaire d'écarter un malentendu. M. Soubotitch a fait ressortir qu'un document qui devrait se trouver à bord du bateau et qui contiendrait la reproduction des inscriptions hypothécaires n'aurait aucune valeur probante, du fait qu'il ne pourrait être constamment mis à jour. Or, dans la pensée de la délégation allemande, il ne doit pas en être ainsi. Elle estime qu'une disposition devra figurer dans la Convention, au chapitre des hypothèques, prescrivant l'obligation pour le propriétaire de présenter le certificat d'immatriculation, ou le document spécial hypothécaire, lors de toute constitution d'hypothèque.

M. Richter ajoute que c'est là le régime actuellement en vigueur en Allemagne.

M. RIPERT (France) constate que la proposition allemande comporte deux parties distinctes, et il regrette que cette délégation ne les ait pas présentées ensemble.

L'obligation de présenter le certificat lors de toute constitution d'hypothèque aurait en France des inconvénients très graves, et M. Ripert fait observer que, même dans la Convention de Bruxelles, on n'a pas voulu prévoir cette obligation.

Il déclare que si cette obligation devait être imposée, la délégation française reviendrait sur son acceptation de la proposition de M. Nauta.

M. SOUBOTITCH (Yougoslavie) appuie la déclaration de M. Ripert. Il estime que la Conférence doit maintenir le texte qu'elle a voté, sans prendre en considération l'explication donnée après le vote par M. Richter.

Le PRÉSIDENT propose que la Conférence prenne acte des déclarations de M. Ripert et de M. Soubotitch. Il fait remarquer que la suggestion de M. Richter pourrait être prise en considération lors de l'examen des articles que la Conférence n'a pas encore discutés.

Il constate que la Conférence décide de renvoyer l'article 13 au Comité de rédaction.

#### Article 14.

Cet article est adopté avec les modifications de forme suivante :

1. Au 2<sup>o</sup>, le dernier membre de phrase doit être lu comme suit : « ... de l'État auquel ce bureau ressortit. »

3. Troisième ligne : « ... que ces noms. »

Article 15.

*Cet article est adopté avec les modifications de forme suivantes :*

Alinéa 2 b), remplacer à la dernière ligne « l'article premier » par « l'alinéa premier ».

Alinéa 3, troisième ligne, lire : « ... au moyen de la formule ci-annexée (voir Annexe II, Formule A) » ; remplacer, à la treizième ligne, « saisie » par « exécution forcée » et « est » par « a été ».

Alinéa 5, troisième ligne, lire entre parenthèses : « (voir Annexe II, formule B) ».

Article 16.

M. CONTZESCO (Roumanie) rappelle qu'au cours de la séance précédente, la Conférence s'était mise d'accord sur une réserve, dont le texte exact n'a pas encore été distribué aux délégations. Il précise qu'il doit être bien entendu que la délégation roumaine couvre de cette réserve générale tous les articles de la Convention à partir de l'article 16.

Le PRÉSIDENT déclare que la Conférence prend acte de cette observation.

M. HOSTIE, président du Comité de rédaction, rappelle que la deuxième Commission avait envisagé l'insertion, au Protocole de clôture, d'une disposition qui aurait précisé qu'en cas de conflit de compétence entre tribunaux, les règles générales du droit international en matière répressive devaient être appliquées.

Le Comité de rédaction a estimé qu'une telle disposition serait superflue et il invite la Conférence à y renoncer.

Le PRÉSIDENT constate que la Conférence se déclare d'accord sur ce point et qu'elle adopte l'article 16 sans modification.

Article 17.

M. CENTNER (Territoire du Bassin de la Sarre) demande qu'il soit mentionné, au procès-verbal de la séance, que l'expression « loi nationale » devra être interprétée, en ce qui concerne la Sarre, dans le sens « loi sarroise ».

Le PRÉSIDENT donne acte de cette demande et constate que l'article 17 est adopté sans modification.

Article 18.

M. RICHTER (Allemagne) déclare que l'adoption de l'alinéa b) de l'article 18 aurait pour conséquence pour l'Allemagne une modification essentielle et très large de sa législation nationale. Une telle modification risque de se heurter à des objections très sérieuses de la part des intéressés, et il est difficile de prévoir si le Parlement allemand ne s'opposera pas, dans ces conditions, à la ratification de la Convention. La délégation allemande est disposée à accepter l'alinéa b), sous la condition que le Protocole de clôture comporte la réserve suivante :

« Chacune des Hautes Parties contractantes se réserve le droit de prescrire dans sa législation que la disposition prévue à l'alinéa b) de l'article 18 ne sera pas applicable sur son territoire. »

M. VAN SLOOTEN (Pays-Bas) estime que les débats ont fait ressortir qu'il est de la plus haute importance, dans l'intérêt du crédit fluvial, que le texte actuel de l'article 18 soit maintenu sans aucune modification ou réserve qui en affaiblirait la portée. Il s'agit ici de déterminer d'une manière définitive le champ d'application de la Convention.

L'alinéa b) prévoit que la Convention jouera dans le cas de vente forcée, dans le pays d'immatriculation, d'un bateau grevé d'une hypothèque constituée pour la sûreté d'une obligation contractée dans un autre pays. Il va de soi que l'article 18 perdrait tout son intérêt si les États contractants pouvaient ignorer la disposition de l'alinéa b), qui protège les intérêts des créanciers hypothécaires étrangers.

La Conférence doit donner une assiette solide au crédit fluvial, qui, à l'époque actuelle, est organisé sur une base internationale et intéresse la batellerie de tous les pays. C'est dans ce but que la Conférence a rendu l'immatriculation obligatoire. Il est indispensable qu'elle reconnaisse maintenant, dans un esprit libéral et loyal, les droits des créanciers hypothécaires étrangers.

L'article 18 domine les articles suivants, et si son alinéa b) n'était pas maintenu, ou était affaibli par une réserve, tout l'intérêt de la Convention disparaîtrait.

M. van Slooten estime que le moment est venu de décider du sort de la Conférence. Si la réserve proposée par la délégation allemande était adoptée, tout le travail des commissions et de la Conférence aurait été inutile. En conséquence, la délégation néerlandaise invite instamment les autres délégations à rejeter d'une façon définitive la réserve allemande.

Le PRÉSIDENT constate que la proposition allemande concerne une question de fond d'une importance essentielle et il invite la Conférence à ajourner son vote sur ce point.



M. RIPERT (France) fait observer que la délégation française éprouve la même difficulté que la délégation allemande à accepter la disposition de l'alinéa *b*) de l'article 18. Si elle l'adopte, c'est parce que d'autres délégations en ont fait une condition de leur acceptation de l'ensemble de la Convention.

Il estime que la réserve proposée par la délégation allemande réduirait à néant les résultats des travaux de la Conférence. Celle-ci doit, en conséquence, ou bien adopter l'article 18 tel quel, sans modification ni réserve, ou bien le repousser en entier ; elle compromettrait alors le succès de la Convention.

M. RICHTER (Allemagne) fait observer que si la Conférence est en présence d'une déclaration formelle d'une délégation qui fait du maintien de l'article 18 une condition de son acceptation de l'ensemble de la Convention, elle est également en présence d'une déclaration formelle d'une autre délégation qui fait de l'adoption d'une réserve à cet article 18 la condition de son acceptation de l'ensemble de la Convention.

En conséquence, M. Richter déclare appuyer la proposition du Président, tendant à ajourner le vote sur ce point.

Le PRÉSIDENT constate que la Conférence décide d'ajourner son vote sur la proposition allemande relative à l'article 18.

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#### QUATRIÈME SÉANCE PLÉNIÈRE

Tenue le samedi 6 décembre 1930, à 15 h. 30.

Président: M. DE RUELLE (Belgique).

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#### VIII. Projet de convention sur certaines matières de droit fluvial (suite).

##### Article 18 (suite).

Le PRÉSIDENT rappelle que la Conférence en est restée à la discussion de l'article 18. La délégation allemande avait formulé une proposition aux termes de laquelle chaque État contractant pouvait se réserver le droit, en ratifiant la présente Convention, de ne pas appliquer les dispositions du titre II aux bateaux immatriculés sur ses registres et qui se trouvent sur son propre territoire. Cette proposition avait été combattue par la délégation des Pays-Bas, et aucune décision n'avait été prise à son sujet.

M. HAAB (Suisse) présente une motion d'ordre. A son avis, la Conférence ne devrait pas se prononcer dès aujourd'hui sur ce point. Il rappelle qu'il y a eu des délégations qui ont voté tout d'abord en faveur de la solution consistant à supprimer dans le texte de l'article, tel qu'il figure au texte du Comité de droit fluvial<sup>1</sup>, le passage commençant par les mots « ou si au moins » et avaient ensuite approuvé la formule que l'on sait. Or, il s'agit là, comme cela résulte des déclarations faites par les délégations allemande et néerlandaise, d'une question très importante, et plusieurs délégations auraient de la difficulté à faire connaître immédiatement leur point de vue à son sujet.

M. MÜLLER (Tchécoslovaquie) ne s'oppose pas à la suggestion de M. Haab, mais désire que l'on fixe dès maintenant le moment où cette question doit être réglée.

M. VAN SLOOTEN (Pays-Bas) demande également que la Conférence fixe le moment où le vote sur cette question doit intervenir. Il est impossible que le doute se prolonge sur ce point. En fait, il ne s'agit pas d'une simple divergence d'opinions entre la délégation allemande et les autres délégations, mais d'une modification à apporter à une résolution prise par la Conférence à la presque unanimité. La délégation allemande, interrogée la veille sur le point de savoir si elle voyait des difficultés à adopter le texte auquel on était arrivé, avait déclaré que ses objections ne portaient que sur la rédaction de ce texte. C'est alors que la Conférence a repris ce texte et a abouti rapidement à une solution. Toutes les délégations ont été d'accord, après cela, pour reconnaître que nulle difficulté ne se présentait plus. Le délégué néerlandais n'a pas d'idée préconçue au sujet de la question visée à l'article 18, mais il se demande s'il est admissible qu'une délégation, après avoir collaboré à établir cette convention, lui porte un coup mortel en proposant une réserve visant son application. C'est non seulement les vues de la délégation hollandaise que M. van Slooten a exposées au cours de la séance de la matinée, mais encore celles de toutes les délégations.

M. RICHTER (Allemagne) envisage la situation sous un tout autre jour. Lorsque la deuxième Commission a discuté le texte de l'article 11, qui est devenu par la suite l'article 18, le délégué allemand a signalé, quant à la délimitation du champ d'application du titre II, deux possibilités, à savoir l'obligation pour un État d'appliquer le régime conventionnel : 1° à tous les bateaux immatriculés sur les registres d'un État contractant ; 2° aux bateaux immatriculés sur les registres

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<sup>1</sup> Voir document C.541.M.195.1929.VIII.

d'un autre État contractant et qui se trouvent sur son territoire. Or, l'article 18 contient, sous sa forme actuelle, une solution hybride à laquelle l'Allemagne ne peut pas se rallier, tandis qu'elle pouvait accepter les deux possibilités indiquées plus haut. Si la délégation néerlandaise repousse la deuxième de ces possibilités, il reste encore la première, sur laquelle on peut s'entendre. Il est vrai que celle-ci soulève certaines difficultés, qu'il sera cependant facile d'éliminer par une réserve consignée au Protocole. Il n'appartient pas à la délégation allemande, qui n'a pas l'intention de se prévaloir de ladite réserve, de présenter un texte, mais M. Richter croit que la Conférence pourrait fort bien accepter un texte qui dirait, en substance, que les dispositions du titre II sont applicables à tout bateau immatriculé sur les registres d'un État contractant, si ce texte était complété par une disposition réservant le droit de chaque État contractant de ne pas appliquer les dispositions de ce titre aux bateaux immatriculés sur ses registres et qui se trouvent sur son propre territoire, à condition qu'il n'existe pas sur ces bateaux d'hypothèque garantissant une obligation contractée à l'étranger.

M. VAN SLOOTEN (Pays-Bas) ne croit pas que les souvenirs du délégué allemand aient été très fidèles sur ce point. Il n'a jamais été question, et il n'est pas question à l'heure actuelle, de trois propositions différentes concernant le texte de l'article 18 : seule est en discussion la formule à laquelle la Conférence avait déjà abouti. Il s'agit donc de savoir si, raisonnablement, la Conférence peut défaire en séance plénière ce qu'elle avait fait quelques heures auparavant en séance de commission.

M. RIPERT (France) dit que s'il a bien compris M. Richter, l'intention de celui-ci est de faire tomber sous le coup du titre II tous les bateaux immatriculés sur le registre d'un État contractant, en laissant cependant à chaque État contractant le droit de faire connaître, en ratifiant la présente Convention, qu'il se réserve de ne pas appliquer des dispositions de ce titre aux bateaux immatriculés sur ses registres et qui se trouvent sur son propre territoire, exception faite du cas où il existe sur ces bateaux une hypothèque garantissant une obligation contractée à l'étranger.

Il demande au délégué de l'Allemagne si la formule que celui-ci a proposée ne répond qu'à un souci d'améliorer la rédaction du texte actuel, ou bien si elle présente avec ce texte une différence de fond. Pour sa part, il croit que les deux rédactions reviennent au même.

M. RICHTER (Allemagne) fait observer qu'il n'a pas proposé une rédaction, mais a suggéré que d'autres délégations, si elles entendent réserver leur droit de ne pas appliquer le titre II aux bateaux immatriculés sur leur propre registre et qui se trouvent sur leur territoire, soumettent un texte à insérer au Protocole. Au point de vue pratique, cette dernière solution revient au même que la précédente. Mais, dans sa forme actuelle, l'article 18 ne pourrait pas être accepté par l'Allemagne ; c'est pourquoi M. Richter proposait qu'il fût modifié et qu'on admit la faculté pour d'autres États de formuler une réserve au Protocole. L'Allemagne, d'ailleurs, ne fera pas usage de ladite faculté.

M. RIPERT (France) demande s'il faut inférer de cette déclaration que l'Allemagne soumettra tous les bateaux à la règle formulée dans le titre II.

M. RICHTER (Allemagne) répond que ce sera le cas quand la législation allemande aura été mise en harmonie avec les dispositions de la Convention.

M. RIPERT (France) considère que, dans ce cas, M. van Slooten a toute satisfaction, puisque l'Allemagne octroie encore plus qu'on ne lui demande. La délégation française prendra sur elle de soumettre un texte répondant à la suggestion de la délégation allemande.

*La Conférence décide d'ajourner sa décision sur l'article 18 jusqu'au moment où elle sera saisie du texte préparé par la délégation française.*

*Cet article est adopté.*

*Article 19.*

*Cet article est adopté.*

*Article 20.*

*Article 21.*

M. HOSTIE, président du Comité de rédaction, signale que l'alinéa 3 de l'article 21 a été incorporé dans le Protocole de clôture.

M. ROSSETTI (Italie) déclare que la rédaction de l'alinéa 3 lui semble peu claire. Ne pourrait-on pas remplacer le mot « notamment » par les mots « tels que », afin de ne pas donner l'impression que l'énumération qui suit doit être considérée comme limitative ou comme impliquant une préférence ?

M. MÜLLER (Tchécoslovaquie) est également en faveur du remplacement du mot « notamment », qui pourrait faire croire que sous le terme « hypothèque », il faut comprendre en premier lieu les droits de gage. Il propose d'employer le mot « aussi ».

M. HOSTIE, président du Comité de rédaction, fait observer que le mot « notamment » n'implique ni limitation ni préférence, mais il ne voit pas d'inconvénient à se servir, si on le préfère, d'autres termes équivalents.

M. HAAH (Suisse) se rallie à cette observation et souligne le fait qu'il est impossible de trouver une formule générale s'appliquant à tous les genres d'hypothèques visés.

Après un échange de vues, le texte de l'alinéa 3 est adopté sans modification, et sera inséré au Protocole de clôture. Il est entendu que l'énumération qu'il contient n'est pas limitative et qu'en l'adoptant, la Conférence n'a nullement voulu exclure les sûretés réelles prévues par d'autres législations existantes ou futures.

*Les alinéas 1 et 2 sont adoptés.*

#### Article 22.

M. SITENSKY (Tchécoslovaquie) déclare qu'il n'insistera pas pour la maintien de l'alinéa 1.

*L'alinéa 1 est supprimé.*

*L'alinéa 2 est adopté.*

#### Article 23.

M. HOSTIE, président du Comité de rédaction, expose que la délégation allemande avait suggéré que l'on parlât, à l'alinéa 1, « du montant fixe ou maximum de la créance », afin de bien marquer que le cas d'une ouverture de crédit était inclus. Le Comité de rédaction a jugé que l'expression « le montant de la créance » ne laissait aucun doute à cet égard, et M. Hostie déclare, par conséquent, que dans l'esprit du Comité de rédaction, la disposition de l'article 23 s'applique également aux ouvertures de crédit.

M. LAWATSCHER (Autriche) propose l'insertion à l'alinéa 2, après les mots « cet acte », des mots « ou une copie certifiée conforme de celui-ci ».

A la suite d'une remarque de M. Ripert concernant la rédaction de l'alinéa 2, l'article 23 est adopté sous la forme suivante :

« 1. L'inscription d'hypothèque doit indiquer au moins le créancier, le montant de la créance, le taux des intérêts et les conditions d'exigibilité de la somme principale et des intérêts.

« 2. Un renvoi à l'acte constitutif d'hypothèque peut tenir lieu de la mention dans l'inscription des conditions d'exigibilité, pourvu que cet acte, ou une copie certifiée conforme de celui-ci, soit déposé au Bureau chargé de tenir le registre pour la publicité des droits.

#### Article 24.

M. HOSTIE, président du Comité de rédaction, tient à faire remarquer, au nom du Comité de rédaction, que l'expression « dans les conditions fixées par la loi du lieu de leur situation », insérée dans le texte de l'alinéa 2, doit être interprétée dans ce sens que si un objet visé à l'article 22, et séparé du bateau, se trouve dans un pays dont la législation prévoit l'extinction d'hypothèque, et passe ensuite dans un autre pays dont la législation ne prévoit pas cette extinction, l'hypothèque éteinte dans le premier pays demeure éteinte dans le second. Le Comité de rédaction est unanime à interpréter le texte dans ce sens et désire que cette interprétation soit consignée au procès-verbal.

M. RIPERT (France) fait remarquer que c'est là l'interprétation du président du Comité de rédaction, et qu'elle n'engage pas la Conférence.

M. HOSTIE, président du Comité de rédaction, dit qu'à la suite de l'intervention de M. Ripert, on se trouve en présence de l'alternative suivante : ou bien la Conférence estime que le texte ne répond pas à sa pensée telle que le Comité de rédaction l'a comprise, et, dans ce cas, elle doit renvoyer le texte au Comité de rédaction, ou bien la pensée que le texte exprime est, selon elle, inexacte et, dans ce cas, elle doit le modifier. Si elle accepte le texte tel qu'il est, elle reconnaît par ce fait que sa pensée a été bien comprise et se trouve bien rendue.

M. RIPERT fait remarquer que le texte en question n'est même pas l'œuvre du Comité de rédaction. Il a été copié sur le deuxième paragraphe de l'article 15.

Le PRÉSIDENT estime que la Conférence ne peut que prendre acte de l'interprétation donnée par le président du Comité de rédaction, mais que, par ailleurs, les travaux préparatoires n'ont qu'une valeur relative lorsqu'il s'agit de fixer l'interprétation du texte définitif.

*L'article 24 est adopté.*

#### Article 25.

*Cet article est adopté.*

#### Article 26.

Cet article est adopté sous la forme suivante :

« Dans le cas, visé à l'article 15, alinéa 1, où les créanciers hypothécaires donnent leur consentement au transfert d'immatriculation du bateau du registre d'un pays sur celui d'un autre, si les conditions posées par lesdits créanciers sont compatibles avec la loi du pays de la nouvelle immatriculation, les inscriptions d'hypothèques sont reportées d'office, avec le rang qu'elles avaient, et les effets des hypothèques sont désormais régis par ladite loi. »

Article 27.

*Cet article est adopté.*

*La Conférence décide de suspendre la séance pendant un quart d'heure.*

Article 28.

M. HOSTIE, président du Comité de rédaction, explique que la modification proposée par le Comité de rédaction au texte du N° 4a) de l'article 28 a pour but de faire ressortir plus clairement, en présence de l'addition qui a été faite quant aux objets fixés, que les indemnités dues pour dommages causés par abordage ou autre accident de navigation *à des navires ou bateaux* sont également visées par cette disposition.

La délégation allemande a déclaré au Comité de rédaction qu'elle se proposait de soumettre à la Conférence le texte suivant qui deviendrait la clause VI du Protocole de clôture : « Le terme « privilège », au sens de la présente Convention, comprend notamment les gages légaux du droit allemand. » Cette proposition vise à donner certaines précisions utiles pour l'application de la Convention dans les pays dont la législation ne connaît pas la notion de privilège. Enfin, pour tenir compte du cas des privilèges du Trésor public, le Comité de rédaction propose le texte suivant qui deviendrait la clause VII du Protocole de clôture :

« Il est entendu que les privilèges du Trésor public établis par la loi du pays où se trouve le bateau au moment de la vente sont réservés et viennent au rang prévu par les lois dudit pays. »

M. RICHTER (Allemagne) demande si les lésions qui entraînent la mort sont comprises dans les lésions corporelles envisagées au N° 4b).

M. HOSTIE, président du Comité de rédaction, déclare que le Comité de rédaction n'a pas modifié le texte du N° 4b), mais que, personnellement, il est d'avis que les lésions entraînant la mort sont couvertes par l'expression « lésions corporelles ».

Le PRÉSIDENT partage également cette opinion et il constate que c'est celle de toute la Conférence.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE fait savoir que le Directeur du Bureau international du Travail vient d'envoyer à la Conférence une lettre concernant les assurances sociales. Cette lettre doit parvenir incessamment à la Conférence, et il serait peut-être opportun que celle-ci, au cas où elle déciderait d'adopter un texte pour l'article 28, se réservât le droit de l'examiner à nouveau, après avoir pris connaissance de la communication du Bureau international du Travail.

*Il en est ainsi décidé. L'article 28 est provisoirement adopté.*

Sur une question de M. ROSSETTI (Italie), le PRÉSIDENT déclare que les adjonctions proposées au Protocole ne sont pas en discussion.

Article 29.

M. RICHTER (Allemagne) propose de supprimer, dans l'alinéa 2, tout ce qui suit les mots « sont postérieurs à l'inscription de l'hypothèque ». Il faudrait en effet, pour que la disposition en question puisse être appliquée, prévoir une procédure de forclusion compliquée et coûteuse pour faire disparaître la prénotation aussitôt que possible. D'autre part, le créancier qui ferait mention des faits constitutifs dans le registre pour la publicité des droits pourrait éventuellement causer un préjudice grave au propriétaire qui se verrait dans l'impossibilité d'emprunter quoi que ce soit sur son bateau, pendant une période plus ou moins longue.

M. NAUTA (Pays-Bas) se rallie, par esprit de conciliation autant que par désir de simplification, à la proposition du délégué allemand.

M. RIPERT (France) rappelle que la Conférence a demandé ailleurs l'inscription sur le registre des créances en question. La suppression envisagée crée le danger que la créance hypothécaire ne soit primée sans qu'on le sache par d'autres qui tirent leur origine d'un abordage. Toutefois, si l'unanimité des délégations considère qu'il est préférable de procéder à la suppression indiquée par M. Richter, la délégation française ne s'y opposera pas, mais elle tient à faire remarquer que ce sera là une concession de plus qu'elle aura faite.

M. RICHTER (Allemagne) estime que le créancier hypothécaire a à sa disposition au moins trois sources de renseignements : premièrement, il peut s'adresser au propriétaire du bateau et celui-ci se rendrait coupable d'une omission grave s'il ne lui signalait pas l'existence d'une créance du fait d'un abordage ; deuxièmement, il peut s'adresser au capitaine, et, en dernier lieu, comme le souvenir des accidents graves subsiste assez longtemps dans les milieux intéressés, une enquête très simple auprès de ceux-ci le mettra au courant de la situation.

M. RIPERT (France) partage l'opinion de M. Richter tant qu'il s'agit des dommages causés aux biens, mais tel n'est plus le cas s'il y a mort d'homme, et précisément, alors, les indemnités

dues sont considérables. D'autre part, beaucoup de législations ne considèrent pas que le propriétaire d'un bateau a commis une omission coupable en ne signalant pas l'existence d'une créance privilégiée du fait d'un abordage. Toutefois, comme il l'a déjà dit, la délégation française est prête à faire le sacrifice de cette disposition.

M. CONTZESCO (Roumanie) déclare que, pour sa part, il lui serait difficile d'aller aussi loin.

M. SITENSKY (Tchécoslovaquie) rappelle qu'au cours d'une discussion antérieure, la délégation tchécoslovaque avait souligné l'utilité de mentionner au registre les créances privilégiées en question, en faisant valoir qu'il peut y avoir des créances relatives à d'autres dommages que ceux causés par l'abordage. Toutefois, dans un esprit de conciliation, la délégation tchécoslovaque n'insistera pas et pourra se rallier à la suppression proposée par M. Richter.

M. HAAB (Suisse) déclare que la délégation suisse approuve la suppression demandée par M. Richter, étant donné que, dans la pratique, les registres seront bloqués dès que la mention d'une créance privilégiée y sera faite, et aussi longtemps qu'elle reste inscrite. Le danger qui en résulte sera d'autant plus grave qu'il semble être assez difficile de trouver un moyen de faire disparaître cette mention.

*.(La suppression proposée par M. Richter est mise aux voix.)*

M. RIPERT (France) déclare qu'il est parfaitement disposé à accepter la suppression proposée, mais il est entendu que son vote ne modifie en rien l'opinion personnelle qu'il a exposée en séance de Commission.

*La suppression demandée par la délégation allemande est adoptée par 11 voix contre 1.*

*Article 30.*

*Cet article est adopté.*

*Article 31.*

M. RIPERT (France) désire qu'il soit bien entendu que les créances visées à l'alinéa 2 ont le même rang, sans distinction de lettre indicative.

Le PRÉSIDENT constate que tel est bien l'avis de la Conférence.

*L'article 31 est adopté.*

*Article 18 (suite).*

*Le texte proposé par la délégation française (voir annexe 2, page 71) est adopté à l'unanimité, sans préjudice de la réserve générale formulée par M. Contzesco.*

*Article 32.*

*Cet article est adopté.*

*Article 33.*

*Cet article est adopté.*

*Article 34.*

M. RIPERT (France) fait observer que l'article 34 n'offre aucun moyen de faire disparaître un privilège en cas de vente volontaire. Or, dans beaucoup de pays existe la procédure de purge et celui qui aura purgé ses hypothèques restera, si l'on n'ajoute rien au texte actuel, soumis au droit de suite des privilèges.

M. DESCAMPS (Belgique) et M. CONTZESCO (Roumanie) appuient l'observation du délégué de la France.

Après un échange de vues auquel participent plusieurs délégués, il est décidé d'intercaler entre le 2 et le 3 de l'alinéa 1, le texte suivant qui sera mis au point par le Comité de rédaction :

« 3. Dans le cas de vente volontaire, par la procédure de purge poursuivie dans un pays dont la législation connaît cette procédure. »

*Article 35.*

*Cet article est adopté.*

## CINQUIÈME SÉANCE PLÉNIÈRE

Tenue le 6 décembre 1930, à 21 h. 30.

Président: M. DE RUELLE (Belgique).

### IX. Projet de convention sur les mesures administratives propres à attester le droit au pavillon des bateaux de navigation intérieure.

M. ROSSETTI (Italie), à titre de président de la première Commission, présente à la Conférence les textes d'un projet de Convention sur les mesures administratives, propres à attester le droit au pavillon des bateaux de navigation intérieure et d'un Protocole de clôture (voir annexes 2 et 3 aux procès-verbaux de la première Commission, pages 71 et 72) qui ont été approuvés par la première Commission.

M. RIPERT (France) tient à présenter, avant que la Conférence ne procède à un vote pour l'adoption de ces textes, une déclaration au nom de la délégation française.

La Convention en question est destinée à faciliter l'application des conventions conclues ou à conclure et, dans le Protocole de clôture, chaque État se réserve le droit de déclarer que cette convention n'aura d'effets sur son territoire qu'en ce qui concerne les bateaux exclusivement affectés à la navigation sur un réseau fluvial déterminé.

Il doit être bien entendu que la Convention ne modifie en rien la situation sur certains réseaux fluviaux où il existe, à l'heure actuelle, des conventions qui règlent le droit au pavillon.

Le PRÉSIDENT prend acte de cette déclaration et fait procéder au vote nominal, par délégation, sur l'adoption du projet de Convention et du Protocole de clôture.

Les délégations belge, française, hongroise, italienne, polonaise, portugaise, tchécoslovaque et yougoslave se prononcent pour l'adoption des textes.

M. CONTOUMAS (Grèce) explique son vote de la veille. Il n'avait pas saisi exactement la portée de l'addendum proposé par le Secrétaire général de la Conférence, et notamment l'interprétation que lui avait donnée la délégation roumaine. Les éclaircissements que la délégation hellénique a obtenus entre temps à ce sujet lui permettent de se prononcer pour l'adoption des textes.

La délégation roumaine se prononce également pour l'adoption avec, toutefois, une réserve en ce qui concerne l'immatriculation des bateaux.

Les délégations allemande, autrichienne, de Dantzig, néerlandaise et suisse déclarent s'abstenir.

La Conférence adopte en conséquence les textes du projet de Convention et du Protocole de clôture par 10 voix contre 5 abstentions<sup>1</sup>.

### X. Projet de convention sur certaines matières de droit fluvial (suite).

#### Article 28 (suite).

M. BORDELOIS, Bureau international du Travail, donne lecture d'une lettre, en date du 8 décembre 1930, adressée par le Directeur du Bureau international du Travail au Président de la Conférence. Par cette lettre, le Directeur du Bureau international du Travail commence par remercier le Président et les membres de la deuxième Commission d'avoir accepté de prendre en considération la première communication du Bureau international du Travail et d'entendre un représentant de ce Bureau. Il présente ensuite les observations suivantes :

« Tout en exprimant ma reconnaissance particulière pour la décision de la Commission qui, s'engageant dans la voie que nous préconisons, a bien voulu élever de trois mois à six mois l'étendue de la créance privilégiée, je crois de mon devoir de constater que cette décision laisse subsister en partie nos objections. Je vous serais donc très obligé de vouloir bien demander à la Conférence d'examiner s'il est définitivement impossible de tenir davantage compte de nos suggestions et remarques. Je suis en effet persuadé qu'il serait en principe fâcheux qu'une convention émanant d'une organisation de la Société des Nations pût aboutir à une diminution quelconque de la protection déjà accordée aux travailleurs par certaines législations. Et, d'autre part, je crains que la ratification de cette convention rencontre, dans ces conditions, une opposition de la part des organisations ouvrières et, en définitive, certaines hésitations de la part des gouvernements intéressés.

<sup>1</sup> Le texte définitif est publié séparément (voir document Conf./U.D.F./59.)

« Par ailleurs, pour les indemnités dues pour accidents du travail ou maladies professionnelles, j'ai constaté avec une certaine inquiétude que la disposition qui assurait expressément le privilège de ces créances a disparu du texte adopté par la Commission.

« Cependant, il me paraît difficile d'admettre que l'intention de la Commission ait été réellement de supprimer ce privilège qui, dans la législation des pays où il n'y a ni garanties d'État, ni assurance obligatoire, ni fonds de garanties, constitue la seule protection sérieuse des victimes d'accidents ou de maladies professionnelles ou de leurs ayants droit dans les cas où l'employeur ou l'assureur se trouvent défailants. S'il en était ainsi, le texte de la Commission se trouverait en désaccord avec la règle figurant à l'article II de la Convention sur la réparation des accidents du travail, adoptée en 1927 par l'Organisation internationale du Travail et qui est ainsi conçue :

« Les législations nationales contiendront des dispositions qui, tenant compte des conditions particulières de chaque pays, seront le mieux appropriées pour assurer en tout état de cause le paiement de la réparation aux victimes des accidents et à leurs ayants droit et pour les garantir contre l'insolvabilité de l'employeur ou de l'assureur. »

« Sans doute, la Commission n'a-t-elle renoncé à mentionner expressément le privilège des indemnités d'accidents et maladies professionnelles qu'en estimant que ce privilège se trouvait maintenu par la disposition générale du début de l'article 18 du projet relative aux créances résultant du contrat d'engagement du capitaine, des gens d'équipage et des autres personnes engagées par l'armateur ou par le capitaine pour le service du bord. Mais je souhaiterais vivement que la Conférence elle-même déclarât que cette interprétation est bien exacte.

« J'ajoute encore que si je me permets d'insister de la sorte, c'est parce que je devrai informer des décisions de la Conférence les organes compétents de l'Organisation internationale du Travail — dépositaires des principes de la protection des travailleurs — et que je désirerais prévenir toute émotion parmi les milieux ouvriers et leurs représentants. »

Le PRÉSIDENT constate que la Conférence est saisie par cette lettre de deux demandes :

1<sup>o</sup> Examiner s'il est définitivement impossible de tenir davantage compte des suggestions et remarques du Bureau international du Travail, en ce qui concerne la disposition qui limite l'étendue du privilège accordé au paiement des salaires dus à l'équipage ;

2<sup>o</sup> Déclarer que la Conférence n'a renoncé à mentionner expressément le privilège des indemnités d'accidents et maladies professionnelles que parce qu'elle estime que ce privilège se trouve maintenu par la disposition générale du début de l'article sur les privilèges, relative aux « créances résultant du contrat d'engagement du capitaine, des gens d'équipage et des autres personnes engagées par l'armateur ou par le capitaine pour le service du bord ».

En ce qui concerne la première de ces deux demandes, le Président rappelle que la deuxième Commission a décidé, après de longs débats, de porter de trois à six mois la période visée par le privilège. Il estime qu'il serait difficile d'étendre davantage cette période sans porter préjudice au crédit fluvial et sans léser les intérêts de l'armement qui sont, indirectement, aussi ceux de l'équipage.

Quant à la seconde demande, le Président déclare que l'interprétation indiquée est bien exacte.

M. RIPERT (France), faisant allusion à la phrase de la lettre du Directeur du Bureau international du Travail qui fait observer « qu'il serait, en principe, fâcheux qu'une convention émanant d'une organisation de la Société des Nations pût aboutir à une diminution quelconque de la protection accordée aux travailleurs par certaines législations », tient à souligner que la Convention élaborée par la Conférence ne diminue en aucune façon cette protection.

Il est persuadé que le Bureau international du Travail se déclarera satisfait lorsqu'il lui aura été précisé que la Convention donne aux travailleurs des garanties que ceux-ci n'ont jamais eues dans la plupart des législations :

1<sup>o</sup> Les créances des gens engagés pour le service du bord prennent rang, dans la suite des privilèges, immédiatement après les frais de conservation, taxes de navigation, droits de port et de pilotage.

2<sup>o</sup> Alors que le privilège accordé à ces créances ne comportait aucun droit de suite dans la plupart des législations, la Convention lui donne le caractère d'un droit réel qui protège admirablement ces créances. La limite de six mois ne pourrait être raisonnablement dépassée, étant donné qu'il s'agit de salaires dont le paiement n'est pas constaté officiellement.

3<sup>o</sup> Quant à la réparation des accidents, M. Ripert fait ressortir qu'elle est assurée par les dispositions relatives aux risques professionnels suivant le N<sup>o</sup> 2a) de l'article 28 et que, pour plus de sûreté, le N<sup>o</sup> 4b) de cet article spécifie : « les indemnités dues pour lésions corporelles des personnes se trouvant à bord, pour autant que ces indemnités ne soient pas privilégiées en vertu du N<sup>o</sup> 2a) ». Les lésions corporelles comprenant même la mort, M. Ripert estime que les garanties données aux travailleurs de la navigation intérieure sont les plus complètes qui puissent leur être accordées.

M. BORDELOIS, Bureau international du Travail, déclare que le Bureau a toujours reconnu pleinement la valeur des garanties données aux mariniens par les décisions prises en ce qui concerne le rang et le droit de suite du privilège des créances résultant du contrat d'engagement. Pour la réparation des accidents, l'interprétation donnée par le Président ainsi que les remarques présentées par M. Ripert apporteront certainement tout apaisement. Dans ces conditions, le Bureau international du Travail ne saurait insister.

Le PRÉSIDENT prend acte de cette déclaration.

*Article 36.*

M. RICHTER (Allemagne) propose la suppression des paragraphes 2 et 3 de l'article 36.

Il explique que la législation actuellement en vigueur en Allemagne ne permettrait pas l'application des dispositions prévues par ces paragraphes. Il estime que cette question doit être réservée à une convention future, qui traiterait exclusivement de la saisie conservatoire, dont la réglementation, du point de vue international, est particulièrement difficile.

M. RIPERT (France) ne voit aucun inconvénient à la suppression de ces deux paragraphes. Toutefois, il rappelle que c'était pour donner satisfaction à la délégation allemande que ces paragraphes ont été rédigés.

M. ROSETTI (Italie) rappelle que le texte de ces paragraphes a été élaboré par un Comité spécialement désigné à cet effet, par la deuxième commission, pour donner satisfaction, contre son avis, à une demande de la délégation allemande.

M. RICHTER (Allemagne) explique que, suivant la première proposition allemande, la mention de la saisie sur le registre ne devait être faite que sur la demande du créancier. Or, les paragraphes 2 et 3 prévoient une obligation, pour le créancier saisissant ou pour le tribunal d'exécution, de donner avis des saisies au bureau d'immatriculation. M. Richter répète que ce système ne pourrait être appliqué en Allemagne.

Il constate que les travaux de la Conférence sur ce point ont démontré que l'étude de la question n'est pas suffisamment avancée pour permettre une réglementation internationale.

M. DESCAMPS (Belgique) déclare que la délégation belge avait suivi avec grande satisfaction le travail de la Commission concernant la saisie conservatoire et qu'elle regretterait la suppression des paragraphes 2 et 3 de l'article 36.

M. VAN SLOOTEN (Pays-Bas) déclare que la délégation néerlandaise regretterait également cette suppression. Elle estime nécessaire une réglementation des avis de saisie, étant donné qu'il est fait mention de la saisie conservatoire en plusieurs autres articles de la Convention. Le système prévu par les paragraphes 2 et 3 de l'article 36 lui paraît satisfaisant.

M. HAAB (Suisse) déclare que la délégation suisse partage le point de vue exprimé par M. van Slooten et estime que le système adopté constitue la meilleure solution qui puisse être trouvée à l'heure actuelle.

M. RICHTER (Allemagne) déclare qu'il est obligé de maintenir sa proposition. Il estime indispensable, soit de supprimer les paragraphes 2 et 3 en question, soit de les modifier de telle sorte que l'avis des saisies conservatoires à donner au bureau d'immatriculation ne soit obligatoire que sur la demande du créancier.

M. RIPERT (France) rappelle que le texte actuel de l'article 36 est le résultat de deux journées de travail, et qu'il serait inutile de chercher maintenant une nouvelle solution. La Conférence ne peut donc qu'adopter tels quels ou supprimer purement et simplement ces deux paragraphes. M. Ripert estime que si la délégation allemande insiste sur la suppression, la Conférence devrait lui donner satisfaction.

M. PANTITCH (Yougoslavie) déclare qu'étant donné qu'il est fait mention de la saisie conservatoire en plusieurs autres articles de la Convention, la Conférence doit adopter l'article 36 en entier, ou bien le rejeter en entier et, dans ce cas, supprimer également toutes les autres dispositions de la Convention concernant la saisie conservatoire. Il est certain que le texte actuel n'est pas parfait et qu'une convention ultérieure, traitant exclusivement de la saisie conservatoire, serait hautement désirable.

M. RIPERT (France) fait observer que, primitivement, une seule délégation insistait pour que la Convention prévoie une réglementation de la saisie conservatoire et que toutes les autres y étaient opposées. La situation est maintenant entièrement renversée, et tandis que la délégation allemande demande la suppression des dispositions concernant la saisie conservatoire, ce sont les autres délégations qui tiennent à la conserver.

M. RICHTER (Allemagne) explique que la délégation allemande désire grandement une réglementation internationale de la saisie conservatoire, mais qu'elle a été convaincue, par les travaux de la Conférence, que l'étude de la question n'était pas encore suffisamment avancée.

En vue du succès de la présente Conférence, M. Richter estime préférable de réserver la réglementation de la saisie conservatoire à une convention ultérieure, qui pourrait d'ailleurs entrer en vigueur en même temps que la Convention actuellement examinée.

M. RIPERT (France) estime que, dans ces conditions, la Conférence ne peut qu'exprimer l'espoir d'avoir fait un travail qui ne sera pas inutile pour l'avenir.

M. VAN SLOOTEN (Pays-Bas) précise qu'il reste entendu que le paragraphe 1 de l'article 36 est adopté par la Conférence.



M. ROSSETTI (Italie) espère que M. Richter, en déclarant qu'une convention ultérieure sur la saisie conservatoire pourrait entrer en vigueur en même temps que la présente Convention, n'entendait pas prévoir pour cette dernière une entrée en vigueur si éloignée.

Le PRÉSIDENT répond que, sans aucun doute, M. Richter envisageait simplement des délais très courts pour l'entrée en vigueur de la future Convention sur la saisie conservatoire.

Il demande à la Conférence si elle entend supprimer les paragraphes 2 et 3 de l'article 36, en espérant qu'œuvre plus complète et plus précise sera faite, grâce à une nouvelle convention, dans un avenir prochain.

M. RIPERT (France) propose que la Conférence exprime cet espoir dans un vœu qui serait inséré dans l'Acte final.

M. ROSSETTI (Italie) constate que la Conférence revient, en fin de compte, à la suggestion qu'il avait présentée au début des débats.

M. PANTITCH (Yougoslavie) demande si la Conférence n'entend pas supprimer également le paragraphe 1 de l'article 36.

M. RIPERT (France) répond par la négative et fait ressortir que ce paragraphe 1 apporte une simplification à l'état de choses actuel.

Le PRÉSIDENT constate que la Conférence est d'accord pour supprimer les paragraphes 2 et 3 de l'article 36, et qu'elle décide à l'unanimité de formuler dans l'Acte final un vœu, recommandant l'établissement, dans un avenir prochain, d'une convention internationale relative à la saisie conservatoire.

#### Article 37.

*Cet article est adopté sans modification.*

#### Article 38.

M. HOSTIE, président du Comité de rédaction, signale que les annexes II et III ont été réunies en une seule et que, par conséquent, le renvoi indiqué au paragraphe 2 de l'article 38 doit prendre la forme suivante : « (Annexe II, Formule C) ».

Le PRÉSIDENT constate que la Conférence adopte l'article 38, sous réserve du texte même de la formule C, qui sera examiné ultérieurement.

#### Articles 39, 40, 41, 42 et 43.

*Ces articles sont adoptés sans modification.*

#### Articles 44 et 45.

Après un échange de vues entre divers délégués à la Conférence, celle-ci décide de remplacer, aux articles 44 et 45, l'expression : « Hautes Parties contractantes » par celle de « États contractants ».

*Les articles 44 et 45 sont adoptés sans autre modification.*

#### Article 46.

*Cet article est adopté sans modification.*

#### Article 47.

Sur la proposition de M. NAUTA, la Conférence décide de renvoyer l'article 47 au Comité de rédaction, pour que cet article soit complété par un alinéa supplémentaire prévoyant un régime transitoire en ce qui concerne la tenue des registres d'immatriculation.

#### Protocole de clôture.

##### Chiffre I.

*Le chiffre I est adopté sans modification.*

##### Chiffre II.

M. RICHTER (Allemagne) propose de supprimer le chiffre II, que la délégation allemande estime inutile.

En effet, s'il y a des États qui considèrent que certaines dispositions de la Convention sont incompatibles avec les traités, actes et conventions en vigueur, ces États ne signeront pas la Convention. D'autre part, si un État, après avoir ratifié la Convention, voyait certaines difficultés surgir de son application, il aurait toujours la ressource de dénoncer la Convention.

M. ROSSETTI (Italie) réplique que ce chiffre II n'est nullement destiné aux États contractants, qui connaissent la portée de la Convention qu'ils signent, mais qu'il est destiné aux États non contractants, et surtout aux tribunaux qui devront interpréter la Convention.

M. CONTZESCO (Roumanie) déclare que la délégation roumaine a toujours considéré la clause du chiffre II comme indispensable et qu'elle en demande le maintien.

M. RICHTER (Allemagne) se voit obligé d'insister encore plus énergiquement sur la suppression du chiffre II, après l'observation de M. Rossetti.

La délégation allemande tient essentiellement, en effet, à ne laisser subsister aucun doute qui permette aux tribunaux d'examiner la question de la compatibilité de la Convention avec les traités, actes et conventions en vigueur.

M. ROSSETTI (Italie) réplique que le chiffre II du Protocole s'adresse aux tribunaux précisément pour supprimer tout doute à cet égard.

M. RIPERT (France) déclare ne pas comprendre la difficulté que soulève le texte du chiffre II. Ce texte signifie simplement que la Convention ne modifie pas les traités, actes et conventions existants, et M. Ripert ne voit pas quel inconvénient il peut y avoir à l'exprimer nettement.

Le PRÉSIDENT déclare partager l'avis de M. Ripert.

M. CONTZESCO (Roumanie) suggère que la Conférence, pour donner satisfaction à la délégation allemande, introduise dans le Protocole une clause suivant laquelle chaque État serait laissé libre de déclarer que la Convention ne modifie en rien les traités, actes et conventions en vigueur.

M. ROSSETTI (Italie) s'élève contre cette suggestion. L'intention de la Conférence est de ne pas modifier les traités, actes et conventions en vigueur, et elle doit le déclarer expressément.

Le PRÉSIDENT constate, après un échange de vues supplémentaire entre divers membres de la Conférence, que celle-ci adopte le chiffre II sous la forme suivante :

« II. Il est entendu qu'aucune des dispositions de la présente Convention ne doit être interprétée comme modifiant les traités, actes et conventions qui régissent les voies d'eau internationales ou d'intérêt international. »

### *Chiffre III.*

M. CONTZESCO (Roumanie) déclare avoir pris connaissance de la nouvelle formule (voir annexe 3, p. 72) sous laquelle M. Ripert a bien voulu rédiger la contre-proposition faite à la suite de la formule présentée par la délégation roumaine à la onzième séance de la deuxième Commission (annexe 20 aux procès-verbaux de la deuxième Commission, page 218).

Il a le regret de déclarer qu'il ne trouve pas dans la nouvelle formule les éléments d'apaisement dont la délégation roumaine avait strictement besoin. Il ne recommencera pas un exposé détaillé des considérations qui préoccupent la délégation roumaine, puisqu'il l'a déjà fait avec suffisamment de clarté. Il tient simplement à faire ressortir qu'il considère la nouvelle formule comme tout à fait insuffisante et prie la Conférence d'accepter la proposition roumaine primitive.

En effet, sans la réserve expresse formulée dans cette proposition, l'ensemble de la Convention devient entièrement inacceptable et inapplicable pour les autorités roumaines.

Il rappelle d'ailleurs que la Conférence n'avait pas élevé d'objections au principe énoncé dans le premier alinéa de la proposition roumaine et que le deuxième alinéa avait été accepté même par la délégation hellénique.

En conséquence, M. Contzesco insiste auprès des délégués à la Conférence qui s'étaient prononcés contre l'adoption de sa proposition, pour qu'ils veuillent bien considérer à nouveau s'il ne leur serait pas possible de revenir sur leur première décision.

Le PRÉSIDENT déclare que la Conférence a écouté avec grand intérêt les exposés qui lui ont été faits sur la situation actuelle en ce qui concerne l'immatriculation des bateaux grecs sur le Bas Danube. Mais il est persuadé que cette situation ne peut être réglée qu'au moyen d'une Convention bilatérale entre la Grèce et la Roumanie.

Il est convaincu que la meilleure formule que la Conférence puisse adopter serait une formule très brève et n'impliquant ni approbation ni désapprobation de la situation actuelle, étant donné que la Conférence est incompétente pour prendre position.

Une formule moins brève pourrait donner l'impression que la Conférence a étudié le problème, et c'est là précisément ce que le Président tient à éviter à tout prix.

M. RIPERT (France) déclare, à titre de rédacteur de la formule, qu'il la retire immédiatement si elle ne convient pas à la délégation roumaine.

Il constate que rien ne choque la Conférence dans la proposition primitive roumaine, mais que la Conférence se considère incompétente pour juger des droits de l'État roumain.

Il demande à la délégation roumaine si elle ne pourrait accepter que sa formule figurât à l'Acte final et que la Conférence donnât acte de cette déclaration.

M. CONTUMAS (Grèce) exprime l'espoir que la Grèce n'aura pas été invitée à se faire représenter à la Conférence pour se voir refuser l'application des dispositions de la Convention. A son avis la formule proposée par la délégation roumaine laisserait supposer que, tout en ne tranchant pas la

question de principe, la Conférence admet que la pratique actuelle, bien que reconnue en fait par la Roumanie, ne l'obligera pas à appliquer les dispositions de la Convention aux bateaux grecs immatriculés sur les registres consulaires du Bas Danube.

Dans un esprit de conciliation, la délégation hellénique avait accepté le texte rédigé par M. Ripert, bien qu'il précisât que la Conférence n'entendait pas prendre position pour ou contre la pratique des inscriptions consulaires. C'était pourtant le but de la délégation hellénique, en venant à la Conférence, de faire consacrer une pratique à laquelle son Gouvernement tient tout particulièrement.

La formule française donnait néanmoins à la délégation hellénique un minimum d'apaisement, car, par sa définition de l'immatriculation consulaire et de ses effets, elle assurait, au moins aux bateaux grecs, le bénéfice du traitement intégral de la Convention. C'est précisément en vue de cet avantage relatif que la délégation hellénique s'était engagée à s'employer de son mieux pour faire accepter par son Gouvernement cette solution moyenne. Il lui est, cependant, impossible d'aller plus loin.

Le PRÉSIDENT pose à la Conférence une question préalable. Entend-elle aborder l'examen de l'affaire ou décliner entièrement sa compétence pour procéder à cet examen ?

M. CONTZESCO (Roumanie) présente une motion d'ordre.

Il estime que, par un vote sur la question préalable posée par le Président, la Conférence ne peut clore un procès qui a été ouvert par la note présentée par la délégation hellénique (voir annexe 4 aux procès-verbaux de la deuxième Commission, page 200) et dont toutes les demandes ont reçu, en fait, satisfaction par suite des modifications introduites par le Comité de rédaction et sanctionnées par le plenum.

Étant donné l'existence de cette note et le fait que la Conférence a fait droit, bien que pour des raisons tout à fait étrangères et n'ayant aucun rapport avec la thèse grecque, aux demandes d'ordre matériel qui y étaient présentées, les Conventions I et II ne pourraient constituer pour les autorités roumaines qu'une très grave source de difficultés. Dans le commerce journalier avec les bateaux grecs sur le Danube, la plupart des dispositions seraient absolument inapplicables, et seul l'énoncé de certaines d'entre elles apparaît même ridicule lorsqu'on les applique, en pensée, à ces bateaux.

Pour terminer, M. Contzesco fait observer que le meilleur argument qu'il puisse présenter lui a été fourni par la délégation hellénique, qui vient de déclarer qu'elle est venue à la Conférence « dans le but de faire consacrer une pratique à laquelle son Gouvernement tient tout particulièrement ».

Ce n'est pas du tout le cas pour le gouvernement roumain.

Le PRÉSIDENT croit pouvoir rassurer la délégation roumaine en déclarant que si la note hellénique a soulevé un problème, la Conférence s'est considérée incompétente pour l'examiner. Si, en fait, dans ses rédactions elle a peut-être rencontré les désirs exprimés par l'une des délégations, c'est pour des considérations entièrement étrangères à ces désirs. La substitution de tel terme à tel autre du projet ne peut donc être considérée comme ayant pour objet de consacrer la thèse qui avait inspiré ces désirs.

M. CONTZESCO (Roumanie) fait observer que les autorités roumaines n'ont pas grand intérêt à appliquer la Convention, sans laquelle il leur sera parfaitement possible de régler tous les conflits éventuels.

M. RIPERT (France) rappelle la suggestion qu'il avait présentée, suivant laquelle la déclaration roumaine serait insérée dans l'Acte final, la Conférence donnant acte à la délégation roumaine de cette déclaration.

M. CONTZESCO (Roumanie) se demande quelle serait la portée pratique de l'expression « donner acte » surtout quand il s'agit d'un document comme l'Acte final, qui n'est même pas annexé à la Convention ; il déclare qu'en tout cas, une telle procédure ne calmerait pas les appréhensions de la délégation roumaine. Une situation morale entièrement nouvelle a été créée par l'introduction de la demande hellénique et par le fait qu'au point de vue rédactionnel, elle ait reçu, même involontairement, satisfaction. La délégation roumaine est de ce chef obligée de constater qu'une bonne partie des dispositions de la Convention sont devenues totalement inapplicables dans les cas particulièrement envisagés ; la réserve proposée est, par conséquent, indispensable pour y remédier à l'avenir.

Le PRÉSIDENT demande à M. Contzesco s'il ne peut accepter la suggestion de M. Ripert.

M. CONTZESCO (Roumanie) répond que, en suivant cette suggestion, la Conférence ne tiendrait aucun compte de la proposition roumaine alors que, par les changements introduits dans la Convention, elle a fait droit, en fait, aux demandes de la Grèce ; dans ces conditions il regrette de ne pouvoir accepter que sa propre formule, ou rien.

Le PRÉSIDENT considère qu'il ne reste, dans ces conditions, qu'à procéder à un vote sur l'adoption de la proposition roumaine primitive (voir annexe 20 aux procès-verbaux de la deuxième Commission, page 218).

M. RIPERT (France) précise qu'il doit être bien entendu que le fait de voter contre l'adoption de la proposition roumaine, ne signifie pas, pour une délégation, qu'elle condamne l'une ou l'autre des deux thèses, mais simplement qu'elle reconnaît l'incompétence de la Conférence à trancher la question.

Le PRÉSIDENT déclare que les votes seront bien interprétés dans ce sens.  
Il invite la Conférence à voter et constate qu'elle repousse la proposition roumaine.

M. SULKOWSKI (Pologne) propose de reprendre la suggestion faite par le président, au cours d'une séance précédente visant à ce que la Conférence fasse une déclaration spécifiant qu'elle n'a voulu affecter en aucune manière la pratique actuellement en vigueur.

Le PRÉSIDENT fait observer que la délégation roumaine pourrait craindre que du vote qui vient d'avoir lieu, on puisse tirer argument contre la thèse roumaine. Il propose en conséquence que dans une formule très courte, la Conférence déclare qu'en adoptant les diverses dispositions de la Convention, elle n'a pas voulu prendre position en ce qui concerne la question des bateaux grecs du Bas-Danube.

M. CONTZESCO (Roumanie) demande quelle est l'attitude que la Conférence, après avoir repoussé la proposition roumaine, entend prendre à l'égard de la note hellénique, car elle ne saurait rester sans aucune suite.

Le PRÉSIDENT répond que le procès-verbal de la séance établira que la Conférence n'a pas entendu épouser davantage la thèse hellénique que la thèse roumaine.

M. CONTZESCO (Roumanie) estime que la Conférence devrait, en ce cas, procéder à un vote en ce qui concerne la demande hellénique également.

M. RIPERT (France) proteste contre une telle procédure. La délégation hellénique n'a pas demandé de vote au sujet de sa note, et on ne peut lui en imposer un.

M. CONTOUMAS (Grèce) précise qu'il faut distinguer dans la note hellénique une suggestion générale et une proposition précise. Il déclare retirer cette proposition, mais croit qu'il ne peut, logiquement, être question dans aucune assemblée de retirer une simple suggestion.

M. CONTZESCO (Roumanie) souligne que la délégation hellénique ne doit éprouver aucune peine en retirant sa proposition, étant donné que celle-ci a reçu indirectement satisfaction, au moins quant à la rédaction des textes, sinon quant à leur portée.

Il répète qu'il aurait souhaité que la Conférence reconnût expressément que si elle a donné, même involontairement, satisfaction à la demande hellénique, elle l'a fait pour des considérations entièrement étrangères à cette demande.

M. RIPERT (France) suggère que le procès-verbal de la séance enregistre une déclaration du président et constate que la Conférence a approuvé cette déclaration.

Après un échange de vues entre divers délégués, le PRÉSIDENT fait la déclaration suivante :

« La Conférence, en adoptant dans ses rédactions, pour des préoccupations de logique juridique, certaines expressions coïncidant avec la suggestion contenue dans la note déposée par la délégation hellénique, n'a eu nullement en vue de prendre en considération les motifs de ces suggestions. Elle ne s'est pas reconnue compétente à cet égard. »

M. CONTZESCO (Roumanie) fait ressortir que si cette déclaration dissipe tout malentendu en ce qui concerne les travaux de la Conférence, elle ne donne toutefois pas satisfaction à la délégation roumaine quant aux autres points de vue d'ordre purement juridique.

M. RIPERT (France) fait observer que la déclaration du Président ne fait qu'interpréter l'opinion de la Conférence, et qu'il y a lieu de constater l'accord unanime des délégations sur le fond de cette déclaration.

M. CONTZESCO (Roumanie) se déclare d'accord sur ce point et remercie la Conférence d'avoir bien voulu s'associer unanimement à la déclaration rédigée par le président.

Le PRÉSIDENT ajoute que la Conférence pourrait, de plus, formuler le vœu de voir la question résolue ultérieurement à la suite de pourparlers engagés entre les délégations qualifiées.

M. CONTOUMAS (Grèce) déclare que la délégation hellénique ne se considère pas non plus comme entièrement satisfaite.

Le PRÉSIDENT regrette que la Conférence n'ait pu donner satisfaction ni à l'une ni à l'autre des délégations hellénique et roumaine, mais constate qu'elle a toujours eu le souci de ne pas compliquer une situation qui, en réalité, n'est pas grave.

Chiffre IV.

Le chiffre IV est adopté sans modification.

Chiffre V.

Le chiffre V est adopté, sans autre modification que le remplacement, à la deuxième ligne, du mot « notamment » par les mots « entre autres », conformément à la proposition de M. Rossetti.

*Chiffre VI.*

*Le chiffre VI est adopté sans modification.*

*Chiffre VII.*

*Le chiffre VII est adopté sous la forme suivante :*

« Il est entendu que la présente Convention ne porte en rien atteinte aux privilèges qui peuvent appartenir au trésor public du pays où se trouve le bateau au moment de la vente, non plus qu'au rang de ces privilèges. »

*Chiffre VIII.*

*Le chiffre VIII est adopté sans modification.*

*Annexe I.*

Après un échange de vues entre M. CENTNER (Sarre) et le Bureau de la Conférence, celui-ci décide, en ce qui concerne les lettres initiales relatives à la Sarre, d'adopter la procédure qui lui a été suggérée par le Secrétaire général de la Conférence. Comme pour la Convention du jaugeage des bateaux de navigation intérieure, le Secrétariat enverrait une note aux États contractants lors de l'entrée en vigueur de la Convention.

*Annexe II.*

*Cet annexe est adoptée sans modification.*

VOTE SUR L'ENSEMBLE DE LA CONVENTION.

Le PRÉSIDENT fait procéder à un vote nominal par délégation pour l'acceptation de l'ensemble de la Convention, sous réserve des trois articles protocolaires qui n'ont pas été examinés.

Les délégations allemande, autrichienne, belge, dantzikoise, française, hongroise, italienne, néerlandaise, polonaise, portugaise, suisse, tchécoslovaque et yougoslave, se prononcent pour l'adoption de l'ensemble de la Convention.

Les délégations grecque et roumaine déclarent s'abstenir.

La Conférence adopte, en conséquence, l'ensemble de la Convention, par 13 voix contre 2 abstentions<sup>1</sup>.

SIXIÈME SÉANCE PLÉNIÈRE

Tenue, le lundi 8 décembre 1930, à 10 heures.

Président: M. DE RUELLE (Belgique).

XI. Projet de Convention sur l'unification de certaines règles en matière d'abordage dans la navigation intérieure (suite).

Le PRÉSIDENT explique que le Comité de rédaction a apporté quelques retouches au projet de convention adopté par la Conférence le 6 décembre et relatif à certaines matières de droit fluvial. Toutefois, il convient d'attendre que le texte du Comité de rédaction soit distribué avant de l'examiner. Le Président propose donc que la séance de l'après-midi soit consacrée à cet examen. Il invite ensuite la Conférence à reprendre la discussion des clauses protocolaires du projet de Convention sur l'unification de certaines règles en matière d'abordage dans la navigation intérieure (voir annexe 4, p. 72).

Article 13 (suite).

M. RICHTER (Allemagne) expose qu'avant de procéder à un vote provisoire ou partiel sur l'acceptation de la Convention, la délégation allemande avait déclaré ne voter que sous réserve des dispositions protocolaires. Cette réserve visait notamment l'article 13 où il est dit que la Convention est rédigée en français. A cet égard, la délégation allemande avait fait savoir au Secrétariat de la Conférence qu'elle demandait que fût établi un deuxième texte rédigé en allemand.

Sans vouloir provoquer une discussion sur le problème des langues dans les conventions pluri-latérales, la délégation allemande estime que sa proposition s'impose pour des raisons tout à fait particulières.

<sup>1</sup> Le texte définitif est publié séparément. (Voir document Conf./U. D. F./58.)

Il s'agit, dans le cas actuel, de conventions relatives au droit privé, dont les règles internationales doivent être appliquées par les tribunaux, les bureaux d'immatriculation, d'autres autorités locales, et, de plus, être connues des particuliers. Ces règles sont souvent extrêmement complexes. Aussi importe-t-il de faciliter, dans la mesure du possible, leur application. Le fait que des règles conventionnelles sont rédigées dans une langue étrangère constitue toujours un grave inconvénient, tant pour la législation lorsqu'il s'agit de mettre en vigueur une convention, que dans l'application quotidienne de ces règles. Mais cet inconvénient est particulièrement grave dans le cas actuel. La délégation allemande a déjà fait allusion à la nature très complexe de la question. En outre, un fait capital est ressorti des discussions au sein des deux Comités préparatoires de la Conférence : les difficultés de fond qui s'opposaient à une réglementation internationale et qui s'opposent encore à une unification complète du droit fluvial résultent en grande partie de ce que la conception allemande, en ce qui concerne notamment les hypothèques, les privilèges et les transferts de propriété des bateaux, diffère de la conception des pays dont la législation est basée sur les principes du Code Napoléon. Dans ces conditions, puisque la Conférence s'est proposé de réaliser une synthèse des différentes conceptions, il est nécessaire que les règles à appliquer soient rédigées en français et en allemand.

A l'appui de cette proposition, la délégation allemande fait remarquer en outre que le réseau fluvial sur lequel les règles internationales doivent s'appliquer est situé en grande partie en territoires de langue allemande. Elle ne méconnaît pas, toutefois, que des considérations différentes peuvent entrer en ligne de compte pour certains autres États. Il est possible, en effet, qu'à certains pays n'aient pas d'intérêt à voir rédiger un autre texte que le texte français de la Convention. La délégation allemande reconnaît même qu'une convention bilingue pourrait entraîner des inconvénients. Toutefois, elle estime qu'il serait aisé de tenir compte également des besoins des pays en question. A cet égard, la Conférence pourrait convenir qu'au cas où deux textes authentiques, français et allemand, seraient rédigés, chacune des parties contractantes aurait la faculté, lors de la ratification de la Convention, de faire connaître si, en ce qui concerne l'interprétation de ses engagements, ou bien le seul texte français ou bien les deux textes français et allemand feront foi. Ce serait là la solution la plus libérale, et elle donnerait satisfaction aux intérêts de tous.

L'acceptation et la mise en vigueur de la présente Convention rencontreront de très grandes difficultés en Allemagne. La Convention obligera en effet à bouleverser complètement la législation fluviale allemande contre laquelle aucune objection n'avait encore été formulée. Or, les difficultés en question deviendraient insurmontables si l'on voulait y ajouter les inconvénients qui résulteraient de l'existence d'un texte de convention rédigé uniquement dans une langue étrangère.

Le PRÉSIDENT constate que la délégation allemande demande que soit établi, à côté du texte français de la Convention, un texte allemand dont les États auraient la faculté de se prévaloir si, par une déclaration préalable, ils se sont réservés cette faculté ; cette déclaration devrait être formulée lors de la ratification de la Convention. A l'appui de sa demande, la délégation allemande fait valoir des raisons spéciales ; celles-ci sont basées sur les divergences fondamentales qui existent entre la conception juridique allemande des droits réels et les autres conceptions admises en cette matière. En particulier, le Président croit comprendre que la délégation allemande propose qu'il soit loisible à chacune des parties contractantes de déclarer qu'en cas de litiges concernant ses obligations passives, c'est-à-dire lorsqu'elle aurait le rôle de défendeur, elle entend considérer comme authentique le texte allemand aussi bien que le texte français. Au contraire, aucune des Parties contractantes n'aurait la faculté de formuler cette déclaration pour le cas où elle aurait le rôle de demandeur.

M. CONTZESCO (Roumanie) pose la question suivante : si un État ne ratifie la Convention qu'en déclarant qu'il entend considérer comme authentique le seul texte français, la délégation allemande estime-t-elle que cet État pourra se prévaloir de cette déclaration à l'égard d'un État où la langue allemande est en usage officiellement, et où, en conséquence, les textes allemand et français feront foi ?

M. RICHTER (Allemagne) déclare que lorsqu'il s'agira d'interpréter les obligations d'un État qui a déclaré qu'il désire se prévaloir des deux textes, cet État peut invoquer sa déclaration, même à l'égard des pays qui n'auront pas fait usage de cette faculté.

M. ROSSETTI (Italie) demande également si un pays A qui ne reconnaît que le texte français, aura le droit, à l'égard d'un pays B qui aura reconnu les textes français et allemand, de déclarer, en cas d'interprétation, que le texte français seul fera foi.

Le PRÉSIDENT rappelle que la délégation allemande a distingué le cas où un État est défendeur et celui où il est demandeur. En supposant qu'un État A, n'admettant que le texte français, réclame d'un État B, admettant les textes français et allemand, l'exécution d'un engagement, l'État B étant défendeur pourrait opposer à A le texte allemand.

M. RICHTER (Allemagne) répond que dans ce cas, en réalité, l'État B pourra opposer les textes allemand et français et qu'il s'agira ensuite de déterminer lequel des deux prévaudra. Ainsi, en attendant la décision des autorités judiciaires, les deux textes seraient considérés comme authentiques provisoirement.

M. CONTZESCO (Roumanie) estime qu'au cas où deux textes seraient rédigés, les États qui n'auraient formulé aucune déclaration au sujet du texte qu'ils entendent considérer comme authentique, devront être régis par le texte français.

M. SULKOWSKI (Pologne) souligne qu'il est essentiel que les engagements imposés par la Convention soient interprétés d'une manière uniforme. Quel serait cependant le résultat dans le cas où l'on accepterait la proposition allemande ? Les engagements des États qui auraient ratifié la Convention en langue française seraient appréciés d'après le texte français ; en ce qui concerne les autres États qui auraient ratifié la Convention en langue française et en langue allemande, on devrait, en appréciant leurs engagements, tenir compte du texte allemand, celui-ci devant jouer le rôle d'un texte authentique comme le texte français. Or, en cas de divergences entre les deux textes, on arriverait à ce résultat bizarre qu'une disposition pourrait être interprétée d'une manière différente pour certains États, ce qui serait inadmissible. Pour ces raisons, il s'impose de n'admettre qu'un texte unique : le texte français.

Le PRÉSIDENT demande si M. Richter conçoit que les États qui auront déclaré s'en tenir au texte français soient appelés à signer également le texte allemand, ou bien celui-ci devra-t-il n'être signé que par les États qui auront déclaré se réserver la faculté d'en faire usage ?

M. RICHTER (Allemagne) répond que dans sa pensée, les deux textes devront être signés par tous les États adhérents à la Convention.

Il ajoute qu'il reconnaît volontiers, comme la délégation polonaise, que la proposition allemande présente certains inconvénients, mais il estime à cet égard que la question des langues, dans les conventions plurilatérales, ne saurait être résolue d'une manière satisfaisante. Aussi croit-il que la solution qu'il a proposée est la plus pratique, la plus libérale, et qu'elle répond au mieux à tous les intérêts. Il déclare également qu'il ne croit pas que la présente Convention puisse donner lieu à des divergences d'ordre international.

M. VAN SLOOTEN (Pays-Bas) déclare qu'il convient de distinguer une question de fond et une question subsidiaire :

1. Est-il désirable de rédiger un texte allemand à côté du texte français ?
2. Quelle sera, en droit international, la situation du texte allemand ?

A vrai dire, la solution de la première question peut être modifiée par celle qui serait donnée à la seconde. Toutefois, il est très important de distinguer les deux questions. M. van Slooten a réfléchi sur la possibilité de rédiger un texte allemand et il est parvenu au résultat pratique suivant : il convient avant tout que la Conférence évite de s'engager dans la discussion de questions qui affecteraient le prestige national ou toucheraient au domaine de la politique, et qu'elle considère uniquement le problème sous son aspect pratique.

1<sup>o</sup> S'il est vrai que les Pays-Bas sont un pays de petite étendue, néanmoins, son commerce maritime et fluvial est aussi considérable que celui de certaines grandes Puissances et jusque dans des territoires où sont parlées d'autres langues que le néerlandais. Le port de Rotterdam, notamment, est orienté vers la mer, vers des territoires de langue anglaise. S'il s'agissait de conclure une convention de droit maritime, il conviendrait d'insister pour que le texte de cette Convention fût rédigé également en anglais. Mais, dans le cas présent, il ne s'agit que de la navigation fluviale. Or, à cet égard, la batellerie des Pays-Bas est orientée depuis des siècles vers les territoires de langue allemande. Il en résulte que dans le port de Rotterdam, les documents relatifs à la navigation fluviale, tels que les contrats d'affrètement, les connaissements, etc., sont rédigés en allemand. D'ailleurs, la plupart des personnes qui ont des intérêts dans la batellerie fluviale néerlandaise parlent l'allemand ; souvent, elles ne comprennent même pas toujours le néerlandais ; aussi, leur serait-il extrêmement utile de pouvoir lire la présente Convention en allemand, afin de connaître avec précision quelles sont les obligations qui leur incombent, spécialement en ce qui concerne l'immatriculation des bateaux et la législation des droits réels. S'il est vrai qu'en Belgique, à Anvers, par exemple, les intéressés ont l'avantage de comprendre à la fois le français, le néerlandais et souvent même l'allemand, aux Pays-Bas, au contraire, le texte français de la Convention présentera moins d'intérêt. La plupart des Néerlandais qui sont intéressés à la navigation rhénane ne comprendront ni le texte français ni le texte néerlandais. La langue néerlandaise juridique est, en effet, extrêmement compliquée. C'est là un état de fait qui n'implique d'ailleurs nullement qu'il soit logique de rédiger un texte allemand.

Pour ces motifs, la délégation néerlandaise pourrait appuyer la proposition allemande, quitte à toutes les autres délégations qui se trouveraient dans une situation analogue de proposer, pour des raisons d'ordre pratique, que le texte de la Convention soit rédigé également en telle ou telle autre langue.

2<sup>o</sup> Quant à la question de savoir quelle doit être, en droit international, la valeur d'un texte allemand, M. van Slooten estime qu'il convient de distinguer plusieurs hypothèses :

1. On peut supposer, à côté du texte français de la Convention, un texte allemand qui ferait également foi.
2. Il y aurait un texte allemand et un texte français, mais on stipulerait qu'en cas de divergence, seul le texte français ferait foi, étant donné que les discussions préparatoires et les débats de la Conférence ont eu lieu en langue française.
3. Le Secrétariat de la Société des Nations se chargerait de communiquer aux délégués un texte allemand.

Il est certain que si la Conférence avait suivi la procédure habituelle, elle aurait à sa disposition un texte anglais de la Convention. Il est non moins certain que ce texte aurait été accepté à l'unanimité, en raison de la profonde compétence du Secrétariat en la matière. Dans le même ordre d'idées, la Conférence pourrait fort bien accepter un texte allemand qui serait présenté par le

Secrétariat avec les garanties nécessaires pour que soit réalisée une concordance parfaite avec le texte français.

On pourrait établir un texte allemand qui émanerait de source « neutre ». M. van Slooten tient à préciser qu'il ne nourrit aucune méfiance à l'égard des rédacteurs éventuels de ce texte, mais qu'il convient d'éviter qu'en cas de litige, un texte allemand provenant de source allemande ne donne lieu à certaines suspicions. D'autre part, il est évident que la Conférence ne saurait établir elle-même un texte. Ce serait là, en effet, un travail de trop longue durée, puisqu'il s'agirait de réaliser entre les deux rédactions une concordance parfaite.

Pour ces motifs, M. van Slooten déclare appuyer l'idée de M. Richter au sujet de l'opportunité d'avoir un texte allemand, en précisant qu'il s'est borné à formuler de simples suggestions au sujet des modalités éventuelles de rédaction. D'ailleurs, la délégation néerlandaise n'a nullement le pouvoir de s'engager dans le domaine de la politique. Elle n'a pas non plus le pouvoir d'ouvrir une discussion au sujet d'une question qui concernerait le prestige de telle ou telle langue. Si donc une discussion de ce genre venait à être ouverte par la Conférence, la délégation néerlandaise devrait s'abstenir.

M. SUŁKOWSKI (Pologne) est convaincu que si la Conférence acceptait la proposition allemande, elle reconnaîtrait par là même que le texte allemand fera foi en ce qui concerne l'interprétation d'engagements allemands. Or, cette conséquence semble, pour les raisons déjà citées par lui, inacceptable.

L'argument de la délégation allemande est basé sur deux idées distinctes. Tout d'abord, cette délégation fait état des difficultés de traduction qui pourraient se présenter au cas où la Convention ne serait rédigée qu'en français. On peut lui répondre que ces difficultés se présentent en cas de traduction dans n'importe quelle langue. Quelquefois même, elles sont plus difficiles à surmonter, étant donné que l'allemand juridique est plus riche en expressions techniques que bien d'autres langues.

La délégation allemande a fait valoir également que la plupart des réseaux fluviaux auxquels s'appliquera la Convention sont situés en territoires de langue allemande. Cette raison n'est cependant pas décisive non plus. Dès qu'on conclut une convention plurilatérale, on reconnaît par là même l'intérêt qu'ont les autres pays contractants, et il s'impose donc de traiter tous ces pays sur un pied de parfaite égalité. Tant qu'il s'agit de conventions conclues sous les auspices de la Société des Nations, elles doivent être rédigées en langues française et anglaise, celles-ci étant seules reconnues comme langues officielles.

Dans cet état de choses, la proposition allemande, en tendant à modifier les règles suivies en matière de langue pour les conventions conclues sous les auspices de la Société des Nations, poursuit en réalité des buts politiques. Or, la Conférence n'a compétence que pour trancher les questions qui se rapportent étroitement aux sujets traités par les projets de conventions qui lui ont été soumis. La question de langue ne se trouvant pas en liaison directe avec les sujets traités, dépasserait les pleins pouvoirs accordés aux diverses délégations si elle était tranchée d'une manière différente de celle adoptée jusqu'à présent. Pour ces motifs, la délégation polonaise estime la proposition allemande inacceptable.

M. CONTZESCO (Roumanie) rappelle qu'il a posé une question en vue de savoir jusqu'à quel point les États qui n'admettraient que le texte français de la Convention, pourraient s'engager dans la voie de concessions en tenant compte de la proposition allemande. La réponse qui lui a été donnée ne l'incite nullement à poursuivre sa demande d'éclaircissement, car il estime que satisfaction ne lui a pas été donnée.

Ainsi que M. van Slooten, la délégation roumaine se maintiendra donc sur le terrain purement pratique et négligera toute autre argumentation. A ce point de vue, il est indifférent pour la batellerie roumaine que la Convention soit rédigée en français ou en allemand, puisque le texte qui sera appliqué en ce qui concerne cette batellerie sera une traduction roumaine de la Convention, transformée en loi nationale. Sur le Danube, sur une longueur de 1.200 kilomètres, les personnes employées dans la batellerie roumaine ne parlent que le roumain; en ces régions, un texte allemand ne leur serait donc d'aucune utilité, mais il est important que toutes les traductions faites dans les différents pays aient pour base le même texte original. Dans ces conditions, M. Contzesco n'est pas disposé à accepter la proposition allemande.

M. ROZZETTI (Italie) déclare qu'il est regrettable que la proposition allemande n'ait été formulée que lors d'une des dernières séances de la Conférence, étant donné que maintes occasions se sont présentées pour la formuler au début des débats. Par exemple, au moment où le Secrétaire général de la Conférence a soulevé la question de l'opportunité de traduire les débats en anglais, à la demande de la délégation allemande, la Conférence aurait pu envisager si la procédure en usage à la Société des Nations, en ce qui concerne l'emploi de la langue anglaise, pouvait être étendue à la langue allemande. Toutefois, si l'anglais est admis comme langue officielle pour la plupart des conventions conclues sous les auspices de la Société des Nations, c'est que les divers documents sont distribués au cours des travaux en français et en anglais, procédure qui permet aux délégués d'étudier l'objet des délibérations dans les deux langues. Au contraire, la Conférence actuelle a discuté en français, et aucun document n'a été rédigé autrement qu'en français; aussi, les délégués ne sauraient-ils apposer leur signature sur un texte allemand élaboré à l'improviste. Comment, en effet, des États pourraient-ils s'engager solennellement à signer un texte de convention qui n'aurait pas été discuté dans la langue où il serait rédigé? Déjà, d'ailleurs, par esprit de conciliation, les diverses délégations ont voulu tenir compte le plus largement possible des désirs de la délégation allemande. Chaque délégué sait même que certaine suggestion officieuse avait été émise, qui tendait à faire annexer au texte français authentique de la Convention un texte allemand non signé. Ce document devait n'avoir qu'une valeur morale et pratique, et devait pouvoir être employé



officiellement dans les pays de langue allemande. Au prix de grands efforts, l'unanimité avait été réalisée en faveur de l'adoption de cette suggestion. Elle constituait déjà une dérogation considérable aux usages suivis lors des discussions internationales ; mais il va sans dire que les diverses délégations ne seraient nullement autorisées par leurs gouvernements à s'engager davantage dans la voie de concessions semblables.

M. SOUBOTITCH (Yougoslavie) déclare que la délégation yougoslave a suivi la discussion avec un grand intérêt. Résumant le sens de la proposition allemande, il constate que celle-ci a déclaré que l'adoption d'un texte allemand s'imposait pour les raisons suivantes : 1<sup>o</sup> il s'agit de faire appliquer par des tribunaux et des particuliers une convention internationale de droit privé ; 2<sup>o</sup> la conception juridique allemande du droit fluvial privé s'écarte de celle des autres États, et cette différence justifie l'existence de deux textes en français et en allemand ; 3<sup>o</sup> la Convention devra s'appliquer sur un réseau fluvial situé en grande partie dans des territoires de langue allemande. La délégation allemande propose en outre que le texte allemand fasse foi à l'égard d'un État de langue allemande, si celui-ci se trouve dans la situation de défendeur.

La délégation yougoslave n'estime pas que ces arguments soient suffisants pour justifier la solution préconisée par la délégation allemande. Elle n'estime même pas que pratiquement, cette solution puisse donner satisfaction.

Tout d'abord, depuis que des conventions de droit international privé sont conclues, jamais les prétentions fondées sur des arguments que fait valoir la délégation allemande n'ont été formulées. Partout, surtout depuis 1902, un grand nombre de conventions plurilatérales de droit international privé ont été signées, et on n'a jamais demandé que leur texte soit établi aussi dans telle ou telle autre langue en invoquant que cette convention est appelée à être appliquée aussi dans tel ou tel autre pays. Il convient en outre de faire remarquer que ce ne sont pas les conventions elles-mêmes, mais les lois nationales incorporant ces conventions qui sont appelées à être appliquées par les autorités judiciaires nationales, puisqu'il est nécessaire de faire concorder les législations nationales avec les conventions qui lient les États entre eux en tant que personnes juridiques.

S'il est vrai que la conception juridique allemande diffère des conceptions de certains autres États en ce qui concerne le droit fluvial, ce n'est pas par l'adoption d'un texte officiel allemand qu'on résoudra le problème. Les dispositions mêmes de la Convention, et non la langue dans laquelle elles sont rédigées, permettront de régler les conflits de lois et d'écarter les divergences qui existent entre les diverses législations, soit en unifiant le droit en certaines matières, soit en trouvant des solutions en cas de conflit de lois. Il est impossible que M. Richter ait voulu dire que le contenu des deux textes doit être différent.

M. van Slooten a eu raison de distinguer la question pratique de la question de prestige national ; la délégation yougoslave ne saurait discuter cette dernière, car, d'une manière générale, la question de l'emploi de telle ou telle langue nationale à raison du prestige national a été écartée par les conférences internationales qui se sont réunies à Genève jusqu'à ce jour.

M. Rossetti a parfaitement exposé les raisons pratiques pour lesquelles la langue anglaise est admise dans les délibérations officielles lorsqu'un certain nombre de délégués ignorent le français et lorsque, par conséquent, les divers documents doivent être distribués dans les deux langues. Au contraire, la Conférence actuelle n'a délibéré qu'en français. Aussi, les délégués ne sauraient-ils signer dans un délai de vingt-quatre heures un texte allemand à l'élaboration duquel ils n'auraient pas pris part. Certes, il est indispensable de rédiger, pour le besoin des autorités allemandes, une traduction allemande de la Convention qui concorde rigoureusement avec le texte français, mais ce texte ne saurait être opposable officiellement dans les rapports d'État à État.

D'ailleurs, la délégation yougoslave est particulièrement heureuse que le texte de la Convention ait été discuté en une seule langue. De graves inconvénients se produiraient si la Conférence décidait que deux textes en langues différentes seraient rédigés. Le système qui consiste à admettre la rédaction de deux textes également authentiques s'est révélé déplorable en pratique. Souvent, en effet, dans ce cas, des conflits d'interprétation se sont produits.

De plus, la délégation yougoslave n'estime pas qu'il soit opportun de rédiger un texte allemand des conventions qui ait une valeur juridique mitigée. La meilleure solution consisterait à laisser à chaque État intéressé le soin de faire traduire le texte français de la Convention à l'usage des autorités nationales. Ainsi, seul le texte français ferait foi dans les relations d'État à État. Si d'ailleurs on admettait la proposition allemande, il serait nécessaire d'annexer au texte français de la Convention non seulement un texte allemand, mais encore des textes en d'autres langues. Pour ces motifs, la délégation yougoslave estime que les arguments de la délégation allemande ne sont nullement décisifs, bien qu'on ne puisse leur contester, du point de vue politique de l'Allemagne, une certaine valeur.

M. LAWATSCHER (Autriche) déclare que la délégation autrichienne, de même que la délégation allemande, estime qu'il conviendrait de rédiger aussi un texte officiel en langue allemande. Au cas contraire, il serait extrêmement difficile de déterminer, en ce qui concerne les diverses notions contenues dans le texte de la Convention, quelles sont les expressions précises correspondantes dans le système du droit allemand, auquel le droit autrichien est analogue. Aussi, la délégation autrichienne tient-elle à souligner les motifs qu'a fait valoir la délégation allemande et se permet-elle d'appuyer chaleureusement la proposition présentée par cette délégation.

M. RIPERT (France) exprime son étonnement de voir, à la fin des travaux de la Conférence, formuler une proposition toute nouvelle. Il s'étonne également de voir suggérer la possibilité de signer un texte allemand non discuté et encore inexistant à l'heure actuelle. Il tient d'ailleurs à préciser, en ce qui concerne la question de la limite des pouvoirs de chaque délégué, que la Confé-

rence n'a nullement défini quelles sont, au point de vue pratique, les conséquences de cette signature.

M. Richter a déclaré qu'il convenait d'établir un texte allemand, afin que ce texte puisse être appliqué ultérieurement par les autorités des pays de langue allemande. Mais, M. Contzesco a souligné avec raison que les autorités des divers États se serviraient uniquement en fait de la traduction de la Convention dans leur langue nationale. La Conférence n'a-t-elle pas consenti, à la demande même de la délégation allemande, à élargir le champ d'application de la Convention en l'étendant notamment à tout bateau immatriculé dans un État contractant ? Il est évident qu'en pratique, on se servira d'une traduction.

A l'appui de sa thèse la délégation allemande déclare que si la Convention n'est rédigée qu'en français, il en résultera de grandes difficultés lors de son application au droit interne allemand, qui devra être modifié. Mais le fait que les lois allemandes devront être ainsi modifiées ne saurait porter atteinte à l'usage qui consiste à rédiger les conventions internationales en une seule langue. Il n'est pas désirable d'avoir deux textes différents qui font foi ; car on ne saurait éventuellement invoquer à la fois un texte allemand et un texte français sans se trouver dans une situation inextricable. Enfin, on peut opposer à l'argumentation allemande qu'un grand nombre de conventions plurilatérales ne sont rédigées qu'en une seule langue ; ainsi, par exemple, en 1910, lors de la conclusion à Bruxelles de conventions de droit maritime, bien que l'influence anglaise en matière maritime soit très forte, jamais aucun délégué n'a demandé qu'un texte anglais fût rédigé. Or, le texte de la Convention actuelle sur l'abordage reproduit celui de la Convention de Bruxelles. Faudra-t-il donc la rédiger en français et en allemand ? La Convention de Varsovie, conclue entre vingt États, relative aux mesures propres à régler les transports aériens, est une convention de droit privé, appelée à être interprétée par les tribunaux des divers États. Pourtant, la délégation allemande n'a nullement demandé qu'elle fût rédigée en deux langues, et ce bien qu'elle contienne des dispositions techniques très détaillées. Pour ces raisons d'ordre pratique, M. Ripert prie la Conférence de ne pas accepter la proposition allemande.

M. HOHL (Suisse) déclare qu'il n'a nullement l'intention de discuter la question de langue du point de vue des principes, la Conférence n'étant guère compétente pour une telle discussion. A vrai dire, la solution idéale de la question consisterait à admettre qu'une convention internationale doit être rédigée en une seule langue. Mais il convient de tenir compte du désir formulé si loyalement par la délégation allemande. Peut-être serait-il possible de trouver un terrain d'entente en admettant qu'une traduction officielle du texte de la Convention soit établie en allemand. A l'appui de cette suggestion, on pourrait citer le fait que la Convention de Berne relative aux transports des marchandises comporte un texte français, un texte allemand et un texte italien, le texte français faisant foi en cas de divergence.

M. ROSSETTI (Italie) tient tout d'abord, à répondre aux arguments formulés par la délégation autrichienne. A vrai dire, il semble qu'on ne puisse user de ses arguments que pour infirmer la thèse allemande. La délégation autrichienne a fait valoir en effet qu'il serait difficile de trouver, pour exprimer les diverses notions qui se trouvent dans le texte de la Convention, les termes précis correspondants dans le langage juridique allemand et autrichien. A cet argument on peut répondre que si la traduction du texte français de la Convention présente de telles difficultés, les surmonter sera plus facile à des experts traducteurs des pays intéressés qu'à la Conférence. Une traduction établie à la hâte et signée par la Conférence ne donnerait pas les garanties que l'on recherche. En ce qui concerne l'exemple de la Convention de Berne cité par M. Hohl, M. Rossetti déclare qu'à cet égard, il n'a formulé aucun désir particulier au nom de l'Italie, mais qu'il a accepté qu'un texte allemand fût rédigé sans obligation pour les délégués de le signer.

Le PRÉSIDENT estime qu'étant donné l'état de la discussion, il semble peu opportun de procéder dès maintenant à un vote au sujet de la proposition allemande. Il ajoute que la Conférence se trouve en présence de trois propositions distinctes : 1° un seul texte français ; 2° deux textes, l'un allemand, l'autre français (proposition allemande et autrichienne) ; 3° un texte officiel français auquel serait annexé une traduction allemande n'ayant pas la valeur authentique du premier. Cette dernière proposition a été faite par la délégation suisse qui s'est inspirée du précédent fourni par la Convention de Berne. Le Président estime qu'il convient d'ajourner à la prochaine séance le vote relatif à la proposition allemande et de poursuivre la discussion des articles protocolaires de la Convention.

M. VAN SLOOTEN (Pays-Bas) tient à préciser l'attitude de la délégation néerlandaise. Il rappelle à cet égard que la discussion a pris deux sens distincts : 1° la Conférence a discuté au sujet de l'argumentation allemande ; 2° les Pays-Bas ont exprimé un point de vue très particulier. En effet, sans aller jusqu'à se rallier à la proposition allemande, la délégation néerlandaise a déclaré simplement qu'elle a un intérêt spécial et indiscutable à ce qu'un texte allemand de la Convention soit rédigé. C'est pourquoi les objections formulées contre la proposition allemande ne touchent pas cette délégation : elle aimerait à voir rédiger un texte allemand, abstraction faite de la question de savoir quelle sera la nature de ce texte, s'il fera foi de la même manière que le texte français, ou s'il constituera une simple traduction. L'essentiel, en effet, est que toutes garanties soient données pour qu'une concordance parfaite règne entre les deux textes.

M. RIPERT (France) se rallie à la proposition d'ajourner la suite de la discussion à la séance suivante. Il tient à préciser toutefois qu'intentionnellement, à la présente séance, il s'est abstenu de parler de la limite de ses pouvoirs. Aussi, lors de la décision, la Conférence devra-t-elle envisager le fait que certaines délégations ne pourraient accepter les diverses propositions qui pourraient être formulées.

M. RICHTER (Allemagne) déclare que la délégation allemande est désireuse de témoigner d'un esprit pratique et de trouver une solution acceptable qui réponde au mieux à tous les intérêts. Il semble en effet que toutes les délégations soient animées d'un véritable esprit de conciliation. Toutefois, il semble également qu'une certaine obscurité règne encore au sujet de la grande importance que présente la question soulevée par la délégation allemande. Aussi, M. Richter s'efforcera-t-il d'éclaircir la situation en répondant aux arguments de M. Soubotitch qui, dans son intéressant exposé ne paraît pas avoir suffisamment tenu compte de la situation particulière de l'Allemagne.

Dans plusieurs pays, en effet, il est d'usage de transformer en lois nationales les conventions internationales. En Allemagne, par contre, les conventions internationales sont normalement mises en vigueur à l'intérieur du Reich à la suite de leur publication dans le *Bulletin des Lois*. Cette publication, qui confère aux conventions la valeur de lois nationales, reproduit le texte international auquel on joint une traduction allemande, mais c'est au texte original de la Convention que le juge allemand se réfère en dernier lieu. Pour ces raisons, il serait hautement désirable, vu la complexité de la matière, qu'un texte officiel allemand soit établi. Les diverses délégations ont déclaré qu'elles ne voient pas comment elles pourraient souscrire à un texte allemand non encore examiné et même inexistant. M. Contzesco a demandé également dans quel sens il conviendrait d'entendre la proposition de la délégation allemande en ce qui concerne les relations d'un État admettant les deux textes avec un autre État qui n'en admettrait qu'un seul. A cet égard, on pourrait déclarer que les deux textes, allemand et français, ne feront foi qu'en ce qui concerne les rapports entre deux États qui auraient déclaré désirer se prévaloir de ces deux textes. Par contre, dans les rapports entre un État qui admettrait les deux textes et un État qui n'admettrait que le texte français, seul le texte français ferait foi, conformément à l'hypothèse formulée par la délégation roumaine. M. Richter ajoute qu'il est juste que la Conférence n'a été saisie de la proposition allemande qu'à la fin de ses travaux, mais que le Secrétariat en a eu connaissance depuis un certain temps.

M. RIPERT (France) demande quelle serait la valeur internationale du texte allemand de la Convention au cas où tous les États contractants, sauf l'Allemagne, déclareraient ne reconnaître comme authentique que le texte français.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE répond que même dans ce cas purement théorique, l'acceptation de la proposition allemande ne laisserait point d'entraîner certaines conséquences. Dans l'hypothèse formulée par M. Ripert, seul le texte français de la Convention ferait foi, en cas de différend international, mais, en ce qui concerne la législation intérieure allemande, le texte allemand faciliterait l'application de la Convention. Il semble d'ailleurs que puisque la délégation allemande n'est pas seule, en pratique, à soutenir sa proposition, l'Allemagne ne serait pas seule non plus à faire usage de la faculté de recourir au texte allemand.

M. RIPERT (France) précise qu'il ressort des explications données en dernier lieu par la délégation allemande que pour les États contractants qui déclarent n'accepter que le texte français de la Convention, ce texte seul fera foi ; dans ces conditions, les autres États ne pourront déclarer qu'ils ne reconnaîtront que le texte allemand.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE déclare qu'il ne croit pas qu'il ait jamais été question de ne reconnaître que le texte allemand.

M. RIPERT (France) demande également si les États qui auront déclaré ne reconnaître que le texte français seront tenus de signer le texte allemand, bien que celui-ci n'ait pas pour eux de valeur juridique.

M. RICHTER (Allemagne) répond qu'il lui faut encore réfléchir au sujet de la question posée, mais qu'il croit nécessaire que tous les États signent également le texte allemand pour lui donner le caractère officiel requis.

*Il est décidé d'ajourner à la séance suivante la suite de la discussion de la proposition allemande.*

*L'article 13 est réservé.*

*Articles 14 et 15 (suite).*

*Ces articles sont adoptés sans observations.*

*Article 16 (suite).*

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE déclare que lors de la discussion de l'article protocolaire correspondant dans la Convention sur l'abordage, il avait été proposé que la Convention entrât en vigueur après ratification par trois États riverains d'un même réseau fluvial continu. Cette suggestion pourrait être reprise actuellement. Toutefois, elle peut donner lieu à une certaine difficulté. On a éprouvé, en effet, quelques scrupules à l'idée qu'il serait nécessaire, dans cette hypothèse, de conférer au Secrétaire général de la Société des Nations la mission de vérifier l'existence de la continuité de ce réseau fluvial. Les missions confiées au Secrétaire général de la Société des Nations sont en général d'ordre purement juridique. Si l'on voulait lui conférer une mission d'ordre technique, la meilleure solution consisterait à créer un organisme compétent chargé de procéder aux constatations nécessaires et de renseigner à leur sujet le Secrétaire général.

Peut-être, d'ailleurs, les mêmes réserves seront-elles formulées si l'on déclare que la Convention n'entrera en vigueur qu'après réception des instruments de ratification ou d'adhésion d'États dont

les territoires forment une étendue continue. Toutefois, dans ce cas, le Secrétaire général de la Société des Nations pourrait constater plus facilement l'existence des frontières, puisque celles-ci sont officiellement reconnues.

M. SOUBORITCH (Yougoslavie) estime que la dernière suggestion proposée par le Secrétaire général de la Conférence semble présenter des avantages pratiques. Toutefois, il convient de la compléter en ce qui concerne la situation spéciale de la navigation sur le Danube. A cet égard, il est à craindre, en effet, que si un seul État ne ratifie pas la Convention, il empêche que celle-ci n'entre en vigueur à l'égard des autres. Aussi serait-il opportun de constater, en ce qui concerne les territoires danubiens, que les États intéressés forment une étendue continue.

M. CHARGUÉRAUD-HARTMANN (France) estime que la constatation de la continuité d'un réseau fluvial entre États ne présente pas de grandes difficultés, si l'on entend par « réseau fluvial » uniquement les voies d'eau naturellement navigables. A vrai dire, le meilleur système consisterait peut-être à prévoir simplement l'entrée en vigueur de la Convention après ratification par trois ou cinq États. En effet, la notion d'États possédant des territoires continus ne semble pas devoir se révéler avantageuse en pratique. A titre d'exemple, la France, l'Italie et la Yougoslavie, qui possèdent des territoires continus, sont dépourvues de relations de batellerie sur un réseau fluvial. La Conférence pourrait cependant choisir entre deux systèmes dont l'un consisterait à faire dépendre l'entrée en vigueur de la Convention ou de sa ratification par trois États riverains d'un même réseau et l'autre de sa ratification par trois États simplement.

M. NAUTA (Pays-Bas) déclare qu'il pourrait accepter la suggestion du Secrétaire général de la Conférence, mais sous réserve de modification. En admettant à titre d'exemple que la Convention entre en vigueur après ratification par la Yougoslavie, la Bulgarie et la Turquie, les Pays-Bas n'auraient qu'un médiocre intérêt à la ratifier. Au contraire, cet intérêt se présentera pour les Pays-Bas s'il s'agit d'appliquer la Convention sur le réseau rhénan. Le meilleur système consisterait donc à ajouter à la disposition protocolaire une clause qui permettrait aux États contractants de subordonner leur ratification à celle de trois autres États choisis par eux. En ce qui concerne les Pays-Bas, cet État pourrait dire, par exemple, qu'il ne ratifiera que lorsque la Belgique, l'Allemagne et la France auront agi de même.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE se rallie à l'idée de M. Nauta, qu'il estime pouvoir être combinée avec celle de M. Charguéraud-Hartmann. En adoptant ce système, il serait nécessaire, pour que la Convention entrât en vigueur, que cinq États l'eussent ratifiée. De plus, une clause serait insérée qui laisserait à chaque État la faculté de subordonner sa ratification à celle d'un ou de plusieurs États nommément désignés.

M. CHARGUÉRAUD-HARTMANN déclare que cette suggestion est acceptable.

M. CONTZESCO (Roumanie) s'y rallie également et déclare qu'elle présente un grand intérêt pour la Roumanie.

M. DE DIETRICH DE SACHSENFELS (Hongrie) estime qu'une telle solution présenterait des inconvénients ; il y a des cas où deux ou plusieurs groupes d'États ayant des intérêts différents sont riverains d'un même réseau fluvial. Dans ce cas, il n'est pas désirable que la Convention entre en vigueur si elle est ratifiée par un État appartenant à un groupe et deux États appartenant à un autre groupe, car l'État qui serait le seul de son groupe à l'avoir ratifiée se trouverait dans une situation défavorable. M. de Dietrich de Sachsenfels estime, par conséquent, qu'il faut se tenir à un nombre d'États — il propose de porter ce nombre à sept — sans ajouter d'autres conditions.

M. SITENSKY (Tchécoslovaquie) déclare qu'il convient d'éviter de subordonner l'entrée en vigueur de la Convention à des conditions trop compliquées. Aussi estime-t-il que la meilleure solution consisterait à réduire le nombre des États à trois, sans formuler d'autres conditions. La notion des territoires formant une étendue continue ne donne pas satisfaction en ce qui concerne les États danubiens, vu que l'intérêt à l'entrée en vigueur de la Convention pourra se faire sentir déjà après la ratification par plusieurs États danubiens dont les territoires ne sont pas contigus.

M. CHARGUÉRAUD-HARTMANN (France) estime également que la mise en vigueur de la Convention ne doit pas être rendue trop difficile. Subordonner cette mise en vigueur à la ratification par sept ou cinq États serait en effet excessif, car trois États peuvent avoir intérêt à la mise en vigueur de la Convention. M. Charguéraud-Hartmann propose de porter le nombre des ratifications à trois et d'introduire une clause subordonnant la mise en vigueur de la Convention pour un État à sa ratification par un ou plusieurs autres États désignés nommément.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE estime que la rédaction d'un texte satisfaisant ne rencontrera aucune difficulté.

M. CHARGUÉRAUD-HARTMANN demande s'il n'a pas été prévu qu'un délai de deux ans devrait s'écouler après le dépôt des ratifications, conformément à l'idée de la deuxième Commission, afin de permettre à certains pays dépourvus encore des organismes nécessaires de constituer ceux-ci conformément aux prescriptions de la Convention. Il ajoute d'ailleurs qu'il a l'intention de suggérer ultérieurement une rédaction plus satisfaisante de la clause relative à ce délai.

Le PRÉSIDENT rappelle qu'en effet ce délai de deux ans avait été prévu originairement.

M. NAUTA (Pays-Bas) déclare comprendre parfaitement les difficultés que rencontre particulièrement la Yougoslavie, qui doit mettre son régime fluvial en harmonie avec les prescriptions de la Convention. Il estime que la meilleure solution pour ce pays consisterait à ratifier après l'expiration d'un délai de deux ans ; au contraire, ce délai semble inacceptable pour les États qui possèdent déjà des registres conformes aux dispositions de la Convention. Pourquoi, en effet, empêcher les Pays-Bas, l'Allemagne et la Belgique, qui tiennent déjà les registres prescrits, de faire entrer la Convention en vigueur après un délai de trois mois, sous prétexte que d'autres pays éprouvent des difficultés à établir leurs registres ? Le mieux est donc de s'en tenir au délai de trois mois prévu à l'article 16. Il va sans dire que si certains États ont besoin d'un délai de trois ans pour prendre les mesures administratives requises, cette situation particulière ne présentera aucun inconvénient pour les autres États.

M. PANTITCH (Yougoslavie) déclare que la délégation yougoslave ne s'oppose nullement à ce que la Convention entre en vigueur dans les délais prévus par la majorité de la Conférence. Il rappelle toutefois qu'en raison des mesures législatives à prendre, la Yougoslavie devra ratifier plus tard que d'autres États.

M. CHARGUÉRAUD-HARTMANN (France) déclare que si la délégation yougoslave se rallie à la proposition de M. Nauta, toute la Conférence pourra y adhérer également.

M. ROMEIN, membre de la Section des communications et du transit, estime qu'avant de savoir si la Convention entrera en vigueur, certains États pourront éprouver des hésitations à ratifier, mais qu'ils pourront se déclarer disposés à effectuer cette ratification s'il est devenu certain que la Convention va entrer en vigueur. A vrai dire, le délai de deux ans semble assez étrange à M. Romein, étant donné que dans les autres conventions conclues sous les auspices de la Société des Nations, on n'a pas prévu de délai plus long qu'un an. On pourrait donc envisager un délai plus court, mais non celui de trois mois qui, dans tous les cas, paraît trop court ; il semble qu'un délai de six mois serait approprié. En ce qui concerne la Convention du jaugeage, le délai de trois mois prévu s'est révélé, en fait, trop court pour permettre aux États de prendre les mesures administratives nécessaires. Le mieux est donc de réfléchir encore au sujet de la durée du délai qui devra s'écouler entre le dépôt des ratifications et l'entrée en vigueur de la Convention.

M. CHARGUÉRAUD-HARTMANN (France) estime qu'un délai de six mois serait approprié, puisqu'aucun délai n'est prévu pour le dépôt des ratifications.

Le PRÉSIDENT se rallie à cette idée ; toutefois, il admet que certains pays auront besoin de laisser s'écouler un certain temps avant d'être en mesure de déposer leurs ratifications.

M. SOUBOTITCH (Yougoslavie) rappelle qu'une fois la Convention ratifiée, trois ans seront nécessaires au Gouvernement yougoslave pour prendre les mesures administratives nécessaires.

M. ROMEIN, membre de la Section des communications et du transit, déclare qu'un délai exceptionnel de trois ans avait été admis pour certains États, en tenant compte du délai normal de deux ans. Il ajoute que si la Conférence estime que ce délai de trois ans est suffisant, elle pourrait fort bien décider que les dispositions transitoires soient laissées telles quelles.

*Le soin de rédiger définitivement l'article 16 est laissé au Bureau de la Conférence.*

#### Article 17 (suite).

Le PRÉSIDENT rappelle que cet article avait déjà été adopté lors de la deuxième séance de la Conférence.

#### Article 18 (suite).

*Cet article est adopté.*

M. ROSSETTI (Italie) propose d'adopter, pour la Convention relative au droit au pavillon des bateaux, les mêmes articles protocolaires que pour la présente Convention.

*Il est décidé que les mêmes articles protocolaires (articles 14 à 18) qui viennent d'être adoptés pour la Convention sur l'abordage seront insérés dans la Convention sur les mesures administratives propres à attester le droit au pavillon des bateaux de navigation intérieure.*

*Il est entendu que l'ordre des articles 17 et 18 sera interverti, selon la décision prise par la Conférence lors de sa deuxième séance.*

## XII. Acte final.

Le PRÉSIDENT déclare qu'en ce qui concerne la question de la rédaction de l'Acte final de la Conférence, cet acte sera un document très court ; il énumérera les conventions sur lesquelles un accord sera établi, reproduira leur texte et enfin contiendra l'indication des vœux émis par la Conférence.

*La Conférence déclare qu'elle fait confiance au Secrétariat pour que celui-ci rédige au mieux le texte de l'Acte final.*

M. ALBRECHT (Allemagne) rappelle que l'article 13 précise que la présente Convention sera ouverte à la signature de tous les États ayant été représentés à la Conférence ou ayant été invités

à s'y faire représenter. Il estime donc qu'il serait opportun d'insérer la liste des États ayant été invités à se faire représenter à la Conférence dans l'Acte final.

M. DE DIETRICH DE SACHSENFELS (Hongrie) appuie la demande de M. Albrecht.

*Il est décidé que la liste des États invités à se faire représenter à la Conférence sera insérée dans l'Acte final.*

### XIII. Publication des Procès-verbaux.

M. ROSSETTI (Italie) déclare vouloir poser certaines questions au sujet de la publicité des procès-verbaux de la Conférence. Il rappelle qu'il est d'usage qu'une conférence plénière prenne une décision au sujet de la publicité à donner à ses débats, de manière que la lecture des procès-verbaux permette aux divers gouvernements d'obtenir tous les éclaircissements nécessaires.

M. ROMEIN, membre de la Section des communications et du transit, répond qu'il est d'usage d'imprimer les procès-verbaux.

M. MÜLLER (Tchécoslovaquie) demande quelle sera approximativement la date à laquelle le texte définitif pourra être distribué.

M. ROMEIN, membre de la Section des communications et du transit, répond que ce ne sera guère avant le mois de mars 1931.

M. ROSSETTI (Italie) demande si, après la correction des procès-verbaux provisoires, les délégués pourront prendre connaissance des épreuves imprimées, afin d'y apporter leurs corrections finales.

M. ROMEIN, membre de la Section des communications et du transit, répond que c'est la première fois qu'une question de ce genre a été posée au Secrétariat. Il ajoute que le fait d'adresser aux diverses délégations les épreuves des procès-verbaux à imprimer entraînerait certaines dépenses et certains délais.

M. ROSSETTI (Italie) maintient sa demande. Il considère qu'il est d'autant plus nécessaire que les délégués aient la faculté d'approuver les procès-verbaux dans leur forme définitive, que certains des procès-verbaux provisoires distribués au cours de la session ont été bien au-dessous du médiocre.

Le PRÉSIDENT répond qu'en effet, les procès-verbaux des premières séances étaient assez flous, mais que les suivants ont été bien meilleurs. Toutefois, il serait peut-être désirable que les délégués reçoivent une épreuve avant le tirage définitif.

Après un échange de vues au cours duquel plusieurs délégués ont appuyé la proposition de M. Rossetti, le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE dit qu'il sera possible d'envoyer à chaque délégué une épreuve finale des procès-verbaux, mais il ajoute qu'à moins de raisons très sérieuses, aucune demande de modification importante ne pourrait être prise en considération.

*La Conférence se déclare satisfaite de cette proposition.*

### XIV. Préambules aux Conventions.

M. NAUTA (Pays-Bas) demande s'il convient d'introduire un préambule dans les diverses conventions adoptées. Il estime qu'il serait opportun de le faire en ce qui concerne tout au moins la Convention relative à l'immatriculation. Il ajoute que si la Conférence se rallie à cette idée, il serait opportun de connaître le texte de ce préambule, qui servirait à expliquer la Convention elle-même.

M. HOSTIE, président du Comité de rédaction, estime qu'il serait plus pratique de ne discuter, pour chaque Convention, la question de savoir s'il convient d'y introduire un préambule, qu'après avoir pris connaissance des textes revus par le Comité de rédaction.

Le PRÉSIDENT estime que ces préambules devront se borner à affirmer que la fin que se propose essentiellement la Conférence est d'unifier, dans la mesure du possible, le droit fluvial.

## SEPTIÈME SÉANCE PLÉNIÈRE

Tenue le lundi 8 décembre 1930, à 16 heures.

Président: M. DE RUELLE (Belgique).

### XV. Convention sur certaines matières de droit fluvial (suite).

Le PRÉSIDENT invite M. Hostie, président du Comité de rédaction, à faire connaître et à expliquer à la Conférence quelques modifications qui ont été apportées par le Comité de rédaction au texte considéré, il est vrai, comme définitif, mais qui demandait cependant à être revu.

M. HOSTIE, président du Comité de rédaction, dit qu'il croit superflu d'attirer expressément l'attention de la Conférence sur des retouches qui ne sont que la mise en œuvre des décisions de la Conférence ; il se borne à signaler les modifications suivantes <sup>1</sup> :

#### Modification de quelques articles.

##### Articles 4, 5, 6 et 13.

Corrections de rédaction ayant notamment pour but de ne pas inclure les dragues de moins de vingt tonnes.

##### Article 5.

Le Comité de rédaction a reconnu la nécessité de rétablir les mots « dans un État contractant ».

##### Article 18.

Seul le début de l'article a été maintenu, le reste figurant sous le chiffre IV dans le Protocole-annexe.

##### Article 34.

Le texte que la Conférence avait décidé d'insérer entre les numéros 2 et 3 de l'alinéa 1, a été rédigé de la manière suivante :

« 3<sup>o</sup> En cas de vente volontaire, suivant la procédure prévue par la loi du pays d'immatriculation, si cette procédure se déroule dans ledit pays. »

Après avoir envisagé diverses solutions, en ce qui concerne la loi devant être appliquée et qu'il a paru nécessaire de préciser, le Comité de rédaction s'est prononcé pour la loi du pays d'immatriculation ; le bateau n'étant pas, en cas de vente volontaire, attaché à un endroit fixe pendant que la procédure se déroule, on ne peut pas parler de la loi du pays où se trouve le bateau ; l'on ne peut pas non plus parler de la loi du pays de la vente, car on peut se demander quelle est cette loi : celle du lieu du contrat ou celle du lieu de son exécution ? En outre, ni l'une ni l'autre de ces lois ne donne les garanties nécessaires de publicité efficace. Seule l'application de la loi du pays d'immatriculation donne ces garanties pour autant que la procédure se déroule dans ce pays. Dans le cas de la loi belge, par exemple, la publicité est assurée par une inscription sur le registre et par des insertions, notamment, dans le *Journal Officiel* et dans des journaux du lieu d'immatriculation. L'on a évité à dessein de parler de « purge », car il est des législations qui rattachent l'effet de l'extinction du privilège à la vente volontaire effectuée dans certaines conditions destinées à garantir les droits des créanciers privilégiés sans connaître le terme de « purge ».

##### Article 42.

Corrections de rédaction.

##### Article 47.

Le Comité de rédaction avait été chargé de compléter l'article 47 par une disposition prévoyant un régime transitoire, en ce qui concerne la tenue des registres. Cette disposition fait l'objet de l'alinéa 1 de l'article 47 et stipule que :

« Chaque État contractant prendra les mesures nécessaires pour que, à l'expiration d'un délai de trois ans à compter de la date à laquelle la présente Convention prendra effet en ce qui le concerne, les inscriptions portées sur ses registres et les certificats délivrés par ses bureaux, antérieurement à cette date, soient mis en concordance avec les dispositions de ladite Convention. »

<sup>1</sup> Le texte définitif est publié séparément. (Voir document Conf./U.D.F./58.)

Cette solution très souple laisse toute liberté aux États. Les alinéas 2 et 3 visent respectivement les certificats d'immatriculation et les inscriptions sur les bateaux.

*Article 48.*

Le Comité de rédaction a rédigé un article supplémentaire conçu comme suit :

« Les interprétations et réserves figurant au Protocole-Annexe ci-joint sont adoptées et auront mêmes force, valeur et durée que la présente Convention. »

M. CONTZESCO (Roumanie) souligne que les articles 34 et 42 peuvent être ajoutés à ceux qu'il a déjà cités, pour prouver que la plupart des dispositions de la Convention sont inapplicables en Roumanie, sans la réserve proposée par la délégation roumaine.

Le PRÉSIDENT constate que la Conférence adopte toutes les modifications qui lui ont été proposées par le président du Comité de rédaction.

Il constate également que sur la proposition de M. Nauta, la Conférence décide d'apporter au texte de la Convention les modifications suivantes :

*Article 15.*

Remplacer à la treizième ligne de l'alinéa 3 les mots « relative à une saisie, après que mention est faite » par les mots « relative à une exécution forcée après que mention a été faite ».

*Article 19.*

Insérer le mot « également » à la quatrième ligne (doivent également répondre).

M. NAUTA (Pays-Bas) fait observer ensuite que les mots « en aucun cas » qui figuraient dans l'article 9 du projet primitif (article correspondant à l'article 15 du texte actuel) ont été supprimés, et demande si cette suppression tend à modifier la portée de l'article. Il estime que cela n'est pas l'intention de la Conférence.

M. HOSTIE, président du Comité de rédaction, déclare que le Comité de rédaction n'a pas eu l'intention de modifier la portée de cet article.

M. CHARGUÉRAUD-HARTMANN (France) fait remarquer que la dernière phrase de l'article 11, « sous réserve de l'observation de la disposition de l'alinéa 1 de l'article 15 », couvre l'observation de M. Nauta.

Le PRÉSIDENT constate que la Conférence adopte l'interprétation indiquée par M. Nauta, qui figurera au procès-verbal, et que le texte de la Convention est définitivement arrêté.

*Titre de la Convention.*

Le PRÉSIDENT demande à la Conférence d'approuver le titre suivant pour la deuxième Convention : « Convention concernant l'immatriculation des bateaux de navigation intérieure, les droits réels sur ces bateaux et autres matières connexes. »

M. HOSTIE, président du Comité de rédaction, déclare ne pas opposer d'objection à l'adoption de ce titre, bien que celui-ci soit long et compliqué, étant donné que les matières traitées par la Convention sont très diverses.

Après un échange de vues entre plusieurs membres de la Conférence, le PRÉSIDENT constate que celle-ci approuve le titre proposé.

*XVI. Texte allemand des Conventions.*

Le PRÉSIDENT rappelle que la Conférence avait été saisie par la délégation allemande d'une contre-proposition en ce qui concerne la traduction en langue allemande des Conventions et que d'autre part, une proposition intermédiaire de conciliation de la délégation suisse recommandait la procédure adoptée pour la Convention de Berne sur le transport des marchandises par chemin de fer.

M. RICHTER (Allemagne) rappelle avoir déclaré que la délégation allemande était prête à prendre en considération toute proposition qui serait présentée.

Il soumet maintenant à la Conférence le projet de texte suivant :

« Est joint à cette Convention un texte allemand qui fera également foi dans les rapports entre celles des Hautes Parties contractantes qui, en procédant à la ratification, feront une déclaration à cet effet. »

M. Richter explique que seul le texte français portera la signature des délégués, le texte allemand y sera annexé et ne fera pas foi pour les États qui n'auront pas fait une déclaration à cet effet. Par contre, il constituera une base juridique solide pour les États qui voudront user de la faculté qui leur est donnée.

La traduction pourra être établie par un Comité de rédaction spécial.



M. ROSSETTI (Italie) déclare que conformément au point de vue qu'il avait exprimé au cours de la séance précédente, la délégation italienne peut accepter la nouvelle proposition allemande.

M. SOUBOTITCH (Yougoslavie) demande une explication sur la portée du texte. Les mots « également foi » signifient-ils que pour les pays qui en feront la demande, les textes français et allemand feront foi tous les deux ?

M. NAUTA (Pays-Bas) répond qu'il n'en sera ainsi que dans les rapports entre ces pays.

M. RIPERT (France) déclare qu'il n'est pas dans les limites des pouvoirs qui lui ont été donnés de signer une convention en langue allemande. Il reconnaît qu'avec la nouvelle proposition allemande, cette difficulté n'intervient pas. Toutefois, il ne s'explique pas comment peut être « joint » à la Convention un texte qui n'existe pas lors de la signature de celle-ci. Les signataires de la Convention sembleraient approuver un texte dont ils n'ont aucun moyen de contrôler la conformité avec le texte français.

M. Ripert estime que la proposition allemande soulève encore deux objections importantes.

En premier lieu, il semble qu'il aurait été très simple pour la délégation allemande d'introduire dès la première séance de la Conférence sa demande visant l'établissement d'un texte en langue allemande. Comme elle ne l'a pas fait, les débats ont porté uniquement sur un texte en langue française, et celui-ci est maintenant prêt à être signé. Mais si, néanmoins, la Conférence estime que des États peuvent faire une déclaration pour l'adoption d'un texte allemand, qui ferait foi dans les rapports entre eux, une telle déclaration devrait être faite lors de la signature de la Convention et non de sa ratification.

En second lieu, si, pour certains pays, le texte français et le texte allemand doivent tous deux faire foi, alors que pour d'autres pays, seul le texte français ferait foi, on pourrait se trouver devant la situation suivante : un même différend, suivant qu'il aurait lieu entre l'Allemagne et l'Autriche, par exemple, ou bien entre l'Allemagne et la France, pourrait recevoir deux solutions différentes. M. Ripert estime qu'une rédaction en deux langues n'est possible que si l'on convient que l'un des deux textes doit prévaloir en cas de conflit.

La délégation française est toute disposée à considérer l'établissement d'un texte allemand, et irait même jusqu'à accepter que certains États puissent faire, en signant, la déclaration prévue dans la proposition allemande, mais la délégation française ne peut aller plus loin.

M. VAN SLOOTEN (Pays-Bas) estime, à première vue tout au moins, que la proposition allemande peut être acceptée par la délégation néerlandaise.

Il considère toutefois que pour garantir la parfaite conformité de la traduction allemande avec le texte français, cette traduction devrait être faite sous le contrôle d'un organisme relevant de la Société des Nations, et même, de préférence, par un comité désigné par la présente Conférence. En conséquence, il invite la Conférence à charger un ou plusieurs membres compétents de rédiger d'emblée la traduction allemande et de la soumettre à la Conférence à la séance suivante. Il fait observer que cette tâche sera facilitée par l'existence du texte allemand des Conventions de Bruxelles, dont un grand nombre de dispositions sont reproduites dans les nouvelles Conventions. Il pense que la Conférence pourrait être entièrement rassurée sur la concordance des deux textes si M. Haab, par exemple, voulait bien se charger de soumettre la traduction à une critique sévère.

Faisant allusion à la dernière intervention de M. Ripert, M. van Slooten désire faire deux remarques :

1. Il lui semble injuste de reprocher à la délégation allemande de n'avoir pas présenté dès le début des travaux de la Conférence sa proposition en ce qui concerne l'établissement d'un texte en langue allemande. En acceptant que les débats se fassent uniquement en français et sur un texte français, la délégation allemande a fait une concession en vue de faciliter les travaux de la Conférence, concession qui a eu pour résultat de désavantager certainement ses délégués. Pour sa part, M. van Slooten est bien disposé à remercier la délégation allemande et à lui donner maintenant satisfaction.

2. Il se peut que des difficultés se présentent dans l'interprétation des présentes Conventions qui ne sont pas parfaites, d'autant plus que les conceptions juridiques sont parfois diamétralement opposées dans les divers pays. Mais M. van Slooten estime que ces difficultés d'interprétation seraient plus rares si les pays de langue allemande pouvaient disposer d'un texte allemand qui serait parfaitement compris dans ces pays. Il ne faut pas rejeter une proposition par crainte de divergences d'interprétation, car il est impossible de supprimer toute possibilité de telles divergences dans le domaine du droit international, et des tribunaux existent qui pourront toujours, en fin de compte, régler les difficultés.

Pour conclure, M. van Slooten déclare que la délégation néerlandaise pourra accepter la proposition allemande, à condition qu'elle soit assurée de la parfaite concordance des textes français et allemand.

M. HAAB (Suisse) rappelle que la délégation suisse avait déposé, au cours de la séance précédente, une formule de conciliation, et déclare qu'il la retire si, comme il l'espère, la Conférence accepte la nouvelle formule allemande. Il est prêt à faire de son mieux pour qu'une traduction allemande puisse être soumise à la Conférence au cours de la séance suivante.

M. ROSSETTI (Italie) déclare que la délégation italienne peut accepter la proposition allemande, non pas pour les raisons exposées par M. van Slooten, étant donné que pour les autorités italiennes, des textes en français ou en allemand sont en langue étrangère tous les deux, mais pour permettre à la Conférence de s'entendre sur un terrain de conciliation et d'arriver à des résultats pratiques.

Il estime que M. Ripert a raison du point de vue juridique, mais, comme il est nécessaire de trouver une formule d'entente, la proposition allemande ne doit pas être repoussée. D'ailleurs, les États qui ne feraient pas la déclaration prévue dans cette proposition, ne seraient nullement affectés par l'existence du texte allemand, et ils doivent se désintéresser des difficultés que pourraient rencontrer les pays faisant cette déclaration. Pour l'État italien, par exemple, ce sera toujours le texte français qui fera foi dans ses rapports avec les autres États.

M. LAWATSCHEK (Autriche) déclare appuyer la proposition allemande.

M. MÜLLER (Tchécoslovaquie), en se ralliant aux objections formulées par M. Ripert, déclare que la délégation tchécoslovaque n'a pas non plus reçu les pouvoirs nécessaires pour signer une convention en français et en allemand. A la rigueur, elle pourrait, pour faciliter l'adhésion de certains pays à la Convention, accepter la proposition de conciliation suisse faite la veille, de joindre à la Convention une traduction officielle allemande, mais ne saurait adhérer à la proposition allemande dans sa forme actuelle.

M. DE DIETRICH DE SACHSENFELS (Hongrie) déclare que la délégation hongroise accepte la proposition allemande qu'elle trouve extrêmement pratique.

Il fait observer que la Conférence a, jusqu'à présent, discuté la question du texte allemand en n'envisageant l'application de la Convention que « vers l'extérieur », c'est-à-dire dans les rapports entre États. Mais M. de Dietrich se place du point de vue de l'interprétation exacte de la Convention, en partant du texte français, dans un pays de langue non française. Une traduction n'est jamais parfaitement conforme au texte original, mais les pays qui feront la déclaration prévue dans la proposition allemande disposeront de trois textes, un en français, un en allemand et un dans leur langue nationale, qui permettront, dans la plupart des cas, de fixer une interprétation exacte.

Quant à ses pouvoirs, la délégation hongroise a été chargée de signer une convention ayant en vue de faciliter l'entente internationale dans le domaine de la navigation intérieure, sans aucune réserve en ce qui concerne les langues.

Enfin, M. de Dietrich estime qu'une traduction « neutre » est indispensable, et que par conséquent, elle devra être faite immédiatement, sous le contrôle d'un comité désigné par la Conférence.

M. SUŁKOWSKI (Pologne) déclare appuyer les objections présentées par M. Ripert. Il signale en outre les difficultés qui surgiraient en cas de différend même entre deux pays qui auraient déclaré accepter le texte allemand, s'il intervient un pays tiers qui n'aurait accepté que le texte français. Il est évident que pour ce pays, ne saurait être acceptable, dans l'hypothèse envisagée, que seule une décision se basant sur le texte français.

Pour toutes ces raisons, il insiste auprès de la délégation allemande pour qu'elle retire sa proposition. Les autres délégations ayant déjà donné maintes preuves de leur esprit de conciliation, il leur serait impossible d'aller encore plus loin.

M. RIPERT (France) espère que la Conférence lui rendra ce témoignage qu'il s'est toujours efforcé de rechercher une solution de conciliation, mais ici la question dépasse ses pouvoirs de délégué.

La Conférence est saisie d'une proposition — et c'est la première fois qu'une telle proposition est faite — suivant laquelle le texte français d'une convention ferait foi dans les rapports entre certains pays et le texte allemand dans les rapports entre d'autres pays. En disant : « Un texte allemand qui fera également foi », on substitue au texte signé par les délégués un autre texte qui vaudra pour certains États seulement. Or, ceci ne semble pas répondre aux motifs exposés par M. Richter au cours de la séance précédente, c'est-à-dire que la question ne devait pas être envisagée du point de vue international, mais qu'il s'agissait simplement, étant donné l'importance de la navigation fluviale allemande, de faciliter la tâche des tribunaux de langue allemande qui devront interpréter la Convention.

Étant donné que certains membres de la Conférence affirment qu'il sera possible de lui soumettre une traduction en langue allemande dès la séance suivante, la délégation française pourra accepter le principe de la proposition. Toutefois, il lui paraît impossible, du point de vue pratique comme du point de vue juridique, qu'il puisse y avoir deux textes faisant foi en cas de différend d'ordre international. M. Ripert reconnaît que ce cas se présentera très rarement en pratique, mais il reste théoriquement possible, et il est indispensable de préciser quel est le texte qui devra prévaloir dans un tel cas, et cela dans l'intérêt même des pays de langue allemande.

Il est donc nécessaire de considérer : 1° l'utilité d'un texte allemand pour les pays de langue allemande ; 2° la nécessité d'une réserve, précisant que le texte français de la Convention devra faire foi en cas de différend d'ordre international.

En conséquence, bien qu'il en coûte beaucoup à la délégation française, elle propose, dans un esprit de conciliation, le texte suivant :

« Il est établi, en annexe à la présente Convention, un texte en langue allemande ; les plénipotentiaires, en signant la présente Convention, peuvent réserver à leur gouvernement le droit, en la ratifiant, d'adopter également ce texte, étant entendu que dans ce cas, ce texte ne vaudra que dans les rapports entre les États qui auraient usé du même droit, et qu'au cas de différend entre les États sur l'interprétation du texte, le texte de la Convention prévaudra. »

(La séance est suspendue pendant une demi-heure.)

Le PRÉSIDENT donne lecture de la proposition de M. Ripert, dont le texte a été distribué.

M. RICHTER (Allemagne) croit nécessaire d'écarter un malentendu et précise que d'après la proposition allemande, le texte allemand ne sera jamais seul à faire foi, même entre les États qui feraient la déclaration indiquée dans cette proposition.

Quant au texte proposé par M. Ripert, il modifie sur deux points la proposition allemande :

1° La réserve ne serait pas faite au moment de la ratification, mais lors de la signature de la Convention.

La délégation allemande déclare accepter cette modification.

Toutefois, il faudra prévoir, en ce cas, une disposition permettant aux États qui adhéreront par la suite à la Convention de faire une déclaration semblable.

2° La proposition française prévoit « qu'au cas de différend entre les États sur l'interprétation du texte, le texte de la Convention prévaudra ».

La délégation allemande ne peut accepter ce dernier point que si la mention suivante est ajoutée, en ce qui concerne le différend : « Et auquel un État qui n'a pas fait usage de ce droit participe. » Le cas théorique prévu par certains orateurs reste ainsi couvert, mais cette addition a pour résultat d'empêcher que dans les pays ayant fait la déclaration, ce soit le texte français qui fasse foi en dernier ressort.

M. RIPERT (France) fait observer que les mots « entre les États » excluaient le cas d'un différend n'intéressant qu'un seul pays. C'est seulement en envisageant un débat devant une Cour de justice internationale qu'il semble difficilement admissible que cette Cour soit obligée de trancher deux cas identiques de deux façons différentes, suivant que les États intéressés auront ou n'auront pas fait la déclaration visée dans la proposition allemande.

M. Ripert attire l'attention de son collègue allemand sur le caractère bizarre de cette possibilité que la proposition allemande laisserait subsister.

*(La séance est suspendue pendant dix minutes.)*

Le PRÉSIDENT informe la Conférence qu'il a appris que l'accord est sur le point de se réaliser entre les délégations.

M. RICHTER (Allemagne) déclare que M. Ripert a écarté les appréhensions de la délégation allemande en proposant d'ajouter à la fin de la formule française les mots : « Si un des États en cause le réclame. »

M. Richter rappelle qu'il est nécessaire de prévoir une disposition permettant aux États qui adhéreront plus tard à la Convention, de faire une déclaration pour l'adoption du texte allemand.

M. MÜLLER (Tchécoslovaquie) déclare que la délégation tchécoslovaque accepte en principe la formule proposée, mais désirerait voir maintenir au début le libellé primitif, à savoir : « Il est joint à la présente Convention un texte en langue allemande », qui, à son avis, répond mieux à la situation. Il demande si cette disposition figurera dans le corps de la Convention ou dans l'Acte final.

M. RIPERT (France) suggère que cette formule, à laquelle serait ajoutée la phrase : « Le même droit est reconnu aux États qui adhéreront à la Convention », soit insérée dans le Protocole-Annexe.

Après un échange de vues, le PRÉSIDENT constate que la Conférence décide de faire figurer dans le Protocole-Annexe la formule proposée par M. Ripert, sous la forme suivante :

« Il est joint à la présente Convention un texte en langue allemande ; les plénipotentiaires, en signant ladite Convention, peuvent réserver à leur gouvernement le droit, en la ratifiant, d'adopter ce texte, étant entendu que dans ce cas, ledit texte vaudra également dans les rapports entre les États qui auraient usé du même droit et qu'au cas de différend entre ces États sur l'interprétation des textes, le texte de la Convention prévaudra si un des États parties ou intervenant au différend le réclame. »

« Le même droit est reconnu aux États qui adhéreront à la Convention. »

M. ROSSETTI (Italie) demande s'il est bien entendu qu'une traduction allemande ne sera établie que pour la Convention concernant l'immatriculation et la Convention concernant l'abordage, et qu'il n'en sera pas établi pour la Convention concernant le droit au pavillon.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE fait observer qu'étant donné que le droit d'adopter la traduction allemande est réservé aux États qui adhéreront ultérieurement aux Conventions, il serait préférable d'établir une traduction également pour la Convention concernant le droit au pavillon.

M. ROSSETTI (Italie) et M. RIPERT (France) font observer que toutes les délégations sont représentées et qu'aucune ne demande cette traduction.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE constate qu'en effet, aucune délégation ne demande cette traduction et qu'en conséquence, il n'y a pas lieu de l'établir.

Il signale que la traduction allemande des deux autres Conventions ne pourra pas être imprimée au moment de leur signature, et demande que les délégations intéressées veuillent bien ne pas se montrer trop protocolaires sur ce point.

M. CONTZESCO (Roumanie) demande que la formule adoptée par la Conférence, au lieu de débiter par les mots « il est joint », débute par les mots « il sera joint ». Il explique que sans cette formule, le Parlement roumain exigera la production de la traduction en allemand de la Convention avant de se prononcer sur la ratification.

M. RIPERT (France) suggère qu'il soit spécifié que le texte allemand n'est établi que pour l'usage des États faisant la déclaration visée dans la formule.

M. ROSSETTI (Italie) et M. SOUBOTITCH (Yougoslavie) estiment qu'il ne peut y avoir aucun doute, et que les délibérations ont fait ressortir que le texte allemand n'aura pas à être soumis au parlement des États qui n'auront pas fait cette déclaration.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE fait observer que le procès-verbal de la séance fera ressortir que la proposition primitive de M. Ripert débutait par les mots « il est établi en annexe », et que par conséquent, ce texte allemand ne constitue pas pour les États qui ne feront pas de déclaration, un lien juridique réel.

Le PRÉSIDENT constate que la Conférence est entièrement d'accord pour insérer dans le *Protocole-Annexe* la formule dont il a donné lecture.

Il demande à M. HAAB de bien vouloir présider le Comité chargé de la traduction, qui comprendrait en outre : MM. CHARGUÉRAUD-HARTMANN, FICKER, HOSTIE, KETTLITZ, LISSBAUER et RICHTER.

M. HAAB (Suisse) déclare que ce Comité acceptera certainement de se mettre au travail sans retard, et il croit possible de préparer la traduction pour la séance suivante, au cours de laquelle les Conventions seront signées.

#### XVII. Acte final.

M. SOUBOTITCH (Yougoslavie) demande si le texte de l'Acte final sera prêt pour la séance de signature.

Le PRÉSIDENT répond que cet Acte sera très simple et bref. Il mentionnera simplement les circonstances dans lesquelles la Conférence a été convoquée, les pays invités, ceux qui se sont fait représenter, la date de l'ouverture et de la conclusion des travaux, ainsi que l'énumération des conventions et le texte des vœux.

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### HUITIÈME SÉANCE PLÉNIÈRE

Tenue le mardi 9 décembre 1930, à 16 h. 15.

Président : M. DE RUELLE (Belgique).

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#### XVIII. Pleins pouvoirs de la délégation suisse.

Le PRÉSIDENT expose que le Secrétariat de la Conférence vient de recevoir, de la part de la délégation suisse, des pleins pouvoirs en bonne et due forme autorisant celle-ci à signer la Convention sur certaines matières de droit fluvial ainsi que la Convention relative à l'abordage.

*La Conférence prend acte de cette déclaration.*

#### XIX. Texte allemand des Conventions (suite).

M. DE DIETRICH DE SACHSENFELS (Hongrie) propose que la Conférence décide d'annexer également à la Convention relative à l'abordage un texte allemand afin de faciliter la signature de cette Convention par les États qui, autrement, ne seraient pas à même de la signer.

*Il en est ainsi décidé.*

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE précise que le texte allemand en question sera distribué à la Conférence, laquelle a déjà, d'ailleurs, reçu communication du texte allemand de la Convention sur l'immatriculation. Il ajoute que pour la bonne règle, la Conférence pourrait exprimer sa pleine approbation au Comité spécial qui a été chargé de rédiger ces textes, étant entendu que les erreurs matérielles de pure rédaction pourraient être rectifiées, le cas échéant, sous la surveillance du président de la Conférence.

*Cette proposition est adoptée.*

Le PRÉSIDENT voit que la Conférence sera unanime à remercier le Comité spécial d'avoir rédigé le texte allemand de la Convention sur l'immatriculation en un très court laps de

temps, au prix d'une séance de nuit. Il invite, d'autre part, la Conférence à approuver, au cours de la présente séance, quelques légères retouches apportées par le Comité de rédaction au texte des Conventions à signer.

#### XX. Déclaration de la délégation française.

M. RIPERT (France) déclare qu'en signant, en sa qualité de délégué du Gouvernement français, la Convention internationale sur le droit au pavillon, la signature de cette Convention adoptée par la Conférence parce qu'elle était susceptible de recueillir un plus grand nombre d'adhésions, ne saurait être considérée comme l'abandon par la France de la conception de la nationalité des bateaux qui était à la base du projet soumis à la Conférence.

M. MÜLLER (Tchécoslovaquie) déclare que la délégation tchécoslovaque se rallie à la déclaration française.

M. ROSSETTI (Italie) formule la même déclaration au nom de la délégation italienne.

M. SUŁKOWSKI (Pologne) exprime la même idée au nom de la délégation polonaise.

#### XXI. Déclaration de la délégation roumaine.

M. CONTZESCO (Roumanie) déclare qu'au moment où la Conférence pour l'unification du droit fluvial achève ses travaux et soumet à la signature des plénipotentiaires des États participants les trois conventions qu'elle a élaborées, la délégation roumaine, consciente d'avoir apporté à ces travaux une collaboration loyale et d'avoir contribué par son esprit de conciliation aux beaux résultats obtenus, se voit inopinément et à son vif regret empêchée d'en bénéficier intégralement.

En effet, si les modifications de rédaction, introduites au dernier moment dans la Convention sur l'immatriculation, apportent peut-être à son texte l'uniformité d'expression qui lui manquait, elles ouvrent en même temps, pour la Roumanie, seul de tous les États européens qui admette l'immatriculation des bateaux appartenant aux ressortissants étrangers sur les registres consulaires respectifs, une question purement régionale que la délégation de Roumanie n'avait nullement l'intention de porter devant la Conférence.

Ces modifications de rédaction coïncident, par un malencontreux hasard, avec les vues exposées par la délégation hellénique, tant dans la déclaration verbale du 19 décembre dernier (voir P.V./2 de la deuxième Commission, page 100), que dans sa demande écrite du 22 novembre (voir annexe 4, page 200), toutes deux tendant à la consécration par la Conférence de la pratique de l'immatriculation consulaire en Roumanie, pratique surannée et susceptible d'être atteinte par les clauses de la nouvelle Convention.

Or, la délégation roumaine, ne pouvant à aucun prix admettre pareille tendance, a demandé à son tour l'adoption par la Conférence d'une formule de protection des droits que le Gouvernement royal entend conserver intacts. La Conférence n'a pas cru devoir prendre parti entre deux thèses qui, à ses yeux, échappaient entièrement à sa compétence ; aussi a-t-elle déclaré que ni la délégation roumaine n'avait besoin de solliciter d'elle la confirmation des droits territoriaux de son Gouvernement ni la délégation hellénique ne pouvait obtenir, de la part de la Conférence, l'infirmité de ces mêmes droits.

Cette résolution a semblé à la Conférence d'autant plus appropriée que le texte de la Convention ne mentionne aucunement l'existence de la pratique concernant l'immatriculation consulaire en Roumanie et qu'au surplus, la demande y afférente avait, dans l'intervalle, été retirée par la délégation hellénique.

La délégation roumaine, tout en trouvant dans les déclarations inscrites aux procès-verbaux des séances de la deuxième Commission du 5 décembre et de la Conférence du 6 décembre un complet apaisement moral de ses appréhensions, estime qu'elle dépasserait certainement les limites de son mandat si elle se considérait comme autorisée à apposer sa signature au bas de textes qui, par suite des dernières modifications de rédaction, lui ont semblé, par rapport à la pratique consulaire actuelle, indiscutablement inapplicables en Roumanie.

Dans ces conditions, la délégation roumaine tient à déclarer, tout en réitérant ses vifs regrets, qu'elle ne pourra signer que la Convention sur l'abordage, en s'abstenant de signer les deux autres, intimement liées entre elles. Elle espère que le Gouvernement royal ne manquera pas de procéder à ces dernières signatures dès qu'il aura examiné la nouvelle situation et choisi quelle est la méthode la plus appropriée pour concilier tous les intérêts en cause.

#### XXII. Déclaration de la délégation allemande.

M. RICHTER (Allemagne) expose que la déclaration du premier délégué de la France lui donne l'occasion de faire à son tour la déclaration suivante :

La signature, par les plénipotentiaires allemands, de la Convention sur l'immatriculation des bateaux de navigation intérieure, ne comporte nullement l'abandon par l'Allemagne de sa manière de voir en ce qui concerne la conception de la nationalité des bateaux.

### XXIII. Dernière lecture des Conventions.

Le PRÉSIDENT invite ensuite la Conférence à procéder à l'examen et à l'approbation de certaines rectifications au texte des Conventions à signer. En conséquence, il donne lecture des modifications suivantes proposées par le Comité de rédaction.

#### 1. Convention sur les mesures administratives propres à attester le droit au pavillon des bateaux de navigation intérieure.

##### Article 4.

La modification suivante est adoptée :

*Premier alinéa.* — Au lieu de « Il conserve ce choix lorsque les conditions fixées pour l'octroi du droit au pavillon par la législation », lire : « Il conserve ce choix tant que le bateau déjà inscrit continue à remplir les conditions fixées pour l'octroi du droit au pavillon par la législation de deux ou plusieurs États contractants, et l'acquiert si le bateau vient par la suite à les remplir. »

*Deuxième alinéa.* — Au lieu de « d'un ou plusieurs autres États contractants, s'ils ont sur son territoire », lire : « d'un ou plusieurs autres États contractants, si ces ressortissants ont sur son territoire... »

#### 2. Convention concernant l'immatriculation des bateaux de navigation intérieure, les droits réels sur ces bateaux et autres matières connexes.

##### Article 4.

*Alinéa 3.* — Les modifications suivantes sont adoptées : au lieu de « Ils conservent ce choix lorsque le bateau déjà immatriculé continue ou vient à remplir les conditions d'immatriculation fixées par la législation de deux ou plusieurs États contractants », lire : « ... il conserve ce choix tant que le bateau déjà immatriculé continue à remplir les conditions d'immatriculation fixées par la législation de deux ou plusieurs États contractants et l'acquiert si le bateau vient, par la suite, à les remplir. »

*Alinéa 4.* — Au lieu de « ... d'un ou plusieurs autres États contractants s'ils ont sur son territoire... », lire : « ... d'un ou plusieurs autres États contractants, si ces ressortissants ont sur son territoire... »

##### Article 28.

La modification suivante est adoptée : Au lieu de « ... l'armateur... », lire : « ... le propriétaire... »

##### Article 38.

La modification suivante est adoptée : Au lieu de : « 1. Lorsque le bateau est saisi pour être vendu, ou si la procédure d'exécution forcée... », lire : « 1. Lorsque le bateau est saisi pour être vendu, ou lorsqu'une procédure d'exécution forcée... »

##### Article 48 nouveau.

Lire : « La présente Convention ne s'applique pas aux colonies, protectorats ou territoires placés sous suzeraineté ou mandat. »

(L'article 48 devient 49.)

##### Protocole-Annexe.

IX. Ad article 50. — Au lieu de « ... qu'au cas de différend entre ces États sur l'interprétation du texte, le texte de la Convention... », lire : « ... qu'au cas de différend entre ces États sur l'interprétation des textes, le texte de la Convention... »

#### 3. Convention sur l'unification de certaines règles en matière d'abordage.

##### Protocole-Annexe.

I. Ad article premier. — A (nouveau) : Les Hautes Parties contractantes déclarent que l'expression « eaux d'un des États contractants » ne vise pas les eaux des colonies, protectorats ou territoires placés sous suzeraineté ou mandat.

Le PRÉSIDENT constate que la Conférence a adopté définitivement les textes des trois conventions qui lui avaient été soumis (voir documents Conf./U.D.F./59; Conf./U.D.F./58; Conf./U.D.F./57).

#### 4. Acte final.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE donne lecture de l'Acte final.

L'Acte final est adopté (voir document Conf./U.D.F./60).

#### XXIV. Signature des Conventions.

Le PRÉSIDENT invite ensuite les délégués à signer les instruments des Conventions. Il suspend la séance en vue de cette formalité, à laquelle il est procédé par ordre alphabétique.

M. ROMEIN, membre de la Section des communications et du transit, donne, à la reprise de la séance, lecture de la liste des États qui ont apposé leur signature sur les instruments des Conventions. Cette liste est la suivante :

1. *Convention sur l'unification de certaines règles en matière d'abordage dans la navigation intérieure* (document Conf./U.D.F./57).

- Allemagne* : Avec la réserve prévue au Protocole-Annexe, au III, *ad* article 14.
- Belgique*.
- Ville libre de Dantzig* : Avec la réserve prévue au Protocole-Annexe, au III, *ad* article 14.
- France*.
- Hongrie* : Avec la réserve prévue au Protocole-Annexe, au III, *ad* article 14.
- Italie*.
- Pays-Bas* : Avec la réserve prévue au Protocole-Annexe, au III, *ad* article 14.
- Pologne*.
- Roumanie*.
- Suisse* : Avec la réserve prévue au Protocole-Annexe, au III, *ad* article 14.
- Tchécoslovaquie*.
- Yougoslavie*.

2. *Convention concernant l'immatriculation des bateaux de navigation intérieure, les droits réels sur ces bateaux et autres matières connexes* (document Conf./U.D.F./58).

- Allemagne* : Avec la réserve prévue au Protocole-Annexe, au IX, *ad* article 50.
- Belgique*.
- Ville libre de Dantzig* : *Ad referendum* et avec la réserve prévue au Protocole-Annexe, au IX, *ad* article 50.
- France*.
- Hongrie* : Avec la réserve prévue au Protocole-Annexe, au IX, *ad* article 50.
- Italie*.
- Pays-Bas* : Avec la réserve prévue au Protocole-Annexe, au IX, *ad* article 50.
- Pologne* : *ad referendum*.
- Suisse* : Avec la réserve prévue au Protocole-Annexe, au IX, *ad* article 50.
- Tchécoslovaquie*.
- Yougoslavie*.

3. *Convention sur les mesures administratives propres à attester le droit au pavillon des bateaux de navigation intérieure* (document Conf./U.D.F./59).

- Belgique* : Avec la réserve que cette Convention s'applique à l'exclusion des colonies et des territoires sous mandat.
- France*.
- Hongrie* : Avec la réserve prévue au Protocole-Annexe, au IV, *ad* article 8.
- Italie*.
- Pologne*.
- Tchécoslovaquie*.
- Yougoslavie*.

#### XXV. Déclaration de la délégation portugaise.

M. FERRAZ DE ANDRADE (Portugal) déclare que la délégation portugaise, tout en appréciant hautement les brillants résultats des travaux de la Conférence, et tout en rendant entière justice aux grands efforts de conciliation réalisés, n'est pas à même de signer dès à présent les Conventions, étant donné que son Gouvernement doit encore examiner celles-ci avec la plus grande attention.

Il tient également à signaler que, puisque l'Espagne n'a pas été représentée à la Conférence, et que le Portugal a, avec ce pays, des intérêts riverains, un échange de vues préalables entre les deux gouvernements semble s'imposer.

La délégation portugaise espère cependant que le Portugal pourra encore signer les Conventions dans les délais stipulés.

#### XXVI. Champ d'application de la Convention sur les mesures administratives propres à attester le droit au pavillon.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE croit devoir attirer l'attention de la Conférence sur le fait qu'une délégation ayant signé la Convention relative au droit au pavillon sous la réserve que cette convention s'applique à l'exclusion des colonies, l'impression peut être produite que dans la pensée des autres délégations signataires, la Convention s'applique aux colonies.

M. RIPERT (France) déclare que telle n'a certainement pas été la pensée des délégations qui ont signé sans réserve, et, étant donné les termes de la résolution du Conseil convoquant la Conférence, résolution selon laquelle la Conférence était appelée à traiter seulement les problèmes intéressant les réseaux fluviaux de l'Europe continentale, les signatures de ces délégations ne peuvent être considérées que comme comportant participation à la Convention dans les limites et les conditions où la Conférence avait compétence pour statuer. Si la Convention relative au droit au pavillon ne contient pas, comme les autres conventions, une clause excluant explicitement son application aux colonies, c'est parce que cette convention contient surtout des déclarations de principe et non, comme les autres conventions, un règlement détaillé d'application territoriale.

MM. YOVANOVITCH (Yougoslavie), MÜLLER (Tchécoslovaquie) et SUŁKOWSKI (Pologne) s'associent à la déclaration de M. Ripert.

Le PRÉSIDENT déclare que, comme délégué de la Belgique, il croit pouvoir, étant donné l'interprétation des signatures donnée par M. Ripert et à laquelle la Conférence s'est associée, retirer la réserve que la délégation belge avait formulée à cet égard.

*Il est pris acte de cette déclaration.*

## XXVII. Discours de clôture.

M. RICHTER (Allemagne) déclare qu'il est certain de se faire l'interprète de toutes les délégations en exprimant ses remerciements les plus chaleureux au Président, qui a dirigé si brillamment les travaux de la Conférence.

M. RIPERT (France) s'associe à cette déclaration. Il remercie également les présidents des trois Commissions.

Le PRÉSIDENT déclare qu'il a un lourd tribut de reconnaissance à acquitter envers tous ceux qui ont apporté leur concours à la Conférence. A cet égard, il pense d'abord au Comité du droit privé institué par la Commission centrale du Rhin et présidé avec tant d'autorité par M. Rossetti, dont tous les délégués connaissent la belle ardeur juvénile. Il songe ensuite au Comité préparatoire du droit fluvial, qui, à Genève, a repris les travaux de la Commission du Rhin et en a élargi le cadre, en vue de trouver des solutions susceptibles d'être appliquées à l'ensemble du réseau fluvial européen.

La Conférence disposait donc, pour ses travaux, d'une base très précieuse. Il n'empêche que, quand cette Conférence s'est réunie, il y a trois semaines, elle a dû revoir de très près les textes qui lui étaient soumis. Elle a notamment dû tenir compte de points de vue nouveaux, car certains États n'avaient pas participé aux travaux préparatoires. C'était là une tâche considérable, qui a été menée à bien en peu de temps.

Le Président remercie tout particulièrement M. Richter des aimables paroles qu'il a prononcées. Il tient à ajouter que le mérite des résultats acquis par la Conférence revient, non pas au Président de celle-ci, mais aux Présidents des Commissions, qui se sont acquittés si brillamment de leur tâche. En ce qui concerne la Commission de l'abordage, la première entrée en activité, M. Contzesco, qui a bien voulu présider à ses travaux, fut pour les délégués un guide sûr, laissant à chacun la faculté de développer ses opinions, prêtant à tous les arguments une égale attention, mais ayant toujours présent à l'esprit le but à atteindre. Sa mission fut couronnée de succès.

En ce qui concerne la deuxième Commission, qui s'occupa de l'immatriculation et des droits réels, on sait combien lourde était sa tâche ; les débats ont été lents et difficiles. Aussi a-t-il fallu à M. Haab, président de la Commission, toute la maîtrise qui le caractérise, son sens juridique profond et la netteté de sa vision, pour triompher de ces difficultés.

Quant à la Commission de la nationalité, elle a été présidée par M. Rossetti, qui, en l'occurrence, a témoigné d'un esprit souple et conciliant, auquel la Conférence sera certainement unanime à rendre hommage. Il a été nécessaire de ramener l'objet primitif de la Convention à des proportions plus modestes, mais le texte original a pu être conservé en ses éléments les plus intéressants sous forme d'une proposition que M. Rossetti a spécialement étudiée et dont il peut être considéré comme le père.

Le Président tient à proposer également à la Conférence d'adresser des remerciements tout particulièrement chaleureux à la Section des communications et du transit, notamment à M. Haas, son Directeur, qui a bien voulu se tenir constamment à la disposition des délégations chaque fois que celles-ci devaient avoir recours à ses lumières. Le Président associe à ces remerciements MM. Romein, Metternich, Lukác et M<sup>lle</sup> Rasmussen, de la Section des communications et du transit, ainsi que M. Giraud, de la Section juridique, qui, dès le premier jour des travaux de la session, se sont tenus à la disposition de la Conférence avec une amabilité et un dévouement inépuisables.

Il tient enfin à payer un tribut de profonde reconnaissance au Comité de rédaction (the last, but not the least), qui s'est tout particulièrement dévoué et qui a été présidé si brillamment par M. Hostie. Ce Comité a souvent consacré des nuits à préparer les travaux des séances. Le Président remercie enfin d'une manière générale tous ceux qui ont apporté à la Conférence leur précieux concours.

La Conférence a donc accompli des travaux dont elle a le droit d'être fière. L'œuvre qu'elle a réalisée n'est nullement théorique ; c'est une œuvre substantielle, objective et conçue à des fins nettement pratiques.

Lorsque les diverses délégations soumettront les conventions à leurs gouvernements, en vue de la ratification par les Parlements respectifs, elles auront conscience d'avoir défendu autant qu'il était possible le point de vue des États qu'elles ont représentés ; elles l'ont fait jusqu'à l'extrême



limite. La Conférence se termine sans vainqueurs ni vaincus. Les sacrifices consentis ne l'ont été que dans la mesure nécessaire à l'élaboration d'un système international acceptable pour tous. Les modifications que certains pays seront amenés à apporter à leurs législations nationales seront, on peut en être convaincu, justifiées par les résultats à obtenir. Il eût d'ailleurs été inutile de réunir une conférence pour l'unification du droit fluvial si les diverses délégations n'avaient de prime abord admis le principe de la nécessité d'adapter leurs législations nationales à la structure d'une œuvre réellement internationale.

Il convient donc d'envisager l'avenir avec confiance et d'espérer que la tâche réalisée ne sera pas sans lendemain.

La Conférence est la première qui ait été réunie pour unifier le droit fluvial ; elle a arrêté certains chapitres importants appelés à figurer dans un code fluvial européen. Mais un grand nombre d'autres questions restent non résolues et pourront être envisagées au cours de réunions ultérieures. On peut citer notamment la limitation de la responsabilité du propriétaire du bateau, les assurances, les connaissements et bien d'autres sujets encore. D'ailleurs, même en ce qui concerne les matières traitées au cours de sa session, la Conférence a admis la nécessité de conclure des accords ultérieurs en vue de régler certains points de détail, tels que la saisie conservatoire, par exemple.

Le Président, se tournant ensuite vers les délégations roumaine et hellénique, croit devoir répéter combien la Conférence aurait voulu pouvoir s'occuper de la situation spéciale au Bas-Danube. Elle n'a pu le faire, car sa tâche était de formuler des règles générales applicables à l'ensemble des États représentés. Si d'ailleurs la Conférence avait abordé l'examen de cette question spéciale, elle aurait pu desservir, au lieu de servir, les intérêts des parties en cause, dans l'ignorance où elle était de certains éléments de fait de nature à modifier profondément peut-être des situations de droit. Aussi, en s'abstenant de traiter cette question délicate, la Conférence n'a-t-elle voulu ni confirmer ni infirmer l'état de choses existant. Sans aucun doute, les délégations roumaine et hellénique reconnaîtront volontiers que la Conférence n'a pris cette attitude que mue par un sentiment de haute impartialité, et se rendant compte, d'ailleurs, d'après les exposés respectifs des parties, que l'application des conventions pourrait se heurter, dans le cas spécial, à certaines difficultés. Toutefois, la Conférence a pris acte avec satisfaction du fait que les délégations roumaine et hellénique sont animées des meilleures intentions en ce qui concerne la possibilité de rechercher une solution de nature à régler ces difficultés d'une manière satisfaisante. Aussi, le Président émet-il le vœu que la situation particulière à laquelle il vient de faire allusion puisse être réglée promptement, au mieux des intérêts en cause.

M. ROSSETTI (Italie) déclare qu'il est certain de se faire l'interprète de tous ses collègues en remerciant particulièrement M. Ripert, délégué de la France, qui a su proposer un grand nombre de solutions conciliantes et a apporté à la Conférence une collaboration si compétente et si précise.

M. YOVANOVITCH (Yougoslavie) déclare qu'au moment où la Conférence termine ses travaux, il tient à exprimer, au nom de la délégation yougoslave et en son nom, le grand plaisir de voir cette Conférence parvenue à un résultat. Grâce à un esprit de conciliation qui n'a cessé d'animer les différentes délégations, grâce à un travail continu dont ont fait preuve les membres et le Secrétariat de la Conférence, celle-ci a réussi à rédiger les trois textes de trois importantes conventions.

La délégation yougoslave estime qu'il est de son devoir de remercier en son nom les membres des autres délégations du concours qu'ils lui ont apporté.

La délégation yougoslave tient également à associer ses hommages à ceux qui ont été adressés au Président de la Conférence, à M. Haas et à ses collaborateurs, à MM. Ripert, Rossetti, Contzesco et Haab.

Elle est particulièrement reconnaissante à MM. Ripert et Rossetti d'avoir aidé la Conférence à surmonter de nombreuses difficultés. La délégation yougoslave adresse également, en son nom propre et au nom des autres délégations présentes, ses plus vifs remerciements au président du Comité de rédaction, M. Hostie, qui a bien voulu mettre sans réserve au service de la Conférence sa haute compétence, sa grande capacité de travail et son dévouement à la cause commune.

La délégation yougoslave aime à croire que cette Conférence ne marque que la première étape dans la voie de la codification du droit international fluvial, et que le chemin dans lequel elle vient de s'engager conduira la navigation fluviale à un meilleur avenir.

M. NAUTA (Pays-Bas) se rallie aux hommages adressés à tous ceux qui, au cours de ces trois semaines de travaux, ont apporté à la Conférence leur collaboration bienveillante et conciliante.

M. CONTZESCO (Roumanie) remercie chaleureusement le Président de la Conférence, qui a témoigné d'une compétence juridique si éminente. Il remercie également MM. Rossetti et Haab en leur qualité de Présidents des première et deuxième Commissions.

Le PRÉSIDENT déclare clos les travaux de la Conférence.

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ANNEXE 1.

[Conf./U.D.F./37.]

PROJET DE CONVENTION  
SUR L'UNIFICATION DE CERTAINES RÈGLES EN MATIÈRE  
D'ABORDAGE DANS LA NAVIGATION INTÉRIEURE

TEXTE ÉLABORÉ PAR LE COMITÉ DE RÉDACTION

*Article premier.*

En cas d'abordage survenu entre bateaux de navigation intérieure dans les eaux d'un des États contractants, les indemnités dues à raison des dommages causés aux bateaux, aux choses ou personnes se trouvant à bord sont réglées conformément aux dispositions suivantes.

*Article 2.*

1. Si l'abordage est fortuit, s'il est dû à un cas de force majeure, ou s'il y a doute sur les causes de l'abordage, les dommages sont supportés par ceux qui les ont éprouvés.

2. Il n'est pas dérogé à cette règle dans le cas où, soit les bateaux, soit l'un d'eux, sont au mouillage au moment de l'accident.

*Article 3.*

1. Si l'abordage est causé par la faute de l'un des bateaux, la réparation des dommages incombe à celui qui a commis la faute.

2. En cas de remorquage, chaque bateau formant partie du convoi n'est responsable que s'il y a faute de sa part.

*Article 4.*

1. Si l'abordage est causé par les fautes de deux ou plusieurs bateaux, ces bateaux sont tenus solidairement à la réparation des dommages causés au bateau innocent ainsi qu'aux personnes et aux choses se trouvant à bord de ce bateau.

2. Le bateau qui a payé une part supérieure à celle qui est proportionnelle à la gravité de sa faute a, contre les autres bateaux en faute, un droit de recours proportionné à la gravité des fautes desdits bateaux.

3. La gravité des fautes est considérée comme équivalente si, d'après les circonstances, une autre proportion ne peut être établie.

*Article 5.*

1. Si le bateau endommagé ou transporteur des personnes ou choses endommagées a, par sa faute, contribué à l'abordage, la responsabilité de chacun des bateaux est proportionnelle à la gravité des fautes respectivement commises ; toutefois, si, d'après les circonstances, la proportion ne peut pas être établie ou si les fautes apparaissent comme équivalentes, la responsabilité est partagée par parts égales.

2. Les dommages causés, soit aux bateaux, soit à leurs cargaisons, soit aux effets ou autres biens des équipages, des passagers ou d'autres personnes se trouvant à bord, sont supportés par les bateaux en faute, dans ladite proportion, sans solidarité à l'égard des tiers.

3. Les bateaux en faute sont tenus solidairement à l'égard des tiers pour les dommages causés par mort ou blessure, sauf recours de celui qui a payé une part supérieure à celle que, conformément à l'alinéa premier du présent article, il doit définitivement supporter.

4. Il appartient aux législations nationales de déterminer, en ce qui concerne ce recours, la portée et les effets des dispositions contractuelles ou légales qui limitent la responsabilité des propriétaires de bateaux à l'égard des personnes se trouvant à bord.

*Article 6.*

La responsabilité établie par les articles précédents subsiste dans le cas où l'abordage est causé par la faute d'un pilote, même lorsque celui-ci est obligatoire.

*Article 7.*

1. L'action en réparation des dommages subis par suite d'un abordage n'est subordonnée ni à un protêt ni à aucune autre formalité spéciale.
2. Il n'y a point de présomptions légales de faute quant à la responsabilité de l'abordage.

*Article 8.*

1. Les actions en réparation de dommages se prescrivent par deux ans à partir de l'événement.
2. Le délai pour intenter les actions en recours admises par l'alinéa 2 de l'article 4 et par l'alinéa 3 de l'article 5 est d'une année. Cette prescription ne court que du jour du paiement.
3. Les causes de suspension et d'interruption de ces prescriptions sont déterminées par la loi du tribunal saisi de l'action.
4. Les Hautes Parties contractantes se réservent le droit d'admettre, dans leurs législations, comme prorogeant les délais ci-dessus fixés, le fait que le bateau défendeur n'a pu être saisi dans les eaux de l'État dans lequel le demandeur a son domicile ou son principal établissement.

*Article 9.*

Sous réserve de conventions ultérieures, les présentes dispositions ne portent point atteinte aux règles sur la limitation de responsabilité des propriétaires de bateaux, telles qu'elles sont établies dans chaque pays, non plus qu'aux obligations résultant du contrat de transport ou de tous autres contrats.

*Article 10.*

La présente Convention s'étend à la réparation des dommages que, soit par exécution ou omission d'une manœuvre, soit par inobservation des règlements, un bateau a causés, soit à un autre bateau, soit aux choses ou personnes se trouvant à leur bord, alors même qu'il n'y aurait pas eu abordage.

*Article 11.*

Sont compris, au sens de la présente Convention, sous la dénomination de bateaux : les hydroglisseurs, les radeaux, les bacs, les dragues, grues et élévateurs flottants, les sections mobiles de ponts de bateaux et tous engins et outillage flottants de nature analogue.

*Article 12.*

Les dispositions de la présente Convention ne préjugent pas des immunités dont jouiraient, dans un des États contractants, les bateaux affectés exclusivement à l'exercice, à un titre quelconque, de la puissance publique.

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ANNEXE 2.

[Conf./U.D.F./48.]

PROJET DE CONVENTION SUR CERTAINES MATIÈRES  
DE DROIT FLUVIAL

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TEXTE PROPOSÉ PAR LA DÉLÉGATION FRANÇAISE

*Article 18.*

1. Les dispositions du présent titre sont applicables à tout bateau immatriculé sur le registre d'un État contractant.
  2. Toutefois, chaque État contractant peut se réserver le droit, en ratifiant la présente Convention, de ne pas appliquer les dispositions du présent titre au bateau immatriculé sur ses registres qui se trouve sur son propre territoire, à moins qu'il n'existe sur ce bateau une hypothèque garantissant une obligation contractée dans un autre État contractant et stipulée payable dans un autre État contractant et à la condition que ces faits soient mentionnés au registre pour la publicité des droits visés à l'article suivant.
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ANNEXE 3.

TEXTE RÉDIGÉ PAR M. RIPERT ET DESTINÉ A REMPLACER  
LA FORMULE PROPOSÉE PAR LA DÉLÉGATION DE ROUMANIE,  
POUR ÊTRE INSÉRÉ DANS LE PROTOCOLE DE CLÔTURE<sup>1</sup>

Il est entendu qu'aucune disposition de la présente Convention ne peut être considérée comme une confirmation ou une modification de la pratique actuelle de l'immatriculation des bateaux dans les consulats du Bas-Danube comme valant immatriculation dans le pays de ces consulats, mais sans que cette immatriculation porte atteinte aux droits de la Roumanie comme État territorial tels qu'ils sont reconnus par ladite Convention à tous les États contractants.

ANNEXE 4.

[Conf./U.D.F./37 a.)]

PROJET DE CONVENTION  
SUR L'UNIFICATION DE CERTAINES RÈGLES EN MATIÈRE  
D'ABORDAGE DANS LA NAVIGATION INTÉRIEURE

ARTICLES PROTOCOLAIRES

*Article 13.*

La présente Convention, rédigée en français, portera la date de ce jour et sera, jusqu'au 31 mai 1931, ouverte à la signature de tous les États ayant été représentés à la Conférence ou ayant été invités à s'y faire représenter.

*Article 14.*

La présente Convention sera ratifiée. Les instruments de ratification seront transmis au Secrétaire général de la Société des Nations, qui en notifiera le dépôt à tous les États signataires ou adhérents.

*Article 15.*

A partir du 1<sup>er</sup> juin 1931, tout État visé à l'article 13 pourra adhérer à la présente Convention. Cette adhésion s'effectuera au moyen d'un instrument communiqué au Secrétaire général de la Société des Nations aux fins de dépôt dans les archives du Secrétariat. Le Secrétaire général notifiera ce dépôt à tous les États signataires ou adhérents.

*Article 16.*

La présente Convention n'entrera en vigueur qu'après réception des instruments de ratification ou d'adhésion de cinq États. La date de son entrée en vigueur sera le quatre-vingt-dixième jour après la réception, par le Secrétaire général de la Société des Nations, de la cinquième ratification ou adhésion. Ultérieurement, la présente Convention prendra effet, en ce qui concerne chacun des États contractants, quatre-vingt-dix jours après le dépôt des instruments de ratification ou d'adhésion. Elle sera enregistrée par le Secrétaire général de la Société des Nations le jour de son entrée en vigueur.

*Article 17.*

La présente Convention pourra être dénoncée par l'un quelconque des États contractants après l'expiration d'un délai de cinq ans à partir de la date de son entrée en vigueur pour ledit État.

<sup>1</sup> Voir annexe 20 aux procès-verbaux de la deuxième Commission, page 218.

La dénonciation sera faite sous forme de notification écrite adressée au Secrétaire général de la Société des Nations. Copie de cette notification informant tous les autres États contractants de la date à laquelle elle a été reçue leur sera transmise par le Secrétaire général.

La dénonciation prendra effet un an après la date à laquelle elle aura été reçue par le Secrétaire général et ne sera opérante qu'en ce qui concerne l'État qui l'aura notifiée.

*Article 18.*

Après que la présente Convention aura été en vigueur pendant cinq ans, la révision pourra en être demandée à toute époque par un tiers au moins des États contractants.

En foi de quoi les plénipotentiaires susnommés ont signé la présente Convention.

Fait à Genève, le . . . . ., en un seul exemplaire qui sera déposé aux archives du Secrétariat de la Société des Nations ; copie conforme en sera remise à tous les États visés à l'article 13.

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## Deuxième partie.

### PROCÈS-VERBAUX DES COMMISSIONS

#### 1. PREMIÈRE COMMISSION

PROJET DE CONVENTION SUR LES MESURES ADMINISTRATIVES  
PROPRES A ATTESTER LA NATIONALITÉ DES BATEAUX DE NAVIGATION INTÉRIEURE  
(DROIT AU PAVILLON).

#### PREMIÈRE SÉANCE

*Tenue le jeudi 27 novembre 1930, à 17 heures.*

*Président: M. ROSSETTI (Italie).*

PROJET DE CONVENTION  
SUR LES MESURES ADMINISTRATIVES PROPRES A ATTESTER LA NATIONALITÉ DES BATEAUX  
DE NAVIGATION INTÉRIEURE.

#### L. Discours du Président.

Le PRÉSIDENT déclare, en ouvrant la séance de la première Commission, qu'il fera de son mieux pour être digne de l'honneur qui lui est échu. Il craint, toutefois, la comparaison que l'on ne manquera pas de faire entre lui et les présidents des deux autres commissions qui ont exercé leurs fonctions d'une manière si accomplie. A cet égard, il convient de remarquer qu'ils ont joui d'un certain avantage, puisqu'ils ont disposé de l'appui des collègues de leurs délégations auxquels ils pouvaient confier les intérêts de celles-ci. Au contraire, M. Rossetti devra à la fois agir en qualité de président et intervenir en tant que délégué de l'Italie.

Avant de donner la parole aux différentes délégations au sujet du projet de Convention, le Président tient à donner quelques explications au sujet de la question de la nationalité. Déjà, lors de la première séance de cette Conférence, il eut l'occasion d'exposer comment le Comité rhénan de droit fluvial, en établissant le programme de ses travaux, s'était tout de suite trouvé dans la nécessité de résoudre cette question qui concerne essentiellement le droit public.

C'est un fait qu'un grand nombre d'actes diplomatiques parlent de la nationalité des bateaux, et lorsqu'on commença l'étude de cette question au point de vue du droit fluvial, on était loin de s'attendre à ce qu'une question que l'on croyait si simple eût pu soulever une opposition aussi acharnée de la part de ceux qui, ici même, sont venus affirmer ne point connaître cette notion de la nationalité des bateaux de navigation intérieure.

Le Comité de droit fluvial estima ensuite que, peut-être, il aurait pu rallier les opinions divergentes en modifiant complètement son projet primitif et en se bornant, non plus à demander que tous ces bateaux aient une nationalité, mais plus simplement à demander que cette nationalité, lorsqu'elle existe, soit reconnue. Et dans le rapport que M. Rossetti même eut à présenter audit Comité, il était clairement dit :

« Il a semblé qu'un accord pourrait peut-être se faire s'il était clair que le projet relatif à la nationalité des bateaux de navigation intérieure *n'aurait pas pour objet ou pour effet d'attribuer, pour le présent ou pour l'avenir, des conséquences juridiques nouvelles à cette notion de nationalité*, mais seulement de fixer les règles administratives qui permettraient de reconnaître en pratique la nationalité là où elle a des effets juridiques reconnus. »

Que telles aient été les intentions des rédacteurs du projet qui se trouve devant la Commission, est aussi bien indiqué par le titre même du projet où l'on parle « des mesures administratives propres à attester la nationalité des bateaux ».

A vrai dire, cette notion revient à chaque instant dans la langue courante. Ne parle-t-on pas sans cesse de bateaux italiens, français, etc. ? C'est là une preuve que la notion de la nationalité existe. Aussi, convient-il de définir ce qu'est un bateau de telle ou telle nationalité. C'est là le but très modeste que se propose le projet de Convention soumis à la Conférence <sup>1</sup>.

M. Rossetti déclare ensuite la discussion générale ouverte.

<sup>1</sup> Voir document C.544.M.195.1929.VIII.

## II. Discussion générale.

M. HOHL (Suisse) déclare qu'à la séance du matin, la deuxième Commission s'est efforcée de trouver une solution en ce qui concerne l'immatriculation des bateaux. Il est persuadé qu'il sera bientôt possible de parvenir à établir le critère nécessaire pour cette immatriculation, peut-être en laissant à la législation des différents États le soin de le déterminer. On peut dès lors se demander si la notion de la nationalité aura encore une utilité pratique, c'est-à-dire si l'immatriculation, comme telle, ne pourrait pas servir de critère pour tous les conflits de lois en matière de navigation intérieure. Le droit de la nationalité des bateaux est extrêmement contesté dans la doctrine. La Conférence, dont le but principal est d'unifier le droit fluvial, ferait-elle vraiment œuvre pratique en s'efforçant de régler une notion juridique si peu éclaircie ?

M. Hohl ajoute que, puisque le Président a invité actuellement la Commission à n'échanger d'abord que des vues générales, il se réserve de formuler ultérieurement quelques observations au sujet des dispositions même du projet de Convention.

M. RICHTER (Allemagne) expose qu'un juriste français qui fait autorité en droit maritime dans tous les pays a dit, parlant de la situation juridique des navires : « Un navire est une personne ; il naît et il meurt ; il a un nom, un rang social et un domicile ; il a une nationalité. » Mais il ajoute :

« Évidemment, il y a là de simples images. Ce sont des procédés de langage commodes pour indiquer que la situation juridique du navire peut, dans certains cas, imposer la même solution que la situation juridique de la personne humaine. Il serait d'une mauvaise méthode d'argumenter sur l'expression employée pour défendre la solution, car on ne doit pas tirer des déductions d'une construction juridique due à la simple imagination. Mais lorsqu'on constate l'identité des solutions, il est commode de les indiquer d'un mot en les attachant à l'idée de la personnalité du navire. La comparaison est pittoresque ; elle n'est point inexacte si on ne la force point. »

La conception d'une nationalité propre des bâtiments est innocente et même fort utile lorsqu'il s'agit des navires qui circulent en haute mer. Elle n'a pas de raison d'être lorsqu'il s'agit des bateaux qui ne circulent que dans les eaux soumises à une souveraineté territoriale. La délégation allemande qui, pour ces motifs, ne reconnaît pas l'utilité d'une nationalité propre des bateaux, ne peut pas accepter une convention qui a pour but de faciliter l'application de cette conception et de préparer le terrain pour un développement d'un droit coutumier fluvial analogue au droit maritime.

D'ailleurs, si cette notion est consacrée en droit fluvial par une convention, elle aura une tendance à devenir générale dans un avenir plus ou moins éloigné. Pour ces motifs, la délégation allemande déclare ne pouvoir accepter le projet de Convention.

M. RIPERT (France) dit que le langage juridique est malheureusement assez pauvre et c'est pour cela qu'on a dû employer pour désigner certaines conditions relatives aux bateaux des termes qui s'appliquent normalement aux personnes.

En employant cette terminologie, les juristes se rendent bien compte de ce que la nationalité d'un bateau français n'est pas de même nature que la nationalité d'une personne, mais on ne saurait dire que cette notion de nationalité soit nécessitée par les conditions particulières à la navigation maritime. Il en est de même en ce qui concerne la navigation aérienne, puisque, après avoir commencé par affirmer leur droit de souveraineté dans les régions aériennes au-dessus de leurs territoires, les États ont reconnu que les avions gardent intacte leur nationalité quand ils survolent leurs territoires. Lorsqu'un instrument de transport passe d'un État dans un autre en emportant avec lui une portion de la fortune et de l'activité économique de son pays, ainsi que des hommes de ce pays, il emporte en même temps quelque chose de sa loi. A titre de confirmation, on peut citer l'article 12 du projet de Convention sur certaines matières de droit fluvial, titre II, chapitre 1. — De la propriété<sup>1</sup>. Cet article prévoit en effet que le transfert volontaire entre vifs des droits de propriété sur un bateau est réglé par la loi du pays contractant où le bateau est immatriculé. C'est donc que, même en pays étranger, ce bateau a gardé le lien qui le rattache à son territoire.

D'ailleurs, les pays mêmes qui nient actuellement la notion de la nationalité ont inscrit dans leurs actes diplomatiques, dans le Statut de la navigation rhénane, par exemple, l'expression « les bateaux allemands, etc. ». Ainsi, bien qu'aucun sens précis n'ait été attaché peut-être à cette expression, il existe une tendance certaine à déclarer qu'un bateau de navigation intérieure a une nationalité, de même que les navires de mer et les aéronefs. On peut ajouter que la reconnaissance de la nationalité des bateaux étrangers n'offre aucun danger pour un pays qui est libre de la réglementer à sa guise. Enfin, le signe tangible de la nationalité d'un bateau est le pavillon. Le droit au pavillon implique qu'un État ne se désintéresse nullement du bateau et de sa vie économique lorsque ce bateau passe sur des eaux territoriales soumises à un régime étranger. Donc, l'idée de la nationalité des bateaux est dans tous les esprits.

Le PRÉSIDENT, en sa qualité de délégué de l'Italie, dit qu'il n'aurait rien répondu et se serait borné à prendre acte des déclarations de la délégation allemande, si celle-ci n'avait déclaré, ce qui, à son avis, est inexact, que le projet tend à introduire une nouvelle notion.

Déjà, dans les procès-verbaux de la cinquième séance de la Commission pour la libre navigation des fleuves du Congrès de Vienne de 1815, on pouvait lire : « Quant au pavillon, on a jugé qu'il serait utile d'exprimer que chaque batelier devra et pourra porter le pavillon de son gouvernement. »

D'où l'on peut déduire que la notion de nationalité que l'on exprime par le port d'un pavillon déterminé paraissait déjà aux négociateurs de Vienne, même en matière de navigation fluviale, une notion acquise et sur laquelle il n'était pas besoin de discuter longtemps.

<sup>1</sup> Voir document C.541.M.195.1929.VIII.

De même, les plénipotentiaires qui signèrent en 1831 la Convention de Mayence paraissent ne pas avoir été d'un avis différent lorsque, dans le modèle de manifeste par eux rédigé ils disent : « Le bâtiment... conduit sous *pavillon* (indiquer l'État riverain auquel appartient le pavillon)... »

Ce même modèle de manifeste fut par la suite adopté par l'article 1 de l'Accord provisoire du 6 novembre 1839 entre la Belgique et les Pays-Bas, pour la navigation dans le canal de Maestricht.

Et le fait que l'indication du pavillon demandée par ce manifeste ne fut pas un simple souvenir de documents maritimes, mais bien au contraire la preuve concrète de l'intention précise des négociateurs de connaître la nationalité des bateaux, est clairement démontré par l'article supplémentaire n° 19 stipulé par la Commission du Rhin le 9 décembre 1848 qui, après avoir concédé aux bateliers du Rhin, dûment autorisés à l'exercice de la navigation, la faculté de conduire les bateaux de n'importe quel État riverain, leur demande « de justifier envers tous les bureaux de navigation et agents préposés à la police, de la *nationalité* du bâtiment étranger dont il (le batelier) a entrepris la conduite, au moyen d'un certificat spécial émané de l'autorité du pays auquel ce bâtiment appartient ».

Sur l'Elbe, les choses ne se passaient pas autrement que sur le Rhin, car l'Acte de navigation signé le 23 juin 1821 entre le Danemark, la Prusse, la Saxe et autres États allemands, dit bien, à son article XVII :

« Le batelier... est tenu de faire connaître sa cargaison à tous les bureaux qu'il touche en leur présentant ce connaissance avec une déclaration. Celle-ci doit être dressée sur le modèle n° 4 des pièces supplémentaires et contenir :

« 1° .....

« 2° Le nom et le numéro du bâtiment, son port, son *pavillon* et sa dénomination. »

La même notion de nationalité est ensuite de nouveau et aussi clairement reprise par le Traité de commerce et de navigation signé le 31 décembre 1851 entre les Pays-Bas et l'Union douanière (*Zollverein*) allemande.

Dans ce traité qui, selon les stipulations de son article 10, était applicable « à la navigation maritime, à la navigation fluviale et à la navigation de toutes les voies d'eau navigables », se trouve un article 12, ainsi conçu :

« La *nationalité* des bâtiments sera admise de part et d'autre d'après les lois et règlements particuliers à chaque pays, au moyen de titres et patentes délivrés par les autorités compétentes aux capitaines, patrons et *bateliers*. »

Vient ensuite la Convention bien connue de Mannheim, signée le 17 octobre 1868, dont l'article 2 s'exprime ainsi :

« Sera considéré comme appartenant à la navigation du Rhin tout bateau ayant le droit de porter le *pavillon* de l'un des États riverains et pouvant justifier de ce droit, au moyen d'un document délivré par l'autorité compétente. »

Après tous les documents qu'il a cités, auxquels il y aurait lieu d'ajouter, après la conclusion des traités de paix, les actes relatifs à la navigation du Danube et de l'Elbe, ainsi que les Conventions de Barcelone, actes qui tous portent la signature de l'Allemagne, comment la délégation allemande, se demande M. Rossetti, peut-elle affirmer que la notion de la nationalité des bateaux de navigation intérieure est une notion nouvelle que l'on voudrait, à tort, introduire dans le droit des gens ?

Si, par ailleurs, après au moins cent quinze ans d'existence reconnue et ininterrompue, cette notion vient maintenant d'être niée avec tant d'assurance, il y a là, de l'avis de M. Rossetti, une raison de plus pour insister pour sa reconnaissance formelle et explicite.

M. NAUTA (Pays-Bas) déclare : 1° que le Gouvernement néerlandais a donné des instructions à sa délégation de ne pas signer la Convention concernant la nationalité des bateaux de navigation intérieure et de ne pas prendre part aux débats y relatifs ; 2° que si le Président lui permet éventuellement de formuler des observations sur la question, il n'exprimera, en ce cas, qu'une opinion purement personnelle.

Le PRÉSIDENT prend acte de la déclaration de M. Nauta et le remercie de bien vouloir prêter son concours à la Commission, à titre personnel.

M. SITENSKY (Tchécoslovaquie) s'étonne de ce que les délégations allemande et néerlandaise puissent se déclarer hostiles à la Convention pour la raison qu'elle introduit la notion de la nationalité des bateaux, étant donné que la question de la nationalité des bateaux a déjà été traitée dans un grand nombre d'actes diplomatiques auxquels l'Allemagne est partie contractante.

Quant à la délégation suisse, elle a déclaré qu'elle pourrait peut-être signer la Convention, mais qu'elle n'estime pas qu'il soit d'utilité pratique de traiter la question de la nationalité, si l'on veut unifier le droit fluvial.

En réalité, la fin que la Conférence se propose est de régler les conflits de lois éventuels en droit fluvial. Cet intérêt se présente actuellement, car la notion de la nationalité des bateaux peut avoir un sens différent dans divers pays où la même convention peut être sujette à des interprétations divergentes. Par conséquent, la Convention projetée actuellement n'est pas seulement utile, mais nécessaire.

M. SUŁKOWSKI (Pologne) souligne que la notion de la nationalité est une conception courante et que les traités s'y réfèrent souvent, sans la définir. La législation polonaise connaît également cette notion. Les fleuves polonais ne sont accessibles qu'aux bateaux polonais, sauf dispositions



internationales contraires. Par « bateaux polonais » on entend ceux qui, inscrits sur des registres publics, appartiennent à des ressortissants ou à des sociétés polonaises. Puisque la majorité des États européens connaissent également la notion de la nationalité des bateaux, il est désirable de réaliser une entente à ce sujet.

M. DE RUELLE (Belgique) dit que la délégation belge est favorable à un examen du fond du projet de Convention. En ce qui concerne la notion même de la nationalité, il déclare se rallier aux idées émises par M. Ripert. A défaut d'autres termes plus appropriés, le terme « nationalité des bateaux » rend au mieux l'idée à exprimer. En effet, lorsqu'un bateau a arboré le pavillon national, ce fait ne constitue qu'une preuve *prima facie* de la nationalité qu'il s'attribue, mais, jusqu'à preuve contraire, le bateau est muni d'un emblème qui inspire le respect des pays où il se rend, et qui lui sert en même temps de titre de protection au cours de son voyage. M. de Ruelle ajoute qu'il lui semble inutile d'entrer dans une longue discussion au sujet des principes ; le projet de Convention, très modeste, se borne en effet, pour autant que la nationalité des bateaux est admise, à éviter essentiellement le cas de double nationalité, et il constitue une base très large qui permet à tout pays partageant la conception de la nationalité d'éviter les conflits de lois éventuels.

M. CONTZESCO (Roumanie) estime, comme M. Rossetti, que la notion de la nationalité des bateaux s'est constituée même à une époque bien antérieure à celle où ont été élaborés les travaux du Comité préparatoire de droit fluvial. En Roumanie, notamment, cette notion apparaît en 1878, après la Guerre de l'Indépendance, et elle n'a jamais cessé d'être admise et réglementée. La doctrine roumaine y est également attachée ; aussi, serait-il fort désirable de voir codifier cette conception, quelle qu'en soit la modalité. En Roumanie, la loi afférente ne parle pas de « nationalité », mais du droit « *d'arborer le pavillon roumain* ».

M. SOUBOTITCH (Yougoslavie) déclare que la délégation yougoslave tient également à contribuer à élaborer la présente Convention, bien que la question discutée lui semble épineuse entre toutes.

Il est certain qu'il existe un rapport spécifique de droit entre un bateau et l'État dont ce bateau ressortit. D'ailleurs, en étudiant la législation yougoslave, on voit cette notion consacrée par la loi relative au pavillon. M. Soubotitch estime que la Conférence rendrait un grand service à la jurisprudence en trouvant un terme approprié pour dénommer ce rapport. Le terme « nationalité » ne lui paraît pas approprié. Il semble dangereux, en effet, de qualifier d'un même terme le rapport qui existe entre une personne et un État et celui qui existe entre un bateau et un État ; encore moins faut-il assimiler le bateau national au territoire national. Aussi, bien qu'en pratique le mot « nationalité » soit considéré comme équivalent au mot « pavillon », peut-être serait-il possible de dire simplement « pavillon » ou bien de trouver un autre mot mieux approprié. Il est bon d'avoir pour des notions différentes des termes différents.

Le PRÉSIDENT tient à apaiser les scrupules de la délégation yougoslave en déclarant de nouveau que le projet de Convention ne vise nullement à attribuer à la notion de la nationalité des conséquences juridiques nouvelles, ce qui ressort clairement des travaux préparatoires du Comité de droit fluvial. Quant à la nouvelle terminologie proposée par la délégation yougoslave, il pourrait l'admettre, si cette délégation y attache du prix, à condition toutefois qu'elle réponde bien à l'idée que la Convention veut exprimer.

M. RICHTER (Allemagne) rappelle que la délégation allemande ne saurait prendre part aux discussions et ce pour les raisons mêmes qui ont été indiquées par M. Nauta. Mais puisque le délégué de l'Italie a émis l'idée que l'exposé formulé par la délégation allemande contenait une inexactitude, M. Richter tient à y répondre brièvement.

Il est certain que les actes diplomatiques internationaux parlent du pavillon et de la nationalité des bateaux. Il est vrai également que la notion du pavillon est mentionnée dans un traité conclu entre l'Allemagne et les Pays-Bas. Mais on s'est aperçu que la portée de ce mot avait été appliquée à la légère aux bateaux de navigation intérieure, et dès qu'on s'est rendu compte de cette inconsidération, les traités de commerce n'ont plus employé le mot « nationalité » en matière de navigation intérieure.

D'une manière plus précise, l'Allemagne ne désire ni introduire le terme « nationalité des bateaux » ni continuer à l'employer. Toutefois, elle ne s'opposerait nullement à ce qu'on dit : « Certains bateaux appartiennent à un propriétaire de telle ou telle nationalité. » On éviterait ainsi de parler d'une nationalité propre au bateau même. M. Ripert a déclaré que cette dernière notion n'était pas nuisible, à condition de ne pas la forcer. M. Richter veut renforcer cette idée en disant que cette notion est dangereuse si on la force. Quant au cas de l'article 12 du projet de Convention sur certaines matières de droit fluvial relatif à la propriété des bateaux, qui a trait au transfert de propriété, et qui a été cité comme exemple par M. Ripert, il soulève une question qui est dénuée de tout intérêt politique.

D'ailleurs, on peut remarquer que si l'on introduit dans un procès de droit privé relatif à un bateau la notion de pavillon et de nationalité, on met immédiatement en cause la question du prestige national. Il est plus difficile alors de faire admettre à un intéressé qui emploie cette expression qu'il est dans son tort et qu'il doit uniquement considérer le litige au point de vue des intérêts privés.

Le PRÉSIDENT donne acte à la délégation allemande de la rectification que celle-ci a formulée au sujet de sa première déclaration et du fait qu'elle ne désire plus « continuer » à faire usage de la locution « nationalité des bateaux ».

Il fait remarquer, toutefois, qu'il a fallu quand même un certain temps à l'Allemagne, après les traités conclus par elle, pour se convaincre de la nécessité d'abandonner cette notion de la nationalité, qu'elle estime désormais être fausse. En effet, un certain nombre d'ordres et d'ordonnances, émanant notamment du Cabinet prussien (1815 et 1823) et du Gouvernement hessois (1839), ont parlé formellement du pavillon national en navigation intérieure. On peut même citer les décrets de l'Empire allemand relatifs aux bateaux allemands sur le Danube et sur les fleuves chinois (1900), ainsi que les lois allemandes sur le pavillon marchand (1899 et 1901) ; enfin, la récente Convention de Barcelone. Aussi, la délégation allemande ne devrait-elle pas reprocher aux autres délégations de vouloir continuer à faire usage de cette notion de la nationalité des bateaux, dont elle a elle-même fait usage pendant une si longue période.

M. DE RUELLE (Belgique) ajoute qu'une notion analogue est appliquée aux sociétés anonymes. Celles-ci sont constituées en vertu d'une loi et ont la nationalité prévue par cette loi. C'est ainsi qu'on parle de sociétés anonymes françaises, belges, etc., bien que ces sociétés ne soient pas toujours absolument françaises ou belges. Leur titre ne vaut également que *prima facie*. Il est évident, en effet, que s'il est possible de constituer une société dans un pays déterminé, sans avoir recours en aucune façon au capital de ce pays, l'idée de la nationalité de cette société ne sera pas très forte. En cas de litige à l'étranger, notamment, le titre sera moins puissant que si la société était composée uniquement de ressortissants du pays en question. Une situation analogue se présentera en ce qui concerne les bateaux.

M. RIPERT (France), en répondant à une remarque de M. Richter, dit que le reproche fait aux juristes continentaux d'employer une mauvaise méthode juridique en adoptant la notion de la nationalité ne lui paraît pas très grave. Il est, en effet, fréquent entre juristes, lorsqu'ils ne sont pas d'accord sur une question de fond, de s'accuser mutuellement d'employer une mauvaise méthode juridique. Mais puisqu'il existe des pays qui ne considèrent pas l'usage de la notion de la nationalité pour les bateaux comme procédant d'une mauvaise méthode juridique, il semble raisonnable que ces pays, désireux d'arriver à une entente internationale sur cette question, continuent entre eux la discussion du présent projet.

Le PRÉSIDENT constate que la discussion générale est épuisée et invite la Commission à discuter article par article le projet de Convention, dont il lit le préambule.

### III. Première lecture du projet de Convention.

#### *Préambule.*

M. SOUBOTITCH (Yougoslavie) propose de supprimer le mot « nationalité » et de le remplacer par le mot « pavillon » ou un autre terme mieux approprié.

M. RIPERT (France) déclare que cette proposition vise uniquement une question de terminologie et qu'il serait opportun d'examiner au préalable l'ensemble des dispositions de la Convention. Alors, peut-être, la délégation yougoslave n'aura-t-elle plus de modification à proposer.

Le PRÉSIDENT estime qu'il serait préférable, à cet égard, d'élire tout d'abord un Comité restreint de rédaction dont feraient partie MM. Ripert et Soubotitch, et qui serait chargé de trouver un autre mot pour remplacer le terme « nationalité ».

M. RIPERT (France) tient à faire remarquer que le préambule a été ajouté au projet primitif de Convention dans l'espoir que celle-ci rencontrerait une adhésion unanime. Puisque maintenant l'Allemagne et les Pays-Bas ne sont pas disposés à signer la Convention, il semble bien que le préambule soit devenu inutile. A quoi servirait, en effet, de déclarer que les Hautes Parties contractantes sont désireuses de faciliter l'application de toute stipulation des conventions qui feraient dépendre certains droits ou certaines obligations de la nationalité des bateaux ? Actuellement, la Convention ne peut être conclue qu'entre États qui reconnaissent tous la notion de la nationalité. En laissant subsister le préambule, on risquerait même d'engager l'avenir, puisqu'on parle de « conventions à conclure ». Or, personne ne sait quelles seront les conceptions de l'avenir relatives à la nationalité des bateaux.

M. SITENSKY (Tchécoslovaquie) considère comme M. Ripert que le préambule n'a été rédigé que pour faciliter l'adoption de la Convention par les pays hostiles à l'introduction de la notion de la nationalité. C'est pourquoi M. Sitensky voudrait maintenir ce préambule, vu qu'il a toujours l'espoir que les gouvernements allemand et néerlandais modifieront leur conception et accepteront finalement la Convention.

Il estime d'ailleurs que si l'on supprime le préambule, la Convention risque d'être adoptée par un groupe de pays plus restreint. Aussi lui semble-t-il préférable de le maintenir, puisqu'il rend le but de la Convention plus clair.

Le PRÉSIDENT pense que les idées formulées par M. Sitensky sont exactes. Mais il lui semble que même si le préambule est maintenu, les délégations allemande et néerlandaise n'accepteront pas la Convention. A l'origine, ce préambule n'existait pas et était remplacé par l'ancien article 1, qui obligeait tout bateau de navigation intérieure à avoir une nationalité. Peut-être pourrait-on revenir à cette idée en reprenant le texte primitif.

M. RIPERT (France) estime qu'il est préférable de laisser subsister le préambule en demandant au Comité de rédaction d'en modifier la forme. En effet, la proposition qu'il a formulée tend plutôt à un ajournement qu'à une suppression formelle.

*La proposition de M. Ripert est adoptée et le préambule est réservé.*

*Articles 1 et 2.*

*Ces articles sont adoptés.*

*Article 3.*

M. HOHL (Suisse) fait valoir qu'en lisant cet article, une contradiction apparaît entre sa rédaction et celle du préambule. Le préambule ne préjuge pas la question de savoir si les bateaux ont une nationalité ou non. Par contre, la création d'« un registre spécial de nationalité », prévue à l'article 3, n'implique-t-elle pas la reconnaissance indirecte de la notion de la nationalité ?

Le PRÉSIDENT estime qu'il s'agit d'un malentendu. En effet, aucun bateau n'est obligé, aux termes de l'article 3, de faire la preuve de sa nationalité. Ce n'est qu'au cas où il le désire que cet article détermine dans quelles conditions cette preuve doit être faite.

M. HOHL (Suisse) demande si un État qui ne reconnaît pas la nationalité des bateaux doit tenir le registre prévu.

Le PRÉSIDENT répond que si un État ne reconnaît pas cette notion, il n'aura aucun registre spécial à tenir. C'est seulement lorsque le bateau le désire que la preuve sera faite, mais il faut quand même que dans ce cas, la preuve soit possible. Autrement, si, par exemple, un capitaine déclare : « Mon bateau est suisse », comment les autorités étrangères pourront-elles en être convaincues, si ce capitaine ne peut point le prouver ?

D'ailleurs, l'article n'impose nullement la tenue d'un registre spécial puisqu'il laisse aux États la plus grande liberté en ce qui concerne la méthode à suivre.

M. DE DIETRICH DE SACHSENFELS (Hongrie) propose de dire : « Tout bateau doit être inscrit sur un registre spécial de nationalité ou sur le registre d'immatriculation. »

Le PRÉSIDENT répond que les auteurs du projet de Convention n'ont pas voulu s'immiscer dans l'organisation bureaucratique des États. Il suffit donc que les bateaux soient inscrits sur un registre tenu à cet effet.

M. RIPERT (France) estime que la proposition de la délégation hongroise est logique. On pourrait dire :

« Tout bateau prouve sa nationalité par son inscription sur le registre d'immatriculation tenu par l'État dont il relève ou sur tout autre registre désigné pour servir à la même fin et tenu par ladite autorité. »

M. PANTITCH (Yougoslavie) se rallie à l'idée de M. Ripert. En Yougoslavie, les bateaux inscrits sur le registre d'immatriculation sont considérés comme yougoslaves, étant donné que seuls les bateaux yougoslaves peuvent y être immatriculés. Aussi, la délégation yougoslave ne tient-elle pas à voir introduire un registre spécial pour la nationalité.

Le PRÉSIDENT répète que l'article 3 n'impose nullement aux États l'obligation de tenir un registre spécial. Il ajoute qu'il se rallie à la formule proposée par M. Ripert, étant donné qu'elle exprime la même idée que l'article 3.

M. SUŁKOWSKI (Pologne) estime qu'il s'agit d'une question de rédaction.

En fait, les systèmes suivis dans les divers pays sont différents. L'article 3 est rédigé de façon telle qu'il n'impose aucune obligation de tenir un registre spécial ; la meilleure solution consisterait à laisser au Comité de rédaction le soin de formuler cet article.

Le PRÉSIDENT déclare qu'il est plus opportun d'accepter dès maintenant la formule proposée par M. Ripert :

« Tout bateau fait preuve de sa nationalité par son inscription sur le registre d'immatriculation tenu par l'autorité compétente de l'État dont il relève, ou sur tout autre registre désigné par ladite autorité. »

Il ajoute, en qualité de délégué de l'Italie, qu'il ne suffit pas qu'un bateau soit inscrit sur un registre d'immatriculation pour faire la preuve de sa nationalité ; en effet, il peut arriver que des bateaux non nationaux soient inscrits par certains États sur un registre ; aussi, conviendrait-il de déclarer que celui-ci doit mentionner également la nationalité de l'État auquel est rattaché le bateau.

M. RIPERT (France) fait remarquer que le deuxième projet de convention s'oppose à ce qu'un bateau étranger déjà immatriculé dans un État soit immatriculé dans un autre. Ainsi, un bateau immatriculé prend la nationalité du pays d'immatriculation.

M. ŠITENSKY (Tchécoslovaquie) estime qu'il suffirait de dire :

« Tout bateau fait preuve de sa nationalité par son inscription sur un registre tenu à cet effet par l'autorité compétente de l'État dont il relève. »

M. SUŁKOWSKI (Pologne) tient à demander d'une manière précise à M. Ripert si un bateau peut avoir la nationalité d'un pays autre que celui où il est immatriculé aux fins du droit privé ?

M. RIPERT répond que ce bateau peut avoir un port d'attache dans un pays différent de celui de l'immatriculation, mais qu'il a la nationalité du pays d'immatriculation.

Le PRÉSIDENT estime que la proposition de M. Sitensky est la meilleure, car elle ne préjuge pas la question de savoir sur quel registre l'inscription sera faite.

*La proposition d'amendement de M. Ripert, modifiée par M. Sitensky, est adoptée en principe et renvoyée au Comité de rédaction.*

#### Article 4.

M. RIPERT (France) déclare que puisqu'il est impossible, maintenant, de parvenir à une solution transactionnelle avec les délégations qui n'admettent pas le principe de la nationalité il, semble inutile de maintenir cet article.

Le PRÉSIDENT se rallie à cette manière de voir, en sa qualité de délégué de l'Italie.

M. SOUBOTITCH (Yougoslavie) déclare ne pas comprendre exactement le sens de la motion proposée.

M. RIPERT (France) rappelle qu'un certain nombre de textes avaient été introduits dans le projet de Convention à une époque où l'on pensait que certains pays pourraient s'y rallier, bien que ne reconnaissant pas le principe de la nationalité des bateaux, mais, maintenant, puisqu'un grand nombre de délégations sont d'accord sur le fait que les bateaux immatriculés dans un État auront la nationalité de cet État, et que le cas de double immatriculation sera évité, le cas de double nationalité ne se présentera pas non plus. Pour cette raison l'article 4 est devenu inutile.

M. SITENSKY (Tchécoslovaquie) estime au contraire que le cas de double nationalité pourra toujours se présenter. Dans certains cas, où la nationalité du bateau sera inscrite sur un autre registre que celui d'immatriculation, les conditions auxquelles un État subordonne la nationalité, pourront être différentes des conditions de l'immatriculation. Ce serait, par exemple, le cas d'un bateau étranger immatriculé qui ne serait pas autorisé à battre le pavillon du pays d'immatriculation. M. Sitensky estime par conséquent que le maintien de l'article 4 s'impose.

M. SOUBOTITCH (Yougoslavie) se rallie aux idées de la délégation tchécoslovaque. Même, en effet, si certains pays admettent qu'« immatriculation » vaut « inscription de nationalité », il est possible que d'autres pays n'adhèrent pas à cette théorie. Certains bateaux immatriculés dans des ports fluviaux n'arborent pas le pavillon national de ce port, quand ce pavillon ne leur a pas été imposé par le pays d'immatriculation.

M. RIPERT (France) estime qu'en raison de l'existence de registres spéciaux de nationalité, le cas visé ne saurait se présenter en pratique.

M. SOUBOTITCH (Yougoslavie) ajoute, à l'appui de sa thèse, qu'il est possible également qu'un bateau étranger soit immatriculé dans un port, aux fins seulement de règlement de la question des hypothèques ou autres droits réels qui peuvent le grever. Dans ce cas, il n'aura pas forcément la nationalité de ce port ; ce peut être le cas notamment en Suisse.

Le PRÉSIDENT estime que ce conflit ne saurait se produire en pratique.

M. SOUBOTITCH (Yougoslavie) répond que dans ces conditions, il semble que le projet de Convention sur la nationalité soit inutile et que celui relatif à l'immatriculation doive suffire.

M. RIPERT (France) dit que puisque le cas cité ne se produit, en pratique, dans aucun pays, il ne semble pas opportun de compliquer la discussion. En général, un bateau immatriculé dans un pays aura le pavillon de ce pays ; telle est la règle qu'il convient de consacrer.

M. WINIARSKI, président du Comité de droit fluvial, estime qu'il semble y avoir confusion. Lorsque le Comité du droit fluvial a rédigé ses projets de conventions, il n'a nullement lié la question de la nationalité à celle de l'immatriculation. Il a dit simplement que la Convention impliquerait la reconnaissance mutuelle de la nationalité des bateaux, et qu'un bateau ne pourrait avoir qu'une seule nationalité. La question est de savoir si l'on consacrerait le système exposé dans les rapports préparatoires, ou bien si on lierait la question de la nationalité à celle de l'immatriculation en supprimant l'article 4.

M. RIPERT (France) estime que certains pays qui connaissent l'immatriculation ne connaissent pas la nationalité des bateaux, mais que désormais, les pays qui doivent adhérer à cette Convention connaîtront les deux systèmes. Est-il tolérable qu'un bateau immatriculé dans un pays puisse ne

pas avoir la nationalité de ce pays ? Une autre question est de savoir si l'on peut admettre un étranger à posséder tel ou tel bateau, et s'il est admissible que les conséquences de l'immatriculation diffèrent suivant les pays au point de vue du règlement des droits hypothécaires, mais il est difficilement admissible qu'un bateau soit, par exemple, hongrois par immatriculation et roumain en ce qui concerne les droits du pavillon.

M. HOHL (Suisse) se rallie à l'idée de supprimer l'article 4, pour des motifs qui sont toutefois un peu différents de ceux exposés par la délégation française. Il rappelle que la délégation suisse considère que l'immatriculation suffit comme critère général pour régler toutes les relations internationales où peuvent être impliqués des bateaux.

M. DE DIETRICH DE SACHSENFELS (Hongrie) pose une question au sujet d'une hypothèse qui, à son avis, peut se réaliser. Il se peut qu'un bateau néerlandais immatriculé aux Pays-Bas navigue exclusivement sur le Danube et que la Société qui est propriétaire de ce bâtiment ait sa succursale principale à Vienne. Si l'on appliquait à ce cas l'article 4, le Gouvernement autrichien pourrait exiger que ce bateau fût inscrit sur les registres autrichiens, puisque, depuis un certain temps déjà, il naviguerait sur le Danube, que des intérêts autrichiens y seraient impliqués, et même, que son équipage serait autrichien, mais il pourrait, avec le consentement du Gouvernement autrichien, continuer à battre le pavillon néerlandais. Toutefois, il se pourrait également que le bateau continuât à rester néerlandais puisque le Gouvernement néerlandais s'opposerait éventuellement à ce qu'il fût immatriculé en Autriche, en raison du fait même qu'il est déjà immatriculé aux Pays-Bas. Dans ce cas, le Gouvernement autrichien pourrait éventuellement lui permettre de battre le pavillon autrichien. Dans cette hypothèse, se produirait donc non seulement un conflit de lois, mais encore un conflit entre deux conventions.

Le PRÉSIDENT répond que le cas exposé est purement théorique puisqu'en se basant sur le projet de convention relatif à la nationalité, aucun État n'admettrait qu'un bateau battant son pavillon soit soumis à une autre législation que sa législation nationale. Il ne semble pas, en effet, qu'il existe des États qui, tout en étant désireux de signer le présent projet de convention, puissent admettre qu'un bateau ait un double état civil.

M. RICHTER tient à proposer une motion d'ordre. Étant donné qu'il ne croit pas avoir saisi le sens exact de la déclaration faite par M. Ripert, il demande à celui-ci de bien vouloir la faire distribuer de manière qu'il y ait une définition exacte du concept de la nationalité des bateaux. A cet égard, M. Richter envisage particulièrement la question des effets qu'aurait cette nationalité sur les rapports entre les États signataires et non signataires de la future Convention.

M. RIPERT (France) répond qu'il n'a formulé aucune déclaration solennelle et qu'il s'est gardé de préciser quelles conséquences on doit tirer de la nationalité des navires, puisqu'à vrai dire, il ignore, en dernière analyse, quelle est la nature exacte de ces effets. Il estime en tout cas qu'il n'existe aucun rapport immédiat entre la notion de l'immatriculation d'un bateau et de ses conséquences et la notion de la nationalité du bateau et de ses conséquences. Pratiquement, on peut affirmer seulement que les États n'acceptent de conférer leur nationalité qu'aux bateaux immatriculés sur leur territoire.

M. RICHTER précise sa pensée en formulant l'hypothèse suivante : un bateau peut remplir les conditions d'immatriculation requises dans un État A et les conditions requises pour être nationalisé dans un État B. Quelle sera, dans ce cas, la Convention qui primera ?

M. RIPERT (France) répond que si le bateau ne se fait pas immatriculer dans l'État B, il ne pourra pas non plus y être nationalisé, puisque la Convention sur l'immatriculation produira ses effets. Si un bateau français va se faire immatriculer en Allemagne, le Gouvernement français ne le considérera plus comme bateau français.

Le PRÉSIDENT en conclut que dans le cas visé par M. Richter, aucun conflit entre les deux conventions ne peut se produire, car l'objet des deux conventions est différent.

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## DEUXIÈME SEANCE

*Tenue le samedi 29 novembre 1930, à 10 h. 30.*

*Président: M. ROSSETTI (Italie).*

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### PROJET DE CONVENTION SUR LES MESURES ADMINISTRATIVES PROPRES A ATTESTER LA NATIONALITÉ DES BATEAUX DE NAVIGATION INTÉRIEURE.

#### IV. Première lecture du projet de convention (suite).

Le PRÉSIDENT rappelle que la Commission en était restée à la discussion de l'article 4, et qu'un certain nombre de délégations avaient proposé la suppression de cet article. Depuis lors, des conversations privées ont eu lieu, et la Commission doit être en mesure, aujourd'hui, de se prononcer à cet égard.

*Article 4 (suite).*

M. SULKOWSKI (Pologne) se déclare pour le maintien de l'article 4. D'autre part, il n'y aurait pas non plus d'inconvénient à supprimer cet article, puisque les conflits de lois qui pourraient naître au sujet de la nationalité sont déjà tranchés par la Convention en matière d'immatriculation, à condition, toutefois, que dans ce cas, il reste entendu que les États signataires de la Convention sur la nationalité signent également la Convention relative à l'immatriculation.

Le PRÉSIDENT estime que la majorité des délégués est d'avis que les deux conventions doivent rester indépendantes. D'autre part, si les quatre principes sur lesquels est fondée la Convention sur la nationalité sont admis, la possibilité de conflits de lois disparaît.

M. CONTZESCO (Roumanie) déclare que la délégation roumaine est pour la suppression de l'article 4, et cela d'autant plus qu'il est contraire à la législation roumaine en la matière.

M. SULKOWSKI (Pologne) est d'avis que si l'on supprime l'article 4, il faudrait stipuler alors que la nationalité d'un bateau est déterminée par l'immatriculation.

Le PRÉSIDENT fait remarquer que pareille stipulation serait incompatible avec les termes de l'article 2 qui dit que « sous réserve des dispositions de la présente Convention, les États contractants conservent le droit de fixer dans leur législation les conditions d'acquisition et de perte de nationalité des bateaux ».

M. MÜLLER (Tchécoslovaquie) considère que l'article 4 est indispensable, étant donné que malgré les quatre principes sur lesquels repose la Convention, des conflits de lois peuvent survenir précisément du fait que l'article 2, comme vient de le dire le président, confère aux États la faculté de fixer tout à fait librement dans leurs législations nationales les conditions d'acquisition de la nationalité des bateaux. La délégation tchécoslovaque est donc pour le maintien de la disposition de l'article 4.

Le PRÉSIDENT estime qu'il y a là un point à éclaircir une fois pour toutes. La nationalité, à son avis, n'est pas une qualité qu'on impose à un bateau : on l'accorde plutôt après s'être assuré que le bateau remplit les conditions nécessaires à son acquisition. Il ne voit pas comment des conflits de lois peuvent se produire sur ce point : en effet, même dans le cas où un bateau remplirait les conditions nécessaires à l'acquisition de la nationalité de plusieurs pays à la fois, il suffit que ce bateau demande à acquérir la nationalité d'un seul de ces pays pour qu'automatiquement, il lui soit impossible d'acquérir celle d'un autre.

M. SULKOWSKI (Pologne) n'est pas convaincu par l'argumentation du président. Du moment qu'aux termes de l'article 2, chaque État est libre de fixer les conditions de l'acquisition de la nationalité des bateaux, il peut exiger que les bateaux qui remplissent ces conditions soient inscrits sur ses registres, d'où possibilité de conflit au cas où plusieurs pays exigent d'un bateau qu'il figure sur leurs registres. Il est donc nécessaire de stipuler que les conflits de ce genre seront réglés conformément aux dispositions de la Convention en matière d'immatriculation.

M. RIPERT (France) dit que si les conditions qu'un bateau doit remplir pour acquérir la nationalité d'un pays sont fixées par les législations nationales, il est évidemment possible que des conflits de lois se produisent, car certains bateaux peuvent réunir les conditions nécessaires à l'acquisition de plusieurs nationalités à la fois. Cependant, s'il est vrai que dans ce cas, un bateau peut avoir le choix entre plusieurs nationalités, il n'en reste pas moins qu'il n'en peut acquérir qu'une seule, et afin de faire disparaître toute appréhension sur ce point, l'article 4 pourrait être complété par une disposition disant que si un bateau remplit simultanément les conditions d'acquisition de plusieurs nationalités, il est entendu qu'il ne peut en avoir qu'une seule : celle du pays d'immatriculation ; il est en effet inadmissible qu'un bateau ait une nationalité autre que celle du pays sur les registres duquel il est immatriculé.

Le PRÉSIDENT voit une difficulté à accepter la proposition de M. Ripert : pour qu'un bateau acquière la nationalité du pays d'immatriculation, il faut encore qu'il remplisse les conditions prévues par la législation de ce pays.

M. SOUBOTITCH (Yougoslavie) déclare que la délégation yougoslave estime impossible la suppression pure et simple de l'article 4. Toutefois, la proposition que M. Ripert vient de faire fournit un critère très sûr aux fins de l'application de l'article 4.

M. SITENSKY (Tchécoslovaquie) pense, contrairement à l'opinion du Président, que des conflits de lois peuvent naître du fait que les États peuvent, dans certaines conditions, obliger les bateaux à acquérir leur nationalité en exigeant leur inscription sur les registres de nationalité. En ce qui concerne la solution indiquée par M. Ripert, M. Sitenisky est parfaitement d'accord sur le point qu'il ne faut pas qu'un bateau ait une nationalité autre que celle du pays d'immatriculation. Toutefois, vu que les deux conventions que doit élaborer la Conférence sont destinées à demeurer indépendantes, il serait préférable de ne pas parler d'immatriculation dans la Convention sur la nationalité. On pourrait atteindre le même but si l'on reproduisait, dans cette Convention, les termes exacts de l'article 3 de la Convention relative à l'immatriculation, tel qu'il sera établi définitivement.

M. CONTZESCO (Roumanie) se déclare d'accord sur cette proposition.

*La Commission décide en principe d'introduire à la place du texte actuel de l'article 4, le texte qui sera établi par la deuxième Commission pour l'article 3 de la Convention sur certaines matières de droit fluvial.*

*Article 5.*

*Cet article est adopté.*

*Article 6.*

Le PRÉSIDENT constate que personne ne désire faire des observations. Il est entendu que la rédaction de l'article devra être revue afin de ne pas donner l'impression que l'on impose aux bateaux l'obligation d'arborer un pavillon, et que le Comité de rédaction tiendra compte de la proposition yougoslave visant la substitution des mots « manifesteront leur nationalité ».

*Article 7.*

M. SULKOWSKI (Pologne) propose de renvoyer la discussion de cet article jusqu'au moment où la deuxième Commission aura arrêté les termes de l'article 37 de la Convention sur certaines matières de droit fluvial.

Le PRÉSIDENT constate que la Commission accepte cette proposition.

*Protocole de clôture.*

*Clause I.*

Le PRÉSIDENT constate que la Commission est d'accord pour supprimer le membre de phrase suivant : « ... telles que la Convention de Genève du 8 novembre 1927. »

M. SOUBOTITCH (Yougoslavie) attire l'attention de la Commission sur le passage suivant de la clause I :

« ... la question des échanges commerciaux d'ordre international auxquels les bateaux donnent lieu, question qui demeure réservée aux traités de commerce et aux conventions générales économiques. »

Il n'est pas exact que la question des échanges commerciaux ne puisse être réglée que par les traités de commerce et les conventions générales économiques. Certaines décisions de droit interne peuvent également s'appliquer à cette question.

Le PRÉSIDENT répond qu'il est clair qu'un État peut régler, selon sa propre législation, la question du changement de nationalité de ses bateaux, mais on ne doit pas moins faire une réserve visant le droit d'autrui, et c'est pour cela que le Protocole de clôture cite les traités de commerce et les conventions générales.

M. SOUBOTITCH (Yougoslavie) estime que l'énumération « traités de commerce et conventions générales » ne peut être que limitative ou indicative. Dans le premier cas, elle est incomplète, dans le second, elle est inutile.

A défaut de traité de commerce ou de convention générale, ce sont les législations nationales qui s'appliquent.

Le PRÉSIDENT ne peut pas admettre, pour sa part, que les législations nationales règlent des échanges d'ordre international. A défaut de conventions et de traités, on doit considérer que ces échanges ne sont pas réglés.

M. SOUBOTITCH (Yougoslavie) fait observer qu'en cette matière, une règle de droit international stipule qu'à défaut de traité ou de convention, c'est la législation nationale qui règle les rapports entre nations.

Le PRÉSIDENT est parfaitement d'accord sur ce point, mais il fait remarquer que c'est le droit conventionnel que discute la Commission en ce moment.

M. WINIARSKI, président du Comité de droit fluvial, propose l'insertion du mot « notamment » après le mot « réservée ».

*Cette proposition est adoptée.*

*Clause II.*

La discussion de la clause II est ajournée jusqu'au moment où les termes de la clause correspondante de la Convention sur certaines matières de droit fluvial auront été arrêtés.

Le PRÉSIDENT ouvre la discussion sur la proposition formulée par la délégation yougoslave au cours de la séance précédente, qui consiste à remplacer le mot « nationalité » par un terme qui serait plus acceptable pour cette délégation.

M. HOHL (Suisse) déclare que la délégation suisse persiste à croire que la Convention ne répond pas à une nécessité pratique. Elle est d'avis que cette Convention est plutôt de nature à faire naître une certaine confusion. Ainsi que l'ont prouvé les discussions ayant eu lieu au cours de cette Conférence, les avis des délégations diffèrent sensiblement sur ce qu'il faut entendre par le terme de « nationalité des bateaux ». Ce qu'il importait plutôt de trouver, de l'avis, du moins, de la délégation suisse, c'était un critère pour la détermination de la législation nationale devant s'appliquer dans certaines circonstances à tel ou tel bateau ; or, il a été trouvé dans l'immatriculation. Si, toutefois, la Commission tient à maintenir le texte qu'elle a élaboré, la délégation suisse se rallierait à la proposition yougoslave de remplacer l'expression « nationalité » par une autre telle que par exemple, « le statut juridique », étant bien entendu que ce statut serait déterminé par l'immatriculation.

M. RIPERT (France) n'a pas l'impression, pour sa part, que les discussions précédentes aient fait ressortir une telle confusion sur la notion de la « nationalité ». Il se souvient fort bien, au contraire, que la délégation suisse, au cours d'un débat relatif à la navigation sur les lacs intérieurs, a parlé de bateaux suisses et de bateaux étrangers. Par conséquent, il existe, même en Suisse, une certaine conception de la « nationalité ». Au surplus, il ne croit pas que les bateaux suisses et les bateaux étrangers soient confondus dans les statistiques suisses de navigation. On peut différer d'avis sur les effets qui s'attachent à la nationalité, mais le fait qu'une nationalité existe doit être reconnu. Et ne parle-t-on pas, en Suisse aussi, de bateaux suisses battant pavillon suisse, alors que personne ne s'aviserait de parler de la nationalité d'une automobile, par exemple ? C'est qu'il existe une différence essentielle entre les instruments de transport tels que les bateaux, les avions, les aéronefs, et les autres objets mobiliers. Si, en dehors de l'expression de « nationalité » il en existait une qui pût rendre l'idée que l'on a en vue, M. Ripert l'adopterait volontiers, mais il faut reconnaître que celle de « statut juridique » ne veut rien dire. Il s'agit de trouver un terme qui exprime le lien existant entre l'objet dont on s'occupe et le pays auquel il ressortit. Pour les personnes ce terme existe, c'est celui de « nationalité », mais on ne possède rien de pareil pour les choses. Du reste, au cours des Conférences précédentes, les délégués suisses et les délégués allemands ont eux-mêmes admis l'expression de « nationalité » lorsqu'il s'est agi d'aéronefs, faute de pouvoir en trouver une autre. Pourquoi donc n'admettraient-ils pas ce même terme en ce qui concerne les bateaux de navigation intérieure ?

Le PRÉSIDENT ajoute qu'il est inexact que personne ne sache ce que signifie l'expression de « nationalité ». La grande majorité des délégués, au contraire, le sait fort bien, et, pour ceux-ci, il n'y a de divergence de vues que sur les effets qui s'attachent à la « nationalité ».

L'emploi de l'expression « statut juridique », loin d'éclaircir la question, embrouillerait singulièrement les choses ; on ne sait pas au juste ce qu'elle signifie, et elle pourrait s'appliquer aussi bien à la question de l'immatriculation et de la propriété qu'à celle de la nationalité, ce qui ne serait pas sans engendrer des confusions fort regrettables.

M. SITENSKY (Tchécoslovaquie) est également opposé à l'adoption de la proposition formulée par la délégation suisse. En effet, le « statut juridique » semble plutôt désigner la loi applicable à un bateau, et, comme un même bateau n'est pas soumis à une même loi sous tous les rapports, il y aurait des inconvénients à employer cette expression. Ce qu'il s'agit de rendre possible, c'est l'administration de la preuve de la « nationalité » du bateau dans les cas où l'application d'une certaine législation ou de certains droits dépend de sa « nationalité » d'après les lois ou conventions en vigueur. Et, comme c'est le terme « nationalité » ou « pavillon » qui est employé dans les lois ou conventions en question, on ne pourrait pas employer un autre terme dans la Convention sur la nationalité.

M. SOUBOTITCH (Yougoslavie) dit que les débats qui viennent d'avoir lieu ont suffisamment prouvé que tous les membres de la Commission sont d'accord sur l'existence d'un lien spécial entre le bateau et l'État auquel il ressortit. Ce lien peut d'ailleurs varier selon les cas. Restent les effets qui s'y attachent ; or, ces effets sont en dehors de la Convention qui fait l'objet de la présente discussion.

Quant à la dénomination du lien en question, la délégation yougoslave a le désir d'écartier l'expression de « nationalité », et cela parce qu'elle ne voudrait pas qu'une confusion s'établisse entre deux notions. En fait, si l'on parle de la « nationalité » d'un bateau, certaines comparaisons avec la nationalité d'un territoire peuvent s'imposer. Or, le cas d'un territoire et celui d'un bateau, au point de vue des liens qui les rattachent aux pays dont ils ressortissent sont tout à fait différents.

Le délégué yougoslave n'approuverait d'ailleurs pas l'adoption de l'expression « statut juridique ». « Statut juridique » désigne plutôt la position juridique d'un objet dans tel ou tel système de droit. Il ne s'applique pas seulement aux liens qui rattachent un objet à un État, mais a trait encore à d'autres rapports en matière mobilière, hypothécaire, etc. Il faut donc trouver un terme plus spécifique.

M. CONTZESCO (Roumanie) rappelle qu'il est dit à l'article 6 que « les bateaux manifesteront leur nationalité par le port du pavillon national... » Ne pourrait-on pas précisément examiner la possibilité de remplacer la notion de la nationalité par celle du pavillon national ?

Le PRÉSIDENT fait observer qu'il n'y a pas de différence matérielle entre les deux notions dont a parlé M. Contzesco. D'autre part, il y aurait de graves inconvénients à employer dans la Convention sur la nationalité des expressions différentes de celles dont on s'est servi pour désigner les mêmes conceptions dans d'autres conventions élaborées par d'autres Conférences. Il ne faut pas



se dissimuler, en outre, qu'il y a une très grande similitude entre le droit fluvial et le droit aérien et que si, dans la Convention relative à la première matière, on se servait d'une expression différente de celle qui a été choisie pour la seconde, on pourrait faire croire que le lien juridique que l'on a voulu désigner dans l'un et dans l'autre cas ne soit pas le même.

M. RIPERT (France) souligne le fait que l'expression « droit au pavillon » ou toute expression analogue aggraverait le danger que le délégué yougoslave a voulu éviter, à savoir qu'on ne tire des conséquences politiques de la conception introduite dans la Convention. En effet, dans un pays quelconque, les questions de pavillon étranger revêtent toujours un caractère plus grave que les simples questions de nationalité. Afin de donner tous apaisements à la délégation yougoslave, on pourrait dire dans le Protocole que cette Convention ne prétend d'aucune façon régler les effets de la « nationalité ».

M. MÜLLER (Tchécoslovaquie) dit que, s'il comprend bien le point de vue de la délégation yougoslave, cette dernière redoute surtout que le privilège d'exterritorialité ne soit, dans certains cas, conféré à des bateaux de navigation fluviale. Il est regrettable qu'il n'existe pas dans le vocabulaire juridique français un mot qui puisse désigner exactement le lien que l'on a en vue. Quant au verbe, on emploie bien les expressions : le bateau ressortit à un État, il en relève ou il lui appartient, mais pour désigner ce rapport, le substantif manque.

M. SOUBOTITCH (Yougoslavie), répondant à la dernière intervention du Président, estime que si l'on s'est servi de l'expression de « nationalité » dans la Convention relative aux aéronefs, il serait tout aussi pratique de la faire disparaître de ladite Convention que de l'imposer dans la Convention sur la nationalité. Il propose donc que la Commission qui s'occupe des aéronefs change le terme de « nationalité » qu'elle avait choisi.

Au surplus, l'insertion au Protocole, proposée par M. Ripert, ne donne pas satisfaction à la délégation yougoslave. A lire la Convention, on se rend parfaitement compte qu'elle ne définit pas la notion de la « nationalité », non plus qu'elle ne précise les effets de ce lien. La délégation yougoslave ne craint pas que l'on puisse tirer certaines conséquences de la notion de la « nationalité » ; ce qu'elle redoute, c'est l'emploi de ce terme, comme tel. Pourquoi ne lui substituerait-on pas une autre expression que l'on définirait de la sorte : « lien juridique qui rattache le bateau au pays auquel il ressortit » ?

M. RIPERT (France) fait remarquer qu'il n'y a pas de mot qui puisse s'appliquer spécifiquement à ce lien et qu'il est impossible à la Commission, qui est composée de juristes et non de grammairiens, d'en inventer un qui soit compréhensible pour tout le monde.

M. SOUBOTITCH (Yougoslavie) propose, dans ces conditions, que l'on dise, dans le Protocole de clôture, que la notion de la « nationalité » ne doit pas être interprétée dans le sens d'une assimilation du bateau à un territoire.

Le PRÉSIDENT fait observer que ce serait entrer alors dans le fond de la question. Pour ne citer qu'un seul exemple, les lois sociales d'un pays devraient bien suivre les bateaux de ce pays, quelles que soient les eaux dans lesquelles ils naviguent, sans quoi il n'y aurait plus de navigation internationale possible.

Il retient, toutefois, le fait que M. Soubotitch se contenterait d'une insertion au Protocole.

M. RIPERT (France) propose, pour cette insertion, le texte suivant :

« Il est entendu que l'expression de « nationalité » est employée dans la présente Convention pour désigner le rapport juridique qui existe entre le bateau et l'État auquel il ressortit et ne préjuge pas des effets qui sont attachés à la nationalité du bateau. »

Le PRÉSIDENT déclare qu'il se rallie, quoique sans enthousiasme, à cette solution.

M. SOUBOTITCH (Yougoslavie) déclare que la délégation yougoslave a reçu des instructions qui lui enjoignent formellement de demander le remplacement de l'expression « nationalité » par une autre. Tout ce qu'il peut promettre à la Conférence, c'est d'expliquer au Gouvernement de Belgrade le sens des discussions qui ont eu lieu ici et de s'efforcer d'apaiser ses scrupules juridiques.

Le PRÉSIDENT ajoute que la délégation yougoslave peut en tout cas constater que les membres de la Conférence ont cherché à lui donner satisfaction dans toute la mesure du possible.

M. CONTZESCO (Roumanie) fait savoir qu'il est chargé de demander la substitution de l'expression « droit d'arborer le pavillon » à celle de « nationalité », étant donné que c'est la première de ces notions qui est consacrée par la loi roumaine. Il pourrait, toutefois, se rallier à la suggestion de M. Ripert si, au lieu de dire tout simplement « auquel il ressortit », l'on ajoutait aussi l'expression « et dont il bat le pavillon ».

M. HOHL (Suisse) répondant à une précédente intervention de M. Ripert, fait savoir que lorsqu'un délégué suisse a parlé de « bateaux suisses », il a voulu désigner par là un bateau dont le pays d'immatriculation était la Suisse. Pour la délégation suisse, le critère réside dans l'immatriculation et non dans la nationalité. D'autre part, si M. Hohl est bien informé, la délégation suisse s'est toujours efforcée, au cours des discussions relatives aux dispositions applicables aux aéronefs, d'écarter la notion de la « nationalité ».

M. RIPERT (France) en convient d'autant plus que la Suisse n'a pas signé la Convention de 1919.

*La Commission décide d'insérer, à titre de clause I du protocole, le texte suivant :*

« Il est entendu que l'expression de « nationalité » est employée dans la présente Convention pour désigner le rapport juridique qui existe entre le bateau et l'État dont il bat le pavillon et ne préjuge pas des effets qui sont attachés à la nationalité du bateau. »

*L'ancienne clause I du Protocole devient la clause II.*

*La clause II du protocole devient la clause III.*

Le PRÉSIDENT expose que les seuls articles de la Convention qui restent à examiner sont l'article 4 et l'article 7 que la Commission discutera lorsqu'elle connaîtra le texte des articles 3 et 37 respectivement, de la Convention sur certaines matières de droit fluvial. Le préambule subsiste sans modification.

*L'ensemble du projet de convention, à l'exception des articles 4 et 7, est adopté en première lecture (voir annexe 1, page 91).*

### TROISIÈME SÉANCE

*Tenue le samedi 6 décembre 1930, à 18 h. 30.*

*Président: M. ROSSETTI (Italie).*

#### PROJET DE CONVENTION SUR LES MESURES ADMINISTRATIVES PROPRES A ATTESTER LA NATIONALITÉ DES BATEAUX DE NAVIGATION INTÉRIEURE.

##### V. Deuxième lecture du projet de Convention.

Le PRÉSIDENT explique que pour faire droit à certaines objections qui avaient été soulevées, il a rédigé un nouveau texte de projet de Convention dans lequel le mot « nationalité » est remplacé par les mots « droit au pavillon ». Il demande si la Commission est d'accord pour délibérer sur ce texte (voir annexe 2, page 92) à la place de celui qu'elle avait adopté en première lecture (voir annexe 1, page 91).

*La Commission accepte cette proposition.*

Sur la proposition de M. SOUBOTITCH (Yougoslavie), il est décidé que lecture sera donnée du texte du nouveau projet.

En conséquence, le PRÉSIDENT procède à cette lecture.

Commentant l'article 4, il fait remarquer que cet article constitue la reproduction exacte du texte qui a déjà été adopté par la deuxième Commission pour être inséré dans la Convention sur l'immatriculation des bateaux.

M. SUŁKOWSKI (Pologne) fait observer d'une manière générale qu'il regrette de ne pas être en mesure de définir son attitude à l'égard d'un texte qui ne vient d'être distribué qu'immédiatement avant l'ouverture de la séance. Il déclare admettre l'expression « nationalité des bateaux », qui est connue également de la législation polonaise. En ce qui concerne la modification proposée, il lui est impossible, pour le moment, d'apprécier sa portée exacte.

Le PRÉSIDENT donne acte à M. Sulkowski de sa déclaration.

##### *Article premier.*

M. SOUBOTITCH (Yougoslavie) estime qu'il convient de modifier cet article de la manière suivante : « Un bateau de navigation intérieure ne peut avoir droit qu'à un seul pavillon national », afin d'éviter que ce membre de phrase puisse être interprété comme signifiant que le bateau n'aurait pas droit à un pavillon international.

M. RIPERT (France) se rallie à cette suggestion, étant entendu que, dans le projet de Convention actuel, l'expression « pavillon national » ne vise pas nécessairement le pavillon officiel ; il s'agit en l'espèce du pavillon de la marine marchande qui est un pavillon national, mais peut être différent du pavillon officiel. Le pavillon national dont il s'agit ici peut être différent du pavillon officiel.

*L'article premier est adopté avec la modification proposée par la délégation yougoslave.*

*Article 2.*

*Cet article est adopté sans modification.*

*Article 3.*

M. CONTZESCO (Roumanie) tient à préciser que, par registre mentionné dans l'article 3, on doit entendre n'importe quel registre spécial désigné pour servir à faire la preuve du droit d'un bateau au pavillon national.

Le PRÉSIDENT donne acte à M. Contzesco de son interprétation à laquelle la Commission se rallie.

*L'article est adopté sans modification.*

*Articles 4, 5 et 6.*

*Ces articles sont adoptés sans modification.*

*Protocole de clôture.*

*Chiffre I.*

Le PRÉSIDENT fait remarquer que le texte de ce paragraphe est identique à celui du projet de Convention sur certaines matières de droit fluvial, avec cette différence, toutefois, que, dans ce texte, le mot « immatriculation » remplace le mot « pavillon ».

*Chiffre II.*

M. SITENSKY (Tchécoslovaquie) propose de rédiger comme suit ce paragraphe : « En ce qui concerne les sociétés de capitaux, leur nationalité est déterminée par le siège social. »

M. CENTNER (Sarre) déclare que, en ce qui concerne le Territoire de la Sarre, la notion de la nationalité doit être entendue comme signifiant « qualité de ressortissant sarrois ».

Le PRÉSIDENT donne acte à M. Centner de cette interprétation.

*Le Protocole de clôture est adopté avec la modification proposée par M. Sitensky.*

**VI. Discussion générale.**

M. HOHL (Suisse) déclare que la délégation suisse se voit dans l'obligation de maintenir, à l'égard du nouveau projet de Convention, les objections faites contre le projet antérieur, bien que le terme de « nationalité » ait été éliminé. Il estime en effet que ce changement de locution n'affecte guère le fond même du texte. Pour ces motifs, la délégation suisse s'abstiendra de voter sur l'ensemble du nouveau projet.

Le PRÉSIDENT donne acte à M. Hohl de sa déclaration. Toutefois, il tient à exposer qu'en réalité les deux projets de Convention diffèrent, et que si l'on adopte le nouveau texte, les craintes émises par certains délégués au sujet des conséquences de l'emploi du terme « nationalité » n'auront plus de raison d'être.

M. CONTZESCO (Roumanie) rappelle que, en ce qui concerne l'article 4 du nouveau projet de Convention, la délégation roumaine formule la même réserve que celle qu'elle a exprimée à l'égard du projet de Convention sur certaines matières de droit fluvial.

M. RIPERT (France) déclare que la délégation française est disposée à voter l'ensemble du nouveau projet, mais qu'il tient à préciser qu'en réalité les rédacteurs de ce texte ont réduit volontairement la portée de la Convention. La notion du pavillon étant admise d'une manière générale, M. Ripert ne peut s'expliquer pourquoi certains délégués formulent des objections contre le nouveau projet. La modification apportée au texte primitif ne constitue nullement un subterfuge destiné à faire accepter l'ancien texte grâce à un simple changement de mot. Les auteurs de la nouvelle rédaction ont volontairement renoncé à l'emploi de l'expression : « nationalité des bateaux », qui impliquait certaines conséquences juridiques. Animés du désir de faciliter à toutes les délégations la signature d'une Convention internationale qui présente un intérêt certain, ils ont consenti à abandonner ces conséquences, sous réserve, toutefois, de leur opinions personnelles au sujet de la notion de la nationalité. Ainsi, bien qu'il s'agisse d'un simple changement de mot, la rédaction du nouveau projet témoigne d'un effort considérable pour parvenir à une solution transactionnelle.

Le PRÉSIDENT se rallie aux idées exprimées par M. Ripert. Il ajoute qu'il espère que les diverses délégations tiendront compte de l'effort considérable accompli en vue de réaliser une entente générale.

### VII. Adoption de la Convention.

Le PRÉSIDENT met ensuite aux voix le projet de Convention. Ce vote, par appel nominal, donne les résultats suivants :

Allemagne . . . . .	abstention.
Autriche . . . . .	abstention.
Belgique . . . . .	oui.
Dantzig . . . . .	abstention.
France . . . . .	oui.
Grèce . . . . .	oui.
Hongrie . . . . .	oui.
Italie . . . . .	oui.
Pays-Bas . . . . .	abstention.
Pologne . . . . .	oui.
Portugal . . . . .	oui.
Roumanie . . . . .	oui (avec la réserve précédemment indiquée).
Suisse . . . . .	abstention.
Tchécoslovaquie . . . . .	oui.
Yougoslavie . . . . .	oui.

*L'ensemble du projet de Convention sur le droit au pavillon des bateaux est adopté par la Commission à la majorité de 10 voix avec 5 abstentions (voir document Conf./U.D.F./59).*

### VIII. Complément au Protocole de clôture.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE désire donner à la Commission quelques précisions au sujet d'un texte qui a été distribué et pourrait être inséré dans le Protocole de clôture (voir annexe 3, page 93). Ce document, de caractère protocolaire, a été inspiré par l'idée que, en ce qui concerne l'application de la Convention, il y a lieu de tenir compte à la fois des préoccupations de divers États intéressés et des progrès généraux réalisés dans le domaine de la navigation intérieure. Il convient également de donner la possibilité à certains États d'adhérer à la présente Convention en restreignant, pendant un certain temps, ses effets à un réseau fluvial déterminé. Ainsi, le texte en question vise essentiellement à faciliter des signatures et des adhésions ultérieures. Il est basé sur le principe que si un État déclare que la Convention sur le droit au pavillon n'aura d'effet sur son territoire qu'en ce qui concerne un réseau fluvial déterminé, on ne saurait équitablement admettre que cet État puisse se prévaloir des dispositions de la Convention, en ce qui concerne l'ensemble des territoires des autres États contractants.

Le PRÉSIDENT estime que le texte proposé constitue une manière ingénieuse de permettre à un certain nombre d'États d'adhérer à la Convention en limitant tout d'abord le champ d'application de celle-ci à un réseau fluvial déterminé.

M. SOUBOTITCH (Yougoslavie) demande au Secrétaire général de la Conférence de bien vouloir fournir des précisions supplémentaires.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE cite à cet égard un exemple pratique qu'il expose à titre de démonstration : en admettant l'existence de deux fleuves 1 et 2, et de trois États A, B et C ; B et C étant des États parties à la Convention, l'État A aurait la faculté de restreindre le champ d'application de la Convention au fleuve 1 seulement. Dans ce cas, l'État A ne pourra se prévaloir des bénéfices de la Convention à l'égard des pays B et C en ce qui concerne la portion du fleuve 2 qui traverse le territoire de B et C. Il ne pourra s'en prévaloir qu'en ce qui concerne la navigation sur le fleuve 1.

M. RIPERT (France) estime que la réserve formulée dans le texte en question n'offre d'intérêt que pour les délégations qui se sont abstenues de voter la Convention. Il semble donc qu'il conviendrait tout d'abord de connaître quelle est leur opinion au sujet de cette réserve.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE déclare qu'à première vue il avait estimé que la question primordiale était de savoir si les États parties à la Convention croient qu'il soit possible d'introduire dans celle-ci la réserve en question.

M. RIPERT (France) fait remarquer que les États adhérents ne peuvent obliger les autres à accepter cette réserve. Il semble donc opportun de ne voter le texte en question que s'il présente de l'intérêt pour un certain nombre d'États.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE répond que pour les États non parties à la Convention, tout se passera comme si le texte n'avait pas existé, mais que si les États adhérents estiment que le texte n'est pas nuisible, il est possible qu'il puisse devenir utile à un certain moment.

Le PRÉSIDENT estime également que le texte ne nuit nullement aux États qui ont adhéré à la Convention, et qu'il est susceptible de faciliter l'adhésion aux États qui hésiteraient à s'y rallier sans réserve. Il estime opportun de procéder à un vote.

M. SITENSKY (Tchécoslovaquie) déclare également que, précisément parce qu'on peut espérer que le texte en question facilitera d'autres adhésions à la Convention, il est opportun de l'adopter.

M. CONTZESCO (Roumanie) estime également que la formule proposée ne saurait diminuer les droits des diverses délégations. Il peut arriver, en effet, que des États qui viennent d'adhérer à la Convention soient désireux de limiter l'application de celle-ci à un réseau fluvial déterminé. Dans ce cas, la réserve dont il s'agit leur permettrait d'agir en conséquence. Aussi, estime-t-il qu'il convient de voter le texte proposé.

Le PRÉSIDENT croit comprendre qu'étant donné l'absence d'objections, le texte en question est adopté et qu'il devra être introduit dans le Protocole de clôture.

#### IX. Adoption de la Convention avec le Protocole-Annexe.

M. DE DIETRICH DE SACHSENFELS (Hongrie) estime qu'il convient de procéder ensuite à un nouveau vote par appel nominal au sujet de l'ensemble du projet de Convention sur le droit au pavillon, avec la réserve qui vient d'être adoptée et qui sera insérée dans le Protocole-Annexe.

Le vote par appel nominal auquel il est procédé donne les résultats suivants :

Allemagne. . . . .	abstention.
Autriche . . . . .	abstention.
Belgique. . . . .	oui.
Dantzig. . . . .	abstention.
France . . . . .	oui.
Grèce. . . . .	non, contrairement au vote précédent de la délégation hellénique, qui s'était dé- clarée favorable au projet de Convention sans l'ad- dendum.
Hongrie. . . . .	oui.
Italie. . . . .	oui.
Pays-Bas . . . . .	abstention.
Pologne. . . . .	oui.
Portugal . . . . .	oui.
Roumanie. . . . .	oui (la délégation roumaine retire sa réserve, formulée auparavant).
Suisse . . . . .	abstention.
Tchécoslovaquie . . . . .	oui.
Yougoslavie. . . . .	oui.

*L'ensemble de la Convention sur le droit au pavillon, avec le Protocole de clôture ainsi complété, est adopté à la majorité par 9 voix, avec 5 abstentions et un vote contraire (voir document Conf./U.D.F./59).*

Le PRÉSIDENT déclare close la session de la première Commission.

## PREMIÈRE COMMISSION

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### ANNEXE 1.

[Conf./U.D.F./41.]

## PROJET DE CONVENTION SUR LES MESURES ADMINISTRATIVES PROPRES A ATTESTER LA NATIONALITÉ DES BATEAUX DE NAVIGATION INTÉRIEURE

### TEXTE ADOPTÉ EN PREMIÈRE LECTURE PAR LA COMMISSION.

Les Hautes Parties contractantes,  
Désireuses de faciliter l'application de toute stipulation des conventions conclues ou à conclure, ou de tout principe reconnu du droit international, qui ferait dépendre certains droits ou certaines obligations de la nationalité ou du pavillon des bateaux de navigation intérieure,  
Conviennent, à cette fin, des dispositions suivantes :

#### *Article premier.*

Un bateau de navigation intérieure ne peut avoir qu'une nationalité.

#### *Article 2.*

Sous réserve des dispositions de la présente Convention, les États contractants conservent le droit de fixer dans leur législation les conditions d'acquisition et de perte de nationalité des bateaux.

#### *Article 3.*

Tout bateau, pour faire la preuve de sa nationalité, doit être inscrit sur un registre désigné pour servir à cette fin, tenu par l'autorité compétente de l'État dont il relève.

#### *Article 4.*

(Comme à la Convention sur certaines matières de droit fluvial.)

#### *Article 5.*

Lorsqu'un bateau aura été nationalisé, il ne pourra recevoir une nouvelle nationalité avant que la radiation de l'inscription de sa nationalité sur le registre primitif ait été effectuée.

#### *Article 6.*

Les bateaux manifesteront leur nationalité par le port du pavillon national et en justifieront par un document permettant de les identifier et délivré par l'autorité visée à l'article 3.

### PROTOCOLE DE CLÔTURE.

I. Il est entendu que la présente Convention n'a pas pour effet de mettre obstacle au droit d'un État de s'opposer, en cas d'événements graves, au changement de nationalité des bateaux inscrits sur ses registres, ni, d'une manière générale, de régler la question des échanges commerciaux d'ordre international auxquels les bateaux donnent lieu, question qui demeure réservée notamment aux traités de commerce et aux conventions générales économiques.

#### II. *Ad article A, alinéa 2.*

Il est entendu, pour l'application de l'alinéa 2 de l'article 4, que, en ce qui concerne les sociétés de capitaux, la nationalité est déterminée par le siège social.

ANNEXE 2.

[Conf./U.D.F./45.]

PROJET DE CONVENTION SUR LES MESURES ADMINISTRATIVES  
PROPRES A ATTESTER LE DROIT AU PAVILLON DES BATEAUX  
DE NAVIGATION INTERIEURE

TEXTE RÉDIGÉ PAR LE PRÉSIDENT DE LA PREMIÈRE COMMISSION, ADOPTÉ PAR CETTE COMMISSION  
ET SOUMIS A LA CONFÉRENCE<sup>1</sup>.

Les Hautes Parties contractantes, désireuses de faciliter l'application de toute stipulation des conventions conclues ou à conclure, ou de tout principe reconnu du droit international, qui ferait dépendre certains droits ou certaines obligations du pavillon du bateau de navigation intérieure, conviennent à cette fin des dispositions suivantes :

*Article premier.*

Un bateau de navigation intérieure ne peut avoir droit qu'à un pavillon national.

*Article 2.*

Sous réserve des dispositions de la présente Convention, les États contractants conservent le droit de fixer dans leur législation les conditions d'acquisition et de perte du droit au pavillon.

*Article 3.*

Tout bateau, pour faire la preuve de son droit au pavillon national, doit être inscrit sur un registre désigné pour servir à cette fin, tenu par l'autorité compétente de l'État qui octroie le droit au pavillon.

*Article 4.*

Si le bateau remplit les conditions fixées pour l'octroi du droit au pavillon par la législation de deux ou plusieurs États contractants, il ne peut être inscrit que dans le registre de l'un de ces États. Dans ce cas, le propriétaire a le choix du pays où le bateau sera inscrit. Il conserve ce choix lorsque le bateau déjà inscrit continue ou vient à remplir les conditions fixées pour l'octroi du droit au pavillon par la législation de deux ou plusieurs États contractants.

Chaque État contractant se réserve le droit d'exiger que ses ressortissants inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant en même temps les conditions fixées pour l'octroi du droit au pavillon, par la législation d'un ou plusieurs autres États contractants, s'ils ont sur son territoire leur résidence habituelle ou, dans le cas de sociétés, la direction principale de leurs affaires. En ce qui concerne les bateaux appartenant à des personnes physiques, chaque État contractant se réserve de même le droit d'exiger que ses ressortissants, même s'ils n'ont pas sur son territoire leur résidence habituelle, inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant les conditions fixées pour l'octroi du droit au pavillon, par la législation d'un ou de plusieurs autres États contractants, si ces bateaux sont exclusivement affectés à la navigation dans les eaux dudit État.

*Article 5.*

Lorsqu'un bateau aura été inscrit sur le registre visé à l'article 3, il ne pourra être inscrit sur un autre registre avant que la radiation de son inscription sur le registre primitif ait été effectuée.

*Article 6.*

Les bateaux justifieront du droit de porter le pavillon par un document permettant de les identifier et délivré par l'autorité visée à l'article 3.

PROCOLE DE CLÔTURE.

I. Il est entendu que la présente Convention n'a pas pour effet de mettre obstacle au droit d'un État de s'opposer, en cas d'événements graves, au changement de pavillon des bateaux inscrits sur ses registres, ni, d'une manière générale, de régler la question des échanges commerciaux d'ordre international auxquels les bateaux donnent lieu, question qui demeure réservée notamment aux traités de commerce et aux conventions générales économiques.

II. Ad article A, alinéa 2.

Il est entendu, pour l'application de l'alinéa 2 de l'article 4, que, en ce qui concerne les sociétés de capitaux, la nationalité est déterminée par le siège social.

<sup>1</sup> Ce texte est publié dans la forme dans laquelle il a été soumis à la première Commission. Celle-ci y a apporté quelques légères modifications. Le texte définitif est publié séparément (document Conf./U.D.F./60).

**ANNEXE 3.**

[Conf./U.D.F./46.]

**ADJONCTION AU PROTOCOLE-ANNEXE DE LA CONVENTION SUR LES MESURES  
ADMINISTRATIVES PROPRES A ATTESTER LE DROIT AU PAVILLON DES  
BATEAUX DE NAVIGATION INTÉRIEURE**

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Texte adopté par la Commission et soumis à la Conférence.

.....  
III. Tout État, en signant ou en ratifiant la présente Convention, ou en y adhérant, peut déclarer que cette Convention n'aura d'effets sur son territoire qu'en ce qui concerne les bateaux exclusivement affectés à la navigation sur un réseau fluvial déterminé, étant entendu, dans ce cas, qu'il ne pourra se prévaloir des dispositions de la Convention, dans le territoire des autres États contractants, qu'à l'égard des bateaux portant son pavillon national, affectés à la navigation sur ce réseau.

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## 2. DEUXIÈME COMMISSION

### PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL.

#### PREMIÈRE SÉANCE

*Tenue le mardi 18 novembre 1930, à 10 heures.*

*Président: Le professeur Robert HAAB (Suisse).*

Le PRÉSIDENT remercie ses collègues de lui avoir fait l'honneur de lui confier la présidence de la deuxième Commission.

#### I. Constitution du Comité de rédaction.

Étant donné le grand nombre des membres de la Commission, il propose que celle-ci se borne à discuter les principes généraux du projet de convention et confie la rédaction des textes à un comité restreint qui comprendrait :

M. CHARGUÉRAUD-HARTMANN,  
M. CONTZESCO,  
M. HOSTIE,  
M. MONTAGNA,  
M. RICHTER,  
M. VAN SLOOTEN,  
M. SITENSKY,  
M. SOUBOTITCH,  
M. SUŁKOWSKI.

Le Président prie les membres du Comité de s'entendre sur la date et le lieu de leur réunion. Il invite la Commission à aborder la discussion de l'article 1 du projet de Convention <sup>1</sup>.

#### II. Examen du projet de convention.

M. ROSSETTI (Italie) propose que la Commission procède immédiatement à une discussion générale sur l'ensemble du titre premier de la Convention en tenant compte des conditions d'ordre général qui ont inspiré les amendements présentés par la délégation allemande (voir annexe 1, page 184).

Le PRÉSIDENT demande si la Commission veut entrer en discussion générale ou s'il ne faut pas plutôt passer à l'examen des articles, étant donné que la seule question susceptible de justifier une telle discussion générale doit se trouver lors de la discussion des articles 2 et 3.

M. Richter partage l'avis du Président, et M. Rossetti n'insiste pas sur sa proposition.

#### TITRE PREMIER. — DE L'IMMATRICULATION.

##### *Article premier.*

Le PRÉSIDENT donne lecture de l'article premier du projet de convention, ainsi que des articles 1 et 1 bis de l'amendement présenté par la délégation allemande.

Il fait remarquer que cet amendement écarte dans tous les cas les bateaux de navigation intérieure ayant un déplacement inférieur à 20 tonnes métriques, tandis qu'aux termes du projet, ils sont soumis à la Convention si, conformément à la législation nationale, ils ont été immatriculés.

<sup>1</sup> Voir document C.541.M.195.1929.VIII.

M. RICHTER (Allemagne) signale que l'amendement allemand fait mention des bateaux de moins de 20 tonnes à l'article 10 *bis*.

D'autre part, il explique que la délégation allemande estime préférable que les dragues grues, élévateurs flottants et tous engins et outillage flottants de nature analogue soient soumis à la même réglementation que les bateaux de navigation intérieure.

M. SUŁKOWSKI (Pologne) attire l'attention de la Commission sur le point suivant : dans le projet primitif, les États contractants s'engagent à établir les registres d'immatriculation conformément à leur législation, tandis que l'amendement allemand prévoit, à l'article 3, que l'immatriculation serait faite dans le pays où est situé le port d'attache du bateau.

Il y a là une question de principe qui doit être résolue : les conditions d'immatriculation doivent-elles être uniformisées ou non ?

Le PRÉSIDENT fait observer que ce point devra être examiné lors de la discussion des articles 2 et 3.

M. RIPERT (France) demande à la délégation allemande de préciser pourquoi elle désire la suppression, dans l'article premier, des termes « conformément à leur législation ».

M. RICHTER (Allemagne) déclare ne pas bien comprendre la portée de ces termes. Il lui semble qu'ils visent la tenue des registres. La délégation allemande désire que les États signataires s'engagent à tenir ces registres conformément aux conditions fixées par la Convention.

Le PRÉSIDENT propose de renvoyer l'étude de ce point au Comité de rédaction.

*Il en est ainsi décidé.*

M. RIPERT (France) demande ce qu'il advient, dans l'amendement allemand, des articles 2 et 3 du projet primitif.

M. RICHTER (Allemagne) répond que les questions traitées dans ces articles feraient l'objet d'articles suivants.

La délégation allemande estime préférable que la Convention ne débute pas par une règle générale, mais qu'elle traite les diverses questions une à une. C'est ainsi qu'elle propose certaines modifications dans la rédaction des certificats d'immatriculation et dans les inscriptions que devront porter les bateaux eux-mêmes.

M. ROSSETTI (Italie) est d'accord en principe sur l'amendement allemand qui tend à inclure dans le texte même de la Convention la plupart des clauses qui figurent dans le Protocole de clôture. Cette manière de voir correspond aux instructions qu'il a reçues de son gouvernement.

Le PRÉSIDENT fait observer que les articles premiers du projet primitif et de l'amendement allemand ne présentent pas de divergence de fond. Ils ne diffèrent qu'en ce qui concerne les dragues, grues, etc.

La Commission doit en outre se prononcer sur le principe de l'introduction, dans le corps de la Convention, de certaines clauses figurant au Protocole de clôture du projet primitif. Le Président se déclare d'accord personnellement sur ce principe, et il constate que *la Commission l'accepte à l'unanimité*.

En ce qui concerne la question des dragues, grues, etc., elle sera examinée au cours de la discussion des articles 2 et 3.

M. ROSSETTI (Italie) demande que la Commission se prononce également sur l'article 1 *bis* de l'amendement allemand.

M. RICHTER (Allemagne) explique que cet amendement apporte deux modifications à l'article premier du projet primitif.

1<sup>o</sup> Il supprime le qualificatif « publics » dans les termes « registres publics » et le remplace par l'article 1 *bis* qui règle la publicité de l'immatriculation.

2<sup>o</sup> Il propose que les registres prévus soient intitulés « registres des bateaux ».

M. ROSSETTI (Italie) n'a pas d'objection de fond à présenter sur l'ensemble de l'article premier de l'amendement. Toutefois, il ne voit pas la nécessité d'imposer aux États contractants une appellation conventionnelle pour les registres prévus, et il propose en conséquence que la Commission adopte les articles 1 et 1 *bis* de l'amendement allemand, en supprimant seulement la phrase « seront intitulés registres des bateaux ».

M. RICHTER (Allemagne) estime qu'il y aurait, dans ce cas, des possibilités de confusion, car dans certains pays, tels que la France, des registres spéciaux sont réservés aux hypothèques.

M. ROSSETTI (Italie) se déclare prêt à accepter le terme « registres des bateaux » s'il est entendu qu'il n'est employé que pour les besoins de la présente Convention et qu'il ne préjuge pas la liberté des États d'appeler leurs registres comme ils le désirent.

M. CONTZESCO (Roumanie) se déclare d'accord avec M. Rossetti. Il fait observer que la confusion envisagée par M. Richter est d'ailleurs peu probable, étant donné que les deux sortes de registres sont tenus par des autorités différentes.

Le PRÉSIDENT déclare qu'il en sera ainsi et qu'on peut considérer les articles 1 et 1 bis comme adoptés en principe et les renvoyer au Comité de rédaction.

### Articles 2 et 3.

Le PRÉSIDENT donne lecture des articles 2 et 3 du projet primitif.

Il signale que la Commission est en présence de deux propositions d'amendement :

1<sup>o</sup> Une proposition présentée par la délégation des Pays-Bas (voir annexe 2, page 198) modifiant le texte du quatrième alinéa de l'article 3 du projet.

2<sup>o</sup> L'article 3 de l'amendement allemand (voir annexe 1, page 184).

M. RICHTER (Allemagne) rappelle que les membres du Comité de droit fluvial ont tous été d'accord pour proposer que l'immatriculation des bateaux de navigation intérieure soit obligatoire. Par contre, ils n'ont pu se mettre d'accord sur les conditions de cette immatriculation. Pour les uns, un bateau doit être immatriculé dans le pays où est situé son port d'attache ou le domicile de son propriétaire : c'est là, notamment, le point de vue allemand. Pour les autres, un bateau doit être immatriculé dans le pays dont le propriétaire du bateau est ressortissant : c'est là, notamment, le point de vue français.

Les membres du Comité de droit fluvial ont décidé, en fin de compte, de laisser à chaque État la liberté de fixer comme il l'entend les conditions de l'immatriculation sur ses registres. En cas de conflit, le propriétaire aurait le choix du pays où le bateau serait immatriculé.

Tous sont d'accord pour estimer que la solution adoptée n'est pas idéale, mais M. Richter va plus loin et déclare qu'elle est non seulement mauvaise, mais qu'elle présente certaines impossibilités d'application. Un État pourrait décider, par exemple, que tout propriétaire désirant immatriculer son bateau sur les registres de cet État serait autorisé à le faire. Le cas exceptionnel, envisagé par le projet de Convention, où un bateau remplirait les conditions d'immatriculation fixées par la législation de deux ou plusieurs États contractants, deviendrait alors la règle.

D'autre part, le projet donne au propriétaire, en cas de conflit, le choix du pays où son bateau sera immatriculé. A première vue, cette idée semblait séduisante, notamment pour la délégation allemande qui est guidée par le désir d'écarter les considérations d'ordre politique et d'établir le système qui correspond le mieux aux intérêts des particuliers, plutôt qu'à ceux des États. Cette délégation estimait que le propriétaire ferait toujours un choix raisonnable, mais un examen plus approfondi montre que le droit de choisir ne jouerait souvent qu'en faveur des propriétaires ressortissants des États ayant adopté le principe de la nationalité.

En effet, on peut envisager deux cas de conflit entre les législations allemande et française.

Premier cas : Le port d'attache d'un bateau est en Allemagne, et son propriétaire est un ressortissant français.

Deuxième cas : Le port d'attache est en France, et le propriétaire est un ressortissant allemand.

Dans le premier cas, le bateau remplit les conditions d'immatriculation fixées par la législation des deux pays, et son propriétaire peut choisir.

Dans le deuxième cas, le bateau ne remplit les conditions d'immatriculation ni de l'un ni de l'autre pays, et on refuse au propriétaire non seulement le droit de choisir, mais même le droit de faire immatriculer son bateau.

Ces deux objections principales suffisent, semble-t-il, pour condamner la solution adoptée dans le projet de convention.

La question de l'immatriculation a été examinée très soigneusement au cours des réunions de deux comités préparatoires, et elle a donné lieu à beaucoup de discussions et de malentendus. Cela provient, de l'avis de M. Richter, de ce que les diverses délégations n'envisagent pas la Convention sous le même angle. Pour la délégation allemande, la Convention ne vise que des points de droit privé. D'autres délégations, par contre, veulent y introduire indirectement le principe de nationalité et sauvegarder dans la même Convention, à la fois les intérêts des particuliers et ceux des gouvernements.

Or, M. Richter estime qu'il est indispensable que la Commission s'en tienne exclusivement au point de vue du droit privé ; quant au droit public, la Convention ne devrait comprendre que des dispositions accessoires ayant seulement pour but de faciliter son application. M. Richter insiste sur la nécessité pour la Commission de renoncer à considérer les bateaux de navigation intérieure comme faisant partie de l'ensemble du domaine national.

En somme, il s'agit de mettre les intéressés à même d'obtenir des renseignements sur un bateau déterminé. Il semble pour cela naturel de choisir, pour lieu d'enregistrement, celui du centre d'exploitation, et ceci justifie le principe du port d'attache.

L'amendement de la délégation allemande est une traduction presque littérale de certains articles du droit fluvial allemand. Il permettrait d'éviter toutes difficultés et discussions. Chaque État serait libre, d'ailleurs, d'agir comme il l'entend pour tout ce qui concerne son administration intérieure.

M. SĪTENSKY (Tchécoslovaquie) constate que la délégation allemande propose l'adoption de conditions uniformes régissant l'immatriculation, au lieu du règlement des conflits tel qu'il est prévu par le projet de convention. Or, M. Richter a rappelé lui-même que les membres du Comité de droit fluvial ont adopté la solution indiquée dans le projet, faute d'avoir pu concilier les points de vue de ses différents membres. Comment espère-t-il pouvoir les concilier maintenant ?

Si une autre délégation présentait un amendement inspiré de la législation de son pays et incompatible avec la législation en vigueur en Allemagne, la délégation allemande ne pourrait non plus l'accepter.

D'autre part, M. Sitensky estime que l'argumentation de M. Richter est critiquable et que les exemples cités sont plus théoriques que pratiques. C'est ainsi, par exemple, qu'un propriétaire allemand, s'il le désire, peut toujours faire en sorte que le port d'attache de son bateau soit en Allemagne.

Le projet élaboré par le Comité de droit fluvial est le résultat de longues délibérations et, s'il ne fixe pas une règle uniforme pour l'immatriculation, c'est parce qu'il était impossible d'en faire accepter une par tous. M. Sitensky estime que si la délégation allemande insiste pour défendre son amendement, cette façon de faire serait dangereuse et pourrait compromettre le succès de la Conférence.

M. ROSSETTI (Italie) tient à rendre hommage à l'étude approfondie du projet de Convention faite par la délégation allemande. Il regrette que les objections présentées par celle-ci ne l'aient pas été plus tôt, au cours des travaux préparatoires. Il estime que plusieurs points peuvent être retenus dans l'amendement allemand, qui ne sont pas incompatibles avec le projet primitif.

Mais il désire attirer l'attention de la Commission sur un point capital : un certain nombre d'États ne peuvent abandonner la conception d'après laquelle la batellerie fluviale fait partie de l'ensemble du domaine national. La conception contraire est toute nouvelle, même en Allemagne. C'est ainsi que dans le traité classique du professeur Mittelstein sur le « Binnenschiffahrtsrecht », la question est traitée du point de vue de l'intérêt national. D'ailleurs, le point de vue de la majorité actuelle a bien été suivi par l'Allemagne, lorsqu'elle a dû pourvoir à la protection de ses intérêts, comme par exemple dans le Bas-Danube. On doit tenir compte, en tout cas, du fait qu'un certain nombre d'États ne sont pas disposés à se dessaisir des droits et des devoirs qu'ils ont à l'égard de leur batellerie nationale.

Il n'y a pas de doute qu'il ne s'agit point là d'une simple question juridique, mais bien d'une question très complexe dont les conséquences d'ordre politique ne peuvent pas être méconnues.

M. Rossetti ne peut non plus se rallier à l'opinion selon laquelle la Conférence actuelle ne serait appelée à établir qu'une convention de droit privé. Sans s'étendre sur le fait qu'en droit fluvial aussi bien qu'en droit maritime, il est bien difficile de faire un partage exact entre ce qui est du domaine du droit public et ce qui est du ressort du droit privé, il rappelle comment certaines notions de droit public doivent en tout cas se trouver à la base de toute règle de droit privé. On ne concevrait pas, à titre d'exemple, un code civil qui ne commencerait point par une réglementation de la nationalité.

Il répète qu'à son avis, la Commission peut répondre favorablement à certaines des objections faites par la délégation allemande en apportant un certain nombre de modifications au texte du projet, et il donne lecture d'un amendement provisoire rédigé à cette fin.

M. SULKOWSKI (Pologne) souligne qu'en théorie, il serait certes préférable d'établir des règles uniformes régissant l'immatriculation ; vu les expériences du Comité chargé de la préparation des projets de conventions, cette tâche paraît cependant, dans les conditions actuelles, irréalisable.

En ce qui concerne en particulier l'amendement proposé par la délégation allemande, son acceptation serait de nature à empiéter sur le terrain de la politique économique suivie par les États particuliers. A cet égard, on doit se rendre compte que d'après l'amendement allemand, l'immatriculation s'effectuerait sur la base du port d'attache, quelle que soit la nationalité du propriétaire du bateau. Or, un État peut avoir intérêt à refuser l'immatriculation aux étrangers en la réservant à ses nationaux, ce qu'il ne saurait plus prescrire si l'amendement allemand était accepté, cet État se trouvant lié par une telle disposition qu'il ne pourrait plus changer unilatéralement.

M. HOHL (Suisse) déclare que dans l'opinion de la délégation suisse, le but principal de la Convention est de prévoir le règlement des conflits de lois.

La solution indiquée dans le projet est à la fois positive, en ce qu'elle rend l'immatriculation obligatoire, et négative, en ce qu'elle confie aux différents États le soin de fixer les conditions régissant l'immatriculation. La délégation allemande propose maintenant une solution entièrement positive. Or, cette question a déjà été discutée au sein du Comité rhénan ; une nouvelle discussion ferait ressortir les mêmes incompatibilités d'opinions, et on ne pourrait que retomber sur la solution indiquée dans le projet de convention.

M. Richter a cité un exemple de conflit négatif, celui d'un bateau dont le port d'attache serait en France, et dont le propriétaire serait un ressortissant allemand. M. Hohl lui rappelle le quatrième alinéa de l'article 3, dont l'Allemagne pourrait se prévaloir dans ce cas.

La délégation suisse en arrive à conclure que la solution adoptée dans le projet de convention sauvegarde les intérêts de tous les États représentés et qu'elle doit ainsi pouvoir être acceptée par tous.

M. CONTZESCO (Roumanie) craint d'avoir été trop optimiste au cours de la séance plénière de la Conférence qui s'est tenue la veille, en comptant sur une marche satisfaisante des débats et sur

une rapide adoption des projets de convention. Il croyait qu'on n'allait pas toucher d'une façon si profonde aux questions de principe formulées par les experts.

Mais l'amendement allemand apporte de très sensibles modifications au système adopté et diminue grandement les chances d'arriver à un règlement de cette question si importante.

A la demande de M. Contzesco, M. DASCOVICI (Roumanie) fait observer qu'il est nécessaire de tenir compte de la situation spéciale de certains États riverains du Danube. La Roumanie, la Yougoslavie et la Tchécoslovaquie ont à lutter contre des conditions économiques spéciales et difficiles : c'est pourquoi elles sont bien attachées au principe de la nationalité du propriétaire du bateau en matière d'immatriculation. En rouvrant la discussion sur d'autres bases, on risquerait de voir la Conférence prendre fin sans qu'aucun résultat ait été obtenu, tandis que le projet de convention contient une solution transactionnelle qui tient compte de deux points de vue nettement opposés.

D'autre part, il est certain que la question relève également du droit public, en ce qui concerne le droit au pavillon notamment.

M. SOUBOTITCH (Yougoslavie) tient à préciser que la délégation yougoslave considère que la question de l'immatriculation n'est discutée par la Commission que du point de vue des conséquences envisagées dans le projet de convention, c'est-à-dire celles ayant trait à la propriété, aux hypothèques, etc., sans toucher en rien à la question de la nationalité.

Il ajoute qu'à son avis, il est juridiquement possible d'établir deux registres distincts, dont l'un porterait des inscriptions relatives à l'immatriculation proprement dite et servirait à la publicité des droits réels, et l'autre des inscriptions d'ordre public et politique, c'est-à-dire relatives à la nationalité.

M. NAUTA (Pays-Bas) fait observer que tous les États possédant un système d'immatriculation en sont satisfaits, et qu'il est peu probable qu'ils consentent à le remplacer par un autre. S'il n'existait pas déjà un grand nombre de législations en vigueur, une réglementation uniforme pourrait être acceptée, mais, étant donné que ce n'est pas le cas, il semble que la seule solution qui puisse être adoptée soit celle du projet de convention, c'est-à-dire celle suivant laquelle, d'une part, chaque État reste libre de fixer les conditions régissant l'immatriculation, et, d'autre part, le propriétaire a le choix du pays où les bateaux seront immatriculés. Cette solution n'est certainement pas sans défaut, mais, encore une fois, c'est la seule possible.

D'ailleurs, on pourra sans doute porter remède à certains des inconvénients qu'elle présente. C'est ainsi, par exemple, que dans l'hypothèse envisagée par M. Richter où un État permettrait à tout propriétaire qui en ferait la demande d'immatriculer son bateau sur ses registres, on pourrait décider, en cas de conflit, que préférence serait donnée à la législation imposant une obligation d'immatriculation, plutôt qu'à la législation donnant simplement une faculté d'immatriculation.

M. Nauta estime qu'il faut adopter comme principe celui du projet de convention : chaque État resterait libre. La Commission doit se contenter de chercher des solutions pour les cas où un bateau remplirait à la fois les conditions d'immatriculation fixées par la législation de deux ou plusieurs États contractants, ou ne remplirait les conditions d'aucun de ces États.

M. HOUBEURT (France) constate qu'il serait infiniment désirable d'arriver à établir une règle unique, mais qu'il faut reconnaître que cela est impossible à l'heure actuelle.

Il croit bon de rappeler les circonstances dans lesquelles a été adopté le quatrième paragraphe de l'article 3. C'était au cours d'une réunion du Comité rhénan à Berlin qu'une solution avait été cherchée avec le plus grand désir d'aboutir. Or, c'est précisément la délégation allemande qui a arrêté le texte finalement adopté, et elle avait fait observer que ce texte était conciliable avec le « Binnenschiffahrtsrecht » et qu'il en reprenait même certaines expressions, telles que « direction principale des affaires ».

Le cas, envisagé par M. Richter, d'un bateau dont le port d'attache serait en France et le propriétaire ressortissant allemand, ne serait sans doute pas difficile à résoudre, d'autant plus que la loi allemande prévoit que dans certains cas, il est impossible de déterminer le port d'attache d'un bateau. D'ailleurs, l'interprétation des règlements a toujours été assez élastique à ce sujet, comme le prouvent certains exemples de bateaux allemands immatriculés dans des ports qui leur sont inaccessibles en raison de leur gabarit.

Enfin, on pourrait citer le cas du petit marinier qui, habitant son bateau, se déplace sans cesse à la recherche du trafic : quel est le port d'attache de son bateau ? M. Houpeurt conclut qu'il faut reconnaître l'impossibilité de trouver une autre solution que la solution transactionnelle du projet de convention. Celle-ci a été adoptée à l'unanimité des experts, et il semble que la Commission pourrait l'adopter également.

M. RICHTER (Allemagne) déclare être légèrement déçu de la tournure prise par le débat, étant donné qu'aucun des orateurs n'a traité, à son avis, le côté essentiel de la question. Si les comités préparatoires n'ont pu trouver une solution meilleure que celle indiquée dans le projet de convention, c'est parce qu'ils ont suivi une méthode défectueuse et qu'ils ont mêlé les considérations de droit privé et de droit public. Il appartient à la présente Commission de trouver une solution plus heureuse en suivant une meilleure méthode.

M. Richter estime, comme M. Rossetti, qu'il s'agit ici de droit fluvial et non pas seulement de droit privé. Toutefois, les considérations de droit public ne doivent être introduites que pour protéger les intérêts des particuliers.

Or, M. Rossetti a fait allusion à l'article 26 de la loi allemande, qui prévoit que le Gouvernement peut édicter une ordonnance autorisant l'immatriculation de certains bateaux sur des registres consulaires. Dans les deux cas où cette disposition a été appliquée, c'est-à-dire pour le Bas-Danube et le Yang-Tsé-Kiang, le Gouvernement allemand a pris cette mesure, faute de mieux, les registres locaux étant fermés aux étrangers.

Quant à la solution proposée par M. Nauta pour le règlement des conflits, c'est-à-dire que préférence soit donnée aux lois faisant une obligation de l'immatriculation, plutôt qu'à celles qui en font simplement une faculté, M. Richter fait observer qu'il peut arriver que les législations de deux États prévoient toutes deux l'obligation de l'immatriculation.

M. RIPERT (France) constate que M. Richter reproche aux orateurs qui ont critiqué son amendement d'avoir négligé sa recommandation principale qui était d'éviter toute considération politique dans la discussion du projet de convention.

M. Ripert veut dissiper à ce sujet un malentendu. Quand des États arrêtent les conditions régissant l'immatriculation des bateaux, ils ne le font pas pour des considérations de politique étrangère, mais en tenant compte de leur politique économique générale. Or, les politiques économiques diffèrent d'un État à l'autre, et, comme tous les pays n'ont pas les mêmes intérêts, il est naturel qu'ils fixent, pour l'immatriculation, des conditions différentes. Le projet de convention a tenu compte des solutions différentes. On peut dire, en conséquence, que ce sont les États qui veulent faire accepter aux autres leur propre solution qui, par cela même, font acte politique.

Il est impossible de supprimer entièrement les conflits de lois ; il s'agit simplement de prévoir une méthode pour leur règlement, et le projet de convention apporte une solution, celle du libre choix en principe du pays d'immatriculation.

Pourquoi exige-t-on l'immatriculation pour les bateaux, et non pour tous les autres biens mobiliers ? C'est pour pouvoir suivre ces bateaux, et permettre qu'ils fassent l'objet d'hypothèques, etc. On ne voit donc pas pourquoi il faudrait créer deux sortes de registres, des registres de propriété et des registres de nationalité : le système amènerait des désordres administratifs.

La règle pour la solution des conflits indiquée dans le projet de convention, donne satisfaction à tous les États, et il semble qu'il serait dangereux de vouloir recommencer à opposer l'un à l'autre les systèmes de l'immatriculation et de la nationalité. La Commission devrait se contenter d'apporter simplement au projet qui lui est soumis quelques amendements éventuels.

M. VAN SLOOTEN (Pays-Bas) souligne que la question de l'immatriculation des bateaux de navigation intérieure a fait l'objet de discussions qui durent depuis sept années. Dès le début, il a paru que cette immatriculation avait deux buts distincts. En premier lieu, assurer une assiette solide aux hypothèques et aux autres droits réels, et, en second lieu, sauvegarder la fortune nationale. Or, la délégation allemande prend maintenant une nouvelle position et essaie d'y rallier la Commission.

M. van Slooten se déclare d'accord avec M. Ripert et estime que la Commission doit s'en tenir, dans son ensemble, au projet de convention qui lui est soumis.

Il attire l'attention de la Commission sur le fait que d'après les statistiques établies par la Commission centrale pour la navigation du Rhin, le tonnage des bateaux appartenant à des petits marinières dépasse, en Belgique et en Hollande, le tonnage appartenant aux grandes compagnies, et qu'en ce qui concerne la navigation allemande sur le Rhin, les proportions sont à peu près égales. Or, étant donné que les petits marinières n'ont généralement pas de port d'attache, il ne convient pas d'établir une réglementation internationale sur la notion du port d'attache.

M. RICHTER (Allemagne), en réponse aux critiques formulées par M. Ripert, ne voit pas pourquoi il serait difficile de tenir deux sortes de registres. Le premier serait un registre de commerce, ayant en vue surtout les hypothèques, et un second registre serait un registre de droit public, ayant en vue, par exemple, la perception des impôts, la protection des bateaux en pays étrangers et les réquisitions éventuelles. Mais M. Richter estime que la Commission n'est pas compétente pour s'occuper de ce dernier ordre de questions : aussi faut-il, à son avis, séparer nettement le droit public et le droit privé.

M. ROSSETTI (Italie) fait observer que même l'amendement allemand laisse subsister un article du Protocole de clôture qui est essentiellement de droit public et qui entraînerait des conséquences très importantes en cas d'événements graves.

M. DE RUELLE (Belgique) déclare que la délégation belge a suivi le débat avec un très vif intérêt et qu'elle en tire la conclusion que le projet soumis à la Conférence comme base de discussion est très sage. M. de Ruelle peut le dire d'autant plus facilement qu'il n'a pas, personnellement, contribué à son élaboration.

Il estime qu'il est inutile que les pays essaient de se convaincre les uns les autres de la supériorité de leurs systèmes respectifs. Les auteurs du projet ont fait œuvre sage en proposant une formule de règlement de conflits de lois plutôt qu'un système d'immatriculation uniforme. Certes, il se peut que pour permettre le règlement de certains cas « négatifs » dont a parlé la délégation allemande, de légères mises au point des législations nationales soient nécessaires, mais M. de Ruelle ne pense pas que cela présenterait des difficultés insurmontables.

Il estime bien difficile, d'autre part, de séparer complètement les considérations de droit public et de droit privé. La question de la vente, par exemple, qui est bien une matière de droit privé, peut avoir des répercussions en matière de droit public, par exemple en matière de droit de prise.

En conséquence, la délégation belge déclare se rallier en principe au projet de convention élaboré par le Comité de droit fluvial.

M. SOUBOTITCH (Yougoslavie) rappelle que la délégation yougoslave considère qu'il y a deux ordres de questions nettement distincts qui doivent faire l'objet de deux conventions différentes. Les questions concernant la propriété et ses conséquences doivent être réglées par la Convention en discussion. Les questions de pavillon et de nationalité doivent être réglées par une convention spéciale. La teneur des articles de la présente Convention ne préjuge en rien la question de l'attribution du droit de pavillon, et la délégation yougoslave se déclare ici en désaccord avec M. Ripert.

M. RIPERT (France) précise que lorsqu'un État immatricule des bateaux inscrits sur ses registres, il y a là une constatation de propriété qui a des conséquences en ce qui concerne le droit public. Il ne peut y avoir deux droits de propriété différents, l'un quant aux rapports de droit public, l'autre quant aux rapports de droit privé.

M. SOUBOTITCH (Yougoslavie) fait observer que la remarque de M. Ripert ne peut s'appliquer qu'aux États qui réservent l'immatriculation à leurs ressortissants.

Il estime que la Commission ne doit pas se préoccuper des conséquences touchant la nationalité des bateaux, et, à son avis, la recommandation de M. Richter est justifiée.

M. RIPERT (France) rappelle que l'argumentation de M. Richter était la suivante : peu importe aux États le lieu du registre d'immatriculation de la propriété, étant donné que les États seront libres d'avoir un autre registre pour tenir compte des considérations de droit public. Or, il est impossible de séparer les deux questions.

M. SOUBOTITCH (Yougoslavie) se déclare en désaccord sur ce point avec M. Ripert. Juridiquement, il est possible de tenir deux registres différents.

Si la Commission veut tenir compte de la recommandation de M. Richter et se limiter aux considérations de droit privé, les appréhensions de la délégation allemande s'évanouiront en grande partie, et cette délégation pourra accepter plus facilement le projet de convention.

Après un échange de vues entre plusieurs membres de la Commission, le PRÉSIDENT décide de renvoyer la suite de la discussion à la prochaine séance pour permettre aux membres de la Commission d'étudier les projets d'amendements qui leur ont été soumis.

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## DEUXIÈME SÉANCE

*Tenue le mercredi 19 novembre 1930, à 10 heures.*

*Président: Le professeur Robert HAAB (Suisse).*

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### III. Examen du projet de Convention (suite).

#### TITRE PREMIER. — DE L'IMMATRICULATION (suite).

##### *Articles 2 et 3 (suite).*

Le PRÉSIDENT ouvre la discussion en demandant aux délégués s'ils ont des observations à faire à la suite de l'étude des amendements distribués.

*Amendement proposé par la délégation italienne.*

M. ROSSETTI (Italie) déclare qu'hier, au début de la séance, dans un souci légitime de venir à bout des difficultés qui se présentaient, il avait présenté un projet d'amendement qui, à vrai dire, n'était pas complet, mais qu'il se proposait de compléter. Or, à la suite d'un examen plus approfondi de ce projet, il a constaté que celui-ci, loin d'améliorer la situation, aurait pour conséquence de l'empirer en augmentant les cas de conflits de lois. Il prie donc la Conférence de considérer son amendement comme nul et non avenu, tout en souhaitant que cet exemple d'autocritique puisse être suivi par d'autres auteurs d'amendements.

Le PRÉSIDENT remercie M. Rossetti et prend acte du retrait de l'amendement italien.

*Déclarations des délégués grec et roumain.*

M. CONTOUMAS (Grèce) déclare que la délégation hellénique a jugé préférable d'entendre d'abord les opinions des représentants des pays les plus directement intéressés à une réglementation uniforme des matières qui lui sont soumises avant de prendre position dans les débats.

La délégation hellénique a suivi avec beaucoup d'intérêt les différentes propositions formulées devant la Commission, et elle est d'accord avec ceux des délégués qui estiment que le travail préparatoire accompli avant la réunion de la Conférence marque une étape avancée dans le sens de la conciliation des points de vue divergents en matière d'immatriculation des bateaux. Dans cet ordre d'idées, la délégation hellénique n'aurait pas demandé la parole au cours de cette discussion si certaine délégation n'avait cru nécessaire de reprendre avec insistance la défense d'une thèse qui risquerait de compromettre la solution de principe consignée dans l'article 3 du projet de convention. Cette solution, amendée éventuellement de façon à couvrir tous les cas qui pourraient se produire dans l'application, présenterait, si elle était acceptée par la Conférence, l'avantage d'un compromis et dispenserait de poursuivre de nouveau la recherche d'un critérium unique acceptable pour toutes les Puissances intéressées, recherche à laquelle, d'après les rédacteurs du rapport, on a dû renoncer jusqu'ici. Or, la proposition allemande autorise à se retrancher également derrière les lois nationales respectives et à faire, pour ainsi dire, de nouveau le point dans la question de savoir quelle est la voie de législation uniforme dans laquelle chacun des délégués serait disposé à s'engager conventionnellement en cette matière controversée.

La Grèce n'a pas de voies de navigation intérieure sur son territoire, et partant, pas de port d'attache propre pour les bateaux du Danube appartenant à ses ressortissants. Or, la délégation hellénique risquerait d'encourir le reproche de dissimuler les motifs de son attitude si elle ne disait pas tout de suite qu'il est d'un intérêt évident pour son pays de pouvoir conserver, au profit desdits bateaux, le bénéfice d'une immatriculation nationale. Cette immatriculation ne saurait se concevoir autrement que par la reconnaissance au propriétaire de ces bateaux du droit correspondant, aux termes de la loi grecque, à une obligation de les faire enregistrer dans les bureaux nationaux tels que les consulats helléniques de Galatz et de Braïla. Ce serait consacrer par là une pratique suivie depuis très longtemps, à laquelle le Gouvernement hellénique refuserait renoncer. D'autant plus que sans y mêler des considérations politiques d'aucune sorte, la législation grecque procède du principe que l'immatriculation est en quelque sorte un effet immédiat et obligatoire de la reconnaissance de la nationalité du bateau. Dans ce sens, la délégation hellénique est amenée à appuyer le point de vue du délégué de la France qui a relevé hier avec tant d'autorité l'impossibilité de dissocier complètement les aspects de droit public et de droit privé de l'immatriculation.

De tout temps, les bateaux helléniques du Danube ont été considérés comme faisant partie du domaine économique de la Grèce. L'obligation que la loi hellénique impose à leurs propriétaires de les faire nationaliser tend, avant tout, à sanctionner à l'égard de ces bateaux le principe du lien qui les rattache audit domaine. L'immatriculation, effet immédiat de la nationalisation, ne saurait en être dissociée puisqu'elle assure pratiquement la survivance de ce lien par le moyen d'un contrôle officiel des manifestations de la vie économique du bateau (transfert de la propriété, charges, etc.). Dans ces conditions, la délégation hellénique ne peut que se rallier à la formule du projet de convention qui est soumis à la Conférence.

M. CONTZESCO (Roumanie) déclare que jusqu'au développement en séance de la déclaration faite par M. Contoumas, la délégation de Roumanie fait les plus formelles réserves au sujet des opinions émises par la délégation hellénique concernant la situation des bateaux appartenant à des ressortissants grecs, inscrits sur les registres des offices consulaires du Bas-Danube.

*Amendement proposé par la délégation néerlandaise.*

Le PRÉSIDENT invite la Commission à discuter l'amendement proposé par la délégation des Pays-Bas au quatrième alinéa de l'article 3 (voir annexe 2, page 198).

M. VAN SLOOTEN (Pays-Bas) précise que cet amendement consiste à substituer au mot « ressortissants » du texte primitif, la phrase « personnes ayant eu, pendant les derniers dix-huit mois, leur résidence habituelle sur son territoire ».

Il précise que cet amendement est conforme aux instructions formelles qu'il a reçues de son Gouvernement. Il pourrait ajouter que son texte est conforme également au nouveau projet de loi néerlandais relatif à la batellerie intérieure, mais il sait fort bien que cet argument ne produirait aucune impression sur une assemblée internationale comme la présente. En effet, peu importe, au point de vue de la réglementation internationale, ce qui a été fait dans les législations nationales. Seules les solutions internationales ont à cet égard une valeur pratique.

La vraie fin que vise l'amendement néerlandais est donc d'éliminer des discussions de la Conférence une dernière pierre d'achoppement, en l'espèce le terme « ressortissants ». Ce mot évoque en effet l'idée de la nationalité. Le mieux est donc d'introduire le principe de la résidence habituelle sur le territoire d'un État contractant. L'amendement néerlandais simplifierait les solutions antérieures.

M. SUŁKOWSKI (Pologne) estime qu'avant d'aborder la discussion, il convient d'éclaircir une question de principe. A son avis, la portée de l'alinéa 4 de l'article 3 est douteuse. La latitude pour chaque État d'exiger de ses nationaux que les bateaux leur appartenant soient inscrits sur les registres nationaux ne saurait être limitée par cette disposition. L'article 1, alinéa 1, dit en effet : « Les États contractants s'engagent à établir, conformément à leur législation, des registres publics pour l'immatriculation, etc. » Il en résulte qu'un État aura la liberté de fixer les conditions d'immatriculation des bateaux ; or, d'après l'alinéa 4 de l'article 3, on doit conclure qu'un État ne pourrait prescrire l'immatriculation de ses nationaux sur ses registres que si ces nationaux résident sur son territoire. Avant d'aborder la discussion au sujet de l'amendement néerlandais qui va limiter encore cette faculté, M. Sulkowski demande aux rédacteurs du projet de bien vouloir préciser leur pensée sur le point suivant : L'alinéa 4 de l'article 3 limite-t-il la faculté pour chaque État de fixer les conditions de l'immatriculation des bateaux de ses nationaux ?



Le PRÉSIDENT déclare que, d'après le système du projet, chaque État fixe les conditions de l'immatriculation. Dès lors, il est possible que le même bateau remplisse les conditions d'immatriculation de plusieurs États. Afin d'éviter la double immatriculation, le propriétaire doit, dans ce cas, choisir entre les États. Ce choix est libre, sous réserve du quatrième alinéa de l'article 3 qui dispose que chaque État se réserve le droit d'exiger que ses ressortissants inscrivent sur ses registres les bateaux leur appartenant et remplissant les conditions d'immatriculation de deux ou plusieurs États s'ils ont sur son territoire leur résidence habituelle ou, dans le cas de sociétés, la direction principale de leurs affaires. Or, il en résulte que le quatrième alinéa de l'article 3 ne limite pas le droit des États de fixer les conditions d'immatriculation, mais le libre choix du propriétaire.

M. SULKOWSKI (Pologne) demande si un État a le droit de prescrire l'obligation générale d'immatriculer les bateaux de ses nationaux sur les registres nationaux.

M. RICHTER (Allemagne) constate que d'après l'article 2 du projet de Convention, les États restent libres de fixer dans leur législation les conditions de l'immatriculation. Or, dans l'article 3, il s'agit de la solution d'un conflit de lois : il concerne les bateaux qui remplissent les conditions d'immatriculation fixées par la législation de deux ou plusieurs États différents. Dans ce cas, le propriétaire a le choix entre deux pays. Si la Convention admet que, dans ce cas, ce choix est libre, les États, de leur côté, ne seront plus libres d'obliger leurs ressortissants à se faire inscrire sur leurs registres nationaux. Ce point est clair.

M. SULKOWSKI (Pologne) constate que, dans ces conditions, un État contractant ne pourrait plus prescrire d'immatriculation obligatoire à un propriétaire de bateaux, à moins que celui-ci n'ait eu, pendant les derniers dix-huit mois, sa résidence habituelle sur le territoire de ces États. La délégation polonaise dit, au contraire : aucune limitation ne doit être apportée à la liberté d'un État de prescrire l'immatriculation obligatoire. Tout national devrait être tenu de faire immatriculer son bateau sur un registre national, qu'il soit domicilié ou non sur le territoire de l'État auquel il appartient.

La Convention ne doit régler que des conflits de lois : aussi la Pologne ne pourrait-elle accepter l'amendement néerlandais qui abandonne le principe de la liberté des États en leur imposant une restriction.

M. RICHTER (Allemagne) croit comprendre que, d'après l'argumentation du délégué de la Pologne, il est impossible à la délégation polonaise d'appuyer l'amendement proposé à l'article 3. La Commission se trouverait, à cet égard, dans une impasse. En effet, d'une part, un État accorderait au propriétaire d'un bateau le droit de choisir sur quel registre il devra faire immatriculer celui-ci et, d'autre part, dans un cas particulier, il lui refuse ce droit.

M. ROSSETTI (Italie) est d'avis que l'amendement néerlandais est aussi grave que la proposition allemande. Cet amendement aboutirait en pratique à renvoyer à dix-huit mois la solution allemande. Le Gouvernement italien ne saurait admettre que si, dans un cas d'espèce, un bateau italien, libre de naviguer en vertu d'un principe général, se rend à Amsterdam, ou en toute autre ville, il soit obligé au bout de dix-huit mois de changer de registre d'immatriculation. Il n'y a pas de raison, dans ces conditions, pour qu'un bateau quelconque ne soit pas obligé, au cours de ses voyages, de changer de registre d'immatriculation tous les dix-huit mois, ce qui ne manquerait pas d'entraîner des complications de tout genre.

M. HOUBEURT (France) fait remarquer, à propos de l'argumentation de la délégation polonaise, que le point de vue de la Pologne est bien celui de la France. Si celle-ci a donné son adhésion au texte du projet de Convention, c'est afin d'arriver à un accord.

M. RICHTER (Allemagne) fait remarquer qu'en ce qui concerne les objections au projet du Comité préparatoire, il convient, au point de vue pratique, de tenir compte à la fois des désirs particuliers du Gouvernement tchécoslovaque et du Gouvernement helvétique. La Suisse et la Tchécoslovaquie possèdent en effet des bateaux sur le Rhin et sur l'Oder. Ces pays veulent donc que ces bateaux soient immatriculés en Suisse et en Tchécoslovaquie. La solution du problème semble possible. Elle pourrait être résolue par un accord spécial et il semble à M. Richter que pour régler au mieux ces intérêts régionaux, il serait préférable de renvoyer la question à un Comité restreint.

La deuxième question discutée est fort difficile à résoudre. La fin à laquelle vise la Convention a, en effet, un caractère de droit privé. Elle a trait à la propriété des bateaux, aux hypothèques et aux privilèges. Un règlement de ce genre a pour condition essentielle l'existence d'un registre public. Or, quel sera, pour les bateaux immatriculés dans deux pays, le registre des droits réels ? La délégation française veut baser ce règlement relatif aux registres de façon à exclure les étrangers. Dans ces conditions, un étranger ne jouirait pas en France, en matière d'immatriculation de bateaux, des avantages de droit privé accordés aux Français. Tout d'abord la France n'admet d'inscription d'hypothèques que sur les bateaux immatriculés en France et demande aux étrangers de reconnaître les hypothèques françaises ; elle refuse ensuite aux États étrangers le droit d'acquérir la propriété de bateaux français. Il est certain qu'en droit privé, c'est là un système d'inégalité. Le seul moyen de sortir de cette impasse semble être l'adoption de la proposition allemande. Il conviendrait donc de renoncer à l'idée d'aborder le règlement de la question en se basant sur la notion du patrimoine national. Si la Conférence n'abandonne pas cette idée, il est à craindre qu'elle ne finisse par un échec complet.

M. ROSSETTI (Italie) déclare que, contrairement à la proposition allemande, il est absolument opposé à l'idée de régler la situation spéciale des gouvernements tchécoslovaque et suisse au moyen d'un accord régional. La situation de l'Italie envers l'Allemagne est absolument la même que celle de la Tchécoslovaquie. Dans les deux cas, l'Allemagne se trouve en présence d'un État étranger. Si l'on n'admet pas ce principe, c'est que l'on veut revenir à la situation qui régnait avant 1815, époque où le droit de navigation était réservé aux riverains des fleuves. Or, l'Italie — que ce soit bien entendu — n'a aucunement l'intention de renoncer aux droits de libre navigation et d'égalité de traitement dans les réseaux fluviaux internationalisés, droits qui lui sont reconnus par des traités solennels. M. Rossetti estime même qu'il serait préférable que la Conférence finit par un échec que de voir les États renoncer au patrimoine de leurs droits.

M. RIPERT (France) répond à M. Richter que, pour la deuxième fois depuis la dernière séance, l'Allemagne a déclaré qu'il convenait de ne pas mêler de considérations politiques aux débats. Or, précisément, aujourd'hui, la délégation allemande transforme les débats de la Conférence en une discussion politique. Tous ceux qui connaissent le droit français savent que la France est le pays où les droits civils des étrangers sont le mieux reconnus et depuis le plus longtemps, et il n'existe pas de différence à cet égard entre les étrangers et les nationaux. Mais la Conférence a pour objet précis de régler les conditions d'immatriculation des bateaux fluviaux. Or, à cet égard, chaque pays a ses intérêts propres. Vouloir s'immiscer dans la législation nationale serait vouer la Conférence à un échec. On a dit : chaque État réglera librement les conditions d'immatriculation des bateaux, et aucun texte ne restreint la portée de cette faculté. Mais, du fait de cette liberté, naissent des conflits de lois entre les législations. La France a consenti à une solution libérale en admettant que, certains bateaux pouvant remplir les conditions d'immatriculation de deux pays, le propriétaire du bateau est libre de faire immatriculer celui-ci là où il lui plaît. Mais il convient que ce choix soit raisonnable. Il n'est pas juste de dire : « Vous voulez réserver pour vous tous vos nationaux. » La condition supplémentaire de l'obligation d'une résidence habituelle dans le territoire national répond précisément à cette objection. D'autre part, du fait de cette réglementation, les étrangers ne sont pas exclus. La faculté de choisir librement le lieu d'immatriculation leur est conservée. Ce qu'on a voulu éviter, c'est qu'un propriétaire français ne fasse une immatriculation frauduleuse à l'étranger. Ainsi, on a maintenu à la fois le droit des États et le droit du propriétaire, et il ne s'agit, en l'espèce, que d'une légère restriction quand le choix apparaît injuste ou irrégulier.

M. SULKOWSKI (Pologne) constate que M. Richter a dit, en résumé, que, en ce qui concerne la faculté, pour un propriétaire de bateau, de choisir dans quel État il immatriculera celui-ci, la proposition polonaise anéantissait la possibilité de ce libre choix. Il semble à M. Sulkowski que chaque État doit avoir la liberté de régler souverainement la question de l'obligation de l'immatriculation en ce qui concerne ses nationaux. Aussi propose-t-il la formule suivante :

« Chaque État contractant se réserve le droit d'exiger que ses nationaux, y compris les sociétés nationales, inscrivent sur ses registres les bateaux leur appartenant et remplissant les conditions d'immatriculation de deux ou plusieurs États. »

M. RICHTER (Allemagne) déclare que la délégation française n'a pas encore saisi le sens exact de l'amendement allemand. En effet, ce n'est pas de l'alinéa 4 de l'article 3 dont il s'agit, et une confusion s'est produite à cet égard entre la question de l'immatriculation et celle des registres hypothécaires relatifs aux bateaux. M. Ripert a déclaré que le libéralisme de la législation française en ce qui concerne le traitement des étrangers était indiscutable. Or, pour la délégation allemande, l'intérêt de la discussion actuelle porte sur le point précis suivant : en France, les étrangers ne peuvent être immatriculés sur les registres des bateaux.

M. ROSSETTI (Italie) déclare que, à ce qu'il paraît, la délégation allemande, elle non plus, n'a pas saisi exactement la portée de la question discutée. Précisément, pour réserver à chaque État la faculté de faire ce qu'il désire au point de vue national, la délégation italienne propose de ne pas toucher à la question du patrimoine national. Ainsi, les États contractants ne seraient nullement liés en cette matière.

La délégation italienne a protesté contre l'idée de traiter la question de l'immatriculation de bateaux suisses et tchécoslovaques en un comité spécial par voie d'accords bi-latéraux. En effet, l'objet de la Conférence actuelle n'est pas de résoudre des difficultés possibles entre les États riverains d'un même fleuve, mais bien d'aboutir à un règlement uniforme des conflits de lois entre les États dont les bateaux exercent la navigation sur le réseau fluvial européen internationalisé.

Le PRÉSIDENT invite la Commission à clore la discussion sur l'article 3, paragraphe 4, et à passer à la discussion de l'article 4.

M. SITENSKY (Tchécoslovaquie) revient sur l'article 3 (paragraphe 4) et constate que le point de vue de la délégation tchécoslovaque est le même que celui de la délégation française. En conséquence, elle n'accepte pas la proposition allemande. L'argumentation de la délégation des Pays-Bas est motivée parce que la loi néerlandaise ne connaît pas la nationalité des bateaux. Cependant, le texte du projet n'oblige pas les États de faire dépendre l'immatriculation de la nationalité du propriétaire. Dans l'alinéa en question, il s'agit seulement de donner aux États la possibilité d'exercer le droit d'exiger l'immatriculation des bateaux dans certains cas. Si les Pays-Bas ne veulent pas voir traiter la question de la nationalité, ils peuvent laisser le libre choix de l'immatriculation aux propriétaires des bateaux. M. Sitenksy est d'avis que le texte élaboré par le Comité du droit fluvial peut très bien être accepté par tous les États, étant donné qu'aucun État ne sera tenu, en adoptant la Convention, de changer quelque chose dans sa législation actuellement en vigueur.

M. DE RUELLE (Belgique) constate que M. Richter craint que le projet de convention ne consacre un système d'inégalité en ce qui concerne la jouissance de droits civils par les nationaux et les étrangers. M. Richter est, en effet, préoccupé par l'idée qu'un étranger appartenant à un pays A ne pourrait contracter un emprunt dans un pays B et, d'autre part, que le droit d'un propriétaire du pays A pourrait être méconnu dans le pays B par sa législation. C'est là une crainte non fondée. En effet, si le pays B s'attache, en matière d'immatriculation, au système exclusif de la nationalité, et ne peut donc immatriculer un bâtiment du pays A, le fait de non-immatriculation dans le pays B n'empêcherait pas qu'un emprunt pût être contracté dans ce pays B. Ainsi, le propriétaire d'un bateau allemand immatriculé aux Pays-Bas pourrait fort bien contracter un emprunt dans ce pays ; dans ce cas, la considération du pavillon n'entrera pas en ligne de compte, mais bien celle de la solvabilité du contractant. De même, si un bateau immatriculé en France, appartenant à un Français, est dévolu, par droit d'hérédité, à un sujet allemand, l'héritier allemand ne pourra peut-être plus l'immatriculer en France. Il pourra toutefois entrer en possession de son bateau et sa propriété sera reconnue en France. Les droits privés ne sont donc nullement mis en cause.

M. ROSSETTI (Italie) fait observer que l'on oublie toujours que la proposition allemande contient aussi un article de Protocole de clôture d'après lequel il serait impossible de transférer, dans certaines circonstances, la propriété d'un bateau étranger immatriculé en Allemagne. A un autre point de vue, si l'on croit que la Conférence n'a d'autre but que de régler des questions entre riverains, on peut se demander à quoi bon avoir réuni ici les représentants de tant d'États. Les riverains du Danube ne sont pas, dans leur grande majorité, ceux du Rhin, et il en est de même pour ceux de l'Elbe et de l'Oder. Le but de la Conférence ne peut donc être aussi restreint, mais il est bien celui de régler des questions intéressant les navigateurs fluviaux de tous les États ici représentés.

Un intérêt moral considérable s'attache à ce que soient respectés les principes de la liberté de navigation et de l'égalité de traitement, et la délégation italienne défendra ardemment ces principes contre toute atteinte.

M. SOUBOTITCH (Yougoslavie) dépose un amendement tendant à remplacer à l'article 3, alinéa 4, les mots « résidence habituelle » par les mots « résidence principale ». Il expose en effet qu'on peut avoir à la fois plusieurs résidences, par exemple une pendant la saison d'hiver et l'autre pendant la saison d'été, mais qu'on ne peut avoir qu'une résidence principale. Il rappelle que le terme « résidence habituelle » a été adopté par la Conférence de la codification du droit international qui a siégé à La Haye au printemps, cette année.

Le PRÉSIDENT constate que les points de vue divergents ont été maintenant exposés en détail.

Il résulte des délibérations de la Commission qu'en principe deux solutions sont envisagées. L'une consiste à établir des conditions uniformes de l'immatriculation, tandis que l'autre, appuyée par la grande majorité de la Commission, se borne à régler les conflits de lois. Le Président, après avoir exposé les diverses propositions qui ont été faites au sein du Comité rhénan, craint qu'une entente sur les conditions matérielles de l'immatriculation ne soit guère possible. Dès lors, il ne resterait comme solution pratique qu'une réglementation internationale des conflits de lois... Il prie M. Richter de bien vouloir réfléchir sur la question de savoir s'il ne pourrait pas se rallier à une telle solution en renonçant à sa proposition consistant à fixer des règles uniformes.

En ce qui concerne les bateaux en construction, le président propose de réserver la discussion sur cette question jusqu'au moment où l'on aura trouvé une solution de la question de principe, ces deux questions étant intimement liées l'une à l'autre ; il suggère de régler la situation juridique des bateaux en construction dans un article spécial.

Enfin, le président propose de passer à la discussion de l'amendement allemand, alinéa 2 de l'article premier (voir annexe 1, page 184) relatif à l'immatriculation des dragues, grues, élévateurs flottants et tous engins et outillages flottants de nature analogue.

*Il en est ainsi décidé.*

#### *Article 4 et amendement proposé par la délégation allemande.*

M. RICHTER (Allemagne) déclare que les intéressés allemands ne voient pas de raison plausible pour traiter les dragues, les grues et autres engins flottants analogues d'une manière différente des bateaux en général en ce qui concerne l'immatriculation. Ces engins présentent en effet un intérêt international ; très souvent, ils passent les frontières. Or, les experts ont déclaré qu'il convenait de laisser chaque législation nationale libre d'édicter telle ou telle prescription sur ce point. La situation est plus nette dans le projet allemand.

M. ROSSETTI (Italie) se rallie à l'idée qu'il convient d'immatriculer obligatoirement certaines dragues et certaines grues en distinguant entre celles ayant un déplacement inférieur ou supérieur à vingt tonnes. Plusieurs de ces engins, en effet, se trouvent dans l'impossibilité de naviguer, et prescrire pour eux l'obligation de les immatriculer pourrait apporter une gêne à la navigation et à l'industrie.

M. RICHTER (Allemagne) répond que l'intention des auteurs de l'amendement allemand était bien d'imposer l'immatriculation obligatoire uniquement aux dragues, grues, etc., ayant un déplacement supérieur à vingt tonnes.

Le PRÉSIDENT constate que l'accord a régné au sujet de la question du tonnage des bateaux dont l'immatriculation serait obligatoire. On a fixé le chiffre de ce tonnage à vingt tonnes. La Com-

mission est-elle d'avis qu'il faut étendre cette prescription aux grues, dragues et élévateurs flottants, et à tous engins et outillages flottants de nature analogue ?

M. VAN SLOOTEN (Pays-Bas) soulève une question d'ordre pratique. Un certificat de jaugeage est-il exigé pour les dragues et pour les grues ? Peut-être cette obligation est-elle exclue par un article spécial de la Convention relatif au jaugeage ?

M. HOUBEURT (France) déclare que la délégation française est en principe prête, si c'est l'opinion générale, à admettre l'immatriculation obligatoire pour les dragues et les grues. Mais cette obligation ne peut s'étendre à tout le matériel indiqué à l'article 4. Aussi, M. Houbeurt serait-il partisan de maintenir le texte du projet ; ce texte laisse toute latitude aux législations nationales.

M. ROMEIN, membre de la Section des communications et du transit, constate qu'en effet le mot « bateau » n'est pas défini exactement dans la Convention relative au jaugeage.

M. SITENSKY (Tchécoslovaquie) déclare que le Gouvernement tchécoslovaque serait disposé à insérer dans la Convention l'obligation d'immatriculer les dragues et les grues ; mais il estime qu'il n'y aurait que peu d'intérêt à imposer cette obligation à tous les États. Aussi, préférerait-il également le texte primitif élaboré par le Comité de droit fluvial. Dans un autre ordre d'idées, il demande si le chiffre de vingt tonnes constitue, en ce qui concerne le déplacement, une limite acceptable pour toutes sortes de bateaux, y compris les remorqueurs ? Peut-être serait-il préférable de parler, en ce qui concerne les remorqueurs, de tonnes et de chevaux-vapeur.

M. CONTZESCO (Roumanie) estime que, en vue d'une meilleure compréhension, l'article 4 devrait être discuté avec l'article 31 et même avec l'article 36 du projet de Convention.

L'article 4, alinéa 1, N° 1, dit : « tous engins et outillages flottants de nature analogue ».

L'article 31 déclare : « Sont compris sous la dénomination de bateaux les dragues, grues, élévateurs flottants et tous engins et outillages flottants de nature analogue. »

Peut-être conviendrait-il même d'examiner en même temps l'article 36. Dans certains règlements relatifs à la navigation sur le Danube, un classement très complet a été élaboré en ce qui concerne les engins flottants. Il serait donc nécessaire d'insérer à l'article 4, paragraphe 1, les mots « au sens de la présente Convention », afin d'éviter une contradiction avec d'autres règlements internationaux.

M. NAUTA (Pays-Bas) demande si le jaugeage des dragues, grues, etc., est opéré selon les mêmes principes que celui des bateaux affectés au transport de marchandises.

M. ROMEIN, membre de la Section des communications et du transit, donne lecture des articles 70 et 71 de la Convention européenne relative au jaugeage des bateaux de navigation intérieure<sup>1</sup>. Ces articles délimitent d'une manière technique les catégories des bateaux affectés et non affectés au transport des marchandises.

M. RICHTER (Allemagne) estime qu'il est peu pratique de soumettre à l'immatriculation obligatoire tous les engins flottants. Il désire par conséquent supprimer dans l'amendement allemand (article 1, alinéa 2) les mots « tous engins ». Il conviendrait de limiter l'immatriculation obligatoire aux dragues, grues et élévateurs.

Le PRÉSIDENT estime qu'il s'agit en l'espèce de question de fond et de forme. La question soulevée en dernier lieu par M. Contzesco pourrait être soumise à un Comité de rédaction. Il reste la question de savoir si l'on doit ou non assimiler aux bateaux les dragues, les grues et élévateurs flottants.

En conséquence, il met aux voix la proposition allemande tendant à assimiler aux bateaux les dragues, grues et élévateurs flottants.

*Cette proposition est adoptée.*

#### *Bateaux de plaisance.*

M. RICHTER (Allemagne) précise, en ce qui concerne la question spéciale des bateaux de plaisance, le sens de l'amendement allemand. Dans sa pensée, ces bateaux, lorsqu'ils ont un déplacement supérieur à vingt tonnes, doivent également être immatriculés obligatoirement en vue d'assurer la publicité de cette immatriculation, en cas d'abordage.

M. ROSSETTI (Italie) déclare qu'au sein du Comité préparatoire, l'accord réalisé a exclu de l'obligation d'immatriculation les bateaux de plaisance. En effet, ces bateaux se trouvent dans une situation particulière. A son avis, l'obligation de les immatriculer est exclue de prime abord à cause du régime spécial qui leur est accordé par les différents gouvernements.

M. RIPERT (France) estime que la question essentielle à envisager n'est pas celle de l'exploitation commerciale des bateaux, mais celle des droits réels qui peuvent s'exercer à leur égard. La destination commerciale des bateaux importe peu en l'espèce. Aussi, appuie-t-il l'amendement allemand.

<sup>1</sup> Document C.L.136.1926.VIII. Annexe.

M. LAWATSCHER (Autriche) déclare qu'il existe sur le Haut-Danube un certain nombre de petites entreprises de navigation qui assurent le transport au moyen de bateaux à rames, en bois. Ces bateaux naviguent dans la direction aval sans remorqueur, et sont halés dans la direction amont. Etant donné que ces entrepreneurs sont de petites gens qui travaillent avec de faibles moyens et qui sont peu versés dans les questions juridiques, l'obligation de faire enregistrer leurs bateaux provoquerait une résistance de leur part. Ces bateaux représentent une valeur d'environ 2.000 schillings, et ils ne sont donc pas particulièrement propres à permettre l'obtention de crédits.

Les bateaux à rames, en bois, n'étant pas mentionnés à l'article 4, alinéa 1, le principe de l'enregistrement obligatoire formulé dans l'article 3 leur serait également applicable. Le régime juridique de ces bateaux est tout à fait conforme à leur faible valeur, d'après les principes généralement applicables aux biens meubles. L'obligation d'enregistrer les actes juridiques, notamment l'aliénation et l'acquisition de ces bateaux, ainsi que les hypothèques qui les grèvent, compliqueraient par trop ces opérations. C'est pourquoi la délégation autrichienne désirerait que l'on comprit les bateaux à rames, en bois, dans la liste des bateaux auxquels le principe de l'enregistrement obligatoire n'est pas applicable.

M. VAN SLOOTEN (Pays-Bas) suppose le cas où un bateau d'un État non contractant entre dans le territoire d'un État contractant. D'après la Convention, le bateau de l'État non contractant devra être immatriculé. Cette hypothèse a été envisagée, mais elle n'a en réalité que peu d'importance, car les bateaux neutres de ce genre constituent une exception.

D'autre part, si l'on pouvait, au besoin, obliger les bateaux étrangers à se faire immatriculer dans un pays, on ne le peut en ce qui concerne les bateaux de plaisance. Les bateaux commerciaux ont un itinéraire plus ou moins déterminé, les bateaux de plaisance, par contre, vont partout, notamment lorsqu'il s'agit de bateaux privés effectuant de longues croisières. Pour ces raisons, M. van Slooten est partisan du maintien du texte du projet du Comité du droit fluvial.

M. ROSSETTI (Italie) constate, en effet, que les conventions maritimes excluent de l'obligation d'immatriculation les bateaux de plaisance. Ces bateaux sont assimilés aux bateaux de guerre dans certains pays et ce régime exclut certainement la possibilité de les faire immatriculer à l'étranger.

M. RICHTER (Allemagne) déclare que l'amendement allemand est fondé sur le principe du port d'attache ; or, les bateaux de plaisance en question n'ont pas de port d'attache dans le pays contractant.

M. ROSSETTI (Italie) déclare qu'il existe, par exemple, dans les eaux italiennes, des bateaux de plaisance appartenant à des étrangers et qui, tout en ne sortant jamais des eaux italiennes, font quand même partie de divers yacht-clubs étrangers. Le Comité maritime s'est d'ailleurs déjà préoccupé de mettre à l'étude le statut spécial des bateaux de plaisance. M. Rossetti désirerait en tout cas réserver cette question jusqu'à ce qu'il soit décidé où les bateaux seront immatriculés.

Le PRÉSIDENT propose à la Commission d'adopter cette solution.

*Il en est ainsi décidé.*

*L'article 4 est adopté, à l'exception des alinéas 2 et 4 qui sont réservés.*

#### *Article 5 et amendement proposé par la délégation allemande.*

Le PRÉSIDENT constate que la divergence entre le texte du projet et la proposition allemande est plutôt une divergence de rédaction. Il donne lecture du projet alinéa par alinéa.

*Alinéa 1 : Nos 1 et 2.*

*Les Nos 1 et 2 sont adoptés sans modifications.*

*Alinéa 1 : No 3.*

M. LAWATSCHER (Autriche) déclare que, d'après le rapport du Comité spécial, on envisagerait de prévoir que tout bateau à immatriculer devrait être jaugeé. On ne voit pas, d'après le rapport, ce qui a motivé cette disposition.

La Convention européenne relative au jaugeage des bateaux de navigation intérieure signée à Paris le 27 novembre 1925 a, au contraire, stipulé que le jaugeage ne doit avoir lieu que sur demande. Une modification de ce principe ne paraît guère désirable pour des raisons de forme pour les États contractants de ladite Convention.

Mais pour ce qui est du fond de la question, les intérêts des créanciers semblent, d'après la délégation autrichienne, suffisamment sauvegardés par le fait que le registre indique si le bateau est jaugeé ou si les données relatives au tonnage du bateau ont été établies d'une autre manière que par le jaugeage légal.

La délégation autrichienne ne croit donc pas qu'il existe de raison impérative pour introduire indirectement le jaugeage obligatoire au moyen de la présente Convention qui, en principe, prévoit l'immatriculation de tous les bateaux.

La délégation autrichienne propose donc de rédiger le point 3 de l'alinéa premier comme suit :

« Tonnage maximum ou le déplacement avec l'indication des documents et certificats y relatifs, le cas échéant, le numéro et la date du certificat de jaugeage. »

Le PRÉSIDENT a des doutes sérieux au sujet de la proposition autrichienne car, au Comité préparatoire, on a été d'accord pour rendre le jaugeage obligatoire par voie d'immatriculation.

M. ROSSETTI (Italie) déclare qu'un certificat de jaugeage est souvent obligatoire pour les bateaux qui se livrent à la navigation internationale. S'il arrive que ces bateaux ne soient pas en possession d'un certificat de jaugeage internationalement reconnu, ils doivent se soumettre à des opérations de jauge. C'est ainsi que, par exemple, la Commission européenne du Danube a assez souvent à procéder à de telles opérations.

Pour procéder à l'immatriculation, ce certificat lui paraît bien nécessaire.

Le PRÉSIDENT estime que la situation des bateaux peut, à ce sujet, être comparée à celle des immeubles fonciers, qui doivent être enregistrés au cadastre.

M. ROMEIN, membre de la Section des communications et du transit, demande pourquoi le Comité préparatoire a introduit la notion du tonnage maximum à côté de celle du déplacement ? A-t-on visé des certificats de jaugeage établis suivant des systèmes autres que le système métrique ? D'après la Convention maritime, tous les bateaux affectés au transport des marchandises sont jaugés d'après leur déplacement. On pourrait peut-être se limiter à cette notion.

Le PRÉSIDENT dit que ce sont les techniciens qui ont proposé la rédaction qui est discutée. Il préférerait la laisser telle quelle.

M. SITENSKY (Tchécoslovaquie) déclare que l'article 6 du projet de Convention prévoit un certain délai dans lequel doivent être déclarées les modifications à introduire dans les inscriptions sur le registre. Mais aucune mention de délai n'est faite pour la demande d'inscription. Les motifs qui ont inspiré l'article 6 sont-ils les mêmes que ceux qui ont inspiré l'article 5 ? En d'autres termes, y a-t-il un délai requis pour l'inscription des bateaux sur les registres ?

Le PRÉSIDENT estime qu'aucun délai n'est prévu à cet égard.

M. SITENSKY (Tchécoslovaquie) répond qu'il lui semble nécessaire de prévoir un délai pour l'inscription, afin de connaître le point de départ de celui-ci en cas de sanctions.

Le PRÉSIDENT répond que c'est là un point qui doit être laissé à la législation nationale de chaque État.

M. RIPERT (France) constate qu'une garantie suffisante est donnée, par le fait que l'immatriculation des bateaux est obligatoire.

Le PRÉSIDENT ajoute que l'inscription doit avoir lieu immédiatement.

*Le N° 3 est adopté sans modification.*

*Alinéa 1 : N° 4.*

M. SOUBOTITCH (Yougoslavie) demande pour quelle raison la nécessité de mentionner la nationalité du propriétaire du bateau a été omise. Est-ce une omission volontaire ?

M. RIPERT (France) explique que le n° 4 de l'article 5 ne contient que l'énonciation d'obligations. Si un pays n'exige pas la mention de la nationalité, l'article ne dit rien à cet égard. Même lorsqu'il s'agit de pays qui exigent cette mention, aucune preuve officielle de déclaration obligatoire de nationalité n'est requise.

M. SOUBOTITCH (Yougoslavie) constate que les pays qui n'admettent que l'immatriculation de leurs nationaux ne seront pas touchés par cette omission, mais que les autres pays peuvent avoir un intérêt à connaître la nationalité des personnes autres que leurs ressortissants.

M. Soubotitch tient à poser une seconde question. Il demande pourquoi l'alinéa 1 de l'article 5 ne fait mention que de propriétaires physiques, car il peut s'agir aussi de personnes morales (sociétés anonymes par exemple).

M. RICHTER (Allemagne) attire l'attention sur le fait que le n° 5 remplit, le cas échéant, la condition de la nationalité qui pourrait figurer parmi les faits qui justifient l'immatriculation. Il ajoute qu'il conviendrait de remettre à un comité de rédaction le soin de libeller au mieux le n° 4 de l'alinéa 1 de l'article en question, en y incluant également la mention du siège commercial du propriétaire du bateau dans le cas d'une société anonyme.

M. CENTNER (Sarre) croit nécessaire de faire observer, au nom de la délégation sarroise, que dans les articles discutés jusqu'à présent et dans d'autres, on s'est servi de certains termes qui ne sont pas directement applicables aux conditions sarroises ; il en est ainsi pour les expressions de « État contractant », « nationalité », « ressortissant » et il serait peut-être opportun, en ce qui concerne le Territoire de la Sarre, de préciser la portée de ces expressions au point de vue de l'application de la Convention aux conditions sarroises.

M. NAUTA (Pays-Bas) estime qu'il convient d'éviter que les États qui ne sont pas intéressés à la question de la nationalité des propriétaires des bateaux soient obligés de se renseigner sur cette nationalité.

*Alinéa 1 : N° 5.*

Le PRÉSIDENT propose de renvoyer le n° 5 au Comité de rédaction.

*Il en est ainsi décidé.*

*Alinéa 1 : N° 6.*

M. CONTZESCO (Roumanie) croit que la déclaration que le bateau n'est pas immatriculé ailleurs est nécessaire et ne doit pas être considérée comme facultative. L'article 3 laisse, en effet, dans certains cas, aux propriétaires de bateaux, le choix du pays où le bateau sera immatriculé. Donc, il convient que le propriétaire fasse une déclaration exacte.

M. ROSSETTI (Italie) considère aussi que cette déclaration doit être obligatoire.

M. SULKOWSKI (Pologne) est d'avis que l'autorité compétente en matière d'immatriculation des bateaux devrait obligatoirement s'assurer par tous les moyens que le bateau n'a pas été immatriculé ailleurs.

Le PRÉSIDENT constate qu'il y a un accord unanime au sujet du n° 6, qui sera renvoyé au Comité de rédaction.

*Alinéa 2.*

M. RICHTER (Allemagne) constate que la personne tenue de formuler la déclaration doit établir exactement les indications requises, afin d'éviter une double immatriculation.

M. RIPERT (France) estime que l'idée qui vient d'être exprimée par la délégation allemande est peu pratique. Il est vrai que, de prime abord, il semble naturel de demander de justifier la déclaration formulée. Pourtant, en général, c'est à la partie qui conteste une déclaration de faire la preuve, et cela pour une raison pratique. Comment pourrait-on demander de faire la preuve de tous les faits prévus à l'alinéa 1 de l'article 5? Il serait impossible, par exemple, de faire la preuve du fait négatif que le bateau n'a pas été immatriculé dans un autre lieu. A cet égard, on ne pourra que se fier aux déclarations faites. Si on inscrit à la Convention l'obligation d'établir la preuve des déclarations prévues à l'article 5, on créera un prétexte pour refuser l'immatriculation faute de preuve complète.

Le PRÉSIDENT se déclare d'accord avec les idées de la délégation française et estime d'ailleurs qu'au cas où une fausse déclaration serait formulée en ce qui concerne l'inscription d'un bateau sur un registre d'immatriculation, des sanctions interviendront à l'égard du contrevenant.

M. RICHTER (Allemagne) explique que, dans sa pensée, conformément au droit allemand, la personne tenue de faire la déclaration en question doit administrer seulement un commencement de preuves *prima facie*, par exemple par voie d'affidavit. Le propriétaire d'un bateau dira, par exemple : Ce bateau a été construit en telle ou telle localité. Afin de vérifier l'exactitude de ses dires, l'autorité compétente pourra lui poser un certain nombre de questions décisives.

M. ROSSETTI (Italie) déclare qu'il convient d'éviter, si l'on admet le système allemand qui prévoit la nécessité d'un commencement de preuve, les chicanes administratives qui ne se produisent que trop fréquemment.

*L'alinéa 2 est adopté.*

Le PRÉSIDENT invite la Commission à discuter l'article 5 *bis* de la proposition allemande.

*Article 5 bis de l'amendement proposé par la délégation allemande.*

M. RICHTER (Allemagne) déclare qu'il est important de pouvoir trouver toutes les indications relatives à l'inscription d'un bateau à la même place. Aussi, l'alinéa 1 de l'article 5 *bis* prévoit-il que chaque bateau doit être immatriculé sur une feuille spéciale numérotée. De même, la question de la mention de la date d'inscription présente un intérêt international en ce qui concerne la publicité des hypothèques et l'acquisition de la propriété. Il en est de même en ce qui concerne la mention de l'inscription des hypothèques prises sur le bateau, et le nom du bureau hypothécaire. Dans certains pays, deux registres sont tenus, l'un pour les hypothèques, l'autre pour l'immatriculation des bateaux. Or, il semble à M. Richter qu'il serait gênant d'être obligé de faire effectuer des recherches dans un registre spécial hypothécaire à l'étranger. L'essentiel est que l'on puisse trouver en même temps que la mention d'immatriculation celle relative aux inscriptions d'hypothèques.

M. ROSSETTI (Italie) se déclare d'accord à ce sujet.

Le PRÉSIDENT résume la pensée de M. Richter en constatant qu'il désire que toutes les mentions qui ont trait à un bateau soient réunies en un même lieu.

En réponse à une question posée par M. HOUBEURT (France), M. RICHTER déclare qu'il importe peu qu'un bateau inscrit, par exemple, sous le n° 5, puisse être mentionné sur un nombre variable de feuilles : 5a), 5b), 5c), etc.

M. DESCAMPS (Belgique) estime que c'est là une question de rédaction.

M. NAUTA (Pays-Bas) ne croit pas que cette question puisse soulever de difficultés administratives.

M. RIPERT (France) est d'avis qu'il convient d'appuyer la suggestion allemande qui vise à établir un rapport entre les inscriptions hypothécaires et les immatriculations des bateaux. Toutefois, l'alinéa 3 de l'article 5 bis de la proposition allemande l'inquiète quelque peu. En effet, aux termes de cet alinéa, le certificat d'immatriculation à délivrer par l'autorité compétente devrait toujours reproduire les inscriptions d'hypothèques qui grèvent le bateau. Or, cette reproduction serait impossible dans certains pays où une autorité différente est compétente pour l'immatriculation et pour l'inscription hypothécaire.

D'ailleurs, quel intérêt les pays auraient-ils à montrer quelles hypothèques sont constituées sur tel ou tel bateau ? Ce serait là imposer une obligation inutile et au propriétaire du bateau et à l'autorité chargée de la conservation des hypothèques.

M. CONTZESCO (Roumanie) propose une motion d'ordre. Il considère que l'article du projet allemand, qui est relatif aux hypothèques, devrait être examiné avec le chapitre qui traite expressément de cette dernière matière. Aussi le mieux, lui semble-t-il, est d'ajourner la discussion de cette question jusqu'au moment où ce chapitre sera discuté.

M. SUŁKOWSKI (Pologne) constate que la proposition allemande vise à établir une concordance entre divers registres. Il est d'accord sur ce principe.

M. RICHTER (Allemagne) examine l'hypothèse où un bateau étranger est mis en chantier en Allemagne. Dans ce cas, le réparateur doit pouvoir constater si le bateau à réparer est grevé ou non d'hypothèques. En cas d'affirmative, ce réparateur ne voudra pas, en effet, effectuer les travaux nécessaires sans versement préalable d'une avance. Il convient que le réparateur soit toujours en mesure d'aller se renseigner au sujet de la situation hypothécaire des bateaux immatriculés. Il est préférable de s'adresser directement au Bureau des hypothèques sans avoir à passer par le Bureau d'immatriculation.

M. RIPERT (France) constate que M. Richter estime qu'il y a un grand intérêt à avoir à bord du bateau un état hypothécaire. Mais cela n'oblige nullement à ce que la mention des inscriptions hypothécaires soit reproduite sur le certificat d'immatriculation.

Le PRÉSIDENT constate l'accord sur le principe. Il propose que la partie de l'amendement qui touche les hypothèques soit réservée jusqu'au moment où le chapitre relatif aux hypothèques sera discuté.

*Il en est ainsi décidé. Avec ces réserves, l'article 5 est adopté et renvoyé au Comité de rédaction.*

### TROISIÈME SÉANCE

*Tenue le mercredi 19 novembre 1930, à 16 heures.*

*Président: Le professeur Robert HAAB (Suisse).*

#### IV. Examen du projet de Convention (suite).

##### TITRE PREMIER. — DE L'IMMATRICULATION (suite).

Le PRÉSIDENT invite la Commission à poursuivre la discussion des articles du projet de Convention sur certaines matières de droit fluvial.

##### *Article 6 et amendement proposé par la délégation allemande.*

Le PRÉSIDENT donne lecture de l'article 6 et de l'amendement allemand y relatif (voir annexe 1, page 185).

M. RICHTER (Allemagne) explique que la délégation allemande n'a rien voulu changer au fond de l'article primitif, mais qu'elle a voulu le rendre plus clair en distinguant les formalités incombant aux particuliers de celles incombant aux bureaux d'enregistrement.

L'amendement mentionne également le duplicata du certificat d'immatriculation, qui est appelé à jouer un grand rôle en pratique. C'est ainsi, par exemple, que lorsque le bateau est entre les mains d'un réparateur, le propriétaire ne dispose plus que du duplicata. Il importe simplement, pour empêcher les abus éventuels, de faire de sorte que le certificat et son duplicata soient exactement conformes.



M. RIPERT (France) estime que le texte allemand n'est pas meilleur que celui du projet primitif. En effet, dans les cas envisagés par l'article, le certificat d'inscription doit être soit modifié soit retiré.

Le PRÉSIDENT décide, d'accord avec la Commission, de renvoyer la question au Comité de rédaction.

*Article 7 et amendement proposé par la délégation allemande.*

Le PRÉSIDENT donne lecture de l'article 7 et de l'amendement allemand y relatif (voir annexe 1, page 185).

M. RICHTER (Allemagne) explique que la délégation allemande considère que l'article 7 primitif est trop chargé. Pour cette raison elle a incorporé les dispositions du premier alinéa de cet article 7 dans l'article 5 *bis* de son projet d'amendement. L'article 7 modifié spécifierait simplement que tout bateau immatriculé doit être muni de son certificat d'immatriculation. La réserve « sauf le cas où, etc... » aurait pour but de ne pas le mettre en contradiction avec l'article 6.

M. MÜLLER (Tchécoslovaquie) demande si le duplicata peut remplacer l'original pour prouver la propriété du point de vue juridique notamment.

M. RICHTER (Allemagne) répond qu'une valeur probante spécifique n'est attachée ni à l'original, ni au duplicata.

Le duplicata n'est mentionné que parce qu'il arrive que le créancier hypothécaire se fait délivrer l'original par le propriétaire. M. Richter répète qu'il suffit de prendre les mesures nécessaires pour qu'il y ait conformité absolue entre l'original et son duplicata.

M. ROMEIN, membre de la Section des communications et du transit, demande si le duplicata doit être délivré en même temps que l'original ou seulement lorsque ce dernier est perdu ou détruit.

M. ROSSETTI (Italie) estime aussi que ce point doit être précisé.

Le PRÉSIDENT signale qu'au sein du Comité rhénan, il avait été décidé de laisser aux législations nationales le soin de fixer les formalités à exiger en cas de perte.

M. ROMEIN, membre de la Section des communications et du transit, fait observer que le quatrième alinéa de l'article 5 *bis* de l'amendement allemand spécifie que mention de la délivrance du duplicata doit être faite sur l'original, ce qui semble exclure le cas de perte.

Le PRÉSIDENT estime que la délivrance du duplicata ne présente aucun danger, si elle est mentionnée sur l'original et sur le registre d'immatriculation.

M. SUŁKOWSKI (Pologne) fait observer que les rédacteurs du projet de Convention ont sans doute voulu laisser la liberté aux législations nationales sur ce point, ainsi qu'il ressort de la dernière phrase de l'article 7 : « Un duplicata, lorsqu'il est délivré par lesdites autorités, peut tenir lieu de certificat. »

Le PRÉSIDENT estime que le Comité de rédaction pourra préciser ce point.

Il invite la Commission à se prononcer sur la question de savoir si le certificat doit ou non porter mention des hypothèques.

M. RICHTER (Allemagne) rappelle qu'au cours de la séance précédente, il a exprimé l'avis que cette mention était nécessaire. Elle l'est d'autant plus que, le privilège du réparateur ayant été supprimé, il faut permettre à celui-ci de se renseigner sans être obligé de consulter le registre.

Les objections qui ont été présentées par les milieux intéressés semblent peu pertinentes. Les armateurs font valoir, en effet, qu'ils ne tiennent pas à mettre leurs capitaines au courant des hypothèques qui grèvent le bâtiment. Or, il suffit de remarquer que ces capitaines sont à même d'obtenir tous renseignements à ce sujet en consultant le registre.

Le PRÉSIDENT fait observer que le réparateur peut toujours, s'il veut s'informer sur la situation hypothécaire du bateau, obtenir un extrait du registre, qui fait mention des hypothèques.

M. RICHTER (Allemagne) réplique que cette formalité exige un délai assez considérable, surtout lorsqu'il doit y avoir correspondance entre deux pays différents.

M. RIPERT (France) estime que les arguments de M. Richter prouveraient tout au plus qu'il pourrait être utile d'avoir à bord un extrait du Registre hypothécaire. M. Ripert voit des inconvénients à ce que la situation hypothécaire du bateau soit dévoilée à tous ; car elle le serait non seulement au capitaine, mais aussi aux différentes autorités des ports.

D'autre part, pour les pays où il existe deux registres distincts, l'inscription des hypothèques sur le certificat d'immatriculation présenterait des difficultés. En tout cas, il faudrait obliger le capitaine à se faire délivrer un certificat récent, et encore cela n'empêcherait-il pas la constitution de nouvelles hypothèques au cours d'un voyage, qui ne seraient pas portées au certificat.

Une garantie absolue ne pourrait être obtenue qu'en stipulant qu'une hypothèque ne pourra être constituée, sans présentation du certificat, ce qui serait fort peu pratique.

M. SOUBOTITCH (Yougoslavie) déclare qu'il voulait formuler les mêmes objections que celles présentées par M. Ripert, notamment que le bateau pourrait naviguer avec un certificat qui ne serait pas à jour.

M. CONTZESCO (Roumanie) estime, par contre, que les objections de M. Ripert et de M. Soubotitch ne prouvent pas d'une façon péremptoire que l'inscription des hypothèques sur le certificat d'immatriculation présenterait de très graves inconvénients. A son avis, il appartient à l'intéressé de faire le nécessaire pour s'assurer que le certificat a été délivré à une date récente.

Il estime avec M. Richter que l'inscription des hypothèques sur le certificat est nécessaire pour que les intéressés puissent toujours être renseignés facilement sur la situation hypothécaire du bateau.

M. ROSSETTI (Italie) signale que la législation italienne prescrit que mention des hypothèques soit faite sur les papiers de bord, et que cette disposition ne soulève pas de difficultés en pratique.

Il fait observer que la Convention internationale de Bruxelles de 1926 pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes, avait adopté d'ailleurs une disposition analogue, et donne lecture de l'article 12 de cette Convention :

« Les lois nationales doivent déterminer la nature et la forme des documents se trouvant à bord du navire sur lesquels mention doit être faite des hypothèques, mortgages et gages prévus à l'article premier, sans que, toutefois, le créancier qui a requis cette mention dans les formes prévues puisse être responsable des omissions, erreurs ou retards de l'inscription sur ces documents. »

M. Rossetti estime que, si la Commission se prononce contre l'inscription des hypothèques sur le certificat d'immatriculation, il est indispensable qu'il y ait à bord un certificat spécial hypothécaire.

M. SOUBOTITCH (Yougoslavie) fait ressortir que les débats actuels portent sur deux questions juridiques différentes ; soit, d'une part, les formalités devant entourer la constitution de l'hypothèque, et, d'autre part, les effets de cette hypothèque. Il estime que la Commission doit laisser aux législations nationales le soin de régler ces questions. Il ne lui appartient pas, en effet, d'unifier ces législations.

Tout ce que la Commission peut faire est de prévoir une règle pour la solution des conflits. Si elle décide en principe que c'est à la législation nationale du lieu d'inscription de fixer la forme de l'inscription, la difficulté sera résolue.

M. ROSSETTI (Italie) réplique que cette solution ne lui paraît pas suffisante, car elle n'assurerait pas une publicité suffisante à l'hypothèque. Il faut que les intéressés étrangers puissent être renseignés, sans avoir à recourir au pays où l'hypothèque a été constituée.

M. RIPERT (France) invite la Commission à constater que certains pays estiment impossible que mention des hypothèques soit faite sur le certificat d'immatriculation.

M. RICHTER (Allemagne) considère qu'il serait indispensable, en ce cas, de remplacer l'inscription sur le certificat d'immatriculation par un certificat spécial hypothécaire. Toutefois, il faudrait alors prévoir que chaque bateau ait obligatoirement un tel certificat à bord, même lorsqu'il ne serait grevé d'aucune hypothèque.

Le PRÉSIDENT considère que cette solution pourrait donner satisfaction à toutes les délégations, mais il invite la Commission à ajourner les débats sur ce point pour les reprendre lors de la discussion sur les hypothèques.

#### Article 8.

Le PRÉSIDENT donne lecture de l'article 8 du projet de Convention.

Il rappelle que la Commission est saisie pour cet article de trois propositions d'amendement :

- 1<sup>o</sup> Une proposition néerlandaise (voir annexe 2, page 198) ;
- 2<sup>o</sup> Une proposition allemande (voir annexe 1, page 185) ;
- 3<sup>o</sup> Une proposition yougoslave (voir annexe 3, page 200).

Il donne lecture de ces trois propositions.

M. VAN SLOOTEN (Pays-Bas) explique que l'amendement proposé par la délégation des Pays-Bas est fort simple et qu'il a pour but une économie et une simplification.

Une économie : si cet amendement était adopté, il ne serait pas nécessaire, en effet, de modifier les inscriptions que portent à l'heure actuelle les milliers de bateaux circulant sur le Rhin, étant donné que les nouvelles prescriptions correspondraient aux règlements en vigueur.

Une simplification : si le bateau devait porter toutes les indications prévues par la Convention du jaugeage et celles de l'article 8, la coque entière du bateau serait couverte d'inscriptions ; la délégation des Pays-Bas propose de laisser à la fantaisie du propriétaire les mentions à inscrire à l'arrière du bateau.

M. DE RUELLE (Belgique) attire l'attention de la Commission sur l'importance qu'il y a à ne pas toucher aux dispositions de la Convention du jaugeage. S'il y a le moindre danger à ce sujet,

il vaut mieux que la question soit étudiée non par le Comité de rédaction, mais par un petit sous-comité composé de spécialistes.

*Nomination d'un Sous-Comité technique.*

Le PRÉSIDENT déclare approuver entièrement cette suggestion de M. de Ruelle et propose que le Sous-Comité comprenne :

M. BAULE,  
M. DE DIETRICH DE SACHSENFELS,  
M. HOUBEURT,  
M. MÜLLER,  
M. VAN SLOOTEN.

*Il en est ainsi décidé.*

M. ROMEIN, membre de la Section des communications et du transit, propose que soient renvoyées également à ce Comité les questions faisant l'objet des alinéas 2 et 3 de l'article 5.

*Il en est ainsi décidé.*

M. RICHTER (Allemagne) signale que l'amendement allemand propose simplement de supprimer la lettre indiquant le lieu de l'enregistrement.

Cette question pourra être examinée également par le Sous-Comité.

M. SOUBOTITCH (Yougoslavie) explique, pour justifier l'amendement de sa délégation, qu'on se sert en Yougoslavie de deux alphabets, alphabet cirilique et alphabet latin, et que l'obligation de supprimer sur les bateaux les inscriptions en caractères ciriliques risquerait de heurter les sentiments de la population. C'est pourquoi l'amendement suivant est proposé :

« A côté de ces inscriptions en caractères latins, les inscriptions peuvent être faites aussi en caractères reconnus officiels dans le pays du lieu de l'immatriculation. »

M. ROSSETTI (Italie) déclare que ce droit lui semble acquis.

M. SOUBOTITCH (Yougoslavie) insiste toutefois pour qu'il en soit fait mention expressément, soit dans le corps de la Convention, soit dans le Protocole de clôture.

Le PRÉSIDENT appuie cette suggestion, qu'il estime d'autant plus nécessaire que le troisième alinéa de l'article 8 interdit « d'ajouter d'autres inscriptions ».

Il invite le Sous-Comité à tenir compte de cette observation.

*Article 9.*

Le PRÉSIDENT donne lecture de l'article 9 du projet de Convention.

Il propose que le quatrième alinéa de cet article soit discuté en même temps que l'article 17. Il rappelle que la Commission est saisie d'un projet d'amendement présenté par la délégation allemande dont il donne lecture (voir annexe 1, page 185). Il fait observer qu'il y a là seulement une modification rédactionnelle et propose de laisser le Comité de rédaction prendre une décision à ce sujet.

Il constate que la Commission est d'accord sur ces deux points.

M. SOUBOTITCH (Yougoslavie) déclare que la délégation yougoslave ne saisit pas clairement la signification du deuxième alinéa de l'article 9. Cet alinéa charge le bureau d'immatriculation où se fait la radiation et le bureau qui procède à la nouvelle immatriculation de s'entendre entre eux sur le moment à partir duquel le transfert doit commencer à prendre effet.

La délégation yougoslave estime que la Convention devrait donner tout au moins quelques directives à ces bureaux, sur la façon dont ils devront réaliser cette entente.

M. RICHTER (Allemagne) dit que ce point a été étudié d'une façon approfondie par la délégation allemande et que celle-ci s'est rendu compte des difficultés qu'il présente. C'est pour cette raison qu'elle a formulé une proposition d'amendement à l'article 34 du projet de Convention, dont l'ancien texte devrait être complété par la disposition suivante : « 2. Les gouvernements des Hautes Parties contractantes régleront la procédure à suivre par des accords bilatéraux. »

Le Ministère allemand de la Justice, consulté par la délégation allemande, lui a répondu qu'un règlement uniforme international de la procédure à suivre serait très difficile à établir et qu'il fallait avoir recours à des accords bilatéraux.

M. CONTZESCO (Roumanie) rappelle qu'il avait également signalé cette difficulté. Toutefois, il estime que des accords bilatéraux pourraient ne pas être toujours suffisants et il demande à M. Richter de donner quelques précisions sur ce point, pour le cas, surtout, où plusieurs gouvernements seraient appelés à s'accorder entre eux.

M. SOUBOTITCH (Yougoslavie) déclare que sa délégation est prête à suivre soit une voie, soit l'autre, à condition qu'elle soit indiquée nettement, et qu'on ne se contente pas de prévoir des négociations compliquées entre deux bureaux qui ne se connaissent pas.

M. SULKOWSKI (Pologne) fait observer que la solution des accords bilatéraux présente un grave inconvénient. La conclusion de tous ces accords demanderait des délais considérables pendant lesquels la Convention ne pourrait entrer en vigueur. Aussi croit-il que la procédure indiquée dans le projet primitif est préférable à celle de l'amendement allemand.

M. RICHTER (Allemagne) réplique qu'il n'est pas douteux qu'une réglementation uniforme internationale serait préférable à un ensemble d'accords bilatéraux. Mais la Commission doit tenir compte du fait que la Conférence n'aura probablement pas le temps de se mettre d'accord sur une telle réglementation uniforme impossible à réaliser.

Il signale que, dans la Convention de la Haye sur la procédure civile, des accords bilatéraux ont été prévus également.

M. ROSSETTI (Italie) considère que M. Richter a raison, mais que l'objection de M. Sulkowski est très fondée également. Le calcul indique que 265 traités bilatéraux seraient nécessaires si le nombre des États contractants était de 23, et il semble impossible d'attendre que tous ces accords soient conclus avant que la Convention puisse entrer en vigueur. Il est donc indispensable d'envisager une autre solution.

M. SULKOWSKI (Pologne) donne lecture de l'article 34 du projet de Convention.

M. SOUBOTITCH (Yougoslavie) insiste sur le fait que le deuxième alinéa de l'article 9 du projet de Convention veut faire déterminer un point ayant des conséquences juridiques très importantes (c'est-à-dire le moment à partir duquel le transfert prendrait effet) par l'entente à intervenir dans chaque cas entre les deux bureaux. Une telle disposition lui semble être insuffisante, et même dangereuse.

M. DE RUELLE (Belgique), faisant allusion à l'exemple, cité par M. Richter, de la Convention de la Haye sur la procédure civile, dit que cette Convention prévoit un minimum de facilité, c'est-à-dire la transmission par la voie diplomatique. Les accords bilatéraux ne sont envisagés que pour simplifier éventuellement ce minimum.

Il estime que la présente Convention doit également prévoir un minimum et déterminer un instant quelconque des opérations à partir duquel le transfert prendrait effet.

Le PRÉSIDENT propose que la question soit renvoyée au Comité de rédaction.

M. ROSSETTI (Italie) estime préférable que la Commission essaie de la résoudre elle-même.

M. RICHTER (Allemagne) suggère l'élaboration d'un formulaire international. Cette élaboration ne serait pas si difficile, étant donné que la correspondance entre les deux bureaux doit être fort simple.

M. ROSSETTI (Italie) propose que la Commission, si elle accepte la suggestion de M. Richter, désigne un petit Sous-Comité spécial pour la rédaction du formulaire envisagé.

M. RIPERT (France) constate que l'expression « prendre effet », employée par le deuxième alinéa de l'article 9, est peu heureuse. Il propose de supprimer la difficulté en supprimant purement et simplement cet alinéa.

A son avis, il ne s'agit pas de déterminer le moment à partir duquel le transfert prendra effet, mais seulement de trouver un moyen pratique qui permette à un bureau d'être prévenu de la radiation de l'immatriculation.

M. MÜLLER (Tchécoslovaquie) se déclare partisan de la suggestion du formulaire présentée par M. Richter.

M. SOUBOTITCH (Yougoslavie) déclare que le point important est d'assurer le synchronisme entre la radiation et la nouvelle immatriculation.

Il propose, en conséquence, que le second bureau procède à une immatriculation provisoire. Celle-ci ne prendrait effet qu'à partir de la date de la radiation, qui serait indiquée ultérieurement par le premier bureau.

Le PRÉSIDENT fait observer que cette procédure est celle adoptée par la législation suisse.

M. RICHTER (Allemagne) estime que l'alinéa en question est très important, car il est indispensable de donner toute la sécurité voulue au crédit hypothécaire. Si l'on ne fixe pas un moment unique pour la radiation et la nouvelle inscription, il pourrait y avoir entre ces deux opérations un intervalle de temps où l'hypothèque ne serait pas enregistrée, ce qui pourrait avoir comme conséquence d'annuler ses effets.

Il signale que la délégation allemande avait, elle aussi, envisagé la solution de l'inscription provisoire, mais qu'elle a reconnu que son application donnerait lieu à de grandes difficultés en Allemagne.

M. VAN SLOOTEN (Pays-Bas) se déclare d'accord avec M. Ripert pour estimer que le deuxième alinéa de l'article 9 emploie une formule peu heureuse, qui peut prêter à des malentendus. Ainsi que l'a souligné M. Soubotitch, il importe surtout d'assurer le synchronisme des deux opérations.

Il propose, en conséquence, de modifier l'alinéa en remplaçant les deux derniers mots « prendront effet » par le mot « s'effectueront ».

M. RIPERT (France) déclare qu'il ne veut pas entreprendre une discussion juridique avec M. Richter, mais qu'il lui semble que la seule conséquence qui pourrait éventuellement avoir un écart entre la date de la radiation et celle de la nouvelle immatriculation, serait d'empêcher la vente du bateau pendant cet intervalle de temps.

Il déclare se rallier à la suggestion d'une inscription provisoire.

#### *Nomination d'un Sous-Comité spécial.*

Le PRÉSIDENT propose à la Commission d'accepter la modification des deux derniers mots de l'alinéa indiqués par M. van Slooten et de décider qu'un formulaire, qui ferait partie de la Convention, serait élaboré par un sous-comité spécial que le Président désignerait.

Il constate que la Commission se déclare d'accord sur ces deux points et que la discussion de l'article 9 est terminée, à l'exception du quatrième alinéa qui sera repris lors de la discussion de l'article 17, et il prie les membres suivants de la Commission de bien vouloir instituer le Sous-Comité chargé de la rédaction du formulaire :

M. CHARGUÉRAUD-HARTMANN,  
M. NAUTA,  
M. SOUBOTITCH,  
M. DE STRYKER,  
M. VOGELS.

#### *Article 10.*

Le PRÉSIDENT donne lecture de l'article 10 du projet de Convention et constate qu'aucune délégation n'a présenté de propositions écrites d'amendement.

M. SITENSKY (Tchécoslovaquie) se demande si le premier paragraphe de l'article 10 ne pourrait pas permettre l'interprétation que la répression des contraventions puisse être assurée à la fois par les autorités des différents lieux où le bateau remplit les conditions de l'immatriculation obligatoire, tandis que, d'après l'intention du Comité, la répression ne peut être effectuée que par une seule de ces autorités.

D'autre part, la délégation tchécoslovaque propose qu'il soit indiqué nettement, dans le deuxième paragraphe de l'article 10, que les autorités compétentes sont tenues de dresser un procès-verbal et de le transmettre à qui de droit.

Le PRÉSIDENT considère que cette deuxième modification est d'ordre purement rédactionnel. Quant à la première question posée, il demande que l'un des rédacteurs du projet de Convention veuille bien y répondre.

M. RICHTER (Allemagne) explique que les rédacteurs du projet ont voulu prévoir un règlement qui soit conforme aux dispositions générales du droit pénal international.

M. SOUBOTITCH (Yougoslavie) demande que cette explication, présentée par M. Richter au nom des rédacteurs du projet, ne soit pas mentionnée seulement dans les procès-verbaux de la Commission, mais qu'elle soit reprise dans l'article 10 même.

M. ROSSETTI (Italie) appuie la suggestion de M. Soubotitch et propose que le Comité de rédaction soit chargé de l'incorporer dans l'article 10.

Le PRÉSIDENT prie le Comité de rédaction de bien vouloir en prendre note.

M. ROSSETTI (Italie) demande la permission de revenir sur le troisième alinéa de l'article 8. Il ne se rappelle pas avoir approuvé l'interdiction faite aux propriétaires des bateaux d'ajouter d'autres inscriptions à celles prévues par la Convention, et il ne s'explique pas une interdiction générale et absolue de cette sorte.

M. HOUBEURT (France) répond que des erreurs seraient à craindre si des inscriptions supplémentaires faisaient suite aux inscriptions réglementaires.

Il propose que les mots « aux endroits réservés » soient ajoutés à la fin du troisième alinéa.

Le PRÉSIDENT demande au Comité de rédaction d'en prendre note.

Il constate que la discussion de l'article 10 du projet de Convention est terminée et rappelle que la Commission devra discuter plus tard l'article 10 *bis* de l'amendement allemand.

*L'article 10 est adopté et renvoyé au Comité de rédaction.*

## QUATRIÈME SÉANCE

*Tenue le vendredi 21 novembre 1930, à 10 heures.*

*Président : Le professeur Robert HAAB (Suisse).*

### V. Examen du projet de Convention (suite).

Le PRÉSIDENT invite la Commission à poursuivre la discussion du projet de Convention sur certaines matières du droit fluvial dont le titre I a déjà été examiné.

#### TITRE II.

##### Article 11.

Le PRÉSIDENT donne lecture de l'article 11 du projet de Convention. Il propose d'ajourner la discussion de cet article à la fin de l'examen du titre II, étant donné qu'il s'agit du champ d'application de ce titre.

M. RICHTER (Allemagne) estime plus logique de déterminer d'abord ce champ d'application. Il se peut, en effet, que certaines délégations ne puissent accepter les dispositions prévues dans le corps du titre que si la dernière partie de l'article 11 était supprimée.

Il fait ressortir que l'article 11 concerne deux cas :

Premier cas : Un bateau, immatriculé dans un pays A, se trouve sur le territoire d'un pays B.

Deuxième cas : Un bateau, immatriculé dans un pays A, se trouve sur le territoire de ce pays et un créancier d'un pays B se présente.

M. Richter propose que la règle indiquée dans l'article 11 ne s'applique pas à ce deuxième cas, qui rendrait plus difficile l'application de la Convention. C'est ainsi, par exemple, qu'il faudrait recommencer toute la procédure basée sur le fait qu'au début d'un règlement de créances, seuls des créanciers ressortissants de l'État A étaient en jeu au moment où un créancier appartenant à un État B est venu se présenter.

M. HOHL (Suisse) déclare que la délégation suisse est d'avis, comme la délégation allemande, de supprimer la dernière partie de l'article 11. Toutefois, si la Commission se prononce dans le sens contraire, la délégation suisse propose que l'article 11 soit modifié de façon à ne concerner : 1<sup>o</sup> que les bateaux étrangers et 2<sup>o</sup> les créanciers hypothécaires et les propriétaires étrangers.

M. SITENSKY (Tchécoslovaquie) se déclare également de cet avis. Il estime que la proposition allemande irait trop loin en restreignant d'une façon essentielle le champ d'application de la Convention. Il peut y avoir intérêt, en effet, à fixer la règle à suivre lorsqu'un bateau est situé sur son territoire national et qu'un créancier hypothécaire étranger se présente.

La délégation tchécoslovaque appuie en conséquence la proposition de la délégation suisse.

M. LAWATSCHER (Autriche) déclare appuyer la proposition allemande.

M. RIPERT (France) conclut, de la tournure prise par les débats, que la proposition faite au début de la séance par le président de renvoyer la discussion de l'article 11 à la fin de celle du titre II, était la plus sage.

Quant à lui, il estime que la phrase « si un bateau se trouve sur le territoire d'un autre État contractant » peut donner lieu à des controverses, étant donné qu'elle ne précise pas le moment où il faut, pour la reconnaissance du privilège, que le bateau se trouve sur le territoire en question.

Il invite, en conséquence, la Commission à réserver sa décision.

M. RICHTER (Allemagne) considère que la proposition suisse n'écarte pas la difficulté qu'il a signalée. En effet, les créanciers étrangers ne sont pas connus. Ils peuvent se présenter jusqu'au dernier moment.

Quant à la remarque faite par M. Ripert, il désire faire observer qu'on ne peut préciser dans la Convention le moment auquel le bateau doit se trouver sur le territoire de l'État, étant donné que le moment envisagé est différent suivant les cas. Lorsqu'un bateau est saisi et fait l'objet d'une exécution forcée, on ne tient pas compte du lieu où le privilège est né.

M. RIPERT (France) demande si, dans le cas d'un bateau allemand saisi en Allemagne, le tribunal allemand doit appliquer ou non la Convention lorsque le privilège est né à l'étranger.

M. RICHTER (Allemagne) répond par la négative. Il estime qu'un tribunal doit appliquer la loi nationale lorsqu'il s'agit d'un bateau national, et la Convention lorsqu'il s'agit d'un bateau étranger.

Le PRÉSIDENT, considérant qu'il est indispensable que la Commission examine d'abord comment doit jouer la réglementation des privilèges, l'invite à voter sur le point de savoir si la discussion de l'article 11 doit être renvoyée à la fin de celle du titre II.

*La Commission en décide ainsi, à la majorité des voix.*

CHAPITRE PREMIER. — DE LA PROPRIÉTÉ.

Article 12.

Le PRÉSIDENT donne lecture de l'article 12 et du chiffre VII du Protocole de clôture.

Il rappelle à la Commission qu'elle est saisie par la délégation allemande d'une double proposition d'amendement :

1<sup>o</sup> Suppression complète de l'article 12.

2<sup>o</sup> Si d'autres délégations demandent le maintien de la règle indiquée par cet article, la délégation allemande propose une formule différente (voir annexe 1, page 186).

Il rappelle également que la Commission est saisie d'une proposition d'amendement néerlandaise (voir annexe 2, page 199).

Il donne en premier lieu la parole à M. Richter.

M. RICHTER (Allemagne) déclare que sa délégation considère qu'il n'y a pas un intérêt international à régler la question du transfert de propriété qui n'a pas encore donné lieu à des conflits, et dont l'étude n'est, d'ailleurs, pas suffisamment avancée. D'autre part, la délégation allemande estime que la règle indiquée dans l'article 12 donnerait de mauvais résultats. En effet, sur le territoire allemand, par exemple, les droits de propriété sur un bateau sont transférés entre vifs, sans intervention bureaucratique, sans retard, sans frais et sans qu'il soit nécessaire de remplir des formalités gênantes. Les intéressés désirent ne pas voir modifier cet état de choses.

Le PRÉSIDENT demande à la Commission de se prononcer sur la suppression éventuelle de l'article 12.

M. VAN SLOOTEN (Pays-Bas) déclare qu'il estime l'article 12 indispensable. Il s'agit d'établir une assiette solide à l'hypothèque et aux droits réels. Tout effort en ce sens serait cependant inutile si on laisse subsister un doute sur la loi qui doit être appliquée en ce qui concerne le droit de propriété.

La délégation des Pays-Bas considère indispensable que ce soit suivant une même loi qu'on reconnaisse la validité de l'hypothèque et le droit de propriété, faute de quoi des confusions seraient toujours possibles.

M. SITENSKY (Tchécoslovaquie) se déclare d'accord avec M. van Slooten. La proposition allemande ne peut être acceptée car elle va trop loin. Il est indispensable de fixer une règle pour le transfert de la propriété. M. Sitenisky cite l'exemple d'un bateau immatriculé dans un pays où l'enregistrement du transfert de la propriété est obligatoire, et qui serait vendu dans un autre pays où cet enregistrement ne serait pas nécessaire. L'acquéreur de bonne foi pourrait se voir contester son droit de propriété dans le premier de ces pays.

Toutefois, la délégation tchécoslovaque estime que le texte actuel de l'article 12 n'est pas suffisant. En effet, lorsque la loi du pays où le bateau est immatriculé ne prévoit, comme condition du transfert, ni l'inscription aux registres publics, ni la mise en possession de l'acquéreur, c'est la législation de l'État sur le territoire duquel se trouve le bateau qui devient applicable.

En conséquence, la délégation tchécoslovaque propose que l'une au moins de ces deux conditions soit rendue obligatoire, et elle soumet à la Commission le projet d'amendement suivant : la première phrase de l'article 12 serait seule conservée et l'article serait complété par la disposition suivante :

« Les États contractants s'engagent à prévoir dans leur législation comme conditions du transfert, ou tout au moins pour que ce transfert ait effet à l'égard des tiers, soit l'inscription aux registres publics visés à l'article 1, soit la mise en possession de l'acquéreur. »

M. HOHL (Suisse) déclare appuyer la proposition de M. van Slooten.

M. RICHTER (Allemagne) rappelle qu'il existe deux systèmes différents en ce qui concerne la portée juridique de l'inscription au registre public du transfert des droits de propriété sur un bateau. D'après un premier système, la propriété n'est effectivement transférée que lorsque l'inscription a été faite. D'après le second système, le transfert de la propriété suit les règles habituelles du droit pour les biens meubles, c'est-à-dire qu'il est effectué lorsqu'il y a eu contrat et tradition, l'inscription au registre n'ayant qu'une portée déclaratoire.

Les délégations des pays qui ont adopté le premier de ces deux systèmes doivent se rallier à la proposition tchécoslovaque. Mais celle-ci prévoit non pas simplement une règle pour la solution des conflits, mais une uniformisation des législations. Or, la délégation allemande estime que l'étude de cette question n'est pas suffisamment avancée pour permettre d'envisager cette uniformisation. En Allemagne, en effet, la question a été discutée depuis longtemps, et les intéressés ont toujours émis des opinions très différentes. La Commission doit donc se limiter à prévoir une solution pour les conflits de lois.

M. RIPERT (France) estime que, dans un cas comme celui qui fait l'objet de la présente discussion, il est nécessaire d'adopter la solution la plus libérale.

La Commission ne doit pas vouloir régler les modalités du transfert dans la législation des divers pays, mais simplement donner aux intéressés le moyen de savoir facilement quelle est la loi régissant le transfert, et, pour cela, la première phrase de l'article 12 est suffisante.

M. NAUTA (Pays-Bas) considère inutile de supprimer la seconde partie de l'article 12. Celle-ci tend à sauvegarder l'intérêt des tiers de bonne foi. Il estime que cette suppression ne pourrait que nuire au crédit hypothécaire fluvial.

M. RIPERT (France) est d'avis que l'objection est plus théorique que pratique, étant donné qu'une hypothèque ne sera guère constituée sur les bateaux dans les pays où le transfert est assuré simplement par contrat ou tradition.

M. NAUTA (Pays-Bas) réplique qu'il ne s'agit pas seulement de protéger l'intérêt des créanciers hypothécaires, mais aussi celui de l'acquéreur de bonne foi, qui risquerait d'acheter un bateau déjà vendu.

M. RIPERT (France) répète qu'il estime impossible que la Convention modifie les diverses législations nationales.

M. RICHTER (Allemagne) croit que la question donne lieu à un malentendu très grave. M. Ripert a déclaré que dans les pays où le transfert des droits de propriété sur un bateau est assuré simplement par contrat et tradition, il ne peut être constitué d'hypothèques sur ce bateau. Or, le transfert est régi de cette façon en Allemagne, où l'inscription au registre ne possède qu'une valeur administrative et n'a pas juridiquement d'effet constitutif. Et pourtant les hypothèques sur les bateaux sont courantes.

M. Richter estime qu'il est impossible de discuter les mérites de l'un ou l'autre système. Toutefois, il désire faire observer que les hypothèques en matière maritime et fluviale sont généralement bancaires et que les banques créancières savent fort bien garantir leurs intérêts. Toutes les précautions nécessaires peuvent être prises par contrat.

M. SULKOWSKI (Pologne) estime indispensable de régler la question du transfert des droits de propriété : ainsi que l'a fait ressortir M. van Slooten, il est nécessaire de donner une assiette sûre à l'hypothèque.

Quant à la proposition de M. Ripert tendant à supprimer la deuxième partie de l'article 12, M. Sulkowski ne peut pas partager cette façon de voir, car, comme l'a fait observer M. Nauta, il ne s'agit pas seulement de protéger les intérêts des créanciers hypothécaires, mais aussi ceux de l'acquéreur de bonne foi.

Il donne lecture de l'article 4 du projet de Convention élaboré par le Comité international technique d'experts juridiques aériens (C.I.T.E.J.A.).

Il propose que la Convention laisse chaque État libre de régler comme il l'entend le transfert de la propriété, mais qu'elle stipule que l'acquéreur de bonne foi, qui a acheté le bateau en se basant sur les indications du registre, soit reconnu propriétaire, même dans le cas où la personne indiquée dans le registre n'était pas le vrai propriétaire.

M. RICHTER (Allemagne) signale que c'est lui-même qui a rédigé le texte cité par M. Sulkowski. Il reproduit la présomption reconnue par la loi allemande pour le droit immobilier, mais M. Richter est opposé, en principe, à l'application de cette règle aux bateaux.

Quant à la remarque faite par M. Sulkowski, M. Richter croit savoir que, dans certaines régions de la Pologne, la loi en vigueur est encore l'ancienne loi allemande et que l'intention du Gouvernement polonais est d'unifier sa législation fluviale sur la base du « Binnenschiffahrtsrecht ». C'est là une question de fond qui ne rentre pas dans le cadre de la Convention, et la Commission doit se limiter à envisager la solution des conflits.

M. Richter reconnaît qu'il peut y avoir un danger d'erreur en ce qui concerne le véritable propriétaire du bateau. Mais il estime que c'est là une difficulté qui ne se présente guère en pratique, étant donné que les créanciers hypothécaires sont généralement très prudents et s'entourent, dans leurs contrats, de toutes les précautions possibles.

M. VAN SLOOTEN (Pays-Bas) déclare être surpris de la dernière remarque de M. Richter. La Commission a certes en vue l'unification du droit fluvial, mais elle doit s'efforcer également de faciliter le crédit hypothécaire. Or, la situation actuelle que M. Richter a caractérisée, a pour conséquence de rendre le crédit hypothécaire inaccessible à certains propriétaires, qui ne peuvent fournir aux banques les garanties très sévères qu'elles exigent. C'est là un inconvénient très grave, et M. van Slooten ne voit pas pourquoi la Commission n'essaierait pas d'y remédier.

M. WINIARSKI, président du Comité du droit fluvial, désire rectifier la remarque faite par M. Richter en ce qui concerne l'unification de la législation polonaise. Celle-ci, croit savoir M. Winiarski, n'est pas envisagée sur la base du « Binnenschiffahrtsrecht », mais sur les principes qui seront adoptés dans la Convention faisant l'objet actuel des débats.

M. RIPERT (France) considère que les débats font ressortir que l'article 12 est la seule solution possible. Une réglementation uniforme internationale serait sans doute préférable, mais la Commission n'est pas préparée pour délibérer utilement sur ce point. Elle n'est saisie d'aucun texte



et aucune étude n'a encore été faite. Il suffit de chercher à donner au créancier le moyen de connaître exactement les règles régissant les transferts.

A M. Richter, qui a cité le cas de la loi allemande, M. Ripert désire faire observer qu'en France, la règle « en fait de meuble, possession vaut titre » était applicable aux bateaux jusqu'à une époque toute récente, et il se peut qu'il y ait, à l'heure actuelle, des pays où une disposition analogue est encore en vigueur. Or, dans ce cas, l'acquéreur n'a pas à craindre l'action des créanciers hypothécaires et l'hypothèque ne peut pas exister.

M. Ripert ne s'explique pas le sens de la réserve indiquée dans l'article 12 et il lui semble inutile d'entreprendre l'examen des questions très complexes qui s'y rattachent.

M. YOVANOVITCH (Yougoslavie) déclare que la délégation yougoslave estime qu'il y aurait lieu de préciser dans la Convention que le transfert volontaire entre vifs des droits de propriété sur un bateau est réglé par la loi du pays contractant où le bateau est immatriculé. Cette délégation est d'avis, en conséquence, de conserver le début de l'article 12, qui énonce ce principe, et de supprimer le reste de l'article, à partir des mots « si cette loi... ».

M. CONTZESCO (Roumanie) rappelle que, dès la première séance de la Commission, tous les orateurs ont déclaré vouloir créer les registres d'immatriculation non seulement pour garantir les droits réels, mais aussi pour garantir tous les effets de ces droits.

Il déclare donc que la délégation roumaine s'oppose à la suppression telle qu'elle est indiquée par M. Ripert, mais que, par esprit de conciliation, elle admettrait la suppression, dans l'article 12, simplement du dernier membre de phrase : « soit la mise en possession de l'acquéreur ». M. Contzesco estime indispensable de conserver tout le reste de l'article.

M. SITENSKY (Tchécoslovaquie) constate que la majorité des délégations se sont prononcées en faveur du maintien de la première phrase de l'article.

En réponse à M. Ripert, qui propose que tout le reste de l'article soit supprimé, la délégation tchécoslovaque désire faire observer qu'il serait désirable de prévoir tout au moins une règle matérielle uniforme minimum qui serait adoptée par tous les États en ce qui concerne le transfert.

Il cite à nouveau le texte qu'il a proposé précédemment et qui tient compte de cette considération. Si la Commission n'acceptait pas cet amendement, M. Sitensky estime qu'il faudrait alors compléter l'article par une disposition de présomption de la propriété.

Le PRÉSIDENT croit utile de résumer toutes les propositions d'amendements qui ont été présentées par les diverses délégations :

1. Supprimer entièrement l'article (proposition de M. Richter).
2. Remplacer l'article 12 par le texte indiqué dans l'amendement allemand.
3. Stipuler que l'acquéreur de bonne foi, qui a acheté le bateau sur la base des indications du registre d'immatriculation, soit reconnu propriétaire, même dans le cas où la personne qui était inscrite au registre comme propriétaire n'aurait pas été le vrai propriétaire (proposition de M. Sulkowski).
4. Supprimer toute la fin de l'article, à partir des mots « si cette loi... » (proposition de M. Ripert, appuyée par M. Yovanovitch).
5. Supprimer les derniers mots « soit la mise en possession de l'acquéreur » (proposition de M. Contzesco).
6. Remplacer toute la fin de l'article à partir des mots « si cette loi » par le texte suivant :  
« Les États contractants s'engagent à prévoir dans leur législation, comme condition du transfert, ou tout au moins pour que ce transfert ait effet à l'égard des tiers, soit l'inscription aux registres publics visés à l'article 1, soit la mise en possession de l'acquéreur » (proposition de M. Sitensky).

M. SULKOWSKI (Pologne), considérant qu'il est nécessaire de se rallier à une formule transactionnelle, retire sa proposition.

M. SITENSKY (Tchécoslovaquie) et M. CONTZESCO (Roumanie) déclarent que, pour simplifier les débats, ils réunissent leurs deux propositions en une seule, et s'entendent sur le texte proposé par M. Sitensky, à la fin duquel sont supprimés les mots « soit la mise en possession de l'acquéreur ».

M. RICHTER (Allemagne) désire écarter tout malentendu. Toutes les délégations sont d'accord pour estimer que la Convention a pour but de faciliter le crédit hypothécaire. Mais M. Richter ne croit pas que la Commission ait le devoir de faciliter ce crédit sous tous ses aspects ; elle doit simplement chercher à écarter les difficultés internationales qui peuvent résulter de la diversité des législations.

A son avis, toutes les délégations qui estiment que la règle indiquée à l'article 12 doit faire partie de la Convention, ne peuvent que se rallier à la proposition de M. Sitensky.

M. PANTITCH (Yougoslavie) signale le danger que présenterait pour l'acquéreur de bonne foi le maintien de la mention de la mise en possession. Il pourrait arriver, en effet, qu'un acquéreur de bonne foi achetant un bateau immatriculé dans un pays dont la loi prévoit la mise en possession de l'acquéreur comme une condition du transfert, voie ses droits, qu'il croyait régulièrement acquis, rester sans effet, faute de s'être conformé à cette disposition qu'il ignorait.

M. MONTAGNA (Italie) déclare que la délégation italienne se prononce en faveur du maintien intégral de l'article 12, qui contient la solution la plus raisonnable des conflits de lois et, en même temps, assure la publicité nécessaire pour faciliter le crédit hypothécaire. La rédaction de l'article 12 n'est certainement pas idéale ; mais c'est la meilleure à laquelle les travaux poursuivis jusqu'ici ont pu aboutir.

M. SITENSKY (Tchécoslovaquie) fait observer que le projet d'amendement allemand ne peut, en tout cas, remplacer l'article 12 tout entier et que la Commission doit d'abord décider ce qu'elle entend maintenir de cet article. Si la proposition de M. Sitensky n'était pas acceptée par la Commission, il estime que l'amendement allemand serait nécessaire pour compléter la première phrase de l'article 12.

M. RIPERT (France) retire sa proposition de supprimer la deuxième partie de l'article et propose que la Commission se prononce tout d'abord sur la suppression entière de l'article 12.

Le PRÉSIDENT constate que toutes les délégations se prononcent contre cette suppression.

M. RICHTER (Allemagne) signale que le dernier élément de phrase de l'article avait été adopté par les rédacteurs du projet simplement pour tenir compte des inconvénients éventuels qui auraient pu résulter de la législation polonaise ; M. Sulkowski ayant fait savoir que ces inconvénients n'étaient pas à craindre, ce dernier élément de phrase devient inutile.

M. Richter reprend la proposition de M. Ripert de supprimer toute la deuxième partie de l'article.

M. SITENSKY (Tchécoslovaquie) déclare que, s'il est établi qu'il n'y a pas, parmi les pays représentés à la Conférence, un seul pays dont la législation ne prévoie pas au moins une des deux conditions indiquées pour le transfert, son amendement perd sa raison d'être et qu'il le retire.

Le PRÉSIDENT fait observer qu'il reste encore le projet d'amendement allemand.

M. RIPERT (France) demande à M. Richter si la délégation allemande maintiendrait ce projet dans le cas où la Commission déciderait de conserver l'article 12.

M. RICHTER (Allemagne) répond par la négative.

Le PRÉSIDENT constate que la Commission décide de n'apporter aucune modification au texte de l'article 12.

Il rappelle que la délégation néerlandaise a présenté un projet d'amendement consistant à ajouter à l'article 12 la mention : « La même règle s'applique aux droits d'usufruit et autres droits réels analogues ».

M. RICHTER (Allemagne) demande quels sont les autres droits réels visés dans ce projet d'amendement.

M. VAN SLOOTEN (Pays-Bas) répond qu'il existe dans certains pays des « droits d'usage ».

M. RIPERT (France) suggère que la proposition néerlandaise soit acceptée, mais en supprimant les derniers mots « et autres droits réels analogues ».

M. VAN SLOOTEN (Pays-Bas) déclare accepter cette suppression.

Le PRÉSIDENT constate l'accord de la Commission sur ce point. Il rappelle qu'elle doit encore se prononcer en ce qui concerne le chiffre VII du Protocole de clôture.

A une question posée par M. Soubotitch, il répond que la « concordance » prévue dans cet article entre les divers registres, signifie que ceux-ci comportent des références permettant de se reporter de l'un à l'autre.

M. RICHTER (Allemagne) signale que ce point est mentionné dans le projet d'amendement de l'article 13 de la délégation allemande (annexe 1, page 186).

Le PRÉSIDENT constate que la Commission adopte le chiffre VII du Protocole de clôture.

## CHAPITRE 2. — DES HYPOTHÈQUES.

### Article 13 et amendement proposé par la délégation allemande.

Le PRÉSIDENT donne lecture de l'article 13 ainsi que du chiffre VIII du Protocole de clôture. Il rappelle que la Commission est saisie d'un projet d'amendement allemand sur ce point et donne lecture des articles 13, 13 bis et 13 ter de ce projet d'amendement (voir annexe 1, page 186). Il fait observer que la Commission est ici en présence d'un nombre important de questions qu'il est nécessaire de distinguer :

1. Premier alinéa de l'article 13 du projet d'amendement allemand.
2. Deuxième alinéa de cet article et premier alinéa de l'article VIII du Protocole de clôture.

3. Deuxième alinéa de l'article VIII du Protocole de clôture.
4. Question des accessoires matériels (deuxième et troisième alinéas de l'article 13 du projet de Convention).
5. Troisième alinéa de l'article 13 du projet d'amendement allemand.
6. Article 13 *bis* de cet amendement.
7. Article 13 *ter* du même amendement.

Il invite la Commission à discuter la première de ces questions.

M. RICHTER (Allemagne) rappelle que la Convention de Bruxelles reconnaît l'hypothèque du point de vue international. Le projet de Convention va plus loin en prévoyant que les effets d'une hypothèque régulièrement établie sur un bateau d'après la loi du lieu d'immatriculation et inscrite sur les registres, seront régis par ladite loi.

La délégation allemande ne peut accepter cette disposition, car elle estime que si un État assume l'obligation d'appliquer une loi étrangère, il faut qu'il puisse être sûr de la connaître. Or, il n'existe pas, à la connaissance de M. Richter, un tableau comparatif des diverses législations sur ce sujet. Il y a d'ailleurs des États qui n'ont pas encore arrêté de réglementation sur ce point, et qui ne comptent le faire qu'après la signature de la présente Convention. L'article 13, actuel pourrait donc être comparé à une lettre de change signée sans que son contenu soit connu.

La Commission doit se borner à reconnaître du point de vue international l'hypothèque qui sera valable suivant la loi du lieu d'immatriculation.

M. RIPERT (France) ne comprend pas bien la différence que présentent les deux formules. A son avis, aucune des deux ne peut obliger un tribunal à reconnaître un effet de l'hypothèque qui serait contraire à sa législation nationale, ou à créer une procédure qui n'existerait pas dans cette législation.

Mais il ne servirait à rien de reconnaître la validité de l'hypothèque, si on ne lui attachait pas un minimum d'effets. En effet, il se pourrait, par exemple, que la législation d'un pays ne prévienne pas pour l'hypothèque de droit de suite.

M. Ripert conseille de ne pas trop s'attacher aux formules. Il suffit que, par une réserve tacite, il soit bien entendu que les effets de l'hypothèque, pour être reconnus, doivent être conciliables avec l'ordre public. La Commission peut même décider de faire mention expresse de cette réserve, sans rien modifier au fond de la question.

M. SITENSKY (Tchécoslovaquie) déclare ne pas être d'accord avec M. Ripert. Il estime que, entre la formule du projet de Convention et celle de l'amendement allemand, il existe une différence importante.

D'après l'amendement allemand, les effets de l'hypothèque seraient régis par la loi nationale et les créanciers hypothécaires ne sachant pas, lors de la constitution de l'hypothèque, en quel pays le bateau serait éventuellement vendu, ne pourraient être fixés sur les effets de leur hypothèque.

La délégation tchécoslovaque préfère, pour cette raison, le texte du projet de Convention.

M. SUŁKOWSKI (Pologne) signale que l'article 16 du projet de Convention, dont il donne lecture, envisage le cas où les effets de l'hypothèque tels qu'ils résultent de la législation du pays d'immatriculation, pourraient se trouver en opposition avec l'ordre public de la législation nationale d'un autre pays. Si, en dehors de la réserve prévue par cet article, les tribunaux étaient admis à refuser l'application de la loi du pays d'immatriculation en lui opposant le principe d'ordre public interne, on rendrait la situation des créanciers très précaire, ce qui serait contraire au but de la Convention.

M. RICHTER (Allemagne) fait observer que la formule de l'amendement allemand présente avec celle de la Convention de Bruxelles une différence importante et d'ailleurs apparente. En effet, d'après la Convention de Bruxelles, la validité de l'hypothèque est soumise à la condition de son inscription sur un registre public, et sa constitution est régie par la loi du pavillon. Les tribunaux sont obligés de reconnaître l'existence d'une hypothèque étrangère, mais la Convention de Bruxelles est muette en ce qui concerne les effets de cette hypothèque.

M. RIPERT (France) fait observer que le texte de cette Convention comporte le mot « respectés ».

M. RICHTER (Allemagne) déclare qu'une règle concernant le respect de l'ordre public, inscrite dans une convention de droit international, a peu de valeur, étant donné qu'il est difficile de déterminer ce qu'on entend exactement par ordre public. Toutefois, si la Commission maintient l'article 11 du projet de Convention tel qu'il est rédigé, la délégation allemande ne pourra accepter l'article 13 que si on y introduit une réserve visant le respect de l'ordre public.

M. RIPERT (France) estime qu'il ne faut pas opposer les textes soumis à la Commission à celui de la Convention de Bruxelles par laquelle les États s'engagent simplement à reconnaître l'hypothèque. Le texte du projet de la nouvelle Convention est plus complet et M. Ripert ne voit pas quel inconvénient il y aurait à dire que les États s'engagent à reconnaître aussi les effets de l'hypothèque.

Le PRÉSIDENT constate que la Commission adopte le premier alinéa de l'article 13.

Il passe à la deuxième question et donne lecture du premier alinéa de l'article VIII du Protocole de clôture, ainsi que du deuxième alinéa du projet d'amendement allemand.

M. CONTZESCO (Roumanie) signale que dans la législation roumaine, l'hypothèque sur les bateaux n'est pas prévue, mais que cette législation prévoit le droit de gage qui a à peu près la même portée et les mêmes conséquences. Il est surpris de constater qu'il ne soit pas fait mention, dans l'énumération, du premier alinéa de l'article VIII de la législation roumaine à cet égard.

Le PRÉSIDENT lui répond que les points de suspension à la fin de l'article permettent précisément de compléter cette énumération.

M. CONTZESCO (Roumanie) prie, dans ce cas, le Comité de rédaction de bien vouloir y mentionner les articles 495 à 499 du Code de Commerce roumain.

M. HOHL (Suisse) déclare appuyer la proposition allemande. Des modifications peuvent être apportées aux législations et il ne faut pas qu'il soit nécessaire de changer chaque fois l'article VIII du Protocole de clôture.

M. ROSSETTI (Italie) déclare appuyer également le texte de l'alinéa 2 de l'article 13 de la proposition allemande pour la même raison et aussi parce qu'il porte suppression du chiffre VIII *ad* 13 du Protocole de clôture.

Le PRÉSIDENT constate que la Commission est d'accord sur le fond de l'amendement allemand et décide de renvoyer la question au Comité de rédaction.

Il invite la Commission à aborder l'examen de la troisième question et donne lecture du deuxième alinéa de l'article VIII du Protocole de clôture.

Il constate que *cet alinéa est adopté.*

Il invite la Commission à passer à l'examen de la quatrième question.

M. RICHTER (Allemagne) informe le Président que la délégation allemande vient de recevoir, en ce qui concerne la question des accessoires, des suggestions des intéressés. Elle n'a pas eu le temps de les examiner et demande que la discussion sur ce point soit ajournée à une séance ultérieure.

M. NAUTA (Pays-Bas) estime que l'exception mentionnée dans le troisième alinéa de l'article 13 devrait figurer au deuxième alinéa de cet article.

Le PRÉSIDENT déclare l'examen des deux derniers alinéas de l'article 13 ajourné à une séance ultérieure.

Il invite la Commission à passer à la discussion de la cinquième question et donne lecture du troisième alinéa de l'article 13 du projet d'amendement allemand.

M. RICHTER (Allemagne) explique que cet article ne constitue qu'une modification de rédaction du paragraphe VIII du Protocole de clôture.

Le PRÉSIDENT déclare, en conséquence, que *la question est renvoyée au Comité de rédaction.*

Il passe à la sixième question et donne lecture de l'article 13 *bis* du projet d'amendement allemand.

M. RICHTER (Allemagne), étant donné l'importance de la publicité donnée à l'hypothèque, estime qu'il est nécessaire de fixer le minimum des indications qui doivent être mentionnées lors de l'inscription de cette hypothèque.

Mais la délégation allemande ne s'opposerait pas, éventuellement, à la suppression du deuxième alinéa de l'article 13 *bis*.

Le PRÉSIDENT *décide de renvoyer la question au Comité de rédaction.*

Il passe à la septième question et donne lecture de l'article 13 *ter* du projet d'amendement allemand.

Après un échange de vues entre M. Ripert et M. Richter sur les effets d'hypothèques constituées sur la quote-part d'un copropriétaire du bateau, le Président décide de renvoyer la question au Comité de rédaction. Il constate que la Commission a terminé l'examen de l'article 13, à l'exception des alinéas 2 et 3.

#### Article 14.

Le PRÉSIDENT donne lecture de l'article 14 du projet de Convention et rappelle que la délégation allemande propose la suppression de cet article.

M. RICHTER (Allemagne) déclare retirer cette proposition de suppression, de même que pour les articles 15 et 16.

M. LAWATSCHER (Autriche) fait la déclaration suivante :

« L'article 14 stipule que l'hypothèque ne garantit les intérêts que pour trois années, nonobstant toutes dispositions contraires de la loi d'immatriculation.

« D'après le rapport du Comité spécial, on peut cependant se demander si l'intention du projet n'était pas, au contraire, d'établir que les dispositions de la loi du pays d'immatriculation soient supprimées par la disposition de l'article 14. Une précision sur ce point serait, de l'avis de la

délégation autrichienne, des plus désirables, et elle estime que la solution la plus efficace serait l'établissement d'une règle uniforme primant même les dispositions de la loi du pays d'immatriculation. »

Le PRÉSIDENT, après un échange de vues avec M. Lawatschek et M. Contzesco, constate que la Commission décide d'adopter l'article 14 sans modification.

*Article 15.*

Le PRÉSIDENT donne lecture de l'article 15.

Il constate que la Commission adopte cet article sous réserve de la question des accessoires et qu'elle le renvoie au Comité de rédaction.

*Article 16.*

Le PRÉSIDENT donne lecture de l'article 16.

Il constate que la Commission adopte cet article sans changement.

*Article 17 et quatrième alinéa de l'article 9.*

Le PRÉSIDENT donne lecture de l'article 17. Il rappelle que la Commission avait décidé d'examiner le quatrième alinéa de l'article 9 en même temps que l'article 17 dont il vient de donner lecture.

A la suite d'une question de M. Pantitch en ce qui concerne la signification exacte des termes « d'office » et « ladite loi », le Président déclare que ces termes doivent être précisés et demande au Comité de rédaction d'en prendre note.

M. NAUTA (Pays-Bas) demande au Comité de rédaction de tenir compte de la nécessité de préserver le rang des hypothèques dont les inscriptions seraient reportées.

Le PRÉSIDENT constate que la Commission accepte la proposition faite par M. Nauta et que les articles 17, et 9 (quatrième alinéa) sont, quant au fond, adoptés. Ils sont renvoyés pour la forme au Comité de rédaction.

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CINQUIÈME SÉANCE

*Tenue le lundi 24 novembre 1930, à 10 heures.*

*Président : Le professeur Robert HAAB (Suisse).*

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VI. Examen du projet de Convention (suite).

TITRE II (suite).

*Article 13 (suite).*

*Premier alinéa (suite).*

Le PRÉSIDENT rappelle à la Commission qu'il lui reste quelques questions à examiner en ce qui concerne les hypothèques. Il fait savoir que M. Richter accepte le premier alinéa de l'article 13, en l'interprétant dans le sens indiqué par M. Ripert, c'est-à-dire sous réserve du respect de l'ordre public.

M. SUŁKOWSKI (Pologne) estime que si la Commission adopte cette interprétation, elle devrait être mentionnée expressément dans le texte de la Convention.

M. MONTAGNA (Italie) estime, au contraire, que cette mention n'est pas nécessaire, étant donné que le respect de l'ordre public est un principe général, reconnu dans tous les pays.

M. SUŁKOWSKI (Pologne) fait observer que, s'il en est ainsi, l'article 16 devient inutile.

M. NAUTA (Pays-Bas) n'est pas certain que la réserve du respect de l'ordre public sera reconnue par la jurisprudence, s'il n'en est pas fait mention expresse. En effet, il est parfois difficile de définir les limites dans lesquelles elle devrait être appliquée : il cite le cas des privilèges. D'ailleurs, si cette réserve était considérée comme sous-entendue dans chacun des articles de la Convention, celle-ci perdrait tout intérêt.

M. MONTAGNA (Italie) fait ressortir que la notion d'ordre public est interprétée de façon différente par les diverses jurisprudences et qu'il serait partant dangereux de faire une déclaration

explicite en cette matière. Il propose en conséquence que le texte du premier alinéa de l'article 13 soit maintenu tel qu'il est.

M. SUŁKOWSKI (Pologne) considère que si la Commission en décide ainsi, il devient nécessaire de préciser les rapports existant entre les articles 13 et 16 et le deuxième alinéa du chiffre VIII du Protocole de clôture. Si on ne veut pas modifier l'article 13, il faudrait tout au moins l'interpréter de façon qu'il soit bien entendu qu'on ne peut pas opposer l'ordre public aux droits qui découlent de la Convention même.

Le PRÉSIDENT demande à M. Sułkowski s'il peut présenter une proposition formelle d'amendement.

M. SUŁKOWSKI (Pologne) déclare qu'il demande simplement que le principe adopté par la Commission soit nettement exprimé dans le texte même de la Convention.

M. RICHTER (Allemagne) déclare partager la façon de voir de M. Montagna.

M. RIPERT (France) fait observer que le sens du texte de l'article 13 est précisé par les autres articles du chapitre, notamment l'article 16.

Le PRÉSIDENT invite la Commission à maintenir sans changement le texte du premier alinéa de l'article 13 et demande à M. Sułkowski de bien vouloir se contenter de voir son observation mentionnée au procès-verbal.

Il considère, en effet, que la Commission ne peut procéder à un vote sur l'interprétation qu'elle entend donner à un article de la Convention. Il est persuadé, d'ailleurs, qu'en pratique, l'application de cet alinéa de l'article 13 ne donnera pas lieu à des difficultés, étant donné que les points qui pourraient être soulevés sont réglés par les dispositions des articles 14 à 17.

Il constate que la Commission se déclare d'accord pour le maintien du premier alinéa de l'article 13, sauf modification de forme éventuellement jugée nécessaire par le Comité de rédaction.

M. CONTZESCO (Roumanie) rappelle que la Commission vient d'être saisie par la délégation hellénique d'une proposition d'amendement (voir annexe 4, page 200) en ce qui concerne l'article 10, déjà adopté par la Commission. Il désirerait savoir quelle est la décision que la Conférence compte prendre au sujet de cette proposition : la discuter immédiatement, l'ajourner, ou la considérer comme tardive ?

Le PRÉSIDENT croit que la proposition hellénique peut être examinée en même temps que les articles 2 et 3 de la Convention.

M. RIPERT (France) rappelle que la question soulevée de par les articles 2 et 3 de cette proposition est très importante, et qu'à son avis, la Commission ne doit pas examiner tous les articles de la Convention sans discuter cette disposition, qui domine la Convention entière.

M. CONTZESCO (Roumanie) se déclare d'accord avec M. Ripert.

Le PRÉSIDENT déclare que la question sera discutée au cours de la prochaine séance de la Commission.

#### *Deuxième et troisième alinéas.*

Le PRÉSIDENT invite ensuite la Commission à aborder l'examen des deuxième et troisième alinéas de l'article 13, dont il donne lecture.

Il signale que la délégation française propose que le deuxième alinéa soit complété par les mots « sous réserve des droits des acquéreurs de bonne foi ».

M. RIPERT (France) déclare retirer cet amendement, étant donné que l'article 15 tient compte de ce point.

M. SITENSKY (Tchécoslovaquie) considère que le texte actuel n'est pas suffisant. En effet, si certains accessoires du bateau et notamment la machine, n'appartiennent pas au propriétaire, il ne serait pas juste d'étendre les effets de l'hypothèque à ces accessoires, même en cas de bonne foi de l'acquéreur.

M. Sitensky estime que l'inclusion des accessoires n'appartenant pas au propriétaire du bateau ne devrait pas dépendre de la bonne foi de l'acquéreur des droits, mais plutôt de l'inscription au registre. Il serait donc d'avis qu'on ne devrait soustraire les accessoires aux effets de l'hypothèque que dans le cas où il a été mentionné dans le registre que ces accessoires n'appartiennent pas au propriétaire du bateau. Dans ce cas, il faudrait que l'article 5 de la Convention prévoie l'inscription dans le registre d'une mention éventuelle en ce sens.

M. RIPERT (France) considère que la remarque de M. Sitensky n'entre pas, en ce qui concerne la machine, dans le cadre des deuxième et troisième alinéas de l'article 13, car la machine ne peut être considérée comme un accessoire du bateau. Quant aux accessoires proprement dits, il semble difficile d'exiger que la liste complète de ceux d'entre eux qui n'appartiennent pas au propriétaire soit donnée dans le registre.

Une mention au registre, signalant que la machine n'appartient pas au propriétaire du bateau, peut être prévue dans la Convention, mais ailleurs qu'à l'article 13.

Le PRÉSIDENT fait observer qu'il n'est pas possible de considérer la machine comme faisant partie intégrante du bateau, si elle a un propriétaire différent.

M. SITENSKY (Tchécoslovaquie) estime qu'il n'est pas exclu que la machine et le bateau soient la propriété de personnes différentes et que dans ce cas, on devrait donner au propriétaire de la machine la possibilité de sauvegarder son droit.

M. NAUTA (Pays-Bas) déclare qu'à son avis, sous réserve de l'observation de M. Ripert, qu'il estime justifiée, le texte actuel devrait pouvoir satisfaire M. Sitensky, puisque ce texte stipule que l'hypothèque ne s'étend pas aux accessoires lorsque « le créancier hypothécaire savait, ou pouvait raisonnablement savoir, qu'ils n'appartiennent pas audit propriétaire ». Le président ayant demandé à M. Nauta s'il estime, en conséquence, que le registre d'immatriculation doit pouvoir faire mention de la réserve de propriété indiquée par M. Sitensky, M. Nauta répond par l'affirmative.

M. MONTAGNA (Italie) signale qu'anciennement, la jurisprudence italienne, s'inspirant de quelques anciens textes de droit romain, n'admettait pas la réserve de propriété dans le contrat de vente, mais qu'elle l'admet à l'heure actuelle. Il estime donc, lui aussi, que la réserve en question doit pouvoir être inscrite au registre.

M. RICHTER (Allemagne) signale que d'après le droit allemand, les effets de l'hypothèque ne s'étendent qu'aux objets appartenant au propriétaire. La délégation allemande a reçu une lettre d'industriels allemands demandant que le texte actuel de l'article 13 ne soit pas maintenu. M. Richter, en conséquence, propose :

1<sup>o</sup> Que le deuxième alinéa soit complété par la formule « à l'exception, toutefois, de ceux qui n'appartiennent pas au propriétaire du bateau » ;

2<sup>o</sup> Que le troisième alinéa de l'article 13 soit supprimé à partir des mots « à l'exception toutefois ».

Il fait observer que la question présente un grand intérêt dans le domaine de la navigation aérienne, mais qu'elle est beaucoup moins importante en ce qui concerne la navigation intérieure. Toutefois, il estime que la Convention doit préciser ce point, étant donné qu'elle stipule que l'hypothèque est régie par la loi du pays d'immatriculation. Il faut prévoir notamment le cas où les accessoires ont été attachés au bateau après la constitution de l'hypothèque.

M. LAWATSCHER (Autriche) déclare appuyer la proposition allemande, qui est reproduite dans une proposition autrichienne qui sera distribuée aux membres de la Commission (voir annexe 5, page 201).

Le PRÉSIDENT constate qu'il y a deux opinions en présence : M. Richter demande que les effets de l'hypothèque ne s'étendent en aucun cas à des accessoires n'appartenant pas au propriétaire, tandis que M. Sitensky demande que seuls les accessoires mentionnés dans le registre comme n'appartenant pas au propriétaire soient soustraits aux effets de l'hypothèque.

M. RIPERT (France) constate que la formule de M. Richter est plus générale et estime qu'il est inutile de prévoir l'inscription des accessoires dans le registre.

Le PRÉSIDENT fait observer que dans ce cas, le propriétaire pourrait prétendre qu'aucun des accessoires ne lui appartient.

M. RIPERT (France) remarque que le revendiquant devra prouver le bien-fondé de ce qu'il avance. L'inscription au registre semble impossible pour tous les petits accessoires.

Le Président et M. Contzesco ayant fait ressortir qu'il serait difficile de délimiter ce qui fait ou non partie intégrante du bateau, M. Ripert propose que les effets de l'hypothèque s'étendent :

1<sup>o</sup> A la machine, sauf indication contraire inscrite au registre d'immatriculation ;

2<sup>o</sup> Aux accessoires.

M. RICHTER (Allemagne) et M. SITENSKY (Tchécoslovaquie) déclarent accepter cette solution.

Le PRÉSIDENT constate l'accord de la Commission sur le fond de la proposition de M. Ripert et demande à celui-ci de bien vouloir formuler par écrit sa proposition, qui sera transmise au Comité de rédaction.

## TITRE PREMIER. — DE L'IMMATRICULATION (suite).

### Article 7 (suite).

Le PRÉSIDENT rappelle à la Commission que lors de la discussion de l'article 7, les différentes délégations n'étaient pas d'accord sur le point de savoir si le certificat d'immatriculation devait faire mention ou non des hypothèques grevant le bateau.

Il rappelle que M. Richter a demandé que cette mention figure sur le certificat d'immatriculation, ou tout au moins que le propriétaire soit obligé d'avoir à bord un certificat spécial hypothécaire, même dans le cas où ce dernier serait négatif.

M. MONTAGNA (Italie) déclare appuyer cette dernière proposition.

M. CONTZESCO (Roumanie) croit se rappeler que le double certificat avait été demandé par les délégations des pays où il existe deux registres distincts : l'un pour l'immatriculation et l'autre pour l'inscription des hypothèques. Il demande s'il est bien nécessaire que dans les pays où il n'existe qu'une seule sorte de registres, il soit établi un double certificat et qu'il soit interdit d'inscrire les hypothèques sur le certificat d'immatriculation, solution qu'il ne serait pas à même d'accepter.

Le PRÉSIDENT croit avoir compris que toutes les délégations sont d'accord pour que la Convention ne s'oppose pas à ce que mention des hypothèques soit faite sur le certificat d'immatriculation.

M. CONTZESCO (Roumanie) remercie le président pour cet éclaircissement qui lui donne satisfaction.

M. SITENSKY (Tchécoslovaquie) déclare que la délégation tchécoslovaque n'estime pas indispensable l'inscription des hypothèques sur le certificat d'immatriculation et qu'elle préférerait en tout cas à ce système celui du double certificat, étant donné que le propriétaire du bateau peut avoir intérêt à ne pas mettre toutes les autorités des ports au courant des hypothèques grevant son bateau.

M. MONTAGNA (Italie) propose que la Convention reproduise l'article 12 de la Convention de Bruxelles du 10 avril 1926, et donne lecture de cet article :

« Les lois nationales doivent déterminer la nature et la forme des documents se trouvant à bord du navire sur lesquels mention doit être faite des hypothèques, mort-gages et gages prévus à l'article premier, sans que, toutefois, le créancier qui a requis cette mention dans les formes prévues puisse être responsable des omissions, erreurs ou retards de l'inscription sur ces documents. »

La Commission laisserait ainsi les lois nationales libres de déterminer les documents sur lesquels mention doit être faite des hypothèques, et cette solution aurait l'avantage d'adopter une disposition qui existe déjà à l'heure actuelle.

M. NAUTA (Pays-Bas) précise qu'il doit être entendu que l'inscription sur le certificat ne constitue pas une condition de la validité de l'hypothèque.

M. CONTZESCO (Roumanie) fait remarquer qu'il importe surtout que la Convention prévoie l'obligation pour le propriétaire d'être en mesure de prouver à tout moment que le bateau est grevé ou non. Quant au moyen d'y parvenir, les législations nationales pourront l'arrêter comme elles l'entendent.

Le PRÉSIDENT constate que la Commission se trouve en présence de deux propositions :

1<sup>o</sup> Celle de M. Richter, qui demande que les hypothèques soient mentionnées, soit sur le certificat d'immatriculation, soit sur un certificat spécial qui devra toujours être à bord, même dans le cas où il serait négatif :

2<sup>o</sup> Celle de M. Montagna, qui recommande d'adopter l'article 12 de la Convention de Bruxelles.

M. SUŁKOWSKI (Pologne) se déclare en faveur de cette deuxième solution, qui laisse plus de liberté aux États.

M. ROSSETTI (Italie) fait ressortir que la proposition italienne n'est pas inspirée par le désir de reproduire une disposition de la législation italienne, étant donné que celle-ci prescrit l'inscription des hypothèques sur le certificat d'immatriculation.

M. RICHTER (Allemagne) déclare avoir retiré son amendement visant l'inscription obligatoire des hypothèques sur le certificat d'immatriculation. Il se considérera comme satisfait si la Convention prévoit qu'un document quelconque, faisant mention des hypothèques, soit obligatoirement à bord.

Il faut que le propriétaire soit tenu de prouver que le bateau n'est pas grevé, et que les créanciers puissent s'en assurer sans avoir à s'adresser au bureau d'enregistrement.

M. MONTAGNA (Italie) estime que c'est là un détail dont il faut laisser le règlement aux législations nationales, ainsi qu'il est prévu à l'article 12 de la Convention de Bruxelles.

M. SITENSKY (Tchécoslovaquie) fait ressortir que si la mention sur le certificat d'immatriculation ou sur un certificat spécial n'est pas une condition de la validité de l'hypothèque, elle n'aura jamais une valeur pratique bien grande, car elle ne constituera pas une preuve indiscutable, et le créancier devra toujours s'adresser au bureau d'enregistrement pour être fixé d'une façon certaine.

M. RIPERT (France) reconnaît que si l'inscription des hypothèques ne doit pas nécessairement être faite sur le certificat d'immatriculation, les objections qu'il avait présentées tombent. Toutefois, il estime avec M. Sitenisky qu'un certificat ne pourra jamais donner qu'une idée



approximative de la situation hypothécaire et devrait, pour avoir une valeur quelconque, être renouvelé à chaque voyage.

Il ne constituerait une preuve certaine que lorsqu'il serait positif.

M. PANTITCH (Yougoslavie) déclare être d'accord avec M. Ripert et appuyer la proposition de M. Montagna.

Le PRÉSIDENT constate que toutes les délégations sont d'accord pour décider que la mention des hypothèques sur le certificat d'immatriculation ne doit pas être obligatoire.

M. SOUBOTITCH (Yougoslavie) déclare que la délégation yougoslave désire assurer la publicité des hypothèques, mais qu'il n'est pas nécessaire pour cela que les créanciers soient mis à même de se renseigner d'une façon certaine auprès du bateau. Il suffit qu'ils puissent toujours trouver à bord un document indiquant à quel bureau ils doivent s'adresser. La délégation yougoslave ne comprend pas quel intérêt pratique auraient des dispositions supplémentaires, étant donné les objections signalées par M. Ripert.

En conséquence, la délégation yougoslave propose que la Convention se borne à prévoir l'obligation formelle d'avoir à bord un certificat indiquant le bureau où sont inscrites les hypothèques. Les pays qui voudraient aller plus loin seraient libres de le faire.

M. ROSSETTI (Italie) fait observer que la Commission doit avoir en vue non seulement de protéger les intérêts des créanciers, mais aussi de faciliter le crédit hypothécaire. Or, ce but n'est atteint que s'il existe à bord un certificat spécial hypothécaire. La délégation italienne propose aussi que l'existence de ce deuxième certificat soit mentionnée sur le certificat d'immatriculation.

M. SOUBOTITCH (Yougoslavie) ne peut pas se déclarer d'accord avec M. Rossetti. Il estime qu'un tel certificat ne faciliterait pas le crédit hypothécaire, étant donné qu'il ne constituerait pas une preuve certaine et que le créancier serait en tout cas obligé de s'adresser au bureau.

Certes, il en serait tout autrement si l'inscription sur le certificat était une condition de validité de l'hypothèque, mais ce n'est pas le cas.

M. RICHTER (Allemagne) fait observer qu'on pourrait donner au certificat une valeur probante absolue, si on exigeait qu'une hypothèque ne pourrait être constituée sans que ce certificat soit présenté.

Les tiers auraient alors toutes garanties, car, si le certificat n'était pas à bord, ils sauraient que le propriétaire est en train de constituer une hypothèque.

M. HOHL (Suisse) présente une motion d'ordre. Il demande au président que la Commission soit invitée à se prononcer d'abord sur le principe de la mention obligatoire des hypothèques sur l'un ou l'autre des certificats.

M. RIPERT (France) explique que la mention des hypothèques sur un certificat avait été adoptée à Bruxelles en 1922 en vue de la suppression du privilège des fournisseurs. Bien que celui-ci ait été rétabli, l'obligation de la mention a été maintenue dans la Convention de Bruxelles, sans qu'elle ait aujourd'hui une utilité bien marquée.

Ainsi que l'a fait observer M. Richter, on ne donnerait une valeur probante au certificat qu'en exigeant qu'il soit présenté lors de la constitution d'une hypothèque, mais cela rendrait impossible la constitution d'une hypothèque pendant un voyage du bateau.

M. Ripert appuie en conséquence la proposition de M. Soubotitch demandant que le certificat d'immatriculation indique le bureau où les hypothèques sont enregistrées.

M. VAN SLOOTEN (Pays-Bas) estime que cette proposition répond aux désirs de toutes les délégations. Le certificat d'immatriculation est pour le bateau ce qu'est pour l'individu un certificat d'état civil, et on ne peut concevoir que celui-ci fasse mention d'hypothèques. Aussi M. van Slooten estime-t-il, lui aussi, qu'il suffit que le certificat d'immatriculation indique le bureau où les créanciers doivent pouvoir se renseigner.

M. CONTZESCO (Roumanie) reconnaît qu'un certificat ne donnerait pas à tout moment une idée absolument exacte de la situation hypothécaire du bateau. Toutefois, il donnerait tout de même certaines facilités fort nécessaires ; les créanciers auraient toujours la ressource, s'ils le désirent, de se renseigner davantage auprès du bureau d'immatriculation.

Quant à la remarque de M. van Slooten, M. Contzesco fait observer qu'un individu n'est jamais considéré comme objet d'hypothèque.

La délégation roumaine se déclare donc pour l'inscription des hypothèques sur le certificat d'immatriculation ou sur un certificat spécial, suivant les pays où il existe une ou deux sortes de registres.

M. SUŁKOWSKI (Pologne) tient à faire remarquer à M. Richter, en ce qui concerne l'obligation de la présentation du certificat lors de la constitution d'une hypothèque, qu'il y a des cas où cette constitution d'hypothèques serait toujours possible sans la présentation du certificat, tel que celui de l'hypothèque judiciaire. Il en résulte qu'un créancier prudent, afin de se renseigner d'une façon sûre sur l'état des hypothèques, devra toujours consulter le registre. Vu ces raisons, il suffit d'indiquer sur le certificat le bureau où les hypothèques sont inscrites.

Sur ce point, d'ailleurs, toutes les délégations semblent être d'accord. Quant à la nécessité de faire mention des hypothèques sur le certificat d'immatriculation ou sur un certificat spécial, c'est un point dont le règlement devrait être laissé aux législations nationales.

M. RICHTER (Allemagne) désire, en premier lieu, répondre à l'objection formulée par M. Ripert contre la présentation obligatoire du certificat lors de la constitution d'une hypothèque, qu'il serait très facile de remédier à la difficulté signalée. En effet, le propriétaire qui veut constituer une hypothèque pendant un voyage du bateau, peut télégraphier au capitaine d'envoyer le certificat d'immatriculation à un bureau déterminé. Il n'est pas nécessaire que le certificat soit toujours à bord.

D'autre part, M. Richter tient à faire observer à M. Sulkowski qui a déclaré qu'un créancier prudent doit toujours consulter le registre, que l'expérience prouve qu'un certificat suffit souvent en pratique. La Convention ne doit pas vouloir modifier cet état de choses.

M. ROSSETTI (Italie) estime que toutes les délégations ayant exposé leur manière de voir, la Commission doit procéder à un vote.

Le PRÉSIDENT constate que la Commission est saisie de deux propositions :

1° Les délégations allemande et italienne demandent qu'il y ait à bord en tout cas un document portant mention de la situation hypothécaire du bateau.

Le Président ayant fait procéder à un vote sur ce point, la Commission se déclare contre cette proposition.

2° La délégation française, appuyée par la délégation yougoslave, propose le texte suivant :

« Le certificat d'immatriculation doit contenir la mention du bureau d'hypothèques. Les lois du pays d'immatriculation peuvent en outre obliger le propriétaire du bateau à mentionner sur ce certificat ou sur un autre document se trouvant à bord, les inscriptions d'hypothèques. »

M. CONTZESCO (Roumanie) signale que les termes « pays d'immatriculation » peuvent prêter à discussion.

Le PRÉSIDENT constate que la Commission adopte la proposition de la délégation française, avec la réserve formulée par M. Contzesco.

#### Article 9, quatrième alinéa.

M. SITENSKY (Tchécoslovaquie) rappelle que la question faisant l'objet du quatrième alinéa de l'article 9 n'avait pas été réglée.

M. HOSTIE, président du Comité de rédaction, répond que l'article 9, alinéa 4, a été adopté en même temps que l'article 17.

M. SITENSKY (Tchécoslovaquie) estime qu'il y aurait lieu quand même de revenir sur la question.

Le PRÉSIDENT suggère que cette question soit renvoyée au Comité de rédaction.

M. SITENSKY (Tchécoslovaquie) se déclare d'accord.

#### Régime transitoire.

M. HOSTIE, président du Comité de rédaction, désire attirer, de la part du Comité de rédaction, l'attention de la Commission sur le point suivant : en étudiant la question de l'inscription des obligations au registre et de la reproduction de cette inscription sur le certificat d'immatriculation, le Comité de rédaction s'est demandé si la Commission entend prévoir que tous les registres et certificats devront être conformes aux dispositions de la Convention au moment de la ratification de celle-ci, ou bien que ces dispositions ne devront commencer à être appliquées qu'après un certain laps de temps. Dans ce dernier cas, il serait nécessaire de prévoir un régime transitoire.

M. HOUBEURT (France) estime un tel régime transitoire indispensable étant donné le temps considérable qui sera nécessaire pour mettre les registres et certificats en conformité avec les dispositions de la Convention. La Commission pourrait prévoir, par exemple, un délai de cinq ans, comme celui prévu pour la Convention de jaugeage.

M. VAN SLOOTEN (Pays-Bas) estime que les dispositions de la Convention ne devront être applicables aux registres et certificats qu'après la ratification de la Convention, et qu'il est nécessaire, en conséquence, de prévoir un régime transitoire.

M. HOSTIE, président du Comité de rédaction, fait observer que si la Commission accepte en principe que les inscriptions et les certificats antérieurs ne devront nécessairement pas avoir été mis en concordance avec la Convention avant sa ratification, le Comité de rédaction étudiera les

modalités du régime transitoire et présentera ultérieurement un texte à l'approbation de la Commission.

Le PRÉSIDENT constate que la Commission adopte cette dernière solution.  
Il invite la Commission à aborder l'examen du chapitre 3 du projet de Convention.

## TITRE II (suite).

### CHAPITRE 3. — DES PRIVILÈGES.

#### Article 18.

Le PRÉSIDENT donne lecture de l'article 18 du projet de convention.

Il rappelle que la Commission est saisie d'un projet d'amendement allemand dont il donne lecture (voir annexe 1, page 186).

Il signale que la Commission est saisie également d'une lettre du Directeur du Bureau international du Travail (voir annexe 6, page 201), relative au paragraphe 3<sup>o</sup> de l'article 18.

M. ROSSETTI (Italie) faisant allusion au titre proposé par l'amendement allemand pour le chapitre 3 : « Des privilèges ou gages fluviaux », fait observer que l'expression « gages fluviaux » a déjà reçu deux acceptions différentes et qu'il semble peu opportun d'en introduire une troisième.

M. RICHTER (Allemagne) explique que c'est une simple modification de forme, peu importante, qui a pour but de faciliter l'application de la Convention. En effet, le mot allemand correspondant au mot « gage » désigne une sûreté réelle caractérisée par le fait que le créancier gagiste est en possession de la chose gagée. Le terme de « privilège » a une signification différente ; il n'est pas compris clairement en Allemagne et il donne lieu à des malentendus. La délégation allemande estime qu'il faut en tenir compte et que si la Commission n'admet pas l'expression « gages fluviaux », le terme de « privilège » devrait être suivi, entre parenthèses, de la traduction allemande.

La définition du premier alinéa de l'article 18 deviendrait alors inutile.

Le PRÉSIDENT estime que la Commission peut conserver le terme « privilège » qui sera traduit dans le texte allemand par « Schiffsgläubigerrechte ».

M. SITENSKY (Tchécoslovaquie) croit savoir que la notion de privilège n'est pas connue dans la législation de tous les pays et que ce terme risque d'être difficile à traduire dans la langue de ces pays. Il estime en conséquence qu'une définition dans le corps de l'article est nécessaire. Cependant, dans le Protocole de clôture, il pourrait être précisé que les États contractants peuvent, pour la désignation de ces droits, employer un mot différent.

M. ROSSETTI (Italie) considère qu'il doit être possible de traduire correctement le mot « privilège » dans la langue de tous les États contractants, la notion que ce mot implique étant connue par toutes les législations.

Le PRÉSIDENT estime que le premier alinéa de l'article 18 constitue une définition de ce qui doit être entendu par « privilège » ; quant aux effets des privilèges, la question fait l'objet de l'article 22.

M. RICHTER (Allemagne) considère que la définition que donne le premier alinéa de l'article 18 n'est pas satisfaisante. Elle devrait, en effet, faire tout au moins mention de la vente forcée et, d'autre part, il n'en ressort pas qu'il s'agit d'un droit réel.

Il propose que l'article 18 soit modifié en faisant suivre les premiers mots « jouit du privilège » par les mots « ou d'une hypothèque légale ». M. Ripert et M. Montagna ayant déclaré cette proposition inacceptable, M. Richter appuie la proposition de M. Sitensky prévoyant que dans un protocole, il soit précisé que chaque pays peut donner du mot « privilège » la traduction qui convient.

M. ROSSETTI (Italie) déclare se rallier à cette proposition.

Le PRÉSIDENT fait observer que la Commission a décidé de s'efforcer de raccourcir le Protocole de clôture. Il répète qu'à son avis, la définition du début de l'article 18 est satisfaisante et que l'article 22 précise les effets des privilèges.

M. CONTZESCO (Roumanie) propose l'emploi de l'expression « droit de priorité ».

M. MONTAGNA (Italie) déclare qu'il ne peut accepter cette définition, étant donné que le gage fluvial n'est pas seulement un droit de priorité, mais aussi un droit réel.

M. RIPERT (France) fait remarquer que le mot « privilège » est employé dans la Convention de Bruxelles et n'a donné lieu à aucune difficulté.

Le PRÉSIDENT, pour tenir compte de l'observation de M. Richter, propose qu'il soit fait mention de la vente forcée.

M. RIPERT (France) fait observer qu'en cas de vente volontaire, les créanciers privilégiés peuvent faire opposition au paiement du prix.

M. RICHTER (Allemagne) réplique que si tel est le cas en France, il n'en est pas de même en Allemagne où les créanciers privilégiés ne peuvent faire opposition à la vente volontaire.

Quant à la Convention de Bruxelles, il désire faire observer à M. Ripert que celle-ci n'est pas encore entrée en vigueur et qu'une des principales difficultés est précisément l'interprétation du mot « privilège ».

Toutefois, M. Richter estime que la question ne présente pas une très grande importance et que la Commission peut charger le Comité de rédaction de trouver une expression meilleure.

M. DE Vos (Belgique) n'y voit pas d'inconvénient, à condition qu'il soit entendu qu'on n'introduira pas le terme de « vente forcée ».

Le PRÉSIDENT constate que la Commission est d'accord pour renvoyer la question au Comité de rédaction.

Il donne lecture du N° 1 et rappelle que le chiffre IX du Protocole de clôture se rapporte à ce N° 1.

Le projet d'amendement allemand propose que soit supprimé ce N° 1 qui serait remplacé par l'article 29 du projet d'amendement allemand.

M. RICHTER (Allemagne) déclare que, de l'avis de la délégation allemande, les frais de justice ne font pas l'objet d'un privilège proprement dit, mais d'un droit de préférence de première classe. Il cite l'exemple suivant : lorsqu'un bateau immatriculé dans un pays A est saisi dans un pays B et qu'il s'échappe avant que la vente ait eu lieu, le fisc ne peut pas revendiquer le recouvrement privilégié des frais effectués.

C'est cette raison qui motive le projet d'amendement allemand.

M. SITENSKY (Tchécoslovaquie) considère qu'il y a là une question de forme plus que de fond, étant donné que toutes les législations prévoient que les frais faits pour obtenir un titre exécutoire doivent être déduits en premier lieu du prix de la vente.

Le PRÉSIDENT serait disposé à approuver la proposition de M. Richter, car elle a l'avantage de réduire le nombre des privilèges énumérés, sans changer le fond de la question.

M. DE Vos (Belgique) n'est pas certain que la modification proposée par la délégation allemande soit seulement une modification de forme. Dans le cas indiqué par M. Richter, où la procédure d'exécution est interrompue, le pays B ne tiendra compte, lors de la vente, que des frais effectués dans ce pays B.

M. ROSSETTI (Italie) estime, lui aussi, que le projet allemand soulève une question de fond. Lorsque le bateau passe du pays A au pays B, ce privilège pour frais de justice au pays A doit naturellement disparaître.

M. RICHTER (Allemagne) estime que dans le cas qu'il a indiqué, où la procédure est interrompue avant que la vente ait pu avoir lieu, le privilège pour le recouvrement des frais effectués ne doit pas suivre le bateau dans l'autre pays.

M. RIPERT (France) reconnaît le bien-fondé de l'opinion exprimée par M. Richter, mais il fait observer que d'après les termes de la Convention, les frais faits dans le premier pays ne font plus l'objet d'un privilège.

M. RICHTER (Allemagne) considère que l'interprétation donnée par M. Ripert peut être contestée.

Le PRÉSIDENT croit comprendre que de l'avis de M. Ripert, les frais ne jouissent d'un privilège que seulement lorsqu'il y a eu vente. Cette façon de voir ne présente pas de différence de fond avec celle de M. Richter, mais il invite la Commission à se prononcer sur ce point.

Il constate que la Commission se prononce en faveur de l'amendement allemand, c'est-à-dire la suppression du N° 1 qui sera remplacé par l'article 29 du projet allemand.

Il donne ensuite lecture du N° 2 et rappelle que la délégation allemande propose que ce N° soit complété par les mots « y compris les frais de pilotage ».

M. RICHTER (Allemagne) explique qu'il s'agit là seulement d'une modification de forme, qui donne une précision nécessaire.

Le PRÉSIDENT constate que la Commission est d'accord pour envoyer la proposition de M. Richter au Comité de rédaction.

M. CONTZESCO (Roumanie) demande à la Commission de prévoir au N° 2 un privilège pour le recouvrement par les États des dommages causés aux ouvrages d'art. Un tel privilège pourrait être sous-entendu comme prévu au N° 5, mais M. Contzesco estime qu'il devrait en être fait mention au N° 2.

M. MONTAGNA (Italie) estime qu'un tel privilège doit avoir un rang postérieur à celui que voudrait lui assigner M. Contzesco. C'est d'ailleurs ce que prévoient les conventions maritimes.

M. CONTZESCO (Roumanie) réplique que le cas est tout à fait différent en matière de navigation intérieure où les ouvrages d'art, le long des fleuves, sont aussi fréquents qu'indispensables.

M. SITENSKY (Tchécoslovaquie) suggère que cette question soit examinée lors de la discussion du N° 5.

M. CONTZESCO (Roumanie) croit préférable qu'elle soit examinée immédiatement. Il signale qu'en ce qui concerne le Danube, la Commission européenne et la Commission internationale ont toutes les deux prévu des dispositions spéciales en ce sens, qui ne peuvent être ignorées par la Conférence.

Le PRÉSIDENT invite la Commission à se prononcer sur la proposition de M. Contzesco.

M. RIPERT (France) demande au président de préciser que le vote ne porte que sur le rang à donner au privilège en question.

Le PRÉSIDENT constate que *la Commission se prononce contre la proposition de M. Contzesco*. Il signale que la Commission est saisie également, en ce qui concerne le N° 2, d'un projet d'amendement présenté par la délégation autrichienne (voir annexe 7, page 202). Ce projet consiste à remplacer la phrase « les frais de conservation depuis la saisie » par la phrase « les frais de conservation du bateau depuis la saisie, qui sont nécessaires pour empêcher le bateau de périr ».

M. LAWATSCHER (Autriche) explique que la délégation autrichienne estime prudent de souligner que seuls sont compris dans les frais d'entretien, les frais indispensables.

M. SITENSKY (Tchécoslovaquie) déclare qu'il avait l'intention de présenter un projet d'amendement dans le même sens. Il appuie la proposition autrichienne.

M. MONTAGNA (Italie) déclare que la délégation italienne est d'un avis contraire. Tous les frais faits dans l'intérêt commun des créanciers, doivent jouir du privilège en question.

M. RIPERT (France) estime que le mot « périr » rend le projet d'amendement autrichien difficilement acceptable.

M. ROSSETTI (Italie) considère que les termes « frais de conservation » couvrent entièrement les frais dont on veut privilégier le recouvrement, et ne s'explique pas pourquoi la délégation autrichienne voudrait les limiter.

Le PRÉSIDENT invite la Commission à voter sur la proposition autrichienne et constate que *la Commission se prononce contre cette proposition*.

*Le N° 2 est donc maintenu tel quel, avec l'addition proposée par la délégation allemande en ce qui concerne les frais de pilotage.*

M. RIPERT (France) attire l'attention de la Commission sur le point suivant. L'article 18 de la Convention énumère toute une série de privilèges, dont certains sont nouveaux pour le Gouvernement français. Celui-ci s'est ému de constater que tous ces privilèges ont en vue seulement la défense des intérêts particuliers, et que les privilèges réservés au fisc ont complètement disparu dans la Convention. Or, il arrive souvent que les petits bateliers n'ont pas d'autre patrimoine que leur bateau, et le fisc se trouverait entièrement désarmé à leur égard par la Convention pour le recouvrement de ses créances.

Il est vrai que cette objection présente une gravité plus ou moins grande suivant le champ d'application qui sera assigné à la Convention. Si celle-ci ne doit être applicable que lorsqu'un bateau se trouve en pays étranger, les dispositions de l'article 18 ne présenteront pas de trop grands inconvénients.

La délégation française n'a pas déposé d'amendement sur ce point, mais elle demande pour quelle raison les privilèges réservés au fisc ont été supprimés et si les autres délégations approuvent cette suppression.

Le PRÉSIDENT invite un des rédacteurs du projet de convention à répondre à M. Ripert.

M. ROSSETTI (Italie) explique que les rédacteurs, qui avaient pour instruction de réduire au minimum la liste des privilèges, n'ont pas voulu modifier sur ce point les dispositions de la Convention de Bruxelles, qui ne prévoient pas de privilèges pour les créances fiscales.

M. MONTAGNA (Italie) estime la remarque de M. Ripert fondée, mais il fait observer que jusqu'à présent, aucune collaboration fiscale n'a été instituée entre les divers États et qu'une disposition en ce sens constituerait une innovation.

M. DE Vos (Belgique) signale que la loi belge prévoit, en faveur du fisc, une hypothèque générale sur les biens et que celle-ci ne peut être supprimée par une disposition contraire de la Convention.

M. ROSSETTI (Italie) précise que les rédacteurs du projet ont voulu exclure toute solidarité fiscale entre les États ; ils ont estimé qu'on ne peut obliger un État à s'occuper du recouvrement des créances du fisc d'un autre État.

M. SUŁKOWSKI (Pologne) reconnaît le bien-fondé des préoccupations de M. Ripert, mais également la valeur des arguments de M. Rossetti. Il estime que la Commission pourrait tourner

la difficulté en adoptant une solution transactionnelle, prévoyant que les créances privilégiées du fisc ne seraient obligatoirement déduites du prix de vente que dans le cas d'un bateau saisi dans son propre pays.

M. ROSSETTI (Italie) fait remarquer que ce cas est prévu dans le chiffre II de l'article 18 qui mentionne : « Les autres créances auxquelles la loi du tribunal saisi accorde un privilège. »

M. SUŁKOWSKI (Pologne) fait observer que, d'après le texte du projet de Convention, les privilèges nationaux seraient primés par les privilèges internationaux et les hypothèques, et que la délégation polonaise ne peut accepter cette solution.

M. RIPERT (France), qui avait demandé pour quelle raison les privilèges réservés au fisc avaient été supprimés dans la Convention, déduit des explications qui ont été données, que ces privilèges ont été supprimés parce que les États ne veulent pas s'engager à reconnaître leurs créances fiscales mutuelles. La délégation française n'a pas déposé d'amendement, et constate que si elle l'avait fait, cet amendement n'aurait pas été soutenu par les autres délégations.

M. Ripert tient toutefois à mettre la Commission en garde contre la possibilité d'une extension éventuelle du champ d'application assigné à la Convention. La délégation française admettrait difficilement qu'un État ne puisse assurer le recouvrement de ses créances fiscales sur son propre territoire.

M. CONTZESCO (Roumanie) demande que, le cas échéant, le procès-verbal de la séance spécifie que la Commission fait sienna la réserve formulée par la délégation française.

Le PRÉSIDENT émet l'avis que la question soit à nouveau examinée lors de la discussion de l'article 11.

M. RICHTER (Allemagne) estime que l'examen de la question de fond n'est pas épuisé. Si la Commission adopte la façon de voir de M. Ripert, que M. Richter déclare partager, il faut préciser que les privilèges fiscaux ne seront respectés qu'en cas de vente du bateau dans le pays où il est immatriculé.

Toutefois, qu'arrivera-t-il si un bateau, immatriculé dans le pays A est vendu dans un autre pays et revient ensuite dans le pays A ? Le fisc du pays A peut-il exercer son privilège sur ce bateau ?

M. RIPERT (France) considère que le cas est prévu par l'article 23, qui stipule que les privilèges s'éteignent dans le cas de vente forcée.

M. RICHTER (Allemagne) constate en conséquence qu'il est bien entendu que les créances fiscales n'auront pas d'effet international.

Mais il signale que le paragraphe II de l'article 18 vise des créances dont certaines font l'objet de privilèges spéciaux dans la législation de divers pays, comme, par exemple, les créances de la douane en Allemagne. M. Richter a attiré l'attention du Comité préparatoire sur la nécessité de ne traiter cette question qu'en connaissance de cause.

M. SUŁKOWSKI (Pologne) considère que la question examinée présente une très grande importance et que la Commission ne doit pas vouloir chercher à modifier les diverses législations fiscales. Or, d'après le projet, les privilèges fiscaux seraient primés par les privilèges internationaux et les hypothèques, ce qui paraît inadmissible.

M. RIPERT (France) fait observer qu'il aurait préféré qu'aucune délégation ne se soit déclarée d'accord avec la délégation française. Celle-ci avait, en effet, pour instruction de demander que les privilèges fiscaux soient respectés même à l'étranger. Or, lorsque M. Ripert a demandé à la Commission si tous les privilèges prévus par la législation du pays d'immatriculation devaient être respectés par un autre pays, il avait cru constater l'unanimité de la Commission contre cette solution et c'est pour cette raison qu'il a renoncé à présenter un projet d'amendement.

M. PANTITCH (Yougoslavie) considère que lorsqu'un bateau est vendu dans le pays où il est immatriculé, le fisc de ce pays n'admettra pas que son privilège soit primé par d'autres. Quant au cas où un bateau est vendu à l'étranger, la question se pose de savoir si le fisc acceptera la radiation de l'immatriculation avant d'avoir assuré le recouvrement de ses créances ; M. Pantitch croit qu'on peut répondre que le fisc s'y opposera toujours.

M. MONTAGNA (Italie) estime que, dans l'hypothèse susvisée, il y a lieu de faire une distinction.

La Convention devrait faire mention du privilège fiscal, seulement pour les créances du fisc du pays où le bateau est immatriculé. Par contre, en ce qui concerne les créances fiscales des pays étrangers, la Commission devrait tenir compte du fait qu'il n'existe pas de précédents pour une collaboration fiscale internationale, et qu'il y a partant lieu de l'exclure.

M. RICHTER (Allemagne) constate que la Commission est unanime pour reconnaître que le privilège fiscal ne doit pas avoir d'effet international. Il reste à préciser l'effet qu'aurait la vente forcée. Or, pour pouvoir prévoir un privilège en ce cas, il faudrait connaître ce que stipulent les diverses législations à ce sujet. M. Richter estime qu'on ne peut insérer une règle générale à l'article 18.

M. RIPERT (France) fait observer que M. Richter ne fait allusion qu'aux droits dont le bateau lui-même peut faire l'objet. Or, la Convention de Bruxelles est plus large et envisage non seulement les droits de port, mais toutes autres taxes analogues.

M. RICHTER (Allemagne) se déclare d'accord et estime qu'il doit être possible de trouver une formule satisfaisante.

Le PRÉSIDENT demande si la Commission est unanime pour estimer que les privilèges fiscaux ne doivent pas avoir d'effet international et ne doivent jouer que dans le cas où la vente forcée a lieu dans le pays où le bateau est immatriculé.

M. SULKOWSKI (Pologne) déclare que la délégation polonaise est d'avis que les privilèges fiscaux soient respectés, même à l'étranger.

M. DE VOS (Belgique) et le PRÉSIDENT constatent qu'il y a donc deux opinions en présence.

M. SULKOWSKI (Pologne) désire dissiper un malentendu. Il déclare que la Convention doit préciser, en premier lieu, que dans le cas d'un bateau vendu dans le pays où il est immatriculé, les privilèges fiscaux doivent être respectés.

M. RIPERT (France) fait observer que, dans ce cas, ce n'est pas la Convention qui est appliquée, mais la loi du pays d'immatriculation.

M. SULKOWSKI (Pologne) réplique qu'il n'en est ainsi que si l'article 11 est interprété dans le sens correspondant.

M. RIPERT (France) rappelle que la délégation française a déclaré nettement ne pouvoir accepter l'article 18 que si le champ d'application de la Convention n'était pas élargi.

M. SULKOWSKI (Pologne) estime que la Commission doit charger un comité spécial d'examiner la question lors de la discussion de l'article 11.

M. VAN SLOOTEN (Pays-Bas) tient à faire observer que toute la portée de la Convention est ici en jeu.

La Commission s'est proposée d'unifier le droit fluvial. La liste des privilèges ne doit donc prévoir que ceux qui seront respectés dans tous les pays.

M. RIPERT (France) signale qu'il reste le cas très important signalé par M. Richter : celui d'un bateau vendu dans un pays autre que le pays d'immatriculation. Dans ce cas, c'est la Convention qui doit être appliquée et il semble difficile de stipuler que le fisc du pays où se fait la vente ne puisse, alors, assurer le recouvrement de ses créances.

M. VAN SLOOTEN (Pays-Bas) signale, à ce sujet, qu'un nouveau projet de loi hollandais prévoit que le fisc renonce à son privilège dans ce cas.

M. SULKOWSKI (Pologne) croit comprendre que M. Ripert demande que soit appliquée la loi du pays où a lieu la vente forcée. Il déclare accepter la solution préconisée par M. Ripert.

M. RIPERT (France) précise qu'il lui semble simplement impossible de priver le fisc de ce pays du droit d'exercer son privilège.

M. CONTZESCO (Roumanie) déclare être entièrement d'accord avec M. Ripert.

Le PRÉSIDENT dit que l'examen de la question sera repris lors de la discussion de l'article 11.

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## SIXIÈME SÉANCE

*Tenue le mardi 25 novembre 1930, à 16 h. 30.*

*Président : Le professeur Robert HAAB (Suisse).*

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### VII. Examen du projet de Convention (suite).

Le PRÉSIDENT informe la Commission que la discussion des articles 2 et 3 du projet de Convention est renvoyée à une séance ultérieure, sur la demande de certaines délégations.

#### TITRE II (suite).

##### Article 18 (suite).

M. VAN SLOOTEN (Pays-Bas) désire présenter une motion d'ordre.

La Commission a abordé la discussion de l'article 18 du projet de Convention, après avoir décidé de réserver pour la fin la discussion de l'article 11. Mais, au cours de la dernière séance, la délégation française a formulé une réserve, par laquelle elle soumet son acceptation de l'article 18

à la condition suivante : la Commission devra adopter, en ce qui concerne le champ d'application de la Convention, l'interprétation la plus restreinte, c'est-à-dire que l'article 11 devra stipuler que la Convention ne sera appliquée que lorsque le bateau sera saisi dans un pays autre que le pays d'immatriculation. M. van Slooten tient à attirer l'attention de la Commission sur la situation très sérieuse qui pourrait en résulter pour un créancier hypothécaire.

Il rappelle qu'au début des travaux qui ont conduit à la rédaction du projet de Convention actuel, il avait été question de prévoir, au chapitre sur les privilèges, une unification véritable du droit fluvial en cette matière, en obligeant les États contractants à adopter dans leur législation et à l'exclusion de tous autres privilèges, ceux énumérés par la Convention. On a dû y renoncer et un article spécial fut introduit au champ d'application de la Convention.

C'est cet article dont la Commission a réservé l'examen, et il se peut qu'après avoir adopté, avec les modifications éventuelles qui auront été jugées nécessaires, la liste des privilèges énumérés à l'article 18, la Commission décide de donner à l'article 11 une portée restreinte, c'est-à-dire de lui faire stipuler que la Convention ne devra être appliquée qu'au bateau vendu dans un pays autre que son pays d'immatriculation.

Quelle serait, en ce cas, la situation d'un créancier suisse, par exemple, qui aurait une hypothèque sur un bateau français ?

Dans le cas où ce bateau serait vendu en France, la loi française serait appliquée et toute une série de privilèges français auraient le pas sur l'hypothèque du créancier suisse.

Dans le cas où le bateau serait vendu en Suisse, le juge suisse serait obligé d'appliquer la Convention, et le créancier suisse verrait tous les privilèges énumérés par cette convention primer son hypothèque.

M. van Slooten estime en conséquence que la Commission doit procéder à l'examen de l'article 11 du projet de Convention, avant de continuer la discussion de l'article 18, et il présente une motion d'ordre en ce sens.

M. MONTAGNA (Italie) réplique qu'à son avis, l'article 18 peut être discuté même avant que la Commission ne se soit prononcée sur l'article 11.

Les diverses délégations ont fait valoir un grand nombre d'arguments au sujet de l'article 18 et ont peut-être compliqué cette question délicate en l'envisageant sous trop d'aspects différents. De l'avis de M. Montagna, il faut se borner à en dégager le caractère essentiel et faire la distinction suivante :

- 1<sup>o</sup> Ne pas envisager les créances des États étrangers ;
- 2<sup>o</sup> Respecter, pour des raisons d'ordre public, les créances de l'État où a lieu la vente.

L'article 2 de la Convention de Bruxelles déclare privilégier les frais de justice, les dépenses encourues dans l'intérêt commun des créanciers, ainsi que les droits de tonnage, de phare ou de port et les autres taxes et impôts publics de même espèce. Ce sont là des créances de l'État où a lieu la vente, et M. Montagna propose que la même solution soit adoptée par la nouvelle Convention.

On pourrait allonger la liste des créances fiscales qui seraient privilégiées, mais M. Montagna estime préférable de s'en abstenir.

M. RICHTER (Allemagne) rappelle qu'il a lui-même demandé, au cours de la première séance de la Commission, que soit discuté en premier lieu l'article 11. Il s'agit, en effet, de préciser si l'on veut prévoir seulement la solution des conflits de lois, ou bien fixer une règle internationale et, dans ce dernier cas, si cette règle ne devra s'appliquer qu'aux bateaux étrangers.

M. RIPERT (France) déclare appuyer la proposition de M. van Slooten. Il estime que la Commission ne peut continuer à discuter des questions de détail en réservant les questions principales. A son avis, l'heure est venue de discuter l'article 11.

Le PRÉSIDENT constate que la motion d'ordre de M. van Slooten est adoptée par la Commission, et il invite celle-ci à aborder l'examen de l'article 11.

#### Article 11 (suite).

Le PRÉSIDENT donne lecture de l'article 11 du projet de Convention.

Il rappelle que la délégation allemande a proposé (voir annexe 1, page 186) que l'article 11 du projet de Convention soit maintenu, à l'exclusion du dernier membre de phrase commençant par « ou si au moins..... ».

Il rappelle également que les délégations suisse et tchécoslovaque ont proposé que la Convention soit appliquée dans le pays d'immatriculation, lorsque le propriétaire ou un créancier hypothécaire inscrit au registre est étranger.

M. RICHTER (Allemagne) fait ressortir que la Commission doit choisir entre trois solutions :

- 1<sup>o</sup> Celle suivant laquelle la Convention ne serait appliquée qu'aux bateaux étrangers ;
- 2<sup>o</sup> Celle suivant laquelle la Convention serait appliquée aux bateaux nationaux et aux bateaux étrangers ;
- 3<sup>o</sup> Celle indiquée par le texte actuel de l'article 11 du projet de Convention.

La délégation allemande déclare qu'elle peut accepter la première ou la seconde de ces solutions, mais pas la troisième. Il lui semble inadmissible de faire dépendre, en une matière de droit réel, le régime qui doit être appliqué de la nationalité d'un seul créancier.



Il cite l'exemple suivant : un bateau immatriculé dans l'État A est saisi dans cet État A. Si un des créanciers hypothécaires inscrits est ressortissant de l'État B, la Convention doit être appliquée ; mais si ce créancier cède son droit à un ressortissant de l'État A, l'hypothèque n'est plus régie par la Convention, mais par la loi du pays A. Une telle solution semble inadmissible.

M. Richter estime en conséquence qu'il faut borner la discussion à un choix entre les deux premières solutions.

M. RIPERT (France) se déclare d'accord quant au fond, avec M. Richter. Mais il ne croit pas qu'on puisse arriver à la deuxième solution par une convention internationale ; il serait dangereux de vouloir imposer des modifications à toutes les législations existantes.

Il ne reste plus alors que la première solution indiquée par M. Richter, c'est-à-dire celle suivant laquelle la Convention ne serait appliquée qu'aux bateaux étrangers, et M. Ripert déclare se rallier à cette formule. Toutefois, il fait observer que l'adoption de celle-ci serait une consécration de la théorie de la loi d'immatriculation régissant les bateaux.

Le régime qui serait ainsi adopté est moins parfait qu'une loi uniforme, mais c'est le seul qu'il soit possible d'obtenir. Il suffira aux créanciers de connaître la Convention et la loi du pays d'immatriculation.

M. VAN SLOOTEN (Pays-Bas) se déclare d'accord avec M. Ripert qu'une unification complète serait désirable, mais elle est impossible. La solution que la délégation néerlandaise pourrait accepter est celle indiquée par le texte actuel de l'article 11, modifié dans le sens de l'amendement proposé par la délégation tchécoslovaque, c'est-à-dire que la Convention serait applicable dans le pays d'immatriculation, quand le propriétaire ou un créancier hypothécaire inscrit au registre est étranger.

Il a été, en effet, objecté au texte actuel qu'il suffirait par exemple de la présence à bord d'un mousse de nationalité étrangère pour qu'« une des personnes intéressées soit un ressortissant d'un autre État ». Or, l'amendement tchécoslovaque fait tomber cette objection.

M. van Slooten propose en définitive que la dernière partie de l'article 11 se lise ainsi : « ou si au moins une des personnes intéressées *inscrites*... ». Les créanciers connaîtraient ainsi d'avance les personnes de la nationalité desquelles dépend l'application de la Convention.

M. van Slooten donne ensuite lecture de l'article 14 de la Convention de Bruxelles du 10 avril 1926, et fait observer que cette convention de navigation maritime a une portée plus étendue, mais que la tâche des rédacteurs était plus facile, étant donné qu'il s'agissait de bateaux naviguant normalement en haute mer et non soumis à une législation territoriale.

M. HOHL (Suisse) déclare appuyer éventuellement la proposition de M. van Slooten.

Il rappelle que la délégation suisse avait déclaré appuyer la proposition allemande, consistant à supprimer la dernière partie de l'article 11. Dans le cas où cette proposition ne serait pas adoptée par la Commission, la délégation suisse avait déclaré qu'elle donnerait sa préférence à une solution qui restreindrait le champ d'application de la Convention aux cas où : 1<sup>o</sup> le bateau se trouve sur le territoire d'un autre État ; 2<sup>o</sup> le bateau se trouve dans le pays d'immatriculation, mais où le propriétaire ou le créancier hypothécaire sont des ressortissants d'un autre État. Les personnes indiquées sous 2<sup>o</sup> sont en effet celles « inscrites » au registre d'immatriculation.

M. RIPERT (France) fait observer que cette solution, qui semble très satisfaisante au premier abord, serait difficile à appliquer. En effet, le régime à choisir dépendrait de la nationalité d'un créancier hypothécaire et celle-ci n'est pas indiquée sur le registre.

D'autre part, il rappelle l'observation qu'il a faite au cours de la séance précédente, c'est-à-dire qu'il estime difficile d'envisager que, dans le cas d'un bateau saisi dans son pays d'immatriculation, le fisc renonce à son privilège parce qu'un créancier hypothécaire étranger se présente.

M. SITENSKY (Tchécoslovaquie) suggère que la proposition de M. van Slooten soit modifiée de la façon suivante : la dernière partie de l'article 11 serait ainsi conçue : « ou si l'application de la Convention est demandée par un créancier hypothécaire qui ne serait pas ressortissant du pays d'immatriculation ».

M. RICHTER (Allemagne) estime que cette proposition est inacceptable. Il peut comprendre qu'on fasse dépendre le régime appliqué de la nationalité d'un créancier quand il ne s'agit que des intérêts de ce créancier et du débiteur. Mais ici, il s'agit des intérêts d'un grand nombre de personnes différentes et l'inscription d'une nouvelle hypothèque ne doit pas pouvoir supprimer des privilèges déjà nés.

M. NAUTA (Pays-Bas) déclare que, sous réserve d'une modification éventuelle qui ferait dépendre l'application de la Convention, non de la nationalité des personnes intéressées, mais du pays où elles sont domiciliées, il estime que la solution indiquée dans le projet de Convention est juridiquement la meilleure.

De quoi s'agit-il, en effet ?

De déterminer suivant quelle règle doit être partagé le prix d'un bateau saisi, entre les créanciers privilégiés. Le projet de Convention prévoit que si le bateau est saisi dans le pays d'immatriculation et que tous ces créanciers privilégiés sont ressortissants de ce pays, c'est la loi de ce pays qui est appliquée. Mais si les créanciers sont ressortissants de pays différents (ou domiciliés dans des pays différents), c'est la Convention internationale qui doit jouer et qui doit prévoir la réglementation du partage.

En conséquence, il faut que l'application de la Convention dépende non du pays où le bateau est immatriculé, mais des pays dont les créanciers sont ressortissants (ou de pays où se trouve leur domicile).

Le PRÉSIDENT constate que la Commission doit choisir entre trois opinions :

1<sup>o</sup> Celle de MM. Richter et Ripert, qui proposent de supprimer la dernière partie de l'article 11, à partir des mots : « ou si au moins..... ».

2<sup>o</sup> Celle de MM. van Slooten, Hohl et Sitenky, qui proposent que la phrase « ou si au moins une des personnes intéressées est un ressortissant..... » devienne « ou si au moins une des personnes intéressées *inscrites* est un ressortissant... ».

3<sup>o</sup> Celle de M. Nauta, qui propose de maintenir le texte actuel, sous réserve d'une modification éventuelle envisageant le domicile des personnes intéressées au lieu de leur nationalité.

M. HOHL (Suisse) précise qu'il ne se rallie à l'opinion de MM. van Slooten et Sitenky que si la proposition allemande n'est pas acceptée.

M. RIPERT (France) attire l'attention de la Commission sur la phrase suivante de l'article 14 de la Convention de Bruxelles du 10 avril 1926 : « ainsi que dans les autres cas prévus par les lois nationales ». Il se demande si cette phrase ne pourrait ouvrir la porte à une solution, et il propose que dans l'article 11 ne soit supprimé que la phrase « ou si au moins une des personnes intéressées est un ressortissant d'un tel État » et que subsiste la fin de l'article « ainsi que dans les autres cas prévus par les lois nationales ».

M. CONTZESCO (Roumanie) et M. RICHTER (Allemagne) déclarent se rallier à cette dernière proposition.

M. VAN SLOOTEN (Pays-Bas) reconnaît que les objections présentées par MM. Richter et Ripert sont très sérieuses. Mais il estime qu'à tout système on peut trouver des inconvénients, surtout lorsqu'il s'agit de délimiter le champ d'application d'une convention.

Quant à la dernière solution proposée par M. Ripert, elle laisse toujours subsister la grosse difficulté que M. van Slooten a déjà signalée, c'est-à-dire que, dans certains cas, le créancier hypothécaire ne pourrait assurer le recouvrement de sa créance par suite des privilèges spéciaux reconnus par la loi nationale. Et il serait très difficile, pour les États qui tiennent à sauvegarder les intérêts du crédit fluvial, de signer la Convention.

Enfin, pour répondre à l'objection présentée en ce qui concerne la difficulté d'établir la nationalité des créanciers inscrits, M. van Slooten fait observer qu'en pratique, le créancier n'est jamais un vagabond, qu'il est même rarement un particulier, étant donné que les prêts hypothécaires sur bateaux sont généralement consentis par des banques spécialisées. Par conséquent, dans la grande majorité des cas, la nationalité du créancier ne fera aucun doute.

M. RIPERT (France) fait observer que dans les cas envisagés par M. van Slooten, il n'y a pas de conflit de lois. En effet, si, par exemple, une banque hollandaise consent un prêt hypothécaire sur un bateau français, cette hypothèque est inscrite sur le registre français, et la banque doit prévoir qu'elle sera régie par la loi française.

M. VAN SLOOTEN (Pays-Bas) réplique qu'il peut s'agir d'une hypothèque consentie par une banque hollandaise en Hollande sur un bateau français.

M. RIPERT (France) estime qu'une telle hypothèque n'en est pas moins constituée en France.

M. VAN SLOOTEN (Pays-Bas) répond qu'il s'agirait en ce cas d'un contrat d'emprunt, et que les intérêts de créanciers étrangers seraient en jeu. Or, il estime que, dans un pays, les intérêts des étrangers doivent être protégés peut-être encore mieux que ceux des nationaux.

M. DE RUELLE (Belgique) déclare que la délégation belge appuie la proposition de M. van Slooten, dont la formule répondrait le mieux aux nécessités du crédit fluvial.

M. de Ruelle a écouté avec grand intérêt toutes les objections qui ont été présentées et qu'il estime fondées. Mais elles ne doivent pas arrêter la Commission. Si, d'un point de vue théorique, elles apparaissent comme fondées, pratiquement leur importance est négligeable.

D'autre part, il fait remarquer que si l'article 14 de la Convention de Bruxelles du 10 avril 1926 limite la portée de cette Convention, celle-ci constituait quand même un progrès, et que la Commission ferait un pas de plus dans la voie de la codification internationale progressive des législations nationales, en adoptant la solution proposée par M. van Slooten.

Quant à la difficulté qui consisterait à faire dépendre l'application d'un règlement en matière de droit privé, de la nationalité des intéressés, M. de Ruelle fait remarquer qu'une situation analogue existe dans un grand nombre d'autres cas.

Le PRÉSIDENT estime que la Commission doit procéder à un vote et l'invite à se prononcer en premier lieu sur la proposition apportant la modification la plus profonde au projet de Convention, c'est-à-dire celle de MM. Richter et Ripert.

Le Président constate que la Commission adopte cette proposition consistant à supprimer dans le texte actuel de l'article 11 la phrase « ou si au moins une des personnes intéressées est un ressortissant d'un tel État » en laissant subsister la dernière phrase de l'article, et que, par suite, les autres propositions tombent.

*Article 18 (suite).*

*Déclaration de la délégation néerlandaise.*

M. VAN SLOOTEN (Pays-Bas) déclare qu'en conséquence du résultat du vote qui vient d'avoir lieu, la délégation néerlandaise ne voit pas quel intérêt elle aurait à participer à la suite de la discussion de l'article 18. En effet, elle pourrait être amenée à s'engager, d'une manière ou d'une autre, à adopter une solution qui irait à l'encontre des intérêts qu'elle entend défendre.

M. RIPERT (France) souligne que la déclaration de la délégation néerlandaise est ressentie très vivement par les autres délégations.

Il fait observer que cette déclaration pourrait être justifiée s'il était question d'adopter une disposition portant atteinte à des garanties existantes. Or, les créanciers étrangers n'ont, à l'heure actuelle, aucune garantie et la Convention leur en apporte dans certains cas. Elle offre donc pour eux un intérêt certain, sinon tout l'intérêt que la délégation néerlandaise voudrait qu'elle leur offre.

M. Ripert prie M. van Slooten de bien vouloir considérer cet argument et il souhaite de le voir revenir sur sa décision.

Le PRÉSIDENT et M. CONTZESCO (Roumanie) déclarent s'associer à l'intervention de M. Ripert, dont le souhait est partagé par toute la Commission.

*Proposition de M. Montagna.*

Le PRÉSIDENT demande à la Commission si elle entend adopter la proposition de M. Montagna, qui prévoit une disposition spéciale pour les privilèges fiscaux et suivant laquelle les créances des États étrangers ne seraient pas envisagées, seules devant être respectées les créances de l'État où a lieu la vente du bateau.

M. RICHTER (Allemagne) estime qu'une telle disposition serait très dangereuse pour le crédit hypothécaire.

M. RIPERT (France) et M. DE RUELLE (Belgique) estiment qu'il n'y aurait lieu de retenir que la partie positive de cette proposition.

M. CONTZESCO (Roumanie) demande que la portée de cette proposition soit précisée.

M. MONTAGNA (Italie) explique qu'il s'agit de déterminer le rang qui sera attribué aux créances fiscales.

M. SULKOWSKI (Pologne) propose que l'article 18 stipule que jouissent d'un privilège les créances fiscales de l'État où le bateau est vendu.

M. RIPERT (France) fait observer que cette formule aurait l'inconvénient de faire venir le privilège du fisc à un rang qu'il n'a pas dans certaines législations. Il estime, en conséquence, qu'il faudrait ajouter à la disposition proposée par M. Sulkowski la réserve « à moins que la législation nationale ne donne pas un tel rang aux privilèges du fisc ».

M. GARCZYNSKI (Pologne) fait observer qu'il y aurait lieu de distinguer les créances fiscales relatives à des taxes et impôts, des créances fiscales plus générales. Les premières auraient le rang que M. Sulkowski propose de leur attribuer, tandis que les créances fiscales plus générales ne prendraient rang qu'après les hypothèques et même après tous les autres privilèges lorsqu'il s'agit d'amendes et autres droits analogues.

M. DE RUELLE (Belgique) déclare que, s'il a bien compris, la Commission est unanime pour estimer que les frais de justice, les impôts et taxes de navigation doivent jouir d'un privilège international, quel que soit le pays où se poursuit l'exécution. Quant aux autres droits fiscaux, non indiqués dans le projet de Convention, M. de Ruelle estime qu'il vaut mieux ne pas en faire mention, étant donné que lorsque la vente a lieu dans le pays d'immatriculation, le fisc peut y exercer ces privilèges comme il l'entend. L'énumération de ces derniers privilèges pourrait nuire au crédit hypothécaire, et la Commission devrait se contenter, à leur égard, d'émettre le vœu de les voir réduire dans la mesure du possible, vœu par lequel, en même temps, elle reconnaîtrait leur existence.

M. RIPERT (France) croit que M. de Ruelle ne tient pas compte de la difficulté qu'il a signalée, c'est-à-dire qu'on ne peut exiger, dans le cas d'un bateau vendu dans le pays où il est immatriculé, que le fisc de ce pays renonce à exercer ses privilèges quand un créancier hypothécaire étranger se présente.

En conséquence, M. Ripert propose que la Convention stipule simplement que : « Il demeure entendu que l'État où le bateau est saisi a le droit d'exercer ses privilèges. »

Le PRÉSIDENT invite la Commission à se prononcer sur le principe de cette proposition, qui correspond, quant au fond, à celle de M. Montagna.

Il constate que la Commission se prononce pour le principe de cette proposition, c'est-à-dire que la Convention stipule qu' « Il demeure entendu que l'État où le bateau est saisi a le droit d'exercer ces privilèges ».

Il prie M. Ripert et M. Montagna de formuler une proposition écrite qui sera transmise au Comité de rédaction.

### Numéro 3.

Le PRÉSIDENT donne lecture du numéro 3 de l'article 18 et invite la Commission à le discuter point par point.

Le premier point stipule que jouissent d'un privilège :

« Les créances résultant du contrat d'engagement du capitaine, des gens d'équipage et des autres personnes engagées par l'armateur ou par le capitaine pour le service de bord ; mais, en ce qui concerne les gages, pour une durée de trois mois au plus. »

### Lettre du Directeur du Bureau international du Travail.

Le PRÉSIDENT rappelle à la Commission qu'elle est saisie d'une lettre du Directeur du Bureau international du Travail, en date du 22 novembre 1930 (voir annexe 6, page 201) qui demande que la période de trois mois prévue par ce premier point du numéro 3 soit étendue de façon à correspondre aux dispositions nationales les plus favorables au personnel de la batellerie (par exemple une année) ; ou bien que toute limite à cette période soit supprimée.

M. BORDELOIS, Bureau international du Travail, explique que si la rédaction actuelle du numéro 3 était adoptée, il en résulterait que les gouvernements des États ratifiant la Convention seraient, pour la plupart, tenus de réduire la protection actuellement donnée aux marinières pour le recouvrement de leur salaire. Or, toutes les activités de l'Organisation du Travail sont régies par une règle essentielle contenue dans l'article 405 du Traité de Versailles et qui prescrit qu'en aucun cas, il ne peut être demandé à un État membre de cette Organisation de réduire la protection déjà accordée aux travailleurs par la législation nationale. Le Bureau international du Travail souhaite que ce principe soit appliqué, dans la mesure du possible, par toutes les organisations placées sous l'égide de la Société des Nations.

A ce point de vue, il est satisfaisant de constater que le rang prévu pour le privilège des salaires correspond à celui établi par les législations les plus favorables aux marinières. Mais il n'en est pas de même pour l'étendue de la créance ainsi garantie. En effet, de nombreuses législations ne restreignent aucunement cette créance ou fixent une limite supérieure à celle du projet ; tel est notamment le cas pour les pays suivants :

Allemagne : pas de limitation.

Belgique : six mois.

France : 1<sup>o</sup> pour le Rhin, pas de limitation (c'est la loi allemande qui est appliquée) ; 2<sup>o</sup> pour les autres voies de navigation, soit l'année échue et l'année courante, soit six mois, suivant qu'est appliqué le Code civil ou le Code de commerce.

Grèce : six mois (législation maritime applicable aux bateaux du Danube).

Pays-Bas : pas de limitation.

Tchécoslovaquie : pas de limitation.

La limite de trois mois prévue dans le texte du projet de Convention, apporterait donc une diminution à la protection assurée pour le recouvrement des salaires des marinières dans des pays où les travailleurs de cette catégorie sont particulièrement nombreux. Malgré l'avantage, d'ailleurs peu important, qui en résulterait pour le crédit fluvial, le Bureau international du Travail ne croit pas qu'il convienne d'adopter cette limite.

Il invite la Commission à vouloir bien envisager la suppression de toute restriction, ce qui correspondrait aux dispositions de la Convention de Bruxelles. Toutefois, dans le cas où la Commission estimerait qu'une limite est indispensable, le Bureau international du Travail pourrait accepter celle d'une année.

M. RIPERT (France) déclare que la délégation française est en principe favorable à l'extension au profit des équipages de la durée envisagée.

Toutefois, il y a lieu de prévoir le cas du petit marinier qui ne paie pas régulièrement son personnel. Or, contrairement à ce qu'il en est pour la navigation maritime, le paiement des salaires n'est pas constaté officiellement, et en cas de vente forcée du bateau, les créanciers s'exposeraient à voir le personnel réclamer des salaires non payés depuis plusieurs années, dont le règlement pourrait absorber tout le produit de la vente du bateau.

M. Ripert propose de limiter la durée à un an.

M. CONTZESCO (Roumanie) fait observer que M. Bordelois n'a pas cité la solution adoptée dans la législation roumaine, qui attribue aux créances résultant du contrat d'engagement le septième rang parmi les créances privilégiées, et ne vise que les salaires dus pour le dernier voyage effectué.

M. DESCAMPS (Belgique) propose une solution transactionnelle, et invite la Commission à adopter une durée de six mois. Il estime qu'il est inutile de prévoir une période plus étendue, étant donné que, dans la navigation intérieure, les voyages ne sont jamais très longs, et que l'équipage dispose de voies de recours pour assurer le paiement des salaires qui lui sont dus.

M. CONTZESCO (Roumanie), M. RIPERT (France) et M. SITENSKY (Tchécoslovaquie) déclarent se rallier à cette proposition.

M. BORDELOIS, Bureau international du Travail, déclare que si la Commission adopte la durée de six mois, le Bureau international du Travail considérera qu'il obtient une certaine satisfaction, mais que ses objections de principe subsistent en partie.

Le PRÉSIDENT fait procéder à un vote et constate que *la Commission se prononce pour la durée de six mois.*

Il invite ensuite la Commission à examiner le deuxième point du numéro 3 de l'article 18 qui stipule que jouissent d'un privilège :

« ... les indemnités dues à un titre quelconque auxdites personnes ou à leurs ayants droit pour accidents de travail ou maladies professionnelles, sauf le cas où ces risques sont couverts par une assurance obligatoire. »

Il rappelle que le projet d'amendement allemand (voir annexe 1, page 186) prévoit la suppression de ce deuxième point.

M. RICHTER (Allemagne) explique que les créances visées par le deuxième point sont : ou bien privilégiées par la première partie du numéro 3 (contrat d'engagement), ou bien couvertes par une assurance obligatoire.

Le seul cas où le deuxième point du numéro 3 jouerait, est celui des indemnités résultant d'un acte illicite commis par le propriétaire. Il ne semble pas qu'il y ait lieu de le prévoir dans la Convention, étant donné qu'il ne rentre pas dans le cadre de l'exploitation normale du bateau. D'ailleurs, il n'est pas prévu dans la Convention de Bruxelles, et la Commission s'est fixée pour règle de restreindre la liste des privilèges.

M. RIPERT (France) fait observer que dans la législation française, en ce qui concerne les risques professionnels, le patron est responsable ; pour cette raison, la Convention doit prévoir un privilège pour le recouvrement des indemnités correspondantes.

M. SUŁKOWSKI (Pologne) déclare se rallier à la proposition allemande qu'il estime indispensable pour la protection des intérêts du créancier hypothécaire. En effet, la valeur du bateau peut être faible, tandis que les indemnités dues en cas de mort, par exemple, peuvent être très considérables.

M. BORDELOIS, Bureau international du Travail, désire appuyer l'objection présentée par M. Ripert. Il se peut qu'en Allemagne, où l'assurance obligatoire existe depuis longtemps et est très étendue, on ait quelque peu perdu de vue la notion de la responsabilité de l'employeur en matière de risque professionnel. Mais, dans la généralité des pays, cette notion garde une grande importance ; souvent, elle est encore la seule sur laquelle se fonde la réparation. Il est donc indispensable de sauvegarder nettement le privilège garantissant les indemnités d'accident et maladie professionnels dans les pays où l'assurance obligatoire n'existe pas encore ou est insuffisamment développée.

Le Bureau international du Travail exprime en conséquence le vœu de voir la Commission maintenir le texte actuel du deuxième point du numéro 3 de l'article 18.

Le PRÉSIDENT fait procéder à un vote sur la proposition de la délégation allemande et constate que *la Commission adopte cette proposition, c'est-à-dire se prononce pour la suppression du deuxième point du numéro 3 de l'article 18.*

Le Président donne lecture du troisième point de ce paragraphe qui stipule que jouissent d'un privilège :

« ... les frais funéraires en cas de mort du capitaine-propriétaire du bateau, si cette créance est privilégiée par la loi du tribunal saisi ».

Il rappelle que la délégation allemande, appuyée par d'autres délégations, propose la suppression du privilège pour les frais funéraires.

Il fait procéder à un vote et constate que *la Commission adopte la proposition allemande, c'est-à-dire se prononce pour la suppression du troisième point du numéro 3 de l'article 18.*

(La séance est suspendue pendant 15 minutes.)

#### Numéro 4.

Le PRÉSIDENT donne lecture du numéro 4 de l'article 18 du projet de convention. Il rappelle à la Commission que la délégation allemande (voir annexe 1, page 187), appuyée par la délégation autrichienne, demande la suppression de la fin du numéro 4 à partir des mots « si elles sont privilégiées... ».

M. RICHTER (Allemagne) explique que la délégation allemande tient à supprimer, dans l'article 18, tous les renvois aux dispositions des lois nationales, et qu'elle estime que la Commission doit faire un effort tout particulier pour essayer de réaliser, au moins en cette matière, une unification véritable.

En ce qui concerne les contributions du bateau aux avaries communes, la délégation allemande estime que le privilège n'est pas nuisible au crédit hypothécaire. On peut, en effet, distinguer deux cas :

1. L'avarie s'est produite avant la constitution de l'hypothèque ; le créancier doit, avant de consentir son prêt, se renseigner sur les risques qu'il court.

2. L'avarie se produit après la constitution de l'hypothèque ; le créancier hypothécaire a la faculté d'imposer au propriétaire l'obligation d'exclure, dans les contrats de transport, la contribution en cas d'avaries communes.

M. RIPERT (France) estime que cette proposition serait dangereuse, car un grand nombre de législations ne connaissent pas les privilèges en ce qui concerne les contributions du bateau aux avaries communes, en navigation intérieure. Lorsqu'il s'agirait d'appliquer la Convention, les tribunaux respecteraient un tel privilège s'il est prévu dans la législation du pays d'immatriculation, mais autrement il serait difficile de le leur faire admettre.

M. RICHTER (Allemagne) réplique que si les tribunaux ne connaissent pas le privilège en cas d'avaries communes, en navigation intérieure, le tribunal reconnaitrait quand même la créance.

M. RIPERT (France) répond que cette créance peut exister sans être privilégiée.

M. RICHTER (Allemagne) estime que la Commission devrait procéder à un vote sur cette question, mais point par point.

M. RIPERT (France) dit que la délégation française considère qu'il est très dangereux de supprimer en séance des dispositions qui sont le résultat de longues discussions au sein des comités préparatoires et qui représentent un compromis. Elle estime que la Commission risque aussi de créer des privilèges que certaines législations ne connaissent pas.

M. RICHTER (Allemagne) donne lecture des observations présentées par la délégation allemande, relatives à son projet d'amendement pour l'article 18 (voir annexe 1, appendice, page 194).

M. RIPERT (France) répond que si le propriétaire ne respecte pas les obligations qui lui sont imposées, cela ne doit pas modifier les droits des chargeurs.

M. SITENSKY (Tchécoslovaquie) fait observer que la suppression demandée par la délégation allemande abrègerait le texte de l'article, mais allongerait considérablement la liste des privilèges. A son avis, le texte actuel sauvegarde les intérêts de tous les États en assurant la reconnaissance du privilège dans tous les cas où il est justifié. On ne pourrait donc adopter la reconnaissance des privilèges en question qu'avec les réserves indiquées à l'article 18.

M. CONTZESCO (Roumanie) dit que la délégation roumaine se prononce contre la suppression de cette réserve. Dans la législation roumaine, le privilège des créances en question reçoit le septième rang, et la délégation roumaine ne pourrait accepter qu'il reçoive, dans la Convention, un rang supérieur au quatrième.

M. SUŁKOWSKI (Pologne) demande pourquoi la terminologie de la Convention de Bruxelles, qui disait « rémunération », n'a pas été reproduite dans la Convention, qui parle d' « indemnités ».

Le PRÉSIDENT suggère que la question soit renvoyée au Comité de rédaction.

M. HOHL (Suisse) dit que la délégation suisse estime que l'article 18 énumère le maximum des privilèges acceptables, et qu'elle est opposée à toute modification qui aurait pour résultat d'en allonger la liste.

M. PANTITCH (Yougoslavie) estime également inutile de créer des privilèges qui ne soient pas prévus par toutes les législations.

M. LAWATSCHER (Autriche) considère que, pour une protection efficace des créanciers hypothécaires, il faut qu'il y ait une réglementation uniforme des privilèges. Le pays où la vente forcée a lieu, dépend de circonstances accidentelles dont l'influence sur la situation des créanciers hypothécaires devrait être éliminée dans la mesure du possible. Pour cette raison, il conviendrait de supprimer les renvois à la législation du tribunal saisi, prévus aux numéros 3, 4 et 6.

Ce n'est que pour les primes d'assurances sociales indiquées au numéro 7 qu'on pourrait, le cas échéant, décider que devra être appliquée la législation du tribunal saisi, étant donné qu'à l'heure actuelle, aucun État ne reconnaît un privilège en ce qui concerne ces primes, lorsqu'elles ne doivent pas être versées aux institutions d'assurance sociale relevant directement de cet État.

Ce sont des considérations d'ordre pratique qui militent en faveur des renvois à la législation du pays d'immatriculation prévus aux numéros 4 et 6. D'après le texte actuel, le tribunal saisi serait tenu, en jugeant certaines questions délicates, d'appliquer les dispositions d'une législation étrangère qu'il ne connaît pas en règle générale. La proposition autrichienne a pour but d'éviter ces difficultés.

Le PRÉSIDENT fait procéder à un vote sur la proposition allemande et autrichienne et constate que la Commission se prononce contre cette proposition, c'est-à-dire contre la suppression de la fin du numéro 4 de l'article 18 à partir des mots « si elles sont privilégiées... ».

Numéros 5 et 6.

Le PRÉSIDENT donne lecture des numéros 5 et 6 de l'article 18 du projet de Convention.

Il rappelle que la délégation allemande (voir annexe 1, page 187), soutenue par la délégation autrichienne, propose de remplacer ces deux paragraphes par la disposition plus générale suivante:

« 5. Les indemnités pour dommages causés par la faute d'une des personnes visées au paragraphe 3 dans l'exercice de ses fonctions ; les indemnités pour dommage matériels résul-

tant de l'inexécution ou de l'exécution incomplète d'un contrat dont l'exécution rentre dans les fonctions du capitaine. »

M. RICHTER (Allemagne) déclare qu'en présence du vote presque unanime de la Commission contre la proposition allemande en ce qui concerne le numéro 4, la délégation allemande renoncerait à demander qu'il soit procédé à un vote sur son projet d'amendement en ce qui concerne les numéros 5 et 6, s'il n'était pas question de donner aux créances visées par ce paragraphe un privilège qui ne les ferait passer avant l'hypothèque que si les faits constitutifs de ces créances sont antérieurs à l'inscription de l'hypothèque.

La délégation allemande n'a pas d'autres observations à présenter que celles qu'elle a indiquées pour soutenir son projet d'amendement du numéro 4. Toutefois, étant donné que le texte du nouveau numéro 5 ne présenterait pas de différence, quant au fond, avec le texte primitif des numéros 5 et 6, M. Richter estime que la question peut être renvoyée au Comité de rédaction.

M. RIPERT (France) demande pourquoi le texte du projet de Convention classe sous deux numéros différents les créances visées par les numéros 5 et 6.

M. RICHTER (Allemagne) répond qu'il s'agit simplement de distinguer des autres les créances qui ne seront privilégiées que si elles le sont déjà par la loi du lieu d'immatriculation.

M. RIPERT (France) appuie la proposition de M. Richter de renvoyer le projet d'amendement allemand pour les numéros 5 et 6 au Comité de rédaction.

Le PRÉSIDENT fait observer que la Commission doit encore se prononcer sur la suppression demandée par la délégation allemande de la réserve indiquée au numéro 6.

M. RIPERT (France) constate que cette suppression aurait pour résultat, ici également, d'allonger la liste des privilèges.

M. CONTZESCO (Roumanie) rappelle que la Commission a repoussé une proposition d'amendement qu'il avait présentée, tendant à faire figurer, dans les créances privilégiées énumérées au numéro 2, les indemnités dues aux États pour dommages causés aux ouvrages d'art. Il demande qu'un privilège pour ces indemnités soit prévu au numéro 5.

Il explique que la préoccupation du Gouvernement roumain en cette matière est bien légitime, étant donné le long parcours du Danube sur son territoire et les dépenses énormes que le Gouvernement fait pour l'entretien des ports et du chenal navigable.

M. ROSSETTI (Italie) appuie la proposition de M. Contzesco.

M. RICHTER (Allemagne) fait observer que le texte proposé par la délégation allemande pour le numéro 5 couvre les créances envisagées par M. Contzesco, par la mention qu'il fait des « Indemnités pour dommages causés par la faute d'une des personnes visées au numéro 3 dans l'exercice de ses fonctions ».

M. HOSTIE, Commission centrale pour la navigation du Rhin, estime que le texte actuel du numéro 5 doit être interprété comme impliquant déjà un privilège pour les indemnités dues aux États pour dommages causés aux ouvrages d'art, étant donné qu'il fait mention des indemnités dues pour dommages causés par « tous autres accidents de navigation » à des biens autres que les biens se trouvant à bord du bateau même.

M. RIPERT (France) reconnaît le bien-fondé de cette remarque, mais estime qu'une précision serait nécessaire pour qu'il ne puisse y avoir doute, notamment dans les traductions de la Convention dans des langues étrangères.

Le PRÉSIDENT constate l'accord de la Commission pour envoyer le projet d'amendement allemand du numéro 5 au Comité de rédaction.

Il invite la Commission à procéder à un vote sur la suppression, proposée par la délégation allemande, du numéro 6.

[M. RICHTER (Allemagne) et M. LAWATSCHER (Autriche) déclarent retirer leur amendement.

M. RIPERT (France) précise qu'il doit être bien entendu que le maintien du numéro 6 ne signifie pas qu'on assigne aux privilèges visés par ce point un rang inférieur à ceux visés par le numéro 5.

M. RICHTER (Allemagne) déclare qu'il ne retire pas son amendement en ce qui concerne la suppression de la réserve indiquée à la fin du numéro 6.

Le PRÉSIDENT fait procéder à un vote et constate que la Commission se prononce contre ce projet d'amendement, c'est-à-dire contre la suppression de la fin du numéro 6, à partir des mots « si ces indemnités sont privilégiées... ».

Numéro 7.

Le PRÉSIDENT donne lecture du numéro 7 de l'article 18 du projet de Convention.

M. RICHTER (Allemagne) déclare que la délégation allemande retire son projet d'amendement en ce qui concerne ce point.

M. RIPERT (France) signale que le numéro 2 de l'article 19 stipule que « les créances mentionnées aux numéros 5 et 6 prennent rang après l'hypothèque si... ». Il propose, en conséquence, que les créances visées par le numéro 7 soient ajoutées à celles visées par le numéro 3.

M. DESCAMPS (Belgique) déclare qu'il voulait faire la même proposition.

Le PRÉSIDENT constate que la Commission approuve cette proposition, c'est-à-dire qu'elle décide que les créances visées au numéro 7 seront ajoutées à celles indiquées au numéro 3.

#### *Chiffre II.*

Le PRÉSIDENT donne lecture du chiffre II de l'article 18 du projet de Convention.

Il constate que la Commission l'adopte sans modification.

L'examen de l'article 18 est ainsi terminé.

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### SEPTIÈME SÉANCE

*Tenue le mercredi 26 novembre 1930, à 10 heures.*

*Président: Le professeur Robert HAAB (Suisse).*

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#### VIII. Examen du projet de Convention (suite).

##### TITRE PREMIER. — DE L'IMMATRICULATION (suite).

###### *Articles 2 et 3 (suite).*

M. DE RUELLE (Belgique) pose une motion d'ordre. Il suggère de remettre à la séance du lendemain la discussion sur les articles 2 et 3 du projet de Convention, concernant le problème fondamental de l'immatriculation. Ainsi, la Commission continuera, dans la séance d'aujourd'hui, l'examen des privilèges. A l'appui de sa proposition, M. de Ruelle expose qu'elle ne constitue nullement un moyen dilatoire, mais une question de méthode, étant donné qu'il lui semble préférable de terminer l'étude des privilèges déjà assez avancée, dans un délai aussi rapproché que possible.

M. ROSSETTI (Italie) rappelle que, depuis plusieurs jours, il demande que soient discutés les articles 2 et 3. Il estime que si la Commission veut conclure au mieux ses travaux, il convient tout d'abord de se mettre d'accord sur la question principale. Si la Commission renvoie à la dernière heure la discussion des articles sur lesquels il existe des divergences profondes d'opinion, elle trouvera peut-être, à la fin de ses travaux, qu'elle a perdu son temps en réglant toute une série de questions de détail sans aboutir à un accord.

M. HOHL (Suisse) déclare appuyer la proposition de la délégation belge. Il estime qu'une fois les questions d'ordre technique réglées, le problème fondamental du principe de l'immatriculation sera plus facile à résoudre. Il prie la Commission de vouloir bien se rallier à la suggestion de M. de Ruelle.

M. DE RUELLE (Belgique) répète qu'il s'agit, dans sa pensée, non pas d'user d'un moyen dilatoire, mais de déblayer le terrain. Ainsi les membres de la Commission auront le temps de réfléchir et il sera plus facile de parvenir à un accord. Il ajoute que les travaux de la Conférence sont déjà assez avancés et qu'il envisage la réunion, dès cette semaine, de la première Commission présidée par M. Rossetti.

M. ROSSETTI (Italie) déclare que, dans ces conditions, il n'insiste plus sur sa contre-proposition.

Le PRÉSIDENT constate que la proposition de M. de Ruelle tendant à continuer, au cours de la présente séance, l'étude des privilèges, est adoptée et que la Commission décide de discuter les articles 2 et 3 à la prochaine séance.

#### TITRE II (suite).

##### *Article 11 (suite).*

M. RIPERT (France) tient à formuler quelques observations au sujet de l'article 11. Il expose qu'au cours de la séance d'hier, la Commission qui délibérait sur l'article 11 a adopté à la simple majorité le texte des documents préparatoires, en changeant toutefois le champ d'application de la Convention. Or, une fois ce vote acquis à la majorité, il est apparu qu'il avait l'inconvénient



de diviser la Commission. Aussi peut-on se demander s'il ne serait pas possible de trouver un terrain d'entente qui permit à la minorité de se rallier à la décision prise.

En effet, en ce qui concerne la forme, l'article 11 contient une incorrection, puisqu'il déclare que « les États contractants s'engagent à assurer l'application des dispositions du présent titre... ». Or, à cet égard, aucun engagement n'est à prendre. Une fois la Convention signée, les autorités de l'État sur le territoire duquel se trouve le bateau auront soin de veiller à ce que la Convention soit appliquée.

En ce qui concerne le fond, on a fait remarquer que l'article 11 avait omis de prévoir une hypothèse en matière de conflit de lois. Il s'agit du cas où le propriétaire d'un bateau immatriculé a grevé volontairement celui-ci d'une créance hypothécaire qu'il est allé contracter à l'étranger.

Bien que M. Ripert s'oppose toujours en principe à ce qu'on fasse dépendre de la nationalité du créancier l'application de la Convention, il constate qu'il serait néanmoins juste de sauvegarder les intérêts des créanciers étrangers. On ne saurait en effet admettre que le propriétaire d'un bateau immatriculé en France puisse se soustraire à des obligations volontairement contractées à l'étranger. M. Ripert est donc disposé à donner satisfaction, dans une certaine mesure, à M. van Slooten, et il a rédigé un texte nouveau qu'il se propose de faire distribuer aux membres de la Commission.

En conséquence, il demande à la Commission de bien vouloir examiner l'article 11 lors d'une séance ultérieure.

*Il est décidé que le texte de M. Ripert sera discuté en premier lieu à la prochaine séance.*

### Article 19.

Le PRÉSIDENT rappelle que la Commission est saisie d'un projet d'amendement de cet article présenté par la délégation allemande (voir annexe 1, page 187), dont il donne lecture.

Le Président estime qu'il convient d'examiner successivement les conflits qui peuvent se produire entre des hypothèques et : 1<sup>o</sup> des privilèges internationaux, 2<sup>o</sup> des privilèges nationaux.

M. RICHTER (Allemagne) constate tout d'abord qu'en ce qui concerne l'alinéa 3 de l'article 19 du projet allemand, cet alinéa se borne à reproduire l'article 21 du projet de Convention et qu'il ne s'agit, à cet égard, que d'une question de rédaction peu importante.

En ce qui concerne les alinéas 1 et 2, il estime que la proposition allemande équivaut à supprimer la condition qui prévoit que le créancier doit faire saisir le bateau dans un délai de quinze jours et présenter une demande d'inscription de saisie au bureau d'immatriculation.

En effet, des objections sérieuses et fondées ont été formulées dans les milieux allemands contre les prescriptions de ces alinéas. On a estimé qu'au lieu de faciliter le fonctionnement de la loi, on imposait aux intéressés l'obligation de faire saisir le bateau dans tous les cas, et qu'on empêchait ainsi un règlement à l'amiable. C'est là imposer une condition très coûteuse et très gênante pour la navigation. D'ailleurs, dans tous les cas, le délai de quinze jours visé dans cet article serait trop court.

M. SUŁKOWSKI (Pologne) attire l'attention de la Commission sur l'antinomie qui existe, à son avis, entre la rédaction de l'alinéa 2 de l'article 19 du projet de Convention et le texte du rapport y relatif. L'alinéa 2 du projet de Convention déclare, en effet :

« Toutefois, les créances mentionnées aux numéros 5 et 6 prennent rang après l'hypothèque si les faits constitutifs de ces créances sont postérieurs à l'inscription de l'hypothèque... »

On peut déduire de ce texte que si les faits constitutifs de la créance privilégiée sont antérieurs à l'inscription de l'hypothèque, les privilèges priment toujours l'hypothèque. Or, c'est là une idée qui n'est pas formulée expressément à la page 26 du rapport du Comité du droit fluvial<sup>1</sup>. M. Sulkowski résume sa pensée en concluant que si les faits constitutifs des créances sont antérieurs à l'inscription de l'hypothèque, le créancier sera dans l'obligation de faire saisir le bateau et de demander l'inscription de cette saisie sur le registre. Il estime d'ailleurs que, bien que cette distinction entre les deux cas d'antériorité et de postériorité ne soit pas exprimée dans le texte actuel du projet de Convention, la pensée du Comité du droit fluvial a coïncidé à peu près avec celle de la délégation allemande : en effet, aux termes de l'alinéa 2 de l'article 19 du projet allemand, le privilège d'une des créances mentionnées aux numéros 5 ou 7 est primé par l'hypothèque et les privilèges nationaux, si les faits constitutifs de la créance sont postérieurs à l'inscription de l'hypothèque ou à la naissance du privilège national. M. Sulkowski croit qu'il serait peut-être utile de modifier le texte de l'article afin de le rendre plus explicite.

Le PRÉSIDENT déclare que la délégation autrichienne avait déjà appelé son attention sur ce point et qu'il voulait demander au Comité de rédaction de retoucher le texte de façon à bien en faire ressortir l'idée.

Le Président invitera les délégations à se prononcer d'abord sur la question de principe, car si elles sont d'avis de conserver le texte du projet, il faudra reprendre cette réglementation en détail.

M. RIPERT (France) dit qu'il ne pourrait guère accepter la suppression de la condition mentionnée dans le projet. Un créancier hypothécaire se verrait gravement menacé par des privilèges tels que ceux résultant de l'assistance et surtout de l'abordage, car les créances en question pourraient être tellement élevées qu'elles pourraient absorber toute la valeur du gage. Il est donc

<sup>1</sup> Voir document C.541 (a).M.195 (a).1929.VIII.

indispensable de garantir le créancier hypothécaire. Il y a encore une hypothèse à envisager, celle où la victime aurait tardé à faire valoir ses droits, du fait qu'elle a un délai de deux ans pour intenter son action ; dans l'intervalle, le propriétaire du bateau pourrait trouver un emprunteur sur hypothèque et cette seconde créance arriverait à primer l'autre. Le créancier hypothécaire se verrait ainsi exposé à un danger de fraude considérable. C'est pour parer à ce danger que le projet impose au créancier privilégié de dénoncer sa créance dans un délai très court.

M. RICHTER (Allemagne) croit que cette hypothèse est surtout théorique. Dans la pratique, le fait qu'il y a eu abordage peut être connu par un créancier diligent, soit en se renseignant auprès du propriétaire, qui se rendrait coupable de fraude en mentant, soit en s'informant auprès du capitaine. Des abordages, assez graves pour que le montant des indemnités en dérivant soit très considérable, sont évidemment connus sur tout le parcours fluvial. Il ne semble donc pas opportun de prévoir des garanties qui ne sont pas indispensables, et de forcer les créanciers voulant jouir de leur privilège, à saisir le bateau, ce qui est, évidemment, une mesure fort gênante.

M. SUŁKOWSKI (Pologne) reprend les deux hypothèses faites par M. Ripert :

1<sup>o</sup> Faits constitutifs postérieurs : dans ce cas, M. Sulkowski croit que les créances privilégiées doivent être toujours primées par l'hypothèque et que le créancier n'est pas obligé d'opérer la saisie et de la faire inscrire dans le registre. A cet égard, il n'approuve pas le texte des experts qui exige les deux conditions, celles de la saisie et de l'inscription. Dans ce cas, la seconde condition n'est pas nécessaire ;

2<sup>o</sup> Faits constitutifs antérieurs : sur ce point, M. Sulkowski croit, comme M. Ripert, que l'on doit toujours exiger la saisie et l'inscription, afin d'avertir le créancier du danger qui le menace. L'argument invoqué par M. Richter, à savoir que cette mesure empêcherait un règlement amiable, n'est pas décisif, car l'on doit prendre toujours en considération l'intérêt du créancier hypothécaire.

M. RIPERT (France) n'est pas convaincu que le danger qu'il signalait soit purement théorique. On ne doit pas oublier que, pour introduire une action à la suite d'un abordage, le créancier aura, d'après la Convention, un délai de deux ans pour faire valoir ses droits. Que l'on suppose un bateau ayant subi un abordage et que l'on fait ensuite réparer ; si ce bateau est présenté intact devant un créancier hypothécaire éventuel, celui-ci ne peut pas savoir qu'il y a eu avarie dans un pays étranger, et il s'expose, par la suite, à des surprises redoutables. L'autre objection est plus sérieuse : il y aurait l'obligation, pour la victime, de faire procéder à une saisie immédiate, alors que l'on aurait peut-être pu s'entendre à l'amiable ; mais M. Ripert ne tient pas essentiellement à la saisie, et il aura toute satisfaction par une disposition prévoyant que les créances privilégiées ne primeront les créances hypothécaires que si le créancier a fait inscrire sa réclamation sur le registre des hypothèques.

M. RICHTER (Allemagne) dit que les milieux intéressés en Allemagne sont également opposés à cette solution. Les créances d'abordage sont extrêmement nombreuses. Il peut arriver que plusieurs membres de l'équipage, s'étant trouvés lésés, fassent inscrire leurs privilèges. Le propriétaire serait exposé à une procédure compliquée et coûteuse. Le point principal, c'est que le créancier, avant d'accorder un emprunt, a le devoir de se renseigner.

M. RIPERT (France) relève une certaine contradiction dans les observations de M. Richter. D'une part, il dit qu'il n'y aurait pas pratiquement danger pour les créances hypothécaires, d'autre part, il constate que les victimes peuvent être si nombreuses qu'il y aurait toute une série d'inscriptions sur le registre.

M. RICHTER (Allemagne) explique que le créancier est en mesure de connaître le fait d'abordage et, par suite, d'en apprécier la gravité et de se rendre compte s'il y a pour lui danger à prêter son argent.

M. RIPERT (France) fait observer que, parmi les faits d'abordage, il peut, sans dégâts matériels, y avoir mort d'homme. Comment le créancier peut-il savoir si l'accident ne donnera pas lieu à une indemnité de plusieurs centaines de mille francs ? Enfin, le privilège pour abordage est inconnu dans beaucoup de pays et la question peut avoir des conséquences très sérieuses.

M. CONTZESCO (Roumanie) dit que la législation roumaine contient toutes les dispositions auxquelles fait allusion M. Ripert et prévoit toutes les garanties mentionnées par celui-ci ; il ne s'agit nullement là de danger théorique.

M. LAWATSCHER (Autriche) déclare que, de l'avis de la délégation autrichienne, il n'est pas possible que les privilèges pour abordage dépendent du fait que les faits constitutifs sont antérieurs. Il n'y a aucune impossibilité à demander que la saisie ait lieu. La délégation autrichienne propose une disposition dans ce sens :

« Les créances mentionnées aux numéros 5 et 6 du paragraphe 1 de l'article 18 ne prendront rang avant l'hypothèque que si les faits constitutifs de ces créances sont antérieurs à l'inscription de l'hypothèque et si, dans un délai de quinze jours à compter du jour fixé à l'alinéa 5 de l'article 19, le créancier a communiqué au Bureau d'immatriculation les faits constitutifs de sa créance et le montant de la créance qui en dérive. »

Le PRÉSIDENT constate que cette proposition équivaut à celle du délégué de la France, mais qu'elle comporte, en outre, l'inscription du montant de la créance.

M. SITENSKY (Tchécoslovaquie) estime que la proposition allemande va trop loin et qu'elle est dangereuse. Les créances d'abordage sont les plus lourdes et il peut y avoir un grave inconvénient à laisser le créancier hypothécaire dans l'incertitude. On ne peut donc se contenter du fait que la créance soit antérieure à l'hypothèque, mais il faut demander aussi une consignation au registre. Faut-il également prévoir la saisie ? On pourrait se contenter, comme le suggèrent les délégués de la France et de l'Autriche, de prévoir une simple annotation sur le registre, de façon que le créancier hypothécaire puisse s'informer d'une créance privilégiée éventuelle. Mais on ne pourrait inscrire le montant de la créance, comme l'a suggéré le délégué de l'Autriche, parce que ce montant n'est pas connu à ce moment, mais est fixé plus tard par le tribunal. Si M. Richter croit que le créancier sera toujours en mesure de connaître le fait d'abordage, ce n'est pas l'opinion de M. Sitensky, qui d'ailleurs fait remarquer qu'il ne s'agit pas seulement des cas d'abordage, mais aussi des divers autres accidents prévus au numéro 6 : avarie de la cargaison, etc.

Le PRÉSIDENT constate que M. Ripert propose de mentionner dans le registre les faits constitutifs. Mais par quelle procédure pourra-t-on faire disparaître cette mention ? On sait qu'une fois une mention inscrite il est très difficile d'en obtenir la radiation, les conservateurs des hypothèques étant très scrupuleux à ce sujet.

M. DESCAMPS (Belgique) fait observer que les inscriptions ne valent en elles-mêmes que pour un délai restreint ; en Belgique, pour deux ans.

Le PRÉSIDENT répond que cela fait déjà une durée appréciable.

M. RIPERT (France) fait remarquer que cette inscription n'intéresse que le créancier hypothécaire. Pour les autres, ces annotations sont différentes.

Le PRÉSIDENT dit que, tant que ces annotations figurent au registre, les propriétaires ne pourront plus obtenir d'hypothèques. Il rappelle que ces mentions sont inscrites sur simple demande du créancier.

M. RIPERT (France) répond que, si le propriétaire a un intérêt majeur à contracter un emprunt, il peut demander la mainlevée de l'inscription.

M. NAUTA (Pays-Bas) signale que, d'après l'article 23, premier alinéa, les privilèges s'éteignent en même temps que les créances et, au plus tard, à l'expiration d'un délai de trois mois.

M. RIPERT (France) répond que l'on n'a pas encore discuté cette question et que l'on ne sait pas à partir de quel moment jouera le délai de trois mois. Il ajoute qu'il ne lui semble pas plus difficile pour le propriétaire d'obtenir la mainlevée d'une inscription que d'emprunter sur hypothèque.

M. RICHTER (Allemagne), au sujet de la question des radiations d'annotations soulevée par le Président, ne croit pas que l'on puisse répondre que les privilèges s'éteignent à l'expiration d'un délai de trois mois. Si l'on prévoit les inscriptions sur le registre, il faut également prévoir une procédure pour les faire disparaître. D'autre part, bien que M. Richter n'ait pas consulté les autorités compétentes de son pays, il est certain qu'elles déclareront que ces annotations de privilège, en cas d'accident très grave, sont impossibles pour des raisons techniques. Enfin, pour faire disparaître le privilège, le propriétaire devra intenter des procès, rechercher les créanciers ayant fait annoter leur privilège, etc., ce qui sera incommode et coûteux.

M. NAUTA (Pays-Bas) croit aussi que ces annotations soulèveront beaucoup d'objections de la part des autorités compétentes. D'un autre côté, le délégué de l'Allemagne s'est appuyé sur des raisons purement pratiques ; les intéressés qu'il a consultés ont déclaré que les conditions énumérées dans le document leur seraient nuisibles. De l'avis du délégué néerlandais, ces objections sont un peu exagérées, car il ne s'agit ici, en pratique, que des abordages très graves. Dans 80% des cas peut-être, les dommages ne dépassent guère 600 à 1.000 florins, et M. Nauta est d'accord que, pour les petits dommages de ce genre, il serait difficile de saisir le bateau. En général, ces créances restreintes sont payées sans difficultés, et, dans la plupart des cas, au moyen d'une assurance. Pour des dommages d'un montant plus élevé, par exemple de 3.000 florins, il semble que le demandeur puisse, sans grands inconvénients, prendre les mesures nécessaires pour la saisie. En pratique, le demandeur commence par demander une caution, sans quoi, il procédera à la saisie et, dans un grand nombre de cas, la caution est accordée. Ce n'est donc que pour un très faible pourcentage de cas qu'il n'intervient pas de solution amiable. Il est aussi bien dans l'intérêt des créanciers privilégiés que des créanciers hypothécaires que les personnes ayant subi un dommage prennent des mesures à bref délai. On pourra discuter si un délai de quinze jours est suffisant ou s'il faut le porter à trois semaines. Quant à lui, quinze jours suffiraient.

M. RICHTER (Allemagne), se plaçant sur le terrain du principe, dit que certains pays sont disposés à prévoir le privilège en cas d'abordage, mais en le soumettant à des conditions qui le rendent, en pratique, sans valeur, savoir : d'abord la condition prévue à l'article 19, ensuite la disposition de l'article 18 qui renvoie aux lois nationales. M. Richter comprend très bien le point de vue des législations internes qui ne veulent pas admettre le privilège d'abordage ni même les indemnités. Un juriste allemand a même été jusqu'à proposer de supprimer l'obligation d'accorder des dom-

images en cas d'abordage — point sur lequel M. Richter n'est d'ailleurs pas d'accord. Mais d'autres considérations s'imposent lorsqu'il s'agit de relations internationales. Si un bateau immatriculé dans un pays A cause un dommage considérable dans un pays B, est-il possible que ce pays B laisse échapper, au profit du créancier hypothécaire, ce navire qui sera peut-être le seul objet sur lequel les créanciers de l'abordage pourront baser leurs poursuites ? Il prie les délégués des pays non favorables en principe au privilège de l'abordage, de penser à ce double point de vue de la législation interne et de la législation internationale.

M. RIPERT (France) dit que la solution proposée par le délégué de l'Allemagne aurait le grave inconvénient d'augmenter l'écart entre le régime de la législation interne et celui de la Convention internationale. Le délégué de la France vient de faire un effort en vue de rapprocher ces deux régimes. Il serait beaucoup plus difficile d'accepter la Convention si elle donnait une solution absolument contraire aux législations nationales, et il y aurait un inconvénient majeur à faire primer la créance hypothécaire par des créances d'un montant considérable et que le créancier hypothécaire peut ne pas connaître. Pareille Convention serait alors très inférieure à l'état de choses actuel. On peut assouplir les dispositions du projet, mais non renoncer entièrement aux précautions qu'il a envisagées.

Le PRÉSIDENT constate que la Commission est saisie de trois propositions :

- 1° La proposition allemande, qui consiste à supprimer la condition de la saisie ;
- 2° La proposition de la délégation autrichienne, consistant à mentionner dans le registre les faits constitutifs et le montant de la créance ;
- 3° La proposition française, consistant à inscrire les faits constitutifs.

M. LAWATSCHER (Autriche) déclare retirer sa proposition.

M. RIPERT (France) précise que sa proposition porte seulement sur le texte du projet avec renvoi au Comité de rédaction.

Le PRÉSIDENT, revenant sur la question de la radiation des annotations, pense que l'on pourrait dire que les annotations seront radiées d'office après le délai de prescription ou sur demande de celui qui les a fait inscrire. Le Comité de rédaction mettra le texte au point.

M. SUŁKOWSKI (Pologne) constate que les propositions devant être soumises au vote visent les faits constitutifs antérieurs. Restent les faits constitutifs postérieurs. Cette seconde question doit être tranchée expressément. En pareil cas, une saisie et une inscription sont-elles nécessaires ? Non, de l'avis de M. Sulkowski, car alors les créanciers privilégiés seront toujours primés par les créances hypothécaires.

Le PRÉSIDENT constate que tous sont d'accord pour charger le Comité de rédaction d'établir un nouveau texte, dans le sens de l'amendement proposé par M. Ripert et appuyé par les délégations de la Pologne, de la Tchécoslovaquie et de l'Autriche.

#### *Article 19 bis de l'amendement proposé par la délégation allemande.*

Le PRÉSIDENT met en discussion les propositions de la délégation allemande constituant l'article 19 bis (voir annexe 1, page 187).

M. RICHTER (Allemagne) reconnaît qu'il s'agit là d'une question assez difficile et peut-être sans grande portée pratique, mais qui doit être résolue. Le cas est apparu lors de la préparation de la mise en vigueur de la Convention de Bruxelles sur les privilèges et hypothèques maritimes. Il est dit dans cette Convention que l'hypothèque prend rang immédiatement après les privilèges internationaux (article 2). Il est dit ensuite que les lois nationales ne peuvent pas prévoir des privilèges prenant rang avant l'hypothèque autres que ceux qui sont visés dans la Convention elle-même. La Convention de Bruxelles prévoit des privilèges, par exemple, pour des réparations faites en cas de nécessité, mais l'on se demande ce qu'il advient dans le cas où le bateau est remis sur chantier sans nécessité, le propriétaire, au cours des travaux de réparations, constituant l'hypothèque sur son navire. En pareil cas, la règle du droit commun doit jouer : le réparateur n'est pas obligé de délivrer le bateau avant d'avoir été payé. C'est une des raisons rendant nécessaires les dispositions de l'article 19 bis.

Vient ensuite le cas où un créancier a fait saisir le bateau avant l'inscription de l'hypothèque. D'après certaines législations, cette saisie est conservatoire. En Allemagne, pareille saisie suit les règles ordinaires du droit commun : l'huissier appose une chaîne sur le bateau et le créancier obtient un droit de gage. La délégation allemande, tout en estimant que ce créancier doit être protégé, ne demande pas la reconnaissance internationale de ce privilège ou droit de gage. En d'autres termes, si le bateau s'échappe dans un autre pays, la délégation allemande ne demande pas que cet autre pays donne effet à la saisie.

M. RIPERT (France) constate, lui aussi, que la question est très difficile à résoudre. Le délégué de l'Allemagne a envisagé deux hypothèses. Dans le cas du réparateur, le droit français prévoit non pas un privilège, mais un droit de rétention équivalant à un privilège. Dans cette hypothèse, la créance de réparation prime la créance hypothécaire, ce qui se comprend, puisque cette réparation a pour effet d'augmenter la valeur du gage. La deuxième hypothèse est beaucoup plus difficile.

Le délégué de l'Allemagne suppose un créancier opérant une saisie qui constitue une saisie conservatoire, et de ce fait naîtrait un privilège national qui primerait l'hypothèque. Ce serait là ressusciter tous les privilèges nationaux du seul fait que le créancier opérerait une saisie. Mais une saisie ne détermine pas le rang des créances. Si l'on adoptait le texte allemand, on aboutirait, en droit français, à ressusciter tous les privilèges de la loi nationale.

M. RICHTER (Allemagne) précise que sa proposition vise seulement le cas où l'hypothèque est inscrite postérieurement à la saisie. Le créancier hypothécaire est en mesure de s'informer avant de prêter son argent.

M. RIPERT (France) fait observer qu'en Allemagne la saisie conservatoire peut être inscrite, ce qui n'est pas le cas en France.

M. SITENSKY (Tchécoslovaquie) pense que la proposition allemande serait acceptable si, au lieu de rendre l'inscription obligatoire pour les États, elle prévoyait seulement une mesure facultative.

M. RIPERT (France) se rallie à cette suggestion.

M. NAUTA (Pays-Bas) croit comprendre que, dans l'article 19 *bis*, la délégation allemande veut maintenir la situation existant en Allemagne où une saisie conservatoire peut être faite sans qu'il y ait inscription sur les registres. Or, à l'article 24 *bis* de l'amendement allemand, il est dit : « La saisie conservatoire du bateau doit être inscrite aux registres... » Quelle est la relation entre les articles 19 *bis* et 24 *bis* ?

M. RICHTER (Allemagne) dit que l'opinion des experts des deux Comités préparatoires était en faveur de l'obligation de l'inscription de la saisie. D'après la loi allemande, cette inscription est facultative, elle n'est effectuée que sur demande du créancier saisissant. Dans l'article 19 *bis*, il s'agit du cas où, par exemple, un bateau immatriculé dans un État A est saisi dans un État B. Il faut protéger les créanciers pendant la période assez longue qui s'écoulera avant que l'inscription soit faite. Dans ce cas, l'article 19 *bis* ne joue plus et intervient l'article 24 *bis*. Le délégué de l'Allemagne ajoute que, dans l'article 19 *bis*, sa délégation propose une règle uniforme. Si celle-ci soulève des objections, il peut se rallier à la proposition tchécoslovaque.

M. SUŁKOWSKI (Pologne) attire l'attention sur une divergence importante entre le projet et la proposition allemande. Le projet fait une distinction entre les privilèges internationaux et les privilèges nationaux. L'amendement allemand parle des cas où les privilèges nationaux peuvent primer les créances hypothécaires, ce qui serait ressusciter les privilèges nationaux. Comme le disait M. Ripert, il y aurait là un grand danger. Pour M. Sułkowski, le droit de rétention doit toujours être primé par les privilèges internationaux et les hypothèques, car les dispositions des lois nationales sur le droit de rétention sont très différentes et les créanciers ne sauraient jamais d'avance quelles créances peuvent primer leurs créances hypothécaires. La question a été examinée par le Comité international technique d'experts juridiques aériens (C.I.T.E.J.A.) qui, à l'article 8 de son avant-projet de Convention sur les hypothèques et privilèges aériens, a décidé « qu'aucun droit de rétention ne pouvait faire obstacle à la procédure de saisie et de vente ni primer les créances privilégiées en vertu de l'article 5 et les hypothèques ».

M. NAUTA (Pays-Bas) ne saisit pas encore bien la relation entre les articles 19 *bis* et 24 *bis*. D'après le délégué de l'Allemagne, il s'agit de protéger le créancier opérant une saisie sans que l'inscription soit faite. Quel intérêt aurait alors le créancier à faire une inscription ? D'après l'article 19, le créancier ayant saisi le bateau ne peut être lésé dans ses intérêts par des saisies postérieures.

M. RICHTER (Allemagne) explique qu'il propose de rendre cette inscription obligatoire dans l'intérêt, non du créancier opérant la saisie, mais des autres intéressés, par exemple des banques. Personnellement, il n'attache pas un grand prix à l'inscription, sur laquelle ont insisté les autres membres du Comité préparatoire, car, d'après la loi allemande, l'apposition de la chaîne sur le bateau par l'huissier suffit. La délégation allemande se rallie à la proposition tchécoslovaque consistant à rendre facultative la disposition de l'article 19 *bis*.

Le PRÉSIDENT constate que *la proposition allemande, ainsi modifiée, est adoptée.*

M. SUŁKOWSKI (Pologne) rappelle que l'article 19 se réfère à l'annexe 1 qui contient un formulaire.

Le PRÉSIDENT constate que ce formulaire n'a plus de raison d'être, du fait des décisions prises, et que *l'annexe 1 doit être supprimée.*

#### Article 20.

Le PRÉSIDENT donne lecture de l'article 20 du projet et des articles 20 et 20 *bis* de l'amendement allemand (voir annexe 1, page 187). Il signale que les alinéas 1, 2 et 3 de l'article 20 *bis* correspondent aux alinéas 1, 2 et 3 de l'article 20 du projet. La délégation allemande soulève deux questions :

- 1° L'introduction dans le projet de la notion de voyage ;
- 2° Une règle interprétative faisant l'objet de l'alinéa 4 de l'article 20 *bis*.

M. RICHTER (Allemagne) dit qu'en droit allemand, et surtout en droit maritime, les créanciers du dernier voyage prennent rang avant les créanciers des voyages précédents. La question est un peu compliquée, car il est souvent difficile de fixer les dates des divers voyages, mais c'est le système qui a été adopté dans la Convention de Bruxelles, et les États maritimes préféreront sans doute ne pas avoir deux systèmes différents.

M. RIPERT (France) dit que, dans le Code de commerce français, la notion de voyage intervient parfois, mais qu'elle est déjà très difficile à déterminer en droit maritime, notamment en matière de cabotage. En navigation intérieure, il est presque impossible de savoir où commence et où finit un voyage. Or, c'est d'après ce point de fait, presque impossible à déterminer, que l'on devrait régler des affaires d'abordage, et les experts, ayant examiné la question dans leurs travaux préparatoires, ont reconnu que la difficulté était inextricable.

M. SITENSKY (Tchécoslovaquie) dit qu'il est impossible de se prononcer sur le principe sans trouver une définition du voyage. C'est cette difficulté qui a déterminé l'attitude du Comité du droit fluvial. La délégation tchécoslovaque serait disposée à accepter la proposition allemande si l'on trouvait une définition acceptable du voyage.

M. RICHTER (Allemagne) reconnaît la difficulté d'une définition légale du voyage. Toutefois, le principe d'après lequel les créanciers du dernier voyage priment les autres créanciers est légal en Allemagne, même pour la navigation intérieure, depuis 1900. Les intéressés, tout en trouvant cette disposition compliquée, disent qu'en pratique il n'est pas difficile de déterminer si un voyage en a précédé un autre. Il serait préférable de suivre l'exemple de la Convention de Bruxelles où l'on s'est passé d'une définition légale.

M. RIPERT (France) rappelle que, dans une pensée humanitaire, il a été décidé que les salaires de l'équipage seraient privilégiés pendant six mois ; si cette créance était primée par une créance d'abordage née lors du voyage précédent, elle ne serait plus payée. La difficulté est moins grande en navigation maritime, où généralement les équipages sont payés après chaque voyage et en tout cas sous un certain contrôle des autorités, ce qui n'est pas le cas en navigation fluviale. En adoptant la proposition allemande, on détruirait l'ordre des privilèges établi dans l'article 18.

M. DE RUELLE (Belgique) dit que la loi belge applicable en navigation maritime l'est également en navigation intérieure. La notion de voyage est d'une application facile, par exemple en ce qui concerne les chalands naviguant sur le Rhin. Il y a plus de difficulté pour les petits parcours, mais la loi est néanmoins appliquée.

M. RICHTER (Allemagne) dit qu'il s'abstiendra de voter et qu'il s'inclinera devant l'opinion de la majorité.

Le PRÉSIDENT constate que la Commission décide d'écarter la notion de voyage.  
Il met ensuite en discussion l'article 20, alinéa par alinéa.

*Alinéas 1, 2 et 3.*

*Les trois premiers alinéas sont adoptés et renvoyés au Comité de rédaction.*

M. RICHTER (Allemagne) demande à M. Ripert si le quatrième alinéa a une valeur indépendante de son premier amendement. Il ne lui semble pas nécessaire de l'insérer dans le texte de l'article 20 primitif.

M. RIPERT (France) répond que la disposition prévue au quatrième alinéa n'est pas nécessaire, car elle va de soi.

Le PRÉSIDENT dit que cette explication sera consignée au procès-verbal.

#### *Article 21.*

Le PRÉSIDENT dit que la délégation allemande propose la suppression de cet article, mais que cette proposition tombe du fait que l'on a rejeté l'amendement allemand aux numéros 4 et 6 de l'article 18. Il met donc en discussion l'article 21 du projet.

M. RICHTER (Allemagne) propose de renvoyer cet article au Comité de rédaction, avec mission de rendre le texte plus clair.

M. RIPERT (France) dit que la seule question qui se pose est de savoir si cet article a bien sa place dans la Convention, car il vise uniquement une question de limitation des responsabilités et non une question de privilèges et d'hypothèques.

M. RICHTER (Allemagne) répond que cet article est nécessaire si l'on adopte le système de renvoi de l'article 19 aux numéros 4 et 6 de l'article 18.

M. SITENSKY (Tchécoslovaquie) appuie cette observation.

Le PRÉSIDENT déclare que l'article est renvoyé au Comité de rédaction afin qu'il soit rédigé dans une forme plus claire.

*Article 22.*

Le PRÉSIDENT constate que l'article 22 de la proposition allemande (voir annexe 1, page 101), reproduit au début le texte du projet et, à la fin, l'article 24 du projet. C'est donc une simple question de rédaction et on peut la renvoyer au Comité de rédaction.

Quant à l'article 22 *bis* de la proposition allemande, le premier alinéa correspond à la fin du premier alinéa de l'article 22 du projet ; le deuxième alinéa est nouveau.

M. RICHTER (Allemagne) ne croit pas que l'on puisse dire que les privilèges internationaux s'établissent sans formalité, puisque l'on a décidé une annotation à l'article 19.

Le PRÉSIDENT dit que le Comité de rédaction devra prévoir une réserve sur ce point.

M. SITENSKY (Tchécoslovaquie) fait remarquer qu'il ne s'agit que d'une condition de rang, mais non d'existence.

Le PRÉSIDENT constate que *le premier alinéa de l'article 22 bis est adopté et envoyé au Comité de rédaction.*

M. RICHTER (Allemagne) croit que le deuxième alinéa de l'article 22 du projet a été adopté par le Comité du droit fluvial sur un malentendu. On n'a pas pensé au droit de suite, mais au cas où le bateau passait dans un autre pays, et on a voulu alors exclure la reconnaissance internationale des privilèges ; mais il n'y a pas de raison d'éliminer leur droit de suite envers un acquéreur de mauvaise foi. C'est donc surtout le cas où la saisie conservatoire n'est pas encore inscrite et où, avant l'inscription, le bateau est vendu à un tiers de mauvaise foi : il faut que la saisie soit maintenue envers l'acquéreur ou le créancier hypothécaire de mauvaise foi.

M. NAUTA (Pays-Bas) tout en étant d'avis que l'on ne doit pas protéger les personnes de mauvaise foi, se demande s'il est suffisant de ne parler que des acquéreurs de mauvaise foi. Les privilèges n'intéressent pas seulement le propriétaire du bateau, mais peut-être plutôt les autres créanciers. L'acquéreur peut avoir été de mauvaise foi et non les autres créanciers.

M. SUŁKOWSKI (Pologne) propose de dire « les ayants droit ».

M. SOUBOTITCH (Yougoslavie) estime que la rédaction du deuxième alinéa est trop générale. On peut supposer le cas d'un bateau sur lequel il existe des privilèges nationaux et qui est cédé à un ressortissant du pays ; il n'y a pas d'intérêts internationaux en cause. Pourquoi ne pas tenir compte de ce cas ?

M. RICHTER (Allemagne) approuve les remarques du délégué néerlandais. Les mots « ces privilèges... suivent le bateau en quelque main qu'il passe » visent seulement le cas du transfert de la propriété, mais non des créances hypothécaires. Il faudrait modifier la rédaction.

M. RIPERT (France) se demande quel intérêt il y a à régler dans la Convention l'effet des privilèges nationaux. Il n'y a qu'à les laisser sous l'empire de la loi du tribunal saisi, sans dire s'ils comportent ou non de droit de suite. Il propose de supprimer le deuxième alinéa.

M. SITENSKY (Tchécoslovaquie) propose d'adopter la suggestion de M. Ripert et de laisser le règlement de la question aux lois nationales.

Le PRÉSIDENT constate que *la Commission décide de supprimer le deuxième alinéa de l'article 22.*

*Article 23.*

*Premier alinéa.*

Le PRÉSIDENT dit que la proposition allemande de supprimer le n° 3 du premier alinéa tombe.

M. RICHTER (Allemagne) approuve la remarque du Président.

*Alinéa 2.*

M. RICHTER (Allemagne) croit qu'on peut se contenter de parler des privilèges internationaux et laisser à la loi nationale le soin de déterminer l'extinction des privilèges nationaux. En second lieu, les milieux intéressés allemands trouvent le délai de trois mois trop bref et demandent au moins six mois.

M. DE RUELLE (Belgique) appuie la suppression demandée, pour les mêmes motifs qui ont valu en ce qui concerne le n° 2 de l'article 22.

M. RIPERT (France) considère que, dans son ensemble, l'article 23 équivaut à une rançon du droit de suite, mais cette mesure présente un grave inconvénient. On donne un délai de trois mois pour faire valoir le privilège ; le seul moyen étant d'intenter une action, on oblige donc le créancier privilégié à agir dans ce délai ; la prescription de deux ans prévue dans la Convention sur l'abordage

ne jouera pas. On est dès lors en présence du procès forcé. Les intéressés se trouveraient dans l'obligation d'assigner dans les trois mois, car leur privilège risquerait d'être perdu avant que la créance ne soit constatée ou née.

Le PRÉSIDENT aimerait avoir une explication des membres du Comité du droit fluvial.

M. HOSTIE (Commission centrale pour la navigation du Rhin) dit qu'il voit une grande différence entre la prescription de l'action d'abordage et le délai de trois mois prévu à cet article. A la suite d'un abordage, on opère une saisie conservatoire — à moins qu'il n'ait été versé une caution, ce qui est le cas normal; dans ce cas, on a deux ans pour intenter le procès.

M. RIPERT (France) dit que cela suppose que la caution ou la saisie interrompt la prescription du privilège. Or, dans la plupart des pays, la saisie conservatoire n'interrompt pas la prescription. La mesure proposée aurait pour effet d'écarter les possibilités d'entente, car si une tentative d'entente échouait, le délai serait passé et le privilège perdu.

M. HOSTIE (Commission centrale pour la navigation du Rhin) dit que, d'après son expérience, une caution est régulièrement versée. Or, ce versement suffit et il n'y a plus, ensuite, besoin de privilège.

M. RICHTER (Allemagne) demande à M. Ripert si l'amendement allemand (alinéa 3) ne lui donne pas satisfaction. Il y a là deux moyens pour exercer le privilège sur le bateau; en outre, la délégation allemande demande un délai de six mois, suffisant pour engager des négociations amiables. Si, au troisième mois, l'intéressé voit qu'il n'a pas chance d'aboutir, il peut opérer la saisie.

M. NAUTA (Pays-Bas) demande ce que la délégation allemande entend par « action réelle ».

M. RICHTER (Allemagne) répond que cette action a pour but de se faire payer sur le prix de vente du bateau.

M. RIPERT (France) croit préférable de laisser la question au tribunal saisi : on ne s'entend jamais sur les points de procédure.

Le PRÉSIDENT invite la Commission à se prononcer sur la durée du délai : trois ou six mois.

M. CONTZESCO (Roumanie) propose six mois.

M. SITENSKY (Tchécoslovaquie) dit que le Comité préparatoire avait accepté un délai plus bref qu'un an prévu par la Convention de Bruxelles parce que les voyages en navigation intérieure sont beaucoup plus courts qu'en navigation maritime et il est plus facile, en navigation intérieure, de faire valoir les droits. Personnellement, il accepterait un délai de six mois.

M. DESCAMPS (Belgique) pense qu'il y a une lacune dans la rédaction. On ne prévoit pas le cas où le bateau abordeur serait inconnu.

M. HOSTIE (Commission centrale pour la navigation du Rhin) admet la possibilité de ce cas, si rare qu'il puisse être. Il est possible, également, que, en cours d'instance, on constate que le bateau fautif n'est pas celui que l'on poursuivait; compte tenu de cette éventualité et en même temps des motifs qui militent en faveur d'une limitation de la durée du privilège, il estime qu'un délai de six mois apparaîtrait comme raisonnable.

Le PRÉSIDENT constate que la Commission décide de fixer le délai à six mois.

#### *Alinéa 3.*

Le PRÉSIDENT remarque que le projet laisse la législation nationale fixer les causes de suspension et d'interruption des délais alors que la délégation allemande propose une règle internationale. Il constate que la proposition allemande est rejetée.

#### *Alinéa 2 de l'amendement allemand.*

M. RICHTER (Allemagne) explique que la proposition allemande correspond aux propositions relatives au projet sur l'abordage; elle permet de renoncer à la longue énumération du deuxième alinéa du projet. Ce système est considéré comme très pratique par les milieux intéressés.

M. RIPERT (France) dit que les conséquences de ce système seraient encore plus déplorables en la matière. En ce qui concerne les salaires de l'équipage, par exemple, le traitement serait très différent si la créance était du 30 mai ou du 2 juin.

Le PRÉSIDENT constate que la proposition allemande est rejetée.

#### *Article 24.*

M. RICHTER (Allemagne) constate que cet article vise la naissance du privilège. On ne peut donc dire que ces dispositions soient applicables aux créances, mais que ces créances naissent même si le bateau est exploité par un non-proprétaire. Du point de vue de la rédaction, il est préférable de reporter cette disposition à l'article 22.



Le PRÉSIDENT déclare que l'article 24 est adopté en principe, le texte étant renvoyé au Comité de rédaction.

TITRE III. — DE L'EXÉCUTION FORCÉE.

La Commission décide d'ajourner l'examen de cette partie du projet.

TITRE IV. — DISPOSITIONS GÉNÉRALES.

Article 31.

Le PRÉSIDENT constate que cet article a été réglé par la décision prise sur l'article premier.

M. CONTZESCO (Roumanie) propose de le compléter par les mots « au sens de la présente Convention ».

L'article ainsi amendé est adopté.

Article 32.

Cet article est adopté.

Articles 33 et 34.

M. SITENSKY (Tchécoslovaquie) propose de fixer un délai pour les mesures à prendre par les parties contractantes.

M. SUŁKOWSKI (Pologne) pense que c'est là une question à régler en même temps que celle des délais fixés pour l'adhésion des États à la Convention.

M. NAUTA (Pays-Bas) ajoute qu'il s'agit d'une clause de style, pour laquelle il y a intérêt à conserver la même rédaction que dans les Conventions antérieures.

Le PRÉSIDENT pense que l'on pourra prendre pour modèle la Convention sur le jaugeage. Il constate que l'article est adopté en principe, avec la réserve qu'on y reviendra lors de la discussion des dispositions protocolaires.

M. RICHTER (Allemagne) constate que la question soulevée par la proposition allemande (voir annexe 1, page 183) est en suspens, un Comité spécial étant chargé de l'examiner à propos de l'article 9.

M. SITENSKY (Tchécoslovaquie) demande quelle langue devra être employée pour la correspondance entre les autorités compétentes au cas où la proposition allemande ne serait pas acceptée.

M. ROSSETTI (Italie) estime que la question ne se pose pas : chacun des correspondants écrira dans la langue qu'il désire. On ne peut obliger les administrations à correspondre dans une langue qu'elles ignorent.

M. SITENSKY (Tchécoslovaquie) dit qu'il y a des pays dont la législation rend obligatoire l'emploi d'une certaine langue dans les correspondances internationales, à moins de dispositions contraires contenues dans une convention internationale. Faute d'une telle disposition, il faudrait appliquer la loi du pays.

M. CONTZESCO (Roumanie) est d'avis qu'on ne peut obliger les bureaux correspondants à se servir d'une langue inconnue réciproquement. Si on laisse la faculté d'employer la langue du pays, il faudra au moins prévoir que les documents seront accompagnés, éventuellement, d'une traduction dans une des langues les plus usuelles, français, allemand ou italien.

D'autre part, l'article 34 est trop vague en parlant des « autorités compétentes » : comment le correspondant étranger sera-t-il sûr de s'adresser à l'autorité réellement compétente ?

Le PRÉSIDENT rappelle que, d'après l'article 35, les États se communiqueront réciproquement la liste des autorités compétentes.

M. DE RUELLE (Belgique) pense qu'il se pose, surtout à ce sujet, des questions de rédaction. Toutefois, il faudrait s'entendre sur la portée de l'article 34. S'agit-il, par exemple, d'une véritable convention d'entraide judiciaire, ce que ne croit d'ailleurs pas M. de Ruelle ? S'il ne s'agit que de correspondance, les dispositions peuvent être plus larges. Il va de soi que l'autorité posant une question à un autre État a tout intérêt à se faire comprendre et qu'éventuellement elle joindra une traduction à sa demande.

Le PRÉSIDENT pense que l'article 34 vise la correspondance entre les bureaux d'immatriculation ainsi qu'entre les autorités d'exécution et les bureaux de registres, mais toutes ces correspondances se font au moyen de formulaires. Le Comité spécial est chargé d'en préparer un au sujet de l'article 9 et, d'autre part, l'annexe II au projet de convention contient déjà une disposition concernant les langues.

M. SUŁKOWSKI (Pologne) pense que c'est la langue du pays d'exécution qui doit l'emporter. Toutes les langues nationales doivent être traitées sur un pied d'égalité. On comprend que le formu-

faire soit rédigé en français, qui est la langue de la Convention, mais s'il s'agit de communications, elles doivent se faire dans la langue du pays d'exécution.

M. ROSSETTI (Italie) signale que le problème n'a rien de nouveau. Il y a déjà des autorités correspondant fort bien entre elles, par exemple les ambassades et légations, sans que l'on ait fixé une règle internationale. On peut laisser la question à la pratique. Jamais on n'a imposé l'obligation internationale d'employer une langue plutôt qu'une autre.

Le PRÉSIDENT dit qu'en examinant les formulaires, on se rendra compte qu'en pratique il n'y a pas de difficulté. Si un conservateur d'hypothèques reçoit un formulaire dans une langue qu'il ne connaît pas, il n'aura qu'à se référer à son propre exemplaire du formulaire.

M. ROSSETTI (Italie) fait remarquer que les passeports sont établis dans les langues nationales et que les autorités de police les comprennent parfaitement.

M. DE RUELLE (Belgique) dit qu'il serait intéressant de savoir ce que l'on attend des autorités judiciaires.

Le PRÉSIDENT explique qu'il s'agit seulement des autorités d'exécution.

M. DE RUELLE (Belgique) constate qu'il ne peut donc s'agir d'envois de Commissions rogatoires, d'actes judiciaires, etc., mais uniquement de correspondance entre les autorités, dont les tribunaux, concernant les registres d'immatriculation.

M. RIPERT (France) explique que, dans certains pays, les autorités chargées de la tenue des registres ne sont pas strictement administratives : par exemple les greffiers.

Le PRÉSIDENT estime que l'on vise seulement les correspondances prévues dans la Convention.

M. HOSTIE (Commission centrale pour la navigation du Rhin) appuie cette remarque. On trouvera un exemple de communications entre autorités judiciaires d'États différents au deuxième alinéa de l'article 10.

M. RICHTER (Allemagne) pense que l'on ne peut épuiser la question avant d'être saisi des propositions du Comité spécial chargé de préparer le formulaire. On verra à ce moment s'il y a lieu de maintenir ou non la proposition allemande.

M. SUŁKOWSKI (Pologne) est d'accord pour ajourner la discussion sur le formulaire. En ce qui concerne la langue, il pense, comme M. Rossetti, que l'on doit omettre toute disposition et laisser la question à la pratique.

M. PANTITCH (Yougoslavie) dit que, jusqu'ici, en Yougoslavie, on a correspondu par la voie diplomatique ; il serait difficile d'imposer aux autorités du pays l'emploi d'une langue qui n'est pas dans leur usage ou dans leurs habitudes. Il propose que la question des langues soit discutée après celle du formulaire. Les règles que l'on aura adoptées alors devront être valables, même pour les correspondances entre les autorités.

M. ROSSETTI (Italie) admet que les formulaires soient imprimés en plusieurs langues, mais il est d'avis de laisser une liberté absolue aux autorités qui correspondent entre elles en ce qui concerne la langue dans laquelle elles se communiqueront des pièces nationales.

M. PANTITCH (Yougoslavie) estime que l'envoi d'une pièce rédigée dans la langue nationale doit être accompagnée de la traduction dans la langue du pays auquel elle est adressée.

M. ROSSETTI (Italie) maintient que l'on ne peut imposer un service de traduction aux bureaux d'immatriculation. On risque de perdre l'avantage de rapidité que l'on veut atteindre en renonçant à la voie diplomatique.

Le PRÉSIDENT ajourne la suite de la discussion sur l'article 34.

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## HUITIÈME SÉANCE

*Tenue le jeudi 27 novembre 1930, à 10 heures.*

*Président : Le professeur Robert HAAB (Suisse).*

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### IX. Examen du projet de Convention (suite).

#### TITRE II (suite).

##### Article 11 (suite).

Le PRÉSIDENT donne lecture du projet d'amendement de la délégation française (voir annexe 8, page 202), relatif à l'article 11 du projet de Convention.

M. RIPERT (France) explique que ce projet a été rédigé en vue de donner satisfaction aux vues exprimées par la délégation néerlandaise. La délégation française aurait préféré ne pas faire

Intervenir le cas de l'intérêt hypothécaire étranger, mais ayant constaté, par les différents votes émis par la Commission, que les avis des délégations étaient partagés sur ce point, elle propose maintenant une formule transactionnelle.

M. VAN SLOOTEN (Pays-Bas) remercie la délégation française de l'esprit de conciliation dont elle fait preuve et déclare que la délégation néerlandaise appuie le projet d'amendement français.

M. RICHTER (Allemagne) demande l'autorisation de réserver pour la deuxième lecture son approbation définitive du projet d'amendement français, qu'il n'a pas eu le temps d'étudier d'une façon suffisamment approfondie.

A première vue, la délégation allemande éprouve quelques scrupules à adopter sans modification le texte proposé. Ces scrupules sont d'ordre juridique et d'ordre pratique.

Du point de vue juridique, la délégation allemande constate que le texte proposé permet en définitive au propriétaire de déterminer quelle sera la loi qui régira le statut réel de son bateau. Or, d'après le droit allemand, les dispositions régissant les droits réels ne peuvent dépendre du statut personnel des parties intéressées, et celles-ci ne peuvent convenir entre elles d'une modification à apporter à ces dispositions. Quant au point de vue pratique, la délégation allemande craint que ce projet français n'écarte pas les objections qu'elle a fait valoir contre la première proposition néerlandaise. M. Richter cite, en effet, l'exemple d'un bateau immatriculé dans un pays A et qui aurait occasionné un abordage. Si le propriétaire de ce bateau estime gênant le privilège accordé par la loi du pays A aux indemnités relatives à cet abordage, il peut grever son bateau d'une hypothèque étrangère et supprimer ainsi un privilège déjà né.

M. HOHL (Suisse) déclare que la délégation suisse appuie la proposition française, qu'elle considère comme une solution de conciliation.

M. SITENSKY (Tchécoslovaquie) et M. DE RUELLE (Belgique) déclarent appuyer également la proposition française.

Le PRÉSIDENT constate que la Commission adopte en principe le projet d'amendement français, la délégation allemande réservant toutefois son approbation définitive pour la deuxième lecture.

#### TITRE PREMIER. — DE L'IMMATRICULATION (suite).

##### Articles 2 et 3 (suite).

Le PRÉSIDENT rappelle, en ce qui concerne les articles 2 et 3 du projet de Convention, que la Commission doit choisir entre deux points de vue différents :

1° Celui de la délégation allemande (voir annexe 1, page 184), qui désire voir adopter une règle uniforme pour la détermination du lieu d'immatriculation ;

2° Celui indiqué dans le projet de Convention, qui prévoit une solution pour les conflits des lois.

Il donne ensuite lecture de l'alinéa 4 de l'article 3 du projet de Convention :

« Chaque État contractant se réserve le droit d'exiger que ses ressortissants inscrivent sur ses registres les bateaux leur appartenant et remplissant les conditions d'immatriculation de deux ou de plusieurs États, s'ils ont sur son territoire leur résidence habituelle ou, dans le cas de sociétés, la direction principale de leurs affaires. »

Il rappelle que la Commission est saisie de cinq projets d'amendement visant cet alinéa 4 :

1. Amendement polonais (voir annexe 9, page 202) ;
2. Amendement néerlandais (voir annexe 10, page 203) ;
3. Amendement autrichien (voir annexe 11, page 203) ;
4. Amendement yougoslave (voir annexe 3, page 199) ;
5. Amendement portugais (voir annexe 12, page 203).

M. RIPERT (France) demande que la Commission soit appelée tout d'abord à choisir, pour l'ensemble des articles 2 et 3, entre le principe du projet allemand et celui du projet de Convention.

M. RICHTER (Allemagne) déduit des discussions qui ont eu lieu à ce sujet, que le principe de l'amendement allemand a peu de chance d'être accepté. Il rappelle que la délégation allemande, pour tenir compte des objections qui avaient été présentées, avait proposé certaines modifications à son projet primitif, notamment une disposition prévoyant des accords régionaux, mais que ces modifications n'avaient pas reçu non plus l'approbation de la Commission. Aussi, la délégation allemande s'est efforcée de rédiger un nouveau projet d'amendement sur la base du principe adopté dans le projet de Convention.

Il lui est très difficile d'accepter ce principe, mais elle tient à ne pas se montrer intransigeante.

Le texte écrit de la proposition allemande sera distribué incessamment aux membres de la Commission.

La délégation allemande tient toutefois à souligner qu'elle ne présente cette proposition que sous la condition que la Commission revienne sur sa décision en ce qui concerne la mention des hypothèques sur le certificat d'immatriculation (ou sur un certificat spécial), cette mention étant

considérée comme indispensable par la délégation allemande pour assurer une publicité suffisante aux hypothèques.

M. ROSSETTI (Italie) estime que la Commission doit attendre d'être en possession du texte de la proposition allemande avant de procéder à une discussion sur cette proposition.

Le PRÉSIDENT se déclare d'accord et invite la Commission, en attendant le texte allemand, à aborder l'examen des articles 35 et suivants du projet de Convention.

#### TITRE IV. — DISPOSITIONS GÉNÉRALES (suite).

##### Article 35.

Le PRÉSIDENT donne lecture de l'article 35 du projet de Convention.

Il rappelle que la Commission est saisie d'un projet d'amendement allemand sur ce point (voir annexe 1, page 189).

M. SOUBOTITCH (Yougoslavie) demande que soit précisé par quelle voie se feront les communications que cet article 35 prévoit entre les États.

M. RICHTER (Allemagne) et M. ROSSETTI (Italie) répondent qu'elles se feront par la voie ordinaire, c'est-à-dire la voie diplomatique.

M. RICHTER (Allemagne) fait observer que l'amendement allemand devra être examiné à nouveau lors de la discussion des dispositions relatives à l'exécution forcée, discussion qui pourra faire ressortir la nécessité d'apporter certaines modifications à cet amendement.

Le PRÉSIDENT constate que la Commission se déclare d'accord et qu'elle adopte l'amendement présenté par la délégation allemande, sous réserve d'un nouvel examen lors de la discussion des dispositions relatives à l'exécution forcée.

##### Article 36.

Le PRÉSIDENT donne lecture de l'article 36 du projet de Convention. Il rappelle que la délégation allemande propose la suppression de cet article.

M. RICHTER (Allemagne) explique que l'article 36 avait été adopté par le Comité préparatoire pour tenir compte du fait que, suivant une opinion exprimée en dehors du Comité, l'immatriculation obligatoire des bateaux serait contraire au principe de la libre navigation stipulé dans les traités, actes et conventions régissant les voies d'eau internationales. Le membre allemand du Comité du droit fluvial ne partageait pas cette opinion, mais ne s'est pas opposé à l'insertion, dans le projet de Convention, de cet article 36 qu'il jugeait inutile, mais inoffensif. Toutefois, une étude plus approfondie a amené la délégation allemande à considérer cet article comme dangereux.

Il est inadmissible, en effet, que les États émettent, dans le texte même de la Convention, des doutes sur la validité de cette Convention et il semble que les gouvernements qui éprouveraient de pareils doutes ne pourraient pas signer la Convention. L'article 36 laisse en somme aux tribunaux le soin de décider si l'immatriculation obligatoire est compatible ou non avec la liberté de navigation. Si donc un tribunal se prononçait contre la compatibilité, une disposition qui domine toute la Convention ne serait pas appliquée dans le pays de ce tribunal.

M. ROSSETTI (Italie) rappelle à M. Richter que les rédacteurs du projet de Convention n'entendaient pas prévoir des objections de la part des États contractants, mais voulaient uniquement répondre par anticipation aux États non contractants qui auraient pu élever des protestations, et éviter ainsi des discussions interminables.

Il estime, en conséquence, que la Commission peut, si elle le juge nécessaire, modifier le texte de l'article 36, mais qu'elle doit le conserver quant au fond.

M. CONTZESCO (Roumanie) estime que l'article 36 donne des apaisements nécessaires, non seulement aux États non contractants, mais aussi aux États contractants, ainsi que le fait ressortir le rapport élaboré par le Comité du droit fluvial<sup>1</sup>.

M. Contzesco appuie, en conséquence, la proposition de M. Rossetti.

M. SOUBOTITCH (Yougoslavie) tient à compléter l'explication donnée par M. Rossetti. Il estime que le vrai sens de l'article 36 consiste en ceci : en cas de conflit entre les dispositions de la présente Convention et celles d'un acte général de navigation (par exemple le Statut du Danube), ce sont les stipulations de ce dernier qui doivent l'emporter. L'article 36 lui paraît nécessaire, car si on le supprimait, on arriverait au résultat qu'en cas de conflit la présente Convention, comme postérieure en date, primerait les actes généraux antérieurs en date.

M. ROSSETTI (Italie) considère qu'il faut tenir compte de l'objection présentée par M. Richter, en ce qui concerne la possibilité de non-application de la Convention, et modifier la rédaction de l'article 36 en conséquence.

<sup>1</sup> Voir document C.541 (a).M.195 (a).1929.VIII, page 29.

M. RIPERT (France), estime que le sens de l'article 36 paraît très clair. Cet article vise l'interprétation et non l'application de la Convention ; il précise la signification de la Convention, en déclarant celle-ci conciliable avec les conventions antérieures.

M. DE POST (Suède) déclare que la délégation suédoise appuie la proposition allemande, qui demande la suppression de l'article 36.

M. RICHTER (Allemagne) propose que la question soit renvoyée au Comité de rédaction, qui devra modifier le texte actuel de façon qu'il ne laisse subsister aucune possibilité pour les tribunaux d'examiner la question de la compatibilité de l'immatriculation obligatoire avec la liberté de navigation.

M. Richter considère, d'autre part, que la place de cet article n'est pas dans le corps de la Convention, mais qu'il devrait figurer dans le protocole de clôture.

M. ROSSETTI (Italie) et M. SITENSKY (Tchécoslovaquie) déclarent appuyer cette dernière proposition de M. Richter.

Le PRÉSIDENT fait procéder à un vote et constate que *la Commission retient l'article 36, quant au fond, mais qu'elle charge le Comité de rédaction d'en modifier la forme et de le faire figurer dans le Protocole de clôture.*

*(La séance est suspendue pendant 30 minutes.)*

#### TITRE PREMIER. — DE L'IMMATRICULATION *(suite)*.

##### *Articles 2 et 3 (suite)*.

Le PRÉSIDENT donne lecture de l'alinéa 4 de l'article 3 du nouveau projet d'amendement allemand (voir annexe 13, page 204), qui a été distribué aux membres de la Commission avant la suspension de séance.

M. SUŁKOWSKI (Pologne) déclare que la délégation polonaise, en présence de la proposition transactionnelle néerlandaise et allemande, retire son amendement dans un esprit de conciliation.

M. SOUBOTITCH (Yougoslavie) demande que soit précisée l'expression « port d'attache ».

M. RICHTER (Allemagne) en réponse à M. Soubotitch, donne lecture de l'alinéa 3 de l'article 3 du projet d'amendement allemand :

« Par port d'attache, on comprend le lieu d'où le propriétaire fait naviguer le bateau ; si plusieurs de ces lieux entrent en compte, celui d'entre eux où le propriétaire a son établissement commercial, ou, éventuellement, son établissement principal, ou, faute d'établissement, son domicile. »

Il fait ressortir que cette définition est très souple. Les autorités allemandes se montrent toujours très libérales dans son application, ce qui laisse, en fin de compte, le propriétaire libre de décider quel sera le port d'attache assigné à son bateau.

M. SOUBOTITCH (Yougoslavie) déclare ne pas bien comprendre encore ce que la délégation allemande entend définir par le « lieu d'où le propriétaire fait naviguer le bateau ». Il lui semble que la délégation allemande désire faire dépendre la détermination du port d'attache des localités entre lesquelles le bateau circule effectivement. S'il en est ainsi, M. Soubotitch ne s'explique pas la raison pour laquelle elle fait intervenir le siège social de la compagnie de navigation ou le domicile du propriétaire.

M. RICHTER (Allemagne) confirme que la délégation allemande entend bien faire dépendre la détermination du port d'attache des localités entre lesquelles le bateau circule effectivement. Le lieu du siège social ou du domicile n'interviendrait que lorsqu'il y aurait plusieurs localités qui pourraient être considérées comme port d'attache.

M. WINIARSKI, président du Comité du droit fluvial, demande s'il est possible, d'après la conception allemande, qu'un bateau ait deux ports d'attache, comme il est possible, en Allemagne, d'avoir deux ou plusieurs domiciles.

M. RICHTER (Allemagne) répond par la négative. Toutefois, il fait observer que le tribunal peut avoir à choisir entre plusieurs localités dont chacune pourrait être considérée comme le port d'attache. Et il est nécessaire de prévoir une règle pour ce cas.

M. VAN SLOOTEN (Pays-Bas) estime que les débats s'engagent sur une fausse route. A son avis, il ne s'agit pas de préciser quel est le sens attribué au terme « port d'attache » dans la législation allemande, mais quel est celui que la Commission entend lui donner.

M. RICHTER (Allemagne) regrette que la délégation allemande n'ait pas eu le temps d'étudier une rédaction plus satisfaisante de son projet d'amendement. Il fait observer à M. van Slooten que ce projet d'amendement débute par une réserve visant la rédaction de ce projet et que la traduction allemande du terme « port d'attache » est indiquée entre parenthèses (Heimatsort), après ce terme, pour permettre d'adopter éventuellement une expression française plus heureuse.

Il va de soi qu'un article de la Convention ne peut pas se référer à une loi nationale pour préciser la signification d'un terme qu'il emploie, et qu'il est nécessaire de définir la notion de port d'attache.

M. SITENSKY (Tchécoslovaquie) fait ressortir que, de l'avis de la délégation tchécoslovaque, la proposition allemande présente deux inconvénients très graves.

En premier lieu, le terme « port d'attache » est interprété de façon différente dans les divers pays. D'autre part, le texte proposé ne prévoit pas de solution pour un des cas les plus importants : celui où le port d'attache est situé dans un pays autre que le pays où est situé le siège social de la compagnie de navigation ou le domicile du propriétaire. Le projet allemand laisse, dans cette hypothèse, toute liberté de choix au propriétaire ; or, c'est justement ce cas-là pour lequel on a voulu donner à l'État du domicile ou, plutôt, à l'État dont le propriétaire est ressortissant, le droit d'exclure le libre choix du propriétaire.

Par contre, M. Sitensky estime que la proposition présentée par la délégation néerlandaise représente une formule de conciliation véritable. En effet, pour tenir compte des critiques adressées au texte du projet de Convention, à laquelle on reprochait de faire mention de la nationalité du propriétaire, le nouveau texte proposé par la délégation des Pays-Bas fait intervenir non plus la nationalité, mais le domicile du propriétaire. M. Sitensky estime que cette formule concilie les deux opinions qui ont été exprimées en cette matière.

M. HOHL (Suisse) fait ressortir que la Commission, si elle décide d'adopter le critère du « port d'attache », doit choisir entre deux solutions de principe :

- 1<sup>o</sup> Définir la portée du terme « port d'attache » dans la convention ;
- 2<sup>o</sup> Laisser le soin de cette définition aux législations nationales.

M. Hohl signale, à ce sujet, que la législation suisse connaît bien la notion de port d'attache, mais qu'elle considère comme port d'attache le lieu où l'entreprise de navigation est gérée, contrairement à la solution adoptée par la législation allemande, qui fixe le port d'attache dans l'un des lieux entre lesquels le bateau circule effectivement.

M. RIPERT (France) désire préciser la position prise par la délégation française dans le débat.

Il rappelle que l'article 3 du projet de Convention a été adopté par le Comité du droit fluvial comme une formule de conciliation possible (qui n'avait d'ailleurs pas été présentée par la délégation française). Cette formule laisse au propriétaire le droit de choisir, entre plusieurs pays, celui où il fera immatriculer son bateau. Ce n'est que par l'alinéa 4 de l'article 3 que le propriétaire est privé de ce droit de choisir, et cela dans un seul cas bien déterminé : celui où il ne peut arguer d'aucune raison valable pour faire immatriculer son bateau ailleurs que dans le pays dont il est ressortissant et où une telle intention de sa part pourrait paraître frauduleuse.

Au cours des débats de la présente Commission, certaines délégations ont objecté que la condition de nationalité, introduite dans cet alinéa 4, risquait de soulever des protestations. Cette objection a été prise en considération et la délégation des Pays-Bas a présenté un texte où la condition de nationalité est remplacée par une condition visant le lieu où est situé le siège social de la Compagnie de navigation ou le domicile du propriétaire. La délégation française, bien que moins satisfaite par ce texte que par celui du projet de Convention, a néanmoins donné son assentiment de principe à la proposition néerlandaise dans un esprit de conciliation, si elle rencontrait l'approbation des autres délégations.

C'est également dans un esprit de conciliation que la délégation allemande présente maintenant son nouveau projet d'amendement, et, pour cette raison, la délégation française l'envisage avec sympathie.

Toutefois, elle voit une objection décisive qui s'oppose à l'adoption de ce projet. En effet, en prévoyant une disposition limitant la liberté de choisir du propriétaire, le projet de Convention a fixé les conditions devant être remplies pour que cette disposition soit applicable. Or, alors que l'amendement néerlandais ne fait que modifier ces conditions, en introduisant la notion du siège social ou du domicile, en remplacement de la notion de nationalité, le nouvel amendement allemand, au contraire, tout en réintroduisant le terme de « ressortissants », soumet le cas où un État peut exiger l'immatriculation d'un bateau sur ses registres, à la condition que le port d'attache de ce bateau se trouve sur son territoire.

Par cette nouvelle disposition, la liberté de choisir du propriétaire, que le projet de Convention entendait restreindre, demeure entière. Le propriétaire aura toujours, en effet, la ressource de fixer à l'étranger le port d'attache de son bateau et d'échapper ainsi à l'obligation de faire immatriculer son bateau dans l'État où se trouve son domicile ou dont il est ressortissant. Et cela lui sera d'autant plus facile que, ainsi que M. Richter a pris le soin de le souligner, les autorités se montrent très accommodantes et acceptent en somme que le propriétaire fixe plus ou moins où il le veut le port d'attache de son bateau.

Si la Commission essayait de s'entendre sur une définition de l'expression « port d'attache », elle se lancerait dans des discussions interminables qui ne pourraient aboutir à aucune solution. La seule solution, en effet, qui supprimerait toute possibilité de choix pour le propriétaire serait celle fixant le port d'attache dans la localité où se trouve le siège social de la compagnie de navigation ou le domicile du propriétaire, et cette solution, la délégation allemande estime ne pas pouvoir l'accepter.

Or, si l'on ne supprime pas toute possibilité de choix pour le propriétaire, la réserve de l'alinéa 4 que la délégation française juge essentielle ne jouerait plus. Le propriétaire d'un bateau pourrait jouir de tous les avantages qui lui sont assurés par le pays où il a son domicile ou dont il est ressortissant, en échappant aux obligations auxquelles il devrait légitimement être soumis en compensation.

M. SOUBOTITCH (Yougoslavie) déclare que la délégation yougoslave voulait faire valoir une argumentation analogue à celle exposée par M. Ripert. La disposition du projet d'amendement allemand serait, à son avis, une source de conflits plutôt qu'une règle pour leur solution.

Il estime que le critère proposé par la délégation allemande obtiendra difficilement l'approbation des autres délégations.

En premier lieu, ce critère est imprécis ; un bateau pourrait, en effet, changer son port d'attache du jour au lendemain, lorsqu'il serait affecté à un nouveau service.

D'autre part, il semble que, dans certains cas, ce critère soit inapplicable. Par exemple, si un bateau appartenant à une compagnie néerlandaise navigue entre Vienne et Budapest, il serait impossible de déterminer quel doit être son port d'attache d'après la définition allemande qui dit « si plusieurs de ces lieux entrent en compte, celui d'entre eux où le propriétaire a son établissement commercial.... ». En effet, dans l'exemple envisagé, le siège social de la Compagnie néerlandaise n'est ni à Vienne ni à Budapest.

M. RICHTER (Allemagne) réplique que, dans l'exemple cité par M. Soubotitch, la Compagnie néerlandaise aurait certainement une succursale sur le Danube, ce qui permettrait de déterminer le port d'attache.

M. VAN SLOOTEN (Pays-Bas) constate que certaines délégations ont bien voulu appuyer l'amendement présenté par la délégation des Pays-Bas et il croit devoir donner quelques explications au sujet de cet amendement.

Il a pris part au débat dans un esprit aussi libéral que possible ; ce qui lui a été rendu facile par le fait qu'il n'a jamais été partisan de la solution adoptée dans le projet de Convention.

Il estimait, au début des travaux préparatoires, qu'une unification complète des législations nationales était possible et qu'une règle pourrait être adoptée qui détermine dans tous les cas le lieu d'immatriculation. Il a fini par être convaincu qu'il était impossible d'arriver à une telle solution, et, faute de mieux, il s'est rallié à celle qui fut définitivement adoptée.

Il est certain que cette solution n'est pas parfaite et qu'on peut lui reprocher un certain nombre d'inconvénients. Toutefois, il est évident qu'une formule qui représente l'aboutissement de quatre années d'études, auxquelles ont pris part non seulement des experts, mais également les intéressés, doit être à même de servir de base aux discussions de la Commission.

Il s'agit de déterminer dans quels cas doit être restreint le choix laissé au propriétaire du lieu d'immatriculation.

M. van Slooten fait observer que la réglementation actuelle de la navigation internationale sur le Rhin donne satisfaction à son pays, et que celui-ci ne tient pas particulièrement à y voir apporter des modifications par la Convention. Toutefois, la délégation néerlandaise désirait trouver une formule qui puisse rallier la majorité des suffrages de la Commission et qui permette d'adopter, dans la Convention, un certain nombre de dispositions relatives aux privilèges et aux hypothèques que les Pays-Bas estiment très désirables.

L'amendement néerlandais essaie donc de concilier deux points de vue différents. Ceux-ci, en ce qui concerne le Rhin, sont les points de vue allemand et français.

M. van Slooten est, en conséquence, très heureux d'apprendre que la délégation française pourrait se rallier à cette solution transactionnelle.

Quant au point de vue allemand, la différence qui le sépare de la solution néerlandaise n'est pas bien considérable. Elle porte simplement sur la condition à fixer lorsque le propriétaire du bateau est, non pas une compagnie de navigation, mais un particulier.

La délégation néerlandaise déclare qu'elle est prête à considérer toute modification qui serait proposée pour son amendement, afin que la Commission puisse arriver à une solution qui serait acceptée par toutes les délégations.

M. RICHTER (Allemagne) reconnaît que la proposition de la délégation des Pays-Bas est inspirée par un vif désir de conciliation. Toutefois, pour la délégation allemande, elle ne représente un progrès sur le texte primitif du projet de Convention que parce qu'elle fait disparaître le terme « ressortissant ». Quant au fond, elle ne se rapproche en aucune façon du point de vue de la délégation allemande qui se voit obligée de maintenir son projet d'amendement. En effet, si la Commission décide que l'application de la Convention dépendra du pays d'immatriculation, il est indispensable que les registres d'immatriculation se trouvent dans la région où le bateau est exploité.

M. ROSSETTI (Italie) rappelle que la délégation italienne a toujours soutenu, au sein du Comité du droit fluvial, comme au cours des dernières discussions, le même point de vue. Le texte qu'elle aurait désiré voir adopter pour l'alinéa 4 de l'article 3 est le suivant :

« Toutefois, le choix prévu à l'alinéa précédent ne pourra pas être exercé par le propriétaire lorsque l'État dont il est ressortissant exige l'inscription sur ses registres des bateaux appartenant à ses ressortissants. »

Au point où en sont les débats et dans un esprit de conciliation, la délégation italienne déclare toutefois qu'elle se rallierait à la proposition néerlandaise, si celle-ci rencontrait les suffrages de la majorité.

M. RIPERT (France) demande à la délégation allemande pour quelle raison celle-ci tient à introduire dans le dernier alinéa de l'article 3 la condition du « port d'attache ». Cette condition réduit à néant la prérogative que les États entendent se réserver, étant donné que M. Richter lui-même reconnaît que le propriétaire aurait toute liberté de fixer comme il le voudrait le port d'attache de son bateau.

M. RICHTER (Allemagne) précise que le texte allemand ne laisserait pas liberté entière au propriétaire sur ce point. Il faut que sa demande ait une base raisonnable, moyennant quoi les autorités y font droit sans difficulté.

M. DE RUELLE (Belgique) considère que la séance en cours est une des plus satisfaisantes qui aient été tenues par la Commission. Toutes les délégations ont fait preuve d'esprit de conciliation, voire même de sacrifice, et le débat se trouve considérablement simplifié, étant donné le petit nombre de textes qui restent en présence.

M. de Ruelle estime qu'un vote serait prématuré à l'heure actuelle et il propose que la Commission ajourne sa décision à une séance ultérieure.

Le PRÉSIDENT partage la satisfaction exprimée par M. de Ruelle, et il espère que les opinions encore divergentes pourront être définitivement conciliées.

#### NOMINATION D'UN SOUS-COMITÉ CHARGÉ DE PRÉSENTER UN NOUVEAU TEXTE DES ARTICLES 2 ET 3.

Pour arriver à ce but, il suggère que la Commission désigne un Sous-Comité qui essaierait d'élaborer un texte pouvant être accepté par toutes les délégations. Ce sous-Comité se réunirait sous la présidence du président de la Commission et comprendrait un représentant de chacune des délégations suivantes : allemande, belge, française, néerlandaise, tchécoslovaque et yougoslave.

Le Président constate que la Commission se déclare d'accord et qu'elle charge ce Sous-Comité de l'élaboration d'un texte qui, accompagné éventuellement d'un rapport, sera soumis à l'approbation de la Commission.

M. LAWATSCHKE (Autriche) fait ressortir que le Gouvernement autrichien est particulièrement désireux de voir figurer dans la Convention une disposition qui lui permette d'exiger l'immatriculation sur ses registres des bateaux appartenant à des compagnies dont le siège social est situé en Autriche.

Il demande que le Sous-Comité comprenne aussi un représentant de la délégation autrichienne.

M. ROSSETTI (Italie) fait observer que toutes les délégations pourraient demander à être représentées dans le Sous-Comité et que celui-ci n'aurait plus alors de raison d'être.

M. LAWATSCHKE (Autriche) déclare ne pas vouloir insister et retire sa demande.

### NEUVIÈME SÉANCE

*Tenue le vendredi 28 novembre 1930, à 11 heures.*

*Président: Le professeur Robert HAAB (Suisse).*

#### X. Examen du projet de Convention (suite).

#### TITRE IV. — DISPOSITIONS GÉNÉRALES (suite).

##### Article 37.

Le PRÉSIDENT donne lecture de deux amendements présentés : l'un par la délégation polonaise (voir annexe 14, page 204), l'autre par la délégation yougoslave (voir annexe 15, page 204).

M. RIPERT (France), considérant qu'il y a une série de textes et d'amendements soulevant des points très délicats de droit international et exigeant la connaissance des traités existant déjà entre États, propose de constituer, pour étudier l'article 37, un sous-comité composé de représentants des États ayant de tels traités.

M. VAN SLOOTEN (Pays-Bas) appuie cette proposition.

M. SUŁKOWSKI (Pologne) considérant le retard qui résulterait de cette proposition pour les travaux de la Conférence, est d'avis d'ajourner la rédaction de l'article, mais de discuter dès maintenant les principes généraux devant servir de base à cette disposition.

M. CONTZESCO (Roumanie) croit préférable d'ajourner la discussion jusqu'à ce que l'on soit saisi de l'avis du sous-comité.

M. SUŁKOWSKI n'insistant pas sur sa suggestion, le Président dit que la composition du Sous-Comité sera annoncée plus tard.

*L'article 37 est réservé.*



TITRE III. — DE L'EXÉCUTION FORCÉE.

Article 25.

Le PRÉSIDENT donne lecture des propositions allemandes, article 24 *bis* (voir annexe 1, page 188) et néerlandaises, articles 24 *bis* et 24 *ter* (voir annexe 2, page 199) visant à insérer dans la Convention une disposition expresse relative à la saisie conservatoire.

M. RICHTER (Allemagne) pense que, sauf des différences de rédaction, les deux propositions visent un même but, qui est de prévoir l'inscription de la saisie conservatoire.

M. VAN SLOOTEN (Pays-Bas) estime que, puisque l'on a souvent parlé dans la Convention de la saisie conservatoire, il semble que les délégués seront d'accord pour estimer que cette saisie conservatoire doit être réglée dans la Convention même. L'amendement néerlandais est extrêmement simple et ne fait que reproduire presque textuellement les articles 25 et 26 du titre III. De cette manière, il y aura concordance absolue entre les deux genres de saisies. D'autre part, il y aurait avantage à retenir l'amendement néerlandais, qui reprend le texte du projet sur l'exécution forcée, plutôt que la proposition allemande, qui introduirait dans la Convention internationale une notion de droit allemand n'existant nulle part ailleurs.

Le PRÉSIDENT, rappelant que la Commission a adopté la proposition néerlandaise sur l'article 12, pense que le texte de l'article en discussion devrait mentionner également le droit d'usufruit.

M. NAUTA (Pays-Bas) approuve cette remarque.

Le PRÉSIDENT dit que le Comité de rédaction tiendra compte de cette observation.

M. RIPERT (France) n'est satisfait ni par l'amendement allemand ni par l'amendement néerlandais, qui se traduisent par la prise en considération de certaines législations nationales dans une convention internationale. Dans beaucoup de pays, la saisie conservatoire ne donne aucun droit de préférence et, d'ailleurs, on n'a pas adopté cette formule dans l'article 19 *bis* : on s'est contenté d'un simple renvoi aux législations nationales. Lorsque la saisie conservatoire n'intéresse en rien les créanciers, pourquoi l'inscrire au registre d'immatriculation ? Il y a toujours un grand inconvénient à multiplier les inscriptions. Au surplus, comme on a renvoyé aux législations nationales quant à l'effet de la saisie conservatoire, il est logique d'y renvoyer également quant à l'inscription. M. Ripert ne s'oppose nullement à l'inscription au registre dans les pays qui connaissent cette procédure, mais pourquoi l'imposer aux pays qui l'ignorent ?

M. SITENSKY (Tchécoslovaquie) est d'accord sur le fond avec les délégations allemande et néerlandaise. Mais il estime que la proposition néerlandaise est mieux formulée.

M. RICHTER (Allemagne), pour faciliter la discussion, déclare se rallier à la proposition néerlandaise, sous réserve de rédaction définitive. Sur le fond de la question, il croit la proposition des deux délégations très importante pour la navigation internationale. Faute d'une telle disposition, le créancier saisissant ne pourrait, après la saisie, laisser partir le bateau : il devrait, dans son propre intérêt, le retenir, ce qui serait extrêmement gênant. Si, au contraire, on accepte la proposition, le créancier saisissant et le propriétaire peuvent se mettre d'accord afin que la saisie produise ses effets et que le bateau puisse recommencer de naviguer. Sans une disposition de ce genre, les intéressés devront renoncer à la procédure amiable.

M. RIPERT (France) est confirmé dans sa manière de voir par les remarques de M. Richter, pour qui la saisie conservatoire établit sur le bateau un droit réel de préférence ; dans ces conditions, il faut une publicité, afin de pouvoir, après le départ du bateau, exercer les garanties données par la saisie conservatoire. Mais, dans beaucoup de pays, la saisie conservatoire donne le droit de conserver le bateau ; celui-ci parti, le créancier saisissant n'aurait plus de droit sur le bateau. La disposition est conforme aux législations allemande, néerlandaise et belge, mais non à la législation française.

M. NAUTA (Pays-Bas) constate que, en France, la saisie conservatoire ne donne aucun droit de préférence au créancier saisissant. Il en est de même aux Pays-Bas, et la proposition néerlandaise ne vise nullement à modifier cette situation. M. Nauta reconnaît volontiers que le simple fait qu'un créancier fait saisir un bateau et inscrire la saisie sur les registres ne doit pas lui donner une situation privilégiée, mais, d'autre part, les Pays-Bas ne pourraient admettre — et tel est l'objet de leur proposition — que, si un bateau a été saisi par un créancier, le propriétaire puisse aliéner le bateau ou constituer hypothèque sur lui au détriment des intérêts du créancier saisissant. C'est pourquoi la proposition néerlandaise dit seulement que si le bateau a été saisi et qu'il est ensuite aliéné ou hypothéqué, cette aliénation ou cette hypothèque ne peut pas nuire au créancier saisissant ; elle ne veut nullement dire que les créanciers saisissants ont un privilège d'un certain rang.

M. RIPERT (France) constate que la conception néerlandaise de la saisie conservatoire est différente de la conception allemande, mais que l'une et l'autre sont également graves et inadmissibles du point de vue de la législation française. D'après la législation néerlandaise, la saisie conservatoire enlève au propriétaire le droit d'aliéner ou d'hypothéquer son bateau.

M. NAUTA (Pays-Bas) précise que la législation néerlandaise n'enlève pas absolument ce droit.

M. RIPERT (France) dit qu'en tout cas la législation néerlandaise ne permet pas d'opposer l'aliénation ou l'hypothèque au créancier saisissant. Tel est, en France, l'effet de la saisie d'exécution, mais non de la saisie conservatoire ; celle-ci est opérée par un créancier n'ayant pas de titre ni de créance établie et qui demande au tribunal l'autorisation de faire la saisie afin que le bateau ne puisse pas s'en aller. Cela se fait le plus souvent pour les bateaux étrangers : car il est indispensable, en ce cas, que le gage reste en place. Par contre, il serait difficile d'admettre que la saisie conservatoire enlève à un propriétaire le droit d'aliénation ou d'hypothèque, alors que la créance n'est encore ni constatée, ni reconnue. Les deux conceptions sont entièrement différentes. La conception italienne est d'ailleurs la même que celle de la législation française.

M. DE RUELLE (Belgique) fait observer qu'il y a possibilité de donner caution pour obtenir levée de la saisie conservatoire.

M. NAUTA (Pays-Bas) ne peut concevoir qu'un droit national quelconque reconnaisse, d'une part, la saisie conservatoire et, d'autre part, admette la possibilité d'aliéner le bateau après qu'il a été saisi, de sorte que l'acquéreur peut répondre qu'il ignorait la saisie et qu'elle ne compte pas pour lui. Que vaut alors la saisie conservatoire ?

M. RIPERT (France) répond qu'elle se traduit, en ce qui concerne un meuble, par l'impossibilité de le détourner. N'importe qui peut faire une saisie conservatoire : le tribunal ne refuse jamais l'autorisation ; mais si, plus tard, le demandeur est reconnu comme n'ayant aucun droit, serait-il admissible que le propriétaire ait été empêché d'aliéner ou d'hypothéquer le bateau ?

M. NAUTA (Pays-Bas) dit que, dans son pays, on peut aussi faire la saisie conservatoire d'un bateau avec la permission du tribunal, mais que, s'il n'existe pas de créance valable, le défendeur obtient du tribunal mainlevée de la saisie. Cette procédure est très facile, mais M. Nauta ne pourrait admettre qu'un propriétaire transfère la propriété de son bateau sans qu'il soit tenu compte des intérêts du créancier saisissant, après la saisie de ce bateau. Nonobstant la saisie, un tel transfert serait possible de bonne foi du côté de l'acquéreur, si la saisie n'est pas inscrite sur les registres, car l'aliénation et le transfert de propriété peuvent se faire par transcription sur le registre sans que l'acquéreur se rende au bureau pour contrôler s'il est sous saisie. Il n'est alors nullement nécessaire que l'acquéreur sache quoi que ce soit de la saisie. M. Nauta se demande s'il n'y a pas un malentendu.

M. RIPERT (France) répond qu'il n'y a pas de malentendu. La situation est la suivante : en France, il n'y a pas de saisie conservatoire spéciale pour les bateaux auxquels on a étendu la procédure de droit commun en matière de meubles. Lorsqu'un meuble est saisi, personne ne vient plus l'acheter, en sorte qu'un propriétaire, non pas en droit, mais en fait, ne peut plus vendre son meuble, qu'il s'agisse d'un bateau ou d'un autre objet.

M. NAUTA (Pays-Bas) croit qu'en France le transfert de la propriété d'un bateau est effectué par l'inscription du titre sur le registre, tandis que les autres biens meubles sont transférés de main à main. La situation n'est donc pas la même.

M. RIPERT (France) dit qu'il en est effectivement ainsi pour les bateaux, mais le transfert de propriété reste possible malgré la saisie conservatoire.

M. RICHTER (Allemagne) attire l'attention sur deux graves inconvénients qui résulteraient de la suppression de cette disposition. En premier lieu, d'après le système français, il pourrait arriver qu'un créancier non privilégié — et ceux-ci sont très intéressants, puisque l'on cherche à limiter le plus possible le nombre des privilèges — fasse saisir le bateau : si la créance est contestée, il y a procès pouvant durer des mois, et pendant tout ce temps, d'après la législation française, le propriétaire peut aliéner ou hypothéquer le bateau avec cette conséquence que le nouveau propriétaire peut répondre au créancier saisissant : le bateau est ma propriété et vous n'avez pas le droit sur lui. Toute la procédure et toutes les dépenses faites par le créancier pour la saisie, le procès, etc., auront été inutiles. En second lieu, pour M. Richter, il est de l'intérêt de chaque pays que ses bateaux ne soient pas retenus inutilement dans un autre pays pendant une longue durée.

M. VAN SLOOTEN (Pays-Bas) estime qu'il se dégage, de la discussion et des observations de M. Ripert et de M. Richter, que si les effets que l'on cherche à attribuer à la saisie conservatoire n'existent pas dans la législation française, il faut les y introduire. D'autre part, l'amendement néerlandais n'est nullement contraire à la législation française ; il supplée à une lacune de cette législation en réglant la question de la saisie conservatoire des bateaux. Il est d'autant plus nécessaire d'adopter l'amendement néerlandais qu'à l'article 19 on a déjà parlé de la saisie conservatoire et renvoyé à un formulaire où il est question de cette saisie.

M. RIPERT (France) reconnaît volontiers que la législation de certains pays sur la saisie conservatoire est meilleure que la législation française. Il doit néanmoins constater que la France n'a pas de loi interne en la matière. Si l'on établit un système international qui doit être applicable à la France, il faut donner à ce pays les moyens de l'appliquer. La grosse difficulté, c'est que la saisie conservatoire se fait souvent très loin des bureaux d'immatriculation. Dans le texte de l'amendement néerlandais, on a prévu une série de mesures, par exemple la transmission de la liste des

inscriptions par télégramme, qui sont inconnues à la législation française. Si la Commission veut adopter le système proposé, M. Ripert demande qu'il soit étudié de façon à former un système complet, applicable partout.

M. DESCAMPS (Belgique) dit qu'en Belgique, on obvie aux effets de la saisie conservatoire en autorisant le propriétaire du bateau saisi à verser caution, qui vaut levée de la saisie. Peut-être faudrait-il ajouter une disposition sur la caution.

M. VAN SLOOTEN (Pays-Bas) pourrait se rallier à la suggestion de M. Ripert, mais cela demanderait du temps. Peut-être le délégué français voudra-t-il bien préparer, sur la question, un texte compatible avec le Code de commerce français.

M. RIPERT (France) considère qu'il y a deux solutions : ou bien renvoyer, en ce qui concerne la saisie conservatoire, aux législations nationales en disant seulement qu'il faut l'inscrire sur les registres : ce serait un système incomplet ; ou bien établir un système international, ce qui serait préférable, mais il faudrait alors en étudier les modalités, et cela exigera la rédaction d'un certain nombre d'articles supplémentaires.

Le PRÉSIDENT croit aussi qu'il est indispensable de régler dans la Convention le cas de la saisie conservatoire.

M. DE RUELLE (Belgique) revenant sur l'observation de M. Descamps, ajoute que l'on peut prévenir l'arbitraire d'une saisie conservatoire : le président du Tribunal, à la suite d'une demande de saisie conservatoire, peut exiger une caution du demandeur dont la demande ne semble pas justifiée *prima facie*.

Le PRÉSIDENT dit que c'est cette procédure qui est en vigueur en Suisse.

M. ROSSETTI (Italie) se demande si c'est le moment de discuter une question aussi importante et compliquée. Il croit se rappeler qu'il en a été souvent parlé au Comité préparatoire et qu'elle a été écartée à cause des difficultés, surtout de procédure. La transmission des demandes d'inscriptions par télégramme est inconnue en droit italien comme en droit français : il faut passer par voie d'officier ministériel. Il ne croit pas que, pendant la présente Conférence, on puisse arriver à une solution satisfaisante de toutes ces questions, que les experts du droit maritime n'ont pas encore pu régler malgré toute leur science et leur longue expérience. Il lui paraît préférable de renvoyer le problème à une autre conférence.

M. VAN SLOOTEN (Pays-Bas) se demande, dans ces conditions, ce que l'on va faire de l'article 19 où il s'agit évidemment aussi de la saisie conservatoire. D'autre part, l'amendement néerlandais précise que la procédure est réglée par la loi nationale, ce qui atténue la difficulté signalée par M. Ripert.

M. RIPERT (France) fait observer que le reste de l'amendement donne les règles relatives à la saisie conservatoire.

Le PRÉSIDENT rappelle au délégué néerlandais qu'à l'article 19, on a supprimé la saisie conservatoire et stipulé que les faits constitutifs devaient être inscrits au registre. Il n'en reste pas moins que la saisie conservatoire constitue pratiquement un point essentiel si l'on veut régler l'exécution forcée, laquelle commence très souvent par une saisie conservatoire. On ne peut négliger cette question d'ordre essentiellement pratique.

M. RIPERT (France) constate que la situation est la suivante : la Commission a été appelée à délibérer sur un certain projet, et on lui soumet maintenant un autre projet concernant la saisie conservatoire. M. Ripert l'accueille avec beaucoup de sympathie et est certain que c'est un projet très utile, mais on ne saurait improviser en une séance toute une législation internationale en la matière.

M. ROSSETTI (Italie) ajoute que c'est une question très importante en ce qui concerne les pouvoirs des délégués. Avant de se rendre à la Conférence, ceux-ci, dans leur pays, se sont entourés de l'avis de tous les organes consultatifs de leur gouvernement sur le projet qui leur avait été soumis, mais ils n'ont certainement pas pu recueillir d'avis sur la question de la saisie conservatoire qui n'était pas prévue. On ne saurait introduire dans le projet une nouvelle question à laquelle tous les délégués ne sont pas préparés et sur laquelle ils n'ont pas d'instructions. Il serait plus sage de renvoyer l'étude et le règlement de cette question à une prochaine Conférence.

M. RICHTER (Allemagne) fait remarquer que la question est à l'ordre du jour à la suite de l'article 19 du projet. Les experts avaient prévu la saisie conservatoire dans les cas d'abordage, et l'amendement en discussion ne fait que remplacer cette disposition visant des cas spéciaux par une disposition visant toutes les créances. Il n'y a donc pas de différence de fond.

Le PRÉSIDENT pense que la Commission doit d'abord se prononcer sur la demande préjudicielle de renvoi à une autre conférence, présentée par M. Rossetti.

M. SITENSKY (Tchécoslovaquie) dit qu'il faudrait d'abord savoir quelle conférence pourrait régler la question : il n'a été prévu aucune conférence sur la saisie conservatoire. Si, dans la con-

vention actuelle, on parle de l'exécution forcée, M. Sitensky ne voit pas le moyen de réunir une autre conférence uniquement pour traiter de la saisie conservatoire.

M. ROSSETTI (Italie) rappelle que le programme de travail du Comité du droit fluvial de la Société des Nations comprend l'étude de tout le domaine du droit fluvial. Les sujets de conventions éventuelles, au fur et à mesure qu'ils sont prêts, sont, par la Commission consultative et technique des communications et du transit, soumis au Conseil. C'est la même procédure qui est suivie par l'Association internationale de droit maritime pour arriver à la conclusion des conventions de droit maritime de Bruxelles. Le Comité du droit fluvial pourrait retenir la question de la saisie conservatoire comme l'un des premiers points de son programme. Quand la question serait mûre le Conseil la renverrait à une conférence.

M. ROMEIN, membre de la Section des communications et du transit, déclare que si, pour l'application de la Convention, des dispositions sur la saisie conservatoire sont plus ou moins indispensables, on peut se demander si la Convention pourrait pratiquement jouer sans des dispositions sur la matière. D'autre part, au cas où la Convention entrerait en vigueur entre un certain nombre d'États, on peut se demander si les dispositions qu'une conférence future élaborerait sur la saisie conservatoire se présenteraient sous forme d'addition à la première convention ou de convention séparée. Il faudrait au moins que tous les adhérents à la présente Convention soient d'accord plus tard sur les dispositions relatives à la saisie conservatoire. Si la Commission croit qu'il lui est impossible de régler la question dans le temps dont elle dispose, on peut chercher un autre moyen, mais il faut d'abord examiner s'il est réellement impossible de la régler maintenant et s'il faut la renvoyer à une Conférence purement hypothétique.

M. RIPERT (France) croit se rappeler qu'à l'article 19 il est dit que les législations nationales détermineront dans leur ressort l'effet de la saisie conservatoire. M. Ripert admet fort bien le cas des législations nationales qui connaissent l'inscription, mais ce que l'on propose c'est tout autre chose. L'énoncé même du titre III concernant l'exécution forcée serait différent, parce que l'amendement en discussion le complète par la mention : « De la saisie conservatoire ». C'est donc un nouveau chapitre que l'on introduit dans la Convention. C'est certainement une matière utile à régler internationalement, mais s'il n'est pas prévu de garanties spéciales, M. Ripert ne peut admettre qu'une saisie ordonnée sans l'autorisation du juge et sans titre empêche l'aliénation ou l'hypothèque du bateau. Or, quelles garanties aurait-on dans les autres pays ? L'objection de M. Ripert ne porte nullement sur le fond, mais si l'on veut faire une règle sur la saisie conservatoire, il faut la faire complète, avec les garanties nécessaires.

Le PRÉSIDENT croit que tous sont d'accord sur la nécessité d'une règle sur la saisie conservatoire. Reste à savoir quand cette règle sera établie. Il attire l'attention sur le fait que l'on a adopté l'article 19 bis, où l'on parle aussi de saisies conservatoires ; il est indispensable de le réglementer pour l'application pratique de la Convention.

M. SITENSKY (Tchécoslovaquie) croit que les propositions allemande et néerlandaise ne visent nullement à unifier toute la matière de la saisie conservatoire : il s'agit simplement de poser une règle uniforme sur la publicité de cette saisie. Il restera éventuellement possible, si on le désire, d'unifier plus tard les règles concernant la saisie conservatoire.

M. RIPERT (France) fait remarquer que l'on se trouvera en présence des effets de la publicité, c'est-à-dire l'impossibilité d'aliéner et d'hypothéquer.

M. SUŁKOWSKI (Pologne) ajoute qu'il y a également des dispositions sur le rang des créances.

M. CONTZESCO (Roumanie) dit que la législation roumaine sur la saisie conservatoire a la même teneur que la législation belge et prévoit la caution, entourée de grandes garanties tant à l'application qu'à la levée de la saisie. Dans certains cas, cette législation est également conforme aux propositions allemande et néerlandaise. Il est, par ce fait, autorisé à se déclarer en faveur d'une réglementation internationale sur la matière et peut se rallier à toute proposition qui rencontrerait le plus grand nombre de suffrages.

Le PRÉSIDENT invite la Commission à se prononcer sur la proposition italienne.

M. RIPERT (France) dit que, si l'on décide de ne pas renvoyer la question à une conférence ultérieure, il doit être entendu que la Conférence présente s'engage à mettre sur pied un système de saisie conservatoire applicable par tous les États. Il est clair que l'on ne va pas, en France, du jour au lendemain, improviser un système d'inscription. En particulier, il n'y aurait aucun moyen, en France, d'introduire l'inscription télégraphique. On s'exposerait à empêcher le Parlement français de ratifier une convention inapplicable dans le pays.

M. ROSSETTI (Italie) appuie les observations de M. Ripert. Il lui serait impossible de souscrire au nom de son Gouvernement à un tel changement de procédure, qui n'a nullement été prévu. Par exemple, au premier alinéa de l'article 24 ter de la proposition néerlandaise, on dit que « la saisie conservatoire doit être inscrite au registre des bateaux sur demande du créancier ». Ce système est inconnu en Italie. L'amendement néerlandais entraînerait une quantité de changements dans la procédure intérieure italienne. La question des inscriptions télégraphiques a été souvent mentionnée devant le Comité d'experts et, si des propositions avaient été faites, les délégations auraient pu demander des instructions de leurs pays. Comme tel n'a pas été le cas, M. Rossetti ne pourrait

souscrire à une procédure pour laquelle il faudrait modifier des lois essentielles qui ne concernent pas uniquement les bateaux et la navigation fluviale.

Le PRÉSIDENT dit qu'en Suisse non plus on ne connaît pas l'inscription par télégraphe ; mais si chaque délégation entend conserver sa propre législation, on n'arrivera jamais à faire du droit international. Dans le cas particulier, il résulte des circonstances spéciales du commerce international qu'il est indispensable de prévoir ces inscriptions par télégraphe.

M. ROSSETTI (Italie) est tout à fait disposé à envisager des changements dans sa législation nationale, mais seulement dans le domaine de la convention en discussion. Mais il lui serait impossible, en vue du seul enregistrement d'une saisie conservatoire, de changer une conception juridique qui s'étend dans tout le domaine de la législation nationale.

M. VAN SLOOTEN (Pays-Bas), après avoir précisé que la délégation néerlandaise ne tient nullement à l'inscription par télégramme, fait observer que l'article 26 du projet, approuvé jadis par M. Rossetti, dit, à la fin du premier alinéa : « Il peut être remis au consul du pays de l'immatriculation pour être transmis par télégramme audit bureau, contre paiement des frais. »

M. SITENSKY (Tchécoslovaquie) constate qu'il y a deux questions en discussion : en premier lieu, veut-on uniformiser complètement les règles sur la saisie conservatoire ou les laisser aux législations nationales ? En second lieu, veut-on insérer dans cette convention au moins une règle concernant la publicité, ou bien tout renvoyer à une conférence ultérieure ? La matière est assez difficile ; mais, en réservant la possibilité de réaliser plus tard l'unification complète, on pourrait se rallier aux règles indispensables contenues dans la proposition néerlandaise.

M. PANTITCH (Yougoslavie) propose de charger un sous-comité d'examiner ce que l'on peut faire pour la question de la saisie conservatoire. Si l'accord n'est pas possible, la question sera renvoyée à une conférence ultérieure.

M. ROSSETTI (Italie), répondant au délégué néerlandais, fait observer qu'en relisant en totalité le premier alinéa de l'article 26, on constate d'abord qu'il y a simplement mesure facultative, et non obligatoire, et ensuite que les transmissions télégraphiques dont il est question visent des informations et non des inscriptions.

M. VAN SLOOTEN (Pays-Bas) dit que la proposition néerlandaise parle, elle aussi, d'une mesure facultative et non obligatoire.

Le PRÉSIDENT rappelle à M. Rossetti que l'article 24 *ter* de l'amendement néerlandais est la copie du dernier alinéa de l'article 26 du projet. C'est pourquoi le Comité de rédaction devra préparer un article unique.

M. RIPERT (France) dit que la plus grande différence entre l'amendement néerlandais et l'article 26 du projet est que la Convention pose le principe que l'exécution forcée est réglée par le pays où se trouve le bateau ; la Convention prévoit ensuite certaines précautions. D'autre part, l'amendement néerlandais, en réalité, proclame l'internationalisation de la saisie conservatoire, en ce sens que celle-ci produit ses effets dans tous les pays, puisqu'elle empêche les aliénations et les hypothèques. Ce principe peut être excellent, mais à condition qu'il y ait des garanties sur les conditions dans lesquelles se fera la saisie conservatoire. La première préoccupation doit être de régler les modalités de cette dernière.

M. RICHTER (Allemagne) se demande si l'objection de M. Ripert ne vaut pas aussi en matière d'exécution forcée.

M. RIPERT (France) répond affirmativement, mais ajoute que la différence c'est que, dans l'exécution forcée, on ne peut empêcher l'État d'exécuter, alors que dans la saisie conservatoire on doit pouvoir préserver les droits du propriétaire.

#### NOMINATION D'UN SOUS-COMITÉ POUR LA QUESTION DE LA SAISIE CONSERVATOIRE.

Le PRÉSIDENT dit que le Sous-Comité suggéré par le délégué néerlandais sera ainsi composé :

M. RIPERT,  
M. RICHTER,  
M. NAUTA,  
M. PANTITCH,  
M. DESCAMPS,  
M. CONTZESCO,  
M. ROSSETTI.

Sur la suggestion de M. Richter, il est décidé que le Président de la Commission fera également partie du Sous-Comité.

#### Article 26.

Le PRÉSIDENT rappelle que la Commission est saisie d'un amendement de la délégation allemande (voir annexe 1, page 188) et d'un amendement de la délégation néerlandaise (voir annexe 2, page 199).

M. VAN SLOOTEN (Pays-Bas) constate que le troisième alinéa de l'article 26 a pour but d'empêcher les débiteurs de soustraire le bateau à la saisie et, à cet effet, l'article interdit l'aliénation et la constitution d'hypothèques. Cette règle n'est pas complète car, dans la pratique, sinon en théorie, le bateau ne représenterait aucune valeur s'il était permis aux débiteurs de conclure un contrat d'affrètement ou de louage pour une période indéfinie.

Le PRÉSIDENT constate qu'il s'agit ici de droits personnels qui ne peuvent pas nuire au créancier saisissant. Dès lors, il n'est pas nécessaire que l'on fasse mention au registre de ces droits.

M. RICHTER (Allemagne) appuie l'observation du président. A son avis, la personne ayant conclu un des deux contrats mentionnés avec celui qui était propriétaire du bateau lorsque ce dernier a été saisi, ne peut opposer son droit, car il ne s'agit que d'obligations purement personnelles entre l'affrètement ou le loueur et le propriétaire. Le contrat d'affrètement n'a pas d'effets réels et ne joue qu'entre les parties qui l'ont conclu.

M. VAN SLOOTEN (Pays-Bas) explique qu'il y a une différence entre la législation néerlandaise, d'après laquelle l'acquéreur d'un bateau est tenu par un contrat de louage conclu par un ancien propriétaire, et les législations suisse et allemande, où tel n'est pas le cas. La disposition contenue dans l'amendement néerlandais n'est gênante pour aucun État et donnera satisfaction aux intérêts néerlandais.

M. RICHTER (Allemagne), commentant les amendements de la délégation allemande, dit que l'application de l'alinéa 2 de l'article 27 et de l'article 30 rencontrerait des difficultés si l'exécution forcée pouvait se dérouler dans un pays autre que celui où le bateau se trouve matériellement. C'est pourquoi l'article 25 de la proposition allemande exclut cette possibilité. En ce qui concerne l'article 26, celui-ci impose aux bureaux d'immatriculation une obligation irréalisable en les contraignant à prendre les mesures nécessaires pour que toutes les personnes venant consulter les registres aient connaissance du résumé. Tout ce que peut faire le Bureau d'immatriculation, c'est de permettre à ces personnes de prendre connaissance de ces deux documents.

Le PRÉSIDENT constate que la Commission est d'accord pour adopter la proposition allemande qui est renvoyée au Comité de rédaction.

#### Article 27.

M. PANTITCH (Yougoslavie) trouve trop court le délai de trois semaines, étant donné les lenteurs administratives, et propose un mois.

M. RIPERT (France) demande par qui les créanciers inscrits devront être avisés (premier alinéa).

Le PRÉSIDENT dit qu'à son avis c'était par les bureaux d'immatriculation, mais, d'après M. Richter, l'intention a été de laisser la question ouverte.

M. VAN SLOOTEN (Pays-Bas) ajoute que la question est laissée à la loi du pays d'exécution.

M. SOUBOTITCH (Yougoslavie) croit que l'explication est donnée dans le texte de l'article 26, deuxième alinéa par les mots « un état de ces créanciers contenant les adresses indiquées par eux ».

Le PRÉSIDENT constate que la Commission adopte l'amendement yougoslave qui consiste à porter le délai à un mois.

M. SOUBOTITCH (Yougoslavie) ajoute que le texte du premier alinéa n'indique pas clairement dans quel délai la date de la vente doit être communiquée aux créanciers.

M. RICHTER (Allemagne) explique que la rédaction n'est pas bien claire : le délai d'un mois au moins prévu à la fin de l'alinéa vise la communication de la date de la vente aussi bien que sa publication.

Le PRÉSIDENT dit que le Comité de rédaction retouchera ce passage de l'article 27.

*L'article est adopté.*

*La suite de la discussion est reportée à une séance ultérieure.*

#### NOMINATION D'UN COMITÉ DE VÉRIFICATION DES POUVOIRS.

Au nom du Président de la Conférence, le PRÉSIDENT dit que ce Comité a été ainsi composé :

M. DE RUELLE,  
M. ROSSETTI,  
M. CONTZESCO,  
M. YOVANOVITCH,  
M. ALBRECHT.

*Secrétaire :*

M. GIRAUD, membre de la Section juridique du Secrétariat.

NOMINATION D'UN SOUS-COMITÉ DE L'ARTICLE 37.

Le PRÉSIDENT dit que ce Comité sera ainsi constitué :

M. ROSSETTI,  
M. SOUBOTITCH,  
M. SULKOWSKI,  
M. CONTZESCO,  
M. CHARGUÉRAUD-HARTMANN,  
M. MÜLLER,  
M. ALBRECHT,  
M. VAN SLOOTEN,  
M. WINIARSKI,  
M. HOSTIE,  
M. HOHL.

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DIXIÈME SÉANCE

Tenue le samedi 29 novembre 1930, à 17 heures.

Président: Le professeur Robert HAAB (Suisse).

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XI. Examen du projet de Convention (suite).

TITRE PREMIER. — DE L'IMMATRICULATION (suite).

Articles 2 et 3 (suite).

Le PRÉSIDENT rappelle que, il y a quelques jours, la Commission a institué un Sous-Comité pour élaborer, dans un esprit de conciliation, une formule concernant les articles 2 et 3 à laquelle toutes les délégations pourraient se rallier. Ont pris part aux travaux de ce Comité les délégations allemande, belge, française, néerlandaise, tchécoslovaque et yougoslave. Le Comité a tenu plusieurs séances. Il en est résulté que, sur beaucoup de questions, il n'y a pas de divergence d'opinions. Or, par contre, il existe toujours les cas — probablement peu importants en pratique — pour lesquels, jusqu'à présent, une formule de conciliation acceptable pour toutes les délégations n'a pu être trouvée. Pour éclaircir la situation devant laquelle la Commission se trouve, le président estime qu'il y a lieu de procéder, dans le sein de la Commission même, à un nouvel échange de vues. Il invite toutes les délégations à faire connaître leur opinion en ce qui concerne les questions de principe réglées dans les articles 2 et 3 du projet de Convention.

M. RICHTER (Allemagne) estime que le point de vue de la délégation allemande sur ce sujet a été si amplement développé qu'il est inutile pour elle de répéter quelles sont les considérations qui la guident.

Son projet d'amendement primitif (voir annexe 1, page 184) est considéré par elle comme indiquant la meilleure solution. Elle a soumis à la Commission son deuxième projet d'amendement (voir annexe 13, page 204) dans un esprit de conciliation et ne peut que maintenir l'un ou l'autre de ces deux points de vue.

M. LAWATSCHER (Autriche) rappelle que la délégation autrichienne a présenté un amendement à l'article 3, mais, dans un esprit de conciliation, elle est disposée à considérer favorablement toute proposition à laquelle se ralliera la majorité de la Commission.

M. DE RUELLE (Belgique) déclare que la délégation belge donne la préférence au texte actuel du projet de Convention.

M. RIBERT (France) rappelle qu'au cours de la première séance de la Commission, la délégation française a fait savoir qu'elle est venue à la Conférence, persuadée que l'article 3 du projet de Convention servirait de base aux discussions. En effet, au sein du Comité du droit fluvial, la délégation française avait abandonné sa conception primitive et donné son assentiment au texte actuel de l'article 3, avec la réserve indiquée dans son alinéa 4.

C'est donc avec un certain étonnement qu'elle a constaté que le principe même de cet article 3, c'est-à-dire le libre choix du pays d'immatriculation laissé au propriétaire avec la réserve de l'alinéa 4, était remis en question. Aussi, quand la délégation allemande a présenté son premier projet d'amendement consistant à remplacer cette formule par celle déterminant le lieu d'immatriculation par le port d'attache, la délégation française a-t-elle considéré qu'il lui était impossible de l'accepter.

En ce qui concerne l'amendement présenté ultérieurement par la délégation allemande, la délégation française ne peut comprendre pourquoi la délégation allemande veut subordonner la réserve de l'alinéa 4 au choix du propriétaire — car le port d'attache peut être choisi librement par celui-ci — ce qui réduirait à néant la prérogative que les États entendent se réserver.

La délégation française déclare, dans ces conditions, s'en tenir au texte actuel des articles 2 et 3 du projet de Convention.

M. DE DIETRICH DE SACHSENFELS (Hongrie) déclare que, conformément aux instructions reçues de son gouvernement, la délégation hongroise donne également la préférence au texte actuel du projet.

M. ROSSETTI (Italie) partage la manière de voir de M. Ripert et déclare que la délégation italienne s'en tient au texte actuel du projet.

M. VAN SLOOTEN (Pays-Bas) fait ressortir que l'unique préoccupation de la délégation néerlandaise est d'obtenir que tous les bateaux soient immatriculés et ne puissent être immatriculés que dans un seul pays, et elle estime que le texte actuel du projet est suffisant. Toutefois, pour tenir compte des objections que certaines délégations ont fait valoir contre la notion de la nationalité du propriétaire, la délégation néerlandaise a présenté un projet d'amendement où cette notion de nationalité est remplacée par celle du domicile. Elle estime utile de garder ce projet d'amendement en réserve, pour le cas où la Commission chercherait à nouveau à s'entendre sur cette base.

M. SUŁKOWSKI (Pologne) rappelle que la délégation polonaise a présenté un projet d'amendement qu'elle a retiré par esprit de conciliation. Elle est prête à poursuivre la discussion sur la base des articles 2 et 3 du texte actuel du projet de Convention.

M. FERRAZ D'ANDRADE (Portugal) déclare que la délégation portugaise donne également la préférence à ce texte.

M. CONTZESCO (Roumanie) rappelle que la délégation roumaine était toute disposée à faire certaines concessions, mais qu'en l'état actuel des choses elle entend s'en tenir au texte du projet.

M. HOHL (Suisse) déclare que la délégation suisse se rallie également au texte actuel du projet, étant donné la grande difficulté de trouver un autre terrain d'entente.

M. MÜLLER (Tchécoslovaquie), M. YOVANOVITCH (Yougoslavie) et M. CENTNER (Sarre) déclarent que leurs délégations respectives se rallient également au texte actuel des articles 2 et 3 du projet de Convention.

Le PRÉSIDENT considère n'avoir rien à ajouter aux déclarations qui viennent d'être faites par les diverses délégations et il invite la Commission à aborder la discussion des questions qu'elle a réservées pour la fin des débats, c'est-à-dire :

1. La question des bateaux de plaisance, article 4, premier alinéa, n° 2 (article 10 *bis* des propositions de la délégation allemande) ;
2. La question des dragues, grues, élévateurs flottants, etc. ;
3. La question des bateaux en construction (article 4, deuxième alinéa, n° 4 et troisième et quatrième alinéas) ;
4. La question de la saisie conservatoire ;
5. La question faisant l'objet de l'amendement proposé par la délégation hellénique (article 10, voir annexe 4, page 200).

*Article 4, premier alinéa, n° 2 (suite).*

Le PRÉSIDENT rappelle que le texte actuel de l'article 4 dispense les bateaux de plaisance de l'obligation de se faire immatriculer prévue à l'article 3, à moins que la législation d'un État contractant ne les soumette à cette obligation. Il s'agit pour la Commission de décider si elle maintient cette exception ou si elle entend assimiler purement et simplement les bateaux de plaisance aux autres bateaux.

M. ROSSETTI (Italie) dit qu'il ne pourrait que répéter les arguments qu'il a déjà présentés et il considère que la Commission doit s'en tenir au texte actuel de l'article 4 et laisser aux diverses législations nationales le soin de régler comme elles l'entendent la question de l'immatriculation des bateaux de plaisance, assimilés par certains États aux bâtiments de guerre, jusqu'à ce qu'une convention spéciale à cette matière puisse intervenir.

M. CONTZESCO (Roumanie) signale qu'en Roumanie les bateaux de plaisance sont assimilés, en ce qui concerne l'immatriculation, aux bateaux de guerre, et il se prononce pour le maintien du texte actuel de l'article 4.

M. RICHTER (Allemagne) déclare que la délégation allemande retire son projet d'amendement, visant à la suppression de l'article 4 et qu'elle se rallie au texte actuel du projet de Convention.

Le PRÉSIDENT constate que la Commission est d'accord pour maintenir tel quel le n° 2 du premier alinéa de l'article 4.



*Article 1, premier alinéa, n° 1 (suite).*

M. DE RUELLE (Belgique) rappelle que la Commission a décidé, au cours de sa deuxième séance, sur la proposition de la délégation allemande, de soumettre à l'obligation de l'immatriculation les dragues, grues et élévateurs flottants.

Il demande à la Commission de préciser que cette obligation ne vise pas ceux de ces engins qui sont attachés d'une façon permanente à un port.

Le PRÉSIDENT signale que le Comité de rédaction n'a pas encore rédigé le texte de ce premier paragraphe de l'article 4. Il demande si la Commission est d'accord pour inviter le Comité de rédaction à faire une distinction entre les dragues, grues et élévateurs, dans le sens indiqué par M. de Ruelle.

M. DE RUELLE (Belgique) précise que son observation vise surtout les grues et les élévateurs.

M. HOUBEURT (France) déclare partager la manière de voir de M. de Ruelle.

M. RICHTER (Allemagne) déclare que la délégation allemande, qui avait demandé l'assimilation des dragues, etc., aux autres bateaux, accepte la proposition de M. de Ruelle.

Le PRÉSIDENT constate que la Commission est d'accord pour que le Comité de rédaction soit invité à tenir compte, dans la rédaction du n° 1 du premier alinéa de l'article 4, de la distinction indiquée par M. de Ruelle, en ce qui concerne les grues et les élévateurs qui sont stationnaires dans un port.

*Articles 5 et 8 (suite).*

*Rapport du Sous-Comité technique.*

M. MÜLLER (Tchécoslovaquie) attire l'attention de la Commission sur le rapport relatif aux articles 5 et 8 (voir annexe 16, pages 204 et 205) qui lui a été soumis par le Sous-Comité technique.

M. ROMEIN, membre de la Section des communications et du transit, fait observer que si la Commission pouvait se prononcer sur ce rapport, le travail du Comité de rédaction en serait facilité.

M. HOUBEURT (France), sur l'invitation du Président, fait un bref résumé, à titre de membre du Sous-Comité technique, du rapport relatif aux articles 5 et 8 présenté par celui-ci.

M. ROSSETTI (Italie) demande si le Sous-Comité technique a tenu compte des inscriptions réglementaires prévues dans la Convention sur le jaugeage. En ce qui concerne, par exemple, la lettre indicative de l'État, celle-ci devra-t-elle être reproduite deux fois ?

M. HOUBEURT (France) fait observer que la Convention sur le jaugeage ne prévoit aucune inscription qui soit obligatoirement apparente. Elle vise des inscriptions qui figurent généralement près du poinçon.

M. Houbeurt signale à l'attention des différentes délégations le système adopté en France, qui prévoit un même numéro pour le jaugeage et pour l'immatriculation.

M. ROSSETTI (Italie) déclare accepter toutes les propositions formulées dans le rapport, mais demande qu'un léger changement de forme soit apporté au texte de la première phrase proposé par le Sous-Comité technique pour l'article 8 (voir annexe 16, page 205), phrase qu'il demande de rédiger comme suit : « Tout bateau immatriculé doit porter, sur les deux côtés ou sur l'arrière... »

Le PRÉSIDENT invite le Comité de rédaction à tenir compte de cette observation et constate que la Commission adopte les propositions formulées dans le rapport du Sous-Comité technique.

*Article 4, premier alinéa, n° 4, et article 5, alinéa 3 (suite).*

Le PRÉSIDENT donne lecture des articles 4, n° 4 de l'alinéa 1 et article 5, alinéa 3, du projet de Convention, relatifs aux bateaux en construction.

Il rappelle que la Commission est saisie d'un projet d'amendement allemand sur ce point (voir annexe 1, page 184).

M. RICHTER (Allemagne) fait ressortir qu'il s'agit de modifications purement rédactionnelles.

Le PRÉSIDENT constate que la Commission accepte la proposition allemande quant au fond et qu'elle la renvoie au Comité de rédaction pour les modifications de forme qui seront jugées nécessaires.

**TITRE III. — DE L'EXÉCUTION FORCÉE (suite).**

*Nouvel article relatif à la saisie conservatoire destiné à être inséré entre les articles 24 et 25 sous le titre III.*

Le PRÉSIDENT donne lecture du nouveau texte destiné à être inséré entre les articles 24 et 25 voir annexe 17, page 206) proposé par le Sous-Comité nommé spécialement à cet effet.

*Rapport du Sous-Comité pour la question de la saisie conservatoire.*

M. RIPERT (France) explique que le Sous-Comité a examiné la question de savoir s'il était possible de donner à la saisie conservatoire un effet extra-territorial, et que le texte qu'il propose indique la solution que le Sous-Comité juge être la seule qui puisse être adoptée dès à présent.

Les conflits ne prendront fin que lorsque la validité et les effets de la saisie conservatoire auront été réglés définitivement par une nouvelle convention internationale qui devra préciser les points suivants :

- 1<sup>o</sup> Quels sont les créanciers qui ont le droit de saisir ?
- 2<sup>o</sup> Quelles sont les garanties à donner aux propriétaires relativement à la validité de la saisie ?
- 3<sup>o</sup> Transmission des procès-verbaux de saisie au bureau d'immatriculation du bateau saisi ;
- 4<sup>o</sup> Effets d'une saisie effectuée à l'étranger.

Le Sous-Comité ne se dissimule pas que le texte qu'il propose laissera une lacune dans la Convention. C'est ainsi, par exemple, que dans le cas d'un bateau néerlandais saisi sur le Danube, la question se pose de savoir quelles sont les mesures que le conservateur du registre hollandais devra prendre lorsqu'il recevra avis de la saisie. Il ne peut, en effet, inscrire la saisie au registre de sa propre autorité.

Étant donné que les diverses législations nationales présentent des différences considérables sur ce point, il semble impossible de régler, à l'heure actuelle, l'effet international de la saisie. Toutefois, l'inconvénient de droit peut être supprimé en fait, si on peut opposer aux intéressés de mauvaise foi qu'ils étaient à même de connaître les dispositions régissant la saisie dans le pays d'immatriculation et dans le pays où la saisie a lieu.

La première phrase du texte stipule que « La validité et les effets de la saisie conservatoire des bateaux restent régis par les lois nationales ». Le Sous-Comité a voulu simplement constater le droit existant et les mots « lois nationales » sont au pluriel, car il s'agit des lois du pays d'immatriculation et du pays où la saisie est effectuée.

Le deuxième paragraphe prévoit la communication des avis de saisie. Il suffira que les États prennent les dispositions nécessaires pour que l'huissier saisissant donne toutes les indications nécessaires au greffe, qui expédiera un avis au bureau d'immatriculation. Celui-ci se contentera d'épingler cet avis à la page du registre concernant le bateau saisi.

M. Ripert répète que le Sous-Comité a estimé que cette solution est la seule qui puisse être acceptée par la Commission. Celle-ci pourra émettre un vœu recommandant l'élaboration ultérieure d'une nouvelle Convention.

Le PRÉSIDENT déclare partager entièrement l'avis du Sous-Comité. Des dispositions supplémentaires à celles prévues dans le texte soumis à la Commission toucheraient au fond même de la question et donneraient lieu à des difficultés insurmontables.

M. SITENSKY (Tchécoslovaquie) déclare partager également l'avis du Sous-Comité. Il estime qu'il faut se contenter d'une simple règle pour la publicité de la saisie. La délégation tchécoslovaque accepte, en conséquence, le texte proposé.

M. ROSSETTI (Italie) déclare que la délégation italienne l'accepte également.

M. RICHTER (Allemagne) estime, lui aussi, que la solution proposée est la seule possible. Il n'a pas disposé du temps nécessaire pour en faire une étude approfondie, mais il lui semble, toutefois, que le texte présente une lacune. En effet, s'il n'est pas possible d'envisager un formulaire international, on pourrait tout au moins prévoir un titre ou une formule figurant en tête de l'avis de saisie, qui le ferait reconnaître comme tel dans tous les pays.

M. RIPERT (France) appuie la proposition de M. Richter.

Le PRÉSIDENT invite le Comité de rédaction à tenir compte de cette observation.

M. CONTZESCO (Roumanie) considère qu'il serait nécessaire de donner au conservateur du registre la possibilité de prouver qu'il a dûment épinglé l'avis de saisie sur le registre en temps voulu, et de se garantir contre une accusation éventuelle de ne pas l'avoir fait.

M. RIPERT (France) estime que chaque État doit arrêter sa propre réglementation sur ce point.

M. NAUTA (Pays-Bas) déclare que la délégation néerlandaise retire le projet d'amendement qu'elle avait déposé et qu'elle accepte le texte proposé par le Sous-Comité.

Le PRÉSIDENT constate que la Commission adopte le texte qui lui a été soumis, sous réserve d'une modification de rédaction qui tienne compte de l'observation de M. Richter en ce qui concerne l'adoption d'une formule internationale devant figurer en tête des avis de saisie.

Il constate également que la Commission est unanime à considérer comme hautement désirable qu'une convention internationale ultérieure réglemente d'une façon complète la validité et les effets de la saisie conservatoire des bateaux du point de vue international.

M. SOUBOTITCH (Yougoslavie) suggère que la Commission émette une résolution en ce sens.

M. ROSSETTI (Italie) demande si la saisie conservatoire fera l'objet d'un titre spécial dans la Convention.

Après un échange de vues, le PRÉSIDENT constate que la Commission est d'accord pour que le titre III de la Convention soit intitulé « De la saisie conservatoire et de l'exécution forcées », l'article concernant la saisie conservatoire formant le premier article de ce titre.

#### Article 28.

Le PRÉSIDENT donne lecture de l'article 28 du projet de Convention et rappelle que la Commission est saisie sur ce point d'un projet d'amendement de la délégation allemande, dont il donne lecture (voir annexe 1, page 188).

M. RICHTER (Allemagne) explique que la délégation allemande a jugé nécessaire de compléter le texte primitif de l'article 28. Il s'agit simplement de poser un principe et de laisser le soin aux législations nationales d'arrêter les modalités de son acceptation. Toutefois, il doit être entendu que la réparation ne peut être subordonnée à la condition de réciprocité.

M. CONTZESCO (Roumanie) demande si la Commission considère juste que l'État doive vraiment être tenu responsable du préjudice causé.

Le PRÉSIDENT et M. RICHTER (Allemagne) précisent que la Convention n'impose pas à l'État l'obligation de réparer le préjudice causé, mais qu'elle exige qu'il y ait une sanction à l'inobservation des formalités prescrites à l'article 27, et l'État a le choix entre les diverses possibilités prévues audit article 27.

M. RIPERT (France) et M. ROSSETTI (Italie) signalent que si l'amendement allemand est adopté, la formule « dans les conditions fixées par la loi nationale » ferait double emploi avec la formule « selon ladite loi », qui figure déjà dans l'article 28 primitif.

Le PRÉSIDENT constate que la Commission adopte l'amendement proposé par la délégation allemande, sous réserve des modifications de forme qui lui seront apportées par le Comité de rédaction.

#### Article 29.

Le PRÉSIDENT donne lecture de l'article 29 du projet de Convention.

Il rappelle qu'au cours de sa cinquième séance, la Commission, sur la proposition de la délégation allemande, a décidé de supprimer le n° 1 du premier alinéa de l'article 18 et de rédiger l'article 29 conformément au projet d'amendement allemand (voir annexe 1, page 188).

Le chiffre IX du Protocole de clôture a été supprimé de ce fait.

Le PRÉSIDENT constate que la Commission maintient sa décision et qu'elle adopte le texte proposé par la délégation allemande pour l'article 29, sous réserve des modifications de forme que le Comité de rédaction jugera nécessaires.

#### Article 30.

Le PRÉSIDENT donne lecture de l'article 30 du projet de Convention.

M. RIPERT (France) déclare ne pas bien comprendre comment les dispositions prévues à l'article 30 devront jouer. Cet article prévoit, en effet, que lorsqu'un bateau fait l'objet d'une vente forcée à l'étranger, le bureau d'immatriculation doit procéder à la radiation des hypothèques éteintes. Or, il semble que ce bureau devra également changer le nom du propriétaire ou même procéder à la radiation complète de l'immatriculation, si le bateau doit être immatriculé dans un pays différent.

D'autre part, le deuxième alinéa de l'article prévoit que l'autorité compétente du pays d'immatriculation devra informer les créanciers inscrits de la radiation opérée. Or, ces créanciers devront déjà avoir été prévenus, conformément aux dispositions de l'article 28.

M. NAUTA (Pays-Bas) rappelle qu'en cas de simple vente, l'acheteur peut demander le changement d'immatriculation et qu'une pareille procédure pourrait être adoptée dans le cas de vente forcée.

M. RIPERT (France) estime qu'il ne serait pas très légal de charger l'adjudicataire de se mettre en rapport avec les créanciers hypothécaires.

M. NAUTA (Pays-Bas) fait observer que la vente forcée éteint les hypothèques.

M. RICHTER (Allemagne) croit se souvenir que le Comité du droit fluvial avait envisagé de faire mention du propriétaire à l'article 30. Mais il y a renoncé par égard aux pays qui réservent leurs registres à leurs nationaux. Il n'a pas voulu, en effet, dans le cas où un bateau immatriculé

dans un de ces pays fait l'objet d'une vente forcée et que l'acquéreur est un ressortissant d'un autre pays, rendre obligatoire la mention du nouveau propriétaire sur le registre.

M. RIPERT (France) fait ressortir que si le bateau reste inscrit au nom de l'ancien propriétaire, les indications du registre deviennent inexactes.

M. SUŁKOWSKI (Pologne) signale que l'article 6 laisse à la loi du pays d'immatriculation le soin de désigner la personne à laquelle incombe l'obligation de faire la déclaration au bureau d'immatriculation. Par conséquent, l'adjudicataire fera une déclaration au bureau et sera inscrite dans le registre si la législation du pays le permet.

M. SITENSKY (Tchécoslovaquie) fait observer que l'article 30 vise seulement la radiation des hypothèques et non pas leur extinction. Il attire l'attention de la Commission sur le danger qu'un certain intervalle de temps puisse séparer la radiation de l'extinction, et il suggère qu'il soit stipulé que l'hypothèque s'éteint lors de sa radiation.

M. SUŁKOWSKI (Pologne) lui fait observer que l'hypothèque s'éteint avec la vente forcée.

M. NAUTA (Pays-Bas) fait ressortir que si, en règle générale, les conditions d'immatriculation sont régies par les législations nationales, l'article 15 prévoit une exception pour le cas d'exécution forcée.

M. RICHTER (Allemagne) déclare partager la manière de voir de M. Ripert. Il suggère que l'article 30 précise que l'expédition authentique de l'acte d'adjudication suffit à justifier le changement de propriétaire.

M. RIPERT (France) se déclare d'accord. Il suffit de trouver une rédaction satisfaisante, mais il est indispensable que l'article 30 ne reste pas muet en ce qui concerne le changement de propriétaire.

Le PRÉSIDENT constate que la Commission invite le Comité de rédaction à tenir compte des observations de M. Ripert et de M. Richter et que, sous réserve de ces modifications de forme, elle adopte l'article 30 du projet de Convention.

#### TITRE IV. — DISPOSITIONS GÉNÉRALES (suite).

##### Article 37.

M. ROSSETTI (Italie) informe la Commission que les travaux du Comité chargé de l'étude de l'article 37 n'ont fait que commencer.

##### Clauses protocolaires.

M. SOUBOTITCH (Yougoslavie) attire l'attention de la Commission sur la nécessité d'arrêter les clauses concernant l'entrée en vigueur de la Convention, sa durée, etc.

Il suggère qu'un Sous-Comité soit désigné à cet effet.

M. ROSSETTI (Italie) répond que, conformément à l'usage, le soin d'élaborer ces clauses protocolaires devrait être laissé au Bureau de la Conférence qui soumettra, en temps utile, un projet de texte à la Commission.

M. DE RUELLE (Belgique) souligne qu'il doit suffire à la Commission de se mettre d'accord en principe sur les points suivants :

- 1° La Convention devra être ratifiée ;
- 2° Les États non signataires auront ou n'auront pas la faculté d'y adhérer ;
- 3° Elle sera dénonçable moyennant un préavis à déterminer.

M. ROMEIN, membre de la Section des communications et du transit, signale que M. Giraud, de la Section juridique du Secrétariat, a suivi les travaux de la Conférence et de ses trois commissions et qu'il prépare des projets de clauses protocolaires qui seront soumis au Comité de rédaction d'abord, puis à la Conférence.

M. ROSSETTI (Italie) estime inutile de soumettre les projets en question au Comité de rédaction. La Section juridique les rédigera en effet dans les formes habituelles et, quant aux questions de fond, elles ne sont pas de la compétence du Comité de rédaction.

Il suggère que les dates, délais, etc., soient laissés en blanc et discutés par la Conférence plénière.

Le PRÉSIDENT constate que la Commission est d'accord pour qu'il en soit ainsi et que le Bureau de la Conférence soumette à celle-ci le projet qui sera élaboré par la Section juridique du Secrétariat.

M. DE RUELLE (Belgique) ajoute qu'il y a lieu de prévoir encore les demandes de révision de la Convention.

*Protocole de clôture.*

*Chiffre I.*

Le PRÉSIDENT donne lecture du chiffre I du Protocole de clôture. Il rappelle que la Commission est saisie d'un projet d'amendement allemand demandant la suppression de la dernière phrase : « telles que la Convention de Genève du 8 novembre 1927 ».

M. ROSSETTI (Italie) suggère que soit adoptée la décision prise dans un cas analogue par la première Commission, c'est-à-dire que la phrase visée dans le projet d'amendement allemand soit supprimée et que le mot « notamment » fasse suite aux mots « question qui demeure réservée ».

M. SITENSKY (Tchécoslovaquie) signale qu'il y aurait lieu de remplacer le mot « les » par le mot « ses » à la fin de la quatrième ligne du chiffre I du Protocole de clôture.

Le PRÉSIDENT constate que ce *chiffre I du Protocole de clôture est adopté*, sous réserve des modifications de forme indiquées, c'est-à-dire :

- 1<sup>o</sup> Remplacer « les » par « ses » à la quatrième ligne ;
- 2<sup>o</sup> Ajouter le mot « notamment » à la fin de la septième ligne ;
- 3<sup>o</sup> Supprimer la dernière phrase : « telles que la Convention de Genève du 8 novembre 1927 ».

*Dispositions transitoires.*

Le PRÉSIDENT rappelle que la Commission doit prévoir des dispositions transitoires régissant a tenue des registres, les indications des certificats d'immatriculation, les inscriptions sur les coques des bateaux, etc., dans la période suivant immédiatement l'entrée en vigueur de la Convention.

M. SOUBOTITCH (Yougoslavie) signale que les autorités yougoslaves, ayant à créer de toutes pièces un service d'immatriculation et à former le personnel nécessaire, ont fait savoir qu'un délai de cinq années leur sera nécessaire.

Après un échange de vues, auquel prennent part tous les membres de la Commission, le PRÉSIDENT constate que *les dispositions suivantes sont adoptées* :

- 1<sup>o</sup> En ce qui concerne les registres, il est décidé que le délai de leur mise en conformité des prescriptions de la Convention sera de deux ans à partir de la date de la dernière ratification nécessaire pour l'entrée en vigueur de la Convention ;
- 2<sup>o</sup> En ce qui concerne les certificats d'immatriculation et les inscriptions sur les bateaux, il est décidé que le délai sera de trois ans à partir de la date de la mise en vigueur de la Convention.

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ONZIÈME SÉANCE

*Tenue le vendredi 5 décembre 1930, à 17 heures.*

*Président : Le professeur Robert HAAB (Suisse).*

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XII. Examen du projet de Convention (suite).

TITRE PREMIER. — DE L'IMMATRICULATION (suite).

Articles 2 et 3 (textes du projet de Convention) (suite).

Le PRÉSIDENT met en discussion les amendements de la délégation autrichienne à l'article 3 (voir annexe 11, page 203), consistant :

- 1<sup>o</sup> A insérer entre les mots « appartenant » et « et remplissant » les mots « pour plus de moitié » (alinéa 4) ;
- 2<sup>o</sup> A remplacer les mots « remplissant les conditions d'immatriculation de deux ou plusieurs États » par les mots « remplissant de même les conditions d'immatriculation d'un ou de plusieurs autres États » (alinéa 4) ;
- 3<sup>o</sup> A ajouter à l'article 3 un cinquième alinéa ainsi conçu :  
« Le même droit est réservé à chaque État contractant en ce qui concerne les bateaux qui appartiennent aux personnes physiques ressortissant de l'État en question et destinés à être utilisés exclusivement dans la navigation à l'intérieur du territoire dudit État, même dans le cas où le propriétaire n'a pas son domicile sur ledit territoire. »

M. LAWATSCHEK (Autriche) explique quelles sont les raisons qui ont déterminé la délégation autrichienne à présenter cette proposition. Le premier amendement tend à éviter qu'un État exige l'inscription lorsque la part du copropriétaire intéressé est tout à fait minime.

En ce qui concerne le deuxième amendement, il semble apporter un éclaircissement utile au texte du projet de Convention.

Enfin, le nouvel alinéa proposé vise un cas d'où il résulterait une situation de droit peu admissible pour tous les États contractants.

Le PRÉSIDENT ouvre la discussion sur le premier point de l'amendement autrichien.

M. DESCAMPS (Belgique) appuie cet amendement.

*L'amendement est adopté.*

Le PRÉSIDENT ouvre la discussion sur le deuxième point de l'amendement autrichien. Il ajoute qu'à son avis le texte du projet de Convention est suffisamment clair. La délégation autrichienne maintient-elle son amendement ?

M. LAWATSCHEK (Autriche) répond affirmativement.

M. RIPERT (France) appuie l'amendement autrichien dont il trouve le texte meilleur que celui du projet de Convention.

*Cet amendement est adopté.*

Le PRÉSIDENT met en discussion le troisième point de l'amendement autrichien consistant à ajouter un cinquième alinéa à l'article 3 du projet de Convention.

M. ROSSETTI (Italie) propose, au lieu de faire un nouvel alinéa, de compléter l'alinéa 4 actuel par le texte de la délégation autrichienne, puisqu'il s'agit d'une même matière.

M. RIPERT (France) propose de modifier l'expression « destinés à être utilisés exclusivement dans la navigation à l'intérieur du territoire ». Ce qui importe, ce n'est pas la destination de ces bateaux, mais leur utilisation réelle ; il faut dire « utilisés exclusivement ».

M. SITENSKY (Tchécoslovaquie) pense qu'il faudrait plutôt employer l'expression « affectés exclusivement à la navigation à l'intérieur ».

Le PRÉSIDENT, constatant qu'il n'y a pas de divergences sur le fond propose, pour éviter une nouvelle réunion du Comité de rédaction, de charger M. Hostie de présenter une rédaction définitive.

Il demande ensuite s'il y a d'autres observations sur les articles 2 et 3.

M. RICHTER (Allemagne), rappelant que le vote définitif de la délégation allemande dépend de l'ensemble du résultat des travaux de la Commission, demande que l'on réserve le vote définitif jusqu'à ce que chaque délégation ait fait ses déclarations.

M. ROSSETTI (Italie) rappelle que les articles ont été déjà votés.

Le PRÉSIDENT rappelle qu'on a discuté ensemble les articles 2 et 3 et que chaque délégation a été invitée à faire connaître son point de vue. Il ne lui semble pas utile de revenir sur la question.

#### *Article 15 (ancien article 9).*

Le PRÉSIDENT rappelle que, lorsqu'on a discuté l'article 9, on a constaté des lacunes et décidé de charger un Comité technique de préparer une autre rédaction, en même temps qu'il rédigerait le formulaire. Il prie le président de ce Comité technique de commenter la solution proposée (voir annexe 18, page 207). Il ajoute que le texte de l'article 15 nouveau a été préparé d'un commun accord par le Comité technique et le Comité de rédaction.

M. NAUTA (Pays-Bas) dit qu'il a été chargé par le Président du Comité technique de donner quelques explications sur cet article.

Le Comité a d'abord considéré qu'il était utile de prescrire que l'intéressé désirant le transfert de l'immatriculation devait s'adresser en même temps aux deux bureaux intéressés, ce qui était plus conforme au texte du projet de Convention. Telle est la raison de la prescription contenue au deuxième alinéa du paragraphe 2, d'après lequel l'intéressé devra s'adresser aussi à l'ancien bureau en ce qui concerne la demande de radiation. Alors s'est posée la question de savoir lequel de ces deux bureaux devait engager la procédure. Cette procédure pourrait être engagée par le bureau où le bateau doit être immatriculé, car ce bureau doit envisager la possibilité d'objections contre l'immatriculation sur ses registres. Mais on peut aussi prévoir que les premières démarches doivent être faites par l'ancien bureau, qui doit envisager l'éventualité d'objections contre la radiation. Le Comité a élaboré un texte pour ces deux projets. Enfin, il a paru que la procédure serait plus simple si l'on prescrivait que l'ancien bureau devait rechercher tout d'abord s'il y avait des objections contre la radiation et, dans la négative, aviser l'autre bureau, en lui communiquant en même temps certains détails concernant le bateau. A ce moment, le deuxième bureau examinera s'il y a de son côté des objections et, dans la négative, il retirera au batelier l'ancien certificat d'immatriculation et lui délivrera le nouveau.

En outre, le Comité technique a rédigé deux formules qui se trouvent en annexes.

M. LAWATSCHER (Autriche) estime que les dispositions du nouvel article 15 concernant le transfert de l'immatriculation d'un bateau du registre d'un État contractant au registre d'un autre État, ne semblent pas complètes. En premier lieu, ne paraît-il pas nécessaire de prévoir une disposition pour le cas où la radiation d'un bateau du registre d'un État ou l'immatriculation sur le registre de l'autre État est déclarée inadmissible ? Pour régler ces cas, on pourrait insérer, après le deuxième alinéa, la disposition suivante :

« Si la demande de radiation est rejetée, le bureau de l'État où le bateau est immatriculé est obligé de prévenir le demandeur, les créanciers inscrits ayant consenti à la demande et le bureau compétent de l'État où le bateau doit être immatriculé. D'autre part, le bureau du second État ayant constaté que l'immatriculation sur son registre, étant donné les indications se trouvant sur la demande ne peut être opérée, est obligé d'en prévenir le bureau du premier État auquel il incombe de rejeter la demande proposant la radiation. »

En second lieu, il faudrait prescrire, dans la première phrase du troisième alinéa, que le bureau du premier État est obligé de transmettre au bureau du second État des copies certifiées conformes des pièces justificatives nécessaires qui se trouvent en original ou en copie dans son bureau et qui forment la base des inscriptions dont le bateau est l'objet.

On finirait en insérant une disposition concernant les demandes proposant des inscriptions qui sont parvenues au bureau du premier État, après une demande tendant au transfert de l'immatriculation. A cette fin, il y a deux possibilités. On pourrait établir que de telles demandes doivent être rejetées, ou bien prescrire que ces demandes ne devraient être traitées par le bureau du premier État que dans le cas où la demande proposant le transfert serait rejetée. Le bateau ayant été immatriculé par le bureau du second État, les demandes en question seraient renvoyées par le bureau du premier État au bureau du second État. Elles seraient considérées par ce dernier bureau comme lui étant parvenues au moment de leur arrivée au bureau du premier État.

M. NAUTA (Pays-Bas) dit que le Comité technique avait commencé par rédiger un alinéa réglant le cas où, dans le premier État, il y avait opposition au transfert de l'immatriculation. Ce bureau devrait alors informer le bureau de l'autre État. Toutefois, il y aurait encore beaucoup d'autres cas où il serait très intéressant de donner des informations, et l'on serait arrivé à un article d'une longueur démesurée ; c'est pourquoi le Comité technique a jugé préférable de supprimer tous les alinéas auxquels il avait pensé. S'il y a une opposition de la part du premier bureau, le transfert ne peut pas être effectué et, pratiquement, la procédure est finie.

En ce qui concerne l'amendement proposé par la délégation autrichienne, M. Nauta, prenant pour exemple des cas pratiques, fait ressortir qu'après que le premier bureau s'est adressé au deuxième bureau et l'a informé qu'il effectuerait la radiation, il n'est pas admissible que l'ancien propriétaire opère encore des inscriptions d'actes au premier bureau. Pendant un certain temps, le propriétaire ne pourra pas disposer de son bateau.

M. LAWATSCHER (Autriche) croit néanmoins qu'il serait utile d'insérer dans la Convention une disposition dans le sens qu'il a indiqué.

M. DE STRYKER (Belgique) dit que, assurément, si un particulier veut encore traiter avec le propriétaire, il demandera ces renseignements au bureau et il saura que la demande de transfert a déjà été faite. Si l'on admettait la proposition autrichienne, il n'y aurait plus de garantie pour personne et on ne saurait plus quelle est la situation exacte.

Le PRÉSIDENT croit que le Comité technique a envisagé toutes les hypothèses. Dans une Convention internationale, il faut se borner aux principes et laisser aux juges les controverses de détail.

*La proposition autrichienne n'est pas retenue par la Commission.*

Sur la suggestion de M. SOUBOTITCH (Yougoslavie) la Commission décide de compléter ainsi le début du paragraphe 4 :

« Dès réception de l'avis du Bureau du premier État, l'autorité compétente du deuxième État procède, s'il y a lieu..... »

*L'article 15 (ancien article 9) ainsi amendé est adopté.*

#### *Formules A et B.*

*Ces deux formules sont adoptées sans modification (voir annexe 18, page 207).*

*Article 45 (ancien article 34) (voir annexe 19, page 215).*

Le PRÉSIDENT rappelle qu'en relation avec le nouvel article 15, il y a une disposition faisant l'objet du nouvel article 45 qui avait été réservée jusqu'à ce que le Comité technique ait soumis ses propositions.

Il met cet article 45 en discussion.

M. ROSSETTI (Italie) pense qu'il doit être entendu que s'il y a doute sur les formulaires transmis ou sur une inscription que l'on ne comprend pas, l'on doit recourir à la voie diplomatique pour avoir des explications, car on ne pourrait attendre que les 230 accords bilatéraux aient été conclus.

Il pense que dans l'intention de la Commission, les formulaires ne devaient pas exclure la correspondance, mais l'aider. Il semble, au contraire, résulter du texte actuel que la correspondance serait exclue s'il n'y a pas de formulaire.

M. CHARGUÉRAUD-HARTMANN (France) estime que d'après ce qu'avait décidé la Commission, on devait précisément préparer des formulaires pour éviter des correspondances directes entre des bureaux qui risquaient de ne pas se comprendre. Le Comité de rédaction a pensé qu'il répondait aux intentions de la Commission de supprimer la correspondance, sauf lorsqu'elle était conforme aux accords bilatéraux envisagés et lorsqu'il y avait un formulaire.

M. ROSSETTI (Italie) croit qu'il y a malentendu. A son avis, ce que l'on avait voulu éviter, ce n'était pas la correspondance, mais la difficulté résultant de la question des langues. On devrait conserver l'article tel quel et ajouter les mots : « et en faisant usage, de préférence, des formulaires ». Si cela n'est pas possible, les autorités intéressées trouveront le moyen de correspondre entre elles, sans quoi, au lieu de faciliter l'application de l'ancien article 34, on la rendrait plus malaisée.

M. CHARGUÉRAUD-HARTMANN (France) attire l'attention sur la dernière phrase du second alinéa de l'article 45 actuel, où se trouvent les mots : « ou par toute autre voie prévue pour de telles communications ». Il y a des voies déjà prévues par des accords entre un très grand nombre d'États. Il pense que cette disposition donnera satisfaction au délégué de l'Italie : il n'est pas nécessaire de faire un accord spécial, car dans beaucoup de cas cet accord existe déjà.

M. DE RUELLE (Belgique) pense que l'on pourrait rendre acceptable le second alinéa en ajoutant les mots : « ou par toute autre voie admise dans la pratique ». A côté de la procédure réglée par des accords formels, il peut s'établir des usages pratiques tendant à correspondre directement. Pourquoi dire d'avance que l'on n'admet pas cette possibilité ? Mieux vaut, au contraire, la laisser se développer.

M. SITENSKY (Tchécoslovaquie) dit que, au Comité de rédaction, il a fait la même objection que vient de soulever M. Rossetti, et c'est précisément pour cela que l'on a ajouté les mots signalés par M. Charguéraud. En effet, il ne fallait pas limiter la possibilité d'une communication directe au cas où il y aurait des formulaires spéciaux, car il peut arriver que les communications directes soient déjà officiellement prévues ou que la langue soit la même.

M. Sitenisky appuie d'ailleurs la suggestion de M. de Ruelle qui rendrait le texte plus clair.

M. SOUBOTITCH (Yougoslavie) pense que la préoccupation de M. de Ruelle est couverte par les mots signalés par M. Charguéraud. Les autres voies prévues peuvent résulter soit de la pratique, soit de textes officiels.

M. CHARGUÉRAUD-HARTMANN (France) croit cependant que la suggestion de M. de Ruelle améliorerait le texte de l'article 45.

M. ROSSETTI (Italie) insiste sur son observation précédente. La proposition de M. de Ruelle parle de la pratique, mais l'on sait combien les États sont, en général, contraires à cette pratique. Un bureau pourrait refuser de répondre en disant que rien ne l'y oblige. Au surplus, les bureaux d'immatriculation ne sont pas au courant de toutes les dispositions conventionnelles réglant la matière entre les États.

M. DE RUELLE (Belgique) propose de dire : « dans la mesure du possible » au lieu de « de préférence », au premier alinéa.

M. CHARGUÉRAUD-HARTMANN (France) dit qu'il semble impossible de prévoir des communications directes entre deux bureaux n'ayant pas la même langue.

M. ROSSETTI (Italie) répond que, dans des conventions aussi importantes que celles qui prévoient la transmission des actes judiciaires, aucune langue n'est prévue ; or, ces transmissions fonctionnent très bien.

M. DE RUELLE (Belgique) fait observer que ces conventions prévoient une traduction dans la langue du pays requis.

M. CONTZESCO (Roumanie) estime que des traductions sont indispensables. Il n'est pas possible que la correspondance entre les différentes autorités puisse se faire dans des langues qui leur sont incompréhensibles. Il ajoute que la correspondance par la voie diplomatique présente l'inconvénient d'être fort longue.

M. RICHTER (Allemagne), tout en estimant très souhaitable de prévoir des communications directes dans la plus grande mesure possible, dit que des communications directes dont la procédure ne serait pas réglée seraient plus nuisibles qu'utiles. C'est pourquoi il ne peut se rallier à la proposition du délégué de l'Italie. Il demande le maintien de l'article 45 amendé par le délégué de la Belgique.

M. SITENSKY (Tchécoslovaquie) pense que, dans cette convention, on ne peut prévoir une traduction : cela doit être laissé aux accords bilatéraux qui interviendront certainement selon les besoins. A son avis, le texte de l'article 45 répond à toutes les exigences.



M. ROSSETTI (Italie) croit qu'à lui seul l'article 45 empêchera la convention d'être applicable, s'il faut attendre la conclusion de 230 accords bilatéraux.

M. CHARGUÉRAUD-HARTMANN (France) rappelle que pour tous les besoins d'application pratique prévus par la Convention il existe un formulaire.

M. CONTZESCO (Roumanie) estime que le texte actuel doit apaiser les appréhensions de M. Rossetti. Personnellement, il était opposé aux accords bilatéraux et il persiste dans cette manière de voir. Il était également opposé à la correspondance par la voie diplomatique, très longue et très difficile. Pour le cas où les formulaires sont insuffisants, car on ne peut tout prévoir dans un formulaire, on a ajouté un deuxième alinéa permettant aux États qui le désireraient et le pourraient, de conclure des accords bilatéraux. Pour les autres, les communications se feront par la voie diplomatique ou par toute autre voie prévue pour de telles communications.

M. RIPERT (France) rappelle que la Commission a donné mandat à un comité spécial de régler la question. Les cas auxquels fait allusion M. Rossetti sont peu fréquents en pratique et le Comité spécial a envisagé toutes les solutions possibles. Il est plus sage de s'en tenir au texte actuel.

M. DE RUELLE (Belgique) appuie les observations de M. Ripert. A son avis, l'usage des transmissions directes de bureau à bureau se répandra très facilement. Il ne s'agit pas de matières où ces transmissions constituent un empiètement sur le pouvoir souverain d'un État. Le cas est différent dans la transmission des actes judiciaires, que l'on peut considérer comme touchant à l'exercice des droits de souveraineté, en sorte que l'on a pu se montrer plus méfiant en matière de telles transmissions. Dans le cas en discussion, au contraire, il faut développer le plus possible la transmission directe, qui ne peut susciter les mêmes appréhensions.

M. SOUBOTITCH (Yougoslavie) constate qu'il est question des autorités judiciaires et administratives « compétentes ». Pour être sûr que le bureau faisant la communication est bien le bureau compétent, il faudrait ajouter : « et dont les nom et adresse ont été préalablement communiqués conformément à l'article 46 ». De toute façon, il faut établir une liaison entre les articles 45 et 46.

M. CHARGUÉRAUD-HARTMANN (France) fait remarquer que l'on ne pourrait communiquer la liste de tous les huissiers, par exemple, qui constituent les autorités compétentes en matière de saisie.

M. SOUBOTITCH (Yougoslavie) tient néanmoins à attirer l'attention de la Commission sur les difficultés qui pourraient se présenter. Comment les autorités de Bâle, par exemple, pourraient-elles savoir que leur correspondant de Pologne ou de Yougoslavie est bien l'autorité compétente ?

M. RIPERT (France) est certain qu'un correspondant prendra toutes mesures pour que ses communications soient recevables par le bureau auquel il les adresse.

M. SOUBOTITCH (Yougoslavie), sans insister sur sa proposition, persiste à croire qu'une précision serait utile à ajouter dans le texte, sans quoi on permettra au bureau d'immatriculation recevant une communication de décider de lui-même si l'autorité dont il a reçu une communication est compétente ou non.

*L'article 45 est adopté avec l'amendement proposé par la délégation belge qui consiste à ajouter à la fin du second alinéa les mots : « ou par toute autre voie admise dans la pratique ».*

#### *Article 16 (ancien article 10) (voir annexe 19, page 211).*

Le PRÉSIDENT signale qu'il y a, au sujet de cet article, des observations de la délégation hellénique (voir annexe 4, page 200) et un texte proposé par la délégation roumaine comme devant être inséré dans le Protocole de clôture (voir annexe 20, page 218).

M. CONTOUMAS (Grèce) prie la délégation roumaine de vouloir bien donner des éclaircissements sur sa proposition.

M. ROSSETTI (Italie) aimerait, lui aussi, avoir des explications sur la proposition roumaine, car il ne comprend pas bien quels sont les droits que l'on voudrait reconnaître. Il ne voit pas sur quelle base repose la pratique mentionnée au deuxième alinéa, et si elle provient simplement d'un usage ou si elle résulte de conventions consulaires, de traités de commerce, etc. Quoi qu'il en soit, il n'aurait pas compétence devant cette Conférence pour trancher la question. Si, au contraire, la délégation roumaine se contentait de dire qu'il est entendu que la question, sans être préjugée en droit, reste réglée en fait, il pourrait, au contraire, accepter et signer le texte.

M. CONTZESCO (Roumanie) estime qu'avant de discuter le fond de la question, la Conférence doit d'abord se prononcer sur le point de savoir si elle a compétence ou non pour examiner la question posée par la délégation hellénique, dont elle n'a encore entendu aucune explication complémentaire. Or, c'est à lui-même, délégué roumain, que l'on demande maintenant des explications, alors qu'il appartiendrait, au contraire, à la délégation grecque de s'expliquer tout d'abord. Si, toutefois, il s'est par hasard mépris sur le sens de la proposition de la délégation hellénique, M. Contzesco déclare qu'il est tout prêt à retirer sa demande d'addition au Protocole de clôture.

M. CONTOUMAS (Grèce) dit qu'il a distribué à la Commission une note explicative donnant tous éclaircissements sur sa proposition.

M. CONTZESCO (Roumanie) constate que cette réponse du délégué hellénique est bien laconique et bien incomplète. S'il ne s'est pas mépris sur le sens de la proposition hellénique, ceci revient à dire : la Grèce est un État participant à cette Conférence, mais elle demande, tout en signant la Convention qu'on discute, à pouvoir bénéficier d'un régime qui n'y est pas inscrit. A quoi la délégation roumaine répond qu'elle est là pour négocier une convention qui, dans son esprit, doit être applicable de la même manière à tous les États signataires, et qu'aucun de ceux-ci, du fait de sa signature, ne peut ou ne doit bénéficier d'un régime d'exception. On cherche ici à unifier, le plus possible, les différentes pratiques, ou à résoudre les difficultés que présentent les différentes législations ; mais M. Contzesco n'a jamais pensé que, dans l'esprit d'une délégation, la Conférence fût appelée à consolider une pratique quelconque et à décider qu'une autre délégation devrait engager son gouvernement à ne jamais user de son droit, à l'avenir, de supprimer, dans sa législation, des pratiques contraires à la convention signée. Il y a toute une série de principes sur lesquels on discute, applicables, par exemple, à l'immatriculation, au transfert, etc. ; mais la Convention n'a pas à s'occuper de toutes autres pratiques ayant caractère local et relevant des législations nationales. Sur le Bas-Danube, il existe des pratiques très anciennes, dont la Roumanie a conservé les vestiges lorsqu'elle a pris la succession du Gouvernement ottoman dans ces parages, dans lesquels vivait tout un amalgame de populations. La Roumanie, loin de vouloir brusquer ces populations, a voulu, au contraire, leur conserver certains avantages. Parmi elles, se trouve une catégorie très sympathique et très utile de navigateurs de nationalité grecque, avec laquelle la Roumanie a toujours vécu en la meilleure intelligence. Le mieux eût été de ne pas soulever à son avantage, au sein de la Conférence, une question risquant d'embrouiller la situation d'aujourd'hui au lieu de l'éclaircir, soit pour maintenant, soit pour l'avenir. M. Contzesco déclare avoir même dit à son collègue hellénique, qu'il n'a rien à gagner par sa proposition, mais que celui-ci lui a demandé s'il avait quelque chose à y perdre ; à quoi le délégué de Roumanie lui a répondu qu'il doit relire la Convention et la signer ou non selon les conclusions qu'il tirerait de cette lecture. En signant la Convention, chaque délégation s'engage à apporter certaines améliorations à la législation de son État ou à consentir à certaines retouches. La demande un peu bizarre de la délégation hellénique constate une controverse issue du fait que la batellerie grecque du Bas-Danube, inscrite aux Consulats de Braila et de Galatz, perdrait certains avantages d'ordre juridique et propose de remplacer, dans le texte de la Convention, le mot « lieu » par le mot « pays », en vue de couper court à toute controverse. Cela signifierait qu'à l'abri de la fiction d'extraterritorialité des offices consulaires helléniques, en disant « pays », cela dirait « pays grecs », tandis qu'en disant « lieu », cela dirait « pays roumain ». M. Contzesco s'attache alors à faire ressortir toutes les bizarreries auxquelles donnerait lieu l'acceptation de la proposition grecque, en reprenant les diverses dispositions du texte de la Convention et en leur appliquant la nouvelle signification proposée par la délégation hellénique.

A propos des dispositions du paragraphe 2 de l'article 16 nouveau (ancien article 10, voir annexe 19, page 211), M. Contzesco, après avoir émis et illustré ses objections à l'égard de la proposition hellénique, tient à dissiper tout malentendu. La pratique actuelle laisse aux bateaux immatriculés dans un consulat la possibilité de poursuivre auprès du consulat même les mesures de publicité, c'est-à-dire les inscriptions hypothécaires, radiations d'hypothèques, transferts, etc. Le Gouvernement roumain ne s'est jamais opposé à cette pratique, et M. Contzesco croit qu'aussi longtemps que cette pratique subsistera, son Gouvernement n'aura pas besoin de s'y opposer, car il est tout naturel que, là où fut faite l'immatriculation, toutes ces mesures puissent être continuées de façon à donner à ces registres consulaires la même efficacité qu'aux registres de l'État territorial. Par contre, si l'on arrive au titre II, article 18 (ancien article 11, page 211), on se rend compte, par le rapprochement entre les deux alinéas de l'article, de la situation inadmissible en présence de laquelle on se trouverait par l'adoption de la proposition grecque. Le délégué de la Roumanie demande à son collègue hellénique si, par la réserve qu'il a formulée, il entend obtenir que les opérations prévues dans cet article, contraventions, poursuites, répressions, etc., ne soient plus faites devant les autorités administratives ou les tribunaux roumains comme c'est le cas maintenant et depuis toujours.

N'obtenant à cette demande catégorique aucune réponse, M. Contzesco poursuit son argumentation à propos des articles 19, 22 et 24 (voir annexe 19, pages 211 et 212). Il ne voudrait cependant pas insister sur ces citations qui pourraient fatiguer inutilement la Conférence. Il se contente de rappeler que l'Orient a connu jadis le régime des Capitulations, mais tel n'est plus le cas maintenant, et sur le Bas-Danube, la Roumanie n'est nullement décidée à l'introduire à l'occasion de la signature de cette Convention. La Roumanie n'entend consolider absolument aucune pratique, si ancienne soit-elle, et le Gouvernement roumain se réserve le droit de modifier la pratique consulaire d'aujourd'hui quand bon lui semblera : les Roumains sont là chez eux. A défaut d'autre explication de la part de la délégation hellénique, il ne peut donc interpréter sa proposition que comme une tendance à introduire, dans les eaux du Bas-Danube, c'est-à-dire en pays roumain, un régime capitulaire, ce qui constitue une hypothèse à exclusion de la façon la plus absolue.

Il est avéré que le Comité de rédaction — dont M. Contzesco fait du reste partie — en remplaçant en divers endroits du texte admis par le plenum, le mot « lieu » par le mot « pays », n'a nullement eu l'intention de donner satisfaction à la demande de la délégation hellénique, laquelle, d'ailleurs, n'avait même pas été discutée en séance ; cependant, sans le vouloir, le Comité de rédaction a ainsi non seulement tranché la controverse — dont parlait la délégation hellénique — mais ouvert une controverse plus grande, car les articles ainsi modifiés ou bien n'ont plus de sens, ou bien doivent s'entendre comme le désire la délégation hellénique, et, dans ce cas ils deviennent totalement inapplicables en Roumanie. Le délégué de Roumanie est d'accord avec le Comité de rédaction pour unifier la terminologie, mais à condition que cette mesure n'ait pour conséquence

ni de consolider une situation reposant sur une pratique volontairement consentie par le Gouvernement roumain, ni de lui lier les mains pour l'avenir quant à la possibilité, pour l'État roumain, de modifier la pratique actuelle sur le Bas-Danube lorsque ses intérêts le lui dicteraient. En un mot, M. Contzesco déclare ne pouvoir admettre que la Convention puisse apporter en faveur d'un seul État signataire une modification à un régime dont bénéficient tous les autres États signataires en Roumanie, en échange du même régime dont la Roumanie bénéficierait sur le territoire de tous les États signataires, excepté celui qui réclame le régime d'exception, vu qu'il n'a pas de navigation fluviale intérieure.

M. DE RUELLE (Belgique) désire soulever une motion d'ordre. La Conférence actuelle n'a aucune compétence pour traiter de la matière des attributions consulaires qui pourraient évidemment être envisagées et donner lieu à des discussions à propos de nombreuses dispositions de la Convention. On pourrait rassurer le délégué de la Roumanie en constatant, dans la mesure où cela est nécessaire, que le Comité de rédaction, en remplaçant en divers endroits le mot « lieu » par le mot « pays », n'a nullement entendu trancher la question soulevée par la délégation hellénique. Toute la Conférence doit être d'accord pour dire qu'elle ne saurait ni confirmer ni infirmer la situation actuelle qu'elle n'a même pas à examiner. Peut-être le délégué de la Roumanie admettra-t-il que le texte qu'il a proposé comme addition au protocole de clôture dépasse sa pensée, car, sans doute, il reconnaîtra que l'on ne doit pas préjuger la question. S'il en est ainsi, les mots « la présente Convention ne touche en rien aux droits de l'État roumain » sont excessifs. Il y aurait lieu, plutôt, de déclarer que la Conférence se reconnaît incompétente à juger de la réserve présentée par la délégation roumaine et qu'elle est d'avis que la Convention ne peut en aucun cas préjuger les droits respectifs des États intéressés.

M. CONTZESCO (Roumanie) ne croit pas avoir dépassé sa pensée par l'expression mentionnée. Il a en effet voulu parler des droits qu'a le Gouvernement roumain de maintenir ou de modifier la pratique actuelle. Il demande au délégué de la Belgique s'il entend que les pratiques actuellement suivies par les différentes chancelleries consulaires dans le Bas-Danube pourront cesser au moment où une législation roumaine ultérieure pourrait venir modifier la situation.

M. DE RUELLE (Belgique) répond que la Conférence n'a pas compétence pour juger et apprécier cette situation. En acceptant une réserve, la Conférence devra faire ressortir clairement que le problème tout entier est réservé à des négociations entre la Grèce et la Roumanie.

M. CONTZESCO (Roumanie) pense que sa propre formule ne dit pas autre chose que ce que demande M. de Ruelle puisqu'en attendant elle laisse expressément aux bateaux appartenant à des ressortissants étrangers la faculté de se faire immatriculer à leur consulat du Bas-Danube.

M. DE RUELLE (Belgique) répond que ces mots trancheraient la question dans un sens positif, alors que la Conférence n'a compétence pour la trancher en aucun sens.

M. CONTZESCO (Roumanie) fait remarquer que l'adoption de la proposition belge mettrait le Gouvernement roumain dans une situation inacceptable, étant donné l'intervention de la délégation hellénique.

M. DE RUELLE (Belgique) répond qu'il y a peut-être des situations encore plus délicates et que la Conférence n'a cependant pas qualité pour les trancher : elles doivent faire l'objet de négociations non pas internationales, mais bilatérales.

M. HOSTIE, président du Comité de rédaction, explique dans quelles conditions, tout à fait étrangères au débat actuel, le Comité de rédaction a été amené à proposer des modifications à certains articles, par exemple à l'article 16 (ancien article 10). Dans le système du projet de Convention établi par le Comité du droit fluvial, il y a deux doubles immatriculations interdites : l'une à l'intérieur d'un même pays, l'autre dans deux pays différents. L'article 16 (ancien article 10) prévoit, au deuxième paragraphe, des sanctions dans le cas de la double immatriculation visé au troisième alinéa de l'article 3, c'est-à-dire de la double immatriculation dans deux pays différents. Par contre, la double immatriculation opérée à l'intérieur d'un même pays est laissée, en ce qui concerne la sanction, à la législation nationale. C'est pourquoi il a paru logique au Comité de rédaction de parler d'autorités compétentes non pas des « lieux » où furent faites les immatriculations, mais des « pays » où elles ont été effectuées, en laissant au législateur national le soin de déterminer quel est, sur son territoire, le juge compétent pour ces contraventions aux obligations internationales. Ayant dû modifier le deuxième alinéa de l'article 16, il était logique de faire, pour les mêmes motifs, une modification correspondante à d'autres passages de la Convention. Il en était ainsi, par exemple, à l'article 21 (ancien 13). Cet article parlait de la loi du lieu d'immatriculation alors que la disposition, en quelque sorte parallèle, de l'article 20 (ancien 12) parlait de la loi du pays d'immatriculation. Ces divergences d'expression ne répondaient à aucune différence de pensée, en sorte qu'il était de bonne méthode de mettre à l'article 21 et à d'autres articles où il était question de la loi du « lieu » d'immatriculation : « le pays ». Il s'agissait donc uniquement de modifications de rédaction destinées à éviter des doutes ou des erreurs éventuelles dans l'interprétation.

M. ROSSETTI (Italie) répète que la Conférence n'a pas qualité pour trancher un débat sur la compétence des consulats. La question actuelle intéresse non pas seulement la Grèce et la Roumanie mais plusieurs autres pays. Elle n'est donc pas limitée au Bas-Danube, mais toutes les observations du délégué de la Roumanie font craindre à M. Rossetti qu'il ne puisse signer cette Conven-

tion si la Conférence lui donne l'interprétation que voudrait M. Contzesco. Pour prendre un exemple, M. Rossetti se réfère au début de l'article 20 (ancien article 12) ainsi conçu : « Le transfert volontaire entre vifs des droits de propriété sur un bateau est réglé par la loi du pays d'immatriculation... » D'après l'interprétation de M. Contzesco, un bateau italien qui, d'après une convention consulaire ou un usage établi, serait immatriculé au consulat italien de Galatz, serait considéré comme ayant la Roumanie comme pays d'immatriculation. Pareille interprétation rendrait toute la Convention inacceptable pour la délégation italienne. Les consuls de beaucoup de pays ont actuellement le droit d'accorder le certificat provisoire de nationalité, la question étant ultérieurement réglée sur les registres de l'État intéressé. Ce sont là toutes questions sortant de la compétence de la Conférence, et M. Rossetti ne voudrait pas les traiter, mais il doit être bien entendu que s'il existe la possibilité d'immatriculer un bateau dans un consulat, ce bateau doit être considéré comme ayant été immatriculé dans le pays d'où relève ce consulat et non dans le pays où se trouve le consulat. Si cette interprétation n'est pas celle de la Commission, la Convention qui a pour but d'unifier le droit n'aboutirait, au contraire, qu'à engendrer des conflits de lois.

M. CONTZESCO (Roumanie) répond qu'il y a un gros malentendu. Il fait remarquer à son collègue italien que tout ce qu'il vient de dire dans la première partie de son intervention ne s'appliquerait qu'à la navigation maritime et non à la navigation fluviale intérieure dont on traite ici. En ce qui concerne la deuxième partie, M. Contzesco est tout à fait d'accord avec M. Rossetti : une immatriculation faite en Roumanie dans un consulat italien a bien les mêmes effets que si elle était faite en territoire italien, et la formule que le délégué de Roumanie a proposée ne dit pas autre chose.

M. ROSSETTI (Italie) se félicite de la précision que vient de donner M. Contzesco et l'en remercie.

M. RIPERT (France) pense que ses divers collègues sont moins loin les uns des autres qu'ils ne le croient eux-mêmes. Que demande la délégation hellénique ? C'est que la signature de la Convention ne fasse pas obligatoirement disparaître une pratique existante. Que demande la délégation roumaine ? Que cette signature ne consolide pas une pratique existante. Il ne s'agit nullement des droits de l'État roumain qu'il n'y a pas lieu de soumettre à l'appréciation de la Conférence. Tout ce qu'il s'agit de dire, c'est que les États signataires n'ont pas une obligation juridique ou morale de modifier la pratique actuelle. Or, les deux États en question conviennent de ne rien changer à cette pratique. Dans ces conditions, ni l'une ni l'autre des deux délégations n'a à parler de droits qui ne sont pas en question : elles demandent simplement que la signature de la Convention ne préjuge en rien la situation de fait existante.

M. SITENSKY (Tchécoslovaquie) croit, comme M. de Ruelle, que la question ne doit pas être tranchée par la Conférence, d'autant plus qu'elle n'a jamais été envisagée par le Comité du droit fluvial. Il lui semble que les observations de M. Ripert pourraient donner satisfaction aux délégués roumain et hellénique.

M. CONTZESCO (Roumanie) remercie M. Ripert de son intervention qui concorde entièrement avec sa propre pensée en ce qui concerne les droits du Gouvernement roumain. Mais il tient d'abord à faire observer que ce n'est pas lui qui a soulevé la question. Il n'aurait jamais voulu appeler l'attention de la Commission sur les controverses qui auraient peut-être pu naître aujourd'hui ou demain de textes qui lui semblaient parfaitement clairs et qui ne lui paraissaient pas pouvoir être interprétés autrement que ne l'ont fait M. Ripert, M. de Ruelle, M. Rossetti et bien d'autres. La situation a cependant changé depuis l'intervention de la délégation hellénique, et, qu'on le veuille ou non, il y a en ce moment une contrainte morale qui oblige M. Contzesco à discuter la question devant la Commission, tout en reconnaissant qu'elle n'a pas qualité pour se prononcer. Il est absolument incontestable que la Roumanie garde ses droits souverains et que ses droits et obligations en matière d'application de la Convention dans ses eaux sont identiques à ceux des autres États. La question était claire jusqu'au moment où l'intervention hellénique est venue la troubler. Si à présent elle n'était pas tranchée dans le Protocole de clôture de la façon que demande M. Contzesco, c'est-à-dire en coupant court à toutes interprétations, l'État roumain ne verrait plus dans la Convention un acte susceptible d'être signé par lui. Au moment où il signerait une convention destinée à mettre fin aux conflits avec l'Europe entière, l'État roumain ne voudrait nullement ouvrir sciemment un conflit avec l'État grec. Il ne s'agit naturellement pas des sujets helléniques ayant en Grèce leur résidence et leur domicile et pouvant avoir, occasionnellement, un bateau sur le Danube. Il s'agit en l'occurrence d'une population grecque autochtone en Roumanie, originaire ou établie depuis des dizaines et des dizaines d'années, qui, en majeure partie, ne connaît même pas sa patrie et qui n'entend nullement quitter la région du Bas-Danube dans laquelle elle a ses attaches et ses devoirs. Cette population se présente toujours devant les tribunaux roumains pour les diverses opérations, ventes, emprunts, hypothèques, etc. et M. Contzesco affirme — sans crainte de recevoir un démenti — que les Grecs en question ne vont jamais à leur consulat que pour l'enregistrement de ces opérations ou pour faire immatriculer leurs bateaux ; dans certains cas même, leurs bateaux sont immatriculés à la Capitainerie de port roumaine, vu que la loi roumaine le permet pour les étrangers nés en territoire roumain et y ayant leur résidence huit mois par an. M. Contzesco ne saurait faire une assimilation entre cet état de choses et celui des ressortissants des autres pays au sujet desquels la Convention établit des avantages spéciaux devant les tribunaux du pays où ils naviguent. Le Gouvernement roumain ne pourrait donc admettre que la situation actuelle soit consolidée pour les populations helléniques du Bas-Danube d'une façon équivalente à un régime capitulaire.

M. CONTOMAS (Grèce) déclare qu'il ne peut pas exiger de la Conférence de se constituer juge des droits respectifs des deux pays. Comme l'ont dit M. de Ruelle et M. Ripert, la question doit

rester en dehors des débats de la Conférence, si celle-ci se déclare incompétente à la trancher. Dans ces conditions, il propose d'insérer dans le Protocole de clôture le premier alinéa de l'amendement roumain, en remplaçant les mots « ne touche en rien aux droits de l'État roumain, etc. » par : « n'a pas pour objet de modifier la pratique actuelle ». La question des droits respectifs des deux pays restera ainsi entière.

M. RIPERT (France), afin de donner satisfaction aux deux délégations, propose de dire : « ... ne peut être considéré comme une confirmation ou une modification de la pratique actuelle de l'immatriculation des bateaux dans les consulats du Bas-Danube ». Cette formule empêchera que l'on tire argument de la Convention dans un sens ou dans l'autre.

M. CONTZESCO (Roumanie) se rallie à cette modification au premier alinéa de sa proposition, sous réserve de la rédaction de la seconde partie.

M. ROSSETTI (Italie) attire l'attention sur les derniers mots de ce premier alinéa : « Cette immatriculation ayant les mêmes effets que celle effectuée sur le territoire de l'État dont lesdits ressortissants relèvent. »

M. RIPERT (France) fait observer que ce passage traite d'une question relevant de conventions consulaires et non de la Convention en discussion.

M. ROSSETTI (Italie) répond que l'on ne peut trancher la première moitié de la question traitée au premier alinéa en laissant la seconde moitié dans le doute. Si l'on veut parler de la pratique actuelle, il faut l'envisager sous ses deux aspects, tels qu'ils apparaissent dans le premier alinéa, sans quoi on pourrait tirer du silence fait sur la deuxième partie un argument *a contrario*. Il faut préciser que la pratique actuelle tout entière n'est pas mise en cause dans la Convention.

M. SITENSKY (Tchécoslovaquie) fait observer que si l'on parle de la pratique actuelle, on envisage aussi ses effets, en sorte qu'il est inutile de les mentionner expressément.

M. RIPERT (France) propose de compléter son amendement par les mots « comme valant l'immatriculation dans les pays étrangers ».

M. ROSSETTI (Italie) croit que ce nouvel amendement serait une amélioration. En outre, au lieu de dire « dans le Bas-Danube », il faudrait dire « la pratique là où elle existe », car elle peut se rencontrer ailleurs.

M. CONTZESCO (Roumanie) demande si, avec l'amendement de M. Ripert, on maintient ou non la seconde partie de sa propre proposition. L'amendement roumain, tel qu'il était rédigé, était en relation avec *les droits* de l'État roumain, notion qui ne peut pas disparaître.

M. RIPERT (France) explique que, dans son amendement, il précise que l'immatriculation en question vaut l'immatriculation faite dans le pays dont dépend le consulat. C'est le fait et on ne dit rien sur les conséquences.

M. CONTZESCO (Roumanie) maintient que la rédaction de sa proposition est en rapport avec le droit, que l'État roumain entend conserver, de modifier cette pratique s'il le juge nécessaire. Le délégué de la Roumanie ne saurait, en cette matière, renvoyer à une convention consulaire ou commerciale, car ce sont des affaires à régler entre les États intéressés et qui ne concernent nullement la Conférence actuelle. Ce qu'il désire, c'est ne pas passer sous silence ces droits qui resteront intacts avec ou sans la Convention.

M. RIPERT (France) explique que la deuxième partie de la proposition roumaine disparaîtrait, car elle serait remplacée par les mots que lui-même proposait d'ajouter à son amendement. Le délégué de la Roumanie a reconnu lui-même que lorsqu'un bateau était immatriculé dans un consulat, c'était comme s'il avait été immatriculé dans le pays d'où relève ce consulat.

M. DASCOVICI (Roumanie) s'appuyant sur la pratique actuelle — dont il donne les détails — déclare que sa délégation ne pourrait accepter que l'on applique demain la loi grecque à des populations helléniques habitant depuis toujours en Roumanie et qui, elles-mêmes, se soumettent actuellement à la loi roumaine, pratique que les consulats helléniques n'ignorent pas.

M. RIPERT (France) explique que la réserve roumaine n'est nullement en question. Dans son amendement, le délégué de la France dit seulement que l'on ne pourrait tirer argument de la Convention pour déclarer que la pratique actuelle est infirmée ou confirmée.

M. CONTZESCO (Roumanie) aimerait savoir, avant de répondre, ce que le délégué hellénique pense des observations de M. Ripert sur le deuxième alinéa de la proposition roumaine.

M. CONTOUMAS (Grèce) déclare que, suivant les instructions précises qu'elle a reçues, la délégation hellénique désire que la Convention confirme, d'une part, la pratique purement administrative des inscriptions consulaires, et n'implique pas, de l'autre, pour les bateaux grecs bénéficiant de cette pratique, un traitement de droit inégal, par rapport à celui que la Convention assurera aux bateaux de tout autre pays contractant. Si, néanmoins, la Conférence ne se reconnaît aucune compétence à régler la question de ladite pratique, la délégation hellénique s'efforcera, sans

naturellement pouvoir prendre d'engagement, de faire accepter par son Gouvernement la proposition transactionnelle de M. Ripert, à savoir que la Convention ne porte ni confirmation ni modification de la pratique des inscriptions dans les consulats du Bas-Danube, comme valant inscriptions dans les bureaux des États dont ces consulats relèvent.

M. DE RUELLE (Belgique) est de plus en plus persuadé que l'on doit adopter une formule aussi brève que possible et qui ne soit pas spéciale au Bas-Danube, sans quoi la Conférence semblera prendre parti entre la délégation hellénique et la délégation roumaine. C'est pourquoi il a précédemment suggéré une formule applicable à tous les pays et qui laisse les situations actuelles absolument entières.

M. PANTITCH (Yougoslavie) dit que la délégation yougoslave estime qu'il faudrait limiter la portée du texte au Bas-Danube. C'est pourquoi la proposition de M. Ripert lui semble préférable à celle de M. de Ruelle. Si l'on voulait établir une formule générale comme le propose M. de Ruelle, on risquerait de prolonger le débat. Il semble que la proposition de M. Ripert doive donner satisfaction à tous, puisqu'elle déclare que la Convention n'a pas pour but de changer en quoi que ce soit la situation telle qu'elle a existé jusqu'à présent en Roumanie ; elle n'a même pas à s'en occuper, c'est pourquoi elle indique nettement que la Conférence n'a pas compétence pour traiter la question soulevée par la délégation hellénique qui, au fond, éprouvait des craintes non fondées.

M. ROSSETTI (Italie) avait demandé que l'on ne parle pas du Bas-Danube, mais d'un point de vue général. Cependant la formule de M. de Ruelle est trop large et il préfère celle de M. Ripert.

Le PRÉSIDENT demande au délégué de la Roumanie s'il peut se rallier à la formule de M. Ripert.

M. CONTZESCO (Roumanie) répond que, malheureusement, cela ne lui est pas possible car, malgré tous les efforts du délégué hellénique pour convaincre son Gouvernement quant à l'esprit qui a animé cette Conférence, il est, lui, convaincu que, dans l'application de la Convention au Bas-Danube, la Roumanie s'exposera, à partir de ce jour, aux pires dangers et aux conflits les plus graves, issus d'une interprétation toute personnelle de la part du Gouvernement hellénique. Si la proposition de M. Ripert était complétée par la deuxième partie du deuxième alinéa de la proposition roumaine, M. Contzesco l'accepterait, car là seulement est le remède contre le danger qu'il veut éviter.

M. CONTOUMAS (Grèce) aimerait recevoir du délégué de la Roumanie des éclaircissements sur la portée exacte du deuxième alinéa.

M. CONTZESCO (Roumanie) répond que ce texte a pour but de confirmer que la Convention enlève au Gouvernement hellénique toute possibilité de venir réclamer demain au Gouvernement roumain un régime différentiel en ce qui concerne les sujets grecs du Bas-Danube par rapport au régime que la Roumanie accorde à tous les États signataires.

M. CONTOUMAS (Grèce) dit que la Grèce demande exactement le même traitement, c'est-à-dire celui de la Convention, avec cette seule différence que la formalité administrative de l'immatriculation se fera dans un consulat au lieu de se faire dans un bureau territorial.

Le PRÉSIDENT prie MM. Ripert et de Ruelle de se réunir pour préparer une formule.

M. RIPERT (France) répond que cela n'est pas nécessaire, puisque le délégué de la Roumanie a accepté l'amendement au premier alinéa de sa proposition et que le délégué hellénique accepte le deuxième alinéa de la proposition roumaine.

M. ROSSETTI (Italie) fait observer que lui aussi est intéressé à la question et qu'il n'a pas encore eu les explications qu'il désirait. Est-ce que, du deuxième alinéa, on peut déduire qu'il y a une différence entre l'immatriculation et la publicité faite dans un consulat et les mêmes opérations faites dans les bureaux du pays dont relève ce consulat ? Au surplus, il ne comprend pas pourquoi l'on parle ici de la publicité des droits. Veut-on dire que les droits que la Roumanie conserve ici sont les mêmes que dans les pays où n'est pas admise l'immatriculation dans les consulats ?

M. CONTZESCO (Roumanie) déclare qu'il n'y a aucune divergence entre son collègue et lui à ce propos. Cette première partie du deuxième alinéa ne porte, dans l'état actuel des choses, aucune atteinte aux droits des autres pays. Il ajoute que la Roumanie entend ne pas accorder à une seule catégorie de sujets étrangers un régime préférentiel par rapport au régime accordé aux ressortissants de tous les autres États signataires.

M. ROSSETTI (Italie) demande si M. Contzesco considère l'immatriculation dans les consulats comme un régime différentiel.

M. CONTZESCO (Roumanie) répond négativement : Cette immatriculation produit exactement les mêmes effets pour ceux qui préfèrent suivre cette procédure.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE croit qu'il y a malentendu à cause des derniers mots du deuxième alinéa. Il voudrait savoir si, au fond, ce deuxième alinéa ne peut se lire ainsi :

• Il est également entendu que la pratique actuelle de l'immatriculation et de la publicité des droits sur les registres des consulats du Bas-Danube ne porte, au sens de la présente Con-

vention, aucune atteinte aux droits de la Roumanie tels qu'ils sont reconnus à tout État contractant à l'égard des bateaux immatriculés dans le territoire d'un autre état contractant.

M. DASCOVICI (Roumanie) déclare que la Roumanie se trouve sur le Bas-Danube dans sa pleine souveraineté. Des étrangers se présentent tous les jours devant les tribunaux roumains pour toutes les formalités en question. Si l'on supprimait la formule « comme État territorial », on créerait pour les étrangers en question faisant l'immatriculation au consulat une véritable situation d'exterritorialité. Or, tel n'est pas le cas dans la pratique actuelle, puisque ces étrangers se présentent d'eux-mêmes devant les tribunaux roumains.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE demande au délégué de la Roumanie si, dans sa pensée, lorsqu'il s'agit de bateaux immatriculés au consulat tout se passe à l'égard de la Roumanie comme si ces bateaux étaient immatriculés dans le pays d'où relève le consulat.

M. CONTZESCO (Roumanie) répond que l'on ne peut dire que tout se passe de la même façon. C'est d'ailleurs ce qu'il n'a cessé de répéter depuis le début, de même qu'il l'a dit dans sa formule écrite. Il s'agit de la pratique matérielle de l'inscription de l'immatriculation, mais non des autres opérations et formalités qui se font couramment devant les tribunaux. Il ne faut pas confondre un consulat avec un État lorsqu'il s'agit non de l'immatriculation matérielle d'un bateau, mais d'un transfert de propriété, d'un prêt hypothécaire, d'une vente, d'une contravention, etc.

M. RIPERT (France) croit que la confusion provient de ce que la proposition roumaine est divisée en deux alinéas. Il propose de fondre son propre amendement et le deuxième alinéa roumain en un même texte.

M. CONTOUMAS (Grèce) se rallie à la proposition de M. Ripert sous réserve que, pour la signature, il faudra à sa délégation des instructions ultérieures. Il s'engage à faire son possible pour que cette proposition soit acceptée par son Gouvernement.

M. ROSSETTI (Italie) constate que, selon M. Contzesco, il y a, à certains égards, différence de traitement entre un bateau immatriculé dans un consulat du Bas-Danube et un bateau immatriculé dans le pays d'où relève ce consulat. Cela, il ne pourrait l'admettre, car il en résulterait non seulement une différence de traitement entre les pays, mais même entre les bateaux d'un même pays.

M. CONTZESCO (Roumanie) constate qu'il se produit une confusion dans l'esprit de son collègue d'Italie dont les appréhensions devraient être apaisées par ce que lui-même a dit à plusieurs reprises. Il ne s'agit nullement d'un traitement différentiel entre des bateaux immatriculés au consulat italien par exemple, et des bateaux immatriculés en Italie. Par contre, jamais le Gouvernement italien n'a demandé au Gouvernement roumain que les contraventions, poursuites, ventes forcées etc., soient réglées devant les consulats italiens comme le demande la délégation hellénique en ce qui concerne les bateaux immatriculés aux consulats de Grèce.

M. RIPERT (France) pense que le texte qu'il suggère est acceptable pour toutes les délégations.

M. CONTOUMAS (Grèce) déclare qu'il pourrait accepter la proposition de M. Ripert, mais en ce sens que l'immatriculation et toutes autres inscriptions se feront aux consulats de Grèce et qu'elles seront équivalentes à une immatriculation et des inscriptions faites en Grèce, leurs effets étant régis par les dispositions de la Convention à tous égards et sans discrimination d'aucune sorte.

M. RIPERT (France) dit que cela est bien entendu.

M. CONTZESCO (Roumanie) se demande, dans ces conditions, où résidait la controverse signalée par le délégué hellénique.

M. RIPERT (France) dit qu'à son avis la question a été provoquée par un malentendu.

M. CONTZESCO (Roumanie) doute qu'il y ait eu malentendu ; mais en tout cas, avant de se prononcer définitivement, demande que le texte suggéré par M. Ripert soit distribué aux diverses délégations, afin de pouvoir être discuté efficacement.

*Il en est ainsi décidé.*

*Article 18 (ancien article 11) (voir annexe 19, page 211).*

Le PRÉSIDENT rappelle que la délégation allemande a fait une réserve sur cet article.

M. RICHTER (Allemagne) dit que la délégation allemande a encore de très graves scrupules à approuver la formule du Comité de rédaction. La question est si importante qu'il propose de renvoyer l'article au Comité.

M. VAN SLOOTEN (Pays-Bas) insiste pour qu'on ne rouvre pas la discussion sur un article longuement discuté, déjà approuvé, et au sujet duquel la délégation allemande a réservé, non son droit de le discuter, mais seulement son vote.

M. RICHTER (Allemagne) précise qu'il ne soulève qu'une question de rédaction. Il n'avait pas approuvé cette formule lorsqu'elle fut proposée par M. Ripert, en cours même de discussion. Il ne pourrait s'y rallier que s'il était pleinement convaincu de l'impossibilité de trouver une autre formule.

M. VAN SLOOTEN (Pays-Bas) répond que, dans ce cas, un renvoi au Comité de rédaction est inutile, la question ayant déjà été longuement discutée par ce Comité. L'article, sans être parfait à tous égards, dit clairement ce que l'on veut dire.

M. ROSSETTI (Italie) approuve cette remarque. Si la délégation allemande n'a pas d'autre rédaction à proposer pour ce texte distribué depuis plusieurs jours, il s'oppose à un renvoi au Comité de rédaction.

M. RICHTER (Allemagne) explique que la délégation allemande espérait encore pouvoir faire des propositions de fond. D'autres délégations attachent une importance capitale à conserver la substance de cette disposition ; la délégation allemande serait disposée à s'y rallier, sous réserve d'en modifier la teneur, qu'il lui sera très difficile de soumettre à son Gouvernement.

M. VAN SLOOTEN (Pays-Bas) pense que l'on doit s'en rapporter aux rédacteurs de l'article, qui lui ont certainement trouvé la meilleure forme possible.

M. RIPERT (France) dit que c'est lui-même qui a rédigé l'article, alors que, comme le délégué de l'Allemagne, il était opposé à la disposition en discussion. Il a cherché en toute bonne foi la formule la plus acceptable pour tous. Quel est le point qui soulève particulièrement les scrupules de son collègue ?

M. RICHTER (Allemagne) répond que ce sont les mots : « ou quand il existe sur ce bateau un intérêt hypothécaire étranger ». On améliorerait la rédaction en les supprimant et en reprenant les termes du deuxième alinéa.

M. RIPERT (France) n'aurait aucune objection à ce que l'on fonde ensemble les deux alinéas. Cette formule avait été insérée dans l'intérêt des délégations opposées à une extension de la Convention et M. Ripert y renoncerait volontiers.

M. RICHTER (Allemagne) explique au délégué néerlandais que ce qui le choque, c'est de voir introduire dans la Convention une notion toute nouvelle, dont il ne saurait apprécier les répercussions sur d'autres matières du droit dans des cas analogues.

M. RIPERT (France) propose la rédaction suivante :

Les dispositions du présent titre sont applicables :

a) Quand un bateau immatriculé sur le registre d'un État contractant se trouve sur le territoire d'un autre État contractant ;

b) Quand il existe sur ce bateau une hypothèque constituée pour la sûreté d'une obligation contractée dans un autre État contractant et stipulée... etc. ;

c) Dans les autres cas visés à l'article suivant.

M. RICHTER (Allemagne) déclare s'y rallier à titre provisoire.

Le PRÉSIDENT constate que la Commission décide de modifier la rédaction dans le sens indiqué par M. Ripert.

*Article 37 du projet de Convention (voir document C.541.M.195.1929.VIII).*

Le PRÉSIDENT rappelle qu'un Comité, présidé par M. Rossetti, avait été chargé d'examiner cet article.

M. ROSSETTI (Italie) explique que ce Comité n'a pu arriver à une autre conclusion que de proposer la suppression de l'article 37.

*L'article 37 est supprimé.*

*Article 2 (ancien article 1 bis et annexe I (liste des lettres initiales des États visés à l'article 2))  
(voir annexe 19, pages 208 et 216).*

M. CENTNER (Territoire du Bassin de la Sarre) demande l'insertion du Territoire du Bassin de la Sarre dans cette liste, avec les lettres initiales S.A.

M. RICHTER (Allemagne) se référant au texte de l'article 2, constate que le Territoire du Bassin de la Sarre n'étant pas un État, ne peut pas figurer dans la liste. La question de donner une marque spéciale aux bateaux qui y sont immatriculés peut faire l'objet d'accords, mais la Conférence n'a pas à en discuter.



Le **SECRETARE GÉNÉRAL DE LA CONFÉRENCE** rappelle ce qui se passa pour la Convention sur le jaugeage, où l'on n'avait pas prévu de lettres initiales pour le Territoire du Bassin de la Sarre. Il fut admis néanmoins que, après la conclusion de la Convention, la Commission de gouvernement pourrait faire savoir, par lettre adressée au Secrétaire général et communiquée à tous les États signataires, son intention d'appliquer la Convention, en bénéficiant de tous les droits qu'elle prévoyait et en indiquant les lettres qu'elle croyait devoir adopter pour le Territoire. Pour éviter un débat inopportun, on pourrait adopter la même procédure.

M. **CENTNER** (Territoire du Bassin de la Sarre) fait observer que, dans un cas analogue (Convention sur la circulation automobile), le Territoire a signé une Convention et s'est vu attribuer des lettres distinctes.

Le **SECRETARE GÉNÉRAL DE LA CONFÉRENCE** répond qu'il n'y a pas une pratique internationale constante. Sans doute, il existe un certain nombre de conventions auxquelles le Territoire est partie contractante. Le fait est que le Territoire a été invité à la présente Conférence dans les mêmes conditions qu'à celle du jaugeage. Le plus sûr est d'appliquer les mêmes mesures.

*Ces observations sont approuvées par la Commission.*

M. **CONTZESCO** (Roumanie) dit que, à ce propos et sans vouloir d'ailleurs insister, il serait peut-être utile de savoir si les bateaux immatriculés dans les consulats du Bas-Danube porteront seulement les lettres de leurs pays respectifs ou aussi une autre lettre indiquant au consulat de quelle ville ils ont été immatriculés.

M. **ROSSETTI** (Italie) répond que le cas est prévu à l'article 2.

*L'annexe I est adoptée.*

*Article 3, cinquième alinéa (voir annexe 21, page 218).*

Le **PRÉSIDENT** ouvre la discussion sur le nouveau texte proposé par M. Hostie pour l'article 3, cinquième alinéa.

M. **LAWATSCHER** (Autriche) dit que l'addition des mots « pour plus de moitié » doit être faite aussi au quatrième alinéa.

Le **PRÉSIDENT** répond que cela va de soi.

M. **CENTNER** (Territoire du Bassin de la Sarre) répète une observation qu'il avait faite le 19 novembre précédent : par le mot « ressortissants », en ce qui concerne le Territoire, doivent s'entendre les habitants de la Sarre aux termes de l'ordonnance de la Commission de Gouvernement.

Le **SECRETARE GÉNÉRAL DE LA CONFÉRENCE** explique que ces mots ont le sens que l'état actuel du droit reconnu doit leur donner, mais il ne croit pas que la Conférence ait compétence pour traiter la question.

*Annexe III (formulaire sur la saisie).*

Le **PRÉSIDENT** constate que le texte de ce formulaire n'a pas encore été distribué.

M. **CHARGUÉRAUD-HARTMANN** (France) ajoute que l'on avait réservé la question de la langue dans laquelle devaient être établis les formulaires. Le Comité technique propose de les faire imprimer dans la langue nationale du pays qui les envoie, les nombres devant être écrits en caractères latins et en chiffres arabes.

M. **RICHTER** (Allemagne) se demande s'il ne serait pas pratique d'imprimer les titres des formulaires en plusieurs langues, pour que tout Bureau sache quel formulaire il reçoit.

M. **CHARGUÉRAUD-HARTMANN** (France) rappelle que ces formulaires sont intitulés : Formulaire A, Formulaire B, etc.

Le **PRÉSIDENT** ne croit pas qu'il puisse se produire de malentendus.

### XIII. Clôture des travaux de la deuxième Commission.

La parole n'étant plus demandée, le **PRÉSIDENT** constate que la deuxième Commission est arrivée à la fin de ses travaux. Il remercie les membres de la Commission de l'indulgence qu'ils ont bien voulu montrer à son égard.

## DEUXIÈME COMMISSION

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ANNEXE 1.

[Conf.U.D.F.3].

AMENDEMENTS PROPOSÉS PAR LA DÉLÉGATION ALLEMANDE AU PROJET DE,  
CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL<sup>1</sup>

TITRE PREMIER. — DE L'IMMATRICULATION

*Article premier.*

1. Les États contractants s'engagent à tenir, conformément aux dispositions de la présente Convention, des registres pour l'immatriculation des bateaux de navigation intérieure ayant un déplacement de ou supérieur à vingt tonnes métriques.

2. Sont compris sous la dénomination de bateaux : les dragues, grues et élévateurs flottants et tous engins et outillages flottants de nature analogue.

3. Le déplacement visé à l'alinéa premier se calcule sur la base du plus grand enfoncement autorisé par les règlements sur les différentes voies navigables que le bateau est destiné à fréquenter.

*Article 1 bis.*

Les registres prévus à l'article précédent seront intitulés « registres des bateaux ». Ces registres doivent être accessibles au public et des extraits certifiés conformes en seront délivrés, contre paiement des frais, à tous ceux qui les requièrent.

*Article 2.*

(Supprimé.)

*Article 3.*

1. Tout bateau remplissant les conditions d'immatriculation visées à l'article premier doit être immatriculé sur demande au bureau compétent de l'État contractant où est situé son port d'attache.

2. A défaut de port d'attache, le bateau doit être immatriculé dans le pays contractant où le propriétaire est contribuable des impôts sur le revenu ou des patentes.

3. Par port d'attache on comprend le lieu d'où le propriétaire fait naviguer le bateau ; si plusieurs de ces lieux entrent en compte, celui d'entre eux où le propriétaire a son établissement commercial ou, éventuellement, son établissement principal ou, faute d'établissement, son domicile.

*Article 3 bis.*

1. L'obligation de faire immatriculer le bateau incombe au propriétaire.

2. Il est défendu de faire la demande d'immatriculation simultanément dans plusieurs pays ou auprès plusieurs bureaux d'un même État contractant.

*Article 4.*

(Supprimé.)

*Article 5.*

1. La demande d'immatriculation est faite par écrit et signée par le propriétaire.

2. Elle doit indiquer au moins :

1<sup>o</sup> Le nom ou la devise du bateau ;

2<sup>o</sup> Le mode de construction et le type du bateau ; la date et le lieu de sa construction et, pour les bateaux à propulsion mécanique — même auxiliaire — la nature et la puissance de la machine ;

3<sup>o</sup> Le tonnage maximum ou le déplacement d'après le certificat de jaugeage, ainsi que le numéro et la date de ce certificat ;

4<sup>o</sup> Les noms, prénoms, profession et domicile du ou des propriétaires et, s'il y a plusieurs propriétaires, la quote-part de chacun d'eux ;

<sup>1</sup> Voir également les observations qui figurent à la page 189.

5° Le port d'attache ou, éventuellement, le lieu où le propriétaire est contribuable des impôts sur le revenu ou des patentes.

6° Le fait que le bateau n'est pas immatriculé ailleurs, ou le lieu où il est déjà immatriculé.

3. Le demandeur doit établir l'exactitude des indications susvisés.

#### Article 5 bis.

1. Chaque bateau doit être immatriculé sur une feuille spéciale numérotée.

2. L'inscription doit contenir au moins les indications visées aux numéros 1 à 5 de l'alinéa 2 de l'article précédent, la date de l'inscription et, éventuellement, le nom du bureau compétent pour les inscriptions d'hypothèques.

3. L'autorité compétente doit délivrer un certificat d'immatriculation reproduisant les inscriptions effectuées en vertu de l'alinéa précédent, ainsi que les inscriptions d'hypothèques et indiquant le pays, le nom du bureau et le numéro d'immatriculation.

4. Si l'autorité compétente délivre un duplicata du certificat d'immatriculation, ce duplicata doit être désigné comme tel et mention de sa délivrance doit être faite sur l'exemplaire principal.

#### Article 6.

1. Si des modifications surviennent dans les faits mentionnés dans le registre, ou si le bateau périt, est démolé ou devient innavigable, l'inscription en doit être demandée au bureau d'immatriculation dans les conditions prévues à l'article 5. La demande doit être accompagnée du certificat d'immatriculation et, éventuellement, du duplicata.

2. Sous réserve de la disposition de l'alinéa 4 de l'article 9, les indications faites en vertu de l'alinéa précédent seront inscrites au registre et reproduites sur le certificat d'immatriculation et le duplicata.

3. La loi du pays d'immatriculation désigne la personne à laquelle incombe l'obligation de faire la demande, le délai dans lequel la demande doit être faite, ainsi que les conditions dans lesquelles la radiation d'office peut être opérée.

#### Article 7.

Tout bateau immatriculé doit être muni de son certificat d'immatriculation, sauf le cas où le certificat doit être présenté au bureau d'immatriculation en vertu de l'alinéa premier de l'article 6. Un duplicata, lorsqu'il en est délivré par les autorités compétentes, peut tenir lieu de certificat.

#### Article 8.

(Ancien texte, sauf remplacement du numéro 2 par la disposition suivante :

« Sur l'arrière, le nom du lieu d'immatriculation en toutes lettres, ainsi que le numéro d'immatriculation suivi par la lettre ou les lettres initiales de l'État d'immatriculation, savoir..... »).

#### Article 9.

(Ancien texte modifié comme suit :

1. Intercalez à l'alinéa 3, entre « précédente » et « qu'elle », les mots « ainsi que le duplicata », et remplacez le mot « l'a » par « les a ».

2. Supprimez à l'alinéa 4 les mots « en aucun cas »).

#### Article 10.

(Ancien texte modifié comme suit :

1. Supprimez au n° 1 les mots « ou des lieux » et remplacez le mot « peut » par « doit » et le chiffre 3 par 3 bis.

2. Remplacez au n° 2 les mots « à l'alinéa 3 de l'article 3 » par « à l'alinéa 2 de l'article 3 bis ».

3. Supprimez au n° 4° les mots « l'alinéa 2 de »).

#### Article 10 bis.

1. Chaque État contractant peut prescrire ou admettre que soient immatriculés sur ses registres des bateaux :

1° Les bateaux d'un déplacement inférieur à vingt tonnes métriques ;

2° Les bateaux en construction.

2. Les bateaux d'un déplacement inférieur à vingt tonnes métriques ne peuvent être immatriculés que dans le pays où est situé leur port d'attache ou, éventuellement, le lieu où le propriétaire est contribuable.

3. Les bateaux en construction ne peuvent être immatriculés ailleurs que dans le pays où ils sont en cours de construction, si ce n'est en vertu d'un accord entre deux ou plusieurs États contractants à la présente Convention et auquel le gouvernement dudit pays est partie.

4. Lorsqu'un des bâtiments susvisés est immatriculé, les dispositions de la présente Convention lui sont applicables.

5. Toutefois, pour les bateaux en construction, les indications prévues à l'alinéa 2 de l'article 5 ne doivent être fournies et inscrites que dans la mesure où elles peuvent être matériellement fournies.

6. L'immatriculation d'un bateau en construction, effectuée en vertu d'un des accords prévus à l'alinéa 3 sera, à tous égards, assimilée à celles qui seraient effectuées dans le pays de construction, même au regard des États contractants à la présente Convention et non parties à cet accord.

## TITRE II.

### Article 11.

(Maintenu, sauf le dernier membre de phrase commençant par « ou si au moins »).

## CHAPITRE PREMIER. — DE LA PROPRIÉTÉ.

### Article 12.

1. Par rapport au détenteur du bateau, la personne inscrite comme propriétaire au registre des bateaux est présumée, sauf preuve contraire, être le propriétaire.

2. Celui qui s'est fait transférer la propriété ou constituer hypothèque par une personne autre que le propriétaire ne peut pas se prévaloir de sa bonne foi vis-à-vis du propriétaire inscrit.

## CHAPITRE 2. — DES HYPOTHÈQUES.

### Article 13.

1. Les hypothèques inscrites sur les registres des bateaux seront reconnues et respectées si elles sont valables d'après la loi du lieu d'immatriculation.

2. La dénomination d'hypothèque comprend toute autre sûreté réelle, quels que soient ses nom et origine.

3. L'inscription d'hypothèque, effectuée sur un registre spécial, vaut inscription au registre des bateaux si le bureau compétent pour la tenue du registre spécial est indiqué au registre des bateaux.

### Article 13 bis.

1. L'inscription d'hypothèque doit indiquer au moins le créancier, le montant déterminé ou maximum de la créance, le taux des intérêts, les conditions d'exigibilité de la somme principale et des intérêts ainsi que la date de l'inscription.

2. Pour les conditions d'exigibilité, un renvoi à l'acte constitutif d'hypothèque peut tenir lieu d'inscription.

### Article 13 ter.

Les hypothèques constituées sur la quote-part d'un copropriétaire du bateau sont assimilées, pour l'application de la présente Convention, aux hypothèques grevant le bateau même.

### Articles 14 à 17.

(Supprimés.)

## CHAPITRE 3. — DES PRIVILÈGES OU GAGES FLUVIAUX.

### Article 18.

Sont privilégiés ou gagés sur le bateau :

1. 1<sup>o</sup> (Supprimé) ;

2<sup>o</sup> Les frais de conservation depuis la saisie ; les taxes de navigation et droits de port y compris les frais de pilotage ;

3<sup>o</sup> Les créances résultant du contrat d'engagement du capitaine, des gens d'équipage et des autres personnes engagées par l'armateur ou par le capitaine pour le service du bord ; mais en ce qui concerne les gages pour une durée de trois mois au plus ;

4° Les indemnités pour sauvetage et assistance et la contribution du bateau aux avaries communes ;

5° Les indemnités pour dommages causés par la faute d'une des personnes visées au n° 3 dans l'exercice de ses fonctions ; les indemnités pour dommages matériels résultant de l'inexécution ou de l'exécution incomplète d'un contrat dont l'exécution rentre dans les fonctions du capitaine ;

6° (Supprimé) ;

7° Les primes des assurances sociales des personnes visées au n° 3, mais pour une durée de trois mois au plus.

II. Les autres créances auxquelles la loi du tribunal saisi accorde un privilège.

#### *Article 19.*

1. Les privilèges internationaux prévus au chiffre I de l'article 18 priment les privilèges nationaux visés au chiffre II et les hypothèques.

2. Toutefois, le privilège d'une des créances mentionnées aux nos 5 ou 7 prend rang après l'hypothèque et les privilèges nationaux, si les faits constitutifs de la créance sont postérieurs à l'inscription d'hypothèque ou à la naissance du privilège national.

3. Si, par suite de l'application de l'alinéa précédent, le créancier d'une créance privilégiée en vertu des nos 5 ou 7 reçoit une somme inférieure à celle qu'il aurait reçue si son privilège avait primé les privilèges nationaux et les hypothèques, le propriétaire est tenu personnellement de la différence, sans qu'il puisse invoquer une limitation de sa responsabilité et sans préjudice de l'application d'une loi nationale en vertu de laquelle le propriétaire est tenu de la totalité de sa dette.

#### *Article 19 bis.*

1. Les privilèges nationaux priment les hypothèques, s'ils sont nés antérieurement à l'inscription de l'hypothèque et si la créance privilégiée appartient à un créancier qui a fait opérer la saisie conservatoire ou qui est détenteur du bateau.

2. Hors les cas visés à l'alinéa précédent, les privilèges nationaux prennent rang après l'hypothèque.

#### *Article 20.*

1. Parmi les privilèges internationaux prévus aux nos 2 à 5 de l'article 18, ceux qui résultent du dernier voyage priment ceux d'un voyage antérieur.

2. Les privilèges susmentionnés priment les privilèges prévus au n° 7 de l'article 18, quelle que soit la date de leur naissance.

3. Toute créance qui résulte d'un contrat d'engagement portant sur plusieurs voyages est réputée née du dernier voyage.

#### *Article 20 bis.*

1. Le rang des privilèges internationaux résultant d'un même voyage est déterminé par l'ordre établi à l'article 18.

2. Les privilèges prévus sous le même numéro ont le même rang.

3. Toutefois, les privilèges visés au n° 4 prennent rang dans l'ordre inverse des dates où ils sont nés.

4. Les privilèges se rattachant à un même événement sont réputés nés au même temps.

#### *Article 21.*

(Supprimé.)

#### *Article 22.*

Les créances énumérées au chiffre I de l'article 18 donnent naissance à des privilèges sans qu'elles soient soumises à des conditions spéciales de preuve, et même si elles sont nées du fait de l'exploitation du bateau par une personne autre que le propriétaire, sauf lorsque le propriétaire s'est trouvé dessaisi par un acte illicite et quand, en outre, le créancier n'est pas de bonne foi.

#### *Article 22 bis.*

1. Les privilèges internationaux s'établissent sans formalité et suivent le bateau dans quelque main qu'il passe.

2. Les privilèges nationaux ne peuvent suivre le bateau que s'il passe dans les mains d'un acquéreur de mauvaise foi.

#### *Article 23.*

1. Les privilèges internationaux s'éteignent :

1° En même temps que la créance et au plus tard à l'expiration d'un délai de six mois ;

2° Dans le cas de vente forcée.

2. Le délai susvisé court à partir du dernier jour du semestre au cours duquel la créance est devenue exigible.

3. Le délai est interrompu lorsque le créancier obtient la saisie conservatoire du bateau ou s'il intente l'action réelle.

*Article 24.*

(Supprimé.)

CHAPITRE 4. — DE LA SAISIE CONSERVATOIRE ET DE L'EXÉCUTION FORCÉE.

*Article 24 bis.*

1. La saisie conservatoire du bateau doit être inscrite au registre des bateaux sur demande du créancier.

2. La demande est établie suivant la formule ci-annexée (annexe I, page 216) et accompagnée d'une expédition authentique du procès-verbal de saisie. Elle peut être remise au consul du pays de l'immatriculation pour être transmise par télégramme audit bureau contre paiement des frais.

3. Pour ce qui est du rang de la créance du créancier saisissant, l'inscription de saisie vaut inscription d'hypothèque.

*Article 25.*

1. La procédure d'exécution forcée ne peut se dérouler que dans le pays où le bateau se trouve.

2. La procédure est réglée par la loi dudit pays, sous réserve de l'observation des dispositions qui suivent.

*Article 26.*

1. Lorsque le bateau est saisi pour être vendu ou si la procédure d'exécution forcée est ouverte sans saisie préalable, l'autorité compétente doit demander au bureau d'immatriculation que mention en soit faite sur le registre des bateaux.

2. La demande est établie suivant la formule ci-annexée (annexe II, page 217). Elle peut être remise au consul du pays d'immatriculation pour être transmise par télégramme audit bureau contre paiement des frais.

3. Le bureau d'immatriculation est tenu de prendre les mesures nécessaires pour que, dès réception de la demande, toute personne qui vient consulter les registres des bateaux ou tout autre registre pour la publicité des droits en puisse prendre connaissance, qu'il en soit fait mention sur ces registres, que les créanciers inscrits en soient informés et qu'un extrait certifié conforme du registre ainsi que la liste des adresses du propriétaire et des créanciers inscrits indiqués par eux soient envoyés à l'autorité compétente indiquée dans la demande.

4. (Ancien alinéa 3, sauf remplacement des mots « du résumé » par « de la demande »).

*Article 27.*

(Ancien texte.)

*Article 28.*

(Ancien texte, complété comme suit :

« .... du préjudice causé dans les conditions fixées par la loi nationale sans que, toutefois, la réparation puisse être subordonnée à la condition de réciprocité »).

*Article 29.*

Ne seront déduits du prix d'adjudication avant sa distribution que les frais de justice effectués dans l'intérêt commun des créanciers pour parvenir à la vente et à la distribution du prix, y compris les frais de garde, mais exception faite des dépenses encourues pour obtenir le titre exécutoire. Ce qui en reste est distribué aux créanciers... (suit l'ancien texte).

*Article 30.*

(Ancien texte.)

TITRE III. — DISPOSITIONS GÉNÉRALES.

*Article 31.*

(Supprimé.)

*Article 32.*

(Ancien texte.)

*Article 33.*

(Ancien texte.)

*Article 34.*

(Ancien texte complété par la disposition suivante :

« 2. Les gouvernements des Hautes Parties contractantes régleront la procédure suivre par des accords bilatéraux »).

*Article 35.*

(Ancien texte, sauf la dernière partie, qui sera rédigée comme suit :

« Les autorités chargées de la tenue des registres des bateaux ou de toute autre fonction prévue dans la présente convention ainsi que les accords visés à l'alinéa 3 de l'article 10 *bis* »).

*Article 36.*

(Supprimé.)

*Article 37.*

(Ancien texte.)

PROTOCOLE DE CLÔTURE.

*Chiffre I.*

(Maintenu, sauf les mots « telles que la Convention de Genève du 8 novembre 1927 »).

*Chiffres II à IX.*

(Supprimés.)

Appendice.

[Conf./U.D.F./2.]

OBSERVATIONS DE LA DÉLÉGATION ALLEMANDE CONCERNANT  
LE PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

TITRE I. — DE L'IMMATRICULATION.

*A. Observations générales.*

*Ad articles 2 et 3.*

1. La délégation allemande regrette de ne pas pouvoir accepter les dispositions de l'alinéa 1 de l'article 2 et de l'article 3.

La loi fluviale allemande prévoit l'immatriculation des bateaux dans le ressort de leur port d'attache au sens défini à l'article 3 *bis* des propositions d'amendements présentées par la délégation allemande (*Heimatsort*). Dans d'autres pays, on ne veut immatriculer que les bateaux dont le propriétaire est ressortissant du pays d'immatriculation.

Les experts n'ont pas pu s'entendre sur une condition uniforme d'immatriculation. Ils ont cru pouvoir surmonter cette difficulté en laissant à chaque État la liberté de fixer souverainement les conditions d'immatriculation et en accordant au propriétaire le droit de choisir le lieu d'immatriculation dans les cas où le bateau remplit à la fois les conditions d'immatriculation fixées par la législation de plusieurs pays.

Ce règlement n'a été accepté par les experts que faute d'une meilleure solution. Si on l'examine de plus près il paraît être inacceptable.

Si on laisse subsister la liberté absolue des États de fixer les conditions d'immatriculation, il peut arriver qu'un État admette l'immatriculation des bateaux sous la seule condition que le propriétaire la requiert. Il peut donc arriver que le cas exceptionnel visé à l'alinéa 3 de l'ancien article 3 devienne la règle, chaque bateau pouvant être immatriculé non seulement dans le pays où se trouve son port d'attache ou dont le propriétaire est ressortissant, mais aussi dans le pays qui permet l'immatriculation sur simple demande. On ne peut pas admettre l'utilité d'une réglementation internationale qui laisse subsister cet inconvénient.

Est également inacceptable l'expédient dont le projet se sert pour résoudre les conflits de lois. Le droit, accordé au propriétaire, de choisir le pays où le bateau sera immatriculé, ne jouera, en effet, qu'en faveur des ressortissants d'un pays où on n'immatricule que les bateaux appartenant aux nationaux de ce pays. Un bateau ayant son port d'attache en Allemagne et appartenant à un Français peut être immatriculé en Allemagne et en France ; le propriétaire peut fixer son choix sur



l'un ou l'autre de ces pays. Dans le cas inverse, il n'y a pas possibilité de choisir. Le bateau dont le port d'attache se trouve en France et dont le propriétaire est allemand ne peut être immatriculé ni en Allemagne, où on n'immatricule que les bateaux qui y ont leur port d'attache, ni en France où on veut refuser l'immatriculation des bateaux appartenant à des étrangers. Dans le premier cas, le propriétaire peut choisir entre deux pays pour y faire immatriculer son bateau ; dans le second cas, le propriétaire allemand est non seulement privé du droit de choisir, mais il ne peut obtenir l'immatriculation ni dans l'un des deux pays ni dans l'autre.

La délégation allemande ne veut pas aborder, dans le cadre des présentes négociations, des problèmes qui se rattachent aux droits des étrangers. Cette matière est régie par la coutume internationale et les traités de commerce ; une autre conférence en est saisie pour la codifier. Mais nous ne pouvons pas accepter un régime d'immatriculation qui puise sa raison d'être dans le fait qu'on veut sanctionner un système qui refuse aux étrangers le traitement national en matière de droit privé.

2. Si on veut remplacer le système de l'avant-projet par un autre, il faut prendre comme point de départ le fait que la partie principale de la présente Convention traite de la propriété, des hypothèques, des privilèges et de l'exécution forcée. Partant, le premier titre doit contenir les règles d'ordre administratif, qui sont indispensables pour assurer le bon fonctionnement des règles de droit privé et de procédure, traitées dans les titres suivants. Lorsqu'on limite l'objet du premier titre dans ce sens, il paraît être possible d'aboutir à un résultat satisfaisant et acceptable par tous les États. Il semble, en effet, incontestable, que — envisagée sous le seul point de vue des intérêts privés — l'immatriculation devrait être effectuée dans le ressort du port d'attache (*Heimatsort*). Rien de plus naturel que de faire immatriculer le bateau au lieu où se trouve le centre de son exploitation commerciale, lieu qui est le plus facilement accessible pour le propriétaire et pour les personnes qui, normalement, veulent consulter le registre.

3. Si, en fixant les conditions d'immatriculation, on s'inspire exclusivement de considérations relatives aux intérêts privés, on écarte toutes les difficultés qui s'opposent à une réglementation internationale, lorsqu'on veut envisager le bateau à la fois comme objet de droit privé et comme partie du domaine national. Ce dernier point de vue devrait être complètement écarté de la présente Convention comme on l'a déjà fait en partie au chiffre I du Protocole de clôture.

L'adoption de cette méthode n'empêche pas que chaque État prend, par voie de sa législation autonome, les mesures propres pour retenir les bateaux de ses ressortissants dans le patrimoine national. Il va de soi que chaque État reste libre d'établir des registres spéciaux pour des fins autres que celles de la Convention et de fixer, en ce qui concerne ces registres, des conditions d'immatriculation autres que les conditions conventionnelles.

4. Les registres, dont nous proposons l'établissement, peuvent être utilisés également pour l'identification des bateaux lorsqu'il s'agit de contraventions aux règlements de police.

5. En ce qui concerne la définition du port d'attache, nous proposons d'adopter purement et simplement la formule contenue au paragraphe 6 de la loi fluviale allemande, formule dont l'application pratique pendant trente ans a démontré l'utilité.

## B.

### Ad article premier.

1. On a soulevé la question de savoir si, d'après la Convention, les propriétaires de bateaux d'un déplacement inférieur à vingt tonnes seront en droit d'en demander l'immatriculation.

Nous estimons qu'il faut laisser à chaque État contractant la liberté d'admettre ou de ne pas admettre l'immatriculation des petits bateaux sur les registres prévus à la Convention.

Par conséquent, nous proposons :

a) De limiter, à l'alinéa 1 de l'article premier, l'engagement international à l'établissement de registres pour l'immatriculation des grands bateaux ;

b) De ne traiter dans les articles 1 à 10 que desdits grands bateaux ;

c) De supprimer à l'article 4 le n° 3 ;

d) De constater dans un nouvel article 10 bis (ancien article 4) que chaque État reste libre de prévoir l'immatriculation obligatoire ou facultative des petits bateaux ainsi que des bateaux en construction, sur les registres conventionnels.

2. Pour tenir compte du fait que les registres prévus à l'article premier existent déjà dans plusieurs pays, on propose de remplacer à l'alinéa 1 le mot « établir » par « tenir ».

3. Il va de soi que les registres seront tenus conformément à la législation nationale, si la Convention ne dispose pas autrement.

D'autre part, il paraît logique d'étendre l'engagement international aux règles établies aux articles 2 et suivants.

C'est pourquoi on propose de remplacer les mots « conformément à leur législation » par les mots « conformément aux dispositions de la présente Convention ».

4. Étant donné que d'après nos propositions, ce sera l'article 1 bis qui traitera de la publicité des registres, il faut supprimer à l'alinéa 1 de l'article premier le mot « publics ».

5. Pour faciliter la lecture du projet, il convient de dire au début quels sont les bâtiments et engins auxquels la Convention s'applique.

Nous proposons donc de remplacer l'article 31 par une disposition identique à insérer à l'article premier. D'après cette proposition et selon ce qui est dit *ad* article 4, tout objet indiqué au nouvel alinéa 2 sera soumis, en vertu de la Convention, à l'immatriculation obligatoire.

6. Il est inutile de faire mentionner les lettres indiquant le pays et le bureau d'immatriculation sur la feuille du registre où le bateau est immatriculé. Pour l'individualisation des bateaux au registre, il suffit que chaque bateau soit immatriculé sous un numéro spécial (voir l'alinéa 1 de l'article 5 *bis*).

Il est également inutile de mentionner ces lettres sur le certificat d'immatriculation, où les noms du pays et du bureau se trouvent déjà indiqués en toutes lettres (voir l'alinéa 3 de l'article 5 *bis*).

Enfin, il est inutile d'indiquer sur le bateau même, à part le nom du bureau en toutes lettres, une lettre désignant ledit bureau.

Il suit de ce qui précède que nous proposons que les bateaux soient individualisés :

a) Sur le registre : par un numéro d'ordre ;

b) Sur le certificat : par ce numéro et le nom du pays ainsi que du bureau d'immatriculation en toutes lettres ;

c) Sur le bateau même : par le numéro d'ordre, le nom du lieu du bureau en toutes lettres et une lettre indiquant le pays d'immatriculation.

C'est ce qui est prévu aux alinéas 1 et 3 de l'article 5 *bis*, et à l'article 8. Les alinéas 2 et 3 de l'article premier (ancien) deviennent ainsi inutiles et doivent être supprimés.

*Ad article 1 bis (nouveau).*

1. Pour éviter des renvois à l'article premier, il convient de prévoir, pour les registres conventionnels, une dénomination internationale. Nous proposons le nom « registres des bateaux ».

2. Du point de vue international, la disposition du chiffre II du Protocole de clôture est d'une importance capitale. Elle doit trouver sa place dans la Convention même.

*Ad articles 2 et 3.*

Voir les observations préliminaires *sub* A.

*Ad article 3 bis.*

Cet article reprend l'interdiction de faire immatriculer le bateau à la fois dans deux pays (voir l'alinéa 2 de l'article 2 et l'alinéa 3 de l'article 3 de l'ancien texte).

La nouvelle rédaction fait ressortir que l'interdiction s'adresse aux propriétaires et non pas aux bureaux.

Elle fait de l'alinéa 2 de l'article 2 une règle uniforme.

*Ad article 4.*

1. Les bateaux non encore immatriculés, qui se rendent du pays où ils ont été construits ou acquis, au pays où ils doivent être immatriculés, ne seront pas soumis, d'après l'article 3 amendé suivant la proposition allemande, à l'obligation de se faire immatriculer, soit dans le pays de leur construction ou acquisition, soit dans un des pays qu'ils passent pour parvenir à leur port d'attache.

C'est pourquoi on demande la suppression de l'alinéa premier.

2. En Allemagne, on ne voit pas de raison pour exempter les dragues, grues, etc., ainsi que les bateaux de plaisance d'un grand déplacement, de l'obligation de se faire immatriculer.

Nous proposons la suppression des nos 1 et 2.

3. La suppression du n° 3 a été demandée *ad* article premier.

4. Pour ce qui reste de l'article 4, voir *ad* article 10 *bis*.

*Ad article 5.*

1. Étant donné que la nouvelle rédaction de l'article 3 dispose que l'immatriculation doit être faite sur demande, l'objet de l'alinéa 1 de l'article 5 doit être restreint à la forme et au contenu de la demande.

2. L'adoption d'un nouveau article 13 *ter* relatif aux hypothèques constituées sur la quote-part d'un copropriétaire justifie l'insertion, au n° 4 de l'article 5, des mots « et s'il y a plusieurs propriétaires, la quote-part de chacun d'eux ».

3. Le n° 5 doit être adapté à la nouvelle condition d'immatriculation prévue à l'article 3.

4. *Ad* n° 6, on propose une meilleure rédaction.

5. Du point de vue international, il importe de garantir, autant que possible, l'exactitude des inscriptions effectuées sur les registres des bateaux. C'est pourquoi nous proposons d'insérer un nouvel alinéa 2, qui stipule que le demandeur doit établir l'exactitude de ses indications. On y parle du demandeur (*Antragsteller*) et pas du propriétaire, parce que l'article 2 sera appliqué aussi dans les cas visés à l'article 6, où le demandeur ne sera pas toujours le propriétaire.

6. Il convient de faire de l'alinéa 2 un article distinct (article 5 *bis*) et d'insérer la disposition de l'alinéa 3 à l'article 10 *bis*.

*Ad article 5 bis.*

1. Du point de vue international, il importe qu'on puisse trouver toutes les inscriptions qui ont trait au même bateau à la même place.

C'est ce qu'on vise au nouvel alinéa premier qui remplace en même temps l'alinéa 2 de l'article premier.

On ne prévoit plus que le numéro d'immatriculation soit précédé par une lettre indiquant le bureau d'immatriculation ; cette lettre est, en effet, inutile en ce qui concerne l'inscription au registre ; elle est inutile également en ce qui concerne le certificat et les indications que doit porter le bateau même, parce que l'alinéa 3 (ancien article 7) et l'article 8 prévoient l'indication du nom ou du lieu du bureau en toutes lettres.

2. Quant au contenu obligatoire de l'inscription, on a ajouté la date de l'inscription et le nom du bureau hypothécaire. La date de l'inscription, parce qu'elle est d'importance internationale, notamment dans les cas visés à l'alinéa 3 de l'article 26 ; le bureau hypothécaire, parce que seul le registre des bateaux est destiné à assurer la publicité internationale.

La nouvelle rédaction permet la suppression du chiffre VII du Protocole de clôture.

3. Il convient de traiter dans des dispositions distinctes des obligations qui incombent au bureau d'immatriculation et de celles incombant aux particuliers. C'est pourquoi nous proposons l'insertion d'un nouveau alinéa 2 ayant pour objet l'obligation des bureaux de délivrer un certificat d'immatriculation, ainsi que la forme et le contenu de ce certificat.

4. L'emploi de deux exemplaires officieux du certificat peut donner lieu à des abus et à des confusions. La disposition du nouvel alinéa 3 les empêchera.

*Ad article 6.*

1. On propose de traiter séparément, ici encore, des obligations incombant aux bureaux et aux particuliers.

2. Le renvoi, dans l'alinéa premier, à l'article 5, vise notamment l'alinéa 2 dudit article.

3. La réserve inscrite à l'alinéa 2 permet la suppression, à l'alinéa 4 de l'article 8, des mots « en ancien cas », dont le sens est obscur.

*Ad article 7.*

Comme le contenu du certificat et l'obligation de le délivrer sont réglementés aux articles 5 *bis* et 6 nouveaux, l'article 7 n'a qu'à établir l'obligation du propriétaire de munir le bateau de son certificat et de garder ce document à bord. Cette obligation est absolue. Elle ne cesse que dans le cas visé à l'alinéa 1 de l'article 6.

*Ad articles 8 à 10.*

Les modifications proposées ci-dessus entraînent des modifications légères, indiquées à l'annexe dans la rédaction des articles 8 à 10.

*Ad article 10 bis.*

Cet article reproduit l'ancien article 4, en tant qu'il est maintenu (voir les observations *ad* article 4) et le chiffre V du Protocole de clôture.

## TITRE II.

*Ad article 11.*

La délégation allemande ne peut accepter le régime international prévu au deuxième titre que pour les bateaux immatriculés en Allemagne, qui se trouvent sur le territoire d'un autre État contractant, ainsi que pour les bateaux immatriculés à l'étranger qui se trouvent sur le territoire allemand.

Les raisons qui s'opposent à l'application conventionnelle des règles internationales dans le pays d'immatriculation sont indiquées à la page 17 du rapport des experts.

### CHAPITRE 1. — DE LA PROPRIÉTÉ.

*Ad article 12.*

1. La délégation allemande regrette de ne pas pouvoir accepter la règle établie à l'article 12. Sur le territoire allemand, les droits de propriété sur un bateau passent, en cas de transfert volontaire entre vifs, sans intervention bureaucratique, sans retard, sans frais et sans qu'il soit

nécessaire de remplir des formes gênantes. Les intéressés demandent le maintien de cet état de choses.

L'adoption de l'article 12 (ancien) aura, en outre, pour effet que, s'il s'agit de bateaux immatriculés dans un pays, où le passage de la propriété est subordonné à une inscription au registre, le bateau peut être mis hors du commerce par un acte de l'État d'immatriculation qui en interdit l'aliénation, et cela même si le bateau se trouve sur un territoire étranger. Ceci serait contraire aux principes généraux du droit, d'après lesquels les interdictions d'aliéner ne produisent pas des effets internationaux.

2. Étant donné qu'en pratique le transfert de la propriété n'a pas donné lieu à des difficultés d'ordre international, nous n'attachons pas de prix à l'insertion, dans la Convention, d'une disposition relative aux passages de propriété.

Toutefois, si d'autres délégations le demandent, nous sommes prêts à remplacer l'article 12 par la nouvelle formule insérée au texte ci-annexé. Le propriétaire inscrit serait ainsi mis à l'abri du danger de se voir privé de son droit par le jeu d'une loi étrangère sur l'acquisition de la propriété par un tiers de bonne foi.

## CHAPITRE 2. — DES HYPOTHÈQUES.

### Ad article 13.

1. La délégation allemande n'accepte pas la règle établie à l'alinéa 1 de l'article 13.

Aucun État ne peut s'engager à appliquer inconditionnellement aux bateaux étrangers, en ce qui concerne les effets de l'hypothèque, la loi étrangère, s'il ne connaît pas les effets d'hypothèque prévus par cette loi et dont, partant, il ne sait pas s'ils sont compatibles avec son ordre public.

L'application de la loi du pays d'immatriculation ne pourrait donc être concédée que sous la réserve de sa non-application au cas où elle est contraire à l'ordre public interne. Mais une telle stipulation servira à peu de chose.

La délégation allemande propose, pour ces raisons, de revenir à la formule de Bruxelles.

2. Étant donné que l'article 12 doit être lu ensemble avec l'article 11, la formule de Bruxelles peut être sensiblement simplifiée. Nous proposons, en outre, d'établir à l'article 12 aussi le principe énoncé à l'alinéa 1 de l'article 15 en substituant aux mots « régulièrement établies » le mot « valable ». Nous demandons, enfin, qu'on remplace les mots « considérés comme valables et respectés » par la formule mieux connue « reconnues et respectées ».

L'alinéa 1 de l'article 13 sera donc ainsi conçu :

« Les hypothèques inscrites sur les registres des bateaux seront reconnues et respectées si elles sont valables d'après la loi du lieu d'immatriculation. »

3. Cette règle doit s'appliquer non seulement aux sûretés dénommées « hypothèques », mais à toute autre sûreté réelle, quel que soit son nom ou origine ; elle doit s'appliquer notamment aux hypothèques légales et judiciaires.

C'est ce que dit l'alinéa 2 nouveau, dont l'insertion permet la suppression de l'alinéa 1 du chiffre VIII du Protocole de clôture.

4. Le nouvel alinéa 3 remplace ensemble, avec les derniers mots de l'alinéa 2 de l'article 5 *bis*, le chiffre VII du Protocole de clôture.

### Ad article 13 bis.

La reconnaissance internationale des hypothèques devant être subordonnée à leur publicité, il convient de déterminer, dans la Convention, les conditions dans lesquelles une hypothèque sera considérée avoir obtenue la publicité internationale. C'est l'objet du présent article.

### Ad article 13 ter.

Cette proposition n'exige pas de commentaire.

### Ad articles 14 à 16.

La modification, proposée ci-dessus, de l'alinéa 1 de l'article 13 permet la suppression des anciens alinéas 2 et 3 de l'article 13 et des articles 14, 15 et 16.

En effet, la règle établie à l'alinéa 1 de l'article 15 est reprise, quant au fond, à l'article 13. Les autres dispositions mentionnées au premier paragraphe ci-dessus ont été insérées au projet en vue de calmer ceux qui ne croyaient pas pouvoir accepter l'alinéa 1 de l'article 13. Elles traitent de certaines situations juridiques qui, en pratique, ne donnent pas lieu à des difficultés. Il ne vaut pas la peine de maintenir lesdites dispositions.

### Ad article 17.

Cet article doit être supprimé en tant qu'il soumet les hypothèques reportées sur un nouveau registre à la loi du nouvel État (voir les observations *ad* article 13, paragraphe 1).

Ce qui en reste peut être supprimé, parce que cette disposition fait double emploi avec l'alinéa 4 de l'article 9.

### CHAPITRE 3. — PRIVILÈGES.

#### A. Observations générales.

Les experts ont réussi à écarter les difficultés les plus sérieuses, qui s'opposent à l'œuvre d'unification. Un dernier effort suffira pour aboutir à une unification complète.

1. La délégation allemande propose, *ad* article 18, chiffre I, la suppression des renvois à la loi nationale du pays d'immatriculation et du pays où le bateau est saisi. Nous demandons cette suppression pour deux raisons :

a) Les experts veulent voir privilégiées les créances résultant d'une avarie commune, d'un accident de navigation et de perte ou avarie de la cargaison pour tenir compte du fait que, d'après le système allemand, la responsabilité du propriétaire pour ces créances est limitée à la fortune de mer et que, partant, la suppression du privilège comporterait, en fait, la négation de la créance.

Mais le projet ne veut accorder ces privilèges que dans les conditions établies aux nos 4, 5 et 6 de l'article 18 et à l'alinéa 2 de l'article 19. Ces conditions sont telles que le privilège ne profitera au créancier que dans des cas exceptionnels. Par conséquent, l'adoption du projet entraînera pour l'Allemagne la nécessité de modifier sa loi fluviale en imposant au propriétaire, dans les cas susvisés, une responsabilité personnelle, limitée à la valeur du bateau. Une telle modification comporterait un bouleversement et une complication très fâcheuse de notre système. Elle ne peut être prise en considération qu'après épuisement complet de tous autres moyens d'aboutir à un accord.

La délégation allemande ne veut pas, pour le moment, insister sur ce point. Elle espère pouvoir convaincre les autres délégations du bien-fondé de sa thèse, que lesdits privilèges peuvent inconditionnellement être admis partout, et cela pour des raisons d'équité et parce qu'ils ne sont pas nuisibles au crédit hypothécaire.

b) La nature des choses exige que les créances résultant de l'exploitation normale du bateau soient liquidées à la fin de chaque voyage et que le bateau soit affecté en premier lieu au paiement de ces dettes. Il faut tenir compte de cet argument, notamment dans la navigation internationale.

Ce ne sont donc pas en premier lieu des raisons d'ordre juridique, qu'on peut invoquer pour justifier, soit la suppression desdits privilèges, soit la détermination d'un rang moins favorable de la créance privilégiée. C'est le désir de fortifier le crédit et de protéger le créancier hypothécaire.

Mais le créancier hypothécaire est en état de se protéger lui-même sans intervention du législateur.

Il se peut mettre à l'abri du danger de voir primé son droit par une créance née postérieurement à l'inscription d'hypothèque, en imposant au propriétaire l'obligation d'exclure, dans les contrats de transport, tout règlement d'avaries communes.

Le créancier hypothécaire ne court point non plus le risque de devoir céder son rang à une créance née antérieurement à l'inscription d'hypothèque, dont, lors de la constitution de son droit, il ne connaissait pas l'existence. Le crédit hypothécaire fluvial restera toujours une sûreté accessoire basée en premier lieu sur le crédit personnel. On ne se fait pas constituer d'hypothèques si on n'a pas une confiance absolue dans l'honnêteté du débiteur. Si tel est le cas, le créancier hypothécaire, n'a qu'à demander au propriétaire, avant le versement de la somme prêtée, si des événements se sont produits qui peuvent engendrer des créances privilégiées. Pour plus de sûreté encore, le créancier peut se renseigner auprès du capitaine ou se faire fournir caution par le propriétaire.

2. La délégation allemande demande, *ad* alinéa 2 de l'article 19, la suppression du dernier membre de phrase, où l'on dispose que pour conserver son rang, le créancier privilégié doit procéder dans les quinze jours à la saisie du bateau.

Les intéressés allemands s'opposent à cette disposition qui est de nature à empêcher un règlement à l'amiable, qui occasionne des dépenses souvent inutiles et qui est très gênant pour le service de navigation.

#### B.

##### Ad article 18.

1. Pour faciliter, en Allemagne, la mise en vigueur de la Convention, on propose de remplacer dans l'intitulé et au début de l'article 18 le mot « privilège » par : « privilège ou gage ». Cela fait, il ne sera plus nécessaire de parler du droit de préférence.

On peut aussi supprimer la mention des accessoires (voir *ad* articles 14 à 16).

2. Les frais de justice visés au n° 1 sont déduits du prix de la vente avant qu'on procède à sa distribution ; ils ne grèvent pas le bateau. Il ne s'agit donc pas d'un privilège proprement dit. On propose, par conséquent, de supprimer le n° 1 et de traiter des frais de justice à l'article 29.

3. On propose, *ad* n° 2, de préciser dans le texte que les droits y mentionnés comprennent les frais de pilotage.

4. Nous proposons, *ad* n° 3, de ne privilégier que les créances résultant du contrat d'engagement en supprimant la deuxième partie de la disposition.

Les indemnités visées au début de la deuxième partie ne peuvent résulter que du contrat d'engagement ou d'un acte illicite commis par le propriétaire. Si elles résultent du contrat, elles

sont privilégiées en vertu de la première phrase ; si elles résultent d'un acte illicite, il ne s'agit plus d'une créance née de l'exploitation normale du bateau, qui mérite d'être privilégiée sur la fortune de mer, mais, tout au contraire, d'une obligation engageant la responsabilité personnelle du propriétaire. Ce privilège ne paraît donc pas justifié. Il n'est pas non plus prévu à la Convention de Bruxelles.

Les frais funéraires en cas de décès, à bord, du capitaine-propriétaire sont nés, il est vrai, de l'exploitation normale du bateau. Mais il semble un peu choquant de les privilégier si on n'accorde pas en même temps un privilège aux créances alimentaires des parents.

5. Les créances privilégiées, en vertu des nos 5 et 6, sont désignées au projet des experts suivant la méthode anglaise par voie d'énumération casuistique, qui ne fait pas apparaître un principe dominant et à laquelle on peut reprocher d'être arbitraire. Nous proposons de fondre en un seul ces deux numéros et de remplacer, suivant l'habitude continentale, l'énumération par une formule générale. Cette formule pourrait indiquer, comme donnant naissance à des privilèges, la responsabilité du propriétaire pour les actes commis par les gens de rivière dans l'exercice de leurs fonctions ainsi que les contrats de transport et de remorquage à exécuter par le capitaine. Cette formule ne diffère de la formule des experts qu'en tant qu'elle couvre aussi le cas de dommages causés aux personnes se trouvant à bord, sans qu'il y ait contrat de transport ou d'engagement. La mise en vigueur de l'ancien texte entraînera pour l'Allemagne des difficultés sérieuses.

6. Quant aux conditions visées à la fin des nos 4, 6 et 7, voir les observations générales ci-dessus.

#### Ad articles 19 et 19 bis.

1. Il suit des observations générales que nous demandons la suppression du dernier membre de phrase de l'alinéa 2 commençant par : « et, si dans un délai... » et des alinéas 3, 4 et 5.

2. Nous proposons de remplacer le reste de l'article par les dispositions plus détaillées des alinéas 1 et 2 de l'article 19 et de l'article 19 bis.

Les experts n'ont pas tenu compte du fait que, parmi les privilèges nationaux visés au chiffre II de l'article 18, il s'en trouve quelques-uns qui méritent un traitement préférentiel. Le droit commun ou commercial accorde, en effet, aux créances des réparateurs, commissionnaires, expéditeurs, transporteurs, dépositaires et commerçants, un privilège ou droit de gage légal, à condition que le créancier ait obtenu et gardé la détention de l'objet grevé et que cet objet appartienne au débiteur. Il s'agit ici de droits réels ayant la même force que les hypothèques conventionnelles et devant prendre rang par rapport à ces hypothèques d'après l'adage « *prior tempore potior juris* ». Toutefois, ces droits réels s'éteignent, suivant les règles générales, à la suite de la constitution d'hypothèque en faveur d'un tiers de bonne foi.

En dehors des cas susvisés, notre loi accorde au créancier saisissant un droit de gage portant sur le bateau. Ce droit de gage doit rester, lui aussi, opposable au créancier hypothécaire de mauvaise foi.

Les observations précédentes justifient l'insertion du nouvel article 19 bis. Cette disposition n'est pas nuisible au crédit hypothécaire. L'hypothèque née antérieurement primera en premier lieu les privilèges ou gages, dont il s'agit. S'il s'agit d'une hypothèque née postérieurement, le créancier ne risque rien s'il est de bonne foi. En outre, le créancier peut prendre des renseignements pour voir si le bateau est détenu par une personne dont la créance peut faire naître un privilège national.

On peut soulever la question de savoir si la matière dont nous venons de traiter est assez importante pour lui consacrer un article spécial. Toutefois, on ne peut pas passer le problème sous silence sans faire naître des difficultés d'ordre technique considérables lors de la mise en vigueur de la Convention.

3. Le nouvel alinéa 3 de l'article 19 tient lieu de l'ancien article 21.

#### Ad articles 20 et 20 bis.

Les intéressés allemands demandent le maintien du système actuellement en vigueur en Allemagne et correspondant à celui de Bruxelles. D'après ce système, les créances privilégiées qui sont nées du dernier voyage priment les créances d'un voyage précédent.

Nous proposons de remplacer l'article 20 par les nouveaux articles 20 et 20 bis, dont la rédaction suit de près la rédaction de Bruxelles.

#### Ad article 21.

Le contenu de cet article se trouve inséré à l'article 19. La rédaction a pu être simplifiée en raison des modifications prévues ad articles 18 et 19.

#### Ad articles 22, 22 bis et 24.

La rédaction de l'article 24 est inexacte et, partant, obscure. On veut dire que le privilège naît non seulement dans les cas où la créance résulte de l'exploitation du bateau par le propriétaire, mais aussi si l'exploitant est un armateur non propriétaire.

En vue d'une rédaction plus claire, il convient de supprimer l'article 24 et de consacrer un article à la naissance du privilège et un autre au droit de suite.

C'est ce qu'on propose aux articles 22 et 22 bis.

Pour justifier la rédaction de l'alinéa 2 de l'article 22 *bis*, on peut renvoyer à ce qui est dit ci-dessus au paragraphe 2, *ad* articles 19 et 19 *bis*.

*Ad article 23.*

1. Nos intéressés demandent à juste titre le remplacement du délai de trois mois par un délai de six mois.

2. A la suite des modifications proposées *ad* articles 18, l'alinéa 2 doit être supprimé.

3. Il ne paraît ni nécessaire ni possible de soumettre les privilèges nationaux à une déchéance internationale. Nous proposons, par conséquent, de ne mentionner à la première ligne de l'article que les privilèges internationaux.

4. Les intéressés allemands demandent l'adoption d'un système correspondant à celui qui est actuellement en vigueur dans notre pays. D'après ce système, le délai de prescription court à partir de la fin de l'année où la créance est devenue exigible. Ce système se recommande par sa simplicité; les créanciers n'ont à contrôler leurs livres qu'une fois par an. Nous proposons d'adopter ce système en substituant, toutefois, à l'année le semestre.

5. Le maintien de l'ancien alinéa 4 affaiblira sensiblement la valeur internationale de la déchéance conventionnelle.

On propose de ne pas prévoir la suspension du délai et de fixer les causes d'interruption par voie de législation uniforme. Le délai doit être interrompu lorsque le créancier poursuit son droit réel, c'est-à-dire lorsqu'il fait saisir le bateau ou s'il intente l'action réelle.

TITRE III. — DE L'EXÉCUTION FORCÉE.

*Observations générales.*

1. Si la Conférence adopte l'amendement proposé *ad* article 11, le champ d'application du titre III sera le même que celui du titre II. Pour tenir compte de ce fait, on propose de faire du titre III un quatrième chapitre du titre II.

2. Nous avons demandé, *ad* article 19, la suppression des dispositions relatives à la saisie conservatoire et cela, entre autres, parce que les dispositions conventionnelles sur la saisie méritent d'être d'application générale. Nous proposons maintenant de réglementer cette matière dans un nouvel article 24 *bis*. L'insertion de cet article entraîne une modification de l'intitulé.

3. Les dispositions de l'ancien titre III ont rencontré, dans notre pays, des objections sérieuses. On craint que la procédure ne soit trop compliquée et on hésite à accorder l'exécution des jugements d'adjudication dans les seules conditions visées à l'article 30. La délégation allemande ne partage pas ces scrupules dans leur ensemble et espère pouvoir les écarter. Elle acceptera donc lesdites dispositions provisoirement et sous réserve des observations qui suivent.

*Ad article 24 bis.*

D'après ce qui est dit *ad* article 19 *bis*, le créancier ayant obtenu la saisie conservatoire jouit d'un privilège ou gage national qui prime l'hypothèque née postérieurement, à condition, toutefois, que le créancier hypothécaire ne soit pas de bonne foi. L'inscription de la saisie renforce ce droit; l'hypothèque constituée après ladite inscription doit inconditionnellement prendre rang après le droit du créancier saisissant.

La procédure à suivre sera — *mutatis mutandis* — la même que celle prévue à l'article 26 pour l'inscription d'une saisie exécutoire. Toutefois, l'inscription ne sera faite que sur demande du créancier et on ne prévoit pas que les créanciers en soient informés.

2. Le premier membre de phrase de l'alinéa 2 a été inséré en vue de faciliter aux autres délégations l'acceptation de cette disposition. Du point de vue allemand, il suffit de stipuler que l'inscription de saisie vaut inscription d'hypothèque.

*Ad article 25.*

L'application de l'alinéa 2 de l'article 27, et de l'article 30 rencontrerait des difficultés si l'exécution forcée pourrait se dérouler dans un pays autre que celui où le bateau se trouve. L'alinéa 1 nouveau veut exclure cette possibilité.

*Ad article 26.*

1. On propose de remplacer à l'alinéa 2 (ancien) les mots « en ait connaissance » par « en puisse prendre connaissance », et cela en vue de ne pas imposer au bureau une obligation dont l'exécution n'est pas possible.

2. On propose de faire communiquer à l'autorité compétente du pays de la saisie un extrait du registre dont la connaissance est indispensable pour le jugement d'adjudication et la distribution du prix.

3. Les autres modifications proposées ne concernent que la rédaction.

**Ad article 27.**

Pas d'observations.

**Ad article 28.**

Il ne convient pas de qualifier d'absolue la responsabilité qu'un État veut assumer en vertu de l'article 28 pour l'inobservation, par ses fonctionnaires, des formalités conventionnelles de publicité. Il faut, au contraire, laisser aux États la faculté de déterminer les conditions de cette responsabilité, par exemple en ce qui concerne *a)* le degré de culpabilité des autorités auxquelles ladite inobservation est imputable, *b)* la faute concomitante de la personne lésée, *c)* l'épuisement des voies de recours. Mais il va sans dire que la responsabilité assumée par un État en vertu de la Convention ne peut pas être subordonnée à la condition de réciprocité.

Notre amendement *ad* article 28 est conçu dans ce sens.

**Ad article 29.**

On a fait observer *ad* n° 1 de l'article 18 que le droit de préférence dont jouissent les créances y mentionnées, n'est pas un privilège proprement dit. Il faut donc transporter le n° 1 à l'article 29 et stipuler que les frais dont il s'agit seront déduits du prix de la vente avant sa distribution.

C'est ce que propose notre amendement, qui insère, en outre, la clause interprétative figurant au chiffre IX du Protocole de clôture qui, partant, sera supprimé.

Une rédaction définitive ne peut être proposée qu'après discussion.

**Ad article 30.**

Voir le paragraphe 3 des observations générales.

**TITRE IV. — DISPOSITIONS GÉNÉRALES.**

**Ad article 31.**

Remplacé par l'alinéa 2 de l'article premier.

**Ad article 32 à 34.**

Pas d'observations.

**Ad article 35.**

L'amendement allemand n'exige pas de commentaire.

**Ad article 36.**

L'article 36 a été inséré dans la Convention parce que des doutes s'étaient manifestés par rapport à la compatibilité de l'immatriculation obligatoire avec le droit de libre navigation.

La délégation allemande estime impossible qu'on mette en doute, dans la Convention même, la validité d'une de ses clauses principales. Un État qui partage ces doutes ne peut pas faire signer la Convention. Le maintien de l'article 36 comporterait, pour les tribunaux, l'obligation d'examiner s'il y a conflit entre la Convention et les actes de navigation et de statuer si c'est l'Acte ou la Convention qu'il faut appliquer.

**Ad article 37.**

Pas d'amendements.

On peut soulever la question de savoir s'il convient de maintenir une disposition relative aux différends d'ordre international lorsque la Convention est modifiée de façon à ne sauvegarder que les intérêts des particuliers.

**PROTOCOLE DE CLÔTURE.**

**Ad I.**

La Convention du 8 novembre 1927 n'étant pas en vigueur, elle ne peut plus figurer au texte du Protocole.

**Ad II.**

Remplacé par l'article 1 *bis*.

**Ad III.**

Étant donné que l'article 3 *bis*, au lieu d'interdire la double immatriculation, interdit le cumul des demandes d'immatriculation et que, d'autre part, l'inscription au registre central est effectuée d'office, la clause II du Protocole est devenue inutile et peut être supprimée.

**Ad IV.**

La suppression de l'alinéa 4 de l'article 3 entraîne la suppression du chiffre IV du Protocole



*Ad V.*

Cette disposition est transférée à l'article 10 *bis*.

*Ad VI.*

On propose la suppression de cette clause.

S'il s'agit d'un cas où la vente entraîne l'extinction des hypothèques, la demande d'immatriculation, faite par le nouveau propriétaire, concerne un bateau qui n'est plus grevé. La dernière partie de la clause IV est donc inutile.

La première partie de la clause ne paraît pas justifiée. Elle n'est pas non plus compatible avec les dispositions légales, qui prévoient l'observation de certaines formalités lorsqu'il s'agit, comme ici, d'une déclaration devant servir de base à une inscription aux registres.

*Ad VII.*

Voir les observations *ad* alinéas 2 de l'article 5 *bis* et *ad* article 13.

*Ad VIII.*

1. Pour l'alinéa premier, voir l'observation *ad* article 13.

2. La modification de l'article 13 nécessite une modification de l'alinéa 2 de la clause VIII (« voie parée »). Nous prions la délégation belge de proposer une nouvelle rédaction.

*Ad IX.*

Voir *ad* article 28.

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ANNEXE 2.

[Conf./U.D.F./5.]

AMENDEMENTS PROPOSÉS PAR LA DÉLÉGATION DES PAYS-BAS  
AU PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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*Article 3 (4).*

*Texte actuel :*

Chaque État contractant se réserve le droit d'exiger que ses ressortissants inscrivent sur des registres les bateaux leur appartenant et remplissant les conditions d'immatriculation de deux ou plusieurs États s'ils ont sur son territoire leur résidence habituelle ou, dans le cas de sociétés, la direction principale de leurs affaires.

*Amendement :*

Chaque État contractant se réserve le droit d'exiger que les bateaux appartenant aux personnes ayant eu pendant les derniers dix-huit mois leur résidence habituelle sur son territoire, ou, dans le cas de sociétés, la direction principale de leurs affaires, soient inscrits sur les registres, dans le cas où ces bateaux remplissent les conditions d'immatriculation de deux ou plusieurs États.

*Article 8 (1).*

*Texte actuel :*

Tout bateau immatriculé doit porter :

1. Sur chaque côté, son nom ou sa devise et, s'il existe plusieurs bateaux appartenant au même propriétaire avec le même nom ou la même devise, un numéro distinctif ;
2. Sur l'arrière, les lettres et les numéros signalétiques visés à l'article 1, alinéas 2 et 3, ainsi que le nom du lieu d'immatriculation en toutes lettres.

*Amendement :*

Tout bateau immatriculé doit porter :

Sur chaque côté, son nom ou sa devise et, s'il existe plusieurs bateaux appartenant au même propriétaire avec le même nom ou la même devise, un numéro distinctif, les lettres et les numéros signalétiques visés à l'article 1, alinéas 2 et 3, ainsi que le nom du lieu d'immatriculation en toutes lettres.

*Article 8 (2).*

Au lieu de caractères latins ayant au moins vingt centimètres de hauteur, etc., lisez : quinze centimètres.

*Article 12.*

*Texte actuel :*

Le transfert volontaire entre vifs des droits de propriété sur un bateau est réglé par la loi du pays contractant où le bateau est immatriculé, si cette loi prévoit comme condition du transfert, ou tout au moins pour que ce transfert ait effet à l'égard des tiers, soit l'inscription aux registres publics visés à l'article 1, soit la mise en possession de l'acquéreur.

*Amendement :*

Ajoutez :

« La même règle s'applique au droit d'usufruit et autres droits réels analogues. »

TITRE II a).

*Article 24 bis (nouveau).*

Lorsqu'un bateau immatriculé dans un des États contractants est saisi conservatoirement, la procédure est réglée par la loi de cet État, sous réserve de l'observation des dispositions qui suivent :

*Article 24 ter (nouveau).*

1. La saisie conservatoire doit être inscrite au registre des bateaux sur demande du créancier.
2. La demande est établie suivant la formule ci-annexée (annexe 1, page 216). Elle peut être remise au consul du pays de l'immatriculation pour être transmise par télégramme audit bureau contre paiement des frais.
3. Le bureau d'immatriculation est tenu de prendre les mesures nécessaires pour que, dès réception de cette demande, toute personne qui vient consulter les registres pour la publicité des droits en ait connaissance, qu'il en soit fait mention sur ces registres, que les créanciers inscrits en soient informés et qu'un état de ces créanciers, contenant les adresses indiquées par eux, soit envoyé à la personne qui a transmis la demande.
4. Aucune aliénation n'est opposable au créancier saisissant ou intervenant et à l'adjudicataire, si elle est effectuée après la réception de la demande par le bureau d'immatriculation ou si, lors de l'aliénation, l'acquéreur avait ou devait raisonnablement avoir connaissance de la saisie. La même règle s'applique à la constitution d'hypothèque ainsi qu'à la conclusion d'un contrat d'affrètement ou de louage du bateau.

TITRE III. — DE L'EXÉCUTION FORCÉE.

*Article 26 (3).*

*Amendement :*

Ajoutez :

« ...ainsi qu'à la conclusion d'un contrat d'affrètement ou de louage du bateau. »

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ANNEXE 3.

[Conf./U.D.F./7.]

AMENDEMENTS PROPOSÉS PAR LA DÉLÉGATION YOUGOSLAVE  
AUX ARTICLES 3 ET 8 DU PROJET DE CONVENTION  
SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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*Article 3, alinéa 4.*

Remplacer les mots « résidence habituelle » par les mots : « résidence principale ».

*Motif :* On peut avoir à la fois plusieurs résidences habituelles, par exemple : une résidence pendant la saison d'hiver et l'autre pendant la saison d'été, mais on ne peut avoir qu'une seule *principale* résidence.

C'est d'ailleurs le terme admis par la dernière Conférence de codification du droit international (La Haye ; mars, avril 1930) (voir Convention sur la nationalité et procès-verbaux de la première commission).

Article 8, alinéa 2.

Ajouter à la fin de cet alinéa une nouvelle phrase, conçue de la façon suivante :

« A côté de ces inscriptions en caractères latins, les inscriptions peuvent être faites aussi en caractères reconnus officiels dans le pays du lieu de l'immatriculation. »

*Motifs de l'amendement* : En Yougoslavie, on se sert de deux alphabets, de l'alphabet cyrillique et de l'alphabet latin ; en Bulgarie, uniquement de l'alphabet cyrillique, en Grèce de l'alphabet hellénique.

ANNEXE 4.

[Conf./U.D.F./15.]

OBSERVATIONS ET PROPOSITIONS PRÉSENTÉES PAR LA DÉLÉGATION  
HELLÉNIQUE RELATIVES AU PROJET DE CONVENTION SUR CERTAINES  
MATIÈRES DE DROIT FLUVIAL

La délégation hellénique désirerait être fixée sur le point de savoir si, de l'avis de la deuxième Commission de la Conférence pour l'unification du droit fluvial, les dispositions de l'article 10 du projet de Convention sur certaines matières de droit fluvial, couvrent, dans leur rédaction actuelle, la compétence des autorités d'un pays qui, comme la Grèce, confie à ses représentants consulaires à l'étranger le soin d'immatriculer les bateaux appartenant à ses nationaux. Il s'agirait notamment du cas des bateaux grecs du Danube.

La teneur des articles 1 et 2 du projet de Convention ne s'oppose guère à ce que la Grèce continue, comme par le passé, à faire immatriculer lesdits bateaux à ses consulats de Galatz et de Braila. Mais, supposons une des contraventions visées à l'article 10. Aux termes des alinéas 1, 2 et 3 de cet article, pour la poursuite et la répression, sont seules compétentes les autorités du lieu de l'immatriculation, ou du lieu où le bateau doit ou peut être immatriculé.

Or, dans l'exemple cité plus haut, à savoir d'un bateau du Danube, appartenant à un ressortissant grec et relevant ou devant relever, quant à son immatriculation, d'un des consulats de Grèce à Galatz ou à Braila, qui serait l'autorité compétente en cas de contravention ? L'autorité roumaine ou l'autorité grecque ?

Il serait contraire au principe du projet de convention, tendant à établir l'unité de compétence tant en matière d'immatriculation qu'en matière de répression, que l'autorité roumaine fût saisie de contraventions commises par le propriétaire d'un bateau immatriculé ou devant être immatriculé à un bureau grec.

La même question de formule doit être soulevée par la délégation hellénique en ce qui concerne le titre II du projet de Convention visant, dans plusieurs de ses dispositions, la loi du lieu d'immatriculation.

Mais les explications que la délégation hellénique demande à la deuxième Commission d'avoir l'obligeance de lui fournir, au sujet de la portée exacte de la formule « autorité du lieu d'immatriculation », employée pour le libellé de l'article 10, pourraient éventuellement s'appliquer, *mutatis mutandis*, aux matières réglementées par les dispositions du titre précité du projet.

Quoi qu'il en soit, la délégation hellénique se permet de faire la suggestion suivante : Pour éviter toute controverse dans l'application de ces textes, on pourrait peut-être substituer au mot « lieu » celui de « pays ».

Le membre de phrase « autorité du lieu d'immatriculation » deviendrait ainsi « autorité compétente du pays d'immatriculation », « loi du lieu d'immatriculation », « loi du pays d'immatriculation », etc.

Cette suggestion paraît d'autant plus acceptable pour les autres délégations que, dans le texte de la Convention, il ne semble pas être fait une distinction très nette entre les deux formules. Ainsi, dans les articles 10, 13, 14, 15 et 18 on cite « la loi du lieu d'immatriculation », alors que dans les articles 12, 17, 19, 30 et l'alinéa VIII du Protocole de clôture, il est question de « loi du pays contractant où le bateau est immatriculé », « loi du pays de la nouvelle immatriculation », « consul du pays de l'immatriculation », « autorité compétente du pays d'immatriculation », « loi du pays d'immatriculation ».

Si, néanmoins, la suggestion de remplacer le mot « lieu » par le mot « pays », soulève des objections d'ordre rédactionnel, la délégation hellénique proposerait l'insertion, dans le Protocole de clôture, d'une clause interprétative, destinée à éliminer, par rapport à la situation spéciale des bateaux grecs, toute possibilité de controverse, et qui se rapporterait à toutes les dispositions de la Convention où il est question de loi ou d'autorité du lieu d'immatriculation.

Cette clause pourrait avoir éventuellement la teneur suivante :

« Il est entendu que pour les pays, comme la Grèce, dont la législation admet l'immatriculation consulaire, les formules telles que « autorité du lieu d'immatriculation », « loi du lieu d'immatriculation » etc., employées dans le texte de la présente convention, sont équivalentes aux formules « autorité compétente du pays d'immatriculation », « loi du pays d'immatriculation », etc. »

ANNEXE 5.

[Conf./U.D.F./18.]

AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION AUTRICHIENNE A L'ARTICLE 13  
DU PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

Article 13, alinéas 2 et 3.

a) Ajoutez à l'alinéa 2 les mots « à l'exception de ceux qui n'appartiennent pas au propriétaire du bateau ».

b) Supprimez à l'alinéa 3 la phrase « à l'exception toutefois de ceux qui... », etc., jusqu'à la fin.

*Motif* : Vu que dans la navigation intérieure, les accessoires matériels n'ont qu'une importance peu considérable, on peut, sans mettre en danger les intérêts des créanciers hypothécaires, admettre le principe que les effets de l'hypothèque ne s'étendent pas aux accessoires matériels appartenant au propriétaire du bateau. Cette règle semble être plus simple que celle prévue à l'article 13, alinéa 3, du projet primitif, et peut être aussi appuyée par les raisons suivantes :

Lors d'une vente aux enchères à la suite d'une exécution forcée, le tribunal doit constater ce qui fait partie des accessoires matériels et constituer par conséquent l'objet à mettre aux enchères. Cette constatation ne peut être faite qu'uniformément en faveur, et que contre tous les intéressés à la procédure d'exécution. Il semble impossible, dans une procédure d'exécution, de statuer qu'un objet ne soit qu'à l'égard d'un des créanciers hypothécaires, mais non pas à l'égard d'un autre créancier hypothécaire, considéré comme accessoire, et cela d'autant moins que l'accessoire ne peut former l'objet d'une vente forcée que conjointement avec le bateau.

ANNEXE 6.

[Conf./U.D.F./16.]

LETTRE ADRESSÉE AU SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE  
PAR LE DIRECTEUR DU BUREAU INTERNATIONAL DU TRAVAIL

J'ai l'honneur de vous demander de bien vouloir transmettre au président de la Conférence pour l'unification du droit fluvial les observations ci-après relatives au « projet de convention sur certaines matières de droit fluvial ».

Ce projet contient des dispositions intéressant le recouvrement des salaires des équipages, dont la principale est ainsi conçue :

« Des privilèges.

« Article 18. — Jouissent d'un privilège et, par conséquent, sont payés par préférence sur le prix de la vente du bateau et de ses accessoires matériels :

« 3. Les créances résultant du contrat d'engagement du capitaine, des gens d'équipage et des autres personnes engagées par l'armateur ou par le capitaine pour le service du bord, mais, en ce qui concerne les gages, pour une durée de trois mois au plus... »

Tout en constatant avec satisfaction que le rang prévu pour les privilèges des salaires correspond à celui établi par la majorité des législations, je me permets de faire remarquer — et je vous serais particulièrement reconnaissant de bien vouloir attirer l'attention de la Conférence sur ce point — que la proposition de limiter à trois mois la créance de salaires ainsi garantie n'est pas en harmonie avec de nombreuses législations nationales qui accordent le privilège pour une période plus longue et, souvent même, ne le limitent pas. Il en résulterait donc, si la rédaction actuelle était adoptée, que les gouvernements des États ratifiant la Convention seraient pour la plupart tenus de réduire la protection actuellement donnée aux marins pour le recouvrement de leurs salaires. On peut même se demander si, dans ces conditions, certains gouvernements n'hésiteraient pas à ratifier la Convention.

En vue d'écartier ces éventualités, je crois devoir vous prier de demander à la Conférence d'examiner la possibilité, soit de fixer l'étendue de la créance privilégiée de façon correspondant mieux aux dispositions nationales les plus favorables au personnel de la batellerie (par exemple, une année), soit, plus simplement encore, de renoncer, à l'exemple de la Convention pour l'unification des règles relatives aux privilèges et hypothèques maritimes (Bruxelles, 1926), à limiter cette créance.

(Signé) Albert THOMAS.

ANNEXE 7.

[Conf./U.D.F./17.]

AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION AUTRICHIENNE A L'ARTICLE 18  
DU PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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Article 18 (I).

a) Insérer dans le préambule de l'article, entre les mots « vente » et « du bateau », le mot « forcée ».

*Motif:* La proposition a pour but de rendre la disposition plus claire.

b) Remplacer au n° 2 la phrase « les frais de conservation depuis la saisie » par la phrase « Les frais de conservation du bateau depuis la saisie, qui sont nécessaires pour empêcher le bateau de périr ».

*Motif:* La proposition ne vise qu'à énoncer d'une manière plus expresse le principe envisagé suivant le rapport.

c) Supprimer :

1° Au n° 3, les mots « les frais funéraires », etc., jusqu'à la fin de l'alinéa ;

2° Au n° 4, les mots « si elles sont privilégiées », etc., jusqu'à la fin de l'alinéa ;

3° Au n° 6, « si ces indemnités », etc., jusqu'à la fin de l'alinéa.

*Motif:* Pour une protection efficace des créanciers hypothécaires, il est besoin d'une réglementation uniforme des privilèges. Le lieu où la vente forcée est effectuée dépend des circonstances accidentelles dont l'influence sur la situation légale des créanciers hypothécaires devrait, dans la mesure du possible, être exclue. Pour cette raison, il convient de supprimer les renvois au droit du tribunal saisi prévus aux nos 3, 4 et 6. De même, il semble juste d'éliminer, faute d'une importance pratique, la disposition concernant les frais funéraires du capitaine-propriétaire tout entière. Ce n'est que pour ce qui est des primes d'assurances sociales (article 18, alinéa I, n° 7) qu'on pourra, le cas échéant, reconnaître décisif le droit du tribunal ayant à procéder à la vente forcée, car, du moins actuellement, aucun État ne reconnaît un droit privilégié à ces primes si elles ne doivent pas être versées à ses propres instituts d'assurances sociales.

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ANNEXE 8.

[Conf./U.D.F./24.]

AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION FRANÇAISE A L'ARTICLE 11 DU  
PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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Remplacer l'article 11 par le texte suivant :

« Les dispositions du présent titre sont applicables quand un bateau immatriculé sur les registres d'un État contractant se trouve sur le territoire d'un autre État ou quand il existe sur ce bateau un intérêt hypothécaire étranger.

« Il y a intérêt hypothécaire étranger, au sens de la présente Convention, quand l'obligation a été contractée à l'étranger et stipulée payable à l'étranger, mais à la condition que ces faits soient mentionnés au registre d'inscription des hypothèques. »

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ANNEXE 9.

[Conf./U.D.F./8.]

AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION POLONAISE A L'ARTICLE 3 DU  
PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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Au titre premier « De l'immatriculation », remplacer l'alinéa 4 de l'article 3 par le texte suivant :

« Chaque État contractant se réserve le droit d'exiger que ses nationaux, y compris les sociétés nationales, inscrivent sur ses registres les bateaux leur appartenant et remplissant les conditions d'immatriculation de deux ou plusieurs États. »

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ANNEXE 10.

[Conf./U.D.F./6.]

NOUVEL AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION DES PAYS-BAS  
A L'ARTICLE 3, ALINÉA 4, DU PROJET DE CONVENTION SUR CERTAINES MATIÈRES  
DE DROIT FLUVIAL

Remplacer l'alinéa 4 de l'article 3 par :

« Toutefois, dans le cas où le bateau remplit les conditions d'immatriculation fixées par la législation de deux ou plusieurs États contractants, chaque État contractant se réserve le droit d'exiger que le bateau soit ou demeure inscrit sur ses registres :

« 1° Si le bateau appartient à une personne ayant eu pendant les derniers dix-huit mois son domicile sur le territoire ;

« 2° Si le bateau appartient à une société ayant son siège social sur le territoire.

« Le territoire de l'État s'entend y compris les colonies et les possessions. »

ANNEXE 11.

[Conf./U.D.F./20.]

AMENDEMENTS PROPOSÉS PAR LA DÉLÉGATION AUTRICHIENNE A L'ARTICLE 3  
DU PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

1° A l'alinéa 4 :

a) Insérer entre les mots « appartenant » et « et remplissant » les mots « pour plus de moitié ».

b) Remplacer les mots « remplissant les conditions d'immatriculation de deux ou plusieurs États » par les mots « remplissant de même les conditions d'immatriculation d'un ou plusieurs États ».

*Motif:* a) D'après le projet soumis à la Conférence (appartenant) l'État ne pourrait exiger l'inscription dans son registre d'un bateau appartenant à plusieurs copropriétaires dont quelques-uns seraient ressortissants d'un autre État, quelque minime que puisse être la quote-part des propriétaires.

b) Cette disposition ne doit sans doute être applicable que pour les cas dans lesquels un bateau remplit les conditions de l'immatriculation de l'État se prévalant de la disposition de l'article 3, alinéa 4, et, en outre, les conditions de l'immatriculation d'un ou de plusieurs autres États. Il semble que le texte soumis à la Conférence ne fasse pas, sans aucun doute, connaître cet ordre d'idées, mais qu'il suffirait, d'après ce texte, que le bateau remplisse les conditions d'un ou plusieurs autres États.

Ajouter un nouvel alinéa 5, ainsi conçu :

« Le même droit est réservé à chaque État contractant en ce qui concerne les bateaux qui appartiennent aux personnes physiques ressortissant à l'État en question, et destinés à être utilisés exclusivement dans la navigation à l'intérieur du territoire dudit État même dans le cas où le propriétaire n'a pas le domicile sur ledit territoire. »

*Motif:* Dans le cas visé à l'alinéa proposé, une situation de droit peu convenable subsisterait pour tous les États contractants.

ANNEXE 12.

[Conf./U.D.F./23.]

AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION PORTUGAISE  
AU PROTOCOLE DE CLÔTURE DU PROJET DE CONVENTION  
SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

Au n° IV, *ad* article 3, alinéa 4, la formule « siège social » doit être remplacée par celle-ci :  
« Siège social réel ou effectif. »

*Motif:* Il faut éviter la situation d'une société de capitaux qui ait sa nationalité déterminée par un siège social *factif*, comme il arrive souvent dans la pratique. Il y a des cas innombrables où, dans l'intention d'échapper à des dispositions très onéreuses des lois d'un pays, on attribue à une société un siège différent de celui où ladite société exerce en fait son activité juridique et économique.

ANNEXE 13.

[Conf./U.D.F./27.]

AMENDEMENTS PROPOSÉS PAR LA DÉLÉGATION ALLEMANDE AU PROJET DE  
CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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1<sup>o</sup> Remplacer, sauf rédaction, l'alinéa 4 de l'article 3 par la disposition suivante :

« Chaque État contractant se réserve le droit d'exiger que ses ressortissants ainsi que les sociétés ayant leur siège social sur son territoire fassent inscrire sur ses registres les bateaux qui leur appartiennent et qui ont leur port d'attache (Heimatsort) sur son territoire. »

2<sup>o</sup> Remplacer l'article 7 *bis*, adopté par le Comité de rédaction sous la forme suivante :

« (Texte du Comité de rédaction.)

« Le certificat d'immatriculation doit contenir la mention du bureau d'hypothèques. Les lois du pays d'immatriculation peuvent en outre obliger le propriétaire du bateau à mentionner sur ce certificat ou sur un autre document se trouvant à bord, les inscriptions d'hypothèques. »

par le texte ci-dessous :

« (Amendement allemand.)

« Tout bateau doit être muni d'un document d'où ressort l'état des inscriptions hypothécaires ou le fait que le bateau n'est pas grevé. »

*Note.* — Il reste entendu que la validité de l'hypothèque n'est pas subordonnée par la Convention à la condition de son annotation sur un document de bord.

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ANNEXE 14.

[Conf./U.D.F./29.]

AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION POLONAISE A L'ARTICLE 37 DU  
PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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Remplacer le texte de l'article 37 par ce qui suit :

« S'il s'élève entre les Parties contractantes un différend quelconque relatif à l'interprétation ou à l'application de la présente Convention, et si ce différend n'a pu être résolu de façon satisfaisante par voie diplomatique, il sera réglé conformément aux dispositions en vigueur entre les Parties, concernant le règlement des différends internationaux.

« Au cas où de telles dispositions n'existeraient pas entre les Parties au différend, elles le soumettront, après une procédure préalable de conciliation devant la Commission consultative et technique de la Société des Nations, à une procédure arbitrale ou judiciaire, en se conformant aux lois constitutionnelles de chacune d'elles. A défaut d'accord sur le choix d'un autre tribunal, elles soumettront le différend à la Cour permanente de Justice internationale. »

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ANNEXE 15.

[Conf./U.D.F./28.]

AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION YOUGOSLAVE A L'ARTICLE 37  
DU PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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Supprimer la seconde phrase de l'alinéa 2, c'est-à-dire la phrase « Cette procédure sera préférée... ».

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ANNEXE 16.

[Conf./U.D.F./21.]

RAPPORT DE LA SOUS-COMMISSION TECHNIQUE RELATIF AUX ARTICLES 5 ET 8  
DU PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL  
(avec deux appendices)

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Ad article 5.

La Sous-Commission technique, qui avait été chargée d'une étude comparative entre le texte du projet de Convention contenu dans le Livre vert et le texte de la Convention sur le jaugeage des bateaux de navigation intérieure de 1925, avait été d'accord pour proposer à la Conférence des modifications de texte de l'article 5 telles qu'elles figurent ci-après (voir appendice 1).

En ce qui concerne le 2<sup>o</sup>, la Sous-Commission avait estimé que les expressions employées dans le projet du Livre vert « lieu de construction » et « date de construction » n'étaient pas suffisamment précises et qu'il y avait intérêt à inscrire sur le registre les mêmes données que prévoit à ce sujet la Convention du jaugeage, c'est-à-dire le chantier sur lequel le bateau a été construit et la date de sa mise à flot. En ce qui concerne la date de construction, on peut en effet hésiter entre la date du commencement des travaux de construction, la date de la mise à flot ou la date de la terminaison de la construction ; la Sous-Commission technique pensait que du moment qu'on prévoyait une notion très précise dans le projet de Convention c'est-à-dire une date déterminée, il y avait lieu d'indiquer d'une manière exacte quelle date était envisagée.

En ce qui concerne le lieu de construction, la Sous-Commission avait estimé qu'il était intéressant, notamment pour le créancier hypothécaire et pour l'acheteur, de connaître non le lieu géographique de construction, mais le nom du chantier, et, étant donné que cette même indication est déjà connue par le certificat de jaugeage, il n'a pas paru y avoir de difficulté à introduire cette même motion dans le projet de Convention.

Plusieurs délégations ayant soulevé des objections à l'encontre du texte proposé par la Sous-Commission technique, celle-ci a tenu une nouvelle réunion à laquelle des représentants des délégations intéressées ont participé. Il a été exposé par une délégation qu'il ne lui paraissait pas possible d'accepter le texte proposé par la Sous-Commission technique, étant donné que les indications qui y étaient prévues ne figuraient pas actuellement sur les registres de son pays et que, partant, si on voulait éviter un manque de concordance entre les registres actuels et les registres futurs, on serait obligé de corriger toutes les inscriptions existantes pour les mettre en conformité avec les textes proposés, ce qui, dans beaucoup de cas, serait matériellement impossible par suite de la difficulté d'avoir des renseignements exacts au sujet d'un très grand nombre de bateaux existants. Devant cette déclaration, les autres membres de la Sous-Commission se sont déclarés disposés à renoncer aux précisions qu'ils avaient préconisées, vu que ces mêmes précisions pouvaient toujours être trouvées dans le certificat de jaugeage dont le numéro est inscrit au registre d'immatriculation. La Sous-Commission a alors adopté à l'unanimité le texte suivant pour le 2<sup>o</sup> de l'article 5 :

« 2<sup>o</sup> Le mode de construction et le type de bateau, l'année et le lieu de construction, et, pour les bateaux à propulsion mécanique — même auxiliaire —, la nature et la puissance de la machine ; »

En ce qui concerne le 3<sup>o</sup>, la Sous-Commission a maintenu le texte qu'elle a proposé antérieurement, c'est-à-dire :

« 3<sup>o</sup> La capacité maximum de chargement ou le déplacement, d'après le certificat de jaugeage, ainsi que le numéro et la date de ce certificat ; »

#### *Ad article 8.*

A la suite de diverses observations soulevées au sujet du texte antérieurement proposé par la Sous-Commission technique (voir appendice 2), la Sous-Commission, lors de sa nouvelle réunion, a adopté le texte suivant :

« 1. Tout bateau immatriculé doit porter sur l'arrière ou sur les deux côtés :

« 1<sup>o</sup> Son nom ou sa devise et, s'il existe plusieurs bateaux appartenant au même propriétaire avec le même nom ou la même devise, un numéro distinctif ;

« 2<sup>o</sup> Le numéro signalétique visé à l'article 1 *bis* précédé soit de la ou des lettres initiales du bureau d'immatriculation, soit du nom dudit bureau, et suivi de la ou des lettres initiales de l'État où l'immatriculation est effectuée. Toutes les lettres susvisées (y compris, le cas échéant, celles composant le nom du bureau d'immatriculation) doivent être reproduites en caractères latins.

« 2. Les indications visées au 1 du présent article doivent être faites d'une manière visible et apparente en caractères ayant au moins quinze centimètres de hauteur.

« 3. Il est défendu d'effacer, d'altérer, de rendre méconnaissables, de couvrir ou de cacher par un moyen quelconque ces noms, lettres et numéros, et d'ajouter d'autres inscriptions qui seraient capables de nuire à la clarté de celles indiquées ci-dessus. »

La différence avec le texte antérieurement proposé (appendice 2) consiste tout d'abord en ceci qu'il ne prescrit plus à quel endroit doit se trouver le nom ou la devise et les marques d'immatriculation. Les indications sous le 1<sup>o</sup> et le 2<sup>o</sup> peuvent donc être portées au même endroit et peuvent être également portées à des endroits différents. Il est seulement stipulé que toute indication qui ne se trouverait pas sur l'arrière du bateau devrait être portée sur les deux côtés et inversement.

D'autre part, le nouveau texte prévoit la possibilité d'indiquer le bureau d'immatriculation soit par des lettres signalétiques, soit par des lettres initiales, soit par son nom en toutes lettres.

Le texte tient également compte de l'amendement de la délégation yougoslave, dans ce sens qu'il prescrit des caractères latins pour les marques d'immatriculation seulement. Il tient également compte d'un amendement de la délégation néerlandaise en ne prévoyant qu'une hauteur minimum de quinze centimètres au lieu de vingt.

Enfin, la Sous-Commission s'est inspirée pour la dernière partie du 3 d'une disposition du règlement de police de la navigation en vigueur sur le Rhin, qui semble répondre aux objections soulevées par plusieurs délégations au sujet des mots « et d'ajouter d'autres inscriptions » qui se trouvent dans le projet du Livre vert.



Appendice 1.

[Conf./U.D.F./11.]

TEXTE PROPOSÉ PAR LA SOUS-COMMISSION TECHNIQUE  
ET DESTINÉ A REMPLACER L'ARTICLE 5 DU PROJET DE CONVENTION  
SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

Article 5.

1. L'inscription des bateaux sur les registres visés dans l'article premier est effectuée sur demande écrite, signée par le propriétaire, et indiquant au moins :

1° Le nom ou la devise du bateau ;

2° Le mode de construction et le type de bateau, le chantier sur lequel il a été construit et la date de sa mise à flot et, pour les bateaux à propulsion mécanique — même auxiliaire — la nature et la puissance de la machine ;

3° La capacité maximum de chargement ou le déplacement d'après le certificat de jaugeage, ainsi que le numéro et la date de ce certificat ;

4° Les nom, prénoms, profession et domicile du propriétaire ou des propriétaires et, s'il y a plusieurs propriétaires, la quote-part de chacun d'eux.

La Sous-Commission propose de renvoyer le reste de l'article au Comité de rédaction, la teneur de certaines dispositions dépendant d'ailleurs du texte qui sera adopté pour les articles 2 et 3.

Appendice 2.

[Conf./U.D.F./12.]

TEXTE PROPOSÉ PAR LA SOUS-COMMISSION TECHNIQUE  
ET DESTINÉ A REMPLACER L'ARTICLE 8 DU PROJET DE CONVENTION  
SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

Article 8.

1. Tout bateau immatriculé doit porter :

1° Sur chaque côté, son nom ou sa devise et, s'il existe plusieurs bateaux appartenant au même propriétaire avec le même nom ou la même devise, un numéro distinctif ;

2° Sur l'arrière, les lettres, en caractères latins, et le numéro signalétique visés à l'article 1, alinéas 2 et 3.

2. Ces indications doivent être faites d'une manière visible et apparente, en caractères ayant au moins quinze centimètres de hauteur.

3. Il est défendu d'effacer, d'altérer, de rendre méconnaissables, de couvrir ou de cacher par un moyen quelconque ces noms, lettres et numéros, et d'ajouter d'autres inscriptions qui seraient capables de nuire à la clarté de celles indiquées ci-dessus.

ANNEXE 17.

[Conf./U.D.F./34.]

NOUVEAU TEXTE PROPOSÉ PAR LE COMITÉ SPÉCIAL ET DESTINÉ A REMPLACER  
LES ARTICLES 24 ET 25 DU PROJET DE CONVENTION SUR CERTAINES  
MATIÈRES DE DROIT FLUVIAL

La validité et les effets de la saisie conservatoire des bateaux restent régis par les lois nationales.

Toutefois, les États contractants s'engagent à prendre les mesures nécessaires pour qu'un avis des saisies conservatoires opérées sur leur territoire, ainsi que des mainlevées de ces saisies soit immédiatement donné au bureau d'immatriculation du bateau saisi.

Ils s'engagent également à prendre les mesures nécessaires pour que les avis de saisie et de mainlevée de saisie qu'ils ont reçus soient mis à la disposition des intéressés dans les bureaux d'immatriculation.

ANNEXE 18.

[Conf./U.D.F./35.]

TEXTE PROPOSÉ PAR LE COMITÉ TECHNIQUE ET RELATIF AUX ARTICLES 9 ET 5  
ET AU PROTOCOLE DE CLÔTURE DU PROJET DE CONVENTION  
SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

*Article 9 (nouvel article 15).*

1. Si un bateau est immatriculé dans l'un des États contractants, il ne peut pas être immatriculé dans un autre sans qu'il soit procédé en même temps à la radiation de l'immatriculation dans le premier État.

2. L'immatriculation d'un bateau grevé d'hypothèques ne peut en aucun cas, être reportée des registres d'un État contractant sur les registres d'un autre ni radiée dudit registre sans le consentement de tous les créanciers hypothécaires et aux conditions acceptées par eux.

3. Pour effectuer le transfert d'immatriculation d'un bateau du registre d'un État à celui d'un autre, une demande d'immatriculation doit être adressée dans les conditions visées à l'article 5 au bureau compétent de l'État dans lequel le bateau doit être immatriculé, et une demande de radiation au bureau où le bateau est encore immatriculé. La demande de radiation indique le bureau du nouvel État où le bateau doit être immatriculé. Elle doit être accompagnée, s'il y a lieu, du consentement écrit et en double des créanciers visés à l'alinéa 2.

4. Au cas où le bureau du premier État ne s'oppose pas à la radiation sur ses registres il en informe, au moyen du formulaire ci-annexé (voir formulaire A) le bureau du second État où la nouvelle immatriculation est demandée et lui transmet en même temps un extrait certifié des registres d'immatriculation et d'inscriptions hypothécaires et un double du consentement écrit des créanciers ; ces extraits et ce double doivent être dûment légalisés. Mention de la demande de transfert est faite alors au registre du premier État, et aucune inscription ne peut être faite dorénavant audit registre. Si toutefois le bureau du premier État reçoit un résumé d'une demande de saisie conformément à l'article 26, après que mention est faite de la demande de transfert, il est fait application des dispositions de ce dernier article ; copie certifiée de ce résumé est transmise immédiatement par le bureau du premier État à celui où le transfert est demandé, qui, également, se conforme à l'article 26, alinéa 2.

5. L'autorité compétente du second État délivre le certificat d'immatriculation effectuée dans les registres de cet État et retire en même temps le certificat de l'immatriculation précédente et, s'il y a lieu, du duplicata.

6. L'immatriculation est radiée par le premier État dès la réception de l'attestation à délivrer sans délai par le second État constatant l'immatriculation sur ses registres (voir formulaire B). Cette attestation doit être accompagnée du certificat de l'immatriculation précédente et, s'il y a lieu, du duplicata.

*Article 5.*

Le Comité propose, en outre, d'insérer comme alinéa 2 nouveau de l'article 5 le texte suivant :

« En cas de transfert de propriété d'un bateau, si une nouvelle immatriculation est nécessaire, la loi du pays où cette immatriculation doit être effectuée indique ceux à qui incombe l'obligation de faire la demande visée à l'alinéa précédent. »

*Chiffre VI du Protocole de clôture.*

Le Comité propose de supprimer le chiffre VI du Protocole de clôture.

FORMULAIRE A.

Conformément à l'article 9 de la Convention internationale sur certaines matières de droit fluvial, nous vous faisons savoir que nous avons reçu une demande de radiation de nos registres d'immatriculation du bateau. . . ., inscrit sous . . . ., que les intéressés désirent faire immatriculer en vos bureaux. Il n'existe, de notre part, aucune opposition à cette radiation. Celle-ci sera effectuée dès que vous nous aurez fait parvenir l'attestation constatant l'inscription dudit bateau en vos registres, accompagnée du certificat de l'immatriculation en nos registres, immatriculation dont la radiation est demandée, et, s'il y a lieu, du double de ce certificat.

Nous annexons à la présente les pièces suivantes :

- 1° La copie certifiée de l'immatriculation en nos bureaux ;
- 2° Un état des inscriptions existantes (ou un certificat négatif) ;
- 3° Le consentement écrit des créanciers inscrits.

FORMULAIRE B.

Me référant à votre lettre du ... concernant la radiation sur vos registres et l'immatriculation sur mes registres du bateau . . . ., L . . . ., N° . . . ., je vous fais savoir que l'immatriculation sur mes registres a été effectuée le . . . .

Je vous envoie ci-inclus le certificat d'immatriculation sur vos registres et le duplicata que j'ai retiré conformément à l'article 9 de la Convention sur certaines matières de droit fluvial.

ANNEXE 19.

[Conf./U.D.F./39,39a),39b),39c) et 39d).]

PROJET DE CONVENTION SUR CERTAINES MATIÈRES DE DROIT FLUVIAL :  
TEXTE ADOPTÉ PAR LE COMITÉ DE RÉDACTION

(Les modifications à ce texte introduites par la deuxième Commission sont indiquées en italique en bas de chaque page.)

TITRE PREMIER. — DE L'IMMATRICULATION.

Article premier.

1. Les États contractants s'engagent à tenir des registres pour l'immatriculation des bateaux de navigation intérieure.

2. Ces registres, établis conformément à la législation nationale, doivent être publics et répondre aux dispositions de la présente Convention ; des extraits certifiés conformes en seront délivrés, contre paiement des frais, à tous ceux qui le requièrent.

Article 2 (ancien article 1 bis).

Chaque bureau d'immatriculation est caractérisé <sup>1</sup>, soit par son nom, soit par une ou plusieurs lettres initiales indiquées par l'autorité compétente, ainsi que par une ou plusieurs lettres initiales de l'État <sup>2</sup> auquel il ressortit (voir annexe I).

Article 3 (ancien article 2).

Réservé.

1. La législation de chaque État contractant détermine les conditions qu'un bateau doit remplir pour pouvoir être immatriculé sur ses registres.

2. Chacun des États contractants s'engage à prendre les mesures nécessaires pour qu'un bateau ne puisse être immatriculé simultanément dans deux de ses bureaux.

3. Toutefois, la disposition de l'alinéa précédent ne met pas obstacle à l'établissement de registres centraux où les inscriptions se trouvent reproduites.

Article 4 (ancien article 3).

1. Tout bateau de 20 tonnes métriques au moins, y compris les dragues, mais à l'exception des grues, élévateurs flottants et autres engins analogues, ainsi que des bateaux de plaisance, doit être immatriculé s'il remplit les conditions d'immatriculation prévues par la législation d'un ou plusieurs États contractants <sup>3</sup>.

Réservé.

2. Si le bateau remplit les conditions d'immatriculation fixées par la législation d'un seul État contractant, le bateau ne peut être immatriculé qu'au bureau compétent de cet État.

Réservé.

3. Si le bateau remplit les conditions d'immatriculation fixées par la législation de deux ou plusieurs États contractants, le bateau ne peut être immatriculé qu'au bureau compétent de l'un de ces États. Dans ce cas, le propriétaire a le choix du pays où le bateau sera immatriculé. Il conserve ce choix lorsque le bateau déjà immatriculé continue ou vient à remplir les conditions d'immatriculation fixées par la législation de deux ou plusieurs États.

4 <sup>4</sup>. . . . .

<sup>1</sup> ... caractérisé, suivant la prescription de l'autorité, soit...

<sup>2</sup> ... l'État auquel il ressortit (voir Annexe I).

<sup>3</sup> (Ajouter) L'obligation de faire immatriculer le bateau incombe au propriétaire.

<sup>4</sup> La deuxième Commission a complété l'article comme suit :

4. Chaque État contractant se réserve le droit d'exiger que ses ressortissants inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant de même les conditions d'immatriculation d'un ou de plusieurs autres États contractants, s'ils ont, sur ce territoire, leur résidence habituelle, ou, dans le cas des sociétés, la direction principale de leurs affaires.

5. En ce qui concerne les bateaux appartenant à des personnes physiques, chaque État contractant se réserve de même le droit d'exiger que ses ressortissants, même s'ils n'ont pas sur son territoire leur résidence habituelle, inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant les conditions d'immatriculation d'un ou de plusieurs États contractants, si ces bateaux sont exclusivement affectés à la navigation dans les eaux dudit État.

*Article 5 (ancien article 3 bis).*

L'obligation prévue à l'article 4 ne vise pas les bateaux non encore immatriculés dans un État contractant, qui se rendent du pays où ils ont été construits ou acquis au pays où ils doivent être immatriculés.

*Article 6 (ancien article 4).*

Chaque État contractant peut, dans les conditions visées aux articles 3 et 4, prescrire ou admettre que soient immatriculés sur ses registres :

- 1° Les grues, élévateurs flottants et autres engins analogues ;
- 2° Les bateaux de plaisance ;
- 3° Les bateaux de moins de 20 tonnes métriques.

*Article 7 (ancien article 4, alinéa 3).*

1. Un bateau en construction, lorsque la législation nationale en admet l'immatriculation, ne peut être immatriculé ailleurs que dans le pays où il est en cours de construction si ce n'est en vertu d'un accord conclu entre deux ou plusieurs États contractants et auquel le Gouvernement dudit pays est partie.

2. Les accords visés ci-dessus seront communiqués à tous les États contractants.

3. L'immatriculation du bateau en construction, en vertu d'un des accords prévus à l'alinéa 1 du présent article, sera à tous égards assimilée à celles qui seraient effectuées dans le pays de construction, même au regard des États contractants et non parties à cet accord.

*Article 8 (ancien article 4, alinéa 2).*

Lorsqu'un des bateaux visés aux articles 6 et 7 est immatriculé, les dispositions de la présente Convention lui sont applicables.

*Article 9 (ancien article 5).*

1. L'immatriculation des bateaux est effectuée sur demande écrite, signée par le propriétaire, et accompagnée des pièces justificatives nécessaires.

2. Cette demande doit indiquer au moins :

1° Le nom ou la devise du bateau ;

2° Le mode de construction et le type de bateau, l'année et le lieu de construction et, pour les bateaux à propulsion mécanique — même auxiliaire —, la nature et la puissance de la machine ;

3° La capacité maximum de chargement ou le déplacement d'après le certificat de jaugeage, ainsi que le numéro et la date de ce certificat ;

4° Les nom, prénoms, profession et domicile du ou des propriétaires, ces indications étant remplacées pour les sociétés par la dénomination et le siège social ; en outre, en cas de copropriété, la part de chacun des copropriétaires ;

5° S'il y a lieu, les faits qui justifient l'immatriculation, conformément aux articles 3 et 4 ; Réservé.

6° Le fait que le bateau n'est pas immatriculé ailleurs ou, s'il est déjà immatriculé, le bureau d'immatriculation.

3. Pour les bateaux en construction, il suffit que la demande contienne les indications qui peuvent être matériellement fournies ; ces indications doivent être complétées après achèvement du bateau.

*Article 10 (ancien article 5 bis.)*

L'immatriculation des bateaux a lieu dans chaque bureau suivant une série continue de numéros matricules. Sous chaque numéro, sont inscrites au moins les données prévues aux chiffres 1 à 5 de l'article précédent, ainsi que la date de l'immatriculation.

*Article 11 (ancien article 6).*

1. Si des modifications surviennent dans les faits mentionnés dans le registre, ou si le bateau périt, est démolé ou devient définitivement inapte à la navigation, l'inscription en doit être demandée au bureau d'immatriculation. La demande doit être signée du propriétaire et accompagnée des pièces justificatives nécessaires, ainsi que du certificat d'immatriculation et, éventuellement, du duplicata, prévus à l'article suivant.

2. La loi du pays d'immatriculation désigne le délai dans lequel la demande doit être faite, ainsi que les conditions dans lesquelles la radiation d'office peut être opérée, sous réserve de l'observation de la disposition de l'alinéa premier de l'article 15.

*Article 12* (ancien article 7).

1. Les inscriptions effectuées sur les registres en vertu des articles 10 et 11 doivent être reproduites sur un certificat délivré par le bureau d'immatriculation et sur lequel sont portées l'indication de ce bureau et celle du pays dont il ressort.

2. Tout bateau immatriculé doit être muni de son certificat d'immatriculation. Un duplicata, lorsqu'il en est délivré par le bureau d'immatriculation, peut tenir lieu de certificat.

*Article 13* (ancien article 7 bis).

Adopté provisoirement par le Comité de rédaction.

La loi du pays d'immatriculation peut prescrire que, soit le certificat d'immatriculation, soit un document distinct se trouvant à bord du bateau, contiendra la reproduction des inscriptions hypothécaires, visées à l'article 21, ou la mention, par l'autorité chargée de la tenue des registres pour la publicité des droits, que le bateau n'est pas grevé d'hypothèques.

*Article 14* (ancien article 8).

1. Tout bateau immatriculé doit porter sur les deux côtés ou sur l'arrière :

1<sup>o</sup> Son nom ou sa devise et, s'il existe plusieurs bateaux appartenant au même propriétaire avec le même nom ou la même devise, un numéro distinctif ;

2<sup>o</sup> Le numéro matricule visé à l'article 10, précédé, en caractères latins, soit de la ou des lettres initiales du bureau d'immatriculation, soit du nom dudit bureau, et suivi, en caractères latins, de la ou des lettres initiales de l'État dont ce bureau ressort.

2. Les indications visées au premier alinéa du présent article doivent être faites d'une manière visible et apparente en caractères ayant au moins 15 centimètres de hauteur.

3. Il est défendu d'effacer, d'altérer, de rendre méconnaissables, de couvrir ou de cacher par un moyen quelconque des noms, lettres et numéros, et d'ajouter d'autres inscriptions qui seraient capables de nuire à la clarté de celles indiquées ci-dessus.

*Article 15* (ancien article 9).

1. Si un bateau est immatriculé sur les registres de l'un des États contractants, il ne peut pas être immatriculé sur les registres d'un autre sans qu'il soit procédé en même temps à la radiation de la première immatriculation. Le transfert d'immatriculation, de même que la radiation de l'immatriculation ne peuvent, lorsqu'il s'agit d'un bateau grevé d'hypothèques, être effectués <sup>1</sup> sans le consentement de tous les créanciers hypothécaires et aux conditions acceptées par eux.

2. Pour effectuer le transfert d'immatriculation d'un bateau du registre d'un État à celui d'un autre, les formalités suivantes doivent être remplies :

a) Une demande d'immatriculation doit être adressée dans les conditions visées à l'article 9 du bureau compétent de l'État dans lequel le bateau doit être immatriculé ;

b) Une demande de radiation doit être adressée au bureau de l'État où le bateau est encore immatriculé ; la demande de radiation indique le bureau où l'immatriculation doit être transférée ; elle doit être accompagnée, s'il y a lieu, du consentement écrit et en double des créanciers visés à l'alinéa premier.

3. Au cas où le bureau du premier État ne s'oppose pas à la radiation sur ses registres, il en informe, au moyen d'un formulaire ci-annexé (voir annexe II, formulaire A), le bureau du second État où la nouvelle immatriculation est demandée et lui transmet en même temps un extrait certifié des registres et un double du consentement écrit des créanciers ; la signature des créanciers, apposée sur ce double, doit être dûment légalisée. Mention de la demande de transfert est faite alors au registre du premier État, et aucune inscription ne peut être faite dorénavant audit registre. Si, toutefois, le bureau du premier État reçoit, dans les conditions prévues à l'article <sup>2</sup>... (ancien article 26), un résumé relatif à une saisie, après que mention est faite de la demande de transfert, il est fait application des dispositions de ce dernier article ; copie certifiée de <sup>3</sup> ce résumé est transmise immédiatement par le bureau du premier État à celui du second État qui se conforme également à l'article <sup>4</sup> ... (ancien article 26, alinéa 2).

4. Dès réception de l'avis du bureau du premier État, l'autorité compétente du second État procède <sup>5</sup> à l'immatriculation du bateau, délivre le certificat visé à l'article 12, et retire en même temps le certificat de l'immatriculation précédente et, s'il y a lieu, le duplicata.

5. Le bureau du second État adresse ensuite sans délai au bureau du premier État une attestation suivant un formulaire ci-annexé (voir annexe II, formulaire B), constatant l'immatriculation sur ses registres. Cette attestation doit être accompagnée du certificat de l'immatriculation précédente, et, s'il y a lieu, du duplicata. Au reçu de cette attestation, l'immatriculation est radiée par le bureau du premier État.

<sup>1</sup> ... être effectués, si ce n'est avec le consentement...

<sup>2</sup> ... l'article 38, une demande relative à une saisie...

<sup>3</sup> ... de cette demande est transmise...

<sup>4</sup> ... l'article 38.

<sup>5</sup> ... procède, s'il y a lieu, à l'immatriculation...

*Article 16* (ancien article 10).

1. Sont exclusivement compétentes pour la poursuite et la répression :

1<sup>o</sup> En ce qui concerne les contraventions à l'obligation d'immatriculer visée à l'alinéa 1 de l'article 4, les autorités compétentes du pays ou des pays où le bateau peut être immatriculé ;

2<sup>o</sup> En ce qui concerne les contraventions à l'interdiction d'immatriculer un bateau dans plus d'un État, visée à l'alinéa 3 de l'article 4, les autorités compétentes des pays où les immatriculations ont été effectuées ;

3<sup>o</sup> En ce qui concerne les contraventions à l'article 11, les autorités compétentes du pays d'immatriculation ;

4<sup>o</sup> En ce qui concerne les contraventions à l'alinéa 2 de l'article 12 et à l'article 14, les autorités compétentes du pays où l'infraction a été constatée.

2. Dans les cas visés aux nos 1, 2 et 3, si la contravention est constatée dans un autre État contractant, les autorités de cet État dressent le procès-verbal et transmettent le dossier aux autorités compétentes en vertu des dispositions desdits numéros, pour leur permettre de poursuivre et de réprimer la contravention, et, dans le cas visé au n<sup>o</sup> 2, elles en adressent une copie aux bureaux où le bateau est immatriculé.

*Article 17* (nouveau).

1. Dans le cas où, d'après la loi nationale, le transfert de propriété dépend de l'inscription aux registres, le terme « propriétaire », à l'article 4, doit s'entendre comme visant l'acquéreur.

2. La loi nationale indique, en pareil cas, ceux à qui incombe l'obligation de signer les demandes visées aux articles 9 et 11.

TITRE II.

*Article 18* (ancien article 11) <sup>1</sup>.

1. Les dispositions du présent titre sont applicables quand un bateau immatriculé sur les registres d'un État contractant se trouve sur le territoire d'un autre État contractant, ou quand il existe sur ce bateau, un intérêt hypothécaire étranger, ainsi que dans les autres cas prévus par les lois nationales. Provisoirement  
adopté par le  
Comité de ré-  
daction.

2. Il y a intérêt hypothécaire étranger au sens de l'alinéa précédent quand l'obligation a été contractée dans un autre État contractant et stipulée payable dans un autre État contractant, mais à la condition que ces faits soient mentionnés aux registres pour la publicité des droits visés à l'article suivant.

*Article 19* (ancien article 11 bis).

Les registres pour la publicité des droits sont, soit les registres prévus à l'article premier, soit des registres distincts de ceux-ci et tenus par une autorité du même pays. Dans <sup>2</sup> le cas où des registres distincts sont tenus, ces registres doivent répondre aux conditions de publicité spécifiées audit article. Une concordance sera établie entre les deux registres. Le certificat d'immatriculation et les extraits des registres délivrés par le bureau d'immatriculation doivent, dans ce cas, indiquer l'autorité chargée de la tenue des registres pour la publicité des droits.

CHAPITRE I. — DE LA PROPRIÉTÉ, DE L'USUFRUIT ET DES HYPOTHÈQUES.

*Article 20* (ancien article 12).

1. Le transfert volontaire entre vifs des droits de propriété sur un bateau, est réglé par la loi du pays d'immatriculation si cette loi prévoit comme condition du transfert, ou tout au moins pour que ce transfert ait effet à l'égard des tiers, soit l'inscription aux registres pour la publicité des droits, soit la mise en possession de l'acquéreur.

2. La même règle s'applique à la constitution de l'usufruit.

<sup>1</sup> La deuxième Commission a remplacé l'article 18 (ancien article 11) par le texte suivant :

Les dispositions du présent titre sont applicables :

a) Quand un bateau immatriculé sur le registre d'un État contractant se trouve sur le territoire d'un autre État contractant ;

b) Quand il existe sur ce bateau une hypothèque constituée pour la sûreté d'une obligation contractée dans un autre État contractant, mais à la condition que ces faits soient mentionnés au registre pour la publicité des droits visé à l'article 19 ;

c) Dans les autres cas prévus par les lois nationales.

<sup>2</sup> Dans ce dernier cas, le registre pour la publicité des droits doit répondre...

*Article 21 (ancien article 13).*

1. Les effets d'une hypothèque, régulièrement établie sur un bateau d'après la loi du pays d'immatriculation et inscrite sur les registres pour la publicité des droits, sont régis par ladite loi.

2. (Ancien article 14.) Toutefois, l'hypothèque ne peut garantir les intérêts pour une durée de plus de trois années en sus de l'année courante.

3. Le terme « hypothèque » au sens de la présente Convention comprend notamment les droits de gage inscrits sur les bateaux immatriculés visés à l'article 1259 du Code civil allemand, les lettres de gage visées à l'ancien article 315 du Code de commerce néerlandais, les droits de gage visés aux articles 495 à 499 du Code de commerce roumain, les hypothèques sur bateau, visées aux lois fédérales suisses du 28 septembre 1923 et du 25 septembre 1917.

*Article 22 (ancien article 13 bis).*

1. La loi du pays d'immatriculation peut toutefois prévoir que l'hypothèque ne s'étend pas à l'appareil moteur, s'il appartient à une personne autre que le propriétaire du bateau et si cette propriété distincte a fait l'objet d'une inscription au registre pour la publicité des droits, antérieure à la constitution de l'hypothèque.

2. L'hypothèque s'étend à tous objets qui, sans faire partie intégrante du bateau, lui sont attachés à demeure par leur destination, à l'exception de ceux qui n'appartiennent pas au propriétaire du bateau.

*Article 23 (ancien article 13 ter).*

1. L'inscription d'hypothèque doit indiquer au moins le créancier, le montant de la créance, le taux des intérêts, les conditions d'exigibilité de la somme principale et des intérêts.

2. Un renvoi à l'acte constitutif d'hypothèque peut, en ce qui concerne les conditions d'exigibilité, tenir lieu d'inscription, à condition que cet acte soit déposé au bureau chargé de tenir les registres pour la publicité des droits.

*Article 24 (ancien article 15).*

1. Sauf le cas d'exécution forcée, les conditions d'extinction des hypothèques sont déterminées par la loi du pays d'immatriculation.

2. Toutefois, lorsque les objets visés à l'article 22, alinéa 2, sont séparés du bateau, l'hypothèque s'éteint en ce qui les concerne, dans les conditions fixées par la loi du lieu de leur situation.

*Article 25 (ancien article 16).*

Aucun État contractant n'est tenu d'organiser une procédure de purge ou toute autre procédure spéciale pour assurer l'application des dispositions qui précèdent.

*Article 26 (ancien article 17).*

Dans le cas visé à l'article 15, alinéa 1, où les créanciers hypothécaires donnent leur consentement au transfert d'immatriculation du bateau des registres d'un pays sur ceux d'un autre, les conditions posées par lesdits créanciers doivent être compatibles avec la loi du pays de la nouvelle immatriculation. Les inscriptions d'hypothèques sont alors reportées d'office, avec le rang qu'elles avaient sur les anciens registres, et les effets des hypothèques sont désormais régis par ladite loi.

*Article 27 (ancien article 17 bis).*

Les hypothèques constituées sur des portions d'un bateau sont assimilées pour l'application de la présente Convention aux hypothèques grevant le bateau lui-même.

**CHAPITRE 2. — DES PRIVILÈGES.**

*Article 28 (ancien article 18).*

Jouissent d'un privilège sur le bateau, y compris les objets visés à l'article 22, alinéa 2 :

I. 1<sup>o</sup> (ancien 2<sup>o</sup>). Les frais de conservation depuis la saisie ; les taxes de navigation ainsi que les droits de port et de pilotage ;

2<sup>o</sup> a) Les créances résultant du contrat d'engagement du capitaine, des gens d'équipage et des autres personnes engagées par l'armateur ou par le capitaine pour le service du bord, mais, en ce qui concerne les gages, pour une durée de six mois au plus ;

b) Les primes d'assurances sociales des personnes visées ci-dessus, si cette créance est privilégiée par la loi du tribunal saisi, mais pour une durée de trois mois au plus ;

3° a) Les rémunérations dues pour sauvetage et assistance ;  
b) La contribution du bateau aux avaries communes si elle est privilégiée par la loi du lieu d'immatriculation et si la responsabilité du propriétaire est limitée en ce qui concerne cette contribution, par la loi appliquée par le tribunal saisi ;

4° a) Les indemnités dues pour dommages causés par abordage ou autre accident de navigation<sup>1</sup> à des personnes ou biens autres que les personnes ou biens se trouvant à bord du bateau même, y compris les dommages causés aux ouvrages et aux installations des ports et des voies navigables ;

b) Les indemnités dues pour lésions corporelles des personnes se trouvant à bord, pour autant que ces indemnités ne soient pas privilégiées en vertu du n° 2 a), ainsi que pour perte ou avarie de la cargaison et des bagages des passagers, jusqu'à concurrence de leur valeur, si ces indemnités sont privilégiées par la loi du lieu d'immatriculation et si la responsabilité du propriétaire est limitée en ce qui concerne ces indemnités par la loi appliquée par le tribunal saisi.

11. Les autres créances auxquelles la loi du tribunal saisi accorde un privilège.

*Article 29 (ancien article 19).*

1. Les créances privilégiées en vertu du chiffre I de l'article 28 priment les créances hypothécaires.

2. Toutefois, les créances mentionnées au n° 4 passeront après l'hypothèque si les faits constitutifs de ces créances sont postérieurs à l'inscription de l'hypothèque ou si, dans un délai de quinze jours, le créancier n'a pas fait faire mention desdits faits constitutifs aux registres pour la publicité des droits. Ces mentions sont radiées à la demande des intéressés, dans les conditions prévues par la loi du pays d'immatriculation. Elles sont radiées d'office à l'expiration d'un délai de... à compter de leur inscription.

*Article 30.*

1. Les créances privilégiées en vertu du chiffre II de l'article 28 prennent rang après l'hypothèque.

2. La loi du tribunal saisi peut toutefois prescrire que certaines de ces créances priment les créances hypothécaires si les faits constitutifs de la créance sont antérieurs à l'inscription de l'hypothèque et si, en outre<sup>2</sup>, le créancier est détenteur du bateau ou l'a fait saisir à titre conservatoire.

*Article 31 (ancien article 20).*

1. Le rang des créances privilégiées entre elles est déterminé par l'ordre établi à l'article 28.
2. Toutes les créances mentionnées sous le même numéro ont le même rang.
3. Toutefois, les créances mentionnées sous le n° 3 du chiffre I dudit article sont remboursées par préférence dans l'ordre inverse des dates où elles sont nées.

*Article 32 (ancien article 21).*

Si un des créanciers visés aux n°s 3 et 4 de l'article 28 reçoit — du fait que par suite du jeu des conditions mises à l'existence ou au rang des privilèges par les dispositions de la lettre b) du n° 3 et de la lettre b) du n° 4 ci-dessus et l'alinéa 2 de l'article 29, sa créance est primée par la créance hypothécaire — une somme inférieure à celle qu'il aurait reçue si sa créance avait primé la créance hypothécaire, le propriétaire est tenu personnellement au paiement de la différence, sans qu'il puisse invoquer une limitation de sa responsabilité, et sans préjudice de l'application d'une loi nationale en vertu de laquelle le propriétaire est tenu de la totalité de sa dette.

*Article 33 (ancien article 22).*

Les créances énumérées au chiffre I de l'article 28 donnent naissance à des privilèges sans que pour être privilégiées, elles soient soumises à des conditions spéciales de preuve. Ces privilèges s'établissent sans formalités et suivent le bateau en quelque main qu'il passe.

*Article 34 (ancien article 23).*

1. Les privilèges visés au chiffre I de l'article 28 s'éteignent :

- 1° En même temps que la créance et au plus tard à l'expiration d'un délai de six mois ;
- 2° Dans le cas de vente forcée ;

3° De plus, en ce qui concerne les privilèges mentionnés à la lettre b) du n° 3 et à la lettre b) du n° 4, dans les cas prévus par la loi du pays d'immatriculation.

<sup>1</sup> ... navigation, à des navires ou bateaux, à des personnes...

<sup>2</sup> ... en outre, avant cette inscription, le créancier est devenu détenteur du bateau...



2. Le délai de six mois prévu à l'alinéa précédent court : en cas de sauvetage ou d'assistance, à partir du jour où les opérations sont terminées ; dans les cas visés à la lettre *a*) du n° 4 du chiffre I de l'article 28, ainsi qu'en cas de lésions corporelles, du jour où le dommage a été causé ; en cas de perte ou avarie de la cargaison ou des bagages, à partir du jour de l'arrivée du bateau au port du déchargement ou à partir du jour où le créancier a su ou aurait raisonnablement dû savoir que le bateau a rompu le voyage ; dans tous les autres cas, à partir de l'exigibilité de la créance.

3. Les causes de suspension et d'interruption du délai sont déterminées par la loi du tribunal saisi.

*Article 35* (ancien article 24).

Les dispositions qui précèdent sont applicables aux créances nées du fait de l'exploitation d'un bateau par une personne autre que le propriétaire, sauf lorsque le propriétaire s'est trouvé dessaisi par un acte illicite et quand, en outre, le créancier n'est pas de bonne foi.

TITRE III. — DE LA SAISIE CONSERVATOIRE ET DE L'EXÉCUTION FORCÉE.

*Article 36* (nouveau).

1. Lorsqu'un bateau immatriculé dans un des États contractants est l'objet d'une saisie conservatoire sur le territoire d'un autre État contractant, la validité et les effets de cette saisie sont réglés par la loi de ce dernier État.

2. Toutefois, les États contractants s'engagent à prendre les mesures nécessaires pour qu'un avis des saisies conservatoires opérées sur leur territoire, ainsi que des mainlevées de ces saisies, soit immédiatement donné au bureau d'immatriculation du bateau saisi.

3. Ils s'engagent également à prendre les mesures nécessaires pour que les avis de saisie et de mainlevée qu'ils ont reçus soient mis à la disposition des intéressés dans les bureaux d'immatriculation.

*Article 37* (ancien article 25).

1. La procédure d'exécution forcée ne peut se dérouler que dans le pays où le bateau se trouve.

2. Cette procédure est réglée par la loi dudit pays.

3. Toutefois, lorsqu'il s'agit d'un bateau immatriculé dans un des États contractants, qui se trouve sur le territoire d'un autre État contractant, les dispositions qui suivent doivent être observées.

*Article 38* (ancien article 26).

1. Lorsque le bateau est saisi pour être vendu, ou si la procédure d'exécution forcée est ouverte sans saisie préalable, l'autorité compétente doit demander au bureau d'immatriculation que mention en soit faite sur le registre pour la publicité des droits.

2. La demande est établie suivant la formule ci-annexée (annexe III) ; elle peut être remise au consul du pays d'immatriculation pour être transmise par télégramme audit bureau contre paiement des frais.

3. Le bureau d'immatriculation est tenu de prendre les mesures nécessaires pour que dès réception de la demande, toute personne qui vient consulter les inscriptions du registre pour la publicité des droits relatifs au bateau saisi, en ait connaissance, qu'il en soit fait mention sur ces registres, que les créanciers inscrits en soient informés, et qu'un extrait certifié conforme du registre, ainsi que la liste des adresses du propriétaire et des créanciers inscrits indiquées par eux, soient envoyés à l'autorité compétente indiquée dans la demande.

4. Aucune aliénation n'est opposable au créancier saisissant ou intervenant et à l'adjudicataire, si elle est effectuée après la réception de la demande par le bureau d'immatriculation ou si, lors de l'aliénation, l'acquéreur avait ou devait raisonnablement avoir connaissance de l'ouverture de la procédure ou de la saisie. La même règle s'applique à la constitution d'hypothèques et d'usufruits, ainsi qu'à la conclusion du contrat d'affrètement ou de louage du bateau.

*Article 39* (ancien article 27).

1. La loi du lieu de l'exécution doit prévoir que les créanciers inscrits seront avisés au moins un mois à l'avance de la date jusqu'à laquelle ils pourront, dans les conditions fixées par cette loi, faire valoir leurs droits, et qu'au moins un mois d'avance, la date de la vente sera communiquée à ces créanciers et publiée au lieu d'immatriculation.

2. Le transfert de la propriété et l'extinction des hypothèques s'opèrent dans les conditions prescrites par la loi du lieu d'exécution.

*Article 40* (ancien article 28).

L'inobservation des formalités prescrites à l'article précédent entraîne, suivant la loi du lieu de l'exécution, soit la nullité de la vente, soit la non-opposabilité de la vente à des tiers intéressés, soit la réparation par l'État du préjudice causé. L'obligation de réparation ne peut être subordonnée à la condition de réciprocité.

*Article 41.*

(Nouveau.) 1. Ne seront déduits du prix d'adjudication avant sa distribution, que les frais de justice effectués dans l'intérêt commun des créanciers pour parvenir à la vente et à la distribution du prix, y compris les frais de garde, mais exception faite des frais encourus en vue d'obtenir un titre exécutoire.

(Ancien article 29.) 2. Le surplus du prix d'adjudication est distribué aux créanciers, conformément aux règles de procédure de la loi du lieu de l'exécution et en tenant compte du rang qui leur appartient aux termes de la présente Convention.

*Article 42 (ancien article 30).*

1. L'autorité compétente du pays d'immatriculation doit procéder à la radiation des hypothèques éteintes dans les conditions prévues à l'article 39, sur présentation d'une expédition authentique de l'acte d'adjudication et après que l'autorité compétente, d'après la loi dudit pays, aura constaté que l'expédition est authentique, que l'autorité qui a procédé à l'adjudication était compétente, et que les stipulations de publicité, visées à l'article 39, ont été observées.

2. L'autorité compétente du pays d'immatriculation informe les créanciers inscrits de la radiation opérée.

(Nouveau.) 3. L'expédition de l'acte d'adjudication, vérifié conformément à l'alinéa 1, constitue à l'égard du bureau d'immatriculation la preuve du transfert de propriété.

TITRE IV. — DISPOSITIONS GÉNÉRALES.

*Article 43 (ancien article 32).*

La présente Convention n'est pas applicable aux bateaux affectés exclusivement à l'exercice, à un titre quelconque, de la puissance publique.

*Article 44 (ancien article 33).*

Les Hautes Parties contractantes dont la législation ne serait pas, dès à présent, suffisante pour assurer l'exécution des dispositions de la présente Convention, prendront les mesures et édicteront les sanctions nécessaires à cet effet.

*Article 45 (ancien article 34).*

1. En vue de l'application de la présente Convention, les autorités judiciaires et administratives compétentes des États contractants sont autorisées à correspondre directement entre elles au moyen des formulaires annexés à ladite Convention.

2. A défaut d'accords bilatéraux entre gouvernements des Hautes Parties contractantes<sup>1</sup>, la procédure à suivre pour toutes autres communications entre leurs autorités respectives, ces communications se feront par la voie diplomatique ou par toute autre voie<sup>2</sup> prévue pour de telles communications.

*Article 46 (ancien article 35).*

Les États contractants s'engagent à se communiquer par l'intermédiaire du Secrétaire général de la Société des Nations, les dispositions d'ordre législatif ou réglementaire prises par chacun d'eux pour assurer l'exécution de la présente Convention, la liste des autorités chargées de la tenue des registres prévus à la présente Convention, ainsi que<sup>3</sup> les lettres initiales des bureaux d'immatriculation visées à l'article 2.

*Article 47.*

A titre transitoire pendant une période de trois ans à partir de l'entrée en vigueur de la présente Convention, les certificats d'immatriculation conformes aux dispositions de la loi du pays d'immatriculation délivrés avant cette mise en vigueur, seront admis comme équivalents aux certificats d'immatriculation prévus par la Convention.

Pendant la même période, les dispositions des alinéas 1 et 2 de l'article 14 ne s'appliqueront pas aux bateaux immatriculés avant l'entrée en vigueur de la Convention.

PROTOCOLE DE CLÔTURE.

I. Il est entendu que la présente Convention n'a pas pour effet de mettre obstacle au droit d'un État de s'opposer, en cas d'événements graves, au transfert d'immatriculation des bateaux inscrits sur ses registres ni, d'une manière générale, de régler la question des échanges commerciaux d'ordre international auxquels les bateaux donnent lieu, question qui demeure réservée notamment aux traités de commerce et aux conventions générales économiques.

II. Il est entendu qu'aucune des dispositions de la présente Convention ne doit être interprétée comme imposant des obligations ou conférant des droits qui soient incompatibles avec les traités, actes et conventions qui régissent les voies d'eau internationales.

<sup>1</sup> ... contractantes sur la procédure...

<sup>2</sup> ... voie admise dans la pratique pour de telles communications.

<sup>3</sup> ... ainsi que le nom ou les lettres...

III. Il est entendu qu'aucune disposition de la présente Convention ne peut être considérée comme une confirmation ou une modification de la pratique actuelle de l'immatriculation des bateaux dans les consulats du Bas-Danube, comme valant immatriculation dans le pays de ces consulats, mais sans que cette immatriculation porte atteinte aux droits de la Roumanie comme État territorial, tels qu'ils sont reconnus par ladite Convention à tous les États contractants.

IV. Ad *article 4, alinéa 4*. — Il est entendu, pour l'application de l'alinéa 4 de l'article 4, qu'en ce qui concerne les sociétés de capitaux, la nationalité est déterminée par le siège social.

V. Ad *articles 21 et suivants*. — Le terme « hypothèque » au sens de la présente Convention comprend notamment les droits de gage inscrits sur les bateaux immatriculés visés à l'article 1259 du Code civil allemand, les lettres de gage visées à l'ancien article 315 du Code de Commerce néerlandais, les droits de gage visés aux articles 495 à 499 du Code de Commerce roumain, les hypothèques sur bateaux visées aux lois fédérales suisses du 28 septembre 1923 et du 25 septembre 1917.

Il est entendu que lorsque, en conformité de la loi du pays d'immatriculation et en exécution d'une clause inscrite du contrat constitutif de l'hypothèque, un créancier hypothécaire aura été envoyé en possession du bateau, les droits que lui confère cet envoi en possession d'après la loi du pays d'immatriculation seront reconnus dans tous les États contractants comme étant un effet de l'hypothèque.

VI. Ad *Titre II, chapitre 2*. — Le terme « privilège », au sens de la présente Convention, comprend notamment les gages légaux du droit allemand.

VII. Ad *article 28*. — Il est entendu que les privilèges du Trésor public établis par la loi du pays où se trouve le bateau au moment de la vente sont réservés et viennent au rang prévu par les lois dudit pays.

VIII. Ad *article 38*. — Il est entendu qu'au cas où, en vertu de la loi du pays d'immatriculation, la conclusion de contrats d'affrètement ou de louage de bateaux serait opposable au créancier saisissant ou intervenant et à l'adjudicataire, la règle visée à l'article 38 dernier alinéa s'appliquera, dans les conditions y mentionnées, également à ces contrats.

#### Annexe I.

##### LISTE DES LETTRES INITIALES DES ÉTATS VISÉS A L'ARTICLE 2.

D = Allemagne.	N = Pays-Bas.
A = Autriche.	PL = Pologne.
B = Belgique.	P = Portugal.
BG = Bulgarie.	RM = Roumanie.
DA = Dantzig.	S = Suède.
F = France.	CH = Suisse.
GR = Grèce.	CS = Tchécoslovaquie.
M = Hongrie.	Y = Yougoslavie.
I = Italie.	

#### Annexe II (première rédaction).

Nom du bureau d'immatriculation.

##### TRANSFERT D'IMMATRICULATION.

État auquel ressortit ce bureau.

##### Formulaire A.

Conformément à l'article 15 de la Convention internationale sur certaines matières de droit fluvial en date du ....., nous vous faisons savoir que nous avons reçu une demande de radiation de notre registre d'immatriculation du bateau ..... (nom), inscrit sous le N° ....., que les intéressés désirent faire immatriculer sur votre registre. Il n'existe, de notre part, aucune opposition à cette radiation. Celle-ci sera effectuée dès que vous nous aurez fait parvenir l'attestation constatant l'inscription dudit bateau sur votre registre accompagnée du certificat d'immatriculation délivré par nous et, s'il y a lieu, du duplicata.

Nous annexons à la présente les pièces suivantes :

- 1° La copie certifiée de l'immatriculation sur notre registre ;
- 2° Un état des inscriptions existantes (ou un certificat négatif) ;
- 3° Le consentement écrit et dûment légalisé des créanciers hypothécaires.

Nom du bureau d'immatriculation.

##### TRANSFERT D'IMMATRICULATION.

État auquel ressortit ce bureau.

##### Formulaire B.

Nous référant à votre lettre du ..... concernant la radiation de votre registre et l'immatriculation sur notre registre du bateau inscrit sur votre registre sous le nom ..... et le N° ....., nous vous faisons savoir que l'immatriculation de ce bateau sur notre registre a été effectuée le ..... sous le nom ..... et le N° .....

Nous vous envoyons ci-inclus le certificat d'immatriculation délivré par vous et le duplicata que nous avons retirés conformément à l'article 15 de la Convention internationale sur certaines matières de droit fluvial en date du .....

Annexe II (deuxième rédaction).

Nom du bureau d'immatriculation.  
État auquel ressortit ce bureau.

TRANSFERT D'IMMATRICULATION.

Formulaire A.

Conformément à l'article 15 de la Convention internationale sur certaines matières de droit fluvial en date du ....., nous vous faisons savoir que nous avons reçu une demande de radiation de notre registre d'immatriculation du bateau ..... (nom) ....., inscrit sous le N° ....., que les intéressés désirent faire immatriculer sur votre registre. Il n'existe, de notre part, aucune opposition à cette radiation. Celle-ci sera effectuée dès que vous nous aurez fait parvenir l'attestation constatant l'inscription dudit bateau sur votre registre, accompagnée du certificat d'immatriculation délivré par nous et, s'il y a lieu, du duplicata.

(Imprimé dans la langue du pays d'envoi, les mentions écrites devant être effectuées au moins en caractères latins et en chiffres arabes.)

Nous annexons à la présente les pièces suivantes :

- 1° La copie certifiée de l'immatriculation sur notre registre ;
- 2° Un état des inscriptions existantes (ou un certificat négatif) ;
- 3° Le consentement écrit et dûment légalisé des créanciers hypothécaires.

Nom du bureau d'immatriculation.  
État auquel ressortit ce bureau.

TRANSFERT D'IMMATRICULATION.

Formulaire B.

Nous référant à votre lettre du ..... concernant la radiation de votre registre et l'immatriculation sur notre registre du bateau inscrit sur votre registre sous le nom ..... et le N° ....., nous vous faisons savoir que l'immatriculation de ce bateau sur notre registre a été effectuée le ..... sous le nom ..... et le N° .....

(Imprimé dans la langue du pays d'envoi, les mentions écrites devant être effectuées au moins en caractères latins et en chiffres arabes.)

Nous vous envoyons ci-inclus le certificat d'immatriculation délivré par vous et le duplicata que nous avons retirés conformément à l'article 15 de la Convention internationale sur certaines matières de droit fluvial en date du .....

Annexe III.

REQUÊTE AUX FINS DE MENTION DE SAISIE.

(Demande visée à l'article 38 de la Convention internationale sur certaines matières de droit fluvial en date du .....) )

Formulaire C.

Le bureau d'immatriculation des bateaux à ..... est requis de faire le nécessaire pour que mention soit faite sur le registre pour la publicité des droits du fait que le bateau nommé ..... appartenant à <sup>1</sup> ..... inscrit au registre à ..... portant les lettres et N°s ..... a fait l'objet d'une saisie-exécution à la date du ..... en vertu de <sup>2</sup> ..... par <sup>3</sup> ..... à la requête de ..... pour une créance d'une somme de ..... avec intérêts et frais.

(Imprimé dans la langue du pays d'envoi, les mentions écrites devant être effectuées au moins en caractères latins et en chiffres arabes.)

(Signé par l'autorité qui a effectué la saisie.)

<sup>1</sup> Nom du propriétaire, s'il est connu.  
<sup>2</sup> Jugement ou autre titre exécutoire.  
<sup>3</sup> L'autorité qui a effectué la saisie.

ANNEXE 20.

[Conf./U.D.F./42.]

TEXTE PROPOSÉ PAR LA DÉLÉGATION ROUMAINE ET DESTINÉ A ÊTRE INSÉRÉ  
DANS LE PROTOCOLE DE CLÔTURE DU PROJET DE CONVENTION  
SUR CERTAINES MATIÈRES DE DROIT FLUVIAL

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Il est entendu que la présente Convention ne touche en rien aux droits de l'État roumain de maintenir ou de modifier la pratique actuelle qui laisse aux bateaux appartenant à des ressortissants étrangers, la faculté de se faire immatriculer à leur consulat du Bas-Danube, cette immatriculation ayant les mêmes effets que celle effectuée sur le territoire de l'État dont lesdits ressortissants relèvent.

Il est également entendu que la pratique actuelle de l'immatriculation et de la publicité des droits sur les registres des consulats du Bas-Danube ne porte, au sens de la présente Convention, aucune atteinte aux droits de la Roumanie comme État territorial, tels qu'ils sont reconnus à tous les autres États contractants dans lesquels l'immatriculation dans les registres consulaires n'est pas pratiquée.

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ANNEXE 21.

[Conf./U.D.F./43.]

NOUVEAU TEXTE DU COMITÉ DE RÉDACTION, PROPOSÉ PAR LE PRÉSIDENT,  
DE L'ARTICLE 4 (ANCIEN 3), ALINÉA 5, DU PROJET DE CONVENTION SUR  
CERTAINES MATIÈRES DE DROIT FLUVIAL, ADOPTÉ PAR LE COMITÉ  
DE RÉDACTION<sup>1</sup>

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*Article 4, alinéa 5.*

En ce qui concerne les bateaux appartenant à des personnes physiques, chaque État contractant se réserve de même le droit d'exiger que ses ressortissants, même s'ils n'ont pas sur son territoire leur résidence habituelle, inscrivent sur ses registres les bateaux leur appartenant pour plus de moitié et remplissant les conditions d'immatriculation d'un ou de plusieurs autres États, si ces bateaux sont exclusivement affectés à la navigation dans les eaux dudit État.

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<sup>1</sup> Voir annexe 19.

### 3. TROISIÈME COMMISSION.

#### PROJET DE CONVENTION SUR L'UNIFICATION DE CERTAINES RÈGLES EN MATIÈRE D'ABORDAGE DANS LA NAVIGATION INTÉRIEURE.

##### PREMIÈRE SÉANCE

*Tenue le jeudi 20 novembre 1930, à 10 heures.*

*Président: M. CONTZESCO (Roumanie).*

##### I. Ouverture des séances de la troisième Commission.

En prenant possession de sa charge, le PRÉSIDENT rappelle que M. de Ruelle, faisant part à la Conférence de la situation délicate dans laquelle il était mis par sa désignation de président, ajoutait que son premier mouvement avait été de s'y dérober. Heureusement il ne l'a pas fait, mais il s'en est très courtoisement vengé en infligeant le même sort à trois de ses collègues, dont deux, MM. Rossetti et Haab, sont beaucoup mieux indiqués pour ces fonctions — parce qu'ayant participé aux travaux préparatoires — que le troisième.

Si M. Contzesco n'a pas décliné cet honneur, c'est parce qu'il a compté sur toute l'indulgence de la Conférence; il espère que grâce à cela, les travaux de la troisième Commission pourront arriver à bon port et surtout sans abordage.

Il remercie donc la Conférence de sa confiance et ajoute que l'opinion émise par M. le D<sup>r</sup> Richter au sujet des chances de succès de cette Commission sont, pour son président, un très heureux présage.

M. Contzesco ajoute qu'au commencement des débats sur l'abordage, il faudra tenir compte de trois éléments essentiels :

1<sup>o</sup> Il existe un rapport de minorité fort intéressant relatif à l'article 4<sup>1</sup>.

2<sup>o</sup> La Commission se trouve en présence d'une série d'observations soumises par la Chambre de Commerce internationale au sujet des articles 8 et 9 de la Convention de Bruxelles (voir annexe 1, page 255).

3<sup>o</sup> Elle se trouve également en présence d'observations et de propositions d'amendements présentées par la délégation allemande (voir annexe 2, page 256) qui ont été formulées avec le plus grand soin.

Un amendement autrichien est également déposé (voir annexe 3, page 257).

##### CONSTITUTION DU COMITÉ DE RÉDACTION.

Le PRÉSIDENT propose à la Commission de maintenir, pour la question de l'abordage, le même Comité de rédaction que pour l'immatriculation, étant donné la nécessité de coordonner la rédaction des différents articles. Il est entendu que le président de la deuxième Commission aura le droit d'assister aux séances du Comité de rédaction.

*Cette proposition est adoptée.*

##### PROGRAMME DES TRAVAUX.

Le PRÉSIDENT déclare ensuite que deux méthodes de travail sont possibles : ou étudier tout d'abord les différents articles et les amendements déposés, ou entendre un exposé général de certains délégués.

M. VOGELS (Allemagne) accepte la proposition du président tendant à ce que le Comité de rédaction soit le même pour la question de l'abordage que pour celle de l'immatriculation. Il ajoute qu'étant donné que M. Richter n'assiste pas à la présente séance, il informera celui-ci des modifications éventuelles qui pourraient être apportées aux textes discutés.

M. ROSSETTI (Italie) estime qu'en cas d'empêchement d'un membre du Comité de rédaction, ce membre aura la faculté de se faire remplacer par un autre membre de sa délégation.

Le PRÉSIDENT constate que la Commission se rallie à cette manière de voir. Il propose de passer à l'examen détaillé des divers articles du projet de convention relatif à l'abordage.

## II. Examen du projet de Convention <sup>1</sup>.

### *Article premier.*

M. YOVANOVITCH (Yougoslavie) dit qu'avant d'aborder la discussion du projet de convention, la délégation yougoslave voudrait poser une question de principe. D'après la délégation yougoslave, la Convention serait appliquée seulement sur le réseau fluvial internationalisé ou reconnu d'intérêt international. Par contre, elle ne serait pas appliquée aux abordages survenus sur le réseau fluvial intérieur, c'est-à-dire strictement national. Ce réseau resterait soumis exclusivement à la législation nationale.

M. RIPERT (France) voudrait voir renvoyer la discussion de cet article au moment où l'on discutera sur l'ensemble du projet. En effet, cet article porte sur le champ d'application de la Convention, et il vaudrait mieux discuter le fond de la Convention avant d'arrêter son champ d'application.

M. ROSSETTI (Italie) se rallie à l'idée de renvoyer la discussion de l'article premier à un stade ultérieur des débats.

Le PRÉSIDENT se déclare également d'accord avec cette idée et reconnaît qu'il y aurait réellement intérêt à connaître d'abord la teneur de la Convention avant de discuter son champ d'application.

M. MÜLLER (Tchécoslovaquie) se prononce également pour l'ajournement, étant donné que la question soulevée par M. Yovanovitch se pose pour la première fois. Il désirerait donc qu'on laissât aux délégations le temps nécessaire pour réfléchir sur cette question importante.

Le PRÉSIDENT dit qu'étant donné que la prochaine séance sera celle de la Commission de l'immatriculation et que la Commission de l'abordage ne se réunira que le 22 novembre, la délégation tchécoslovaque trouvera sans doute, d'ici là, le temps nécessaire pour réfléchir à cette question.

M. ROSSETTI (Italie) constate que la question a été très longuement débattue au cours des travaux du Comité de droit fluvial. Il pense que M. Yovanovitch aurait intérêt à se renseigner auprès des membres de ce Comité pour connaître les raisons d'ordre purement pratique de l'adoption de l'article premier.

*La Commission adopte la proposition de renvoyer à un stade ultérieur de ses travaux la discussion de l'article premier.*

### *Article 2.*

Le PRÉSIDENT donne lecture de l'article 2 du projet de Convention et rappelle qu'en ce qui concerne l'alinéa 2 de cet article, le Protocole de clôture dit :

« Les mots « au mouillage » doivent être entendus comme s'appliquant à tout bateau amarré ou autrement immobilisé. »

La délégation allemande propose de modifier l'article 2. Aussi le président laisse-t-il le soin à cette délégation de s'expliquer sur le sens de son amendement (voir annexe 2, page 256).

M. VOGELS (Allemagne) est d'avis que pour ceux qui doivent appliquer les conventions, il est désagréable de rechercher si des remarques interprétatives se trouvent dans des protocoles de clôture. Afin d'alléger la tâche des juges qui seront chargés d'appliquer la Convention, ainsi que la tâche des lecteurs de celle-ci, il propose d'incorporer dans la Convention même ces mots explicatifs.

Il croit, d'ailleurs, que le nouveau texte allemand donne un sens précis et à la Convention et au Protocole. Ainsi, cet amendement ne modifie pas le sens des textes, mais tend à les rendre plus clairs.

M. SITENSKY (Tchécoslovaquie) estime que la phrase de l'alinéa 1 « ou s'il y a doute sur les causes de l'abordage », qui d'ailleurs se trouve déjà dans la Convention de Bruxelles, devrait être remplacée par un texte plus clair, par exemple, « ou si les causes de l'abordage ne peuvent être constatées ».

M. DE DIETRICH DE SACHSENFEIS (Hongrie) fait observer que l'article 2 rejette la responsabilité afférente aux dommages résultant de l'abordage sur ceux qui les ont subis, si l'abordage est fortuit, s'il est dû à un cas de force majeure ou s'il y a doute sur les causes.

Étant donné que la preuve de la faute ou de la négligence commise est très souvent difficile à établir et même douteuse en ce qui concerne les responsabilités des entreprises de transport, cette disposition aurait en pratique pour conséquence, dans nombre de cas, que les dommages seraient supportés aussi par les personnes, biens et effets transportés.

Selon la conception juridique hongroise, les bateaux, comme tous les moyens de transport à propulsion mécanique, sont considérés comme moyens d'entreprises dangereux, et l'on applique à ceux qui les exploitent le principe de la responsabilité objective.

<sup>1</sup> Voir document C.541.M.195.1929.VIII.

Ce principe a été établi par la loi XVIII de 1874, dont l'article 5 dit en substance :

« Si une personne perd la vie ou supporte un dommage physique en chemin de fer, la responsabilité des dommages ainsi causés incombe au chemin de fer, qu'il soit en faute ou non, sauf au cas où l'entreprise démontre que l'accident a été causé ou par la propre faute de la personne intéressée, ou par force majeure, ou par le fait d'une troisième personne que l'entreprise ne pouvait empêcher. »

La jurisprudence a étendu cette responsabilité objective à toutes les entreprises dangereuses et aux dommages matériels causés par elle. Le nouveau projet de code civil hongrois a consacré cette pratique par l'article 1741, dont les dispositions sont déjà appliquées par les tribunaux hongrois, bien que ce code ne soit pas encore inscrit au *Bulletin des lois*. Ainsi, cet article a déjà force de loi ; sa teneur est la suivante :

« Quiconque exerce pour son propre compte une profession industrielle ou autre, ou emploie pour quelque but que ce soit un procédé industriel qui, par sa nature, est lié à un certain danger, est responsable de tout dommage résultant de ces profession, occupation ou procédé industriel, causé, soit à des employés, soit à une tierce personne, à moins qu'il ne prouve que le dommage a été causé par force majeure.

« Une responsabilité de ce genre incombe en particulier aux entreprises de chemins de fer, funiculaires, navigation à propulsion mécanique, conduites d'eau, service de gaz et d'électricité, entreprises de construction et de mines, ainsi qu'à toute personne exploitant des automobiles, ascenseurs, avions ou aéroplanes. Cette responsabilité ne peut être ni déclinée ni restreinte. »

Dans ces conditions, bien que l'article en question corresponde entièrement à l'article 2 de la Convention de Bruxelles sur les abordages maritimes, la Hongrie n'estime pas qu'il convienne que les personnes qui exploitent des bateaux de navigation intérieure soient déchargées de la responsabilité objective, dans le seul but de faire concorder le droit fluvial avec le droit maritime. Elle propose donc que l'article 2 du projet de Convention sur l'abordage soit libellé comme suit :

« 1. Si l'abordage est dû à un cas de force majeure, les dommages sont supportés par ceux qui les ont éprouvés.

« 2. Si l'abordage est fortuit, s'il est dû à un cas de force majeure ou s'il y a doute, les dommages causés aux bateaux sont supportés par les bateaux qui les ont éprouvés.

« 3. Si l'abordage est fortuit ou s'il y a doute sur les causes de l'abordage, les dommages causés aux cargaisons, aux effets ou aux biens des équipages, des passagers ou d'autres personnes se trouvant à bord, ainsi que les dommages causés par mort ou blessures, sont supportés par les bateaux transporteurs desdites cargaisons, effets, biens et personnes. »

M. de Dietrich de Sachsenfels ajoute que la législation hongroise assure aux personnes qui en jouissent une plus grande protection que celle qui leur serait accordée d'après l'article 2 du projet de convention. Si l'on pouvait distinguer exactement toutes les causes des abordages, toute possibilité serait donnée de déterminer avec précision l'importance des dommages supportés par ceux qui les ont éprouvés. Mais ce serait vouloir aller trop loin. Ce qui importe, c'est de distinguer aussi bien entre les conséquences qui doivent être subies à la suite d'un abordage qu'entre les causes de celui-ci. On pourrait diviser la question en trois alinéas en prévoyant : 1° le cas d'abordage fortuit ; 2° le cas de force majeure ; 3° le cas où il y a doute. C'est là une rédaction un peu différente des dispositions de Bruxelles, mais M. de Dietrich de Sachsenfels croit qu'il serait bon, en ce qui concerne la question de l'abordage, de voir la législation évoluer dans le sens d'une amélioration continue.

M. RIPERT (France) explique que si l'on a introduit dans l'alinéa 1 de l'article 2 la phrase : « où s'il y a doute sur les causes de l'abordage », cette mention a été insérée pour des raisons historiques et uniquement parce qu'elle figure dans la Convention de Bruxelles.

En ce qui concerne les observations du délégué de la Hongrie, M. Ripert estime qu'elles sont très importantes. Il est vrai que dans des cas fortuits, il peut exister une responsabilité, mais il convient de distinguer nettement entre la responsabilité du transporteur envers les passagers et les chargeurs de marchandises et les rapports qui existent entre deux bateaux. Quand deux bateaux s'abordent et qu'on ignore les causes de l'abordage, de même, d'ailleurs, en cas d'abordage fortuit, il ne saurait plus être question d'appliquer les règles relatives aux transportés. L'argumentation hongroise serait exacte s'il s'agissait, dans le cas présent, d'une responsabilité envers des personnes et des marchandises transportées ; mais il est certain qu'il ne s'agit que de rapports entre deux bateaux.

M. DE DIETRICH DE SACHSENFELS (Hongrie) est rassuré par les explications de M. Ripert, mais il pense que la rédaction du paragraphe discuté n'est pas assez claire. Pour éviter toute possibilité de malentendu, il propose de dire « les dommages supportés par les bateaux qui les ont éprouvés ».

M. MÜLLER (Tchécoslovaquie) dit que les observations de la délégation hongroise semblent démontrer que le texte actuel permet une interprétation différente de celle donnée au texte de la Convention de Bruxelles. Il désirerait connaître le sens précis de ce dernier.

Le PRÉSIDENT donne lecture de l'alinéa 2 de la Convention de Bruxelles et constate qu'il est conforme au texte proposé.



M. RIPERT (France) pense que l'article 2 doit être interprété à la lumière de l'article premier, qui parle « d'abordage survenu entre bateaux de navigation intérieure ». C'est uniquement cette question qui est réglée dans la présente Convention.

Le PRÉSIDENT demande si M. de Dietrich de Sachsenfels retire sa première proposition et s'il accepte cette simple modification « les dommages sont supportés par les bateaux qui les ont éprouvés ».

M. DE DIETRICH DE SACHSENFELS (Hongrie) déclare qu'il peut se contenter de cette modification.

M. VOGELS (Allemagne) ne saurait l'accepter. Si l'on dit qu'en cas de force majeure, les dommages résultant de l'abordage sont supportés par les bateaux qui les ont éprouvés, cette phrase peut signifier que les dommages causés aux personnes, aux marchandises et aux effets des passagers sont supportés obligatoirement par les bateaux. Or, cette interprétation serait contraire à la Convention projetée et à la Convention de Bruxelles. Si l'on acceptait cette modification, l'article serait équivoque. On y introduirait ainsi une rédaction qui pourrait donner lieu à des erreurs et à des doutes.

M. SITENSKY (Tchécoslovaquie) estime qu'on pourrait trouver une solution satisfaisante pour la délégation hongroise en insérant dans la Convention un article spécial traitant la question de responsabilité du propriétaire du bateau, de façon que l'alinéa 4 de l'article 5 devienne un article indépendant qui, complété par la règle de l'article 10, s'appliquerait tant aux cas visés à l'article 4 qu'à ceux visés à l'article 5. Dans le nouvel article, il faudrait aussi déterminer avec précision quelle loi doit être appliquée en ce qui concerne l'appréciation de cette responsabilité.

M. DE DIETRICH DE SACHSENFELS (Hongrie) n'est pas d'accord avec M. Vogels. Il ne lui semble pas qu'en modifiant la teneur de l'alinéa 1 de l'article 2, on rendrait ce texte moins clair. C'est pourquoi la délégation hongroise se rallie à la proposition tchèque.

M. HAAB (Suisse) demande quelle est la portée exacte du membre de phrase « s'il y a doute sur les causes de l'abordage ».

M. RIPERT (France) expose que le membre de phrase « ou s'il y a doute sur les causes de l'abordage », s'explique par des raisons historiques. L'ancienne législation française prévoyait, en effet, dans ce cas, au lieu de la clause de non-recours, la constitution d'une « masse » qu'on partageait ensuite en deux. Aujourd'hui, cette règle est périmée, et c'est pourquoi on pourrait supprimer la phrase qui en est le vestige.

Le PRÉSIDENT estime qu'il conviendrait de renvoyer la discussion au moment de la discussion de l'article 5.

M. ROSSETTI (Italie) constate qu'on se trouve en présence de deux suggestions : celle formulée par la délégation hongroise et celle qui vise à supprimer dès maintenant de l'alinéa 1 de l'article 2 la phrase « ou s'il y a doute sur les causes de l'abordage ». Cette dernière solution pourrait peut-être être résolue dès maintenant.

Le PRÉSIDENT demande aux membres de la Commission s'ils ont des objections à formuler à ce sujet.

M. VAN SLOOTEN (Pays-Bas) estime que le moment est venu de formuler des observations de principe. Depuis longtemps, la Convention de Bruxelles régit les rapports réciproques d'un grand nombre de pays signataires. Or, cette Convention a unifié le droit international en matière d'abordage. Aussi, dans les divers pays en question, le règlement de l'abordage est-il identique. La Convention peut s'appliquer, en effet, aussi bien aux abordages maritimes qu'aux abordages fluviaux, notamment au cas où un navire de mer est impliqué dans un abordage sur les eaux intérieures des États signataires. Ladite Convention prévoit même la possibilité d'étendre son champ d'application en cette matière à toutes les eaux intérieures. On pourrait, par conséquent, régler le cas de l'abordage dans les eaux intérieures par voie de simple extension de cette Convention. Ce qui rend cette procédure très difficile, c'est que certains pays, autrefois maritimes, sont devenus aujourd'hui des pays entièrement fluviaux. Dans certains pays et au Comité rhénan, on s'est préoccupé, dès lors, d'établir une concordance complète en ce qui concerne les règlements appliqués pour les deux catégories d'abordage. Il convient d'ajouter qu'afin d'éviter des litiges inutiles et le recours éventuel des avocats à l'argument *a contrario*, en cas de concordance imparfaite entre les règles à appliquer, les juristes, membres des Comités d'études, se sont préoccupés d'assurer entre les conventions maritimes et fluviales la concordance la plus exacte possible. Il ne faut pas oublier non plus que les textes existants ont été discutés longuement et en détail à Bruxelles et qu'une jurisprudence considérable fait autorité en cette question. La portée des textes de cette jurisprudence est claire ; aussi la Conférence pourrait-elle fort bien se borner à accepter la Convention de Bruxelles. Il serait utile, pour les pays représentés à la Conférence, de s'en tenir à ce principe. Ce serait la méthode la plus sûre pour aboutir à un résultat acceptable.

M. ROSSETTI (Italie) déclare qu'il est exact que lors des travaux préparatoires, la délégation néerlandaise a déjà fait valoir ce point de vue. On avait même suggéré de renvoyer toute la question au Comité maritime, mais cette suggestion s'est heurtée à une opposition générale. M. Rossetti

estime en tout cas qu'il ne voit pas de raison de ne pas améliorer une convention lorsqu'il est possible de le faire. La Convention de Bruxelles a été établie il y a un certain nombre d'années, et on ne peut pas cacher que certaines de ses clauses ont donné lieu à différentes sortes d'interprétations. D'autre part, les conditions de la navigation intérieure sont assez différentes de celles de la navigation maritime pour justifier des modifications dans le texte de la Convention.

M. VOGELS (Allemagne) se rallie aux idées de la délégation néerlandaise. L'Allemagne est signataire de la Convention de Bruxelles relative à l'abordage. En Allemagne, règne une complète synonymie entre les règlements relatifs aux navires de mer et ceux qui régissent les bateaux fluviaux. Lorsqu'on a rédigé l'article 2, on a copié le texte de la Convention de Bruxelles. Toutefois, il convient de faire remarquer que des doutes peuvent s'élever sur la nature des bateaux qui se trouvent éventuellement aux débouchés des fleuves. Quelquefois, des bateaux fluviaux passent sur mer et inversement. En cas d'abordage entre ces deux catégories de bateaux, le juge devra régler au préalable la question de savoir à quelle catégorie ils appartiennent. Quant au membre de phrase « ou s'il y a doute sur les causes de l'abordage », il est appliqué en Allemagne depuis longtemps sans donner lieu à la moindre difficulté. Si l'on supprime ce membre de phrase, il est à craindre que le juge ne se demande en quoi consiste la différence entre le texte de la Convention de Bruxelles et celui de la Convention sur l'abordage. Et il trouvera probablement une interprétation tout autre que la véritable et qui le mènera à appliquer les deux Conventions d'une manière différente. Aussi semble-t-il préférable, afin d'éviter des doutes, de maintenir le texte de la Convention de Bruxelles.

M. VAN SLOOTEN (Pays-Bas) déclare que la délégation néerlandaise a été très heureuse d'apprendre l'opinion de la délégation italienne, d'autant plus que l'intervention de M. Rossetti en cette matière est forcément impartiale. Toutefois, il estime que M. Rossetti a déclaré inexactement que le Comité rhénan et le Comité de la Société des Nations ont jugé inopportun de reproduire le texte de Bruxelles ; ces Comités ont été d'accord, d'une manière générale, de reproduire le texte de Bruxelles autant qu'il était possible.

M. SITENSKY (Tchécoslovaquie) estime que l'Allemagne a raison de vouloir s'appliquer les mêmes règles pour l'abordage en mer que pour l'abordage entre bateaux de navigation intérieure. Il serait du même avis si l'interprétation de la Convention de Bruxelles ne comportait aucun malentendu. Mais, comme le prouve le rapport de la minorité, en expliquant l'article 4, des doutes ont surgi au sujet du champ d'application de la Convention. Par conséquent, M. Sitensky estime-t-il, comme M. Rossetti, qu'il conviendrait d'améliorer la Convention de Bruxelles en rédigeant les textes avec une extrême clarté.

M. DE RUELLE (Belgique) tient à insister sur l'idée qui a été si magistralement exposée par la délégation des Pays-Bas et la délégation allemande. Sans doute, les textes de la Convention de Bruxelles ne sont nullement sacrés. Si l'expérience démontre que certains principes admis jadis ne répondent plus aux nécessités du commerce et de la navigation, il convient de les modifier. Rien ne s'oppose donc à ce que soient adoptées les améliorations nécessaires. Lorsqu'il s'agit, par contre, d'amender un texte par le seul souci d'élégance, il convient d'user d'une extrême prudence. Il est certain qu'ultérieurement, les juges feront le rapprochement entre les textes de la nouvelle Convention et ceux de la Convention de Bruxelles. Lors de cet examen, ils trouveront peut-être des raisons actuellement insoupçonnées qui auraient inspiré les modifications introduites. On peut citer de nombreux exemples d'accidents en mer au sujet desquels subsistent des doutes sur les causes de l'abordage. Si la Convention de Bruxelles n'avait pas existé, la situation serait différente ; on pourrait ne pas parler du cas douteux. Prenons, par exemple, le cas d'un abordage entre un bateau en mouvement et un bateau immobilisé. Selon les conceptions admises à l'égard de la présomption de faute *prima facie*, il suffit que le propriétaire du bateau immobilisé prouve qu'il n'a pas été en faute. Si l'on change les textes, on s'expose à ce que les juges, dans l'impossibilité de retenir le cas douteux, exigent que le propriétaire du bateau immobilisé, pour se disculper, établisse la faute de celui en mouvement. Il serait donc sage de n'introduire que les modifications nécessitées par les conditions différentes de la navigation intérieure, sans revenir sur les rédactions.

M. SUŁKOWSKI (Pologne) estime qu'on devrait régler des situations identiques par des formules identiques. L'abordage a été réglé au point de vue maritime ; il convient de maintenir, si possible, les textes de Bruxelles. Quelquefois, il est vrai, des situations juridiques exceptionnelles peuvent se présenter qui diffèrent en navigation maritime et en navigation intérieure. Dans ce cas, des règles différentes devraient être appliquées, mais, en général, les cas qui se présentent sont analogues.

M. RIPERT (France) déclare ne pas comprendre exactement la portée de la discussion engagée. Il la comprendrait s'il s'agissait d'élaborer un texte visant à étendre à la navigation intérieure les règles qui s'appliquent aux navires de mer. On peut constater que les délégations mêmes qui désirent maintenir le texte de la Convention de Bruxelles ont déposé un grand nombre d'amendements. C'est le cas de la délégation allemande, qui veut écarter de la Convention de Bruxelles la question de la prescription. La Convention de Bruxelles a réglé les questions d'abordage entre pays maritimes qui ont une tradition maritime très ancienne, mais il y a des pays dépourvus de littoral maritime, tels que la Suisse, qui ont besoin de règles sur l'abordage en matière fluviale qui soient compréhensibles en elles-mêmes sans que ceux qui doivent les interpréter aient besoin de recourir à des études historiques sur la législation maritime. Dans ces conditions, il semble qu'il convienne de modifier le texte de Bruxelles en l'adaptant aux conditions de la navigation intérieure.

M. HAAB (Suisse) déclare fort bien comprendre les points de vue néerlandais et allemand, mais il ne peut s'empêcher d'émettre des doutes au sujet de l'opportunité de maintenir le texte de la Convention de Bruxelles tel quel. A son avis, on pourrait renvoyer les procès-verbaux de la présente Commission au Comité maritime de Bruxelles, qui pourrait s'en inspirer lors de la révision de la Convention de Bruxelles.

M. SOUBOTITCH (Yougoslavie) estime qu'il y a deux façons de rédiger la Convention. Ou bien on transcrit tel quel le règlement de la Convention de Bruxelles, ou bien on apportera à celui-ci des modifications : ce qui doit primer, ce sont les raisons pratiques. En cas de conflit d'interprétation, le juge appliquera une loi dont la solution devra être claire et se suffire à elle-même. Une loi est mauvaise lorsque le juge est obligé d'effectuer des recherches dans les procès-verbaux et les documents préparatoires. Cette raison ne doit pas être primée par des considérations théoriques au sujet de l'unité nécessaire de la législation en ce qui concerne les deux catégories d'abordages, maritimes et fluviaux. M. Soubotitch accepte le principe qui tend à modifier la rédaction du texte de Bruxelles lorsqu'une telle modification est justifiée. Il estime qu'on pourrait donner satisfaction au désir de la délégation néerlandaise en insérant une note explicative dans le Protocole de clôture. Cette note serait ainsi conçue :

« En cas d'abordage fortuit, de force majeure ou de doute, aucune indemnité ne pourra être réclamée par un bateau à l'autre. »

M. MÜLLER (Tchécoslovaquie) est du même avis que MM. Ripert et Rossetti sur l'opportunité d'une adaptation du texte de la Convention de Bruxelles aux conditions de la navigation intérieure. Si la délégation allemande a déclaré que les principes de cette dernière Convention sont appliqués sans difficulté depuis quarante ans en Allemagne, il est à observer que le texte de la loi allemande est quelque peu différent de celui de la Convention de Bruxelles. Après avoir donné lecture des textes allemands respectifs, M. Müller demande aux juristes si le sens des deux textes est le même.

M. VOGELS (Allemagne) constate que M. Ripert s'est déclaré incapable de comprendre la discussion engagée au sujet de l'article 2. Mais la France n'a-t-elle pas signé la Convention de Bruxelles ? Celle-ci a reçu force de loi en Allemagne, et le Code de Commerce allemand a été mis en concordance avec elle en vue d'une plus grande simplification. Chaque juge et chaque tribunal allemands sont obligés d'examiner à la fois le texte de la Convention et le texte du Code. Attendu que depuis vingt ans aucune difficulté ne s'est présentée, on peut soutenir légitimement que ces textes ont été consacrés par la pratique.

M. DASCOVICI (Roumanie) constate que les cas d'abordage sur le Danube sont réglés, pour des raisons pratiques, par l'application de la Convention de Bruxelles, mais que le Code de Commerce roumain ne contient aucune mention qui ait trait au cas d'abordage douteux. La Convention de Bruxelles a force de loi au point de vue pratique. Si on la modifie, le juge éprouvera des difficultés. Il convient donc de maintenir ce texte.

M. ROSSETTI (Italie) croit qu'il y a un malentendu au sujet de la Convention de Bruxelles. Si la majorité des délégués était en faveur de l'extension de cette Convention à la navigation intérieure, la question serait simple : il suffirait de faire un seul et unique article qui consacrerait cette extension. Mais M. Rossetti ne pense pas que telle soit l'opinion de la Commission. A son avis, afin d'éviter de continuer à discuter sur un malentendu, il vaudrait mieux mettre au vote la suppression de la phrase « ou s'il y a doute sur les causes de l'abordage ».

M. DE RUELLE (Belgique) répète que jamais les plus ardents défenseurs de la Convention de Bruxelles n'ont eu l'intention de s'opposer à ce que celle-ci fût améliorée lorsqu'il s'agit de pourvoir à des situations spéciales à la navigation fluviale. Mais il estime qu'il serait dangereux de vouloir, lorsqu'il s'agit d'exprimer la même idée, modifier le texte de Bruxelles par voie d'adjonction ou de retranchement. Il serait moins dangereux, si l'on voulait modifier la rédaction sans entendre modifier le fond, d'élaborer des textes entièrement nouveaux.

M. VOGELS (Allemagne) rappelle que la Convention de Bruxelles a non seulement été signée, mais encore ratifiée par la majorité des États ; elle est appliquée depuis près de vingt ans ; cela prouve sa valeur. Quant au reproche adressé à la délégation allemande de vouloir maintenir le texte de la Convention de Bruxelles tout en proposant des amendements au projet du Comité de droit fluvial, M. Vogels tient à préciser que ces amendements n'affectent pas le fond de la Convention de Bruxelles, mais ne comportent que de légères modifications de détail. Tous les pays ont un même intérêt à ce que la législation du droit fluvial soit unifiée.

Le PRÉSIDENT résume les débats en constatant que cette longue discussion a permis de connaître toutes les opinions qui ont pu se former au sein des délégations. Il constate également qu'aucune opinion extrémiste n'a été émise. La plupart des délégués ont admis, en effet, la nécessité de certaines améliorations au texte proposé. Quant aux amendements proposés par la délégation allemande, il semble préférable d'attendre jusqu'au moment où sera discuté l'article 5, alinéa 4, et de confier à ce moment au Comité de rédaction le soin d'établir d'une façon satisfaisante le texte de l'article 2.

M. ROSSETTI (Italie) ne croit pas qu'il existe une liaison entre l'article 5 et le membre de phrase en discussion. Toutefois, il estime qu'il convient, après ces longs débats, de trancher la question. Il pense que le meilleur moyen d'y parvenir serait de procéder à un vote.

M. DE RUELLE (Belgique) se rallie à cette idée. Le mieux serait de mettre au vote le maintien de la mention « ou s'il y a doute sur les causes de l'abordage ». Si la Commission admet la suppression, on saura, une fois pour toutes, qu'elle a entendu modifier, non seulement quant au fond, mais même quant à la forme, la Convention de Bruxelles. Les tribunaux le sauront et n'auront pas à rechercher le pourquoi des simples modifications de rédaction.

M. SITENSKÝ (Tchécoslovaquie) attire l'attention de la Commission sur l'existence de trois propositions :

- 1<sup>o</sup> Supprimer la phrase « ou s'il y a doute sur les causes de l'abordage » ;
- 2<sup>o</sup> Maintenir le texte du projet ;
- 3<sup>o</sup> Modifier l'alinéa en question en y insérant « si les causes ne peuvent être constatées ».

M. RIPERT (France) se déclare disposé à voter, soit le maintien, soit la suppression du membre de phrase, la question n'ayant en fait aucune importance.

M. ROMEIN (membre de la Section des communications et du transit) estime que le mieux serait peut-être de se rallier au texte proposé par M. Sitenisky, sans procéder à un vote.

M. RIPERT (France) est au contraire d'avis qu'il convient de maintenir la procédure habituelle. En effet, si la demande de suppression du membre de phrase litigieux est appuyée par un certain nombre de délégués, ceux qui hésiteraient encore pourront s'y rallier plus facilement. Le mieux est donc de mettre aux voix la proposition tendant à la suppression.

Le PRÉSIDENT aurait préféré arriver à une entente sans aucun vote, mais, puisqu'il en est instamment prié, il se rallie à cette demande.

*Il est procédé au vote sur la suppression du membre de phrase « ou s'il y a doute sur les causes de l'abordage », qui figure à l'alinéa 1 de l'article 2.*

*La majorité des délégations se prononce contre cette suppression.*

Le PRÉSIDENT dit qu'il faut maintenant procéder au vote sur la proposition tchécoslovaque.

M. RIPERT (France) prie la délégation tchécoslovaque de bien vouloir retirer son amendement, étant donné que le sens de celui-ci est absolument identique à celui du projet qui a l'avantage d'être conforme au texte de la Convention de Bruxelles.

M. SITENSKÝ (Tchécoslovaquie) maintient son amendement.

*Il est procédé au vote sur la proposition tchécoslovaque.*

*Celle-ci est repoussée. En conséquence, le texte du premier alinéa de l'article 2 du projet de convention est adopté sans modification.*

*Alinéa 2.*

Le PRÉSIDENT rappelle qu'il existe un amendement allemand à cet alinéa (voir annexe 2, page 256).

M. ROMEIN (membre de la Section des communications et du transit) demande ce que signifient les termes « autrement immobilisés ». Étant donné que les bateaux au mouillage et les bateaux amarrés sont déjà énumérés, il ne voit que les bateaux échoués auxquels ces mots pourraient s'appliquer.

M. VOGELS (Allemagne) pense que le sens de l'expression « autrement immobilisés » est explicite et qu'elle peut rester telle quelle.

M. DE RUELLE (Belgique) pense que l'on peut admettre qu'un bateau est immobilisé bien qu'il chasse sur ses ancres, par exemple, un bateau amarré sur ses ancres d'étrave face au courant de la rivière ; il y a une jurisprudence en ce sens, notamment à la Commission du Rhin siégeant comme Cour d'appel.

Le PRÉSIDENT dit que l'alinéa 2 sera renvoyé au Comité de rédaction.

### *Article 3.*

Le PRÉSIDENT rappelle qu'il existe, en ce qui concerne l'article 3, un amendement de la délégation allemande, qui prévoit que l'article 7 actuel devrait être rattaché, après modification, à l'article 3, comme deuxième alinéa.

M. VOGELS (Allemagne) propose que cet amendement soit discuté lors de la discussion de l'article 7.

*Il en est ainsi décidé.*

M. SITENSKÝ (Tchécoslovaquie) constate que les articles 3, 4 et 5 parlent des bateaux et non des personnes responsables des dommages au sens de l'article 5, alinéa 4, et de l'article 10 ; c'est la

loi nationale qui règle la question de la responsabilité du propriétaire du bateau, sans qu'il soit déterminé, cependant, quelle est la loi nationale. Est-ce la loi du lieu d'immatriculation ou celle du pays où l'abordage a eu lieu ? M. Sitenky est donc d'avis qu'il serait nécessaire de préciser dans la Convention, quelle loi doit être appliquée en vue de la détermination de la responsabilité des propriétaires, si l'on veut éviter des conflits de lois, par exemple au cas d'un abordage en Tchécoslovaquie, causé par la faute d'un bateau allemand. D'après la loi du lieu d'immatriculation de ce bateau, la responsabilité du propriétaire est limitée dans certains cas ; la loi du lieu d'abordage ne connaît pas une telle limitation de responsabilité. Laquelle de ces deux lois sera applicable ? Un conflit de loi peut se produire à cet égard. Il semble donc qu'il existe une lacune profonde dans la rédaction de l'article 3.

M. RIPERT (France) estime que la question de la détermination de la loi applicable doit être laissée de côté. En effet, la Convention de Bruxelles relative à la responsabilité n'est pas encore ratifiée, et la question soulevée reste en dehors du cadre de la présente Convention.

M. SITENSKY (Tchécoslovaquie) ne croit pas qu'il s'agisse ici de la responsabilité des personnes. En se référant à l'article 10, il insiste de nouveau sur la nécessité de déterminer quelle est la loi applicable, parce qu'autrement, on ne pourrait pas éviter des conflits de lois très dangereux.

M. VOGELS (Allemagne) déclare se rallier à l'opinion de la délégation française. A son avis, la question de responsabilité ne saurait trouver place dans la présente Convention. De grandes difficultés se présentent au sujet de l'établissement des principes qui doivent régir la question de la responsabilité limitée. Si l'on voulait s'en occuper actuellement, la Conférence ne saurait réaliser la fin qu'elle se propose. La Convention de Bruxelles n'a-t-elle pas d'ailleurs éliminé cette question de la responsabilité, au sujet de laquelle il n'a pas encore été possible de mettre les principes en harmonie ? Le mieux est donc de maintenir l'article 3 tel quel.

M. SITENSKY (Tchécoslovaquie) estime qu'il ne s'agit pas, dans sa pensée, de réaliser l'unification de la question de la responsabilité, mais d'insérer une formule au sujet de la règle à suivre pour déterminer quelle est la loi applicable.

M. RIPERT (France) répond qu'en cas de besoin, la législation nationale déterminera quelle est cette loi par une règle de conflit de lois, en ayant recours à la notion fournie par la loi d'immatriculation.

M. HOSTIE (Commission centrale pour la navigation du Rhin) estime que la Conférence sortirait des limites de son ordre du jour en traitant la question soulevée par M. Sitenky.

M. NAUTA (Pays-Bas) se rallie à cette manière de voir. Il ajoute qu'il convient de remarquer qu'aux Pays-Bas, ce n'est pas le propriétaire, comme en Tchécoslovaquie, mais l'armateur qui est responsable en cas d'abordage.

Le PRÉSIDENT constate que l'article 3 est adopté sans modification, étant entendu que l'amendement allemand est réservé et sera repris lors de la discussion de l'article 7.

#### Article 4.

Le PRÉSIDENT de la Commission rappelle qu'il existe un rapport de minorité rédigé par MM. Charguéraud-Hartmann et Hostie, au sujet de cet article <sup>1</sup>.

M. ROSSETTI (Italie) tient à proposer une motion d'ordre. A son avis, on ne saurait discuter le rapport de la minorité sans avoir lu l'article 5. La Conférence se trouve en présence de deux propositions : examiner en premier lieu le rapport de la majorité, ou celui de la minorité. Or, à cet égard, M. Rossetti trouve bizarre de donner le pas, en cette discussion, à la minorité. C'est bien plutôt l'opinion formulée par la grande majorité du Comité qu'il convient d'exposer tout d'abord.

Le PRÉSIDENT estime qu'en demandant à la Commission si elle veut discuter tout d'abord le rapport de la minorité, il a suivi la règle applicable en ce qui concerne les votes, laquelle consiste à examiner d'abord la proposition dont l'acceptation est la plus éloignée.

M. ROSSETTI (Italie) estime qu'alors, le mieux serait de considérer comme déjà connues les raisons qui motivent les rapports de la majorité et de la minorité et de passer sans délai à la discussion de la question dans son ensemble.

M. HOSTIE (Commission centrale pour la navigation du Rhin) tient, à son tour, à prendre la parole sur une question d'ordre. Il estime que M. Rossetti a raison de vouloir la jonction des articles 4 et 5, mais il tient à déclarer qu'en réalité, on ne saurait encore parler en ce moment d'une opinion minoritaire au sein de la Commission. Le rapport de la minorité fait partie des travaux préparatoires dont la Conférence est saisie au même titre que les rapports du Comité de droit fluvial. Pour le moment, la Commission n'est saisie d'aucun amendement. Personnellement, il n'aurait d'ailleurs rien à ajouter à ce rapport de la minorité.

<sup>1</sup> Voir document C.541(a).M.195(a).1929.VIII, page 37.

Le PRÉSIDENT estime que cette déclaration a éclairci la discussion et que dans ces conditions, l'avis de la minorité du Comité ne sera pas discuté pour le moment.

M. RIPERT (France) propose, au nom de la délégation française, la suppression de l'article 4 et demande à M. Charguéraud-Hartmann de bien vouloir exposer les motifs de cette proposition.

M. CHARGUÉRAUD-HARTMANN (France) dit que la discussion de l'article 4 soulève deux questions : faut-il adopter, en matière de faute dite collective, une réglementation différente de celle qui prévaut en matière de faute dite commune, et, subsidiairement, si oui, la notion de solidarité doit-elle être consacrée dans tous les cas de faute collective ou dans certains seulement ? Il se bornera, pour le moment, à la première de ces questions. La délégation française estime qu'il est contraire à la logique d'exclure la notion de solidarité dans certains cas et de la maintenir dans d'autres. Il est souvent difficile pour un juge d'apprécier, en cas d'abordage, le degré exact de faute qui incombe au propriétaire d'un bateau en distinguant, par exemple, entre un bateau « innocent » et un bateau auquel peut être imputée une faute de 10%. Et c'est cependant de cette distinction que le projet soumis à la Conférence fait dépendre la solidarité ou la non-solidarité des autres bateaux impliqués dans l'abordage. Une autre considération motivait l'opinion de la délégation française. En cas d'abordage, le propriétaire d'un bateau qui s'estime innocent est tenté, s'il y a solidarité, d'exercer son recours à l'égard de celui qu'il croit le plus solvable, alors qu'en réalité, celui-ci serait le moins coupable. Dans ce cas, le coupable principal n'est pas partie au procès, et il devient très difficile pour le juge de déterminer avec exactitude le degré réel de culpabilité des divers intéressés.

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## DEUXIÈME SÉANCE

*Tenue le samedi 22 novembre 1930, à 10 heures.*

*Président: M. CONTZESCO (Roumanie).*

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### III. Examen du projet de Convention (suite).

Le PRÉSIDENT invite la Commission à reprendre la discussion de l'article 4 du projet de Convention.

#### *Article 4 (suite).*

M. ROSSETTI (Italie) tient à rappeler l'historique de cet article. Il le compare tout d'abord avec l'article respectif de la Convention de Bruxelles, dont il donne lecture.

Par « faute commune », au sens de la Convention de Bruxelles, on avait toujours entendu la faute commune entre navire abordeur et navire abordé, jusqu'au moment où le Tribunal hanseatique de Hambourg déclara, dans une sentence, qu'il y avait également faute commune lorsque plusieurs abordeurs causaient ensemble des dommages à un navire innocent.

Or, dans un mémoire remarquable et bien connu, le regretté professeur Mittelstein a démontré que cette dernière thèse n'était pas fondée. D'autre part, les jurisprudences de la Cour de l'Amirauté anglaise, de la Cour supérieure de Rotterdam, ainsi que de la Cour suprême de Leipzig, sont unanimes à admettre que l'on ne peut parler de « faute commune », et, par conséquent, d'une responsabilité proportionnelle à l'importance de la faute, que lorsque la faute a été partagée entre les abordeurs et l'abordé.

Des déclarations dans le même sens ont été faites par M. Louis Franck, président du Comité de droit maritime. Cette jurisprudence paraît aussi être constante en France et presque constante en Belgique.

La question de la solidarité fut ensuite de nouveau soulevée à la Commission centrale pour la navigation du Rhin siégeant en Cour d'appel, au sein de laquelle deux tendances se sont manifestées : l'une inspirée par la jurisprudence existante, l'autre favorable aux idées nouvelles, exposées ici hier par la délégation française. A cette occasion, M. Rossetti a consulté un certain nombre d'autorités juridiques. Toutes lui ont déclaré que cette jurisprudence était conforme aux idées qui avaient inspiré le Comité maritime international dans la rédaction de l'article 2 de la Convention de Bruxelles. M. Rossetti est alors remonté aux sources et a demandé à M. Franck son opinion personnelle. Le président du Comité maritime international a confirmé à M. Rossetti qu'il partageait sa manière de voir et qu'à son avis, il ne saurait être question de faute commune qu'entre bateaux abordeurs coupables et abordés coupables, ce qui exclut le cas du bateau innocent, victime d'une collision.

M. Rossetti a interrogé ensuite le professeur Berlingieri, dont l'autorité en cette matière est bien connue. Celui-ci n'a pu que lui confirmer la précédente opinion. Dans ces conditions, M. Rossetti a estimé qu'il avait suffisamment d'atouts en main pour pouvoir continuer à soutenir sa thèse.

M. Rossetti fait remarquer que le cas où plusieurs navires ont commis une faute envers un navire innocent, lors d'un abordage, est assez rare dans la navigation maritime, alors que, par

contre, il se présente fréquemment dans la navigation fluviale. Dans ce cas, en effet, lorsque des convois sont impliqués dans un abordage, la question se pose presque toujours.

M. Rossetti a voulu se borner à un exposé historique de la question, sans préjuger le fond même de celle-ci à propos de quoi il laisse à son collègue M. Montagna le soin d'exposer le point de vue de la délégation italienne.

M. MONTAGNA (Italie) expose que la délégation italienne a examiné avec la plus grande attention la proposition de la minorité, proposition signée par deux des plus éminents connaisseurs du droit fluvial.

La délégation italienne croit toutefois préférable la solution adoptée dans le projet de Convention qui consiste à appliquer le principe de la solidarité.

Elle s'inspire d'un des principes de droit les plus sûrs et les plus anciens qui dit : « Là où il y a concours dans la faute, il y a solidarité dans la responsabilité. » C'est une règle de droit romain bien connue, et elle est acceptée par les législations les plus modernes, ce qui montre qu'elle répond aux exigences actuelles.

M. Charguéraud-Hartmann a attiré l'attention de la Conférence sur deux inconvénients auxquels, à son avis, le principe de la solidarité pourrait donner lieu : 1° il est difficile de distinguer entre un bateau innocent et un bateau auquel peut être imputée une faute de 10%. Il faut avouer que ce cas est très rare. Dans ces conditions, il y a lieu de se demander s'il n'y a pas là une de ces hypothèses théoriques dont les diverses délégations ont déjà dit que la Conférence ne devrait pas se préoccuper ; 2° il est possible que le propriétaire d'un bateau qui s'estime innocent exerce son recours à l'égard de celui qu'il croit le plus solvable, alors qu'en réalité, celui-ci serait le moins coupable. Dans ces conditions, M. Charguéraud ajoute qu'il est très difficile à un juge de déterminer avec exactitude le degré réel de culpabilité. Mais, même en excluant la solution basée sur la responsabilité solidaire, on ne pourra jamais empêcher le propriétaire d'un bateau qui s'estime innocent d'exercer son recours dans les conditions indiquées par M. Charguéraud. Par conséquent, le juge se trouvera également dans une situation délicate, puisqu'il lui faudra déterminer le degré réel de culpabilité de chacune des parties.

Ainsi, il semble qu'il n'y ait pas de raisons vraiment graves pour déroger à un principe consacré par une jurisprudence séculaire. Ce principe répond à une nécessité pratique et équitable. En effet, lorsqu'il y a concours dans la faute et qu'on est certain que la responsabilité de plusieurs coauteurs est engagée, la partie lésée n'a pas à se préoccuper de la détermination de leur degré respectif de culpabilité. C'est une question qui ne la regarde pas. Ce qui importe, c'est que la partie lésée puisse obtenir rapidement la réparation de ses dommages. Pour toutes ces raisons, la délégation italienne propose de maintenir sans modification le premier alinéa de l'article 4.

M. CHARGUÉRAUD-HARTMANN (France) estime que le système de la Convention de Bruxelles et celui du projet soumis à la Conférence diffèrent ; aussi serait-il reconnaissant à M. Le Jeune, du Comité maritime international, de bien vouloir exposer le système de Bruxelles.

M. LE JEUNE (vice-président du Comité maritime international) tient à dire tout d'abord, au nom de celui-ci, combien il a apprécié le geste de la Société des Nations d'avoir bien voulu le prier d'assister aux travaux de la Conférence pour l'unification du droit fluvial. Ceux qui, il y a trente-cinq ans, ont créé le Comité maritime international ont été inspirés par un sentiment généreux d'altruisme et par des considérations d'ordre pratique tendant à établir l'uniformité dans la législation maritime. Les buts du Comité maritime sont donc analogues à ceux de l'Organisation du transit de la Société des Nations, et il est heureux que leurs efforts se rejoignent. L'Organisation du transit pourra toujours compter sur le concours du Comité maritime, chaque fois que ce concours lui sera utile.

Il rend hommage au Comité du droit fluvial des études approfondies auxquelles il s'est livré, études qui remontent aux époques lointaines et qui ont été d'autant plus difficiles à accomplir que les éléments historiques font parfois défaut ; ainsi, des comptes rendus complets des travaux préparatoires du Comité maritime ne sont pas publiés, car, à cette époque, seuls les rapports des séances plénières étaient imprimés.

Il rappelle que l'établissement de l'article 4 de la Convention de Bruxelles a été précédé d'un débat considérable. Ce débat ne portait en aucune façon sur le principe de la solidarité ou de l'absence de solidarité en cas d'abordage. Il ne visait pas davantage la question de savoir si la faute commune mentionnée à l'article 4 de la Convention de Bruxelles devait s'interpréter comme pouvant mettre en cause plus de deux navires. Ce qui a dominé tout le débat, c'est la lutte engagée entre les partisans continentaux du principe que la responsabilité devait être proportionnelle à la gravité des fautes et les adversaires de ce principe qui heurtait de front le droit anglo-saxon. M. Rossetti a sans doute justement interprété les opinions personnelles des auteurs de la Convention de Bruxelles, dans laquelle on n'a pas cru devoir introduire la notion de la solidarité. Est-ce une préméditation ?

M. Le Jeune ne désire pas se prononcer sur ce point, en raison, surtout, du fait qu'un grand nombre des personnalités qui ont collaboré à l'établissement de la Convention ne sont plus de ce monde. Toutefois, M. Le Jeune constate que bien que certaines divergences d'opinions se soient manifestées dans les différents pays quant à l'application de l'article 4, ceux où le principe de la solidarité est admis ne se sont guère trouvés gênés par le texte de la Convention.

En France, par contre, les décisions des tribunaux vont décidément à l'encontre du principe de la solidarité.

Quant à la valeur de ce principe lui-même, il n'appartient pas à M. Le Jeune de donner son opinion à ce sujet. Il estime, en effet, que le système de la solidarité offre une solution ; il y en a d'autres, et il incombe à la Conférence même de choisir. M. Le Jeune a jugé utile, après les dernières discussions de la Commission, de se renseigner sur la manière dont la jurisprudence de la Belgique,

pays qui est le berceau de la Convention, interprète l'article 4. Or, si cette jurisprudence appliquée d'une manière générale le principe de la solidarité, elle y apporte toutefois certains tempéraments. La Conférence examinera donc s'il y a lieu d'édicter une règle absolue et formelle, qui aurait pour conséquence de mettre les tribunaux dans l'impossibilité d'y apporter le moindre tempérament.

M. VOGELS (Allemagne) rappelle que les deux thèses : celle de la majorité et celle de la minorité ont été soutenues depuis le commencement des travaux des experts et que tous les motifs pour et contre sont clairement exposés dans des rapports.

Il estime que la teneur de l'article 4 relatif à l'abordage justifie les doutes qui ont surgi. Il conviendra d'exclure toute possibilité de doutes dans le texte définitif.

Mais dans quel sens devra-t-on les exclure ? Ou bien on se ralliera aux motifs de la minorité, ou bien on s'en rapportera à l'opinion de la majorité qui recommande l'adoption du principe de la solidarité.

En ce qui la concerne, la délégation allemande se rallie à la deuxième solution. Elle estime que la solidarité a pour elle l'autorité des plus hautes Cours de justice, particulièrement de la Cour suprême de Londres, qui, en termes très nets, s'est prononcée en sa faveur. Il en est de même en ce qui concerne les Cours de Rotterdam et de Leipzig.

Il est préférable que, lors d'un abordage, la partie lésée n'ait pas à s'occuper du degré de culpabilité des auteurs du dommage. Ce qui importe est la réparation du dommage causé.

La Conférence doit être guidée par des considérations pratiques plutôt que théoriques. Le but de la Conférence est de trouver une solution simple, qui épargne au juge des doutes inutiles. La délégation allemande prie la Commission de prendre une décision sans trop élargir le débat.

M. SITENSKY (Tchécoslovaquie) estime que la question de l'interprétation de la Convention de Bruxelles est intéressante, mais qu'elle n'est pas prédominante. Il ne s'agit pas, en effet, de savoir comment on a voulu régler le problème de la responsabilité dans la navigation maritime, mais plutôt comment ce problème doit être réglé dans la présente Convention pour que la réglementation réponde à l'équité et aux intérêts de la navigation.

Dans le cas de faute collective, la réglementation prévue par le projet de Convention pourrait satisfaire la délégation tchécoslovaque. La thèse de la minorité semble, par contre, susceptible de provoquer des difficultés. En supposant l'hypothèse d'un abordage survenu entre deux unités appartenant à deux différents trains de remorque, et si l'on n'admet pas le principe de la responsabilité solidaire, le bateau lésé ne pourra pas choisir, pour le citer en justice, n'importe lequel des bateaux coupables, mais devra intenter une action contre tous ces bateaux. Or, il sera difficile, à ce stade du procès, de connaître quel est le véritable coupable. Seul un tribunal pourra trancher cette question. Il se pourra fort bien que les défendeurs cités n'aient commis, en dernière analyse, qu'une faute très légère et que les trois quarts de la faute aient été commis par un bateau contre lequel l'action n'a pas été intentée ; cependant, entre temps, l'action pourra se trouver périmée à l'égard de ce bateau qui a commis la faute la plus grave, et cette péremption aura été causée par le fait qu'un certain temps aura été nécessaire pour rechercher le véritable coupable. Dans ce cas, par suite de la péremption, la partie lésée perdra le bénéfice des dommages-intérêts dont elle aurait joui si l'on avait appliqué le système de la solidarité.

Le mieux est donc de laisser à la partie lésée le choix du coupable et de faire partager la réparation du dommage entre tous les coupables au moyen de recours seulement, après la décision du tribunal.

M. ROSSETTI (Italie) remercie tout particulièrement M. Le Jeune, qui vient de confirmer que M. Rossetti avait bien interprété l'opinion des « pères » de la Convention de Bruxelles. M. Le Jeune a confirmé également que telle était bien la jurisprudence la plus généralement suivie en Belgique. Il a dit, enfin, que la notion de la solidarité entre bateaux coupables et innocents n'avait pas été discutée à la Conférence qui a établi la Convention de Bruxelles, ce qui confirme aussi l'interprétation que, d'après M. Rossetti, l'on doit donner, en l'espèce, à cette Convention.

M. DE RUELLE (Belgique) tient, non pas à exprimer une opinion formelle au sujet de l'interprétation de la Convention de Bruxelles en cette matière, mais à rappeler seulement qu'en cas d'adoption pure et simple du texte du projet du Comité de droit fluvial, la Commission irait extrêmement loin dans la voie de la solidarité. Elle dépasserait même peut-être la limite jusqu'à laquelle veulent aller les délégués qui ont parlé précédemment.

On a fait état d'une règle de droit commun, laquelle est basée sur le droit romain. Cependant, d'après la plupart des législations, notamment le Code Napoléon, le principe de la solidarité en matière de réparation d'un dommage n'est pas une règle absolue, mais laisse une certaine liberté aux juges. Il est évident, par exemple, que si la faute commise est, pour ainsi dire, la même pour tous, chacun des coauteurs devra contribuer équitablement à la réparation du dommage causé.

M. Montagna a dit avec raison que quand il y a concours dans la faute, il doit y avoir concours également dans la solidarité, partant, dans la responsabilité.

Si l'on adopte le texte du projet de Convention, le juge se trouverait privé de toute liberté d'interprétation. Or, ce serait aller trop loin.

M. NAUTA (Pays-Bas) déclare que la question soulevée par M. Charguéraud-Hartmann a trait à une situation qui se présente très fréquemment en droit maritime et fluvial. Cette situation a donné lieu à peu de difficultés avant la mise en vigueur de la Convention de Bruxelles ; seule l'interprétation de la Convention de Bruxelles a suscité des difficultés. Cette Convention donne une solution pour le cas où, de deux bateaux qui sont impliqués dans un abordage, l'un est en faute, ensuite pour le cas où l'abordage est causé par force majeure et également pour le cas où un abordage a lieu entre deux bâtiments en faute. Dans ce dernier cas, elle prévoit l'application du prin-



cipe de la faute dite commune. Mais elle ne mentionne pas *expressis verbis* quelle est la solution à appliquer pour le cas, cité par M. Charguéraud-Hartmann, où trois bateaux sont impliqués dans un abordage, deux de ces bateaux étant coupables et l'autre innocent.

Cette situation a soulevé une question : les auteurs de la Convention de Bruxelles ont-ils envisagé d'appliquer le principe de la faute commune au cas cité par M. Charguéraud-Hartmann ? Cette question a été soulevée dans plusieurs pays. Elle a donné lieu à des procès aux Pays-Bas, en Allemagne et ailleurs. Dans tous ces pays, les cours et tribunaux ont décidé que l'article 4 de la Convention de Bruxelles n'a pas l'intention de régler le cas de la faute collective. Ces décisions ont été rendues à juste titre. En consultant les comptes rendus des délibérations de la Conférence diplomatique qui a établi la Convention de Bruxelles, on ne trouve aucune trace d'une intention quelconque de la part des auteurs de cette convention d'y introduire le principe d'une responsabilité qu'on doit peut-être plutôt nommer partielle que partagée, dans le cas où il y a concours dans la faute. Au contraire, à la page 35 des documents préparatoires du Comité de droit fluvial, un certain nombre d'opinions de juristes éminents sont citées, qui disent clairement qu'en cas de plusieurs coauteurs fautifs, on doit accepter le principe de la responsabilité solidaire. C'est ainsi que M. Martin (Allemagne) disait : « La solidarité n'a rien d'excessif, elle est conforme aux principes généraux. » M. Autran (France) disait à son tour : « D'une façon générale, les auteurs d'un même délit ou d'un même quasi-délict sont tenus solidairement. » M. Lyon-Caen, pendant la Conférence de Bruxelles, déclarait qu'en France, les tiers qui sont victimes d'un abordage, soit qu'il s'agisse d'un dommage causé aux personnes ou aux choses, ont une action solidaire de responsabilité contre les auteurs du dommage.

A son tour, M. Louis Franck déclare, dans son rapport à la Conférence du Comité maritime international de Bruxelles : « Telle est la jurisprudence constante en France et la jurisprudence au moins générale en Belgique. »

M. Nauta a consulté également M. Louis Franck au sujet de l'idée émise par M. Hostie. M. Franck a répondu que le principe de la responsabilité partagée serait contraire à l'opinion générale qui a prédominé lors des débats de la Convention de Bruxelles. On peut donc constater : 1° que le texte de Bruxelles n'a pas clairement donné une solution pour le cas de faute collective et qu'il a donné lieu à des procès ; et, 2° que l'acceptation du principe de la solidarité ne sera-t-il pas contraire aux principes de ladite Convention.

Or, le projet de Convention qu'on discute maintenant s'occupe du droit applicable à la navigation intérieure ; aussi, de même que MM. Vogels et Sitenky, M. Nauta estime que si le texte de la Convention de Bruxelles a causé des doutes et occasionné des procès en droit maritime, le mieux est de l'améliorer pour l'adapter aux besoins de la navigation intérieure.

La Conférence devra donc se décider au sujet de savoir si elle acceptera le principe de la solidarité en ce qui concerne les bateaux en faute. En sa qualité d'avocat à Rotterdam, M. Nauta a eu l'occasion d'émettre son avis lors de nombreux abordages. Dans ces cas, on se trouvait souvent en présence de plusieurs innocents et de plusieurs coupables, et jamais le moindre doute ne s'est élevé dans son esprit au sujet de la solidarité. Aux Pays-Bas, ce dernier principe est adopté et il n'a jamais donné lieu à des difficultés sérieuses. Aussi M. Nauta craint-il que, en cas d'adoption d'une notion différente, ne surgissent des difficultés considérables. Il est vrai que la minorité est composée d'experts juridiques très compétents en droit fluvial. Mais il ne faut pas oublier que l'opinion majoritaire est représentée, elle aussi, par des personnalités éminentes, telles que MM. Mittelstein, Richter et Rossetti.

MM. Hostie et Charguéraud-Hartmann ont dit : « Introduisez, en cas de faute collective, le principe de la responsabilité partielle pour chaque coauteur. » M. Nauta se demande si la base juridique de cette responsabilité est suffisamment solide. Il paraît assez illogique d'admettre qu'un auteur de dommage soit tenu responsable de, par exemple, 50% seulement du dommage causé, pour la seule raison qu'il existe un second défendeur, tandis que ce même auteur de dommage devrait répondre de la totalité, s'il était seul. Le pourcentage devant être établi par la partie lésée, elle-même, pour motiver la plainte. Si un bateau innocent a subi un dommage par la faute d'un bateau A solvable et d'un bateau B insolvable, M. Nauta considère qu'il est équitable que le bateau innocent obtienne la réparation totale du dommage qu'il aura subi. Mais il n'est pas conforme à l'équité que la présence d'un bateau insolvable pourra avoir pour conséquence de réduire de 50% le montant des dommages-intérêts que le bateau innocent touchera, tandis que ce bateau aurait touché 100% s'il n'y avait eu qu'un seul coupable : le bateau solvable.

M. Charguéraud-Hartmann a déclaré également qu'il est possible qu'un bateau coupable et solvable ne puisse exercer de recours à l'égard d'un insolvable et supporte finalement seul la charge totale des dommages-intérêts. Le cas peut se produire, il est vrai, mais si l'on doit déterminer ce qui est le moindre mal : 1° de faire supporter la charge totale des dommages-intérêts par un des bateaux coupables seul ou, 2° de laisser le bateau innocent perdre une partie des dommages-intérêts auxquels il a droit, l'équité commande de décider en faveur du bateau innocent. D'ailleurs, dans le dernier cas cité, le bateau en faute, qui a finalement à supporter toute l'étendue des dommages-intérêts, n'a pas à se plaindre, car on peut fort bien admettre que s'il avait été seul, il aurait aussi bien supporté le tout. Il perd seulement un avantage éventuel (la possibilité d'un recours contre un coauteur).

M. Nauta ajoute que la Conférence ne doit pas modifier une règle de droit qui est appliquée depuis des siècles. Une convention doit se rallier au droit existant ; s'il en est autrement, on risque de voir les gouvernements et les parlements des États contractants formuler des objections contre la Convention en demandant les raisons des modifications apportées. On pourrait répondre d'une manière satisfaisante à ces objections si un mécontentement unanime régnait au sujet du droit existant ; mais tel n'est pas le cas. Au contraire, au cours des travaux préparatoires, jamais aucune plainte n'a été formulée. Pour ces raisons, M. Nauta propose à la Commission l'acceptation du principe de la solidarité en se réservant la faculté de proposer quelques modifications de rédaction.

M. CHARGUÉRAUD-HARTMANN (France) déclare qu'au cours de sa brève réplique, il retiendra essentiellement l'idée de M. Nauta au sujet de la nécessité de ne pas modifier sans y réfléchir une règle existante, et c'est ce que fait l'article 4. On veut trancher la question d'une manière rigoureuse, sans laisser aux juges la latitude d'interpréter, dans chaque cas, les principes généraux dont ils disposent actuellement.

M. Montagna a déclaré que là où il y a concours dans la faute, il doit y avoir concours dans la responsabilité. Or, l'article 4 n'est pas limité au cas de concours dans la faute. On a cité également l'opinion de M. Autran, qui a déclaré : « D'une façon générale, les auteurs d'un même délit ou d'un même quasi-délit sont tenus solidairement. » Or, l'article 4 parle de faute « même différente ».

La délégation française n'est pas convaincue par les arguments invoqués en faveur du système du projet. M. Nauta a déclaré que, au cas où A et B sont coupables, C innocent et B insolvable, il est équitable que C soit dédommagé par A, ce dernier ne devant pas être exonéré d'une partie des paiements qu'il aurait dû effectuer si B n'avait pas été présent. Mais peut-être que la faute de A n'aurait justement causé aucun dommage si B n'en avait aussi commis une. On peut citer par exemple le cas où la présence d'un bateau amarré A, entraîne un abordage entre B et C : B a commis 75% de faute et A 25% pour avoir été amarré à un endroit interdit ; C est innocent, mais si B n'avait pas commis une faute lourde, il n'y aurait pas eu de dégâts, et on veut que A, dont la seule présence ne pouvait occasionner d'accident, supporte la totalité des frais de réparation du dommage causé à C.

M. Vogels a dit qu'il ne faut pas mettre à la charge du bateau innocent l'obligation de rechercher le principal coupable ; or, la fin à laquelle doit viser la Convention n'est-elle pas d'obliger l'abordé à citer au procès toutes les personnes impliquées dans l'abordage, seule solution permettant au juge de connaître de l'affaire dans son ensemble et, par suite, de la bien juger ?

M. DE VOS (Belgique) comprend fort bien les arguments de la minorité. A son sens, le doute subsiste au sujet de l'interprétation de la Convention de Bruxelles. Souvent celle-ci reste dans le vague, en écartant les questions de détail pour ne viser que le cas principal. M. de Vos croit qu'il faut entendre la notion de la faute commune dans un sens général, c'est-à-dire qu'elle s'applique non seulement à deux bateaux qui s'abordent et qui sont fautifs, mais également aux tiers innocents. De plus, il convient de distinguer entre les dommages causés aux biens et ceux causés aux personnes. En général, les biens sont mieux protégés que les personnes. Aussi les auteurs du projet de Convention ont-ils veillé à ce que la responsabilité solidaire couvre d'une manière plus efficace les passagers et les tiers. Mais, à son avis, le projet du Comité de droit fluvial va ou trop loin ou pas assez loin. Il proposerait de reprendre le texte de Bruxelles et d'y ajouter une note interprétative relative à la faute commune et la faute réciproque.

M. ROSETTI (Italie) constate que M. Charguéraud-Hartmann veut que le bateau abordé innocent s'adresse à tous les coupables. Or, une difficulté bien grave se présente, car, en pratique, l'abordé ne peut exercer son recours que contre celui qu'il connaît, et il se peut bien qu'il ignore le véritable auteur de l'abordage. Dans ce cas, il pourrait arriver qu'une action de ce genre fût forclosée, par suite de l'expiration de délais encourus lors des recherches nécessaires pour mettre tous les coupables en cause.

M. VOGELS (Allemagne) ajoute que l'expérience des tribunaux allemands est un argument en faveur du principe de la solidarité ; l'application de celui-ci n'a jamais donné lieu à des plaintes. Étant donné que la navigation maritime et fluviale est considérable en Allemagne, il y a forcément un grand nombre d'abordages chaque année.

Quant aux arguments cités par les deux experts, on peut constater qu'ils constituent simplement la répétition de ceux qui se trouvent exposés au rapport de la minorité dans les documents préparatoires. Le mieux est donc de clore le débat et de mettre la question au vote.

M. CHARGUÉRAUD-HARTMANN (France) est d'accord sur la proposition de passer au vote, mais il faut savoir sur quoi on votera. S'agit-il d'admettre la solidarité dans tous les cas ou seulement dans certains cas ? Si la Commission adopte purement et simplement l'article 4 du projet, elle rentre dans le domaine des innovations. Il faut bien réfléchir.

M. HOHL (Suisse) comprend le souci de certaines délégations de ne rien introduire dans le projet en discussion qui irait à l'encontre des principes de la Convention de Bruxelles. Comme, cependant, la portée de l'article 9 de cette convention est contestée, le principe de la solidarité faisant partie du droit commun dans presque tous les pays semble s'imposer. Quant à l'exemple, cité par M. Charguéraud-Hartmann, qu'il est possible qu'un des coupables soit seul inculpé, M. Hohl fait observer qu'il reste toujours à celui-ci la possibilité de citer ses coauteurs devant le tribunal.

D'une manière générale, la délégation suisse se rallie à l'opinion de la majorité.

M. SITENSKY (Tchécoslovaquie) déclare que M. Charguéraud-Hartmann a proposé de limiter l'application de l'article 4 aux cas de fautes égales. Or, il est difficile de savoir à l'avance si des fautes égales ou des fautes différentes ont été commises.

M. VAN SLOOTEN (Pays-Bas) constate qu'on a préconisé deux systèmes opposés. Ne faut-il pas tenir compte d'une autre solution, celle du Comité rhénan, où les deux points de vue ont été discutés à fond et où le Comité a décidé de s'en tenir au texte de la Convention de Bruxelles, c'est-à-dire de reproduire exactement en matière fluviale l'état du droit maritime ? Ne serait-ce pas pour la Conférence la solution qui s'impose ? La vérité est que le juge appelé à statuer au sujet d'un abordage est souverain en ce qui concerne l'appréciation souvent difficile des faits. D'autre

part, les parties en cause formulent un grand nombre d'allégations mensongères. Parfois, le juge se trouve devant le cas de deux abordages indépendants l'un de l'autre. Dans tous les cas, il doit trouver une solution équitable. Il se demandera, dès lors, en son for intérieur, s'il est inique ou non d'appliquer le principe de la solidarité, et la solution de cette question trouvée, il va considérer, de nouveau, les causes de l'abordage. M. van Slooten estime, comme M. Nauta, que le principe de la responsabilité solidaire doit l'emporter. Toutefois, les arguments de la minorité ne sont pas sans fondement. On ne peut nier que le système rigide du projet de Convention ne puisse invoquer des injustices à l'égard des parties en cause et soulever des difficultés pour les juges. Le mieux serait donc peut-être de ne rien innover, mais de s'en tenir simplement au texte de la Convention de Bruxelles. Le principe de la solidarité est suffisamment établi par la jurisprudence constante.

M. ROSSETTI (Italie) fait remarquer que la Commission n'est ni un comité d'experts ni une cour de justice où chacun peut exprimer une opinion personnelle, mais qu'elle est composée de délégations de gouvernements, et il s'étonne que les deux délégués des Pays-Bas aient exprimé des opinions différentes. Laquelle de ces deux opinions est celle du Gouvernement néerlandais ?

M. SUŁKOWSKI (Pologne) constate que la Commission est appelée à choisir entre deux principes : principe de la solidarité et principe de la responsabilité partagée. Dans le cas visé par l'article 4 du projet de Convention, M. Sułkowski estime que, théoriquement, il faudrait choisir le principe de la solidarité. Toutefois, il faut tenir compte du fait que l'article 5 du projet de Convention s'inspire du principe de la responsabilité partagée. Il serait illogique, semble-t-il, d'appliquer deux principes différents aux divers cas envisagés.

M. RIPERT (France) fait observer qu'il s'agit pour la Commission d'aboutir à un texte. Or, jusqu'à présent, la Commission n'a été saisie que d'une seule proposition : celle de la délégation française, tendant à la suppression pure et simple de l'article 4.

Les raisons de cette proposition sont les suivantes : 1° l'article 4 impose la solidarité à des États dont certains peuvent ne pas connaître cette notion, ou ne pas vouloir l'adopter ; 2° il impose la solidarité même en cas de fautes différentes ; 3° il impose la solidarité dans ce cas, tandis que le deuxième alinéa de l'article 5 l'exclut dans un autre cas, ce qui paraît illogique.

La raison de cette contradiction provient de ce que les rédacteurs du projet ont commencé par reproduire, dans l'article 5, les dispositions de la Convention de Bruxelles, et ont élaboré ensuite l'article 4. Le cas envisagé dans cet article 4 est un cas relativement rare que la Convention de Bruxelles a jugé inutile de prévoir.

La délégation française estime qu'il faut laisser à la jurisprudence le soin de décider, selon les fautes commises, s'il faut ou non rendre les bateaux fautifs solidairement responsables.

M. NAUTA (Pays-Bas), en réponse à l'observation de M. Rossetti, déclare que les instructions données à la délégation des Pays-Bas sont en faveur de la solidarité.

Il fait observer que, si l'on étudie les débats qui se sont déroulés pendant les diverses conférences qui ont donné naissance à la Convention de Bruxelles, on constate qu'il fut décidé que s'il existe un abordage entre deux navires en faute, la responsabilité et les dommages seraient également partagés. On a réglé cette situation parce que les diverses législations avaient adopté sur ce point des solutions différentes. Suivant les unes, chacun des bateaux devait supporter ses propres dommages ; suivant les autres, il n'en était pas de même. Les législations présentaient des divergences analogues en ce qui concerne la cargaison, que certaines d'entre elles soumettaient aux mêmes règles que le bateau lui-même. Après une étude approfondie, on a considéré utile d'accepter pour la cargaison la même règle que pour le bateau qui la porte ; ainsi on a introduit la disposition de l'article 4 de la Convention de Bruxelles, qui est reproduite dans l'article 5 du projet. Il existait pour les auteurs de la Convention de Bruxelles encore une autre raison motivant cette disposition ; elle concerne certaines clauses généralement contenues dans les connaissements, mais M. Nauta ne peut pas en aborder l'examen qui impliquerait des explications trop compliquées. L'histoire de la Convention de Bruxelles montre que l'article 4 de cette Convention a trait à une situation tout à fait différente de celle qui s'offre quand deux bateaux sont en faute et un tiers innocent, et qu'on ferait mal en déclarant simplement la règle que la Convention de Bruxelles a formulée pour le cas de faute commune applicable au cas de faute collective.

M. ROSSETTI (Italie) demande au président de bien vouloir inviter la Commission à voter pour ou contre la suppression de l'article 4.

M. SUŁKOWSKI (Pologne) présente une motion d'ordre. La discussion a montré le lien très étroit qui existe entre les articles 4 et 5, et il demande que la Commission ne procède pas à un vote sur la suppression de l'article 4 avant que l'article 5 ait été examiné.

M. MÜLLER (Tchécoslovaquie) fait ressortir que la discussion des mérites des deux thèses juridiques en présence pourrait mener la Commission fort loin. Il estime qu'il faut envisager la question du point de vue pratique et tenir compte du fait, signalé par M. Vogels, qu'une longue expérience de la solution adoptée en Allemagne a prouvé qu'elle ne présentait pas d'inconvénients sérieux. La délégation tchécoslovaque déclare pouvoir adopter cette solution en ce qui la concerne et accepte le principe de solidarité du projet de Convention.

Quant aux objections formulées en ce qui concerne la solvabilité des bateaux, c'est-à-dire que le bateau solvable pourrait être grevé plus fortement par rapport à la gravité de sa faute, elle estime que le deuxième alinéa de l'article 4 donne tout apaisement à ce sujet.

M. DE VOS (Belgique) déclare que sa proposition consiste à reproduire les dispositions de la Convention de Bruxelles et à préciser, dans un protocole de clôture, la signification de l'expression « fautes commises ».

Il fait observer que la Convention de Bruxelles s'applique lorsqu'il y a abordage entre un navire de mer et un bateau fluvial. Ce système va continuer tant qu'une nouvelle convention ne l'aura pas modifié, et il invite la Commission à introduire le moins de changements possible, pour éviter de créer des conflits.

Le PRÉSIDENT s'excuse auprès de la délégation allemande de n'avoir pas cru devoir mettre fin aux débats au moment où elle l'a proposé, étant donné que l'importance de la question traitée et la divergence des thèses en présence nécessitaient impérieusement une discussion aussi large que possible. En effet, toutes les thèses ont été remarquablement exposées, et la Conférence se trouve maintenant en mesure de prendre position et d'attribuer ses sympathies à l'une ou à l'autre des conceptions soutenues, dans la mesure où elles s'écartent du projet de Convention.

La solution qui s'écarte le plus de ce projet est celle de la délégation française, qui demande la suppression pure et simple de l'article 4. Une autre proposition est celle de la délégation belge, qui consiste à maintenir l'article 4 et à préciser, dans un protocole de clôture, la signification du terme « fautes commises ».

Le président ne croit pas nécessaire pour le moment de s'arrêter aux autres thèses et invite la Commission à se prononcer sur la thèse la plus extrême, c'est-à-dire celle de la suppression de l'article 4.

Le président invite donc la Commission à voter d'abord sur la proposition de la délégation française. Il constate que la majorité de la Commission se prononce contre cette suppression.

Par conséquent, *la proposition de suppression de l'article 4 du projet est rejetée.*

M. ROMEIN (membre de la Section des communications et du transit) suggère que la Commission se prononce maintenant sur la proposition belge, consistant à remplacer l'article 4 par le texte de la Convention de Bruxelles.

M. NAUTA (Pays-Bas) fait observer que l'article 4 envisage le cas où certains bateaux sont innocents, et il estime qu'on ne peut le remplacer par l'article 4 de la Convention de Bruxelles, qui envisage le cas où tous les bateaux sont fautifs.

Il est vrai, s'il a bien compris M. de Ruelle, que cet article de la Convention de Bruxelles peut être interprété dans un sens qui permette de l'appliquer aux cas où il y aurait des bateaux innocents. Mais cette interprétation est contraire à celle adoptée par la jurisprudence d'un grand nombre de pays, notamment de l'Allemagne, de l'Angleterre, de l'Italie et des Pays-Bas.

Le PRÉSIDENT, constatant à nouveau le caractère le plus extrême des thèses en présence, met aux voix la proposition belge de remplacer l'article 4 du projet par l'article 4 de la Convention de Bruxelles et de préciser, dans un protocole, la notion de « fautes commises ».

Il constate que la majorité de la Commission se prononce contre cette proposition.

Le président rappelle qu'il reste maintenant à trancher la question de savoir si l'article 4 du projet de Convention doit être maintenu tel quel ou modifié.

M. RIPERT (France) demande que soit précisé le sens des termes « qui auraient commis des fautes mêmes différentes ». « Différentes » à quel point de vue ? S'agit-il de gravité différente ou de notion différente ?

M. MONTAGNA (Italie) rappelle à ce sujet que le principe de la solidarité est basé sur le concours dans la faute. Par « fautes différentes », il comprend « fautes de degrés différents ».

M. VOGELS (Allemagne) signale que la législation allemande, en ce qui concerne la question de savoir comment doit être interprété le concours dans la faute, distingue deux cas. Ou bien les bateaux sont considérés comme coauteurs d'une action commune, décidée au besoin par une entente préalable — comme dans le droit pénal — ce cas est très rare en matière d'abordage. L'autre cas, qui est le plus fréquent, est celui où il y a simple concurrence de deux fautes, dont le seul lien est d'avoir provoqué les mêmes dommages.

Cette dernière interprétation est la plus simple. Si la Convention voulait faire une distinction entre les deux cas indiqués, elle rendrait fort compliquée la tâche des tribunaux en leur demandant de trancher une question dont les éléments sont très difficiles à apprécier.

La délégation allemande déclare en conséquence approuver les termes actuels de l'article 4.

Le PRÉSIDENT estime que la Commission ne peut se dispenser de préciser la signification qu'elle entend donner à l'article 4. Les membres de cette Commission pourront, en effet, être appelés ultérieurement à donner des explications à ce sujet dans leurs pays respectifs.

M. DE RUELLE (Belgique) propose de donner un caractère facultatif à la règle indiquée au premier alinéa de l'article 4, en remplaçant les mots « sont tenus solidairement » par les mots « pourront être tenus solidairement ». Cette solution correspond à la pratique actuelle des tribunaux, et il devient alors inutile de chercher à faire des distinctions dans le texte.

M. de Ruelle considère que la Commission ne doit pas vouloir lier le juge qui, en principe, est un homme sage.

M. MONTAGNA (Italie) estime impossible d'accepter que ce soit le juge qui fasse la loi.

Il propose de remplacer les termes « fautes même différentes » par les termes « fautes même de degrés différents », sauf rédaction.

M. RIPERT (France) propose que soient supprimés les mots : « qui auraient commis des fautes même différentes », et que la première phrase de l'article se lise ainsi : « Si l'abordage est causé par la faute de deux ou plusieurs bateaux, ces bateaux sont tenus solidairement..... »

M. MONTAGNA (Italie) déclare retirer sa proposition et appuyer celle de M. Ripert.

M. SITENSKY (Tchécoslovaquie) déclare que la délégation tchécoslovaque partage, en ce qui concerne la question du concours des fautes, la façon de voir de la délégation allemande. Il estime d'ailleurs que celle-ci ne présente pas une différence de fond avec celle qui se traduit par la proposition française.

M. SOUBOTITCH (Yougoslavie) déclare appuyer la proposition française, qui éclaire la signification de l'article 4. Toutefois, cette signification serait rendue encore plus claire, à son avis, si l'on disait : « par la faute ou les fautes ».

M. RIPERT (France) déclare accepter la formule « par les fautes ». Il demande, d'autre part, que l'article dise « bateau innocent » au lieu de « bateaux innocents », pour rendre le sens du reste de l'alinéa plus clair.

M. VOGELS (Allemagne) et M. SITENSKY (Tchécoslovaquie) appuient la proposition française ainsi modifiée.

M. DE RUELLE (Belgique) retire sa proposition tendant à remplacer les termes « sont tenus solidairement » par les termes « pourront être tenus solidairement ».

Le PRÉSIDENT constate que la Commission accepte la proposition française tendant à rédiger le premier alinéa de l'article de la façon suivante :

« 1. Si l'abordage est causé par les fautes de deux ou plusieurs bateaux, ces bateaux sont tenus solidairement à la réparation des dommages causés au bateau innocent, ainsi qu'aux personnes et aux choses se trouvant à bord de ce bateau. »

*Cet alinéa étant adopté et renvoyé au Comité de rédaction*, il invite la Commission à passer à l'examen du deuxième alinéa, dont il donne lecture.

M. SITENSKY (Tchécoslovaquie) estime que ce deuxième alinéa doit être complété par une disposition analogue à celle du quatrième alinéa de l'article 5. Il propose, soit que l'on modifie en ce sens le deuxième alinéa de l'article 4, soit que l'alinéa 4 de l'article 5 fasse l'objet d'un article spécial, qui se rapporterait aux deux articles 4 et 5, comme il l'a déjà proposé à la dernière séance.

M. VOGELS (Allemagne) déclare appuyer la proposition de M. Sitenisky et propose que la question soit renvoyée au Comité de rédaction.

M. SITENSKY (Tchécoslovaquie) signale, pour le cas où sa proposition serait acceptée, qu'il y a lieu de préciser dans le même article de quelle législation nationale il s'agit : celle du pays où a lieu l'abordage, ou bien celle du pays d'immatriculation.

Le PRÉSIDENT constate que la *Commission adopte le deuxième alinéa de l'article 4, sous la réserve que le Comité de rédaction devra tenir compte de la proposition de M. Sitenisky.*

*Il donne ensuite lecture du troisième alinéa, qui est adopté sans modification.*

L'examen de l'article 4 étant terminé, il invite la Commission à aborder celui de l'article 5.

#### Article 5.

Le PRÉSIDENT donne lecture de l'article 5 du projet de Convention.

M. SOUBOTITCH (Yougoslavie) estime que, dans le premier alinéa, les termes « d'après les circonstances », sont inutiles ; il propose de les supprimer.

M. SUŁKOWSKI (Pologne) fait observer que ces termes figurent également dans le troisième alinéa de l'article 4 et qu'il y aurait intérêt à employer la même formule dans les deux articles.

Le PRÉSIDENT répond que l'article 4 a été adopté et ne doit plus être modifié.

M. RIPERT (France) et M. WINIARSKI (Commission internationale de l'Oder et Commission consultative et technique des communications et du transit) expliquent que le texte de l'article 5 reproduit les termes de la Convention de Bruxelles.

M. SOUBOTITCH (Yougoslavie) déclare maintenir sa proposition, à moins qu'il ne soit établi que la formule « d'après les circonstances » a été introduite pour écarter les présomptions légales.

M. WINIARSKI répond qu'il se peut qu'on ait voulu donner une telle signification à cette formule dans la Convention de Bruxelles, mais que, dans le projet de Convention actuel, elle a été reproduite sans aucune intention particulière.

M. VAN SLOOTEN (Pays-Bas) invite la Commission de rédaction à examiner avec soin la question de savoir s'il est indispensable de faire débiter l'article 5 par une expression différente de celle employée dans la Convention de Bruxelles, qui dit « faute commune ».

Le PRÉSIDENT constate que la Commission adopte le premier alinéa de l'article 5, sous réserve des modifications éventuelles de forme que le Comité de rédaction jugera bon d'y apporter.

*Les deuxième et troisième alinéas sont ensuite adoptés sans modification.*

La Commission aborde l'examen du quatrième alinéa.

M. ROSSETTI (Italie) estime que l'alinéa 4 présente une importance si grande qu'il doit faire l'objet d'un article séparé.

M. SITENSKY (Tchécoslovaquie) se déclare du même avis, mais propose que le texte de cet alinéa soit modifié, en remplaçant au début : « Il appartient aux législations nationales de déterminer... » par : « C'est la loi du lieu d'immatriculation à laquelle il appartient de déterminer... »

M. HOSTIE (Commission centrale pour la navigation du Rhin) estime que la Commission sortirait du cadre de son mandat si elle voulait régler les conflits de lois en ce qui concerne la limitation légale ou conventionnelle de la responsabilité.

M. VOGELS (Allemagne) et M. MONTAGNA (Italie) se déclarent d'accord avec M. Hostie.

M. SITENSKY (Tchécoslovaquie) fait observer que la remarque de M. Hostie est peut-être fondée, mais qu'avec le texte actuel du quatrième alinéa, on n'évitera pas les conflits de lois.

M. NAUTA (Pays-Bas) fait observer que le quatrième alinéa de l'article 5 ne vise en aucune façon la réglementation de la limitation des responsabilités. Cette question fait l'objet de l'article 10. Aussi est-il d'avis qu'il ne serait pas opportun de déclarer la règle de cet alinéa applicable pour le cas de faute collective, réglé à l'article 4 ; à son avis, la question à laquelle l'article 5, alinéa c) a trait ne peut pas se poser pour le cas de faute collective.

M. RIPERT (France) se déclare d'accord avec M. Nauta. Le quatrième alinéa de l'article 5, qui reproduit une disposition de la Convention de Bruxelles, envisage une question toute particulière : celle du recours des personnes se trouvant à bord contre le propriétaire du bateau. Or, il y a des dispositions légales particulières ou des clauses de contrat de transport qui règlent les rapports juridiques entre le propriétaire et les personnes qui se trouvent à bord, et, dans le projet de Convention, on a voulu réserver ce point et respecter les dispositions des lois nationales.

M. ROSSETTI (Italie) se rallie à cette manière de voir. Il propose de laisser subsister le quatrième alinéa de l'article 5 tel qu'il est et de faire un nouvel article concernant la limitation des responsabilités, lors de l'examen de l'article 10.

Le PRÉSIDENT constate que la question demande à être encore examinée avec soin, et décide d'ajourner les débats à la séance suivante.

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### TROISIÈME SÉANCE

*Tenue le mardi 25 novembre 1930, à 10 heures.*

*Président: M. CONTZESCO (Roumanie).*

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#### IV. Examen du projet de Convention (suite).

##### *Article 5 (suite).*

##### *Alinéa 4.*

Le PRÉSIDENT propose d'examiner l'alinéa 4 de l'article 5 du projet de Convention. Il rappelle à cet égard que, sur la proposition de M. Winiarski, président du Comité du droit fluvial, l'examen de cet alinéa avait été ajourné afin d'être révisé et mis en conformité avec une proposition émanant de M. Sitensky, à laquelle la délégation allemande s'était ralliée.

M. SITENSKY (Tchécoslovaquie) rappelle qu'il a proposé de faire de l'alinéa 4 de l'article 5 un article spécial qui s'appliquerait également à l'article 4 et à l'article 5, auquel on devrait ajouter une disposition déterminant quelle est la loi applicable en ce qui concerne la limitation de la responsabilité des propriétaires de bateaux.

Mais on lui a objecté que trancher ici la question des conflits de lois dépasserait la compétence de la Conférence. En raison de cette objection et après avoir étudié plus profondément la rédaction

de l'article 5, M. Sitensky déclare finalement que si elle n'est pas acceptée entièrement, sa proposition a perdu sa raison d'être. Aussi retire-t-il cette proposition.

M. WINIARSKI (président du Comité du droit fluvial) rappelle que la Convention de Bruxelles a maintenu le principe de la responsabilité solidaire dans le cas de lésions corporelles et qu'elle a accordé un recours à celui qui a payé une part supérieure. Le projet distingue deux cas : 1<sup>o</sup> celui de la faute commune ; 2<sup>o</sup> celui de la faute collective. Or, dans ce dernier cas prévu par l'alinéa 4, le projet admet le principe de la responsabilité solidaire et accorde un recours analogue. Si M. Sitensky n'avait pas retiré son amendement, on aurait pu faire de l'alinéa 4 un article séparé et remplacer les mots « ce recours » par « les recours visés aux articles 4 et 5 ».

M. SITENSKY (Tchécoslovaquie) croit, au contraire, que le recours prévu à l'article 4 n'est pas le même que celui visé à l'article 5 et que, si l'on n'a pu se rallier à sa proposition de former un article spécial de l'alinéa 4 de l'article 10 avec une règle sur la loi applicable, il vaut mieux laisser l'alinéa 4 de l'article 5 tel quel. Il ne saurait se rallier à la proposition de M. Winiarski.

M. VOGELS (Allemagne) estime que l'alinéa 4 de l'article 5 ne peut être modifié et qu'il convient de garder tel quel cet article. Il lui semble, en effet, que, même en théorie, il est impossible que l'alinéa 4 de l'article 5 s'applique au cas prévu par l'article 4. Or, il faut éviter d'introduire dans la Convention l'énoncé d'un fait impossible en théorie. Dans ces conditions, les délégations allemande et tchécoslovaque retirent leur amendement.

M. RIPERT (France) appuie les observations formulées par M. Vogels. Il estime que l'alinéa 4 ne doit pas être modifié. Dans cet alinéa, il n'est pas question de la limitation de la responsabilité des bateaux entre eux, mais de la responsabilité du propriétaire du bateau à l'égard des personnes se trouvant à bord.

M. PANTITCH (Yougoslavie) estime que la rédaction de l'alinéa premier n'est pas suffisamment claire. Il propose de le renvoyer au Comité de rédaction.

Le PRÉSIDENT déclare que les alinéas 1, 2 et 3 de l'article 5 sont approuvés et qu'il appartient à la Conférence de décider s'il convient de laisser au Comité de rédaction le soin de les modifier.

M. HOSTIE (président du Comité de rédaction) rappelle que le Comité de rédaction est déjà saisi du premier alinéa de l'article 5.

*Il est entendu que le Comité de rédaction tiendra compte de l'observation de M. Pantitch.*

*L'alinéa 4 est adopté sans modification.*

#### Article 6.

Le PRÉSIDENT propose d'entendre les observations des délégations allemande et autrichienne au sujet de cet article, auquel elles ont proposé des amendements (voir annexes 2 et 3, pages 256 et 257).

M. ROSSETTI (Italie) déclare que l'article 6 a été introduit pour deux raisons principales : 1<sup>o</sup> cette disposition se trouve déjà dans la Convention de Bruxelles ; 2<sup>o</sup> une jurisprudence à peu près constante admet le principe qui s'y trouve exprimé.

Il estime pour ces raisons qu'il convient de maintenir intégralement le principe de la responsabilité, sans quoi la sécurité et la protection de la navigation auxquelles la Conférence vise ne seraient assurées d'une manière suffisante.

M. PANTITCH (Yougoslavie) croit qu'il conviendrait d'accepter sans modification la rédaction de l'article 6. A son avis, le pilote n'est nullement substitué au capitaine dans le commandement du bateau. Le capitaine reste le chef suprême, même lorsqu'il a le pilote à ses côtés, et il peut commettre des fautes indépendamment de celles commises par le pilote. Le pilote ne sert qu'en qualité d'instructeur obligatoire ; c'est le cas, notamment, en ce qui concerne la section des Portes de Fer, sur le Danube. M. Pantitch estime, par conséquent, que, ainsi qu'il a été prévu dans la Convention de Bruxelles, la responsabilité doit subsister, même dans le cas où le pilote est obligatoirement imposé.

M. VOGELS (Allemagne) croit que citer en exemple la Convention de Bruxelles en ce qui concerne l'application de l'article 6 constitue une faible argumentation. En effet, dans le cas d'un pilote obligatoirement imposé, cette Convention a suspendu l'application du principe de la responsabilité. Il est contraire à l'équité de laisser subsister la responsabilité du commandant du bateau dans le cas où des fautes ont été commises par un pilote que ce capitaine n'a pas été à même de choisir. Il ne faut pas oublier que le capitaine ne peut refuser le pilote et qu'il doit lui obéir. Aussi, lorsqu'un abordage a été causé par la faute d'un pilote obligatoire, sans qu'aucune faute n'ait été commise par l'équipage du bateau, la loi allemande assimile ce cas à celui de force majeure, auquel s'applique la disposition de l'article 2 du projet de Convention, c'est-à-dire que les dommages sont supportés par ceux qui les ont éprouvés.

En ce qui concerne la forme même des amendements proposés par les délégations allemande et autrichienne, M. Vogels déclare pouvoir se rallier à la formule autrichienne et retire l'amendement allemand.

Dans un autre ordre d'idées, M. Vogels expose qu'au cours d'entretiens privés qu'il a eus, on a déclaré que ces amendements auraient pour conséquence une élévation des tarifs de pilotage

fixés par la Commission internationale du Danube, et qu'ainsi, les charges imposées à la navigation seraient aggravées. C'est là, certes, une conséquence à laquelle les délégations allemande et autrichienne désirent obvier ; mais il convient de faire remarquer que les raisons invoquées au sujet de la possibilité d'une élévation des tarifs ne sont pas fondées. En effet, les amendements allemand et autrichien n'ont nullement pour conséquence que la Commission internationale du Danube soit responsable de la faute commise par un pilote obligatoire. Il s'agira plutôt d'un cas assimilé à celui de force majeure dans lequel — sauf le pilote — personne ne sera responsable. Si cette hypothèse est admise, la Commission internationale du Danube ne serait pas autorisée à procéder à une augmentation des tarifs de pilotage.

M. PANTITCH a déclaré qu'il était difficile de distinguer entre la faute du capitaine et celle du pilote ; mais il ne faut pas oublier que le pilote obligatoire prend en réalité le commandement du bateau. Dans ces conditions, il est impossible de faire une distinction entre les fautes de chacun. D'ailleurs, la loi allemande sur la navigation maritime et fluviale déclare que le capitaine n'est nullement responsable de la faute du pilote, sauf quand la faute d'une ou plusieurs personnes de l'équipage y a contribué, clause qui, d'ailleurs, est sous-entendue. Pour ces motifs, M. Vogels propose à la Conférence de se rallier aux thèses autrichienne et allemande.

M. SUŁKOWSKI (Pologne et Dantzig) déclare se rallier à l'opinion des délégations allemande et autrichienne.

M. ROSSETTI (Italie) déclare qu'en aucun cas la délégation italienne ne saurait accepter le principe de la limitation de la responsabilité du capitaine.

Si, en effet, la Convention de Bruxelles a suspendu le principe de cette responsabilité, cette suspension ne concerne que la mise en vigueur de la Convention sans toucher à la question de fond, sur laquelle, même à Bruxelles, l'accord a été unanime. Cette opinion est confirmée par le fait qu'à la Conférence diplomatique de Bruxelles, le Gouvernement britannique, le seul qui admettait une pratique contraire, ne s'est nullement opposé à cette disposition, se limitant, pour des raisons pratiques, à demander la possibilité d'une suspension de sa mise en vigueur.

C'est vouloir méconnaître les pratiques suivies par la plupart des pays maritimes que de dire que le capitaine est obligé d'obéir au pilote. Le pilote n'est qu'un conseiller, et si le capitaine, seul responsable du bateau, estime que le pilote a donné un avis erroné, il n'y donne aucune suite.

M. DASCOVICI (Roumanie) estime qu'aux raisons formulées par M. Rossetti s'ajoutent des considérations de fait. S'il est vrai que la Convention de Bruxelles ait admis le principe de la responsabilité entière du capitaine en matière de droit maritime, il semble, à plus forte raison, qu'on doive admettre ce principe en navigation fluviale, où les abordages se produisent encore plus fréquemment.

Il est vrai que l'article du règlement de la Commission européenne du Danube décline toute responsabilité en ce qui concerne le pilotage obligatoire sur le Bas-Danube, jusqu'à l'embouchure de ce fleuve. Cette disposition semble quelque peu bizarre, mais il ne faut pas oublier que des sanctions disciplinaires interviennent contre les pilotes fautifs. Si l'on n'accepte pas le principe de la responsabilité en cas de faute d'un pilote obligatoire, au point de vue moral, les victimes d'un abordage ne pourront plus exercer aucun recours, ce qui serait contraire à la fin que se propose la Conférence. En effet, celle-ci ne se propose-t-elle pas essentiellement d'assurer la sécurité de la navigation fluviale ? Ne faut-il pas, dans ces conditions, pouvoir mettre en cause des responsabilités ?

Les amendements allemand et autrichien sont explicables, si l'on considère les secteurs autrichiens et allemands du Danube, mais non pas dans les autres parties de ce fleuve, où le pilotage est obligatoire et la navigation plus intense.

M. PANTITCH (Yougoslavie) répond à la délégation allemande qu'il n'a connaissance d'aucun cas où un pilote prenne effectivement le commandement d'un bateau. En effet, le pilote n'a pas qualité pour le faire et ce droit est réservé au capitaine. Le pilote n'est, en réalité, qu'un instructeur chargé de manœuvrer aux passages dangereux du fleuve.

M. WINIARSKI (président du Comité du droit fluvial) déclare que lors de l'élaboration du projet de Convention de Bruxelles, il a été admis que la disposition relative à la responsabilité du propriétaire ne s'oppose nullement à ce qu'un bateau civilement responsable exerce un recours contre un pilote fautif, au cas où ce recours est autorisé par une législation nationale. Peut-être serait-il possible à la Conférence de formuler la même déclaration, en vue d'apaiser les appréhensions de quelques délégations.

M. NAUTA (Pays-Bas) estime qu'il convient, en cette matière, de préciser tout d'abord ce qu'on entend par pilote obligatoire. A cet égard deux conceptions ont été formulées : 1<sup>o</sup> M. Vogels a attaché à ces mots un sens très restreint, puisqu'il entend par pilote obligatoire le pilote qui prend le commandement et remplace complètement le capitaine ; 2<sup>o</sup> de son côté, M. Rossetti a exposé sa conception, qui est la même que celle acceptée aux Pays-Bas, où l'on entend par pilote obligatoire un pilote qu'on doit prendre à bord, mais qui sert de conseiller au capitaine, qui reste responsable.

Or, si l'on veut discuter la proposition de M. Vogels, il convient de savoir de quoi l'on parle avant de pouvoir décider si l'on doit accepter la règle du projet de Convention ou bien la règle contraire.

Aux Pays-Bas, le principe de la responsabilité, tel qu'il est formulé par l'article 6, est admis dans le cas où le pilote est obligatoire.

Toutefois, M. Nauta comprend fort bien la valeur des arguments exposés par M. Vogels.



A son avis, il est impossible de concilier les deux opinions contraires. Aussi croit-il que le mieux serait de supprimer l'article ou de le rendre facultatif.

Le PRÉSIDENT estime que M. Nauta insiste avec raison sur la divergence qui existe entre les deux conceptions relatives au rôle du pilote, en cas d'abordage. Il croit qu'il serait opportun de donner la parole à M. Baule, secrétaire général de la Commission internationale du Danube, afin d'entendre ses explications techniques sur la question.

M. BAULE (secrétaire général de la Commission internationale du Danube) expose quelles sont les caractéristiques d'un pilotage dans la section des cataractes du Danube, aux Portes de Fer. En cette partie du fleuve, les pilotes sont mis obligatoirement à la disposition des bateaux par l'administration. Le pilote doit s'assurer des conditions de navigabilité du bateau et déclarer ensuite s'il est prêt à se charger du pilotage. Dans ce cas, il conseille le capitaine au sujet des manœuvres dans les secteurs dangereux du fleuve. Dans certains passages très dangereux, là où le sens exact des diverses conditions, des remous et des courants est nécessaire, le pilote doit prendre la barre. Toutefois, le règlement de la navigation dans cette partie du Danube déclare expressément que la présence du pilote à bord ne décharge pas le capitaine de ses responsabilités.

M. SULKOWSKI (Pologne) constate que la discussion a montré quelles sont les différentes pratiques suivies dans les différents pays.

Mais l'article 6 vise une situation différente, celle où les dommages ont été causés uniquement par la faute du pilote. Dans ce cas, il est exagéré que le propriétaire du bateau soit responsable de la faute du pilote.

Pour ces raisons, M. Sulkowski déclare se rallier aux amendements allemand et autrichien.

M. RIPERT (France) estime qu'il convient de prendre une décision sur le point discuté.

A son avis, l'unique question dont il s'agit en l'espèce est de savoir quelle est la responsabilité du propriétaire du bateau envers un bateau abordé. Ce n'est qu'après avoir réglé ce point qu'il conviendra de régler le recours que le propriétaire pourrait avoir contre le pilote. Peu importe, en effet, à la victime d'un abordage que le bateau soit sous le commandement du pilote ou du capitaine. L'unique question importante est celle de la réparation due à la victime de l'abordage.

Quant à la thèse défendue par M. Vogels, tendant à ce que l'abordage causé par un bateau ayant un pilote obligatoire à bord soit considéré comme un cas de force majeure, elle est tellement extraordinaire qu'aucune nation maritime n'a osé la défendre à Bruxelles.

Si l'on admettait cette conception, lorsqu'un bateau, conduit par un pilote, réputé expérimenté en matière de navigation, cause un abordage, on serait obligé de refuser à la victime toute possibilité de recours. Ce serait là une solution inadmissible. Étant donné qu'en général, la Conférence a insisté sur la nécessité de sauvegarder les intérêts de la victime d'un abordage, ne serait-il pas illogique de refuser toute réparation à cette victime, au cas où le pilotage est obligatoire ?

M. ROSSETTI (Italie) se rallie aux idées de M. Ripert. Il rappelle que le pilote obligatoire n'est pas imposé pour sauvegarder un intérêt particulier, mais bien dans l'intérêt général de la navigation. Ce n'est pas une raison, parce qu'on a pris des précautions spéciales pour protéger les navires, que de se refuser à admettre le principe de la responsabilité.

Dans quelle rivière une autre pratique est-elle suivie ? Où existe-t-il un pilotage obligatoire qui prend les responsabilités du capitaine ? En réalité, le capitaine reste toujours responsable. On peut ajouter qu'aux Portes de Fer, sur le Danube, certaines compagnies, surtout allemandes et autrichiennes, ont à leur service leurs pilotes particuliers, considérés, à tous les effets, comme les pilotes obligatoires qu'ils remplacent.

Faut-il donc admettre que les abordages causés par les bateaux de ces compagnies par la faute de leurs propres pilotes soient considérés comme dus à la force majeure ? C'est peut-être là l'origine des amendements qui se trouvent devant la Commission.

M. VOGELS (Allemagne) insiste sur le fait que M. Rossetti vient de déclarer qu'aucune pratique n'admet le principe de l'exonération de la responsabilité. Pourtant, en Allemagne, l'article 737 du Code de Commerce déclare l'armateur non responsable pour un abordage qui s'est produit pendant que le navire est sous la direction d'un pilote obligatoire, à moins qu'une personne appartenant à l'équipage ait commis la faute. Quant à l'argument de M. Ripert, qui a déclaré qu'en cas de dommage, la victime se trouverait dans une situation très défavorable, puisqu'elle serait privée de recours, M. Vogels estime que cette victime pourra se faire assurer comme contre les cas de force majeure. M. Vogels déclare pouvoir se rallier à l'idée de M. Nauta, tendant à trouver une solution intermédiaire destinée à concilier les diverses opinions exprimées. Cette solution consisterait à supprimer l'article 6.

M. SITENSKY (Tchécoslovaquie) estime aussi que la proposition de M. Nauta est justifiée, étant donné que l'article 6 est mal à sa place dans la Convention. En effet, la question de la responsabilité du propriétaire se pose également dans tous les cas d'avarie causée par la faute du bateau. Aussi, serait-il plus opportun de réserver le règlement de la question discutée par la Conférence et de ne l'introduire que dans une convention de portée plus vaste, relative à la responsabilité des propriétaires de bateaux. M. Sitensky conclut qu'on pourrait donc supprimer dans cette Convention la règle de l'article 6 et laisser à chaque État la liberté de régler la question selon ses intérêts.

M. LAVATSCHER (Autriche) tient à ajouter que, à son avis, l'établissement de la responsabilité du bateau pour l'abordage causé par un pilote obligatoire ne semble pas fondé, en raison des considérations suivantes : le bateau peut même se trouver dans le cas d'éprouver un dommage

par la faute d'un pilote obligatoire. Dans ce cas, le dommage éprouvé incombe au bateau. Il semble alors tout à fait juste que le bateau soit libéré de la responsabilité dans le cas où le dommage causé par le pilote obligatoire est éprouvé par d'autres personnes, compte tenu du fait qu'il s'agit d'une institution publique.

M. SUŁKOWSKI (Pologne) résume les différentes questions soulevées. Le propriétaire du bateau est-il responsable en cas de pilote obligatoire ? Au contraire, la responsabilité envers la victime est-elle limitée au pilote ou bien, enfin, l'État est-il responsable du dommage causé par le pilote ? A son avis, l'article 6 vise seulement le cas de la responsabilité du propriétaire.

M. ROSSETTI (Italie) affirme de nouveau que le cas où le propriétaire est exonéré de sa responsabilité en cas de pilote obligatoire ne se présente pas en pratique. M. Vogels a répondu à cet argument en lui opposant le texte de la loi allemande ; or, ce n'est pas le texte d'une loi qu'il avait demandé, mais bien l'existence d'une pratique. A cette loi, qu'il ne connaît pas, il peut toutefois opposer la Convention sur l'abordage maritime, où l'Allemagne a admis le principe de la responsabilité. Mais à la pratique qu'il a affirmée, aucune autre pratique en sens contraire n'a pu lui être opposée. Et cela est bien naturel, car une telle pratique, à l'heure actuelle, n'existe pas sur les rivières européennes.

Aussi M. Rossetti ne saurait-il accepter ni la proposition néerlandaise ni les propositions autrichienne et allemande.

M. DE VOS (Belgique) estime qu'il convient de formuler une distinction de fait et de droit. Il est évident que si le pilote est substitué au capitaine et s'il assume la responsabilité de celui-ci, on ne saurait plus admettre le principe de l'article 6. Mais M. de Vos ignore, à vrai dire, s'il existe une autorité qui admette que la responsabilité du pilote soit substituée à celle du patron du bateau.

En droit, M. de Vos considère, comme M. Ripert, que le propriétaire d'une chose en est responsable d'une manière générale envers des tiers ; tel est le cas en ce qui concerne, par exemple, les automobiles et les avions. Il estime que le texte de l'article 6 doit être maintenu intégralement.

M. SITENSKY (Tchécoslovaquie) est d'avis que la question discutée ne devrait pas être tranchée par un vote et que la seule solution est de la laisser ouverte, en donnant toutefois aux législations des différents États la possibilité de décider souverainement.

M. ROSSETTI (Italie) croit qu'il convient qu'une majorité se dégage au sujet des principes qui sont actuellement discutés, quitte à voir certains États signer sans restrictions la Convention, tandis que d'autres la signeraient avec des réserves, à l'instar de ce qui s'est passé à Bruxelles.

M. RIPERT (France) estime que la question posée est grave. Si l'on supprime, en effet, l'article 6, chaque État restera libre de régler souverainement la question de la responsabilité au cas de pilotage, ce qui diminuera l'importance de la Convention.

D'autre part, M. Ripert estime qu'une convention diplomatique doit prévoir elle-même ses réserves, sans quoi il est impossible de formuler celles-ci au moment de la signature.

M. SUŁKOWSKI (Pologne) déclare à M. Rossetti que, selon l'article additionnel, la disposition de la Convention de Bruxelles relative à la limitation de la responsabilité du propriétaire n'est pas encore entrée en vigueur. Or, en vue de faciliter la signature générale de la présente Convention, la meilleure solution consisterait à se rallier à la proposition de M. Nauta. Ne pourrait-on d'abord voter sur cette proposition qui tend à la suppression de l'article 6 ?

Le PRÉSIDENT estime que le mieux serait de commencer par voter sur les propositions allemande et autrichienne. Il fait remarquer que la délégation allemande s'est ralliée à l'amendement de la délégation autrichienne et que, d'autre part, la délégation néerlandaise, tout en se prononçant pour la suppression, a précisé qu'elle ne soumettait pas un amendement.

M. SUŁKOWSKI (Pologne) dit que, dans ces conditions, il reprend la suggestion néerlandaise pour la soumettre formellement comme amendement de la délégation polonaise.

Le PRÉSIDENT met aux voix la proposition autrichienne, appuyée par la délégation allemande.  
*Cette proposition est rejetée.*

Le PRÉSIDENT met aux voix la proposition polonaise.  
*Cette proposition est rejetée.*

Le PRÉSIDENT demande s'il y a encore une opposition à l'article 6 sous sa forme actuelle.

M. NAUTA (Pays-Bas) fait observer qu'il reste une autre possibilité : celle de faire une réserve. C'est ainsi que l'on a procédé pour la Convention de Bruxelles. Il demande que les États signataires, tout en acceptant la Convention, aient le droit de faire une réserve sur la mise en vigueur de l'article 6.

M. RIPERT (France) rappelle que, dans la Convention de Bruxelles, la réserve portait non pas sur la disposition elle-même, mais sur la date de l'entrée en vigueur de cette disposition. Si, à

l'occasion de chaque article, les diverses délégations demandaient la possibilité de faire une réserve, on aboutirait à une convention qui ne serait pas la même pour tous les pays.

Le PRÉSIDENT met aux voix le texte du projet.

*L'article 6 est adopté tel qu'il est rédigé dans le projet.*

#### Article 7.

Le PRÉSIDENT rappelle que la délégation allemande demande que l'article 7 soit rattaché à l'article 3, comme deuxième alinéa de cet article. La proposition ayant déjà été approuvée en principe, l'amendement allemand peut être considéré comme adopté, sous réserve de renvoi au Comité de rédaction.

M. ROSSETTI (Italie) insiste pour que l'on adopte le texte proposé, tel qu'il a été rédigé par la délégation allemande, comme second alinéa de l'article 3, ce texte étant beaucoup plus clair que celui du projet.

*La suggestion du délégué de l'Italie est approuvée.*

#### Article 8.

Le PRÉSIDENT rappelle que la Chambre de Commerce internationale (voir annexe 1, page 256) propose que, par analogie avec les dispositions de la Convention de Bruxelles, le capitaine et l'équipage du bateau abordeur soient tenus de porter secours dans toute la mesure du possible au bateau abordé. Des explications complémentaires sur cette proposition ont été données par M. Holban, représentant de la Chambre dans une lettre en date du 24 novembre 1930 (voir annexe 1, appendice, page 256).

M. ROSSETTI (Italie) explique que la question soulevée par la Chambre de Commerce internationale avait provoqué d'assez longues discussions au sein du Comité préparatoire. Personnellement, il était de ceux qui se ralliaient à cette manière de voir ; si elle n'a pas été retenue dans le projet, c'est parce que certaines délégations ont affirmé que leur législation intérieure n'admettait pas pareille obligation. Si, toutefois, la proposition est reprise devant la Commission, elle aura toute la sympathie de la délégation italienne. En droit maritime, la question ne se pose même pas. Dans un droit en formation tel que le droit routier, la notion du secours est déjà admise en ce qui concerne les automobilistes.

Le PRÉSIDENT rappelle les commentaires sur les articles 8 et 9 de la Convention de Bruxelles, qui se trouvent dans le rapport du Comité pour l'unification du droit fluvial <sup>1</sup>.

M. SITENSKY (Tchécoslovaquie), tout en étant d'accord sur le principe de la proposition de la Chambre de Commerce internationale, doute qu'elle entre dans le cadre du projet de Convention. Elle relève plutôt du domaine du droit public et le projet ne vise que la responsabilité des dommages causés aux bateaux de navigation intérieure, ce qui est une matière de droit privé ; son caractère serait essentiellement modifié par l'acceptation de la proposition en discussion.

Le PRÉSIDENT pense cependant que l'on pourrait trouver une solution transactionnelle consistant à faire une recommandation s'adressant aux pays ayant introduit cette notion dans leur législation et à ceux qui seraient prêts à l'y introduire.

M. ROSSETTI (Italie) dit que la proposition de la Chambre de Commerce internationale a un précédent dans la Convention de Bruxelles sur l'abordage. Cette Convention de droit maritime est exactement le pendant du projet en discussion, en sorte que la mesure proposée aurait bien sa place dans ce projet. On objecte, cependant, que ce qui est bon en mer n'est pas bon sur un fleuve, où l'on n'est pas exposé aux mêmes dangers, etc. De l'avis de M. Rossetti, c'est une thèse pour le moins bizarre d'admettre qu'un capitaine puisse causer un accident à un bateau et l'abandonner sans secours, même si cela se passe sur une rivière. La proposition n'est pas non plus une innovation, puisqu'elle s'appuie sur un usage en vigueur en mer depuis au moins un siècle et demi. S'il était possible de l'introduire dans la matière du droit fluvial, on réaliserait un grand progrès dans l'ordre humanitaire.

M. DASCOVICI (Roumanie) appuie la proposition de la Chambre de Commerce internationale. Dans son article 67, la loi roumaine, relative à l'organisation de la marine commerciale, applicable tant à la navigation maritime qu'à la navigation intérieure, prévoit expressément cette mesure, ainsi que des sanctions sévères contre le capitaine qui passerait outre.

M. ROSSETTI (Italie) explique que, dans le programme des travaux futurs du Comité du droit fluvial de la Société des Nations, figure l'élaboration d'une Convention sur l'assistance et le sauvetage. Il faut évidemment sérier les questions, mais la Convention future sur l'assistance et le sauvetage ne pourrait modifier la Convention sur l'abordage, en sorte qu'il est utile d'y introduire la notion du sauvetage dès maintenant.

<sup>1</sup> Voir document C.541a).M.195a).1929.VIII, page 36.

M. SIRENSKY (Tchécoslovaquie) rappelle que, dans les pays où l'obligation d'assistance est dès maintenant prévue, celle-ci repose toujours sur une base plus large : celle de l'obligation de porter assistance dans tous les cas, où un bateau se trouve en danger, et non pas seulement en cas d'abordage. C'est pourquoi il n'est pas d'avis que la place de cette disposition soit dans le projet actuel. Sur le fond, tous sont d'accord.

M. RIPERT (France) est également très favorable à la proposition dans son principe. Mais la question est très complexe. Il ne suffit pas d'inscrire l'obligation : il faut également prévoir les sanctions, ainsi que la rémunération des services éventuellement rendus par le capitaine prêtant assistance. Dans la Convention de Bruxelles, on n'a inscrit que l'obligation, mais dans la même session à laquelle cette convention a été adoptée, il a été conclu une autre convention prévoyant l'assistance. Cette question n'est pas à l'ordre du jour de la Conférence actuelle. Tout en marquant sa sympathie pour la proposition en discussion, la Conférence pourrait, ou bien la soumettre à une étude approfondie, ou bien la transformer en une recommandation générale aux États de prévoir l'assistance dans leur législation interne, en attendant la conclusion d'une convention sur l'assistance. Il préférerait cette dernière solution.

M. ROSSETTI (Italie) dit que sa proposition consisterait à reconnaître, en principe, l'obligation de porter secours. Comme on l'a fait dans d'autres cas, on dirait, dans un protocole de clôture — bien que M. Rossetti soit, en principe, opposé à ces protocoles de clôtures — que cette disposition ne sera pas obligatoire avant qu'une convention sur l'assistance ne soit entrée en vigueur.

Le PRÉSIDENT constate que la Commission est saisie d'une suggestion de M. Ripert et d'une proposition plus large de M. Rossetti, proposition qui, d'ailleurs, répond aux sentiments humanitaires de tous les délégués.

M. SIRENSKY (Tchécoslovaquie) croit que la proposition de M. Ripert est mieux fondée, du fait que, dans la convention future, il ne s'agira pas seulement de secours en cas d'abordage, mais de tous les cas où un bateau se trouve en danger ; cette convention traitera évidemment les questions de sanctions et de rémunération. Mieux vaut laisser la question sur sa base la plus large.

M. VOGELS (Allemagne) déclare que la délégation allemande se rallie à la proposition de M. Ripert.

M. RIPERT (France) explique que, selon sa proposition, la Conférence, en séance plénière, émettrait un vœu invitant les États à introduire dans leur législation l'obligation de porter secours en cas d'abordage, en attendant la conclusion d'une convention sur l'assistance.

M. ROSSETTI (Italie) serait bien obligé de se rallier à cette proposition s'il s'agissait de réaliser l'unanimité. Toutefois, il se produirait ce fait un peu bizarre que les mesures prévoyant l'assistance matérielle en cas d'abordage, qui trouvent leur juste place dans la Convention de Bruxelles sur l'abordage, se trouveraient en droit fluvial dans une convention sur l'assistance.

M. RIPERT (France) fait remarquer que cette solution est plus logique.

M. ROSSETTI (Italie) dit que si la Conférence adopte à ce sujet une recommandation qui serait signée comme tous les autres actes de la Conférence, il se rallie à la proposition de M. Ripert, tout en préférant, en principe, une disposition positive telle que celle de Bruxelles.

Le PRÉSIDENT dit qu'il est curieux que la Convention de Bruxelles, dans son article 9, contienne à ce sujet une disposition catégorique, alors qu'en matière fluviale, où les dangers d'abordage sont beaucoup plus sérieux et plus fréquents et où le secours est bien plus facile, la Convention resterait muette à ce sujet.

M. ROSSETTI (Italie) constate que, d'après des explications que lui a donné M. Ripert, lors des discussions de Bruxelles, la disposition a été introduite dans la Convention sur l'abordage parce qu'il n'y avait pas accord sur le texte plus large relatif au secours et à l'assistance ; ici, la situation est renversée : toutes les délégations sont favorables à une convention générale sur le secours et le sauvetage, mais non à une disposition visant les cas d'abordage.

Le PRÉSIDENT croit que la proposition de M. Rossetti répond plus clairement au sentiment de presque toutes les délégations et la recommande particulièrement à l'attention de la Conférence.

M. RIPERT (France) ne voudrait pas empêcher l'unanimité de se réaliser. Toutefois, il lui semble que la mesure proposée alourdirait la Convention ; au surplus, elle n'est pas applicable immédiatement.

M. VOGELS (Allemagne) appuie les remarques du délégué de la France.

M. DE RUELLE (Belgique) appuie la proposition de M. Rossetti pour les mêmes motifs que le président. Une disposition a été insérée à cet égard dans la Convention de Bruxelles sur l'abordage, indépendamment de la Convention sur l'assistance, parce qu'il s'agissait d'une situation spéciale et d'une obligation plus impérieuse entre abordés qu'entre navires quelconques : il fallait établir un lien juridique plus étroit entre bâtiments abordeurs et bâtiments abordés. Le délégué de la Belgique se rangera d'ailleurs à l'avis de la majorité.

M. PANTITCH (Yougoslavie) se rallie à l'idée de mentionner l'obligation de porter assistance, d'autant plus que cette obligation est prévue par la loi yougoslave.

M. DASCOVICI (Roumanie) dit que, tous étant d'accord sur le principe, il ne voit pas de raison pour écarter une proposition qui se rapproche davantage de la proposition de Bruxelles.

M. HAAB (Suisse) appuie également la proposition italienne.

Le PRÉSIDENT demande s'il y a encore quelque avis contraire.

M. RIPERT (France) dit qu'évidemment, en principe, il n'y a pas d'avis contraire. Cependant, lorsque l'on adopte un article de convention, il faut qu'il soit très précis, même si l'on en renvoie l'application à plus tard. Or, le texte qui a été adopté à Bruxelles, dont M. Ripert donne lecture, est fort détaillé. M. Ripert se demande si, sans avoir étudié cette disposition de très près, on peut l'introduire dans la présente Convention. La seule utilité d'une recommandation est qu'elle ne présenterait pas d'inconvénient. Il craint que l'adoption de la proposition italienne n'entraîne un danger.

M. ROSSETTI (Italie) ne voudrait pas reproduire en totalité l'article de la Convention de Bruxelles, car les dispositions de détail pourront trouver leur place dans la convention future. Il suffirait de maintenir la première partie de l'article de Bruxelles, de façon à poser le principe, puis, dans le protocole de clôture, on déclarerait que les dispositions de l'article 4 ne constituent pas une obligation internationale tant que la question n'aura pas été traitée dans toute son ampleur par la future convention.

M. DE RUELLE (Belgique) approuve cette proposition. Il y aura ainsi pour les États une obligation morale de prendre les mesures nécessaires.

Le PRÉSIDENT constate que la *proposition italienne est adoptée* et qu'elle sera renvoyée au Comité de rédaction.

Il ouvre ensuite la discussion sur l'article 8 du projet.

#### *Premier alinéa.*

Le PRÉSIDENT rappelle que la législation roumaine prévoit le protêt. Cependant, la délégation roumaine fait le sacrifice de cette disposition dans l'intérêt de l'unification.

*Le premier alinéa est adopté sans modification.*

#### *Deuxième alinéa.*

M. SITENSKY (Tchécoslovaquie) fait remarquer, que dans la pratique, en conséquence du deuxième alinéa, un bateau endommagé pourrait souvent ne pas recevoir les dédommagements qui lui sont dus. D'après cet alinéa, il n'y a pas de présomption légale de faute, et c'est le bateau endommagé qui devrait toujours apporter la preuve. Or, en fait, il est très difficile au capitaine de ce bateau de savoir ce qui a pu se passer sur le bateau abordeur. Au contraire, le capitaine du bateau ayant causé le dommage pourrait beaucoup plus facilement démontrer qu'il n'a pas commis de faute.

M. ROSSETTI (Italie) constate que, d'après le délégué tchécoslovaque, il devrait y avoir présomption légale de faute quant à la responsabilité du bateau abordeur, mais la question se pose de savoir quel est l'abordeur et quel est l'abordé, question bien difficile à trancher, de sorte que la modification proposée équivaudrait à ne rien dire.

M. SITENSKY (Tchécoslovaquie) dit que sa proposition consisterait à supprimer le deuxième alinéa.

M. ROSSETTI (Italie) fait ressortir les incertitudes de la notion de présomption légale. C'est pour exclure ces complications qu'a été adopté le texte du projet. Étant donné la diversité des notions sur la présomption de faute, on serait loin d'aboutir à une législation uniforme.

M. DE RUELLE (Belgique) appuie les observations du délégué de l'Italie. Il ne faudrait pas essayer de faire, en matière de navigation, ce que certains voudraient introduire, par exemple, en ce qui concerne les automobiles, et partir de l'idée que le bateau constitue en lui-même un instrument dangereux et qu'il est présumé en faute s'il se produit un accident. Les conférences de droit maritime et fluvial ont beaucoup discuté la question de la présomption légale de faute et c'est à juste titre que celle-ci a été écartée. Cette mesure n'exclut d'ailleurs pas certaines présomptions *prima facie*, par exemple celle qui pèse sur le bateau en mouvement par rapport au bateau immobilisé.

M. ROSSETTI (Italie) fait observer qu'il s'agit là de présomptions morales et non légales.

M. DE RUELLE (Belgique) en convient. Il ajoute que ceux qui ont une certaine expérience des affaires d'abordage admettront que les règles actuelles n'offrent pas de grandes difficultés d'application pour les tribunaux.

M. DASCOVICI (Roumanie) insiste pour le maintien du texte actuel.

*Le deuxième alinéa est adopté.*

*L'article 8 est adopté dans son ensemble, sous réserve de renvoi au Comité de rédaction du premier alinéa.*

Article 9.

*Premier et deuxième alinéas.*

Le PRÉSIDENT rappelle la proposition de la délégation allemande, ainsi conçue :

« Les premier et deuxième alinéas seraient remplacés par le texte suivant :

« Les actions en réparation de dommage et les actions en recours admises par la présente Convention se prescrivent par un an. Le délai court à partir du dernier jour de l'année au cours de laquelle la créance est devenue exigible. »

M. VOGELS (Allemagne) explique pourquoi les milieux intéressés ont insisté pour que la délégation allemande présente cet amendement. En navigation fluviale, les cas d'abordage sont beaucoup plus fréquents qu'en mer, à cause de l'exiguïté des eaux. Une compagnie de navigation intérieure allemande en a compté jusqu'à trois cents par an. Pour les juristes des compagnies de ce genre, il est extrêmement désagréable d'avoir à rechercher dans chaque cas si le délai de prescription est révolu. Le seul but de l'amendement est de simplifier le travail des compagnies en fixant une expiration de délai unique pour tous les cas survenus dans l'année. En fait, il arrivera que les délais varient, dans les différents cas, d'un à deux ans, mais il n'est pas nécessaire, en matière de navigation fluviale, que les délais soient toujours de deux ans, contrairement à ce qui se passe pour la navigation maritime, où les navires restent parfois très longtemps à l'étranger sans revenir à leur port d'attache. Peut-être d'autres délégations n'ont-elles pas à cette question le même intérêt pratique qui apparaît en Allemagne, mais en tout cas, l'amendement allemand n'est nuisible aux intérêts de personne.

M. ROSSETTI (Italie) dit qu'il ne serait pas compétent pour se prononcer sur la durée du délai, qu'il soit d'un an ou de deux ans ; par contre, il lui semble injuste de prévoir dans certains cas un délai de 364 jours et dans d'autres cas un délai de 729 jours. Celui dont la créance serait exigible le 31 décembre 1930, par exemple, serait dans une situation bien plus désavantageuse que celui dont la créance serait exigible le 1<sup>er</sup> janvier 1931. Il faut donner aux intéressés les mêmes droits et les mêmes obligations. D'autre part, les calculs ne sont pas plus difficiles à faire dans un cas que dans l'autre et M. Rossetti ne voit pas l'avantage réel de la proposition allemande.

M. RIPERT (France), tout en reconnaissant qu'en matière de prescription tout délai est arbitraire, fait remarquer d'abord que, selon une règle générale admise dans tous les pays, une action se prescrit à partir du moment où elle est née et, en second lieu, que, même dans la navigation fluviale, on est obligé d'appliquer les dispositions de la Convention de Bruxelles, quand il y a abordage entre un bâtiment de mer et un bateau fluvial. En prévoyant des délais différents, on augmenterait les difficultés pratiques.

M. PANTITCH (Yougoslavie) appuie les observations de M. Ripert.

M. VOGELS (Allemagne) fait observer que le système proposé par la délégation allemande n'est pas nouveau, puisqu'il existe dans le Code civil allemand depuis le 1<sup>er</sup> janvier 1900 et qu'il a fort bien fonctionné en trente ans d'application. Les milieux intéressés allemands ont beaucoup insisté pour que ce système soit introduit dans une convention internationale. D'ailleurs, les États riverains du Danube ont les mêmes intérêts, car sur ce fleuve, la navigation est presque exclusivement exercée par des compagnies, et celles-ci ont le même intérêt que les compagnies allemandes. Sur ce dernier point, il n'a pas été formulé d'objection. En ce qui concerne la différence entre l'amendement allemand et la convention de Bruxelles, M. Vogels fait observer qu'elle correspond à la différence entre la navigation maritime et la navigation fluviale, dans laquelle les abordages sont beaucoup plus fréquents et les difficultés de se mettre en rapport avec la partie adverse beaucoup moins grandes. Il ne s'agit pas, en réalité, d'une question de fond, mais d'une question d'obligance. Les milieux allemands ayant un grand intérêt à l'adoption de cet amendement, M. Vogels renouvelle sa proposition avec l'espoir qu'elle sera adoptée, à moins qu'elle ne soulève des objections sérieuses.

Le PRÉSIDENT dit que, si la question ne devait se placer que sur le terrain de l'obligance, elle serait certainement résolue par l'affirmative, toutes les délégations étant certainement désireuses de montrer leur déférence à l'égard de la délégation allemande. Toutefois, en sa qualité de délégué de la Roumanie, il doit présenter une observation générale : Sur le Danube maritime, de Braïla jusqu'à la mer Noire, où la navigation est mixte, la Roumanie applique la Convention de Bruxelles, qui prévoit un délai de deux ans. Comment la Roumanie pourrait-elle donner satisfaction à la proposition allemande sans se mettre en opposition avec une convention qu'elle a signée ?

M. RIPERT (France) précise qu'il n'y aurait pas contradiction entre deux conventions, mais complication du fait de l'adoption de deux prescriptions différentes.

*La proposition allemande est rejetée.*

*Les premier et deuxième alinéas de l'article 9 sont adoptés.*

*Troisième alinéa,*

*Cet alinéa est adopté.*

*Quatrième alinéa.*

M. RIPERT (France) dit que, à moins qu'une délégation n'insiste pour le maintien de la réserve formulée dans cet alinéa, il préférerait la voir supprimée ; elle n'avait d'ailleurs été introduite dans la Convention de Bruxelles que sur la demande de la délégation britannique.

M. VOGELS (Allemagne) et M. SITENSKY (Tchécoslovaquie) appuient la suggestion de M. Ripert.

M. NAUTA (Pays-Bas) insiste sur le maintien du quatrième alinéa. Il faut éviter qu'un bateau abordeur puisse échapper aux poursuites de l'abordeur. Toutefois, il propose de remplacer les mots « eaux territoriales » par « eaux nationales ».

M. RIPERT (France) fait remarquer qu'il n'est pas nécessaire d'arrêter le bateau abordeur pour intenten l'action ; il suffit de citer le propriétaire devant le tribunal. Le délégué de la France n'insistera pas sur la suppression de l'alinéa, si une autre délégation désire le maintenir.

M. DE RUELLE (Belgique), appuyé par M. ROSSETTI (Italie) propose de dire simplement : « dans les eaux de l'État » sans les qualifier de « territoriales », « nationales » ou autrement, étant donné la difficulté de la question.

M. DASCOVICI (Roumanie) propose de dire : « sur le territoire de l'État ».

M. ROSSETTI (Italie) dit que cela équivaldrait à rouvrir les discussions de La Haye. Mieux vaut garder l'expression la plus large : « dans les eaux de l'État ».

Le PRÉSIDENT se demande si la question ne devra pas être envoyée au Comité de rédaction, qui chercherait l'expression la plus appropriée.

M. RIPERT (France) ne voit pas où réside la difficulté. Il s'agit, dans cette disposition, de l'impossibilité de saisir un bateau. Le demandeur ne peut évidemment réclamer la saisie que dans les eaux où cette saisie est possible ; si la saisie n'est pas possible, la mesure ne joue pas.

M. SITENSKY (Tchécoslovaquie) fait remarquer qu'à la fin du quatrième alinéa, on tranche indirectement la question de la compétence du tribunal devant lequel le bateau endommagé peut porter l'action : on prévoit la compétence du tribunal de l'État dans lequel le demandeur a son domicile ou son principal établissement. Or, le demandeur peut aussi bien porter l'action devant le tribunal de l'État de l'abordeur, devant le tribunal du lieu de l'abordage, etc. Ne faudrait-il pas modifier le texte de cet alinéa de façon qu'il tienne compte de la possibilité de porter l'action devant un tribunal autre que celui visé dans le texte actuel ?

M. RIPERT (France) reconnaît que la portée de cet alinéa est difficile à interpréter pour ceux qui n'ont pas été au courant des discussions de Bruxelles. Cet alinéa ne touche nullement à la compétence. Dans la plupart des pays, on peut introduire l'action sans arrêter le bateau. Mais on a fait observer à Bruxelles que, dans certains pays, il était nécessaire d'arrêter le bateau pour pouvoir introduire l'action. C'est pourquoi certains États ont demandé cette réserve. La législation française a adopté la même disposition, mais elle est parfaitement inutile en France. Elle n'intéresse que les pays où l'on n'admet l'ouverture d'une action qu'après que le navire a été arrêté.

M. SITENSKY (Tchécoslovaquie) dit qu'il y a là une raison de plus en faveur de la suppression de l'alinéa. Si on le maintient, pourquoi ne citer qu'un cas de juridiction ? Il serait alors préférable d'élargir la portée du texte en tenant compte de la possibilité de saisie dans les différents pays.

Le PRÉSIDENT fait remarquer qu'une délégation a insisté sur le maintien du quatrième alinéa. Peut-être pourrait-on tenir compte de la suggestion du délégué de la Tchécoslovaquie en complétant l'article.

M. RIPERT (France) répond que plus on complètera cet alinéa, plus on le compliquera. Cette disposition, en fait, ne gêne personne. Il ne s'agit, en réalité, que d'une réserve au profit de la procédure de certains États : mais elle ne modifie en rien la portée de la Convention.

M. SITENSKY (Tchécoslovaquie) n'insiste pas sur sa motion.

*Le quatrième alinéa est adopté, le mot « territoriales » étant supprimé.*

#### *Article 10.*

M. RIPERT (France) demande qu'il soit bien entendu que le texte doit s'entendre ainsi : « ..... les présentes dispositions ne portent point atteinte aux règles, telles qu'elles sont ou seront établies dans chaque pays..... ».

Le PRÉSIDENT dit que l'interprétation de M. Ripert est juste et sera consignée au procès-verbal.  
*L'article 10 est adopté.*

*Article 11.*

M. PANTITCH (Yougoslavie), au sujet des mots « par inobservation des règlements », fait observer qu'il y a des cas où il peut s'agir de règlements nationaux et internationaux, par exemple sur le Danube.

M. RIPERT (France) explique que l'article 11, copié sur la Convention de Bruxelles, n'a nullement pour but de prévoir des infractions à des règlements, mais seulement l'application des règlements au cas où, sans que deux bateaux se soient rencontrés, il y a eu un dommage causé. Le texte serait tout aussi clair si l'on supprimait les mots en question.

M. ROSSETTI (Italie) approuve la première observation du délégué de la France, mais non la suppression des mots en question. On veut prévoir le cas où un abordage ne s'est pas produit, mais aurait pu se produire, par exemple à cause d'une vitesse excessive. En supprimant les mots « soit par inobservation des règlements », on pourrait viser, par exemple, le cas d'un bateau laissant tomber le chargement d'une grue sur un autre bateau. Il faut préciser qu'il ne s'agit que de cas de fautes nautiques. L'expression générale « inobservation des règlements » montre qu'il s'agit de tous les règlements applicables en l'espèce, qu'ils soient nationaux ou internationaux.

Le PRÉSIDENT ajoute qu'en fait, cela se ramène toujours à des règlements nationaux, puisque les conventions internationales font l'objet, dans chaque pays, d'un décret ou d'une loi.

M. PANTITCH (Yougoslavie) n'insiste pas sur son observation.

Le PRÉSIDENT désire savoir où rentrerait le cas des ouvrages d'art dont il parlait la veille. A son avis, l'énumération limitative de l'article 11 ne doit pas priver les États de se voir accorder les dommages nécessaires au cas où des travaux d'art seraient endommagés.

M. ROSSETTI (Italie) répond que, dans l'article 11, on a seulement voulu régler une question ambiguë en cas d'abordage. Sur le genre de dommages dont parle le président, les États ont leurs règlements, qui sont applicables.

Le PRÉSIDENT dit que cette explication, confirmée par la Commission, sera consignée au procès-verbal.

*L'article 11 est adopté.*

*Article 12.*

M. ROSSETTI (Italie), rappelant les longues discussions auxquelles l'énumération de l'article 12 a donné lieu devant le Comité pour l'unification du droit fluvial, demande que cette énumération soit maintenue telle quelle, sous réserve de l'adjonction des mots : « Au sens de la présente Convention. »

*Cette adjonction est approuvée.*

M. YOVANOVITCH (Yougoslavie) voudrait compléter l'énumération par les indications suivantes : « les ferry-boats, les pontons d'accostage, les ateliers de réparation flottants, les hangars flottants, les moulins flottants et les bains flottants ».

M. ROSSETTI (Italie) explique que les ferry-boats rentrent dans la catégorie des bacs. Pour les autres indications, elles sont comprises dans les mots « tous engins et outillages flottants de nature analogue ». Si l'on n'a pas parlé des moulins flottants, c'est parce que sur le Danube il y a une tendance, dont les navigateurs se félicitent, à les voir disparaître et que l'on craignait, en les mentionnant, de consacrer leur maintien.

M. SITENSKY (Tchécoslovaquie), considérant qu'à l'article 12 on parle des hydroglisseurs et d'« engins analogues », se demande si ce texte ne pourrait donner lieu à des doutes et si l'on ne pourrait comprendre parmi ces derniers aussi les hydroplanes, ce qui, à son avis, serait dangereux, étant donné que les abordages avec des hydroplanes relèveront d'une autre convention.

M. DASCOVICI (Roumanie) se demande si l'on peut assimiler les radeaux aux bateaux. S'il n'y a pas d'opposition, il propose de supprimer les mots « les radeaux » de l'énumération.

M. ROSSETTI (Italie) explique qu'au Comité pour l'unification du droit fluvial, on a exclu les hydravions comme n'étant pas destinés à la navigation sur les fleuves ; le cas des hydroglisseurs est différent. S'il arrive un accident du fait d'un hydroplane, la question est laissée à la jurisprudence, et en tout cas elle sera réglée par d'autres Conventions internationales qui traitent de la navigation aérienne.

M. DE DIETRICH DE SACHSENFELS (Hongrie) fait observer que bien souvent les hydroplanes partent d'un fleuve, et l'on sait combien, sur le Danube, par exemple, ils compliquent la manœuvre des bateaux. Il est donc d'avis que, pour le moment, on devrait mentionner les hydroplanes, qui peuvent être la cause d'un abordage entre deux bateaux.



M. ROSSETTI (Italie), tout en approuvant la justesse de la remarque du délégué de la Hongrie, attire l'attention sur les mots « de nature analogue ». La jurisprudence dira si les dispositions sont applicables ou non.

Le PRÉSIDENT demande si la Commission est d'accord sur la suppression des radeaux dans l'énumération.

M. MÜLLER (Tchécoslovaquie) s'oppose à cette suppression, les radeaux pouvant être directement la cause d'abordage.

Le PRÉSIDENT fait remarquer que l'on ne saurait faire entrer les radeaux dans la dénomination de bateaux et qu'ils ne présentent vraiment pas le caractère des autres engins énumérés à l'article 12.

M. RIPERT (France) répond qu'il ne s'agit pas de fixer la qualité de ces engins, mais de régler les cas d'abordage. Plus l'énumération sera longue, mieux cela vaudra dans l'intérêt des bateaux endommagés.

M. VOGELS (Allemagne) appuie la remarque du délégué de la France. Il insiste sur le maintien de l'article 12 tel quel. Un abordage causé par un radeau est, en fait, analogue, du point de vue de la réparation des dommages, à un abordage causé par un autre bateau.

Le PRÉSIDENT maintient que la condition de navigation des radeaux est tout à fait différente de celle des autres engins et qu'il lui paraît personnellement difficile de les considérer comme entrant dans la catégorie d'engins présentant plus ou moins les caractéristiques des bateaux. Dans le règlement international du Danube, les radeaux ne sont d'ailleurs pas astreints aux mêmes mesures que les autres engins flottants.

M. ROSSETTI (Italie) ne voit pas de raison d'exclure d'un règlement sur la responsabilité des dommages, les radeaux qui sont souvent si nuisibles à la navigation. Au surplus, les propriétaires des radeaux eux-mêmes peuvent bénéficier de cette mesure. Il y a eu récemment sur l'Elbe un procès à ce sujet. On pourrait, à la rigueur, envisager une autre solution consistant à ne donner aucun exemple et à dire simplement : « Au sens de la présente Convention sont compris, sous la dénomination de bateaux, tous engins et outillages flottants. »

M. DE DIETRICH DE SACHSENFELS (Hongrie) dit qu'il voulait faire la même proposition que le délégué de l'Italie.

M. VOGELS (Allemagne) regrette de ne pouvoir appuyer la proposition du délégué de l'Italie et insiste pour le maintien de l'article 12 sous sa forme actuelle. Avec la nouvelle proposition, on ne saurait quel sens précis donner à l'article 12. Il faut énumérer les cas les plus douteux et M. Vogels ne voit aucune raison pour changer un seul mot à la rédaction actuelle.

M. MÜLLER (Tchécoslovaquie), répondant aux remarques du président, dit que le flottage se fait non seulement sur les petits cours d'eau, mais aussi sur les grands fleuves, par exemple sur l'Elbe, où les radeaux, en dérivant tout comme les bateaux, recherchent naturellement le chenal où ils peuvent causer des abordages. Il y a aussi le cas du remorquage de radeaux se déplaçant sur quatre rangs et occupant une grande partie du chenal ; il arrive même qu'un radeau, en descendant le courant, aborde un navire au mouillage. M. Müller insiste sur le maintien de l'article 12 tel quel.

M. DE DIETRICH DE SACHSENFELS (Hongrie) considère que si l'on commence une énumération, on discutera sans fin sur les éléments à y introduire ou à en exclure. Personnellement, il serait d'avis d'ajouter les hydroplanes ; il aura, toutefois, satisfaction, si l'on estime qu'ils rentrent dans la catégorie des engins « de nature analogue » ; mieux vaudrait cependant adopter une formule générale.

M. SITENSKY (Tchécoslovaquie) est d'avis qu'en supprimant l'énumération, il régnerait une grande incertitude sur le champ d'application de la Convention. Les mots « de nature analogue » s'appliquent non pas aux bateaux, mais aux engins qui ont été dénommés dans l'article 12. Si l'on disait simplement : « sont compris sous la dénomination de bateaux tous engins et outillages flottants de nature analogue », il serait fort douteux, par exemple, que l'on vise les radeaux.

Le PRÉSIDENT estime qu'une énumération est toujours défectueuse, à moins qu'elle ne soit intentionnellement limitative. Par exemple, dans quelle catégorie est inscrit un brise-glace ?

M. ROSSETTI (Italie) répond que ce serait dans la catégorie des bateaux.

Le PRÉSIDENT fait remarquer que certains règlements spéciaux sont applicables aux radeaux et leur font une obligation de se tenir en dehors du chenal, c'est-à-dire de gêner le moins possible la navigation.

M. ROSSETTI (Italie) répond que ces règlements ne peuvent pas toujours être observés et qu'en fait, les radeaux présentent des dangers pour la navigation.

Le PRÉSIDENT, considérant qu'il faut éviter une énumération limitative et qu'un assez grand nombre de délégations désirent une expression beaucoup plus générale, se demande si l'on ne pourrait pas ne pas citer tous les engins énumérés dans l'article 12.

M. RIPERT (France) dit que s'il n'y a pas d'amendement formellement présenté, il est préférable de mettre le texte actuel aux voix.

M. DE DIETRICH DE SACHSENFELS (Hongrie) propose d'ajouter les hydroplanes.

M. RIPERT (France) dit qu'il ne pourrait signer une convention comportant cette mention. Il y a d'autres organismes s'occupant des conventions aériennes, et la question des hydroplanes soulève une quantité de questions. La Conférence actuelle doit s'occuper uniquement de l'abordage entre bateaux.

Le PRÉSIDENT rappelle que la délégation yougoslave a proposé l'insertion de plusieurs éléments nouveaux.

M. VOGELS (Allemagne) répond qu'il a été convenu que ces engins entraient dans la catégorie des « engins de nature analogue ».

M. RIPERT (France) pense que la délégation yougoslave aura satisfaction par l'insertion, dans le procès-verbal, de cette explication.

M. YOVANOVITCH (Yougoslavie) dit que cette procédure lui donne satisfaction.

M. DE DIETRICH DE SACHSENFELS (Hongrie) croit comprendre que la délégation allemande est d'accord pour l'insertion des hydroplanes.

M. VOGELS (Allemagne) désire dissiper tout malentendu ; à son avis, il n'est pas impossible que la jurisprudence accepte cette manière de voir.

Le PRÉSIDENT suggère à nouveau de supprimer les radeaux.

M. VOGELS (Allemagne) s'oppose à cette suppression au sujet de laquelle il demandera un vote.

M. RIPERT (France) prie le président de ne pas insister sur sa motion.

Le PRÉSIDENT répond que cela lui est difficile, en tant que représentant d'un pays dont le commerce des bois se fait en grande partie par radeaux.

M. RIPERT (France) explique qu'il ne s'agit nullement de faire peser sur les radeaux la même responsabilité que sur les bateaux. Les radeaux seront jugés d'après les règlements qui leur sont applicables quant aux fautes qui pourraient être commises.

M. ROSSETTI (Italie) rappelle qu'à la Commission de l'Elbe, il y a un litige sur un dommage causé à un radeau. La mesure envisagée serait donc aussi dans l'intérêt des propriétaires des radeaux.

Le PRÉSIDENT, devant l'opposition rencontrée, dit qu'il n'insiste pas sur sa motion, mais que la délégation roumaine demande l'insertion de sa réserve au procès-verbal. Il constate que l'article 12 est adopté, avec le maintien des radeaux et sans l'insertion des hydroplanes ni des adjonctions suggérées par la délégation yougoslave ; le texte sera renvoyé au Comité de rédaction.

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## QUATRIÈME SÉANCE

*Tenue le mercredi 26 novembre 1930, à 17 heures.*

*Président : M. CONTZESCO (Roumanie).*

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### V. Examen du projet de Convention (suite).

Le PRÉSIDENT souhaite tout d'abord la bienvenue au nouveau membre de la Commission, M. F. Andres, secrétaire au Ministère de la Justice, qui assistera la délégation tchécoslovaque en qualité de conseiller juridique.

Il invite ensuite la Commission à procéder à l'examen de l'article 13 du projet de Convention.

#### *Article 13.*

Le PRÉSIDENT rappelle que la Commission se trouve en présence d'un amendement de la délégation allemande tendant à ce que les dispositions de la présente Convention s'appliquent

également aux bateaux qui, dans un des États contractants, sont affectés exclusivement à l'exercice, à un titre quelconque, de la puissance publique (voir annexe 2, page 257).

M. VOGELS (Allemagne) dit qu'il est vrai que la Convention de Bruxelles n'a pas soumis au régime de la Convention les bateaux appartenant à un État contractant et affectés exclusivement à l'exercice de la puissance publique. C'est d'ailleurs pour cette raison que le projet de Convention élaboré par le Comité de droit fluvial les a exclus à son tour.

Mais entre 1910 et l'époque actuelle, plusieurs nouvelles conventions ont été signées à Bruxelles. La plus intéressante d'entre elles est celle du 10 avril 1926 qui a trait aux immunités des navires d'État. Cette convention n'est pas entrée en vigueur, mais elle a été signée par la majorité des États et ratifiée par un certain nombre de signataires, notamment par l'Allemagne. La délégation allemande propose que les principes de cette convention, généralement reconnus, soient introduits dans la convention actuelle.

L'article premier de la Convention de Bruxelles sur l'immunité des navires d'État déclare que les bateaux affectés exclusivement aux transports commerciaux sont considérés comme bateaux privés, idée qui est conforme au texte des experts. L'article 3 déclare que les dispositions de l'article précédent sont inapplicables aux navires de guerre et aux autres bateaux, non commerciaux, affectés exclusivement à un service gouvernemental au moment de la naissance de la créance. Cette dernière catégorie de bateaux est donc insaisissable. Ils sont enlevés à la juridiction civile. Toutefois, les intéressés ont le droit, en cas de dommage subi, de porter leur réclamation devant un tribunal de l'État propriétaire du navire, sans que cet État puisse se prévaloir de son immunité, notamment pour les actions relatives à l'abordage.

Ainsi, l'État est toujours responsable des abordages causés par ses navires, même quand il s'agit de navires affectés au service de la puissance publique.

Il serait donc illogique que la Conférence, qui s'occupe de la question de la responsabilité d'un État en cas d'abordage, adoptât un autre principe que celui suivi en 1926.

M. DE RUELLE (Belgique) déclare comprendre fort bien les préoccupations de la délégation allemande.

Il estime qu'en lisant l'article 13 du projet, on a quelque peu l'impression que le Comité de droit fluvial a voulu soit consacrer, soit réserver les immunités des navires des États contractants, alors que la Convention de Bruxelles tend à limiter ces immunités.

Mais, à vrai dire, est-il opportun que la Commission traite cette question ? Il semble que le mieux serait de supprimer l'article 13, en somme assez inutile. D'autre part, la Convention de Bruxelles sur les immunités des navires d'État n'est pas encore ratifiée. Ce serait donc anticiper que de vouloir l'appliquer dès maintenant. Pour toutes ces raisons, tout en se déclarant d'accord au sujet de l'interprétation donnée par M. Vogels, M. de Ruelle conclut que la meilleure solution serait de supprimer l'article 13.

M. SUŁKOWSKI (Pologne) déclare se rallier également à l'opinion de la délégation allemande. Il estime que la réserve formulée par l'article 13 au sujet des immunités dont jouiraient éventuellement dans des États contractants les bateaux affectés exclusivement à l'exercice de la puissance publique a été inspirée essentiellement par une question de prestige. C'est une coutume internationale, en effet, de ne pas soumettre les navires affectés à l'exercice de la puissance publique au régime applicable aux bateaux privés.

Dans l'article 32 du projet de Convention sur certaines matières de droit fluvial, il y a une réserve identique à celle qui figure à l'article 13 du projet en discussion. Il faudrait arriver à une concordance entre les deux textes.

En ce qui concerne la question matérielle, c'est, en effet, un principe reconnu par toutes les législations qu'en cas d'abordage causé par un bateau appartenant à un État, les dommages subis doivent être réparés.

M. SITENSKY (Tchécoslovaquie) estime que la question des bateaux d'État est toute différente en ce qui concerne les matières traitées dans la Convention sur certaines matières de droit fluvial et en ce qui concerne l'abordage. Il est vrai que l'on ne veut pas soumettre les bateaux d'États aux prescriptions relatives à l'immatriculation et au régime hypothécaire, mais on ne peut pas, par contre, les exclure lorsqu'il s'agit de la réparation des dommages causés par l'abordage.

M. ROSSETTI (Italie) déclare qu'ainsi que l'a exposé la délégation allemande, il convient en droit de tenir compte de la Convention de Bruxelles relative aux immunités des navires d'État. Bien qu'elle n'ait pas encore été ratifiée, il n'en est pas moins vrai que l'article dont il s'agit a été adopté sans rencontrer de l'opposition.

Pourquoi, d'ailleurs, faire en l'espèce une distinction entre le droit maritime et le droit fluvial ? Il n'y a aucune raison pour que les dommages causés en cas d'abordage par un bateau appartenant à un État ne soient pas réparés lorsque les dommages causés par un navire à un État le sont.

M. DE RUELLE (Belgique) rappelle que, quant au fond, la plupart des États admettent, sans avoir encore ratifié la Convention, le principe posé par celle-ci au sujet de l'immunité des navires d'État. Mais peut-être serait-il nécessaire de faire certaines distinctions qu'on ne trouve pas dans le projet allemand.

M. RIPERT (France) approuve la proposition allemande quant au fond ; il constate, en effet, qu'il est exact que la Convention de Bruxelles, relative aux immunités, règle le cas d'abordage causé par les navires d'État. Mais cette convention formule une réserve que l'amendement allemand ne contient pas. En effet, aux termes de cette réserve, le demandeur qui a subi un dommage

ne peut porter son action que devant le tribunal de l'État dont relève le navire ayant causé l'abordage. Cette réserve donne satisfaction aux États qui hésiteraient à accepter l'obligation pour leurs navires de paraître devant un tribunal étranger. M. Ripert préférerait que l'article 13 soit maintenu tel quel.

M. LAWATSCHER (Autriche) déclare que la délégation autrichienne éprouve de grandes difficultés à accepter la proposition allemande. En effet, aux termes de la Constitution autrichienne, l'État n'est responsable, en ce qui concerne les fautes commises par ses fonctionnaires, qu'en cas de dol ou de *culpa lata*. Aussi déclare-t-il se rallier aux dispositions du projet primitif.

M. WINIARSKI (président du Comité de droit fluvial) expose que le Comité du droit fluvial a pu appliquer les dispositions de la deuxième Convention de Bruxelles aux bateaux affectés à l'exercice de la puissance publique. Mais le Comité a préféré formuler une disposition de nature à couvrir le cas où les législations nationales admettent le principe de la responsabilité des bateaux appartenant aux États. Ainsi, lors de la rédaction de l'article 13, le Comité a employé à dessein le conditionnel « jouiraient », au lieu d'une formule catégorique. Le texte signifié sur la Convention ne veut pas régler cette question.

Le PRÉSIDENT constate que la Commission se trouve en présence de trois propositions divergentes : 1° la proposition allemande, qui tend à modifier le régime des immunités ; 2° celle de la délégation belge, qui vise à la suppression de l'article 13 ; 3° la proposition de la délégation française, tendant au maintien pur et simple de l'article.

Le président déclare que la proposition allemande devrait en tout cas être complétée puisque l'article de la Convention de Bruxelles fait état de certaines modalités qu'elle ne mentionne pas.

M. ROSSETTI (Italie) estime que si la Convention ne formule aucune disposition au sujet de la question des bateaux d'État, elle s'expose à ce que les dommages causés éventuellement par eux ne soient pas réparés.

En supposant, par exemple, qu'un bateau tchécoslovaque soit abordé, en Autriche, par un bateau appartenant à l'État autrichien, d'après les déclarations de M. Lawatschek, il paraît que les dommages causés par cette collision ne seraient pas réparés. Pour ces motifs, la Conférence actuelle doit régler la question et insérer une clause précise à ce sujet dans la Convention.

M. SITENSKY (Tchécoslovaquie) n'est pas d'accord avec M. Rossetti sur les conséquences de l'omission de la mention des bateaux d'État dans la Convention. Il croit que cette omission aura, au contraire, pour effet que ces bateaux seraient considérés comme tombant sous le coup de la Convention.

M. VOGELS (Allemagne) constate qu'aucune observation n'a été formulée au sujet de la question de savoir si un État impliqué dans un abordage causé par un de ses bateaux est obligé de se soumettre à une juridiction étrangère. A cet égard, il estime qu'un abordage avec un bateau appartenant à un État ne peut avoir lieu que sur le territoire de cet État même, puisque, en droit des gens, aucun bateau public (par exemple ceux affectés au service de la police et des douanes) n'a le droit de se rendre sur le territoire d'un autre État.

M. ROSSETTI (Italie) observe que M. Vogels oublie l'existence des bâtiments de guerre, qui pourtant circulent aussi sur les rivières, d'un État à l'autre.

M. VOGELS (Allemagne) répond que la Convention sur l'abordage ne s'occupe que de règles matérielles, et non de questions de procédure. Or, une règle générale prévoit qu'aucun État n'est obligé de se défendre devant un tribunal étranger. Cette règle restera intacte, même si l'on ne dit rien expressément à son sujet. M. Vogels croit que l'amendement allemand donne raison à tous les intéressés, et estime que la crainte formulée par M. Ripert est injustifiée.

M. DASCOVICI (Roumanie) estime qu'il serait possible de laisser ouverte la question de la responsabilité en matière d'abordage, en ce qui concerne les bateaux appartenant à un État et affectés à un service commercial.

M. RIPERT (France) expose que la lecture qui vient d'être faite de l'article de la Convention de Bruxelles sur les immunités, a fortifié l'argumentation qu'il avait précédemment fait valoir. Il lui semble que M. Vogels ait commis une erreur. L'article premier de la Convention de Bruxelles sur les immunités assimile les bateaux d'État aux bateaux privés *uniquement lorsqu'ils ne sont pas affectés à un service public*. En ce qui concerne ceux affectés à un service public, il est dit que s'ils ont causé un abordage, la victime éventuelle de la collision a le droit d'intenter une action judiciaire devant le tribunal de l'État auquel appartient le bateau ayant causé les dommages. Mais la Convention ne se prononce nullement sur la question de savoir quelle règle devra être appliquée devant ce tribunal pour obtenir l'indemnité réclamée. Ce sera, en l'espèce, la loi nationale qui s'appliquera. Ainsi, il est clair que les bateaux d'État ne sont pas soumis, en général, aux mêmes régimes que les autres bateaux, puisque la seule dérogation à leur régime d'immunités consiste dans le droit, pour un demandeur, de les citer devant le tribunal de l'État auxquels ils appartiennent.

M. VOGELS (Allemagne) déclare qu'au cas où la proposition de la délégation allemande serait rejetée, celle-ci demandera que l'article 13 soit supprimé.

M. DE RUELLE (Belgique) précise que, tout en restant partisan de l'idée de la suppression, il partage l'opinion de M. Ripert. Il ne faut pas, en effet, que n'importe quel bateau affecté à

l'exercice de la puissance publique puisse être cité de n'importe quelle façon devant n'importe quel tribunal.

M. ROSSETTI (Italie) estime qu'on pourrait renvoyer la question litigieuse à une conférence ultérieure qui réglerait d'autres questions inscrites au programme du Comité de droit fluvial. En attendant, il conviendrait, si l'on décide de supprimer l'article 13, d'expliquer, dans le protocole de clôture, que l'examen de la question sera repris ultérieurement.

M. WINIARSKI (président du Comité du droit fluvial) estime que si l'on supprime l'article 13, les diverses délégations en tireront des conclusions diamétralement opposées. Il conviendrait donc d'énoncer les raisons de cette suppression.

M. RIPERT (France) estime que puisque l'article 13 se borne à affirmer un état de choses existant, son maintien dans la Convention ne saurait entraîner des inconvénients. Au contraire, sa suppression provoquerait des confusions.

M. DE RUELLE (Belgique) estime que, en droit des gens tel qu'il a évolué, il ne dépend nullement de la fantaisie d'un État de se créer à lui-même des immunités. Peut-être serait-il possible de remplacer dans l'article 13 le mot « immunité » par « régime de responsabilité applicable ». Dans ce cas, les mots « à un titre quelconque » seraient supprimés.

M. ROSSETTI (Italie) objecte à cette proposition un exemple pratique. Si, à Vienne, un abordage se produit entre un bateau italien et un bateau autrichien, chaque État intéressé au règlement de cet abordage affirmera qu'il convient d'appliquer un régime de responsabilité différent, et l'on se trouvera en présence d'un conflit de lois qu'il vaut mieux éviter.

M. DE RUELLE (Belgique) répète que la doctrine tend à délimiter l'étendue des privilèges que constituent les immunités.

M. ROSSETTI (Italie) répond que la doctrine diffère suivant les tribunaux.

M. RIPERT (France) estime que la rédaction proposée par M. de Ruelle aurait l'inconvénient de signifier que la Convention ne serait pas applicable au cas visé. Il semble que le texte du document préparatoire soit moins compromettant, puisqu'il déclare que la question des immunités est réservée et laisse l'état des choses tel quel.

Le PRÉSIDENT met au vote la proposition de la délégation allemande tendant à modifier l'article 13.

*Cette proposition est rejetée.*

Dans ces conditions, le PRÉSIDENT met au vote la proposition de la délégation belge, ainsi qu'une nouvelle proposition de la délégation allemande, tendant à la suppression pure et simple de l'article 13.

*Ces deux propositions sont également rejetées.*

*En conséquence, conformément à la proposition de la délégation française, l'article 13 est maintenu sans modification.*

Le PRÉSIDENT constate que la Commission a terminé l'examen des articles du projet de Convention sur l'unification de certaines règles en matière d'abordage. Il invite ensuite la Commission à examiner la motion émanant de la délégation yougoslave, relative au champ d'application de la Convention projetée et qui avait été ajournée.

## VI. Champ d'application de la Convention.

M. SOUBOTITCH (Yougoslavie) expose que lors du début de la discussion de la Convention, M. Yovanovitch a déclaré que, dans l'esprit de la délégation yougoslave, la Convention ne devrait être applicable que sur le réseau fluvial internationalisé ou reconnu d'intérêt international.

Cette déclaration a été inspirée par la préoccupation suivante : il existe, en Yougoslavie, deux réseaux de voies fluviales, l'un ouvert à la navigation internationale, l'autre réservé exclusivement à la navigation nationale. Or, dans certains milieux étrangers à la Conférence se manifeste la tendance d'obliger la Yougoslavie d'ouvrir également à la navigation internationale ses voies fluviales intérieures, ou même de soumettre celles-ci au régime des voies d'eau reconnues d'intérêt international.

La Yougoslavie n'est nullement disposée à se rallier à cette tendance. Elle désire, en effet, maintenir le statut actuel de ces voies navigables intérieures, statut qui consiste à les soumettre à tous égards à l'autorité et à la législation exclusives de l'État yougoslave.

Aussi, la délégation yougoslave ne voudrait-elle pas voir régler par la présente Convention les cas d'abordage qui peuvent se produire sur les eaux intérieures de son pays. Elle ne voudrait pas que de son consentement à faire régler cette matière sur les voies d'eau intérieures par une convention internationale, on puisse déduire que ces voies sont soumises à un commencement d'internationalisation.

Toutefois, afin de donner tout apaisement à la Conférence, la délégation yougoslave se déclare toute disposée à conformer la législation nationale applicable à ces voies d'eau aux conclusions qui seront incorporées dans le texte de la Convention actuellement élaborée. Mais, en aucun cas, la cause juridique de l'application de ces dispositions sur ces voies intérieures ne doit être une obligation internationale, mais uniquement la loi nationale yougoslave.

M. ROSSETTI (Italie) comprend bien les scrupules qui ont inspiré la déclaration de la délégation yougoslave. Si on limite le champ d'application de la Convention au réseau de voies navigables internationalisées ou d'intérêt international, il faudrait introduire dans la Convention une recommandation aux États pour qu'ils appliquent à leur réseau national des principes analogues à ceux de la Convention.

Le PRÉSIDENT fait remarquer que la délégation yougoslave s'engage précisément à appliquer ce principe.

M. RIPERT (France) estime qu'il est facile de délimiter avec précision la portée de la réserve yougoslave, en ce qui concerne la question particulière de l'abordage. Une convention internationale n'est utile que lorsqu'il s'agit de régler des conflits de lois ; or, si l'on s'en tenait à la rédaction de l'article premier, la Convention devrait s'appliquer au cas, par exemple, où un abordage se produirait entre deux bateaux néerlandais dans des eaux néerlandaises. Ce serait aller trop loin, et la Convention de Bruxelles s'est montrée à cet égard moins téméraire. Elle a prévu, en effet, qu'elle ne doit s'appliquer qu'en cas d'abordage survenant sur des eaux internationales entre bateaux immatriculés dans des pays différents. Il est vrai que chaque délégation désire que la législation intérieure des différents États soit mise en harmonie avec la présente Convention ; à cet égard, il ne faut pas oublier qu'il serait difficile de faire admettre aux divers parlements qu'ils n'auraient pas le droit de réglementer souverainement, dans leurs propres pays, les cas d'abordage qui pourraient se produire sur leurs réseaux nationaux de navigation. D'ailleurs, sur les eaux exclusivement réservées aux bateaux yougoslaves, il est invraisemblable que des abordages puissent se produire entre des bateaux immatriculés dans des États différents ; si, par hasard, il en était autrement, on ne saurait contraindre le Gouvernement yougoslave à s'engager à appliquer à son réseau national une convention internationale ; aussi la réserve yougoslave est-elle justifiée ; la Convention ne peut, en effet, supprimer complètement l'application des lois nationales, au cas, notamment, où des abordages se produiraient entre des bateaux immatriculés dans le même pays.

M. DASCOVICI (Roumanie) se rallie à l'opinion yougoslave, étant donné que la situation est analogue en Roumanie. Il est possible que le réseau normalement réservé à la navigation nationale soit exceptionnellement accessible aux bateaux étrangers, mais, dans ce cas, la législation roumaine doit rester souveraine.

M. HOHL (Suisse) déclare se rallier, quant au fond de la question, à l'opinion des délégations française et yougoslave. Quel intérêt y aurait-il à régler d'une manière internationale un abordage sur le territoire d'un État dont l'abordeur et l'abordé sont tous des bateaux immatriculés chez lui ?

M. NAUTA (Pays-Bas) constate que M. Ripert a parlé seulement d'un abordage entre deux ou plusieurs bateaux et des dommages qui en résultent pour les propriétaires des bateaux. La Convention de Bruxelles va plus loin, puisqu'elle règle la question des dommages causés également aux cargaisons et aux personnes qui peuvent se trouver à bord. Or, en cas d'abordage survenant sur le territoire d'un État entre deux bateaux immatriculés sur le territoire de cet État, il se peut que la cargaison endommagée appartienne au propriétaire d'un autre pays ; il convient donc de tenir compte de cette situation particulière. A cet égard, l'article premier de la Convention de Bruxelles déclare qu'en cas d'abordage entre un navire de mer et un navire auquel s'applique un intérêt étranger, les indemnités seront réglées, etc. C'est donc que la Convention de Bruxelles s'applique à ce cas. Ainsi tous les intéressés impliqués dans un abordage peuvent se prévaloir de cet article, et non seulement les propriétaires des navires. C'est donc aller trop loin que de vouloir trancher la question en termes exprès, comme on l'a proposé en se ralliant à l'opinion yougoslave.

M. RIPERT (France) constate que l'interprétation de la Convention de Bruxelles diffère dans les différents pays ; en France, « les intéressés » est interprété comme « bateaux intéressés ».

M. DE RUELLE (Belgique) constate que l'article 12 de la Convention de Bruxelles sur l'abordage, qui détermine le champ d'application de cette Convention, a été interprété diversément dans les différents pays. D'après la doctrine belge, conformément à l'opinion exposée par M. Nauta, la Convention s'applique au cas d'abordage survenant dans les eaux d'un pays entre deux navires de ce pays, si un quelconque des pays contractants autres que celui-ci a un intérêt quelconque à bord. D'autre part, il ne faut pas oublier qu'il ne s'agit pas ici d'établir un règlement de navigation, mais de poser des principes généraux pour la solution des litiges en matière d'abordage. Il ne s'agit donc pas de porter atteinte aux prérogatives de la souveraineté des États sur leurs eaux nationales.

M. RICHTER (Allemagne) demande à la Commission de ne pas restreindre le champ d'application de la Convention aux grands bateaux et aux voies d'eau internationalisées. D'ailleurs, l'Allemagne ne saurait admettre que le régime des voies d'eau d'intérêt international diffère de celui applicable aux autres parties de son territoire. Il ajoute que la méthode qui consiste à déterminer dans chaque cas d'abordage quels intérêts se trouvent à bord constitue une méthode

impraticable, en raison de la complexité de la procédure à suivre par l'examen des connaissements et autres documents de bord.

M. RIPERT (France) constate que toutes les délégations sont d'accord pour souhaiter que chaque législation nationale puisse être mise en harmonie avec la Convention. Mais la réserve de la délégation yougoslave est inspirée par un souci de prestige, de dignité nationale. Pour qu'un parlement adopte la Convention, il faut qu'il puisse prévoir nettement le champ d'application de celle-ci. Or, les abordages dont il est question impliquent tout d'abord qu'un bateau étranger est venu dans un pays déterminé. Devra-t-on, du fait même de son admission et de sa qualité d'étranger, appliquer obligatoirement la Convention à ce bateau ? En réalité, la délégation yougoslave ne veut pas que le fait d'ouvrir par tolérance une voie d'eau nationale à des bateaux étrangers implique automatiquement l'obligation, pour la Yougoslavie, d'appliquer la Convention internationale. Cela est juste. Aussi M. Ripert demande-t-il à la Commission de se rallier à la conception yougoslave.

Le PRÉSIDENT constate que la majorité de la Commission serait disposée à accepter la proposition yougoslave, soutenue par la délégation roumaine.

Le SECRÉTAIRE GÉNÉRAL DE LA CONFÉRENCE se demande si la Commission n'a pas discuté à la fois deux questions tout à fait différentes et s'il ne serait pas préférable de dissiper une confusion possible.

Il semble, en effet, qu'on ait discuté à la fois sur le sens même de l'article premier, c'est-à-dire l'interprétation de cet article par les intéressés, et sur la question de l'étendue territoriale à laquelle la Convention devrait s'appliquer. Au cas où une interprétation déterminée serait acceptée par la Commission, celle-ci ne risque-t-elle pas de créer une situation sur laquelle on devrait revenir, puisqu'on serait alors apparemment en présence de difficultés plus grandes qu'elles ne le sont en réalité ? Il semble donc opportun de distinguer la question de réserve de celle plus générale de l'interprétation de la Convention.

M. WINIARSKI (président du Comité de droit fluvial) dit qu'il est possible de limiter le champ d'application de la Convention, mais, en réalité, la question soulevée par la délégation yougoslave est toute différente, car elle concerne effectivement la question de la liberté de la navigation.

Jamais, dans l'esprit du Comité de droit fluvial, la question du champ d'application de la Convention n'a été liée à celle du régime de la navigation. Dans la pensée des auteurs du projet, la Convention doit s'appliquer sur tout le territoire des États contractants, sans égard au caractère plus ou moins international du fleuve.

Aussi M. Winiarski estime-t-il que les objections soulevées par la délégation yougoslave ne sont pas fondées. Le fait que la Convention serait appliquée sur des voies purement nationales ne toucherait en rien à la question du régime de celle-ci.

M. Winiarski ajoute que le secrétaire général de la Conférence a attiré, à juste titre, l'attention de la Commission sur l'intérêt qu'il y aurait à discuter et à résoudre la question du champ d'application de la Convention indépendamment de la question du régime international ou national des voies d'eau.

Le PRÉSIDENT demande à M. Soubotitch si la déclaration de M. Winiarski est susceptible d'apaiser les appréhensions de la délégation yougoslave en certifiant que la Convention ne changerait rien au régime des eaux intérieures.

M. RICHTER (Allemagne) demande à la délégation yougoslave si elle entend qu'un État peut se réserver de ne pas appliquer la Convention sur ses eaux intérieures, ou bien si sa proposition constitue une réserve générale sans relation directe avec la question précise de l'abordage.

M. SOUBOTITCH (Yougoslavie) répond que, dans la pensée de la délégation yougoslave, un abordage qui se produit sur des eaux intérieures nationales ne doit pas être soumis à l'application de règles internationales. Il rappelle, toutefois, que le Gouvernement yougoslave est prêt à édicter des prescriptions destinées à mettre en harmonie avec la Convention la législation nationale applicable sur les eaux intérieures, mais qu'en légiférant ainsi, ce gouvernement usera simplement de son droit souverain de réglementation.

M. SUŁKOWSKI (Pologne) propose de donner satisfaction à la délégation yougoslave en insérant au Protocole final une disposition conçue à peu près comme suit : « La réglementation générale de l'abordage ne saurait être interprétée comme comportant des limitations pour les législations nationales en ce qui concerne les eaux nationales. »

M. ROSSETTI (Italie) estime que la proposition yougoslave est, non pas une réserve, mais une proposition d'amendement à l'article premier. Si cet amendement est adopté, il répète qu'il faudrait également formuler une recommandation aux États de s'inspirer de la présente Convention en établissant le règlement applicable à leurs eaux intérieures réservées à la navigation nationale.

M. NAUTA (Pays-Bas) estime qu'il suffirait de déclarer dans le Protocole de clôture que la Convention ne vise nullement l'internationalisation de voies d'eau ; on éviterait ainsi des difficultés de rédaction et il ne serait pas nécessaire de modifier les articles.

M. DASCOVICI (Roumanie) estime que c'est le terme de « navigation intérieure », dont use l'article premier, qui a donné lieu aux réserves formulées. Peut-être serait-il possible de déclarer, au

Protocole de clôture *ad* article premier, qu'en ce qui concerne le champ d'application de la Convention, celle-ci n'entend nullement toucher au régime de la navigation intérieure.

M. DE DIETRICH DE SACHSENFELS (Hongrie) se rallie aux idées de M. Winiarski. Il tient à faire remarquer que la Convention ne saurait s'appliquer, par exemple, au cas où seuls des bateaux yougoslaves navigueraient sur une voie d'eau yougoslave ; mais elle s'appliquerait, par exemple, sur la Save, où des bateaux étrangers naviguent également. En effet, la fin que se propose la Convention est de régler les conflits de lois qui peuvent surgir en cas d'abordage entre bateaux d'États différents. A cet égard, le critère essentiel à considérer n'est pas le fleuve, mais bien la nature différente des bateaux qui s'y livrent à la navigation.

M. DE RUELLE (Belgique) estime que la Commission commettrait une erreur grave si, à propos de la disposition visée, elle établissait une distinction formelle entre les eaux intérieures nationales et les eaux internationales. Les voies d'eau d'intérêt international sont soumises à un régime de navigation différent, mais il ne s'agit pas de le régler ici ; il s'agit, en l'espèce, de savoir si, en matière d'abordage entre bateaux relevant d'États différents, on appliquera ou non la même règle sur une voie nationale que sur une voie internationale. Certes, il est loisible à la Commission de donner acte à la délégation yougoslave de ses réserves, lesquelles sont dictées par des raisons spéciales ; mais il convient d'éviter de faire naître une idée qui serait la confirmation d'un principe auquel la délégation belge ne pourrait souscrire.

M. RIPERT (France) rappelle que la réserve yougoslave lui semble parfaitement fondée. La délégation yougoslave dit seulement : « Dans certains pays existent des voies d'eau exclusivement réservées aux nationaux. » Vous ne pouvez pas contester le droit d'un gouvernement de refuser l'accès de ses voies aux non-nationaux et de ne pas appliquer la Convention, lorsqu'un abordage se produit sur celles-ci. De même, si le Gouvernement français voulait décider un jour qu'un grand fleuve français, ouvert jusque-là aux étrangers, ne le sera plus désormais, pourquoi vouloir, dans ce cas, obliger ce gouvernement à appliquer la Convention ? Il suffirait donc de déclarer au Protocole de clôture que les « États contractants se réservent le droit de déclarer la Convention non applicable aux voies d'eau exclusivement réservées à leurs nationaux. »

M. VOGELS (Allemagne) rappelle que la délégation allemande ne saurait accepter une convention qui soumette les voies d'eau internationales à un régime différent de celui des autres voies d'eau de son territoire. Elle ne saurait accepter non plus la réserve formulée, puisque l'on ne peut déterminer avec précision l'étendue de son champ d'application.

M. HOHL (Suisse) déclare qu'il est possible, pour régler la question discutée, de recourir à deux critères : 1° le caractère national ou international des eaux ; 2° le caractère des bateaux, soit qu'il s'agisse de bateaux abordeurs ou abordés, qui sont immatriculés dans l'État où se produit l'abordage, soit qu'on se trouve en présence d'un ou plusieurs bateaux immatriculés dans un autre État.

La délégation suisse préfère adopter le deuxième critère.

M. PANTITCH (Yougoslavie) déclare que la délégation yougoslave serait satisfaite de voir la proposition de la délégation française inscrite au protocole de clôture. Il rappelle qu'il s'agit, comme l'a dit M. Ripert, d'une question de dignité nationale.

M. MÜLLER (Tchécoslovaquie) pense, comme M. Winiarski, que les appréhensions de la délégation yougoslave, inspirées par le souci de prestige national, ne sont pas fondées. Personnellement, M. Müller est pour le champ d'application le plus large possible de la Convention ; toutefois, étant donné la déclaration de la délégation yougoslave de vouloir conformer la législation nationale applicable aux voies d'eau nationales à la présente Convention, la délégation tchécoslovaque, pour lui faciliter l'adhésion à la Convention déclare être disposée à se rallier en principe à la proposition de M. Ripert, dont il conviendrait de déterminer exactement la rédaction.

M. NAUTA (Pays-Bas) déclare que, dans ces conditions, il est disposé également à se rallier à la proposition de la délégation française, tout en regrettant les réserves formulées.

M. RIPERT (France) donne lecture de sa proposition, qui est ainsi conçue :

« Les États contractants se réservent le droit, en signant la présente Convention, de déclarer que cette Convention ne sera pas applicable dans les eaux où la navigation est exclusivement réservée à leurs nationaux. »

M. DE RUELLE (Belgique) se demande s'il est utile d'étendre à tous les États la consécration d'un principe dangereux. Il vaudrait mieux, à son avis, se borner à prendre acte de la réserve de la Yougoslavie, sans plus, de façon à ne pas engager le principe.

M. HAAB (Suisse) estime que le Gouvernement fédéral a aussi un certain intérêt à cette réserve, en raison du régime applicable aux lacs intérieurs de la Suisse. Il est désirable, en effet, qu'en ce qui concerne les abordages sur ces lacs, la Convention ne soit pas immédiatement applicable, mais que la législation nationale reste en vigueur.

Le PRÉSIDENT invite la Commission à voter au sujet du principe formulé par la délégation yougoslave, en s'abstenant de formuler une décision au sujet de la rédaction du texte ; le soin



d'élaborer celui-ci sera laissé au Comité de rédaction, qui s'inspirera à cet égard du texte proposé par M. Ripert.

M. RICHTER (Allemagne) expose que, étant donné l'intérêt très médiocre que présente la Convention pour l'Allemagne, sa signature par l'Allemagne sera rendue plus incertaine si elle est entourée d'un trop grand nombre de réserves.

Le principe de la réserve formulée par la délégation yougoslave est mis aux voix.

*Ce principe est accepté, et il est décidé que le Comité de rédaction présentera une formule définitive sur la base du texte proposé par M. Ripert.*

Le PRÉSIDENT remercie la Commission d'avoir si heureusement mené à bien la tâche qu'elle s'était proposée en examinant de la façon la plus objective et en achevant dans un intervalle relativement court toutes les questions contenues dans le projet de Convention sur l'abordage.

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## TROISIÈME COMMISSION

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### ANNEXE 1.

[Conf./U.D.F./9.]

#### OBSERVATIONS PRÉSENTÉES PAR LES REPRÉSENTANTS DE LA CHAMBRE DE COMMERCE INTERNATIONALE RELATIVES A L'ASSISTANCE EN CAS D'ABORDAGE.

En matière d'abordage, le projet de Convention présenté à cette Conférence suit, en général, les règles établies par la Convention de Bruxelles sur le même sujet, sauf en ce qui concerne les articles 8 et 9 de cette Convention. L'article 8 impose au capitaine qui a causé un abordage le devoir de prêter assistance au navire abordé. L'article 9 invite les États contractants à faire concorder leur législation nationale respective avec les dispositions ci-dessus, et à établir des sanctions à cet égard.

La Commission pour l'unification du droit fluvial de la Société des Nations a estimé utile d'écarter les dispositions de l'article 8 de la Convention de Bruxelles et a invoqué à cet effet les motifs suivants :

« Il va de soi que le capitaine ne peut pas remplir ce devoir (de prêter assistance au navire abordé) sans le concours de l'équipage. Or, en général, il n'existe pas de dispositions pénales à cet égard dans les États européens, en ce qui concerne la navigation fluviale. Dans plus d'un pays, il paraît douteux qu'il existe une telle voie d'assistance en ce qui concerne l'équipage. Pour que l'on puisse reprendre l'article 8 de la Convention de 1910, une modification assez importante de la législation nationale serait donc nécessaire. D'autre part, les cas pour lesquels l'article peut être utile en navigation intérieure sont extrêmement rares. Leur importance ne saurait prévaloir contre les difficultés pouvant résulter de la nécessité de modifier ou de compléter les lois nationales. »

La délégation de la Chambre de Commerce internationale estime qu'on peut invoquer certains arguments contre les motifs indiqués ci-dessus. En effet, d'après presque toutes les législations nationales en matière de navigation intérieure, l'équipage des bateaux est sujet aux ordres du capitaine ou du batelier, et on ne saurait citer aucun cas où l'équipage se serait opposé à porter secours à un bateau abordé. Tout au contraire, l'équipage a toujours été content de pouvoir intervenir dans de pareils cas, parce que les tarifs prévoient le paiement de salaire supplémentaire.

La Chambre de Commerce internationale, n'ayant pas eu l'occasion de participer aux travaux préparatoires de la Commission de l'unification de droit fluvial, ignore peut-être d'autres arguments qui peuvent avoir incité la Commission de passer outre aux dispositions de la Convention de Bruxelles. La Chambre internationale n'a pas eu non plus l'occasion de faire une étude approfondie sur les diverses législations nationales en la matière. Toutefois, elle tient à signaler à la Conférence le paragraphe 23 de la loi allemande sur la navigation intérieure, qui contient les stipulations suivantes :

« L'équipage est tenu de suivre les ordres du batelier, concernant le navire, et d'exécuter en tout temps tous les travaux relatifs au service ou à la cargaison. L'équipage ne doit pas quitter le bateau sans avoir obtenu la permission du batelier. Si le bateau fait naufrage, l'équipage doit faire le mieux possible pour sauver les personnes et les bagages, et pour sauver tous les objets appartenant au navire, ainsi que la cargaison, selon les ordres du batelier. »

Il est vrai que cette disposition ne se prononce pas expressément sur les cas d'abordage, mais il semble que, par analogie, elle y est aussi applicable. En tout état de cause, on peut déduire de cette disposition que l'équipage du bateau fluvial est sujet aux ordres du capitaine ou du batelier dans la même mesure que l'équipage d'un navire maritime. Il semble que l'insertion, dans le projet de Convention présenté à cette Conférence, d'une disposition analogue à celle de la Convention de Bruxelles sur l'abordage serait utile pour les raisons suivantes :

1. Il convient de rapprocher autant que possible la législation maritime et fluviale au sujet des questions se posant de façon semblable en navigation maritime et en navigation intérieure.

2. L'omission d'une disposition semblable à l'article 8 de la Convention de Bruxelles permettra de déduire par argumentum *a contrario* que le bateau en navigation intérieure et son équipage ne sont pas tenus de prêter assistance au bateau abordé.

3. Une disposition analogue à celle de la Convention de Bruxelles, sera particulièrement importante pour les voies navigables à faible circulation, où le bateau abordé restera souvent sans secours, si le bateau abordeur ne lui prête pas assistance. L'introduction d'une telle disposition serait surtout dans l'intérêt des bateliers particuliers qui, après une collision, peuvent se voir abandonnés par le remorqueur ou le bateau à vapeur qui a causé l'abordage, ces derniers devant suivre leur itinéraire fixé préalablement ou devant remorquer d'autres trains de bateaux qui les attendent.

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Appendice.

[Conf./U.D.F./19.]

LETTRE DU REPRÉSENTANT DE LA CHAMBRE DE COMMERCE INTERNATIONALE  
EN DATE DU 24 NOVEMBRE 1930.

Étant obligé de quitter Genève avant d'avoir pu exposer le point de vue de la Chambre de Commerce internationale, j'ai l'honneur de vous prier de bien vouloir prendre note de ce qui suit comme complément aux observations que la délégation de la Chambre a eu l'avantage de soumettre à la Commission.

La Chambre de Commerce internationale ne croit pas qu'il existe des intéressés qui ne voudraient reconnaître du moins une obligation morale de l'abordeur de porter assistance au bateau abordé. La Chambre sait que ce ne sont certainement pas *tous* les intéressés qui pourraient demander de donner voie libre à l'abordeur. La Chambre de Commerce internationale n'ayant pas eu l'occasion de participer aux travaux préparatoires et d'ouvrir, à cette époque déjà, une enquête auprès de *tous* les intéressés, la délégation à cette Conférence doit se borner à mettre en relief certains intérêts qui lui ont été signalés il y a peu de temps seulement.

Dans le Cercle des assureurs et notamment à l'Union internationale des assureurs, des voix se sont élevées contre une telle franchise. Si cette question touche directement aux intérêts des assureurs, elle touche également au patrimoine national, soit aux intérêts économiques nationaux. Qu'il y ait assurance ou non, il s'agit toujours d'une partie du patrimoine national qui se trouverait sans protection, s'il était permis à l'abordeur de suivre son chemin sans se soucier du sort du bateau qu'il a mis en détresse.

Du reste, l'insertion d'une disposition analogue à celle de la Convention de Bruxelles ne s'impose pas seulement à un point de vue économique. Il faut considérer aussi que son omission placerait la navigation intérieure sur un niveau moral inférieur à celui de la navigation maritime. Il n'est peut-être pas nécessaire d'introduire des sanctions pénales comme prévues par la Convention de Bruxelles, mais il convient de statuer au moins une obligation civile.

(Signé) Arthur HOLBAN.  
Délégué de la C.C.I.

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ANNEXE 2.

[Conf./U.D.F./4.]

AMENDEMENTS PROPOSÉS PAR LA DÉLÉGATION ALLEMANDE AU PROJET DE  
CONVENTION SUR L'UNIFICATION DE CERTAINES RÈGLES EN MATIÈRE  
D'ABORDAGE DANS LA NAVIGATION INTÉRIEURE

Ad article 2.

La délégation allemande propose de modifier le texte de l'alinéa 2 de l'article 2 comme suit :

« Il n'est pas dérogé à cette règle dans le cas où les bateaux ou l'un d'eux sont, soit au mouillage, soit amarrés ou autrement immobilisés au moment de l'accident. »

Cette modification a pour effet que la clause correspondante du Protocole de clôture peut être supprimée.

**Ad article 3.**

La délégation allemande propose d'attacher le présent article 7 à l'article 3 comme deuxième alinéa :

« En cas de remorquage, chaque bateau formant partie du convoi n'est responsable que s'il y a faute de sa part. »

Cette légère modification n'a pour but que de rendre le sens plus clair.

**Ad article 6.**

La délégation allemande propose le texte suivant :

« La responsabilité établie par les articles précédents ne subsiste pas dans le cas où l'abordage est causé par la faute d'un pilote obligatoire. »

La disposition de Bruxelles qui prévoit cette responsabilité n'est pas entrée en vigueur.

**Ad article 7.**

Voir *ad* article 3.

**Ad article 9.**

La délégation allemande propose de remplacer les alinéas 1 et 2 par le texte suivant :

« Les actions en réparation de dommage et les actions en recours admises par la présente Convention se prescrivent par une année. Le délai court à partir du dernier jour de l'année au cours de laquelle la créance est devenue exigible. »

Cette réglementation est plus pratique et plus simple que celle du projet.

**Ad article 13.**

La délégation allemande propose le texte suivant :

« Les dispositions de la présente Convention s'appliquent aux bateaux qui se trouvent dans la propriété d'un des États contractants, même s'ils sont affectés exclusivement à l'exercice de la puissance publique. »

Cette proposition est conforme à la Convention de Bruxelles au sujet des immunités des navires d'État.

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**ANNEXE 3.**

[Conf./U.D.F./10.]

**AMENDEMENT PROPOSÉ PAR LA DÉLÉGATION AUTRICHIENNE A L'ARTICLE 6  
DU PROJET DE CONVENTION SUR L'UNIFICATION DE CERTAINES RÈGLES  
EN MATIÈRE D'ABORDAGE DANS LA NAVIGATION INTÉRIEURE**

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**Article 6.**

Remplacer le mot « même » par le mot « excepté ».

*Motif:* L'institution de pilotes obligatoires constituant une institution d'ordre public, il paraît très dur de rendre responsable du dommage éprouvé par d'autres personnes, du fait de l'abordage dû à la faute du pilote imposé, le bateau qui, par suite des prescriptions officielles, est obligé de le prendre à bord contre son gré.

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[C. C. T. (16th Session) P.-V.]

Geneva, July 15th, 1931.

LEAGUE OF NATIONS

**ADVISORY AND TECHNICAL COMMITTEE  
FOR COMMUNICATIONS AND TRANSIT**

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**MINUTES**

OF THE

**SIXTEENTH SESSION**

**Held at Geneva from May 28th to June 2nd, 1931**

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M. ITO.  
M. José HERBELLA Y ZOBEL, Chief Engineer of the Central Service for Maritime Signals of Spain.  
Admiral L. LANGLOIS, former Director-General and Chief of the Chilean Naval General Staff.  
Colonel A. LURIA, Military Engineer of the Italian Navy, Head of Division in the Lighthouse and Maritime Signals Service.  
M. G. MEYER, Ministerial Counsellor of the Navigable Waterways Section in the German Ministry of Communications.  
Captain M. NORTON.  
Captain D. RASI-KOTSICAS, Greece.  
M. A. DE ROUVILLE, Chief Engineer for Bridges and Roads and Director of the French Central Lighthouse and Buoyage Service.  
Baron G. WREDE, Director-General of the Finnish Naval Administration.

*For the International Hydrographic Bureau :*

The President of the Directing Committee of the Bureau.  
*Secretary :* M. ROMEIN.

**II. Technical Committee for Maritime Tonnage Measurement.**

M. A. VAN DRIEL, Advisory Naval Architect to the Netherlands Navigation Inspection Service (*Chairman*).  
M. L. AALL, Principal Surveyor for Tonnage in Norway.  
Mr. F. W. BICKLE, Principal Surveyor for Tonnage, Board of Trade, London.  
M. BRETON.  
M. P. A. LINDBLAD, Commercial Adviser, Chief of the Shipping Inspector Service of the Central Administration of Trade and Industry in Sweden.  
M. PALANCA.  
M. ROBINOW.  
M. Y. SAITO, representing the Nippon Yusen Kaisha in London.  
Mr. C. SKENTELBERY, European Manager of the Maintenance and Repair Department of the United States Shipping Board, London.

*Drafting Committee :*

M. VAN DRIEL (*Chairman*).  
M. AALL.  
Mr. BICKLE.  
M. BRETON.  
M. J. F. RICHARD, Head of Section of the Customs Department of the French Ministry of Finance, assisting M. Breton.  
*Secretary :* M. ROMEIN.

### III. Committee on the Unification of River Law.

- M. WINIARSKI (*Chairman*).  
M. E. BONAKI, First President of the Court of Appeal of Galatz.  
M. P. CHARGUÉRAUD-HARTMANN, Secretary of the International Oder Commission ;  
Legal Adviser at the French Ministry for Foreign Affairs.  
M. HOSTIE.  
M. E. DE JARMAY, Director of the Royal Hungarian River and Maritime Navigation  
Company, Ltd. (M.F.T.R.).  
M. G. NAUTA, Barrister at Rotterdam.  
M. R. RICHTER, Head of Department at the German Ministry of Justice.  
M. ROSSETTI.  
M. F. SITENSKY, Chief Counsellor at the Ministry of Commerce of Czechoslovakia.  
*Secretary* : M. METTERNICH.

### IV. Committee on Combined Transport.

- M. Umberto BROCCA, Director-General of the Società Italiana dei Servizi Marittimi.  
Jonkheer VAN DEN BERCH VAN HEEMSTEDE, General Director of the International Air  
Traffic Association, The Hague.  
M. LANKAS.  
M. Gaston LEVERVE, Secretary-General of the International Railway Union, Paris.  
M. Anton MENS, Director of Freight Service of the firm W. M. Müller & Co., Rotterdam.  
M. Henri NIEMACK, Ministerial Counsellor in the German Ministry of Communications.  
M. RIPERT, Professor at the Faculty of Law of Paris.  
Mr. Walter Leslie RUNCIMAN, of Runciman & Co., Shipowners, London, representing  
the International Chamber of Commerce.

### V. Committee on the Unification of Transport Statistics.

#### (a) *Maritime Navigation Section* :

- M. J. H. F. CLAESSENS, Director of Commercial Statistics, The Hague (*Chairman*).  
Mr. A. W. FLUX, Head of the Statistical Department of the Board of Trade, London.  
M. GAYON, Head of the Commercial Statistical Department of the General Directorate  
of French Customs.  
M. S. GIACHETTI, of the General Directorate of the Italian Mercantile Marine.  
Mr. GRENING, Director for Europe of the U. S. Shipping Board Merchant Fleet  
Corporation, London.  
M. HOSTIE.  
Dr. W. TEUBERT, Ministerial Counsellor at the Prussian Ministry for National Economy.

#### (b) *Inland Navigation Section* :

- M. CLAESSENS (*Chairman*).  
M. P. DEMETRIAD, Engineer ; Inspector-General ; Director of the Docks at Braila.  
General Wm. W. HARTS, U. S. Army, Military Attaché, American Embassy in France.  
M. HOSTIE.  
M. H. HOUPEURT, Chief Engineer of Bridges and Roads ; Director of the French National  
Office of Navigation.  
M. PIEKALKIEVICZ, Head of Section of the Polish Central Statistical Office.  
M. TEUBERT.

#### (c) *Railways Section* :

- M. C. COLSON, Member of the Institut de France (*Chairman*).  
Mr. W. Fayette ALLPORT, Commercial Attaché, U. S. Embassy in France.  
M. HONDL, Ministerial Counsellor at the Czechoslovak Ministry for Railways, Head of  
the Department for Statistics and Organisation.  
Mr. A. E. KIRKUS, Director of Statistics, Ministry of Transport of Great Britain.

M. MUSELLE, Chief Engineer, National Society of Belgian Railways.  
M. STEUERNAGEL, Director of the Reichsbahngesellschaft.  
M. TOSTI, Engineer of the Italian State Railways.

(d) *Drafting Committee :*

M. CLAESSENS.  
Mr. FLUX.  
M. HOSTIE.  
M. TEUBERT.  
M. WATIER.

(e) *Members of the Committee belonging to the Joint Committee of the Advisory and Technical Committee and the International Institute of Statistics.*

Mr. FLUX.  
M. MUSELLE.  
M. TEUBERT.  
M. WATIER.

**VI. Air Transport Co-operation Committee.**

Professor L. DE BROUCKÈRE, Senator of the Kingdom of Belgium (*Chairman*).  
M. Emile ALLARD, Director of the Belgian Technical Air Service ; Professor at Brussels and Liège Universities.  
M. Tord Knutsson ÅNGSTRÖM, Civil Engineer ; Member of the Swedish Central Air Department.  
Colonel Janusz DE BEURAIN, Chief of Institute of Aeronautical Studies of the Polish General Staff.  
M. Emmanuel CHAUMIÉ, Director of Mercantile Aviation at the French Air Ministry.  
M. Ricardo RUIZ FERRY, Vice-President of the International Aeronautical Federation ; Representative of the Press Association in the Spanish Central Air Board.  
Lieut.-Colonel C. FILIPOWICZ, Chief of the Civil Aeronautics Section of the Polish Ministry of Communications.  
M. FISCH, Geheimer Regierungsrat at the German Ministry of Communications.  
General Louis HIRSCHAUER, Chief Engineer in the French Air Service.  
Mr. John Jay IDE, Technical Assistant in Europe of the National Advisory Committee of the United States of America.  
Colonel Arnold ISLER, Director of the Swiss Federal Air Office.  
M. Shimao IWAI, Secretary at the Japanese Ministry of Communications.  
General Atsushi KABA, Japanese Delegate on the International Commission for Air Navigation.  
M. Manlio MOLFESE, Chief of Civil Aviation at the Air Ministry of the Kingdom of Italy.  
M. Edmond-Louis PITTARD, Professor at Geneva University ; Advocate.  
Lieut.-Colonel F. C. SHELMEKDINE, Director of Civil Aviation at the Air Ministry of Great Britain.  
M. Tadya SONDERMAYER, Director-General of the Yugoslav Air Navigation Company "Aeropout" ; Vice-President of the Yugoslav Royal Aero-Club.  
M. Emile Th. DE VEER, Director of the Netherlands Air Service.

*Rapporteurs who may attend the Meetings in an Advisory Capacity :*

M. Henri BOUCHÉ, Director of l'*Aéronautique*, Paris.  
M. Salvatore CACOPARDO, Chief of Section at the Air Ministry of the Kingdom of Italy.  
Brigadier-General P. R. C. GROVES (retired) (Great Britain).  
Dr. Hans OPPIKOFER, Professor at the University and Director of the Institute of Aerial Law, Königsberg.

**VII. Special Sub-Committee for the Study of the Question of the Constitution and Operation of a Main Network of Permanent Air Routes and Postal Air Transport.**

M. FISCH (*Chairman*).  
M. ALLARD.

M. ÅNGSTRÖM.  
M. CHAUMIÉ.  
M. FILIPOWICZ.  
M. MOLFESE.  
Lieut.-Colonel SHELMERDINE.  
M. DE VEER.

*Authorised to take part in the work of the Special Sub-Committee.*

M. BOUCHÉ (*expert*).  
*Secretary* : Mr. L. C. TOMBS.

**VIII. Experts on the Question of Facilities for the Landing of Aircraft in the Neighbourhood of the Seat of the League of Nations.**

M. A. DUVAL, Assistant Director of the Base Service at the French Air Ministry.  
Commander Antonio MARESCALCHI, Manager of the Aeronautical Construction Company, Ltd., Genoa.  
M. MILCH, Member of the Board of Directors of the Deutsche Lufthansa, Berlin.  
*Secretary* : M. METTERNICH.

**IX. Advisory Committee on Wireless Technical Questions.**

General FERRIÉ, Commander-in-Chief of the Transmission Troops and Services at the French Ministry of War ; Member of the Paris Academy of Sciences ; President of the International Wireless Telegraph Committee (*Chairman*).  
Dr. KOOMANS, Chief Engineer of Posts and Telegraphs ; Head of the Radio Laboratory at The Hague.  
Dr. P. JAEGER, Chief Counsellor at the German Ministry of Posts.  
Colonel A. G. LEE, of the General Post Office of Great Britain.  
Professor VALLAURI, of the Royal Naval Academy, Leghorn.  
*Secretary* : M. VAN DISSEL.

**X. Preparatory Committee of the Fourth General Conference for Communications and Transit.**

M. DJOURITCHITCH (*Chairman*).  
Professor Giuseppe ARMELLINI, Director of the Royal Astronomical Observatory at Rome, Rapporteur of the Italian National Committee on Calendar Reform ;  
M. André F. BERTAUT, Member of the Paris Chamber of Commerce, Member of the Permanent Committee of the French National Economic Council ;  
Professor Honorato DE CASTRO, Director-General of the Geographical, Cadastral and Statistical Institute, Madrid, nominated by the Spanish National Committee on Calendar Reform ;  
M. Rudolf FERNEGG, Secretary-General of the German Industrial Federation in Czechoslovakia, Member of the Czechoslovak National Committee on Calendar Reform ;  
Commander Abel FONTOURA DA COSTA, Professor at the Naval School, Lisbon, Chairman of the Portuguese National Committee on Calendar Reform ;  
M. T. KOBAYASHI, Secretary at the Japanese Ministry of Communications (*Observer*) ;  
Dr. Charles F. MARVIN, United States Weather Bureau, Department of Agriculture, Washington, U.S.A., Vice-Chairman of the United States National Committee on Calendar Simplification ;  
Count Paul MORSTIN, Counsellor of Legation at the Permanent Delegation of Poland accredited to the League of Nations (*Observer*) ;  
Dr. Hans PLATZER, Director at the Statistical Office of the Reich, Vice Chairman of the German National Committee on Calendar Reform ;  
M. Honorio ROIGT, Publicist, nominated by the Argentine National Committee on Calendar Reform ;  
Sir Amherst SELBY-BIGGE, Bart., K.C.B., formerly Permanent Secretary to the Board of Education, Member of the British Calendar Reform Committee of Enquiry ;  
M. E. R. SJÖSTRAND, Counsellor at the Central Administration on Social Questions ; Permanent Representative of the Swedish Government at the International Labour Office ;

M. Affonso A. DE VASCONCELLOS, nominated by the Brazilian National Committee on Calendar Reform ;

M. Vassa U. YOVANOVITCH, Vice-Chairman of the Chamber of Industry, Belgrade, Chairman of the Yugoslav National Committee on Calendar Reform.

*Secretary* : Mlle E. KEY-RASMUSSEN.

**XI. Joint Committee on the Question of Customs and Fiscal Duties on Newspapers and Periodicals.**

*Members appointed by the Advisory and Technical Committee.*

M. GRÜNEBAUM.

M. SINIGALIA.

M. SCHOELLER, Director-General of the "Messageries Hachette", Paris.

*Secretary* : Mlle. E. KEY-RASMUSSEN.

**XII. Special Committee on the Question of the Jurisdiction of the European Commission of the Danube.**

M. W. BURCKHARDT, Professor at the University of Berne (*Chairman*).

M. HOSTIE.

M. KROELLER.

**XIII. Special Committee of Enquiry on the Negotiability of Railway Transport Documents.**

M. G. RIPERT, Professor at the Paris Faculty of Law, (*Chairman*).

M. de CANDOLLE.

M. GRÜNEBAUM.

Mr. HOTCHKISS, Consulting Lawyer to the Canadian National Railways.

M. LEGUIZAMON.

M. SINIGALIA.

\*  
\* \*

*Experts appointed to assist the Chairman and the Secretary-General of the Committee in the Examination of Questions regarding Communications at Times of Emergency.*

M. Georges BONNET, former Member of the French Delegations at the Postal Conferences and at the Conferences on Communications and Transit; Deputy; former Minister.

M. JAEGER.

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## FIRST MEETING.

*Held on Thursday, May 28th, 1931, at 3.30 p.m.*

---

**Chairman :** M. HEROLD ; later, M. Silvain DREYFUS.

**Present :** All the members of the Committee, except M. Restrepo, who was unable to attend, and His Excellency Phya Abhibal Rajamaitri, replaced by M. S. VARASIRI, attaché to the Siamese Legation in London.

The following also attended the meeting :

For the International Chamber of Commerce :

M. P. RAGUE,  
M. M. NORDBERG,  
Mr. P. Maurice HILL,  
M. G. HOLZ.

For the Central Rhine Navigation Commission :

M. J. HOSTIE.

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### I. COMMUNICATIONS BY THE CHAIRMAN.

The CHAIRMAN declared open the sixteenth session of the Advisory and Technical Committee for Communications and Transit.

He welcomed all the members of the Committee, and particularly M. von Heidenstam, who had just been definitely appointed member of the Committee by the Swedish Government in place of M. Hörnell, resigned.

The Chairman deeply regretted to inform his colleagues of the death of M. Enciso, appointed by the Argentine Government. M. Enciso, who had been a member of the Committee since the General Conference of 1927, had taken part only once in the Committee's discussions—at the ordinary session of 1928. They remembered him as a good colleague, and the Chairman requested the members of the Committee to rise in their seats as a sign of respect to his memory.

He also announced that three eminent jurists who were intimately connected with the Advisory and Technical Committee had been elected judges of the Permanent Court of International Justice at The Hague—namely, M. Guerrero, a member of the Committee appointed by the Government of Salvador ; M. Urrutia, former member of the Committee appointed by the Government of Colombia ; and M. van Eysinga, former member of the Committee appointed by the Netherlands Government. The last-named had been the first Chairman of the Advisory and Technical Committee.

The Chairman congratulated the new judges on their election and wished them every success in their new careers. He thought that the Committee would like to ask the Bureau to express its good wishes to M. Guerrero, M. Urrutia and M. van Eysinga.

Lastly, he reminded them that M. Haas had been promoted to the rank of Director. The Committee had so often had occasion to praise him that the Chairman would simply offer him their congratulations.

### II. ELECTION OF THE BUREAU.

The CHAIRMAN invited the Committee to appoint a Chairman and two Vice-Chairmen.

M. SEELIGER proposed that the Committee should elect as Chairman M. Silvain Dreyfus, who had consistently displayed the most admirable zeal and devotion.

M. DE VASCONCELLOS seconded this proposal.

M. Silvain DREYFUS *was elected Chairman by acclamation.*

M. SINIGALIA proposed as Vice-Chairmen M. Grünebaum and M. Amador, whose competence and personal qualities well fitted them for such a position.

M. GRÜNEBAUM and M. AMADOR *were elected Vice-Chairmen by acclamation.*

The CHAIRMAN thanked the members of the Committee for the confidence they had shown in him, thus making it very easy for him to carry out his duties. He also wished to thank the Secretary-General of the Committee and the members of the Secretariat.

M. Silvain DREYFUS took his place as Chairman, and thanked the Committee for the honour conferred upon him. He fully appreciated the value and the responsibility of this honour, when

he recalled all the distinguished men who had presided over the Transit Committee before him. At least he could assure the Committee of his complete devotion to the ideals of the League.

M. GRÜNEBAUM said that he was both proud and surprised to have been appointed Vice-Chairman. He regarded this honour as a compliment rather to his country than to himself. Austria, by her position in Central Europe, was an important factor in the sphere of transport. She was most anxious to co-operate in the solution of all difficulties in the most liberal spirit.

M. AMADOR was much touched by the honour done him by the Committee. He was particularly gratified by this honour, inasmuch as his country belonged to a group of States, those of Latin America, which had not always taken a very keen interest in the work of the League. For a long time past he had been endeavouring to stimulate their interest, and his appointment as Vice-Chairman of the Committee would help him in this task.

The CHAIRMAN was happy to note the interest taken in the most varied quarters in the work of the Advisory and Technical Committee for Communications and Transit. He saw fresh proof of this in the presence at this session of the delegates of the International Chamber of Commerce, whom he thanked and welcomed.

### III. PROGRAMME OF WORK.

After a brief exchange of views, *the Committee adopted the draft agenda (see Annex I) prepared by the Secretariat and provisionally fixed the order in which the different questions should be approached.*

### IV. PREPARATION OF INTERNATIONAL CONVENTIONS.

(Item 2 on the Agenda.)

The CHAIRMAN recalled that the eleventh Assembly had adopted a resolution laying down certain rules with regard to the ratification and preparation of international Conventions concluded under the auspices of the League of Nations.<sup>1</sup> He drew the Committee's attention to the last paragraph of Section IV of this resolution, stating that "the above rules shall be communicated to the technical organisations of the League of Nations and to the Governments for the purpose of enabling the Assembly at its next session to consider whether changes should be made therein as the result of any suggestions which may be made". These rules were contained in Section IV of the Assembly resolution.

M. GRÜNEBAUM, without wishing to go into a detailed examination of the proposed rules, asked whether it would not be well to consider how far this resolution might affect the agenda of the fourth General Conference on communications and transit. This agenda included the question of grave occurrences of a general character affecting routes of communication, with regard to which two alternatives were proposed—on the one hand, a simple recommendation, and, on the other, the conclusion of a Convention. Should the indications given by the Assembly be followed with regard to this draft Convention?

The SECRETARY-GENERAL OF THE COMMITTEE said that, in his opinion, the procedure laid down by the Assembly was not applicable to the Communications and Transit Organisation. The first paragraph of Section IV stated that "the following preparatory procedure should, in principle, be followed, exception being made of the cases where previous Conventions or arrangements have established a special procedure . . ." This was the case of the Communications and Transit Organisation, which possessed a special statute the clauses of which had been approved, when necessary, by the Assembly. The Secretary-General of the Committee did not think that it would be expedient to adopt for the Organisation this new procedure, which would disturb its work. The reason for which the resolution had been referred to the technical organisations was that the latter had great experience with regard to international Conventions, and their opinion was therefore valuable. Thus, it might perhaps be replied that the rules in force relative to the Communications and Transit Organisation had hitherto given every satisfaction, since the majority of the draft Conventions had been adopted by the Conferences to which they had been submitted. It would, moreover, be easy to show that a strict application of the rules laid down by the Assembly would make the machinery so cumbrous and slow that for any urgent question the services of the League of Nations would have to be dispensed with. Indeed, the procedure laid down required a minimum of two years before a draft Convention could be submitted to a Conference.

Furthermore, the Secretary-General of the Committee doubted whether it was possible to lay down rules applicable to all cases. For example, there were circumstances when it would be dangerous or inexpedient to ask Governments to state their views on a draft which might not have been drawn up by a responsible authority. Two systems had been applied by the Communications and Transit Organisation. In some cases, the draft conventions had not been communicated to the Governments in advance and in others they had. Despite this precaution, the difficulties had not been less at conferences when the second procedure had been followed. In this connection, he drew attention, in particular, to the case of the draft Conventions on the buoyage and lighting of coasts.

<sup>1</sup> See document C.622.M.244.1930.V.

To sum up, the Secretary-General of the Committee thought that there was a certain danger in fixing a detailed procedure applicable to all cases.

Sir John BALDWIN had thought that, as a matter of fact, the resolution adopted by the Assembly referred equally and perhaps especially to the Communications and Transit Organisation. He would like to be informed on this point.

The SECRETARY-GENERAL OF THE COMMITTEE replied that such was not his opinion. When this resolution had been adopted, he had not been consulted, and, moreover, if the resolution had been meant to refer to the technical organisations, it would certainly have been submitted to the Second Committee of the Assembly, which dealt with these organisations. The resolution, however, was the result of the work of the First Committee—i.e., of the Committee on Legal Questions. He thought it was a consequence of the partial failure of the Conference for the Codification of International Law, held at The Hague in 1930.

He thought that, in its reply, the Advisory and Technical Committee might give a concrete example showing that, according to the procedure proposed by the Assembly, a draft convention initiated, for example, in February 1931, could not be submitted to a conference until the end of 1933 or the beginning of 1934 at the earliest, if no difficulty was encountered.

M. DE VASCONCELLOS thought that the problem referred to in the Assembly's resolution had been raised by Lord Cecil in connection with the delay which occurred in the ratification of Conventions concluded under the auspices of the League of Nations. On Lord Cecil's proposal, a Special Committee of Jurists had been set up. This Committee had certainly not been thinking of the technical organisations. In M. de Vasconcellos' opinion, it should be replied that the Communications and Transit Organisation wished to abide by its statute.

M. SINIGALIA had also understood, when reading the resolution, that it could not refer to the Communications and Transit Organisation.

The CHAIRMAN considered that, while specifying that the rules in question did not apply to the Communications and Transit Organisation, the Committee should express an opinion on the value of these rules. Emphasis should be laid on the practical drawbacks to which their application would give rise.

Mr. Maurice HILL (International Chamber of Commerce) said that, if the procedure proposed in the resolution was adopted, it would be important to maintain touch, as in the past, with the competent international organisations. This consultation of the circles concerned gave the best results and should be taken into account when fixing the procedure.

The SECRETARY-GENERAL OF THE COMMITTEE did not feel qualified to give an authoritative interpretation of the Assembly's resolution. He proposed that at a later meeting the Committee might hear the opinion of a member of the Legal Section of the Secretariat on this point.

Sir John BALDWIN also asked that the decision of this question should be postponed to a later meeting.

*The continuation of the discussion was postponed to the following meeting.*

#### V. TRANSPORT OF AGRICULTURAL PRODUCTS (EFFECT TO BE GIVEN TO RESOLUTION X OF THE COMMITTEE, FIFTEENTH SESSION).

(Item 4 on the Agenda.)

The CHAIRMAN recalled that, in September 1930, the Advisory and Technical Committee had requested its Chairman: (1) to appoint three experts who would be instructed to submit a preliminary report to the present session, (2) to invite the Governments to transmit all available information to the Secretariat before February 1st, 1931.

The Advisory and Technical Committee had reserved the right to decide at its present session whether or not it seemed advisable to include the consideration of the problems concerning the transport of agricultural products in the agenda of the fourth General Conference.

The SECRETARY-GENERAL OF THE COMMITTEE explained the reasons for which no action had been taken on this resolution of the Advisory and Technical Committee. The resolution in question had been adopted at the request of the Conference with a View to Concerted Economic Action. The question had then been considered as presenting a certain importance and urgency, and it had been proposed to study it with a view to placing it on the agenda of the fourth General Conference. This study was, however, to take place within the framework of a concerted economic action and in relation to the development of more general economic investigations. A study of this kind carried out without any definite goal would, of course, have a purely academic character. Its only practical object resided in a close relationship with a specific economic policy, transport being only one factor in the problem as a whole.

Since the adoption of this resolution, however, questions relating to agricultural products had only been examined within the framework of the European Union. The Commission of Enquiry for European Union had only made definite progress in the sphere of agricultural mortgage credit. It had undertaken studies concerning the purchase and sale of certain cereals, but no solution sufficiently definite to involve transport questions had been envisaged.

It had therefore seemed to the Secretariat that the work contemplated would be vain in the absence of guiding ideas. They must wait until the Governments had adopted a specific policy; only then could they see how the problems of transport should be solved.

M. ITO wished to know if the Governments had been asked to supply information on the drawbacks of the present situation of transport from the point of view of the circulation of agricultural products.

The CHAIRMAN answered that such information had not been asked for. As the Secretary-General of the Committee had explained, the resolution remained in suspense, referring, as it did, to only one point of the general question of agricultural policy and this point could hardly be treated separately. In the Chairman's view, the resolution should not be cancelled, but its application postponed. The study in question would be undertaken when circumstances permitted.

He added that the foregoing resolution ought to be applied in its spirit rather than in its letter, and that due account would have to be taken of circumstances.

M. POLITIS supported this view.

*The Chairman's proposal was adopted.*

## VI. ADJUSTMENT OF RAILWAY TARIFFS (EFFECT TO BE GIVEN TO RESOLUTION XIII OF THE COMMITTEE, FIFTEENTH SESSION).

(Item 5 on the Agenda.)

The CHAIRMAN recalled that this resolution referred to indirect protection, certain special tariffs being assimilated to indirect export bounties.

The Advisory Committee had requested the Secretariat to submit a preliminary report. This report (see Annex 2) consists of a note regarding the study of the question of indirect protection by the Economic Organisation.

This note had been prepared by the Economic Relations Section. It outlined the studies already carried out and showed that the Economic Committee had considered that there could be no question of the conclusion of an international convention forbidding the use of indirect methods in order to retain protectionist measures which had already been condemned, it being necessary that clear rules should be laid down with regard to each question. To the note was attached a methodical classification of the measures which could be included in the category of indirect protection. Lastly, the note gave an outline of the present situation of the question, successively reviewing the questions already dealt with or those which did not seem capable of forming the subject of an international agreement, and the questions which remained to be studied.

As regards the methodical classification, it contained under the heading "Railway Tariffs" (see Annex 2, section B, Item 13) the following passage :

"A study of the Commercial treaties providing for equality of treatment in this respect would perhaps be useful as furnishing the elements for an international agreement later. If such a study were decided upon, it should be carried out in collaboration with the Communications and Transit Section."

The Chairman pointed out that a similar passage occurred in the Protocol adopted by the Preliminary Conference with a View to Concerted Economic Action.

The SECRETARY-GENERAL OF THE COMMITTEE had nothing to add with regard to what he had said on the question of the transport of agricultural products. It was impossible to go further than was done by the International Convention on the Regime of Railways, unless the States decided to adopt a specific common policy ; in that case there would be consequences for transport by rail which would have to be considered. But the question could not be studied by itself ; they must wait until something definite was done in the economic sphere.

M. DJOURITCHITCH thought that the Committee might declare that it approved the Economic Organisation's report. The study of commercial treaties from the point of view envisaged might certainly be fruitful. Transport tariffs were established on the basis of the policy followed by the railway companies to ensure receipts, and of the policy followed by the Governments to protect national industries. It was often difficult to determine the part played by these two elements in a particular tariff. On the other hand, an endeavour had been made in certain commercial treaties to remedy the drawbacks of certain tariff stipulations, and a study of the provisions adopted might perhaps furnish a suitable basis for the campaign against indirect protection.

M. Djouritchitch therefore thought that the Economic Organisation's proposal should be approved.

The SECRETARY-GENERAL OF THE COMMITTEE pointed out that a small Legal Committee had already been appointed to undertake studies concerning the codification of international law in regard to transport. The result of these studies would constitute a sort of embryo of international law in this matter. The question might, perhaps, be referred to this small Committee for discussion.

M. GRÜNEBAUM approved this suggestion. He drew attention to the Commercial Treaty concluded on June 30th, 1930, between Greece and Hungary in which this question was dealt with in great detail.

The CHAIRMAN pointed out that it was hardly possible to mention a particular treaty in a general resolution, but M. Grünebaum's suggestion would appear in the Minutes.

M. GRÜNEBAUM declared himself satisfied.

*It was decided to refer the question to the Committee for the Codification of International Law in regard to transport.*

VII. EXTENSION OF INTERNATIONAL AGREEMENTS RELATING TO TRANSPORT (EFFECT TO BE GIVEN TO RESOLUTION XII OF THE COMMITTEE, FIFTEENTH SESSION).  
(Item 6 on the Agenda.)

The CHAIRMAN summed up Resolution XII adopted by the Committee at its fifteenth session. The first paragraph related to a question which had been referred to the Permanent Committee for Inland Navigation. This question was dealt with in a special paragraph of the Permanent Committee's report and would be examined when the report in question was discussed. The second paragraph related to the possibility for railway administrations to adopt identical principles as regards freedom of communications as the basis of their international agreements relating to transport. This problem had been referred to the Permanent Committee for Transport by Rail for examination.

The Committee now had before it a letter dated April 15th, 1931 (see Annex 3), in which M. Sinigalia proposed that the opinion of the delegation which had submitted this recommendation to the Preliminary Conference with a View to Concerted Economic Action should be asked. The object was to ascertain the motives which had inspired the recommendation adopted by the Conference.

M. SINIGALIA explained that he had been asked to procure certain particulars which could only be supplied by the delegation which had proposed the recommendation.

The SECRETARY-GENERAL OF THE COMMITTEE said that, in view of the present situation, no Government had displayed any special interest in this question. It should therefore be noted that studies were going on in connection with the international codification of law, but that, in the absence of any definite point being raised, the problem could not be specially mentioned in the agenda.

*The conclusions of the Secretary-General of the Committee were approved.*

VIII. CONSTRUCTION OF AN AERODROME NEAR THE SEAT OF THE LEAGUE OF NATIONS :  
REPORT BY THE COMMITTEE OF EXPERTS.<sup>1</sup>  
(Item 8 on the Agenda.)

The CHAIRMAN recalled that a first scheme, dated November 19th, 1927, had been approved by the Committee of Experts ; but that, owing to the large expenditure involved, the Canton of Geneva had submitted a second and more modest proposal on May 24th, 1929, which the Committee of Experts had examined at Geneva on March 5th, 1931. The Committee's observations might be summarised as follows :

A. *Shape and size of the aerodrome.*—The entire operation (extension of the aerodrome and creation of servitude) would cost about 1,500,000 Swiss francs.

B. *Levelling of the ground.*—The Committee approved the plan of levelling submitted.

C. *Protection against electric lines.*—The removal of the high and low-tension power lines should be carried out urgently.

D. *Marking of the aerodrome.*—As a first step, a limited system of night beacons might be regarded as sufficient.

E. *Wireless communication.*—The wireless transmitting station would be placed five kilometres from the aerodrome. This station should be combined with the new broadcasting station of Radio-Genève. The League of Nations would consider whether an increase in the power of the station should be contemplated in order to permit of the use of this station to communicate with certain aerodromes.

F. *Hangars and workshops.*—For the moment, the question of a private hangar for the League of Nations did not arise. If a thoroughly equipped workshop were available, the covered areas provided for would be sufficient.

In short, if the work proposed in the report were carried out, the Cointrin aerodrome would meet the probable needs of the League of Nations.

M. ROMEIN, member of the Communications and Transit Section, observed that certain information was still lacking. For example, there was no total estimate and no plan for the allocation of expenditure. The report provided figures as regards land, but said nothing as to the cost of the other installations. The Geneva authorities had promised to furnish a general estimate and to submit suggestions as to the allocation of the expenses between the Swiss authorities and the League of Nations.

The Committee might decide that the report, together with the supplementary information, when received, should be communicated to the Council for transmission to the Assembly.

M. GRÜNEBAUM had been struck by the fact that the draft made no mention of the organisation of a special meteorological service. This service, whose object was to advise pilots, and which existed in all modern aerodromes, would certainly cost more than some of the other installations provided for by the Committee.

M. HEROLD pointed out that there was already a local meteorological service at Geneva, which would be at the aerodrome's disposal.

<sup>1</sup> See document C.C.T. 477, published separately.

M. ROMEIN, member of the Communications and Transit Section, added that weather forecasts were made at Zurich and were then communicated to Geneva. It was therefore a question of transmission. This question formed part of the problem of wireless communications sent either to aeroplanes in flight or to aerodromes. The Cointrin aerodrome already maintained relations with a certain number of aerodromes for the more special information which it required. If the League of Nations desired to extend these relations to other aerodromes it might do so.

The CHAIRMAN proposed that the Committee should note the experts' report and the information supplied by the Secretariat and instruct the latter to transmit the whole to the Council for communication to the Assembly.

*This was agreed to.*

IX. TRIPTYCH SYSTEM : REPLIES OF GOVERNMENTS (EFFECT TO BE GIVEN TO RESOLUTION XVIII OF THE COMMITTEE, FIFTEENTH SESSION).

(Item 11 on the Agenda.)

The CHAIRMAN recalled the fact that the Secretary-General of the League of Nations had sent to various Governments a circular letter informing them of Resolution XVIII adopted by the Advisory and Technical Committee at its fifteenth session, and asking them to state whether they would be prepared to apply the rules drawn up by the Committee with regard to the triptych system (see Annex 4). The purpose was the limitation of exclusions from the benefit of the triptych system.

The Chairman thought that the replies of the Governments should be transmitted to the Permanent Committee on Road Traffic, with the request that it should pursue the study of the question.

M. ROMEIN, member of the Communications and Transit Section, said that, as a whole, the replies received were favourable. A certain number of countries, some of which were important, had, however, not yet replied. It would perhaps be well to send them a fresh letter asking them to supply the information required. The Road Traffic Committee would thus possess more complete information, which would enable it to continue its study.

The CHAIRMAN proposed that the Committee should take note of the replies received, refer the question to the Permanent Committee on Road Traffic, and, in accordance with M. Romein's suggestion, send a letter of reminder to the Governments which had not yet replied.

*This was agreed to.*

X. RESULTS OF THE EUROPEAN CONFERENCE ON ROAD TRAFFIC, HELD AT GENEVA FROM MARCH 16TH TO 30TH, 1931.

(Item 14 on the Agenda.)

The CHAIRMAN recalled that the work of the Conference had led to the drawing up of the following instruments :

- Convention on the Unification of Road Signals ;
- Convention on the Taxation of Foreign Motor Vehicles ;
- Agreement between Customs Authorities in Order to facilitate the Procedure in the Case of Undischarged or Lost Triptychs ;
- Final Act.

The Conference had inserted in the Final Act a resolution, in which it had decided to suspend its work on the Convention on the International Regime of Commercial Motor Transport. It had asked that the Communications and Transit Organisation should proceed to the additional investigations which were regarded as indispensable for a later conference.

The Conference had further adopted the following recommendations :

“That the Permanent Committee on Road Traffic should conduct a thorough enquiry into the problem of light signals ;

“That the Permanent Committee on Road Traffic should endeavour to achieve the codification of the signals made by police officials directing traffic and by drivers of vehicles.”

On the Chairman's proposal, it was decided to refer these two recommendations to the Permanent Committee on Road Traffic.

The CHAIRMAN opened the discussion on the resolution adopted by the Conference with regard to the international regime of commercial motor transport. It was necessary to consider what body should be entrusted with the additional investigations indispensable for a future conference.

M. SINIGALIA said that the Conference had been unable to draw up a Convention on the International Regime of Commercial Motor Transport, because this was a question very closely touching the relations between transport by rail and transport by road. He thought that, in principle, the question should be referred to the Permanent Committee on Road Traffic, which would be instructed to pursue investigations. But, in view of the difficulty raised by the question

of the connection with transport by rail, it would perhaps be well to attach to the Committee on Road Traffic representatives of the Permanent Committee for Transport by Rail.

M. ROMEIN, member of the Communications and Transit Section, agreed that, as normally composed, the Permanent Committee on Road Traffic did not comprise all the necessary elements for a complete study of the problem. In this connection, he drew attention to two of the preliminary paragraphs of the resolution, which read as follows :

“Observing that the discussions in the First Commission of the Conference have brought to light a number of legal problems, particularly in regard to what public transport services may properly be made the subject of international regulation and also in regard to the question of the freedom of transit ;

“Believing that these problems cannot be elucidated without further investigation based on a comparative examination of the domestic law of the different countries represented at the Conference . . . . .”

It was therefore essential, with a view to a future conference, to study these legal questions ; but other questions might also arise. Hence, it did not seem possible to say at once what additional assistance the Committee on Road Traffic would require.

M. Romein therefore suggested that the question should be referred to the Permanent Committee on Road Traffic, which would be requested, in agreement with the Chairman of the Advisory and Technical Committee, to call in the necessary assistance. The experts who should be invited might be designated by the Chairman of the Transit Committee in agreement with the Chairman of the Permanent Committee on Road Traffic.

The CHAIRMAN said that, in that case, the study of the question would be entrusted to the Permanent Committee on Road Traffic, with such reinforcements as the latter might judge necessary.

M. SCHLINGEMANN considered that the question should be referred to the Permanent Committee on Road Traffic, which should be left entirely free to adopt whatever procedure it might consider expedient, since it was possible that this Committee might wish to set up a special committee of experts.

Sir John BALDWIN agreed with M. Schlingemann. The Permanent Committee on Road Traffic would consider the reasons set forth by the Conference. With the approval of the Chairman of the Advisory and Technical Committee, it could choose the procedure which seemed to it the best. In any case, it seemed preferable to Sir John Baldwin not to set up a mixed committee immediately.

M. HEROLD said that it must be quite understood that the responsibility of the proposals to be made should lie with the Permanent Committee on Road Traffic. No mixed committee was being created. If the Road Traffic Committee needed any outside help, it would have to take the necessary decision.

*It was decided to refer the question to the Permanent Committee on Road Traffic, subject to the conditions stated in the course of the discussion.*

M. ROMEIN, member of the Communications and Transit Section, gave the following list of the countries which had so far signed the various Conventions prepared by the European Conference on Road Traffic :

*Convention concerning the Unification of Road Signals :*

Belgium	France	Netherlands
Czechoslovakia	Germany	Poland
Danzig	Italy	Switzerland
Denmark	Luxemburg	Yugoslavia

*Convention on the Taxation of Foreign Motor Vehicles :*

Belgium	Great Britain	Netherlands
Czechoslovakia	Italy	Poland
Danzig	Luxemburg	Switzerland
Denmark		

*Arrangement to facilitate the Procedure in the Case of Undischarged or Lost Triptychs :*

Belgium	Great Britain	Netherlands
Denmark	Irish Free State	Switzerland
France	Italy	Yugoslavia.
Germany.	Luxemburg	

*The Committee noted this statement.*



XI. PASSPORT AND VISA FORMALITIES FOR MIGRANTS (EFFECT TO BE GIVEN TO RESOLUTION VI OF THE COMMITTEE, FIFTEENTH SESSION).  
(Item 16 on the Agenda).

The CHAIRMAN informed the Committee that, in reply to the request made to it, the International Labour Office had forwarded the information received from the Japanese Government on February 9th and 25th, 1931, relating to the formalities to be fulfilled by Japanese subjects emigrating to Mexico and certain South American countries (see Annex 5). In addition, the International Labour Office's communication mentioned that the International Conference of Emigration and Immigration, held in Rome in May 1924, had adopted a resolution in favour of the simplification of the formalities required of emigrants and the reduction of the charges imposed on them.

Furthermore, the Conference of Emigration and Immigration, held at Havana in April 1928, had expressed the wish that all certificates should be included in a single document, and that these certificates and the visas relating to them should be issued free of charge.

M. ITO asked if it would be possible for the Secretariat to undertake a study of the question and report to the Advisory and Technical Committee at its next session. The information furnished to the Governing Body of the International Labour Office by the Japanese Government was probably correct. Nevertheless, certain Governments might perhaps wish to amplify or rectify the information thus communicated. Furthermore, this information only related to Japanese nationals. It would, perhaps, be well to undertake a general study of the question and ascertain the general regime at present in force.

M. AMADOR associated himself with M. Ito's suggestion.

Mr. Maurice HILL (International Chamber of Commerce) drew attention to the importance of this question to the International Chamber of Commerce, and especially to shipowners. He regarded the resolution adopted by the Rome Conference, asking that the passport obligation should be abolished as soon as possible, as particularly important. The International Chamber of Commerce would be glad to know if any steps had yet been taken to carry this resolution into effect. It aimed at the removal of an obstacle which considerably hampered passenger traffic.

The CHAIRMAN proposed that, in accordance with the wish expressed by M. Ito and supported by M. Amador and the International Chamber of Commerce, an enquiry should be conducted among the Governments, whom the Secretariat would ask for more definite and complete information on the question.

*This was agreed to.*

XII. REQUEST FROM THE INTERNATIONAL RAILWAY UNION CONCERNING THE EXEMPTION OF RAILWAY POSTERS FROM CUSTOMS DUTIES.  
(Item 17 on the Agenda).

The CHAIRMAN recalled that, in a letter dated December 19th, 1930 (see Annex 6), the International Railway Union had asked the Advisory and Technical Committee to approach the Governments with a view to the abolition of Customs duties on advertising matter exchanged by the railway administrations of the different countries. Moreover, the Economic Committee of the League of Nations had set up a Sub-Committee of Customs Experts, which had proposed the admission duty free of printed matter and posters for advertisement intended for free distribution. A text had been submitted to the International Railway Union, and the question would be examined by the Economic Committee at its next session.

The question was whether the Advisory and Technical Committee desired to express an opinion in favour of the request laid before it.

M. POLITIS had been Rapporteur of this question at the International Railway Union. The question at issue was the propaganda to be made in order to develop passenger traffic. The importance of this propaganda was obvious in view of the crisis being passed through by transport undertakings. In his opinion, the Advisory and Technical Committee might ask the Economic Committee to take steps to see that the recommendation made by the International Railway Union should be taken into consideration and that the results aimed at should be achieved.

Sir John BALDWIN did not think that this request should be supported. At a time when everyone was being told to economise, he did not think they ought to support propaganda in favour of travelling which was very expensive.

M. SCHLINGEMANN did not view the question in the same light as Sir John Baldwin. He was astonished that Customs duties were charged on railway time tables and posters. This constituted a veritable obstacle to circulation.

M. GRÜNEBAUM said that the question was of great importance to countries whose situation obliged them to encourage tourist traffic. Customs duties made propaganda abroad very expensive for such countries. He supported M. Politis' proposal and thought that the Economic Committee should be recommended to accept the suggestion put forward with a view to developing tourist traffic.

M. POLITIS emphasised the importance of the question from the point of view of the development of international relations. Mutual knowledge was necessary to mutual appreciation and affection, and was the corner-stone of moral disarmament.

M. SINIGALIA pronounced in favour of the request, provided that it referred to posters and printed matter issued by the railway administrations.

After a short discussion, in which it was stipulated that the exemption would only apply to the posters and printed matter of railway administrations, *the Committee decided, by thirteen votes to one, to recommend the International Railway Union's request to the favourable attention of the Economic Committee.*

XIII. REQUEST FROM THE INTERNATIONAL RAILWAY UNION WITH REGARD TO CUSTOMS DUTIES ON CARDS FOR MACHINES USED FOR STATISTICAL PURPOSES.

(Item 18 on the Agenda).

M. SINIGALIA pointed out that this request (see Annex 7) differed considerably from the previous one. It would be comprehensible, up to a certain point, if the cards in question were solely utilised by railways, but they were also used by other undertakings.

M. SEELIGER said this was not a question of facilities concerning transport, but a commercial matter which was outside the Committee's competence.

Sir John BALDWIN supported M. Seeliger's observations. He asked what the Committee's attitude would be if, later, the International Railway Union recommended that coal, for example, intended for the railways should be exempt from Customs duty. He saw no reason to give the railways an advantage over the rest of industry.

M. POLITIS pointed out that the compilation of statistics constituted an obligation which the Governments imposed on railways in the general economic interest. There was therefore no possible comparison with coal.

The CHAIRMAN further observed that, according to the International Railway Union's recommendation, the Advisory and Technical Committee would have to approach the Governments with a view to the abolition of the Customs duties in question. This would be a somewhat unusual step to take.

*After an exchange of views, it was decided not to give effect to the International Railway Union's request, and to inform the Union that this was not a question directly concerning communications and transit, but an economic question.*

M. POLITIS said that, at the International Railway Union's next session, he would propose that the question should be referred to the Economic Committee of the League of Nations.

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SECOND MEETING.

*Held on Friday, May 29th, 1931, at 10 a.m.*

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*Chairman : M. Silvain DREYFUS.*

*Present : All the persons who attended the previous meeting, and M. Rossetti, Member of the Permanent Committee for Inland Navigation.*

XIV. REPORT OF THE PERMANENT COMMITTEE FOR INLAND NAVIGATION.  
(Item 10 on the Agenda).

M. LUKAČ, Secretary of the Permanent Committee for Inland Navigation, read the first part of the report of this Committee, which met on May 27th and 28th (see Annex 8).

The CHAIRMAN asked the members of the Committee, before going on to examine the questionnaire attached to the report, to give their opinion on the question of the extension of international agreements relating to transport.

*The proposal of the Committee for Inland Navigation that a preliminary enquiry should be undertaken was adopted without discussion.*

The CHAIRMAN then asked the Committee to decide whether this enquiry should be conducted among the Governments of Europe only or among all Governments without exception. He pointed out that it was intentional that the report said that the questionnaire "should be sent by

the Secretariat to all the Governments concerned", the Advisory and Technical Committee having to decide this point.

Sir John BALDWIN doubted whether any conclusion would be reached if the questionnaire were sent to too many Governments. It would be difficult enough to obtain positive results with regard to the countries of Europe alone. If the enquiry were extended to the countries of the East and to North and South America, the multiplicity of replies and their diversity would make it still more difficult to arrive at a conclusion. Moreover, the Conference for Concerted Economic Action, which had initiated this enquiry, was a European Conference, and it was therefore preferable that the study in question should relate only to European countries.

M. SEELIGER, without entirely sharing Sir John Baldwin's opinion, considered that his suggestion might be taken into account by proceeding by stages. The enquiry might first relate to the countries of Europe, and then, on the basis of the information received, they could decide whether it should be extended to non-European countries.

M. SCHLINGEMANN feared that the method suggested by M. Seeliger might involve a loss of time, and suggested that the questionnaire should be sent immediately to all the countries concerned.

The CHAIRMAN requested the members of the Committee to pronounce on one or other of the solutions proposed.

M. SEELIGER said that, provided the possibility of sending the questionnaire later to other States was left open, he would accept the first solution, consisting in confining the enquiry to the countries of Europe to begin with.

The Committee having recognised that it could always apply later to the States outside Europe if it thought fit, *the latter solution was adopted unanimously.*

M. LUKAČ, Secretary of the Committee for Inland Navigation, read the questionnaire (see Annex 8).

With regard to point 2 of this questionnaire, it was noted that tugs were not explicitly mentioned.

Sir John BALDWIN proposed that a footnote should be added to the effect that "towage is included among means of transport".

After an exchange of views, *the following text, which applies to all means of transport, including towage, was adopted, subject to any drafting changes that might be thought advisable:*

"2. If they are so permitted, is there equality of treatment as regards all transport operations between national and foreign vessels, their cargoes and their passengers, etc.?"

*The end of the report was adopted without discussion.*

#### XV. RESULTS OF THE CONFERENCE FOR THE UNIFICATION OF RIVER LAW, HELD AT GENEVA FROM NOVEMBER 17TH, TO DECEMBER 9TH, 1930. (Item 13 on the Agenda).<sup>1</sup>

M. ROSSETTI, Rapporteur of the Permanent Committee for Inland Navigation, having been asked by the Chairman to give the Committee some explanation of the work of the Conference for the Unification of River Law, recalled the fact that the success of this Conference had proved that the question of river law had been ripe since 1922, the year in which the Advisory and Technical Committee had begun to deal with it. He paid a tribute to the assistance of the Central Commission for Rhine Navigation, of the International Maritime Committee, whose representative had advised the Conference with regard to collisions, and of the International Chamber of Commerce, which had drawn the Conference's attention to a delicate point—namely, the obligation to provide assistance, a humanitarian idea which had for centuries been accepted in maritime navigation and which called for introduction into river law. It was true that it had not been possible to introduce this idea into any of the Conventions adopted, but the Conference had recommended that it should be dealt with in a later convention.

M. Rossetti then read the three recommendations adopted by the Conference (document Conf. U.D.F.60, page 7). He pointed out that the first recommendation concerned less the Transit Committee than the Governments; on the other hand, the second recommendation, which dealt with assistance in river navigation, concerned both the States and the Advisory and Technical Committee. As regards the second recommendation as well as the third, which related to the question of attachment (*saisie conservatoire*), the Conference had already outlined the action to be taken by the Advisory and Technical Committee by requesting it to draw up two separate conventions, the first relating to assistance and the second to attachment.

The CHAIRMAN, after thanking M. Rossetti on behalf of the Committee for his very full and interesting explanations, proposed that the Advisory and Technical Committee, in agreement with the Committee for Inland Navigation, should decide to refer the question raised by Recommendation No. III to the Committee on River Law. As regards the question dealt with in Recommendation No. II, the Committee might request the Secretariat to prepare a resolution on this point.

*This was agreed to.*

<sup>1</sup> See documents Conf. U. D. F. 57, 58, 59 and 60.

XVI. PREPARATION OF INTERNATIONAL CONVENTIONS (*continued*).  
(Item 2 on the Agenda.)

The CHAIRMAN explained that the Assembly's decision contained in Part IV of Resolution I<sup>1</sup> did not appear to apply to the Conventions negotiated under the auspices of the Communications and Transit Organisation. Nevertheless, as it was stated that "the above rules shall be communicated to the technical organisations of the League of Nations . . ." the Committee had to examine the question. It was obvious that, if the procedure contained in points 1 to 7 of Part IV were applied literally, considerable delays would occur in the preparation of the general Conventions negotiated under the auspices of the League of Nations. As the Committee did not know exactly the Assembly's intentions in adopting this procedure, the Chairman had requested Mr. McKinnon Wood, who had taken part in the work in the Assembly, to state the reasons of the decision in question.

Mr. McKinnon WOOD, Counsellor, Legal Section, recalled that, in 1929, the Assembly had decided, on the proposal of the First Committee, to set up a special committee to consider why certain Conventions were only ratified after a long delay. In certain cases, the difficulties were perhaps due to the lack of sufficient preparatory work. The first Hague Conference for the Progressive Codification of International Law had already pointed out that certain very complex questions had not received sufficient diplomatic preparation and that it was therefore impossible for the Governments to agree immediately to the adoption of the Conventions. The Hague Conference had therefore recommended a more complete and thorough study of draft Conventions.

It was a consequence of this recommendation that the Sub-Committee specially appointed by the First Committee of the Assembly to study the question of the ratification and signature of Conventions concluded under the auspices of the League of Nations had prepared the standard procedure which had been adopted by the Assembly and was now submitted both to the technical organisations of the League of Nations and to the Governments.

Mr. McKinnon Wood pointed out that the First Committee did not wish to impose any procedure on the organisations of the League, and that it had desired to consult them as to the rules which it had laid down. This method being regarded as the normal method, the Assembly could always, on the proposal of a competent body, adopt a shorter and simpler procedure by eliminating certain stages in the procedure at present proposed.

The First Committee had not been thinking particularly of the Advisory and Technical Committee, which, owing to its organisation, was covered by the paragraph of the report which mentioned a special procedure. The Committee might state that this clause was applicable to it, and this statement might be communicated to the members of the Assembly.

Mr. McKinnon Wood admitted that the method proposed by the Assembly was somewhat cumbersome, but it might be amended and pruned later. For the moment, it served a useful purpose, since the Assembly wished to be sure that the preparation of the general Conventions negotiated under the auspices of the League of Nations was carried out as thoroughly as possible, and that the time and money expended should not be wasted.

M. SEELIGER proposed that the Committee should state that, while recognising the necessity of long and minute preparation in order to avoid failures and unnecessary expense, it preferred to follow the procedure which it had hitherto adopted and which had already given excellent results.

Sir John BALDWIN thought that the Advisory and Technical Committee should simply state in a resolution that its rules of procedure provided all the guarantees which the Assembly regarded as desirable for the drawing up of general Conventions.

The CHAIRMAN considered that the resolution should relate to three chief points :

(1) The procedure recommended by the Assembly did not apply *ipso facto* to the Communications and Transit Organisation ;

(2) The procedure that this Organisation was in the habit of applying provided guarantees of the kind required by the Assembly ;

(3) The Assembly's attention should be drawn to the considerable delays which would inevitably be involved by the application of the preparatory procedure laid down in Part IV of its resolution of October 3rd, 1930.

The Chairman asked the Secretariat to prepare a draft resolution taking these various points into consideration.

XVII. FINAL AGENDA OF THE FOURTH GENERAL CONFERENCE ON COMMUNICATIONS AND TRANSIT :  
PROPOSALS OF THE INTERNATIONAL CHAMBER OF COMMERCE.  
(Item 7 on the Agenda.)

The CHAIRMAN mentioned the following questions which would figure on the agenda of the Conference.

(1) Report on the work of the Advisory and Technical Committee for Communications and Transit ;

<sup>1</sup> See document C.622.M.244.1930.V.

- (2) Report submitted by the Secretary-General of the League of Nations on the measures taken in execution of the decisions of the previous Conferences ;
- (3) Renewal of the membership of the Advisory and Technical Committee for Communications and Transit ;
- (4) Steps to be taken in case of grave occurrences of general character affecting routes of communication ;
- (5) Calendar : examination of the expediency from an economic and social standpoint of :
  - (a) Fixing movable feasts ;
  - (b) Simplifying the Gregorian calendar ;
- (6) Possibly, problems of the transport of agricultural products ;
- (7) Other questions which might be indicated by the Council or the Assembly.

*Proposals of the International Chamber of Commerce.*

M. NORDBERG (International Chamber of Commerce) asked if it was possible to place on the agenda of the fourth General Conference on Communications and Transit the question of the negotiability of transport documents. The International Chamber of Commerce had outlined the position of this question in a report which would be distributed, and it thought the question sufficiently ripe from the banking and economic standpoints for it to be possible to proceed from words to acts.

The SECRETARY-GENERAL OF THE COMMITTEE outlined the present position of this question. The International Chamber of Commerce had undertaken very important studies in connection with the institution of a negotiable transport document ; these studies had been taken up in another form by the International Railway Union, whose work on this question had not yet been completed.

For its part, the Transit Committee had appointed a Committee on Negotiable Transport Documents, which had held a first meeting to endeavour to reconcile the views of the International Chamber of Commerce with those of the International Railway Union. In response to the wishes of these two Organisations, the Committee on Negotiable Transport Documents would have to be summoned again in the autumn in order to consider whether an agreement between the two points of view was possible. The parties were already agreed, however, that the question would have to be submitted to the Conference for the Revision of the Berne Convention, which was to be held in 1933. The Secretary-General of the Committee therefore doubted whether it was necessary to place this question separately on the agenda of the Fourth General Conference. When the report submitted by the Advisory and Technical Committee was examined, there would be an exchange of views which would provide an opportunity of approaching the question. It would even be an advantage if, in the present state of the question, this exchange of views remained very general.

M. NORDBERG pointed out that the International Chamber of Commerce had already prepared a supplement to the Berne Convention as an Annex to its report.

The SECRETARY-GENERAL OF THE COMMITTEE informed the Committee that, in the same connection, he had received, in the name of the International Shipping Conference, a letter raising the question of barriers to maritime navigation and announcing that a table of these various barriers would be submitted to the next Conference. The same remarks as to the report on barriers applied to the question of the negotiability of transport documents.

Mr. Maurice HILL (International Chamber of Commerce) said that the International Chamber of Commerce took a special interest in the measures adapted in execution of the decisions of previous conferences. It thought that the next General Conference on Communications and Transit might study the steps to be taken to ensure a more complete ratification of the different Conventions which had already been concluded in regard to transit, maritime law, Customs formalities, etc. The ratification of these Conventions was far from being complete, and, as a result of the resolutions adopted at Stockholm and Amsterdam and already communicated to the Advisory and Technical Committee, the Congress of the International Chamber of Commerce, held at Washington at the beginning of May 1931, had adopted the following resolution :

*“Resolution No. 15 : International Maritime Conventions.*

“The International Chamber of Commerce ;

“Whereas many international Conventions of value to international commerce and shipping have not been ratified by a sufficient number of countries, and

“Whereas this state of affairs may seriously jeopardise confidence in the effectiveness of international agreements ;

“Urges its national committees and organisation members of the International Chamber of Commerce to do everything in their power that these Conventions may not remain dead letters but be effectively enforced by all maritime countries.”

Mr. Hill added that the International Chamber of Commerce, remembering that it had submitted a report on trade barriers to the Economic Conference of 1927, and that this report had been adopted as an official document of the Conference, had prepared a fresh report dealing with special cases of barriers to maritime navigation. This report, which had been adopted by the

Washington Congress, was now submitted to the League of Nations, and the International Chamber of Commerce proposed that it should be adopted on the same footing as the previous report—*i.e.*, as an official document of the next general Conference. This report on the barriers to maritime navigation contained, in principle, nothing new. It only drew attention to the cases in which a stricter application of Conventions was desirable, these cases being grouped under the three following heads :

- (1) Flag discrimination ;
- (2) Customs and consular difficulties ;
- (3) Sanitary requirements.

It was therefore essentially a compilation of definite facts.

In conclusion, Mr. Hill proposed, on behalf of the International Chamber of Commerce :

“(1) That the question of the application of international Conventions of value to commerce should figure on the agenda of the Fourth General Conference on Communications and Transit ;

“(2) That the report prepared by the International Chamber of Commerce on this point should be adopted as an official document of the Conference ;

“(3) That the delegates to the Conference should redouble their efforts in their respective countries to ensure the ratification of those Conventions which had not yet been ratified and the effective enforcement of the Conventions which had already been ratified.”

The CHAIRMAN postponed the continuation of the discussion to the next meeting in order to give the members of the Committee an opportunity of forming an opinion on Mr. Hill's proposals.

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### THIRD MEETING.

*Held on Friday, May 29th, 1931, at 4 p.m.*

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*Chairman : M. Silvain DREYFUS.*

*Present : All the persons attending the previous meeting, with the exception of M. Rossetti.*

#### XVIII. FINAL AGENDA OF THE FOURTH GENERAL CONFERENCE ON COMMUNICATIONS AND TRANSIT : *(continued)*. PROPOSALS OF THE INTERNATIONAL CHAMBER OF COMMERCE *(continued)*.

*(Item 7 on the Agenda.)*

The CHAIRMAN reminded the Committee that the International Chamber of Commerce had communicated to some of its members a pamphlet entitled “Barriers to Maritime Navigation”, and had asked that the proposals put forward in this pamphlet should be placed on the agenda of the Fourth General Conference.

M. SCHLINGEMANN had had the request of the International Chamber of Commerce communicated to him by a Netherlands shipping association. He saw nothing but advantages in laying this question before the Conference. He wondered, however, whether the question was ripe for examination by the General Conference. To study it, the representatives of the States invited to the Conference would have to be accompanied by experts. He saw no objection, however, to the Conference considering the problem and, if necessary, instructing the Advisory and Technical Committee to deal with it. As regards the procedure to be adopted in this connection, he thought it might be left to the Secretary-General of the Committee.

M. DE VASCONCELLOS recognised that this was an important question, but required preliminary study. It would be necessary, in particular, to hear the opinion of the Governments. He had no objection to its being discussed at the Conference, and to the International Chamber of Commerce submitting its document to the latter, on condition that the question was not formally placed on the agenda.

M. SEELIGER had also had the request of the International Chamber of Commerce notified to him through the German shipowners. In his opinion, the near approach of the General Conference precluded the placing on the agenda of all the questions raised. He supported the opinion expressed by M. de Vasconcellos. This was a problem which had not yet been studied, so the General Conference could not usefully deal with it and would consequently refer the question to the Advisory and Technical Committee. The latter might therefore take it up direct.

Sir John BALDWIN emphasised the dangers involved by the slowness of the proposed procedure. The members of the Committee were themselves experts, or could in any case be accompanied by specialists, if need be. In this particular case, it was chiefly a question of common sense for

which no experts were needed. The Advisory and Technical Committee should be a guide to public opinion and use its influence to put an end to acts injurious to trade. In his opinion, the Committee might very well agree to the request of the International Chamber of Commerce and accept the pamphlet submitted by the latter as a document for the Conference. It could also summon the Permanent Committee for Ports and Maritime Navigation before the Conference, lay the question before it, and ask it to pronounce on the adoption of the document as a whole or of any part of the proposals. In any case, he was against ruling out this question for purely formal reasons.

The SECRETARY-GENERAL OF THE COMMITTEE recalled the fact that the Committee had only proposed to place on the Conference's agenda questions which it had studied and which were capable of legal decisions on the basis of drafts prepared by it. This was not the case with regard to the proposal of the International Chamber of Commerce. In his opinion, they might perhaps adopt the following procedure. The Committee would officially inform the Governments that the International Chamber of Commerce, which had been invited, in accordance with the provisions of the Statute, to take part in the work of the General Conference, had notified the Advisory and Technical Committee of its intention to instruct its representatives to raise, on the one hand, the question of negotiable documents and, on the other, that of barriers to maritime navigation. With reference to the latter question, it would be mentioned that the International Chamber of Commerce had submitted to the Committee a document which would be attached to the letter sent to the Governments. The latter would thus know that the problem in question might be raised during the general discussion.

The General Conference, which had a much wider composition than the Committee, could thus give directions which would be very useful for the further study of the question by the Permanent Committee for Ports and Maritime Navigation. The Secretary-General of the Committee therefore suggested that, without placing the question on the agenda of the Conference in a separate item, the proposals of the International Chamber of Commerce should be officially communicated to the Governments on the Chamber's responsibility.

M. ITO was also in favour of giving the General Conference an opportunity of discussing the question in the circumstances suggested by the Secretary-General of the Committee.

M. DE VASCONCELLOS expressed a similar opinion. He could not agree to the idea of placing on the agenda a question dealt with in a document with which he was not sufficiently acquainted.

M. SINIGALIA shared Sir John Baldwin's opinion. A conclusion must be arrived at as rapidly as possible. Hence he thought it essential that the question should first be laid before the Permanent Committee for Ports and Maritime Navigation. The latter could study the problem and submit definite proposals to the Conference.

The SECRETARY-GENERAL OF THE COMMITTEE doubted whether it would be any good summoning the Ports Committee before the Conference. Questions, and even particular cases, were involved which concerned certain Governments, and it was impossible to study them in the absence of the States concerned. For this reason, he thought it preferable to take advantage of the Conference, where a large number of countries were represented, to make a preliminary study of the question. The majority of the Governments mentioned in the document in question not being represented on the Committee for Ports and Maritime Navigation, the latter would be obliged to await the replies of these Governments. The General Conference would therefore obtain better results than the Ports Committee could hope to at its first session.

Mr. Maurice HILL (International Chamber of Commerce) realised the difficulty presented by the examination of particular cases in the absence of representatives of the countries concerned. But the same difficulty had arisen in the International Chamber of Commerce, and the latter had consulted the countries concerned through the National Committees. Could not the League of Nations adopt the same procedure—*i.e.*, communicate this report to the Governments concerned—in order to obtain their observations? The competent Committee would thus possess a sufficient documentation and could submit definite proposals to the Conference. The latter only met every four years, and the International Chamber of Commerce wished to be supported in the work it had undertaken by the moral authority of the Conference. It wished to avoid the delay of four years which would occur if the next Conference could not deal with the question.

The SECRETARY-GENERAL OF THE COMMITTEE added that any Government which desired to communicate observations before the Conference could do so. The observations would be transmitted to all the other Governments.

The procedure he had suggested seemed to him the simplest and the most expeditious. It did not bind the Advisory and Technical Committee and would enable the Governments to prepare for the Conference and to give their delegates the necessary instructions.

Sir John BALDWIN was prepared to support the procedure suggested by the Secretary-General of the Committee.

He regretted, however, that, in the case of questions like the present one, which were of considerable practical importance, the Advisory and Technical Committee could not deal with them immediately and direct. In his opinion, it might perhaps be necessary to amend the regulations on this point.

The SECRETARY-GENERAL OF THE COMMITTEE observed that there was nothing to prevent the problem being immediately laid before the Committee for Ports and Maritime Navigation, but this particular case involved a series of facts affecting the authority of often distant

Governments. The procedure he had suggested seemed to him to be the most expedient in giving practical results.

M. SEELIGER supported the suggestions of the Secretary-General of the Committee, but he feared that the Conference would not be able to do very much, since the delegations would have to include experts on the question, and the Governments concerned would perhaps hesitate to incur this fresh expense.

*The suggestion of the Secretary-General of the Committee was adopted.*

#### XIX. THE QUESTION OF THE TERRITORIAL SEA. (Item 3 on the Agenda.)

The CHAIRMAN read the following main passages in the Council resolution (see Annex 9) :

“I. The Council invites the Organisation for Communications and Transit to follow in a general manner the development of the problem of *codification of the international law relating to the territorial sea* with a view to presenting recommendations to the Council on the subject when it finds it possible to do so.

“II. The Council refers for consideration to the Organisation for Communications and Transit the recommendation formulated by the Conference concerning inland waters—namely, that the Convention on the International Regime of Maritime Ports signed at Geneva on December 9th, 1923, should be *supplemented* by the adoption of provisions regulating the scope of the *judicial powers* of States with regard to vessels in *inland waters*.”

The Chairman proposed to examine these two points in succession.

##### *Point I.*

The SECRETARY-GENERAL OF THE COMMITTEE recalled the partial failure of the attempt made by the Hague Conference with a view to the codification of international law in regard to territorial waters. After this failure, the Governments had been asked for information, and certain replies had already been received. The Communications and Transit Organisation would therefore have to centralise the documentation and ask that the question should be taken up again when it offered prospects of success. The Advisory and Technical Committee might perhaps refer the resolution to its Legal Committee and ask the latter to submit a preliminary report on the difficulties which had prevented the conclusion of an agreement, as well as suggestions as to the procedure which might hasten the moment when an agreement could be concluded. The difficulties at the Conference had been due, not to differences of legal doctrine, but to conflicts of interests.

Sir John BALDWIN was surprised that, in these circumstances, the question was being referred to the Legal Committee. The questions at issue were points of fact which were mainly of importance to the different countries and with which the jurists, in his opinion, were quite incompetent to deal.

The SECRETARY-GENERAL OF THE COMMITTEE replied that he had proposed the Legal Committee because none of the permanent committees of the Organisation seemed to him to have the necessary general competence. If the Advisory and Technical Committee thought it preferable, they might set up a very small committee of three or four members who might go into the different aspects of the question and determine the difficulties to be solved.

M. DE VASCONCELLOS pronounced in favour of a small committee.

The CHAIRMAN said that, if this solution were adopted, the Committee's first task would be to bring out the points which had prevented an agreement being reached. The Committee would first define the difficulties and would then see if recourse should be had to certain experts to solve them. The Advisory and Technical Committee might perhaps authorise its Chairman to add competent advisers to the small committee in case of need.

*It was decided to refer the question to a small committee, whose members would be appointed by the Chairman of the Committee.*

##### *Point II.*

The SECRETARY-GENERAL OF THE COMMITTEE pointed out that this question was different from the previous one. They had, first of all, to decide whether the Convention on the International Regime of Maritime Ports ought to be supplemented ; and, secondly, if the reply to the first question was in the affirmative, they had to consider what steps should be taken for this purpose.

As regards the first question, the Secretary-General of the Committee pointed out that the Convention in question had been adopted after long and laborious discussions. It had already been ratified by a certain number of States and perhaps it would be a pity to amend it now. In his opinion, it would be preferable to consider an additional agreement. They could decide later whether this additional agreement would be open only to the signatories of the original Convention or whether it would constitute a separate Convention.



As regards procedure, they might perhaps set up a small committee whose members would be appointed by the Chairman of the Advisory and Technical Committee, the Chairman of the Permanent Committee on Ports and Maritime Navigation and the Chairman of the Committee on Inland Navigation.

The CHAIRMAN said that they ought to make quite sure of the exact meaning of the expression "inland waters", which appeared in the same sentence as the words "maritime ports".

The SECRETARY-GENERAL OF THE COMMITTEE replied that by "inland waters" was meant all that was neither the open sea nor the territorial sea. All maritime ports were situated in inland waters.

Sir John BALDWIN would have liked the discussion to be adjourned, as he was awaiting documents on the subject. He did not, however, oppose the provisional adoption of the Secretary-General's suggestion, but he reserved the right to revert to the point should the documentation he was going to receive demand it.

*Sir John Baldwin's reservation was noted.*

*The proposal of the Secretary-General of the Committee was adopted.*

XX. UNIFICATION OF TRANSPORT STATISTICS : REPORT OF THE JOINT COMMITTEE OF THE ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT AND OF THE INTERNATIONAL INSTITUTE OF STATISTICS.

(Item 9 on the Agenda.)

The CHAIRMAN recalled that, at its second session, which took place from January 19th to 21st, 1931, the Mixed Committee had studied successively :

(1) The determination of the conditions in which it would be possible to distinguish currents of transport according to provenance and destination, and the definition of districts, regions and groups ;

(2) The nomenclatures to be used for the classification of goods ;

(3) The possibility of eliminating from statistics transport over a short distance or of small weight ;

(4) Standard tables to be adopted for statistics of the movement of goods ;

(5) Standard tables to be drawn up for technical and administrative statistics (railways, inland navigation, maritime navigation).

The Advisory and Technical Committee and the International Institute of Statistics would have to agree as to the advisability of a third session of the Mixed Committee.

The Chairman considered that, for the moment, this report<sup>1</sup> was communicated to the Committee simply for purposes of information.

M. SINIGALIA thought the normal end of the Committee's work would be the summoning of a general conference to consider the adoption of a convention on statistics. They would have to submit to this conference proposals having some chance of being accepted. Hence he thought it would be well to examine the report laid before the Committee.

He recalled the fact that the work had been begun by a Committee of Experts appointed by the Advisory and Technical Committee. The former had drawn up proposals and it had then been thought expedient to ask the International Institute of Statistics for its opinion and assistance. The Joint Committee then created had modified the proposals of the Committee of Experts on some points. As regards the statistics of transport by rail and inland navigation, he mentioned, for example, that the experts had proposed that the statistics should be compiled for transport between each district of a given country and groups of districts of other countries. The Mixed Committee now asked that for each of the economic districts of one State, statistics should be prepared with regard to its relations with each of the other districts of that State and with each of the districts of the other States. This new proposal considerably increased the work to be done, and therefore needed careful consideration.

M. Sinigalia also wished for some explanation of the draft nomenclature in Annex 5 of the Report of the Joint Committee. It contained three lists : List A, which had 118 headings ; List B, with 51 headings ; and List C, with 21 headings. The Joint Committee thought it desirable that all countries should adopt List A, or at any rate List B, it being understood, however, that only List C would be imposed as a compulsory minimum. He did not see how the work would be appreciably lightened by the adoption of List C. To compile statistics under the headings of List C, it would also be necessary to begin by establishing them product by product, according to the headings of List A. Take, for example, the case of cereals. A country would be obliged to ascertain all the data relating to transport in order to give the total for cereals. The amount of research work therefore remained much the same as if the statistics were to be given in detail.

M. ROMEIN, member of the Communications and Transit Section, admitted that, in both cases, the whole sphere of transport would have to be covered. There seemed to be no doubt, however, that it was much simpler to classify goods under twenty-one headings than under a hundred and eighteen.

<sup>1</sup> See document C.C.T./I.I.S. 2 (copies in French available only).

With regard to the first question raised by M. Sinigalia, M. Romein said that the wording was perhaps not sufficiently clear. But he emphasised that the report reproduced the conclusions of the different sections of the Committee for the Unification of Transport Statistics. He added that the latter Committee had not yet submitted its general report, because it was endeavouring to put the result of its discussions into the form of concrete proposals. These proposals would consist, on the one hand, of provisions for draft conventions and, on the other, of simple recommendations. The Committee hoped to be able to submit its report to the next session of the Advisory and Technical Committee, but the Secretariat had not wished to delay the transmission of the Joint Committee's report.

M. SINIGALIA disputed the assertion that nothing had been changed in the experts' proposals. As an example, he mentioned the fact that, in the list of statistical regions (Annex 3 of the report), the experts had divided Italy into Eastern and Western Italy, the boundary being at Taranto. In the Joint Committee's report the limit was now at Reggio di Calabria.

M. ROMEIN, member of the Communications and Transit Section, pointed out that neither the Committee for the Unification of Transport Statistics nor the Advisory and Technical Committee was bound by the Joint Committee's proposals.

M. SINIGALIA also observed that, while for certain products a new division into several headings had been adopted, other headings constituted unsatisfactory groups—for example, No. 114 of List A (vehicles, their motive apparatus, and other spare parts), which ranged from ships to carts. He doubted whether a list established on this basis could be of any value for statistical purposes. He reminded the Committee that Governments also published internal statistics. He asked whether as much consideration as possible had been given to methods already followed in order to avoid the work with regard to internal statistics being completely changed or materially increased as a result of the modifications introduced for international purposes. Statistical work was very heavy, and any changes would involve great difficulties.

M. ROMEIN, member of the Communications and Transit Section, replied that they were not considering statistics of an international character. What was desired was to establish uniform methods for the compilation of national statistics in order to render them comparable. The achievement of uniformity necessarily involved certain changes. There was one particularly interesting category among the statistics considered—namely, economic statistics relating to transport. These statistics did not exist in a large number of countries, and it was proposed to create them. They would see later whether the countries were prepared to put into force different parts of the proposals. This would be a question which would be submitted to a conference and regarding which negotiations would be undertaken. The changes involved by the introduction of these statistics would naturally be taken into account.

Furthermore, M. Romein pointed out that, when the complete report of the Committee for the Unification of Statistics was ready, the whole results would have to be submitted to all the Governments before summoning a conference, so as to have the opinion of the different countries, particularly on the question of the division into districts and on the new economic statistics relating to transport.

M. SINIGALIA agreed that the object was to unify the methods of national statistics, but the modifications should be as small as possible, and the statistics should give useful and precise information. M. Romein's suggestion fell in with his wishes. Since it was understood that the Governments would have the question submitted to them before the Conference met, he was satisfied, as he had intended to make a similar suggestion himself as a conclusion to the observations he had laid before the Committee.

M. SEELIGER recognised that statistics played a very great part in the economic life of countries. The work accomplished had therefore been welcomed in general in Germany. Nevertheless, he had a few observations to make.

As regards the three lists which formed Annex 5 of the Report, he said that, in Germany, it would be impossible to accept List A, which could only be regarded as a maximum list without a compulsory character.

Similarly, the list of statistical regions in Annex 3 could only be accepted as a maximum list. The compilation of statistics was already very expensive, and it would be impossible in Germany to increase the costs of this service.

Lastly, the methods proposed for inland and maritime navigation statistics relating to passengers and goods were based on an excellent idea; but these statistics would be too expensive. The programme under consideration could not be accepted to its full extent in Germany.

The CHAIRMAN said that these observations would be taken into consideration when the Governments were consulted on the general report.

M. DJOURITCHITCH pointed out that Annex 22 concerning taxes included certain economies affected by the State as a result of reductions of prices agreed to under monopoly or concession contracts. He did not think it logical to class with taxes the charges undertaken in this connection by the railway administrations.

M. LUKAČ, member of the Communications and Transit Section, said that they had only reproduced the tables submitted by the International Railway Union.

The CHAIRMAN emphasised that the report of January 21st, 1931, was not intended to be final. It had only been submitted to the Committee in order to inform it of the progress of the work. The decision would be taken later when they had the Statistical Committee's report, after consultation with the Governments. He proposed that a resolution should be drafted to the effect that the Committee noted the communication made to it.

M. SINIGALIA hoped that the resolution would specify that the results of the work would be submitted to the Governments before the Conference met.

M. ROMEIN, member of the Communications and Transit Section, thought that, before doing this, it would be more logical to await the report of the Committee for the Unification of Statistics.

As regards the joint Committee's report, he drew the Advisory and Technical Committee's attention to the fact that some decision ought to be taken on the recommendation made on page 5—namely :

“ . . . as regards railway transport in particular, the Joint Committee would be glad to know the views of the International Railway Union . . . in the event of the latter being willing to undertake such a study.”

If the Advisory and Technical Committee shared this view, they might communicate the report to the International Railway Union, asking it for its opinion on statistics relating to the transport of goods by rail, should it see fit to undertake a study of this question. The International Railway Union's reply would form part of the general documentation on the subject.

*The Committee approved M. Romein's suggestion.*

*It noted the report communicated by the Joint Committee.*

XXI. RESULTS OF THE CONFERENCE FOR THE UNIFICATION OF BUOYAGE AND LIGHTING OF COASTS  
HELD AT LISBON FROM OCTOBER 6TH TO 23RD, 1930.  
(Item 12 on the Agenda.)

The CHAIRMAN recalled that the Conference held at Lisbon had drawn up the following instruments :

- (1) Agreement concerning maritime signals ;
- (2) Agreement concerning manned lightships not on their stations ;
- (3) Recommendations on lighthouse characteristics and radio-beacons ;
- (4) Final Act.

The Conference had decided to postpone the draft for a partial regulation of buoyage. On pages 49 and 50 of the records of the Conference,<sup>1</sup> however, there was a declaration signed by twelve delegations stating that, should a disagreement persist with regard to certain important buoyage questions after the period of postponement provided for by the Conference, these delegations would conclude a regional agreement, in which they would participate on the basis of the St. Petersburg Conference.

M. SINIGALIA expressed the hope that every effort would be made to conclude an agreement on the partial regulation of buoyage as soon as possible.

M. SEELIGER thought that, if it was impossible to secure a universal solution, a Convention might perhaps be concluded between a limited number of States—for example, those of Europe and Africa.

Sir John BALDWIN observed that, at the Lisbon Conference, the chief problem had not been effectively solved, but the foundations had been laid for subsequent work. The ideal was a universal agreement. If this could not be reached immediately, they might consider a division by continents. It was not impossible, however, that a universal solution would be reached at the next Conference.

The SECRETARY-GENERAL OF THE COMMITTEE thought that they ought to adopt at least a formal resolution on this subject. The Lisbon Conference must resume its work and the Council would therefore have to decide to invite the Governments to meet again at the Committee's request. Perhaps they could decide at the present session to make this request to the Council without fixing a date, the Chairman of the Committee being left to choose the moment for transmitting to the Council the Committee's resolution asking the Council to give effect to the resolution of the Lisbon Conference.

Furthermore, to facilitate the work of the future Conference, the Committee ought perhaps to give the Chairman the necessary powers to create and summon a small preparatory committee in case of need.

Sir John BALDWIN approved the suggestions of the Secretary-General of the Committee. Naturally, if the Council decided to summon a fresh conference, preparatory work would have to be done. A small committee would have to review the situation and bring the agenda into line with the results of the work done at Lisbon.

<sup>1</sup> See document C.163.M.58.1931.VIII.

M. SINIGALIA supported the proposal to set up a Preparatory Committee.

Mr. Maurice HILL (International Chamber of Commerce) said that the shipowners energetically maintained the opinion they had expressed at the Lisbon Conference. This opinion figured in the records of the Conference, and he thought it unnecessary to repeat it here.

The SECRETARY-GENERAL OF THE COMMITTEE was glad of the statement just made by Mr. Hill, as he had not been sure whether the International Shipping Conference was represented at this session of the Committee. As this was the case, he would be obliged to inform the Committee of certain facts which had come by chance to his knowledge. He had learnt in the course of his travels in certain countries that, since the Lisbon Conference, the International Shipping Conference had asked certain national organisations to urge their Governments not to give effect to the Lisbon Conference's wish to resume its work within a certain period.

The Secretary-General of the Committee had always held that, despite the co-operation between certain organisations and the League of Nations, these organisations retained their freedom of action. In view, however, of the mutual confidence which had always characterised the relations between the Communications and Transit Organisation and the International Shipping Conference, he had been rather surprised to learn only by chance of the action taken by the Shipping Conference.

Mr. Maurice HILL (International Chamber of Commerce) thought it was perhaps necessary to summarise here the opinion expressed at Lisbon by the shipowners. The shipowners were those who used the lighthouses, and it was they who in a great number of countries furnished the funds for their upkeep. The question of unification, therefore, was of direct and vital importance to them. They had stated at Lisbon that uniformity in this direction did not seem to them necessary in practice; in fact, in certain cases unification might perhaps even increase the dangers. The shipowners had also pointed out that, in view of the economic crisis through which the world was at present passing, all unnecessary expenditure must be avoided. Nevertheless, if the Governments desired to pursue the work of unification, the International Shipping Conference would be ready to co-operate with them to bring about uniformity on the best possible basis.

The International Shipping Conference had perhaps misinterpreted what had happened at Lisbon, but it had had the impression that, as regards the principle of the necessity of unification, the question had not been settled during the general debate. The Conference had rapidly set up special committees to examine the technical questions. In these circumstances, the Shipping Conference had felt free to approach the Governments and ask them if they were really desirous of pursuing the work of unification, in view of the fact that the principal parties concerned did not consider it essential.

The SECRETARY-GENERAL OF THE COMMITTEE emphasised that he had never said that the International Shipping Conference had exceeded its rights, and that he had never wished to challenge its opinions.

He had simply wished to point out that the procedure followed in this connection had perhaps not been what the Communications and Transit Organisation was entitled to expect of the Shipping Conference.

Sir John BALDWIN agreed with Mr. Hill that the Lisbon Conference had not voted on the principle of uniformity. As regards the Conference's opinion, all that they had to go on was the declaration signed by the twelve countries who expressed their willingness to achieve unification. As regards the others, some indication of their opinion, at least at the end of the Conference, might be found in the resolution concerning the continuation of the work in connection with the unification of buoyage. This resolution had been adopted unanimously, which seemed to show that the countries which had not been in favour of unification at the beginning of the Conference had been convinced by the arguments put forward during the discussions, otherwise they would have made reservations.

In any case, the attitude of these countries would be made clear when the question of the holding of a new conference was raised. Countries which did not desire unification could reply negatively to the invitation addressed to them.

Lastly, he observed that the Secretary-General of the Committee had not disputed the Shipping Conference's rights to approach the Governments, but had simply declared himself surprised that the Advisory and Technical Committee had only been acquainted by chance with the action taken.

The CHAIRMAN proposed that the Committee should take note of the work done by the Lisbon Conference and should associate itself with the resolution adopted by the Conference with regard to the continuation of the work relating to the unification of buoyage. The Committee might authorise its Chairman to take steps to facilitate the resumption of the work within a reasonable period.

*This was agreed to.*

#### *Recommendation concerning the Band of Frequencies assigned for Radio-Beacons.*

Sir John BALDWIN drew the Committee's attention to the recommendation contained in the Final Act of the Conference regarding the band of frequencies assigned for radio-beacons. This was a very important question. The different Governments had already had this recommendation communicated to them, since they were in possession of the Final Act, but it would perhaps be well if the Committee reminded them of the question.

The SECRETARY-GENERAL OF THE COMMITTEE proposed that the Commission should decide to communicate this recommendation to the Governments parties to the Radio-Telegraphic Convention of 1927.

*This was agreed to.*

XXII. REQUEST FROM THE INTERNATIONAL RAILWAY UNION CONCERNING THE SYSTEM OF  
TRANSPORT FOR DAILY AND SIMILAR NEWSPAPERS IN INTERNATIONAL TRAFFIC.  
(Item 19 on the Agenda.)

The CHAIRMAN said that the European Conference held at Geneva in November 1929 had approved the proposals of principle put forward by the International Railway Union with regard to the transport of newspapers and periodicals by rail, in response to the recommendations adopted by the Conference of Press Experts in August 1927.

On December 9th, 1930, the International Railway Union had transmitted to the Advisory and Technical Committee the regulations adopted by the Managing Committee of the International Railway Union to give effect to the proposals of principle (see Annex 10).

The Committee was now requested to approach the Governments and ask them to accept the principle of agreements with the Customs and other State administrations with a view to the Confirmation of the draft regulations.

The SECRETARY-GENERAL OF THE COMMITTEE pointed out that, in this case, the Committee was only carrying out a decision of the Conference. He thought it would be sufficient to recall the resolution adopted by the Conference and to state that, in order to give effect to this resolution, draft regulations had been prepared by the International Railway Union, and that these draft regulations required ratification.

In reply to certain objections put forward by M. Herold and M. Grünebaum, he said that the question of the monopoly of the postal services had been discussed at length by the Conference itself and raised no difficulty.

M. SINIGALIA said that the Governments would, of course, be free to make the adoption of the regulations subject to certain conditions if they thought necessary.

*The suggestions of the Secretary-General of the Committee were adopted.*

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FOURTH MEETING.

*Held on Saturday May 30th, 1931, at 10 a.m.*

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*Chairman : M. Silvain DREYFUS.*

Present : All those who attended the previous meeting and M. Maurice Milhaud of the International Labour Office.

XXIII. ANNUAL REPORTS OF THE MEMEL HARBOUR BOARD FOR 1929 AND 1930.  
(Item 20 on the Agenda.)

The CHAIRMAN informed the members of the Committee that the Secretariat had received the reports of the Memel Harbour Board for 1929 and 1930, but that the number of copies sent was not sufficient to permit of their distribution to the members of the Committee.

Sir John BALDWIN proposed that, when the extra copies arrived, the Secretariat should draw the members' attention to the points of interest in the reports.

*Agreed.*

XXIV. QUESTIONS OF INTERNAL ORGANISATION : COMPOSITION OF PERMANENT COMMITTEES.  
(Item 23 on the Agenda.)

M. VON HEIDENSTAM was appointed a member of the Permanent Committee for Ports and Maritime Navigation in place of M. Hoernell. M. FELDMANS was appointed a member of the Permanent Legal Committee in place of M. Duzmans.

The CHAIRMAN pointed out that M. Hoernell was also Chairman of the Permanent Committee on Electric Questions. If M. von Heidenstam had no objection, the Committee might ask M. Hoernell to retain this office.

M. VON HEIDENSTAM agreed to this solution, and said that he would himself ask M. Hoernell, on behalf of the Committee, to accept this invitation.

XXV. PROGRAMME OF CLAIMS OF PROFESSIONAL MOTOR-DRIVERS (EFFECT TO BE GIVEN TO  
RESOLUTION IX OF THE COMMITTEE, FIFTEENTH SESSION).  
(Item 15 on the Agenda.)

The CHAIRMAN, after reading the above-mentioned resolution, asked the members of the Committee to go through the list of questions in the programme of claims of motor-drivers (see Annex 11) in order to see whether they agreed with the statements contained in the letter from the Director of the International Labour Office, dated February 21st, 1931 (see Annex 12), regarding the respective powers of the Labour Office and the Transit Committee to deal with the various questions raised by motor-drivers' claims. With a view to facilitating this examination, the International Labour Office had deputed one of its officials, M. Maurice Milhaud, to furnish the Committee with all necessary explanations.

The letter from the Director of the International Labour Office divided the thirty points in the programme of the motor-drivers' claims into three categories :

- (1) Questions solely within the province of the International Labour Office (items 1, 2, 4 and 19) ;
- (2) Questions with which the Labour Office was competent to deal, at any rate in part (items 3, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 20, 22, 23, 24, 26, 27, 28, 29 and 30) ;
- (3) A final category (items 11, 12, 13, 21 and 25) consisting of questions solely within the province of the Advisory and Technical Committee.

After a full examination, in which the members of the Committee and Secretariat and the delegate of the International Labour Office took part, a new division of the questions was established.

The CHAIRMAN read the new list, which, in the opinion of the members of the Committee, corresponded more closely with the respective powers of the two organisations :

- (1) Questions solely within the province of the International Labour Office (items 1, 2, 3 (a)<sup>1</sup> and 19) ;
- (2) Questions to be examined jointly by the International Labour Office and the Advisory and Technical Committee for Communications and Transit (items 4 to 14 inclusive, 16, 17, 18, 20, 28, 29, and 30) ;
- (3) Questions solely within the province of the Advisory and Technical Committee (items 3 (b),<sup>1</sup> 15, and 21 to 27 inclusive).

M. MILHAUD, International Labour Office, said that he would submit this new arrangement to the Director of the International Labour Office for his approval.

The CHAIRMAN, after thanking M. Milhaud, informed the Committee that the Secretariat would draw up a resolution to this effect. He explained that the questions solely within the province of the Advisory and Technical Committee would be referred to the Permanent Committee on Road Traffic ; those which concerned both the International Labour Office and the Transit Committee would be examined by a joint committee consisting of delegates of the International Labour Office and members of the Advisory and Technical Committee for Communications and Transit.

XXVI. INVITATION OF THE ITALIAN GOVERNMENT TO THE COMMUNICATIONS AND TRANSIT  
COMMITTEE TO BE REPRESENTED AT THE FIFTEENTH INTERNATIONAL NAVIGATION CONGRESS  
TO BE HELD AT VENICE AND ROME IN SEPTEMBER 1931.  
(Item 24 on the Agenda.)

The CHAIRMAN asked M. Seeliger to be good enough to represent the Advisory and Technical Committee at this Congress.

M. SEELIGER said that he *would be pleased to do so* and thanked the Chairman.

XXVII. NOMINATION OF REPRESENTATIVES OF THE COMMUNICATIONS AND TRANSIT  
ORGANISATION TO SERVE ON THE JOINT COMMITTEE OF THAT ORGANISATION AND THE FISCAL  
COMMITTEE FOR THE QUESTION OF FISCAL AND CUSTOMS DUTIES APPLICABLE TO NEWSPAPERS  
AND PERIODICALS.

(Item 25 on the Agenda).

M. ROMEIN, member of the Communications and Transit Section, explained that it would be the duty of the representatives of the Communications and Transit Organisation serving on this Joint Committee to support the recommendations of the European Conference on the Transport of Newspapers and Periodicals. He added that it would be a good thing if the members were to include someone thoroughly acquainted with the claims of undertakings forwarding and distributing newspapers and periodicals.

<sup>1</sup> The Committee considered it advisable to subdivide item 3 into two different items, 3 (a) and 3 (b), the former relating to insurance of the drivers and the latter to insurance of the cars.

The CHAIRMAN read the list of members of the Fiscal Committee appointed to serve on the Joint Committee. These were : M. CLAVIER (Belgium) (*Chairman*), M. BLAU (Switzerland), M. BORDUGE (France), M. DORN (Germany), M. KNEPPO (Hungary). He proposed to add to these members the following delegates of the Advisory and Technical Committee for Communications and Transit : M. GRÜNEBAUM (Austria) and M. SINIGALIA (Italy). M. SCHOELLER, Director of the Messageries Hachette, would serve on the Joint Committee as expert.

The Chairman added that this Committee would meet at Geneva on June 3rd.

*The Committee decided to appoint the persons proposed by the Chairman.*

XXVIII. DRAFT BUDGET OF THE COMMUNICATIONS AND TRANSIT ORGANISATION FOR 1932.  
(Item 26 on the Agenda.)

M. ROMEIN, member of the Communications and Transit Section, supplementing the explanations given in the note accompanying the draft budget (see Annex 13), said that the reduction of 26,000 francs under Subhead 2 was exceptional, and should not be regarded as hampering the normal work of the Advisory and Technical Committee. It was hardly likely that it would be possible to hold a Communications and Transit Conference during the first nine months of 1932 in view of the fact that the Disarmament Conference would need practically the whole of the Central Services of the Secretariat. It was even probable that no conference could be held until the first quarter of 1933. If, as a result of recent Council resolutions, the Committee was obliged to take steps which would necessitate the summoning of various new Committees, the budgetary situation would perhaps have to be reconsidered.

The reduction of 2,000 francs under Subhead 3(a) was in accordance with the general tendency to reduce printing expenses. It should be noted, however, that, if the sum given under 3(a) were added to the amount indicated under 3(b), the reduction would be found to be less considerable.

*The Committee noted the explanations furnished by the Secretariat and adopted the draft budget.*

XXIX. REPORT OF THE CHAIRMAN OF THE COMMITTEE ON THE MISSIONS CARRIED OUT BY HIM SINCE THE LAST SESSION OF THE COMMITTEE.  
(Item 27 on the Agenda.)

M. HEROLD, the former Chairman, informed the Committee that he had carried out four missions since the last session :

(1) M. Widding had been appointed a member of the Memel Harbour Board for a further period of three years ;

(2) In accordance with a request by the Council, the Chairman had appointed the members of a Committee of Experts to study the fixing of rules for the adoption of a standard horse-power measurement for aeroplane and dirigible engines. This Committee consisted of : Colonel Luigi CHIAPELLI, Director of the Organisation Division of the Italian Royal Aeronautical Staff ; Colonel Emilio HERRERA, Director of the Spanish Higher Aeronautical School ; Mr. John Jay IDE, Technical Adviser in Europe of the National Advisory Committee on Air Navigation of the United States of America ; Professor Wunibald KAMM, Professor at the "Technische Hochschule" of Stuttgart ; M. MARTINOT-LAGARDE, Chief Engineer of the Technical Aeronautical Service at the Air Ministry, Paris ; Lieut.-Colonel Mervyn O'GORMAN, C.B., Vice-President of the I.A.F. and of the R.A.C. ; Lieut.-Colonel Katsumi OTA, of the Imperial Japanese Office of the League of Nations at Paris ; Lieut.-Colonel Jarnlev PAULIČEK, Engineer, Ministry of National Defence at Prague.

The Committee's report<sup>1</sup> was submitted to the Council at its last session.

(3) The Chairman had appointed a legal expert to co-operate with the Rapporteurs of the Permanent Legal Committee for the study of the question of the codification of the law relating to communications. The expert appointed was Professor WACKERNAGEL, of the University of Bâle. The Rapporteurs of the Permanent Legal Committee were M. PILOTTI and M. HOSTIE.

(4) The Chairman had appointed the members of the Preparatory Committee for the Fourth General Conference on Communications and Transit, in regard to the question of the simplification of the calendar.

This Committee was composed as follows :

<i>Brazil :</i>	M. Affonso A. de VASCONCELLOS, nominated by the Brazilian National Committee on Calendar Reform.
<i>France :</i>	M. BERTAUT, Member of the Permanent Committee of the French National Economic Council.
<i>Germany :</i>	Dr. PLATZER, Vice-Chairman of the German National Committee on Calendar Reform.

<sup>1</sup> Document C.259.M.115.1931.VIII.

- Great Britain* : Sir Amherst SELBY-BIGGE, Bart., K.C.B., Member of the British Calendar Reform Committee of Enquiry.
- Italy* : Professor Amedeo GIANNINI, Chairman of the Italian National Committee on Calendar Reform.
- Japan* : His Excellency M. SAWADA, Director of the Imperial Japanese Office of the League of Nations.
- Poland* : Professor E. LIPINSKI, Chairman of the Polish National Committee on Calendar Reform.
- Portugal* : Commander Abel FONTOURA DA COSTA, Chairman of the Portuguese Committee on Calendar Reform.
- Sweden* : M. E. R. SJÖSTRAND, Counsellor at the Swedish Central Administration on Social Questions.
- United States of America* : Dr. C. F. MARVIN, Vice-Chairman of the United States National Committee on Calendar Simplification.
- Yugoslavia* : M. Vassa U. YOVANOVITCH, Chairman of the Yugoslav National Committee on Calendar Reform.

The members representing the National Committees of the Argentine, France, Germany, Great Britain, Italy, Portugal and the United States of America had already agreed to serve on the Committee. The acceptance of the other members was awaited.

M. ROMEIN, member of the Communications and Transit Section, added that the Committee of Experts to study the Fixing of Rules relative to the Adoption of a Standard Horse-Power Measurement for Aeroplane and Dirigible Engines had reached a unanimous conclusion, which had been incorporated in a report transmitted to the Council.<sup>1</sup>

The latter, in its turn, had transmitted the report to the various Governments.

XXX. MISCELLANEOUS COMMUNICATIONS BY THE SECRETARY-GENERAL OF THE COMMITTEE.  
(Item 28 on the Agenda.)

M. ROMEIN, member of the Communications and Transit Section, brought the following questions to the notice of the members of the Committee :

*Request of the International Life-Saving and First-Aid Association in Case of Accident to be placed under the Authority of the League of Nations.*

The Committee, at its fourteenth session, had asked M. Schlingemann to supply information as to the position of the International Life-Saving and First-Aid Association in Case of Accident, founded at Amsterdam, which had asked to be placed under the authority of the League of Nations in virtue of Article 24 of the Covenant.

This information had been transmitted to the Secretariat, and the question would be brought before the Council. As far as it was concerned, the Advisory and Technical Committee might regard this question as settled.

*Special Sub-Committee for the Study of a Principal Airways System.*

The Air Transport Co-operation Committee, at its meeting in July 1930, had decided to set up a special sub-committee for the study of a principal airways system and questions of postal transport. The Chairman of that Committee had appointed the members of the Sub-Committee, which was composed as follows : M. FISCH (*Chairman*), M. ALLARD, M. ÅNGSTRÖM, M. CHAUMIÉ, M. FILIPOWICZ, M. MOLFESE, Mr. SHELMERDINE, M. DE VEER.

This Sub-Committee had not yet held a meeting.

*Declaration of the States Parties to the Convention instituting the Definitive Statute of the Danube.*

The Council had decided to invite the States parties to the Convention instituting the definitive statute of the Danube to sign a declaration recording their common consent to the entry into force of the provisions replacing the former provisions concerning the regime of the Danube. This declaration had been signed on December 5th, 1930. A certain number of signatures had been given subject to ratification and, up to the present, the Secretariat had not been notified that the necessary ratifications had been received.

*Request from the High Commissioner of the League of Nations at Danzig.*

In accordance with the procedure laid down by the Council, the High Commissioner of the League of Nations at Danzig had asked for an opinion on certain questions concerning the regime of Polish railways in the Free City of Danzig, with special reference to the management of the railways. These questions had been examined by the Permanent Legal Committee of the Advisory

<sup>1</sup> See documents C.259.M.115.1931.VIII and C.260.M.116.1931.VIII.



and Technical Committee. The Administrative Section of the Permanent Committee for Transport by Rail had also given its opinion on certain technical aspects of the question. In a letter dated October 6th, 1930, the Secretary-General had transmitted to the High Commissioner a copy of a letter dated October 4th, 1930, signed by M. Schlingemann, Vice-Chairman of the Transit Committee, communicating the reply of the Permanent Legal Committee to the questions raised by the High Commissioner. If the members of the Committee so desired, the Permanent Legal Committee's report would be communicated to them.

M. SINIGALIA expressed the desire to receive this report.

The CHAIRMAN, after consulting the members of the Committee, decided that this report should be communicated to them.

*Annual Report of the Straits Commission.*

The Secretariat had received the annual report of the Straits Commission for 1930. That report was at the disposal of the members of the Committee.

*Request from the International Confederation of Intellectual Workers relating to the Reduction of Railway Fares in Favour of Members of International Congresses.*

The Intellectual Co-operation Section of the Secretariat had received a request from the International Confederation of Intellectual Workers, asking the International Committee on Intellectual Co-operation and the Transit Committee to study the problem of the reduction of railway fares in favour of the members of international congresses proceeding to those congresses. It should be noted that, in many countries, special rates applicable to such persons were already in force.

M. HEROLD proposed that the examination of this question should be entrusted to the Permanent Committee for Transport by Rail, which would furnish the Secretariat with the necessary data to enable it to reply to the above request.

*M. Herold's suggestion was adopted.*

*Coming into force of the 1926 Convention on Motor Traffic.*

The Transit Committee, at its fifteenth session, had adopted a resolution (No. XXVI) relating to certain temporary measures to facilitate the transfer from the regime of the 1909 Convention on Motor Traffic to that of the 1926 Convention. This resolution had been communicated to the Governments concerned, a considerable number of whom had already sent their replies. All these replies were in favour of the adoption as a whole of the recommendations contained in the resolution.

The countries in question were as follows : Austria, Belgium, Brazil, Free City of Danzig, Denmark, Egypt, Estonia, Finland, Germany, Greece, Hungary, Irish Free State, Italy, Luxemburg, Principality of Monaco, Netherlands, Norway, Portugal, Roumania, Saar Territory, Siam, Sweden, Switzerland, Vatican City.

The Turkish Government had stated that it was not a party either to the 1909 Convention or to that of 1926. However, the 1926 Convention would be ratified by Turkey, and, as soon as this had been done, the Turkish Government would examine the Advisory and Technical Committee's recommendations and would take such action on them as might be necessary.

The following countries had not sent any reply : Bulgaria, Czechoslovakia, Chile, Cuba, France, Great Britain, Guatemala, India, Latvia, Lithuania, Mexico, Persia, Peru, Poland, Spain, Uruguay, Union of Soviet Socialist Republics, Yugoslavia.

*The rest of the Secretariat's statement was postponed until a later meeting.*

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FIFTH MEETING.

*Held on Saturday, May 30th, 1931, at 5 p.m.*

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*Chairman : M. Silvain DREYFUS.*

Present : All those who attended the previous meeting, with the exception of M. Rague and M. Milhaud.

XXXI. FINAL AGENDA OF THE FOURTH GENERAL CONFERENCE ON COMMUNICATIONS AND TRANSIT (*continued*) : PROPOSALS BY THE INTERNATIONAL CHAMBER OF COMMERCE (*continued*).  
(Item 7 on the Agenda.)

M. DE VASCONCELLOS said that he had read the pamphlet on barriers to maritime navigation issued by the International Chamber of Commerce, which the Committee had decided to distribute

in view of the fourth General Conference. If he had seen this pamphlet before the decision was taken, he would have made reservations with regard to the wording of certain passages. The pamphlet contained observations which, although permissible on the part of the representative of a Government, could not, he thought, be allowed on the part of a private organisation. Although he did not wish to go back on the decision taken, he hoped that the letter enclosing the pamphlet would explain that the document was issued by the International Chamber of Commerce, and that the Committee could take no responsibility for its contents.

XXXII. REPORT ON THE LEAGUE WIRELESS STATION.  
(Item 22 on the Agenda.)

M. DE VASCONCELLOS (Rapporteur) said that his report had been distributed (see Annex 14). He had nothing to add to it. The sole purpose of the document was to inform the Committee of the present position. The expenditure which had already been incurred, or which would be incurred later, was essential expenditure. The question would be settled by the Fourth Committee of the Assembly.

*The Committee noted M. de Vasconcellos' report, no observations being made.*

XXXIII. CO-OPERATION BETWEEN THE NATIONAL GOVERNMENT OF CHINA AND THE  
COMMUNICATIONS AND TRANSIT ORGANISATION.  
(Item 21 on the Agenda.)

The SECRETARY-GENERAL OF THE COMMITTEE said that the members had received a document (see Annex 15) containing :

(1) A telegram from the National Government of China, dated January 7th, 1931, and the reply of the Secretary-General of the League of Nations ;

(2) The correspondence exchanged between the Minister of Finance of the National Government of China, the Vice-Chairman of the Executive Yuan and the Director of the Communications and Transit Section of the League of Nations ;

(3) A telegram addressed by the National Government of China to the Secretary-General of the League of Nations and suggestions thereupon transmitted to the Council by the latter.

These suggestions had been approved by the Council at its sixty-third session on May 19th, 1931.

The Secretary-General of the Committee briefly recalled the circumstances in which he, together with Dr. Rajchman, Director of the Health Organisation, and Sir Arthur Salter, Director of the Economic and Financial Organisation, had been asked to visit China. The telegram of invitation from the National Government of China expressly stated that the object of his visit would be to discuss problems of inland waterways and land reclamation. As the outcome of his interviews with the members of the Government at Nanking, his mission had been enlarged and extended to the examination of other problems, all of a strictly technical nature. During this brief visit, it had not been possible for him to express any opinion as to the substance of the questions raised and his task had been confined to an examination of the questions of immediate interest to the National Government of China and the means of establishing closer co-operation between the Transit Organisation and the National Government for the examination of those problems. This latter part of his task had been expressly mentioned at the end of the telegram of invitation, which stated :

“The Chinese Government hopes that, as a result of this preliminary consultation, practical collaboration with the several technical organs and experts of the League may, on examination, be found feasible.”

He had discussed with the members of the Chinese Government and the directors of the service concerned the questions in regard to which co-operation between the Chinese Government and the Transit Organisation could speedily be established and the practical form which this co-operation might take. This would be a similar task for the Communications and Transit Organisation to that already accepted by the Health Organisation, which had been working in China for the past year. The result of this consultation was to be found, as regards the Transit Organisation, in the correspondence exchanged between the Director of the Transit Section and the Minister of Finance of the National Government, and, as regards co-operation with the League's technical organs as a whole, in the request submitted by the Government of China to the last session of the Council.

He wished to emphasise that this co-operation was of an exclusively technical character and that during his visit to China he had examined no international or political questions whatsoever. The exchanges of view had been confined exclusively to the programme of economic reconstruction.

In the first place, he would like to say that he had received a most cordial reception from the members of the Chinese National Government and the representatives of all the services with which he had had to deal. Everyone had been most anxious that effective collaboration should be established, and this had made it possible for him in the very short time at his disposal to accomplish useful work. He wished to express his deepest gratitude to the National Government of China, and asked the members of the Committee to associate themselves with this tribute.

The National Government of China was at the present time devoting its attention to the economic reconstruction of the country. For this purpose, it had set up a National Economic Council, which would doubtless deal first of all with questions for which a practical solution could be found in a relatively short space of time. It was the task of that Council to co-ordinate the Government's efforts, to classify the problems and to organise the first essential measures. The Government had asked for the co-operation of the League's technical organs in drawing up the programme and with a view to facilitating the work of the National Economic Council. The task of the Transit Organisation in this connection could not be precisely defined for the moment, but the members of the Committee could not fail to realise its importance.

It appeared to be the intention of the National Government of China, in the first place, to confine its efforts to a few definite problems and to take all the necessary measures for their solution rather than to draw up straightaway a vast scheme the immediate application of which could not be realised immediately. By degrees, as results were obtained and experience was acquired, a more ambitious programme might be conceived; the application of the initial restricted programme would serve as an experiment and would help to train the technical and economic services of the Chinese Government and to fit them for their work, while it would also help to educate both specialists and public opinion.

The general form of the collaboration of the Chinese Government with the Transit Organisation and the other technical organisations of the League would be as follows: according to the method already employed by the technical organisations, experts would be sent to China; an official of the Secretariat would proceed to Nanking and would stay there for a certain time to help to organise the National Economic Council and to establish the reconstruction programme. As regards the Communications and Transit Organisation, an official would also be detached to Nanking and would help to organise the Technical Civil Engineering Field Station. The Committee would realise that these arrangements would be inadequate; they merely provided for liaison with the Chinese Government on the spot. The Advisory Committee would also have to organise its work in this connection at Geneva so as to carry out the tasks entrusted to it as efficiently as possible. He would come back to this matter later.

The items which already figured on the programme of reconstruction contemplated by the National Government and in regard to which it had requested the co-operation of the Transit Organisation, were as follows:

- (1) The execution of the scheme for the Hwai River improvement submitted to it by the Hwai Commission;
- (2) The organisation of a Technical Civil Engineering Field Station.

The Chinese Government would also ask the experts sent in connection with the improvement of the Hwai to carry out a preliminary enquiry into the problems now under consideration by the North China River Commission, and it was that Government's desire that the experts in question should be so chosen that they, or at least one of them, would be in a position to be consulted on the technical aspects of a proposal relating to harbour development in the area of Greater Shanghai. Together with the improvement of the Hwai, these two questions formed a group of well-defined problems in regard to which the essential task of the Committee was to procure experts.

The question of the organisation of a Technical Civil Engineering Field Station was of a more general nature. The terms in which it had been defined were possibly somewhat vague. The National Government of China wished to possess an institution which would train the civil engineers at its disposal and help them to acquire a knowledge of local conditions. It was the desire of the Chinese Government that the directors or teaching staff of the proposed station should help in carrying out the work provided for in the initial programme of reconstruction and in training the young engineers, who would themselves participate in that work. The station would thus serve both as a practical training school and also as the nucleus of a national corps of civil engineers. The Communications and Transit Organisation had been called upon to co-operate in this task, which was a very important one. In this connection, the Transit Organisation might base its methods on those already employed by the Health Organisation in China in carrying out a similar task.

As regards the technical problems connected with the improvement of the Hwai and similar questions in regard to the rivers of North China and the Port of Shanghai, the Advisory Committee was not called upon, at all events at its present session, to examine the substance of those problems. It had therefore not been necessary to invite the Chinese Government to be represented at the present session. However, he would like to give the Committee a general outline of those problems.

The Secretary-General of the Committee then referred briefly to the chief factors of the problem of the improvement of the Hwai and the various changes in the river's course. Two lakes had now been formed near what was formerly the mouth of the river. A vast area of cultivable land had been lost by the formation of the two lakes in question, while the river had also from time to time caused floods, which, in 1921, covered 11,000 square kilometres. The improvement of this situation was both an economic and a humanitarian question, which had for a long time past engaged the attention of the Chinese Government. From 1912 to 1926, on the initiative of a Chinese industrialist, very definite investigations had been undertaken, including, in particular, topographical surveys. These investigations had been pursued by various organisations, which had drawn up schemes. He would mention the efforts of the American Red Cross in 1914, the report and scheme drawn up in 1920 by an American engineer, and, finally, the enquiries organised in 1921 by the Famine Relief Commission. In 1929, the Chinese Government had set up a Hwai River Commission, which had prepared a very detailed scheme, providing in general for the drainage of one of the lakes and the reclamation of the fertile land; the protection of the northern area against

floods ; the checking of some of the floods by means of dams ; and the diversion of the Hwai towards the Yang-Tse-Kiang.

The Hwai River improvement scheme had been included in the initial reconstruction programme drawn up by the Chinese Government, both because this improvement would have very important economic effects and because precise data and a well-thought-out scheme were already available. From a financial point of view, the capital involved would not be very considerable. It was somewhat difficult to form an exact estimate. It was thought, however, that the cost would be between 30 and 50 million silver dollars, and that the value of the land reclaimed or protected against floods would permit the recovery of, at any rate, a very large portion of that expenditure.

The work in connection with the rivers of Northern China covered the five rivers running into the sea in the neighbourhood of Tientsin. The hydraulic system of one of those rivers was very irregular and it often caused floods. In 1918, 45,000 square kilometres had been flooded and six million inhabitants reduced to a state of famine, while the floods had even reached the town of Tientsin. The Government had then set up a Commission, which had carried out enquiries and had completed the elaboration of a scheme in 1925. This scheme provided for the building of a dam and the formation of a new artificial delta either in the northern or the southern region. The Commission was in favour of the formation of this delta in the south.

In 1928, the North China River Commission had submitted a preliminary scheme providing for a certain number of dams, but not for any deltas. After further investigations, the scheme had been modified, and it now provided for fewer dams and for the formation of a delta in the north.

There was also a question in the same region of carrying out certain work of interest to Tientsin. It was desired to take advantage of the presence of the experts in China to lay down the guiding principles of the work of the North China River Commission and to choose between the various proposals in existence.

As regards the port of Shanghai, the Chinese Government was considering, on the proposal of the municipality of Greater Shanghai, the possibility of carrying out certain development works between the International Settlement and the point where the Whangpoo flowed into the Yang-Tse-Kiang. The details of the proposal had not yet been drawn up. The Chinese Government simply wished to have the preliminary opinion of one or more experts.

Those were the various problems in the solution of which the Transit Organisation was now called upon to co-operate. As decisions of principle had been taken by the League Council, the Committee had simply to lay down precise methods for this co-operation. As regards the question of the improvement of the Hwai, the Committee had been asked to send experts according to the usual procedure. On the other hand, as regards the organisation of the Technical Civil Engineering Field Station and co-operation with the National Economic Council, it would appear to be expedient to set up certain organs adapted to these new tasks and competent to furnish the Committee with the necessary opinions. If liaison should be established with Nanking, there should be set up at Geneva an organisation capable of replying to such questions as might be asked, if consultations even at a distance were found to be advisable.

As regards the Civil Engineering Field Station, he thought that a small committee might be established, including a certain number of directors of institutions for the training of engineers or persons connected with those institutions. Such a committee, which would be of general service as a technical committee of engineers at the Advisory Committee's disposal, appeared to be indispensable to deal with the problem raised by the Chinese Government.

As regards assistance to the National Economic Council in drawing up a programme of public works, a new committee might also be set up, not for the study of any particular question, but for the purpose of formulating views on the general question of public works. It would act as a committee of enquiry for public works questions.

The CHAIRMAN, on behalf of the Committee, thanked the Secretary-General of the Committee for the excellent account of the question which he had given them, and congratulated him.

He added that he would like to know the exact meaning of the term "civil engineers".

After a short discussion, the SECRETARY-GENERAL OF THE COMMITTEE explained that these were engineers concerned with public works or civil constructions, no distinction being made between Government and private engineers.

M. VON HEIDENSTAM said that he had spent a certain number of years in China, where he had dealt with the same problems as those which the Committee had been invited to assist in solving. The League could perform very useful work in China, an opinion he had already expressed to high officials of the League last year. He congratulated the League on the results which had been so speedily obtained in this connection as the outcome of the visit to China of the three Directors of the Technical Organisations.

As regards the definite schemes for co-operation mentioned by the Secretary-General of the Committee, he thought that a distinction should be made between the two classes of problems. In one case—*i.e.*, the organisation of the Civil Engineering Field Station—it was doubtless the object of the Chinese Government to train a corps of technicians. Although it was not very definite, the scheme was important, and the League could be of great assistance in connection with the training of engineers and administrators. As regards the other questions, it was proposed to furnish technical advice to China on particular problems. He would emphasise the fact that China had never lacked technical advice. In the case of important works, the chief thing was to obtain financial resources and to organise an efficient administration for the future operation of the undertaking. It was obviously necessary to begin by supplying technical advisers ; but, if difficulties arose in regard to the financing of the operations, it would be impossible, as had often been the case before, to carry out the technical proposals. According to the information furnished,

the initial difficulties were to be overcome by the National Economic Council which had been set up ; but, if the work developed considerably, the financial question would in all probability soon arise.

M. von Heidenstam then examined the three categories of public works which it was proposed to undertake. As regards the Hwai River, the studies begun about 1912-13 under the auspices of the American Red Cross had been continued for years on the initiative of a Chinese industrialist, the Minister Chang Chien, and precise investigations had recently been made. The reasons for which the schemes had not been executed were of an economic rather than a technical nature.

As regards the rivers in the Tientsin district, the Committee to which the Secretary-General had referred, and of which M. von Heidenstam had himself been a member, had for seven years carried out enquiries, which had led to the framing of definite proposals. In this case, again, effective improvement works had not yet been begun.

Lastly, as regards the extension of the port of Shanghai, the problem had been under consideration since 1914. Very extensive investigations had been carried out by the port authorities. The result of these investigations had been submitted in 1921 to a highly competent technical Committee consisting of engineers appointed by the maritime nations whose tonnage figures were largest in the shipping returns for the port of Shanghai. This Committee had approved a definite scheme, but this scheme had not been carried out. In this case, however, the difficulty was of a political and not of a financial nature, the development of the port outside the International Settlement being contemplated.

In short, if the League wished to render effective assistance to the Chinese National Government in carrying out important public works without delay, provision should also be made for the solution of financial difficulties. It might be as well to bear these considerations in mind at the present stage.

The SECRETARY-GENERAL OF THE COMMITTEE, in reply to M. von Heidenstam, said that the Communications and Transit Organisation was not directly concerned with financial questions. It was possible, however, that the methods hitherto followed for ensuring the occasional help of foreign experts might not facilitate the solution of the financial question. Under the new method which had been proposed, a Chinese technical staff would be constituted.

Moreover, the Chinese Government had set up a National Economic Council to co-ordinate the various efforts ; it had selected certain special problems in regard to which it had every intention of carrying out the schemes proposed. This was shown by the fact that the letters from the Government were signed by the Minister of Finance, who had doubtless considered the expenditure which the proposed works would involve.

Lastly, M. von Heidenstam's observations should not lead them to think that, for the work mentioned, the Chinese Government was in possession of definite schemes which only needed to be executed. It was true that, in the majority of cases, investigations had been made ; but, although these were valuable, they were not sufficiently advanced to permit of immediate execution.

M. VON HEIDENSTAM explained that, in speaking of financial questions, he was referring both to Chinese and other capital.

As regards the degree of advancement of the schemes which had been drawn up, he had not meant to imply that all these schemes were perfectly ready, but the enquiries in regard to the port of Shanghai had led, as long ago as 1921, to the framing of a definite scheme ; and, as regards the rivers in the Tientsin district, the 1925 scheme would have enabled certain work to be begun if financial difficulties had not arisen.

M. DJOURITCHITCH was glad to see that it was proposed to organise an institution for training engineers, but would draw the Committee's attention to the necessity for training the minor staff (foremen, etc.) also. If highly trained young engineers were for years obliged to perform tasks which could be carried out by the minor staff, this would not only involve a waste of money, but would prevent those engineers from maintaining the required standard.

The SECRETARY-GENERAL OF THE COMMITTEE pointed out that China was a country with a very old civilisation and that, in the course of the centuries, considerable public works had been carried out, especially the Grand Canal. There was no difficulty in finding minor staff in China, and he emphasised the remarkable powers of adaptation of the Chinese staff.

M. ITO said that he had listened with great interest to the account of his visit to China which the Secretary-General of the Committee had just given them. Thanks to his intelligent grasp of the situation, co-operation had now been established between the Communications and Transit Organisation and the Government of the great Chinese Republic, and he warmly congratulated the Secretary-General.

He was also glad to note the programme of work which had been drawn up.

In view of the geographical proximity of China and Japan, the establishment and operation of a communications and transit system in the great Republic necessarily affected indirectly the Japanese system. Thanks to her situation, Japan had acquired a special knowledge of the problem in question. He was happy to state that Japan was prepared to co-operate wholeheartedly in carrying out the tasks entrusted to the Transit Organisation which the Secretary-General of the Committee had just defined.

Sir JOHN BALDWIN thought that the Chinese Government's request should be given a favourable reception and that the closest co-operation of that country with all the technical organisations of the League should be provided for. As regards results, they should guard against excessive optimism which might lead to disillusionment, as well as against assuming an unduly pessimistic

attitude which would discourage the various efforts. He was convinced that the Chinese Government would do its utmost to ensure the success of the work.

M. SINIGALIA associated himself with the congratulations expressed to M. Haas in regard to the manner in which he had carried out this first stage of the work entrusted to him ; and, like Sir John Baldwin, he thought that a favourable reply should be given to the request of a Government which proposed to reorganise its country and confer on it the benefits of a wider civilisation.

M. SEELIGER wished to associate himself with the tribute which had been paid to the Secretary-General of the Committee. What had struck him most in the latter's statement was the increasingly important part played by the Transit Organisation in the world, since a large country had sought its help.

M. DE VASCONCELLOS agreed with M. Seeliger, and pointed out that this new activity in an Asiatic country was an effective answer to the reproach too often levelled against the League that it was an exclusively European organisation.

The CHAIRMAN said that the Committee had unreservedly approved its Secretary-General's statement and associated itself with his proposals. A resolution to this effect would be submitted.

XXXIV. PRESENT STATE OF NEGOTIATIONS BETWEEN POLAND AND LITHUANIA : COUNCIL  
RESOLUTION OF JANUARY 24TH, 1931.  
(Item 29 on the Agenda.)

The CHAIRMAN read the report submitted to the Council on this subject by the Spanish representative (see Annex 16). This report suggested that the Permanent Court of International Justice should be asked to give its opinion on the question of the opening traffic of the Landwarow-Kaisiadorys line, and also that the Transit Committee should be asked to provide the Court with such assistance as it might need for the examination of this question.

M. DE VASCONCELLOS, who had represented the Committee before the Council, gave an account of his mission. The Governments concerned had submitted observations in regard to the Committee's findings, which, however, did not affect the substance of the report. He had had several interviews with the Rapporteur to the Council, and had come to an agreement with him as regards the procedure to be followed. He had thought it best not to reply in detail to the Government's observations, since it had been proposed to the Council that the question should be referred to the Court. Nevertheless, at the Council meeting he had considered it his duty to maintain the Advisory Committee's report as it stood, and to make it clear that the Government's observations did not in any way invalidate it (see *Official Journal*, February 1931, pages 214 and 215).

The CHAIRMAN, on behalf of the Committee, thanked M. de Vasconcellos for the efficient manner in which he had discharged his mission.

The SECRETARY-GENERAL OF THE COMMITTEE pointed out that, at the moment, the Committee could not take any decision as regards the assistance which it might be called upon to render to the Court for the examination of the question. He proposed to get into touch with the Registrar of the Court in order to ascertain whether the latter wished the Committee to expound its view of the legal aspect of the question before the Court. It would be inadvisable for the Committee to appear as a party to the case. He would submit the result of his conversations to the Chairman, and the Committee might leave it to the latter to take the necessary steps to give effect to the last paragraph of the resolution adopted by the Council.

*This was agreed to.*

XXXV. FREIGHTING OF VESSELS BY FOREIGNERS : QUESTION SUBMITTED BY THE ADVISORY  
COMMITTEE ON TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS.

The CHAIRMAN informed the Committee of a question which had just been submitted by the Opium Committee. This question would be discussed at a later meeting at which a member of the Opium Section would furnish supplementary information.

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SIXTH MEETING.

*Held on Monday, June 1st, 1931, at 10 a.m.*

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*Chairman : M. Silvain DREYFUS.*

*Present : All those who attended the previous meeting, with the exception of M. Nordberg and Mr. Hill.*

XXXVI. TRANSPORT AND TRANSIT OF ELECTRIC POWER : COUNCIL RESOLUTION OF MAY 22ND, 1931.  
(Item 30 on the Agenda.)

The CHAIRMAN, after reading the resolution adopted by the Commission of Enquiry for European Union and approved by the Council on May 22nd, 1931 (see Annex 17), observed that,

as regards the Belgian Government's proposals concerning the fixing of the agenda of the Commission of Enquiry (see Annex 18), points 3 and 4 need not be dealt with, as points 1 and 2 were alone of interest to the Committee. The Belgian Government was of opinion that an attempt should be made to solve the problem of the transport and transit of electric power within European territory. The Chairman thought that the words "Continent" and "Continental", wherever they occurred, should be replaced by the words "Europe" and "European" to avoid any confusion as to the meaning of the term "Continent". There was no doubt that, in using the terms "Continent" and "Continental", the Belgian Government had meant to refer to Europe, since the resolution adopted by the Commission of Enquiry for European Union mentioned "international exchanges of electric power in Europe". He added that, as the Council had approved this resolution, the Advisory and Technical Committee was not called upon to deal with the form but with the substance of the question.

The SECRETARY-GENERAL OF THE COMMITTEE thought that, as regards the substance of the question, the Belgian Government might be asked to draw up, if possible, a more detailed and more precise memorandum than the document of a general character submitted to the Commission of Enquiry for European Union. This memorandum would make it clearer what the Belgian Government had had in mind in submitting its proposal. For its part, the Secretariat might collect information as to existing agreements in regard to the exchange of electric power. The procedure to be followed by the Secretariat, when it was in possession of the Belgian memorandum and the necessary information, would be a somewhat delicate one; although the question presented various technical aspects, the economic and legal aspects were far from negligible. Consequently, the simple reference of the matter to the Permanent Committee on Electric Questions would not be sufficient. He was therefore of opinion that, after consulting the Chairman of that Committee, the Chairman of the Advisory and Technical Committee might either appoint other persons to serve on the Committee on Electric Questions for the examination of this subject or set up a special committee including a certain number of members of the Committee on Electric Questions.

The CHAIRMAN was of opinion that it would be expedient, in the first place, to draw the Belgian Government's attention to the following point: two Conventions had been concluded at Geneva in 1923, one of which actually dealt with the transmission in transit of electric power. This Convention had been ratified by only four or five European countries—*i.e.*, an insufficient number to enable its application to be effective. The Convention in question was to apply to the whole world. The Belgian Government had now reverted to the question and was dealing with it from an exclusively European standpoint. Was the Convention in this new form more likely to be ratified? If the Belgian Government had reasons to believe that this was so, it would be useful to know what those reasons were.

M. SINIGALIA thought that they should find out exactly what the Belgian Government wanted. Did it want an entirely new Convention, or the application in Europe of the existing Convention? He agreed with the proposal to appoint a special Committee to study the various aspects of the question.

The SECRETARY-GENERAL OF THE COMMITTEE explained that, in its present form, the problem was more restricted than the old one as regards its geographical scope, but more extensive as regards its subject matter. It covered, not only the transport of electric power, but international exchange of power.

M. SEELIGER thought that the Belgian Government took the view that the position had changed since 1923, and that this fact justified the proposal now before the Committee.

M. HEROLD was of opinion that the Belgian Government should be asked whether it regarded the 1923 Convention as the point of departure for further enquiries, or whether it wished to make a fresh start. He therefore thought that the best suggestion was that which had been made by the Secretary-General of the Committee—namely, that the Committee should first ascertain the Belgian Government's and the Council's desires, because the Committee could not take any effective action until it had been enlightened on these points.

Sir John BALDWIN agreed with M. Herold and added that the Belgian Government should be asked to state to what kind of experts it proposed to entrust the study of this question. The problem presented, not only an economic and an administrative aspect, but a technical aspect as well. For instance, it would be necessary to settle, *inter alia*, the question of the distances over which the electric power could be transmitted. Hence, as regards the collaboration of the Belgian, Czechoslovak, Norwegian and Spanish Governments in studying the question of the regime of international exchanges of electric power in Europe, they could make it clear whether the examination of the problems was to be entrusted to economic or commercial experts, or to technical experts.

The CHAIRMAN proposed that the Secretary-General's suggestion to appoint a small committee, leaving it to the Bureau to bear in mind the observations made at the present meeting, should be adopted in principle. The Belgian Government would be asked to transmit to the Secretariat supplementary information relating to its proposal.

*This was agreed to.*

XXXVII. CUSTOMS EXEMPTION FOR LIQUID FUEL : COUNCIL RESOLUTION OF MAY 22ND, 1931.  
(Item 31 on the Agenda.)

The CHAIRMAN pointed out that this questions had been submitted in a somewhat similar form to the previous one, with the difference that, as the Commission of Enquiry had requested States members of the Commission to transmit to the Secretariat the documentary material relating to the regulations applied in the different countries in regard to Customs exemption for liquid fuel, and as the Council had approved the resolution adopted in this connection (see Annex 19), the Transit Committee would not have to ask the Governments concerned for the necessary material.

The SECRETARY-GENERAL OF THE COMMITTEE said that it was possible that the German Government would submit certain explanations as to its views on this problem (see Annex 20) and might even make some suggestions.

Sir John BALDWIN thought that the various aspects of the question could be examined forthwith. As they were aware, liquid fuel was employed in maritime, river and air navigation and in motor transport.

As regards maritime transport, the present position had not given rise to any complaints ; the regulations were very liberal, and there were no lengthy formalities in regard to the declaration of the liquid fuel which vessels might have occasion to bring into the various ports.

Motor transport could be divided into two categories. In the case of private motor-cars, the quantity of petrol carried was never very great, and private owners, when they entered a foreign country with their car, were bound to use the fuel sold in that country to replenish their stock when this was exhausted. As regards the second category, which included commercial motor vehicles, it might be advisable to ascertain the regulations in force in the various countries.

In the case of air navigation, the problem was still more simple : if an aeroplane flew over a country without landing, the question did not arise, because no country would think of taxing the fuel of a machine which did not land in its territory. On the other hand, if the aeroplane landed, in ninety-nine cases out of a hundred it did so on purpose to replenish its stock of petrol, and there again the question did not arise, as the liquid fuel capacity of an aeroplane was very limited.

There remained, therefore, the case of inland navigation, and in this connection he was somewhat surprised that the German Government should have chosen to raise the question at a time when it was being examined by the various European River Commissions. It would be preferable for the German Government, which was well aware of the difficulties to which this question had given rise, to wait until these Commissions had completed the enquiry on which they were at present engaged. He therefore thought that, first of all, the Advisory and Technical Committee should ask the River Commissions for information as to the present position in regard to this question. The problem did not necessarily assume the same form for all the Commissions, and the solution might vary according to the country.

M. SEELIGER, in reply to Sir John Baldwin's observations, said that, since Germany was a transit country *par excellence*, the question of the treatment of the fuel of all motor vehicles passing through Germany was of capital importance for her. From the financial standpoint alone, the question of Customs duties on oil and petrol occupied a prominent place. The equitable settlement of the problem of liquid fuel was therefore essential with a view to facilitating traffic and avoiding disputes. He reminded the Committee that this problem had already given rise on various occasions to many difficulties. He had stated five or six years ago that his Government wished to bring the question of liquid fuel before the League of Nations. Special difficulties had arisen in the River Commissions. Some of their members demanded Customs exemption for all fuel consumed by vessels using the rivers of a foreign country ; others wished to impose Customs duties on such fuel in their territory. As regards the Rhine and the Oder, the majority were in favour of exemption. Germany had proposed a *modus vivendi*, bearing in mind, as far as possible, the desiderata submitted. The Central Rhine Navigation Commission had provisionally accepted the German proposals. Germany was thus applying on international rivers a system which did not seem to be unfavourable to shipping. However, the regime had not yet been finally adopted by the Central Commission. The German Government had accordingly considered it natural to bring this question before the Commission of Enquiry for European Union for settlement. Although Germany was chiefly concerned, other countries had a sufficient interest in the question to justify the intervention of the Commission of Enquiry and the competent organs of the League of Nations.

The CHAIRMAN pointed out that, as regards the substance of the question, there was no disagreement between M. Seeliger and Sir John Baldwin, but the latter thought that it was not sufficient to consult the countries represented on the Commission of Enquiry, as suggested in the resolution adopted by that Commission, but that the River Commissions should also be asked for their opinion.

M. SEELIGER did not think that those Commissions were at present in a position to submit proposals for the solution of the problem as it now stood.

The SECRETARY-GENERAL OF THE COMMITTEE said that, as regards procedure, it was the usual thing, and in accordance with all precedents, when the Secretariat asked Governments for data,



not to exclude *a priori* any method of transport. If the usual procedure were applied in the present case, no difficulties would arise.

M. SEELIGER replied that, if the German Government was asked for information, it would only be able to submit a statement of the conditions at present in force on the Rhine, the Elbe, the Oder, etc., and the River Commissions could not add anything to that information.

Sir John BALDWIN was of opinion that, in the case of Governments and certain organisations, this information might suffice. But, as regards other organisations, such as the International River Commissions, such limited information would not be sufficient for the Advisory and Technical Committee, as it would not furnish the necessary data for a serious enquiry. He would take as an example the Rhine Commission ; the present position was a compromise, which had only been approved provisionally by the majority of the members of that Commission. Certain of those members considered that this position was unacceptable. Consequently, the questions submitted to the River Commissions should cover a sufficient number of points to enable them to give the reasons why they were not satisfied with the present position and to state what were the conditions which they regarded as ideal, giving their reasons.

The CHAIRMAN said that, if this were done, there were not many alternatives to be considered. Either unanimous agreement would be reached by the River Commission, in which case the reply would be simple ; or it would not be reached, in which case each River Commission would merely have to communicate the various opinions expressed by its members to the Transit Committee, which would thus have ample data.

M. SEELIGER replied that the River Commissions had never dealt with more than one aspect of the questions of international rivers—namely, the legal aspect. Germany looked at this problem from a much wider angle, and that was why she wished to bring the question before a universal organ like the League.

The CHAIRMAN observed that there was nothing to prevent the River Commissions and the national organs in general dealing with air, maritime, river, etc., transport from being consulted. When the Committee had received their replies, it would examine them, bearing in mind the arguments put forward by M. Seeliger.

The SECRETARY-GENERAL OF THE COMMITTEE added that the observations which had just been made in regard to these organs might also apply to Governments, provided a sufficiently elastic and general formula were adopted. For instance, Governments, as well as those organs, might be requested to "submit such information or observations as they might think fit to furnish on this question". This formula would make it possible for each to state its views on the problem without being obliged to regard it from a legal or any other too specific standpoint. The same question might be submitted to all the organs associated with the Transit Committee's work. The Secretary-General of the Committee then reviewed the various methods of transport and suggested to the Committee the names of the principal organs which might be consulted.

There was no need to collect information in regard to railways, which were scarcely affected by the question of liquid fuel. The organs to be consulted would be the following :

*Maritime Transport :*

International Shipping Conference.

*Air Transport :*

International Commission for Air Navigation.

International Air Traffic Association (I.A.T.A.).

*Inland Navigation :*

The various River Commissions, including the European Commission of the Danube, which occupied a "mixed" position, as the Danube was partly maritime.

*Motor Transport :*

International Association of Recognised Automobile Clubs ;

International Touring Association ;

International Commercial Transport Federation.

The opinion of the International Chamber of Commerce might also be obtained.

M. ROMEIN, Communications and Transit Section, said that, as regards maritime navigation, it should be made quite clear that they were dealing with import duties on liquid fuel and not with port dues. In certain ports, charges were levied on the volume occupied by fuel oil, for instance. This volume was added to the tonnage of the vessel, on which the port dues were calculated.

The CHAIRMAN, in reply to M. Romein's observation, explained that it was not sufficient for the Customs administration to levy a charge for that charge to be regarded as a Customs duty. The Customs service was frequently instructed, for the sake of convenience, to levy charges on behalf of independent public establishments. For example, the port dues, to which M. Romein

had referred was not a charge levied for account of the Customs Administration. There could not, therefore, be any misunderstanding on the matter.

*It was decided that a draft resolution should be drawn up on the lines indicated by the Secretary-General of the Committee.*

XXXVIII. MISCELLANEOUS COMMUNICATIONS BY THE SECRETARY-GENERAL OF THE COMMITTEE  
(continued) : RIGHT TO FLY A MERCHANT FLAG.

(Item 28 on the Agenda.)

The SECRETARY-GENERAL OF THE COMMITTEE reminded the members that they had duly received the document containing a comparative study of national laws governing the granting of the right to fly a merchant flag drawn up by the Secretariat.<sup>1</sup> This information had been collected as the outcome of a question concerning alcohol smuggling which had been raised by the Finnish Government and during the discussion of which the question of the granting of the right to fly a merchant flag had arisen. Now that the members of the Committee were in possession of the necessary data, it was for them to decide whether any action should be taken on this document. He was of opinion that the Permanent Legal Committee would be competent to study the replies of the various Governments contained in that document and to say whether it was advisable to contemplate a draft International Convention on the matter.

Sir John BALDWIN did not think that any action should be taken on this document. The case of alcohol smuggling which had led to this enquiry into the granting of the right to fly a merchant flag was a special case which was comparatively rare and which was not of very great importance from the point of view of European and world equilibrium. He feared, therefore, that the proposal of the Secretary-General of the Committee would appear in the eyes of the British Government to be out of proportion to the actual importance of the question.

The SECRETARY-GENERAL OF THE COMMITTEE said that he was prepared to withdraw his suggestion, and proposed as a solution that this item should appear on the agenda of the next session in the following form : "Action to be taken on the comparative study of national laws governing the granting of the right to fly a merchant flag". The Governments would thus have ample time to study the problem before the next session.

M. SEELIGER agreed with what Sir John Baldwin had said and, like him, he thought that it would be very difficult to settle this question on an international basis.

*The suggestion of the Secretary-General of the Committee was approved.*

XXXIX. FREIGHTING OF VESSELS BY FOREIGNERS (continued).

(Item 32 on the Agenda.)

The CHAIRMAN reminded the members of the Committee that, at the request of the Opium Advisory Committee, a new question had been added to the agenda of the present session. He would ask Mr. Duncan Hall, who had consented to furnish the Committee with explanations on this question, to address the meeting.

Mr. Duncan HALL, Social Questions and Opium Traffic Section, explained that the Opium Advisory Committee had not wished to discuss the question of the freighting of vessels for opium smuggling before the various difficulties had been submitted to the Transit Committee.

This was what usually happened : a vessel flying, for instance, the Japanese flag would be chartered by a Chinese. The vessel thus escaped provisionally the supervision of the Japanese authorities. It would proceed, say, to Bushire, an important port for the export of opium. On arrival there, a cargo of opium would be shipped, its destination being given as Vladivostok ; but, instead of proceeding to this latter town, the vessel would stop *en route* and unload the opium in some Chinese port ; that was a typical act of smuggling. The charterer, as soon as the opium had been landed, at once disappeared. If the case came to the notice of the Japanese authorities, the captain of the vessel was punished, but what they really desired was to punish the charterer. The Opium Advisory Committee therefore requested the Advisory and Technical Committee for Communications and Transit to suggest some means of preventing such abuses ; this was a technical question which was within the competence of the Transit Committee.

In conclusion, Mr. Duncan Hall said that it might perhaps be possible to demand a security from the charterer or to take severe legal measures, but he would leave it to the Transit Committee to find the most appropriate solution.

Sir John BALDWIN wished to know whether security was to be demanded of the charterer in all cases, or merely in regard to the transport of opium.

Mr. Duncan HALL replied that there was no reason why the security should not be confined to the transport of opium and possibly of other narcotic drugs.

Sir John BALDWIN pointed out that the application of the security system would give rise to very great difficulties. A vessel was always chartered for a definite period, and consequently it

<sup>1</sup> See document C.248.M.112.1931.VIII.

was impossible to say beforehand whether it would be employed for the transport of opium or of any other commodity. Moreover, in view of the considerable value of opium, the security demanded would have to be so high that it might put a stop to the legitimate trade in opium, or at all events hamper it considerably.

M. ITO agreed with Sir John Baldwin that the security system was impracticable. He then gave the members certain particulars which his knowledge of the question enabled him to furnish.

In the first place, as regards the flag question, he explained that, if a vessel flying the Japanese flag was chartered by a Chinese, in theory, this vessel continued to be under the jurisdiction of the country to which it belonged. In practice, however, when the vessel was on the high seas, supervision was, of course, almost impossible.

Secondly, the penalty which it was proposed to impose on the charterer should be of a penal rather than a fiscal nature. The object was to punish the charterer, and in that case the fiscal question would not be of very great importance.

He added that, in his opinion, it was not sufficient to punish the captain of the vessel, when he was under the jurisdiction of the country to which the vessel belonged. If it were not possible to punish the charterer, the penalty imposed on the captain would not suffice to put a stop to this traffic.

The CHAIRMAN, summing up, said that the Committee responsible for the examination of this matter would consider all the various aspects of the question mentioned during the discussion and reported in the Minutes. He added that the two committees which appeared to be best qualified to carry out this examination were the Permanent Committee for Ports and Maritime Navigation and the Permanent Legal Committee; a mixed Committee could be set up by adding to the former certain members of the latter. The Secretary-General of the Transit Committee might be asked to draw up a draft resolution to this effect.

*This was agreed to.*

XL. MISCELLANEOUS COMMUNICATIONS BY THE SECRETARY-GENERAL OF THE COMMITTEE  
(continued).

(Item 28 on the Agenda.)

*Communication from the International Transport Workers' Federation.*

The SECRETARY-GENERAL OF THE COMMITTEE informed the Committee that a printed memorandum had been submitted by the International Transport Workers' Federation to the Advisory and Technical Committee for Communications and Transit, the International Labour Office, etc. This memorandum contained the resolutions of the International Railwaymen's Conference held from April 28th to May 3rd, 1930. As the Secretariat had received only one copy of this memorandum, the Secretary-General read the resolution which was of most interest to the Committee. This resolution referred to "the constitution of a permanent international organ providing for the discussion of various questions by Government representatives, railway undertakings and the International Transport Workers' Federation as representing the staff, on a footing of complete equality, and for the staff to have the same say in its decisions as the undertakings".

This memorandum would be transmitted to the Permanent Committee for Transport by Rail, which would examine the technical questions involved. As it was the rule of the Advisory and Technical Committee, in all cases in which the presence of the workers' delegates was necessary, to invite the transport workers' representatives, the latter would also co-operate in the examination of this question.

M. DJOURITCHITCH thought that a representative of the International Railway Union should also be invited.

The SECRETARY-GENERAL OF THE COMMITTEE pointed out that the International Railway Union was in every case invited to send a representative when the Committee's agenda included items of interest to it. In the present case, however, a representative of the International Transport Workers' Federation should also be invited.

*This was agreed to.*

*Effect given to the Requests of the Various Railway Companies under the Treaties of Trianon and St. Germain.*

The SECRETARY-GENERAL OF THE COMMITTEE informed the Committee of the outcome of the requests made by the various railway companies under Article 304 of the Treaty of Trianon and Article 320 of the Treaty of St. Germain. The opinions given by the Committee had in every case been acted upon, and had produced excellent results. The disputes between the Governments concerned and the companies had been settled amicably. In the only case in which a board of arbitration had been appointed this board had not had to meet, as the dispute had actually been settled before the date fixed for the meeting.

*Commissariat set up in Application of Article 107 of the Treaty of Lausanne.*

Moreover, the Commissariat set up in 1928 in application of Article 107 of the Treaty of Lausanne had been abolished in January 1931 by a decision of the Council. The winding-up would

continue until September 1931. The position had become so satisfactory that it was no longer necessary to maintain this Commissariat.

*Appointment of an Indian National as Expert.*

Finally, the Secretariat's attention had been drawn to the advisability of contact being established between the Transit Organisation and certain commercial and industrial circles in India. It should be noted that, despite its economic importance, India had, so far, never been represented on any of the Advisory and Technical Committee's permanent committees. He suggested that, in order to put an end to this abnormal situation, the Chairman should appoint an Indian expert as corresponding member of the Transit Organisation.

*This was agreed to.*

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SEVENTH MEETING.

*Held on Tuesday, June 2nd, 1931, at 3.30 p.m.*

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Chairman : M. Silvain DREYFUS,

Present : All those who attended the previous meeting, with the exception of M. Hostie.

XLI. ADOPTION OF RESOLUTIONS.

The draft resolutions prepared by the Secretariat with regard to the following questions *were adopted without discussion.*<sup>1</sup>

1. *Preparation of International Conventions.*
2. *Study of the Questions of the Transport of Agricultural Products.*
3. *Adjustment of Railway Tariffs.*
4. *Extension of International Agreements relating to Transport by Rail.*
5. *Construction of an Aerodrome near the Seat of the League of Nations.*
6. *Extension of International Agreements regarding Inland Navigation.*
7. *Passport and Visa Formalities for Personnel in Inland Navigation.*
8. *Final Agenda of the Fourth General Conference on Communications and Transit.*
9. *Study of the Question of the Territorial Sea.*
10. *Request from the International Railway Union concerning the System of Transport for Daily and Similar Newspapers in International Traffic.*
11. *Annual Report of the Memel Harbour Board.*
12. *Claims of Professional Motor-Drivers.*
13. *Co-operation between the Communications and Transit Organisation and the Chinese National Government.*
14. *Present State of Negotiations between Poland and Lithuania.*
15. *Transport and Transit of Electric Power.*
16. *Customs Exemption for Liquid Fuel.*
17. *Freighting of Vessels by Foreigners.*
18. *Questions of Internal Organisation : Constitution of Two Committees of Enquiry.*

At the request of M. SEELIGER and M. HEROLD, the Committee decided to explain in the text of the resolution that the two Committees of Enquiry had been set up as the outcome of a request for co-operation made by the Chinese National Government. The Committees might, if necessary, deal with general questions within their competence ; but it was understood that, for the moment, they would attend to the special problems raised by the Chinese Government's request.

*The draft resolution was adopted as modified.*<sup>2</sup>

*Despatch of a Telegram to the Chinese National Government.*

The SECRETARY-GENERAL OF THE COMMITTEE proposed that the Committee should authorise him to send a telegram to the Chinese National Government informing it that the Advisory Committee had been pleased to accede to its request.

*The proposal of the Secretary-General of the Committee was adopted.*

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<sup>1</sup> See document C.417(a).M.173(a).1931.VIII.

<sup>2</sup> See document C.417(a).M.173(a).1931.VIII, paragraph XXXIV.

19. *Unification of Transport Statistics.*

At M. SINIGALIA's request, it was agreed that the Advisory Committee should not take any decision on the various reports submitted to it until it had received full particulars. If necessary, it could ask the Committee for the Unification of Transport Statistics to undertake a further enquiry.<sup>1</sup>

*The draft resolution was adopted.*

20. *Triptych System.*

21. *Continuation of the Work of the European Conference on Road Traffic relating to Commercial Motor Transport.*

22. *Recommendations of the European Conference on Road Traffic with regard to Light Signalling.*

23. *Recommendation of the European Conference on Road Traffic with regard to the Signals to be made by Officials directing Traffic and Drivers of Vehicles.*

24. *Passport and Visa Formalities for Migrants.*

25. *Recommendation of the Conference for the Unification of River Law relating to Attachment. (saisie conservatoire).*

26. *Recommendation of the Conference for the Unification of River Law relating to Assistance and Salvage.*

*The draft resolutions relating to these questions were adopted without discussion.*<sup>2</sup>

27. *Exemption of the Advertising Matter of Railway Administrations from Customs Duties.*

M. SINIGALIA requested that, as decided by the Committee by thirteen votes to one, it should be made quite clear that the advertising matter in question consisted of documents issued by railway administrations and distributed free of charge.

M. SEELIGER asked that exemption from Customs duty should be restricted to documents issued by railway companies and distributed free of charge.

*The suggestion made by M. Sinigalia and M. Seeliger was rejected by a majority vote.*

M. SINIGALIA observed that the taking of a vote on a suggestion modifying the decisions of the Committee did not seem to him a correct procedure, especially as several members who had participated in the first vote were absent.

M. GRÜNEBAUM pointed out that the words "advertising matter exchanged by the railway administrations of the various countries" did not cover the case of advertising matter sent by a railway company to travel agencies in a foreign country, which was not an exchange.

The CHAIRMAN said that the words used had been taken from the letter of the International Railway Union.

Sir John BALDWIN said that the Committee should confine itself at the present stage of its work to examining the text of a resolution corresponding to the decision taken by it at an earlier meeting. As the outcome of the discussion to which this question had given rise, the Committee had decided by thirteen votes to one to transmit to the Economic Committee the letter from the International Railway Union, with a favourable opinion on the matter. As several members of the Committee had already left Geneva, it was impossible to go back on the decision taken.

He accordingly proposed that the draft resolution before the Committee should be put to the vote.

*The draft resolution was adopted by a majority vote.*<sup>3</sup>

28. *Customs Duties on Cards for Machines used for Statistical Purposes.*

29. *Composition of Permanent Committees.*

30. *Fifteenth International Navigation Conference.*

31. *Nomination of Representatives of the Communications and Transit Organisation to serve on the Mixed Committee of That Organisation and the Fiscal Committee for the Question of Fiscal and Customs Duties applicable to Newspapers and Periodicals.*

32. *Draft Budget of the Communications and Transit Organisation for 1932.*

33. *Report of the Chairman of the Committee on the Missions carried out by him since the Committee's Last Session.*

34. *Request submitted by the International Federation of Intellectual Workers.*

35. *Report on the League Wireless Station.*

*The draft resolutions relating to these items were adopted without discussion.*<sup>4</sup>

<sup>1</sup> See document C.417(a).M.173(a).1931.VIII, paragraph XX.

<sup>2</sup> See document C.417(a).M.173(a).1931.VIII.

<sup>3</sup> See document C.417(a).M.173(a).1931.VIII, paragraph XI.

<sup>4</sup> See document C.417(a).M.173(a).1931.VIII.

**XLII. APPOINTMENT OF THE CHAIRMAN OF THE PREPARATORY COMMITTEE OF THE FOURTH GENERAL CONFERENCE.**

The CHAIRMAN said that the Preparatory Committee to study the Question of Calendar Reform in view of the Fourth General Conference would meet shortly. As that Committee was to submit suggestions according to the usual procedure of the Communications and Transit Organisation, it would be desirable to entrust the chairmanship to a member of the Advisory Committee. He proposed that M. Djouritchitch, who had a thorough knowledge of these questions, since he had taken a very active part in Yugoslavia in the formation of a national committee for the study of this problem, should be asked to fill this office.

*The appointment of M. Djouritchitch was approved by acclamation.*

**XLIII. APPOINTMENT OF A CHAIRMAN AND A VICE-CHAIRMAN OF THE PERMANENT LEGAL COMMITTEE.**

The SECRETARY-GENERAL OF THE COMMITTEE said that the Permanent Legal Committee had lost both its Chairman and Vice-Chairman, who had been appointed Judges at the Permanent Court of International Justice at The Hague.

*The Committee decided to ask M. Pilotti to act as Chairman and M. van Slooten as Vice-Chairman.*

**XLIV. FINAL AGENDA OF THE FOURTH GENERAL CONFERENCE ON COMMUNICATIONS AND TRANSIT (continued).**

The SECRETARY-GENERAL OF THE COMMITTEE said that a report on the work done by the Advisory Committee since the Third General Conference was to be submitted to the Conference. The compilation of this report would simply be a matter of drafting and would be based on the annual reports. He proposed that the Committee should ask the Secretariat to draw up a draft to be submitted to the Chairman and subsequently transmitted to each of the members of the Committee.

*The proposal of the Secretary-General of the Committee was adopted.*

**XLV. BUDGETARY QUESTIONS.**

The SECRETARY-GENERAL OF THE COMMITTEE pointed out that, during the present year, the Communications and Transit Organisation would have new tasks to perform, emanating chiefly from the Commission of Enquiry for European Union. The execution of those tasks might entail either budgetary transfers or the granting of supplementary credits. If supplementary credits had to be asked for, he proposed that these requests should be submitted to the Budget Sub-Committee, and that the settlement of these questions should be left to the latter.

*This was agreed to.*

**XLVI. PENAL CONSEQUENCES OF COLLISIONS AT SEA.**

The SECRETARY-GENERAL OF THE COMMITTEE said that, at its thirteenth session, the Advisory Committee had approved a resolution adopted by the Permanent Committee for Ports and Maritime Navigation on the penal consequences of collisions at sea. The Advisory Committee had not considered it necessary to draw up a convention on this matter, and had thought it preferable to leave the matter to international courtesy. He had been informed that the International Labour Office had submitted the question to the International Maritime Committee of Antwerp. At its meeting in August 1930, a resolution was adopted in favour of a convention. A preliminary draft would be submitted in January 1932. If his information was correct, the question was to be brought before the Belgian Government to be placed on the agenda of the Brussels Diplomatic Conference. As it had hitherto been understood that the Communications and Transit Organisation did not deal with questions of private maritime law, but was competent to co-operate in the framing of conventions dealing with questions of public law, it would perhaps be well to ask the Belgian Government for information, to notify it of the decision taken in 1929 by the Advisory Committee and to ask it to give the Committee an opportunity of submitting such observations as it might think fit to make before this question was placed on the agenda of the Brussels Conference to be held in 1932.

The Secretary-General of the Committee proposed that the Committee should request its Chairman to keep in touch with the Belgian Government.

*The proposal of the Secretary-General of the Committee was adopted.*

**XLVII. VISIT OF THE SECRETARY-GENERAL OF THE COMMITTEE TO JAPAN.**

The SECRETARY-GENERAL OF THE COMMITTEE informed the Committee that, in the course of his voyage to China, he had had the opportunity of visiting Japan. He had been received by the Government authorities, not only with the utmost courtesy, but with the greatest cordiality. He regarded the reception which he had received as a proof of the interest taken by Japan in the work

of the Communications and Transit Organisation. He thanked the Japanese Government wholeheartedly, and felt certain that the Committee would associate itself with his expression of gratitude.

The CHAIRMAN said that the Committee would undoubtedly do so, and he had much pleasure in recalling in this connection the valuable assistance rendered to the Committee by its Japanese members, M. Sugimura and M. Ito.

*The Committee noted the communication of the Secretary-General of the Committee.*

#### XLVIII. CLOSE OF THE SESSION.

The CHAIRMAN thanked his colleagues for the zeal and devotion displayed by them and the members of the Secretariat for their valuable help.

He declared closed the sixteenth session of the Advisory and Technical Committee for Communications and Transit.

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## ANNEXES.

### Section I. — Preparatory Documents.

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#### ANNEX 1.

[C.C.T. /490 and C.C.T.490(a).]

#### AGENDA.

1. Election of the Bureau.
  2. Preparation of International Conventions.
  3. Study of the Question of the Territorial Sea.
  4. Study of the Question of the Transport of Agricultural Products.
  5. Adjustment of Railway Tariffs.
  6. Extension of International Agreements relating to Transport by Rail.
  7. Final Agenda of the Fourth General Conference on Communications and Transit.
  8. Construction of an Aerodrome near the Seat of the League of Nations.
  9. Unification of Transport Statistics.
  10. Report of the Permanent Committee on Inland Navigation.
  11. Triptych System.
  12. Results of the Conference for the Unification of Buoyage and Lighting of Coasts.
  13. Results of the Conference for the Unification of River Law.
  14. Results of the European Conference on Road Traffic.
  15. Programme of Claims of Professional Motor-Drivers.
  16. Passport and Visa Formalities for Migrants.
  17. Request from the International Railway Union concerning the Exemption of Railway Posters from Customs Duty.
  18. Request from the International Railway Union with regard to the Customs Duties on Cards for Machines used for Statistical Purposes.
  19. Request from the International Railway Union concerning the System of Transport for Daily and Similar Newspapers in International Traffic.
  20. Annual Reports of the Memel Harbour Board for 1929 and 1930.
  21. Report of the Secretary-General of the Transit Committee on his Mission to China.
  22. Report on the League Wireless Station.
  23. Questions of Internal Organisation : Composition of Permanent Committees.
  24. Invitation from the Italian Government to the Advisory and Technical Committee for Communications and Transit to be represented at the Fifteenth International Navigation Congress, which will meet at Venice and Rome in September 1931.
  25. Appointment of Representatives of the Communications and Transit Organisation to serve on the Mixed Committee of That Organisation and the Fiscal Committee for the Question of Customs and Fiscal Duties applicable to Newspapers and Periodicals.
  26. Draft Budget of the Communications and Transit Organisation for 1932.
  27. Report of the Chairman on the Missions carried out by him since the Last Session of the Committee.
  28. Various Communications by the Secretary-General of the Committee.
  29. Present State of Negotiations between Poland and Lithuania.
  30. Transport and Transit of Electric Power.
  31. Customs Exemption for Liquid Fuel.
  32. Freighting of Vessels by Foreigners.
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ANNEX 2.

[C.C.T./479.]

NOTE OF THE ECONOMIC RELATIONS SECTION REFERRING TO THE  
ADJUSTMENT OF RAILWAY TARIFFS.

In pursuance of Resolution XIII, adopted by the Transit Committee at its fifteenth session, the Secretary-General of the Committee has the honour to circulate to the members of the Committee the following note drafted by the Economic Relations Section on the enquiry into the question of indirect protectionism undertaken by the Economic Organisation.

NOTE.

When the Economic Committee undertook the enquiry into the question of administrative protectionism, in pursuance of a recommendation of the Economic Consultative Committee, it fully realised the importance and complexity of its new task. The fact that this protectionism is developing under different forms and even, it might be said, on parallel lines with the efforts made to diminish Customs protectionism engaged its attention from the outset, and it decided, with a view to preparing its plan of enquiry, to instruct its Vice-Chairman at that time (M. Trendelenburg) to submit a report on the subject (twenty-fifth session, from June 25th to 28th, 1928).

Such is the starting-point of the enquiries into the problem of indirect protectionism.

At the next session (twenty-sixth session, from October 23rd to 30th, 1928), the Economic Committee took note of two memoranda, one by its Vice-Chairman and the other by Mr. Eastman, which gave a preliminary definition of the problem. Owing to the complexity of the problem, the Economic Committee decided, however, to ask the other members to submit their observations in writing, and appointed a Sub-Committee to make proposals in regard to the work to be undertaken subsequently.

The Economic Committee resumed the discussion of administrative protectionism at its twenty-eighth session (from April 8th to 12th, 1929). It found that this problem covered all measures—apart from tariffs and import and export prohibitions—which might strengthen protection or hinder international trade. It considered that, in the first place, as complete a list as possible should be prepared of the facts which might come within the scope of this definition and, in order more clearly to indicate the extent of the problem, decided that these enquiries should henceforth be described by the wider term “indirect protectionism”.

As a result of these decisions, the Secretariat has compiled a note in which it gives a summary of the question and proposes to classify, in the form of a catalogue indicating their relative importance, the questions comprised in the vast problem of indirect protectionism. For the sake of greater clearness, the Secretariat has also compiled a systematic and classified list of all the measures which have been brought to its notice as coming under the general head of “indirect protectionism” (see Appendix).

At its thirty-first session (January 10th and 11th, 1930), the Economic Committee considered this classification and, regarding the matter from an essentially practical point of view, decided to make a more detailed study of certain aspects of indirect protectionism which involve specially vexatious obstacles to international trade.

In pursuance of this decision, the Secretariat undertook various enquiries, which are referred to below.

In concluding this short account of the various discussions and decisions which have led up to the present position of the question, I will merely say that, from the beginning, the Economic Committee considered that there could be no question, as regards the problem of indirect protectionism, of the conclusion of an international convention whereby the signatory States would undertake not to have recourse to indirect methods in order to retain protectionist measures which have already been condemned. Indeed, it was of opinion that, in every question connected with political economy, clear rules must be laid down and an attempt made to find the most suitable means of putting an end to any abuses observed in regard to the problem under investigation.

**Present Position of the Question.**

Starting from the data methodically classified in Note E.566 of the Secretariat, showing the position with regard to the work done on the questions of indirect protectionism in January 1930, the following is a summary of the enquiries undertaken since that date and of the progress made.

**A. QUESTIONS ALREADY DEALT WITH OR WHICH DO NOT APPEAR TO BE CAPABLE OF REGULATION  
BY INTERNATIONAL AGREEMENT.**

(a)<sup>1</sup> *Questions covered by the Convention relating to Customs Formalities of November 3rd, 1923.*  
No change in I to II.

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<sup>1</sup> The paragraphs of the following summary refer to the corresponding paragraphs of document E.566 (see Appendix).



ECONOMIC COMMITTEE : NOTE BY THE SECRETARIAT CONCERNING  
INDIRECT PROTECTIONISM.

Geneva, January 8th, 1930.

The question of indirect protectionism was included in the agenda of the last session of the Economic Committee, and the Secretariat had specially prepared two documents on this matter—documents E.551 and E.547. The examination of the question was, however, postponed to the present session.

The above-mentioned documents were based on the documentation furnished by some of the members of the Committee and the information obtained by the Secretariat. The Secretariat has examined these reports and would like to submit a few suggestions to the Committee as to the conclusions to be drawn therefrom.

The Secretariat has compiled and methodically classified data regarding all the measures which have been brought to its notice as coming under the general head of “indirect protectionism”.

The various cases have been divided into two large groups—the first group consists of those which in its opinion do not call for special action on the part of the Economic Committee, while the second comprises cases in regard to which special enquiries, necessitating preliminary investigation on the part of the Secretariat, might be undertaken by the Committee.

A. QUESTIONS ALREADY DEALT WITH OR WHICH CANNOT BE REGULATED BY INTERNATIONAL AGREEMENT.

(a) *Questions covered by the Convention relating to Customs Formalities of November 3rd, 1923.*

1. Burdensome Customs formalities and administrative practices.
2. Absence of any periodical publication of Customs regulations.
3. Clearance at the frontier.
4. Storing and warehousing.
5. Regulations requiring the presentation of consular invoices, even where the goods are liable to specific duties.
6. Regulations requiring the production of certificates of origin in all cases.
7. Regulations requiring in all cases the consular legalisation of certificates of origin ; discrimination in the application of the regulations requiring consular visas ; excessive charges.
8. Refusal to accept certificates of origin issued in a third country when the goods have been transmitted by the latter country instead of arriving directly from the country of origin.
9. Excessive requirements in regard to the verification of goods.
10. Excessive requirements in connection with consular invoices.
11. Treatment of samples.

(b) *Questions dealt with in the Convention for the Abolition of Import and Export Prohibitions and Restrictions.*

1. Clearance of certain specified goods through stated Customs offices.
2. Arbitrary application of import prohibitions, restrictions or quotas.

(c) *Questions dealt with in the Draft Convention on the Treatment of Foreigners.*

1. Internal charges imposed at a higher rate or in a more burdensome manner on imported goods than on like home products.
2. Internal regulations relating to sale, distribution and consumption imposing greater restrictions on imported goods than on home products.
3. Restrictions on the activities of commercial travellers, hawkers and fitters.
4. Legal system and administration of justice.

(d) *Questions to be dealt with in the Draft Sanitary and Veterinary Convention.*

Various sanitary and veterinary measures affecting foodstuffs, live-stock, plants, etc.

(e) *Questions which may be settled as the Result of the Adoption of a Unified Customs Nomenclature.*

1. Obscurity of Customs tariffs.
2. Frequent and unjustifiable alterations in the classification of goods and unjustifiable classification of new commodities.
3. Incorrect classification of goods.

(f) *Questions to be settled by Bilateral Agreements.*

1. The absence of any conventional consolidation of Customs duties.
2. The unduly short duration of commercial agreements.
3. Regulations empowering the administration to raise the Customs duties.
4. Regulations relating to the analysis of goods (excessive or vexatious requirements : use of unsuitable apparatus or methods of verification).
5. Absence of facilities for tools temporarily imported for fitting.
6. Burdensome conditions in connection with the registration of medicinal preparations and the treatment of proprietary medicines.

(g) *Measures which, strictly speaking, do not constitute Indirect Protectionism or which cannot be regulated by International Agreement.*

1. Regulations requiring the name of the consignee to be stated.
2. Treatment of samples of no value.
3. Customs regime in regard to printed advertising matter.
4. Lack of precision in the regulations granting exemption from, or a reduction of duties on, certain goods (machinery and other material intended for production).
5. Surtaxes on indirect imports.
6. Provisions regulating the conditions in regard to quality, etc., with which imported goods are required to comply.<sup>1</sup>
7. Provisions concerning the gauging and stamping of certain goods.<sup>1</sup>
8. Preference given to foreign products in the case of orders placed by public authorities.

B. QUESTIONS NOT YET DEALT WITH.

1. *Alterations in the Regulations relating to Procedure.*

The possibility of mitigating the inconvenience caused by the putting into force of new regulations or of alterations in existing regulations immediately or after unduly short notice should be examined.

2. *Alterations in Customs Duties.*

The possibility of preventing injustice owing to the immediate application of such alterations or of their entry into force after unduly short notice as well as the means to be employed to this end should be considered.

3. *Examination of the Possibility of obtaining from All Countries an Undertaking that the Customs Administrations concerned shall furnish to the Public on Request binding Information concerning the Classification of Goods.*

4. *Regulations to the Effect that Imported Goods must be described in Accordance with the Terms used in the Tariff.*

The possibility of allowing goods to be described in the usual trade terms should be considered. The inconvenience resulting from the regulations at present in force in certain countries will be appreciably reduced when a unified nomenclature has been adopted.

5. *Regulations fixing the Conditions under which Goods are regarded as National Goods and the Application of These Provisions.*

The Economic Committee has already had occasion to consider this question in connection with the examination of the most-favoured-nation clause. The collection of documentation on the matter appears to be indispensable for its further investigation.

6. *Determination and Assessment of the Value of Goods dutiable ad valorem.*

The measures adopted by certain States cause such inconvenience to trade that it appears desirable to seek more equitable regulations which would not involve the disadvantages at present observed.

7. *Regulations laying down Excessive or Inadequate Conditions for fixing the Weight of Goods and Packing assessable for Duty (Gross Weight, Net Weight, Tare). Customs Procedure with regard to Packing.*

The questions coming under this head are sufficiently important and crop up sufficiently frequently to justify a special examination with a view to reaching agreement as to the phraseology and the application of the rules relating thereto.

<sup>1</sup> The only reasonable requirement in this matter is that foreign goods should be treated in this respect in the same, or at least a similar, manner to like home products.

The 1928 Statistical Conference adopted a recommendation, which was approved by the Council, for the examination by the Economic Committee of a proposal to adopt precise definitions of the terms "gross weight", "net weight", "legal net weight", and to ensure uniformity in the use of these terms.

These two questions, which are related to one another, might be examined together.

8. *Inadequate Provision for Redress against Decisions of the Administration and for the Settlement of Customs Disputes : Excessive Penalties.*

It appears desirable to examine the different methods of redress in the various countries, in order to ascertain the possibility of introducing some measure of uniformity in the procedure.

It would also be well to take steps to prevent the application of excessive penalties.

9. *Temporary Admission of Removal Vans.*

This question is of practical importance and it would be well to examine it and collect all documentation relating thereto, with a view to the revision later of the Convention of November 3rd, 1927.

10. *Postal Regime with regard to Postal Packets.*

Many complaints have been received with regard to the application of irritating formalities to imports by parcels post and also with regard to the imposition of surtaxes on these imports. As complete documentation as possible might be collected on the various aspects of these problems, to prepare for a meeting of experts which might be able to frame a draft international agreement.

11. *Supplementary Charges : Number and Rates.*

It would be useful to attempt to indicate precisely all the charges levied upon this head on imports in the various countries. The object of this study would be to distinguish between charges corresponding to services actually rendered and therefore justifiable, and charges clearly having a purely fiscal and protectionist character.

This study would lead to investigation of the possibility of reducing these supplementary charges.

12. *Marks of Origin.*

(For reference only, as this question has already been dealt with in a separate report.)

13. *Railway Tariffs.*

A study of the commercial treaties providing for equality of treatment in this respect would perhaps be useful as furnishing the elements for an international agreement later. If such a study were decided upon, it should be carried out in collaboration with the Communications and Transit Section.

14. *Privileges granted to National Goods in the Form of Direct Subsidies, Exemption from or Reduction of Internal Charges, Special Drawbacks of Customs Duties and Taxes in respect of Exports, etc.*

This question, which was dealt with in the resolutions of the World Economic Conference, might be examined from an international point of view. The example of the Brussels Sugar Convention of 1902 shows that the question of subsidies can be dealt with successfully in the case of a particular commodity.

C. QUESTIONS RELATING TO THE CUSTOMS TRUCE.

In document E.551, pages 52 to 54, the Secretariat had, before the establishment of the proposal of the Economic Committee for a Customs truce, contemplated the possibility of the Committee desiring to formulate precise undertakings to be given by the contracting parties relating to "the other hindrances to trade (that is, other than Customs duties, properly speaking)".

Now, the Economic Committee, in its proposal, introduces a provision in Article V whereby the contracting parties undertake not to apply to trade between them "fresh hindrances likely to prejudice the effect of the Customs truce". It therefore declared in favour of the second alternative considered in the above-mentioned document—namely, the settlement of the question by the formulation of a general principle designed to assure the maintenance by the contracting States, unaltered and in principle, of the treatment which they concede to each other at the time of the conclusion of the truce.

Moreover, several questions which the Secretariat desired to have stated more clearly, should the Economic Committee decide to deal in detail with "the other hindrances to trade" in the draft Convention, are treated in special provisions. Thus, Article X authorises the contracting parties, subject to certain conditions, to substitute specific duties for *ad valorem* duties, to modify their Customs nomenclature and to establish fresh tariff rates for new products.

The draft Convention also contains, in Article VII, an undertaking by the contracting parties to conform to the provisions of the Convention for the Abolition of Import and Export Prohibitions and Restrictions.

It appears from the above that, as the other questions mentioned in document E.551 all come under Article V, there is no point in discussing them further for the moment, beyond drawing up a list which would be useful, should the Conference decide to introduce into the Convention more exact definitions than those contained in the above-mentioned Article V.

The list might be as follows :

1. Modifications in the methods of clearing by weight and in the rules applicable to tare, in those cases where specific duties are imposed.
2. Excessively high valuation of goods liable to *ad valorem* duties.
3. Wrong classification of goods liable to specific duties.
4. Inadequate provision for redress for persons who have been prejudiced by the decisions given in the case of Customs disputes.

#### D. CONCLUSIONS.

The Secretariat has thought fit to reproduce the above notes, so that, when the question of indirect protectionism comes up for discussion, the members of the Committee may have a text to help them to follow the report.

The Secretariat considers that the Committee should give its opinion on the various questions raised, and, in particular, state whether it approves the conclusions at which the Secretariat has arrived, and more especially whether it agrees to the studies and investigations enumerated in Section B being undertaken, and indicate the order in which it would prefer each to be taken.

The Secretariat should be allowed a good deal of latitude, so as to enable it to collect the necessary documentation, and it might be agreed that each of the members of the Economic Committee should give the Secretariat any assistance of which it may stand in need.

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#### ANNEX 3.

[C.C.T. /482.]

### LETTER ADDRESSED BY THE MEMBER OF THE COMMITTEE APPOINTED BY THE ITALIAN GOVERNMENT TO THE SECRETARY- GENERAL OF THE COMMISSION ON DECEMBER 18<sup>TH</sup>, 1930, CONCERNING THE EXTENSION OF INTERNATIONAL AGREE- MENTS RELATING TO TRANSPORT.

In accordance with the task entrusted to me by the Communications and Transit Committee at its last session, I have duly ascertained the reasons for the recommendation adopted by the Economic Conference, held in February and March 1930, with regard to agreements between railways, which should be concluded on uniform principles.

The explanations furnished have made it clear that the recommendation was not submitted by the Italian delegation, which merely suggested certain changes with a view to making it more elastic.

In any case, the object of that delegation was to recommend that any question involving special agreements between certain railways should be treated on the basis of uniform principles, it being left to the Governments and administrations concerned to establish them in advance and to decide, when the time comes, whether these agreements could actually be brought into operation, and, if so, which of them.

We may therefore take it that, for instance, the Berne Conventions (passengers and goods), the Convention for the Exchange of Rolling-Stock, the Technical Convention relating to Rolling-Stock, the work done by the International Railway Union, the Convention on the International Regime of Railways, the Convention for the Clearance of Goods through the Customs, the work of the Permanent Railway Congress, etc., should be amply sufficient to meet the purpose of the recommendation in question.

Moreover, the Committee might consider the advisability of making certain amendments or additions to the Convention on the International Regime of Railways or of taking steps to obtain the accession of States which have not yet acceded to that Convention.

At the same time, I think it would be desirable to learn the views of the delegation which submitted the recommendation, so as to ascertain whether the foregoing interpretation is correct.

(Signed) G. SINIGALIA.

ANNEX 4.

[C.C.T./488.]

SUMMARY OF REPLIES FROM GOVERNMENTS TO CIRCULAR LETTER  
277.1930.VIII, OF OCTOBER 20<sup>TH</sup>, 1930, RELATING TO THE TRIPTYCH  
SYSTEM.

In accordance with a resolution adopted by the Advisory and Technical Committee at its fifteenth session, the Secretary-General of the League forwarded to various Governments a circular letter acquainting them with the said resolution and asking them to be good enough to inform him whether they were prepared to apply the rules set out in this resolution relating to the triptych system.

The Governments of the following States have declared that they have already applied or are prepared to apply these rules : Belgium, Bulgaria, Denmark, Estonia, Germany, Great Britain, Greece, Latvia, Luxemburg, Poland, Roumania, Switzerland, Yugoslavia.

The German Government, while stating that it accepts the proposed rules, points out that the system in force in Germany is in several particulars more favourable ; it also states that it does not at present propose to introduce the six-month limit. The Belgian and Danish Governments state that in no case can there be any question of admitting motor vehicles for commercial purposes, such as transport, against payment, sale, etc.

The Governments of the Netherlands and the Union of South Africa are not prepared to accept these rules, the former because the provisions laid down are less liberal than those already adopted in this matter under the legislation of the Netherlands, the latter because local conditions do not allow of the adoption of the triptych system.

The other replies propose the adoption of certain amendments.

The Austrian Government proposes that after the words "A person temporarily" shall be inserted the words "—that is, not regularly and repeatedly—". The Federal Government considers that, failing this reservation, it would often be difficult and even impossible to determine whether a domicile was or was not *de facto*.

The Government of Finland, since the benefit of the triptych system is only for genuine tourists and since the first paragraph of the rules drawn up by the Committee does not allow the granting of this to persons on business, wishes to reserve the right to exclude commercial travellers. Further, provided that all countries agree that persons on business are excluded from the benefits of the triptych system, the said Government would prefer the elimination of the six-month limit of stay. This limit has actually been adopted in Finland for all classes of professional traders.

The Government of the Irish Free State does not grant triptychs to persons visiting the country on business and would not be prepared to authorise a stay of more than four months for persons temporarily domiciled in the country. It considers that a longer stay might arouse doubts as to the temporary nature of the residence.

The Portuguese Government also asks that the stay shall be limited to four months.

The Egyptian Government is not prepared to grant triptychs to persons having a business domicile in Egypt, even if they only visit the country at long intervals. It considers that the activities which they carry on in the country are definitely commercial in character.

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ANNEX 5.

[C.C.T./486.]

PASSPORT AND VISA FORMALITIES REQUIRED FOR MIGRANTS  
(EFFECT GIVEN TO THE DECISION OF THE ADVISORY AND TECHNICAL  
COMMITTEE FOR COMMUNICATIONS AND TRANSIT AT ITS FIFTEENTH SESSION).

The Secretary General of the Committee requested the International Labour Office to supply detailed explanations as to the wishes of the Governing Body, and particularly as to the difficulties mentioned by the Japanese member of the Governing Body, with regard to passport and visa formalities required for migrants.

The International Labour Office, in compliance with this request, has transmitted to the Secretary-General of the League of Nations the two following memoranda from the Japanese

Government, dated respectively February 9th and 25th, 1931, relating to formalities to be fulfilled by Japanese subjects, emigrating to certain South American States and to Mexico :

SIMPLIFICATION OF FORMALITIES FOR EMIGRANTS.

I. The Consulates of Mexico and South American countries stationed in Japan require of persons who desire to emigrate to those countries the following documents for the issue of passport visas :

*Mexico.*

	Certification fee of Consul.
1. Vaccination certificate . . . . .	2 pesos
2. Certificate of conduct . . . . .	1 peso
3. Marriage certificate . . . . .	10 pesos
4. Document certifying the permission of parents or of the head of a family for emigrants under 21 years of age . . . . .	10 pesos

*Colombia.*

1. Health and vaccination certificates . . . . .	2 dollars
2. Certificate of conduct issued by the Japanese police authorities . . . . .	2 dollars
3. Identity card issued by consuls of Colombia. Fee of issuance . . . . .	2 dollars

*Remark.*—Certificates of conduct are required for male and unmarried female emigrants of more than 15 years of age, even when they emigrate as a family emigrant.

- Brazil.*
1. Health certificate.
  2. Vaccination certificate.
  3. Certificate of good conduct.
  4. Identity card.
  5. Certificate of occupation.
  6. Certificate of the Brazilian police authorities and certification by the Federal Inspection Bureau of Immigrants in Brazil are required as regards emigrants above 60 years of age and under 18 years of age as well as unmarried women who are called to join their family in Brazil.
  7. Finger-printing is required (in case of family emigrants, that of the head of the family only).

*Remark.*—The passport visa and the certification by consuls of the accompanying documents became free of charge as from January 1st, 1929, as regards agricultural emigrants.

*Peru.*

	Certification fee of Consul.
1. Health and vaccination certificates . . . . .	2 dollars
2. Certification of conduct . . . . .	2 dollars

- Chile.*
1. Health certificate.
  2. Identity card.
  3. Certificate of occupation.
  4. Finger-printing is required.

*Remark.*—Formerly, an endorsement fee of health certificate (\$4.40), a certification fee of other documents (\$4.40), a translation fee for each certificate (\$4.40) and a certification fee of a copy of the census register (\$4.40) were charged. However, since June 1929, such fees were not to be charged in addition to the fee of passport visa.

- Argentine.*<sup>1</sup>
1. Health certificate.
  2. Identity card.

<sup>1</sup> With reference to the Argentine, in consequence of the Presidential Order which came into force on January 1st, 1931, a certificate fee of 10 pesos is required for each of the following documents :

- (1) Document certifying that the bearer has committed no criminal offence in the past five years;
- (2) Document certifying that the bearer is not a lunatic or a beggar;
- (3) Document certifying the ability of the bearer of making a living.



3. Document certifying that the bearer is not a lunatic or a beggar.
4. Document certifying the ability of making a living.

*Remark.*—The certification fee is not required in addition to the fee of passport visa.

II. Forms of the above-mentioned certificates are found annexed (except Colombia).<sup>1</sup>

III. The resolution adopted by the International Conference of Emigration and Immigration held in Rome, May 15th to 31st, 1924, with regard to the question of the simplification of passport and consular visas, is as follows :

“The Conference,

“Considering the desirability of simplifying formalities for emigrants, in particular by adopting a uniform type of passport and reducing the charges made for the issue of this document :

“Expresses the wish :

“(1) That the necessity of obtaining passports should be abolished as soon as possible ;

“(2) That, in the meantime, a uniform type of individual and of family passport should be adopted ;

“(3) That the procedure in connection with the issue of passports to emigrants should be simplified and accelerated ;

“(4) That offices for the issue of passports to emigrants should be instituted in order that they may be saved long and expensive journeys, and that local authorities may, so far as possible, be given the right to issue such passports, thus avoiding the concentration of this work in a few large towns situated at a considerable distance from the emigrants' homes ;

“(5) That, at ports of departure, the consuls of the countries to which the emigrants are proceeding should also be authorised to *viser* the passport of any emigrant who is ready to embark ;

“(6) That, where charges are made for the issue of passports or visas to emigrants, these charges would not exceed a small uniform sum ;

“(7) That the transit visas on passports and the charge for the same should be abolished in the case of those persons who prove, by producing their tickets, that they are proceeding to their destination as emigrants or are returning to their country of origin.”

IV. The resolution concerning the simplification of passport visas for emigrants, adopted by the Conference of Emigration and Immigration, held at Havana in March and April 1928, is as follows :

“The Conference expresses the wish that the different certificates required of immigrants for the drawing up of the passport or for obtaining a consular visa be included in a single document, and that these certificates and the visa relating to them be issued free of charges.”

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## ANNEX 6.

[C.C.T./483.]

### REQUEST FROM THE INTERNATIONAL RAILWAY UNION CONCERNING THE EXEMPTION OF RAILWAY POSTERS FROM CUSTOMS DUTIES.

I. LETTER SENT BY THE SECRETARY-GENERAL OF THE INTERNATIONAL RAILWAY UNION TO THE SECRETARY-GENERAL OF THE ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT.

Paris, December 19th, 1930.

[*Translation.*]

As you are aware, advertising matter exchanged by the railway administrations of the various countries is subject to Customs duties, which add considerably to the cost of producing such matter, and consequently do not allow of publicity to the extent which is desirable for the development of international relations.

At its last session, the Managing Committee of the International Railway Union expressed the opinion that the League's Advisory and Technical Committee for Communications and Transit might with advantage approach Governments with a view to inducing them to abolish Customs duties on advertising matter issued by railway administrations.

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<sup>1</sup> These forms are not reproduced in the present document.

I am communicating the foregoing to you with the request that you will take such action in the matter as you may consider expedient.

I should be very grateful for any information you can give me on the subject.

(Signed) Gaston LEVERVE.

2. NOTE BY THE SECRETARY-GENERAL OF THE COMMITTEE.

In view of the fact that a Sub-Committee of Customs experts appointed by the League's Economic Committee has for some time past been examining the question of the reduction or abolition of Customs duties on certain advertising matter, and in order to avoid any loss of time in considering the action which it may be possible to take in regard to the above-mentioned request, the Secretary-General got into touch with the Economic Section and communicated this request to it.

According to the information received, this Sub-Committee of Customs experts proposes, in a report to be submitted to the Economic Committee at its next session and dealing with the question of the Customs regime applicable to printed matter for advertising purposes, the admission "free of import duty, without limitation of quantity, of printed matter and posters for propaganda, the main purpose of which is to induce the public to visit countries or localities, and fairs and exhibitions abroad, provided that these documents are intended for distribution free of charge and that their purpose of general publicity is evident".

In order to make it quite clear that exemption from Customs duties is to be extended to all advertising matter issued by railway administrations, such as time-tables in the form of books or posters, printed tourist matter, announcements of fairs and exhibitions, artistic displays, sports meetings and congresses, and also to other similar documents, the above-mentioned text of the report should be slightly modified. The International Railway Union has received the draft of the amended text and has been invited to submit its observations.

The question will be examined by the Economic Committee at its next session.

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ANNEX 7.

[C.C.T. /481.]

REQUEST FROM THE INTERNATIONAL RAILWAY UNION WITH REGARD TO CUSTOMS DUTIES ON CARDS FOR MACHINES USED FOR STATISTICAL PURPOSES.

LETTER FROM THE SECRETARY-GENERAL OF THE INTERNATIONAL RAILWAY UNION TO THE SECRETARY-GENERAL OF THE ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT.

Paris, December 9th, 1930.

[Translation.]

As you are aware, the International Railway Union has endeavoured to prepare and keep regularly up to date very full statistics of great importance for international traffic.

The preparation of the statistics which serve as a basis for the work in question is considerably facilitated by substituting mechanical for manual processes. Cards made of special cardboard, coming exclusively from America and subject to relatively high Customs duties, which add greatly to the cost of compiling the statistics, are employed in the machines used for this purpose.

These Customs duties thus seriously hinder the use of machines of this kind and make it impossible to develop this form of documentation to the desired extent.

In these circumstances, the Managing Committee of the International Railway Union recommended at its last session that the Advisory and Technical Committee for Communications and Transit of the League of Nations should ask Governments to remove the Customs duties on the special cardboard used in these machines.

I have the honour to bring this recommendation to your consideration for whatever further action you may deem suitable.

(Signed) Gaston LEVERVE.

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ANNEX 8.

[C.C.T./N.I. 49 (1).]

REPORT ON THE SEVENTH SESSION OF THE PERMANENT  
COMMITTEE FOR INLAND NAVIGATION, HELD AT GENEVA ON  
MAY 27<sup>TH</sup> AND 28<sup>TH</sup>, 1931.

*President* : M. Silvain DREYFUS.

The following members took part in the work of the Committee : M. DELMER, M. POPESCO, His Excellency Phya Abhibal RAJAMAITRI, His Excellency M. ROSSETTI, His Excellency M. A. DIETRICH VON SACHSENFELS, M. SCHLINGEMANN, His Excellency M. SEELIGER and M. HOSTIE, Secretary-General of the Central Commission for Rhine Navigation.

Sir John Baldwin offered his excuses for his inability to attend the meetings, except on May 28<sup>th</sup>.

M. Yovanovitch was unable to attend the session.

*Secretariat* : M. LUKAČ.

The agenda of the Committee comprised the following questions :

1. Resolution with regard to the extension of international agreements relating to transport, adopted by the Advisory and Technical Committee at its fifteenth session.
2. Results of the Conference of the International Chamber of Commerce on Danube Navigation, held at Cracow in September 1930.
3. Report of the Inland Navigation Section of the Committee for the Unification of Transport Statistics on its session held at Paris on January 22<sup>nd</sup> and 23<sup>rd</sup>, 1931.

The discussions and conclusions of the Committee in regard to these various questions may be summarised as follows :

I. EXTENSION OF INTERNATIONAL AGREEMENTS RELATING TO TRANSPORT.

The Permanent Committee had before it the following resolution adopted by the Advisory and Technical Committee for Communications and Transit at its session in September 1930 :

"The Advisory and Technical Committee decides to refer to the Permanent Committee for Inland Navigation the request of the Preliminary Conference with a View to Concerted Economic Action, held at Geneva in February and March 1930, that consideration should be given to the possibility of framing an international agreement on inland navigation on national waterways, based on the principles enumerated in the additional Protocol to the Barcelona Convention of 1921."

The Chairman of the Committee, in his speech, traced the history of the question of navigation on national waterways, particularly in the light of the discussions that took place at the Barcelona Conference, which led to the conclusion of the additional Protocol.

The discussion which followed showed that, in the Committee's opinion, the idea of the Preliminary Conference with a View to Concerted Economic Action was that it might be possible to conclude an international agreement of a much wider scope than the additional Protocol, the principles of the latter merely forming the basis of part of the agreement. In view, however, of the ten years that have elapsed since the Barcelona Conference and the changes that may have taken place in the views of the various Governments on this question, the Committee felt that, before proposing to the Advisory and Technical Committee that steps should be taken with a view to the possible conclusion of an international agreement on the lines suggested by the Conference for Concerted Economic Action, it would be advisable to collect material on the subject. Accordingly, after some discussion, the Committee adopted the text of a questionnaire (see Appendix) to be sent by the Secretariat to all the Governments concerned, so that, when the Committee has acquainted itself with the replies to the questionnaire, it will be able to form an idea of the present position in regard to navigation on the national waterways of the various countries and to consider what further action should be taken in the matter.

In connection with this question, M. Rossetti suggested that the Secretariat of the Committee should institute enquiries with a view to informing the members of the Permanent Committee of the international regime of inland navigation in the various American countries as it stands in consequence of decisions of the Pan-American congresses.

The Permanent Committee agreed to these suggestions.

II. CONFERENCE OF THE INTERNATIONAL CHAMBER OF COMMERCE ON DANUBE NAVIGATION  
(Cracow, September 1930).

The Permanent Committee considered with interest the resolutions adopted by this Conference which were communicated to it.

With regard to Resolution XVII, concerning identity cards for crews, which was specially submitted to it at the request of the International Chamber of Commerce, the Permanent Committee recognising the great importance of this question in inland navigation, acquainted itself with the similar enquiries already undertaken by the Secretariat in regard to personnel engaged in maritime navigation in consequence of the following resolution adopted by the Advisory and Technical Committee for Communications and Transit in September 1930.

“The Advisory and Technical Committee takes note of a letter from the Director of the International Labour Office forwarding the text of a resolution adopted by the International Labour Conference at its thirteenth session relative to the abolition of passport obligations for officers and seamen, and instructs the Secretariat to prepare under the direction of the Chairman of the Permanent Committee for Ports and Maritime Navigation and the Chairman of the former Sub-Committee on Passports, a report showing : (1) the present situation in the various maritime countries ; and (2), for purposes of information, what measures have been adopted by the riparian States on certain navigable international waterways with regard to crews employed in inland navigation. This report will be submitted to the Committee at an early session.”

The Committee found that the information which the Secretariat is at present collecting in accordance with this resolution also covers inland navigation, and can consequently be used as part of the material required for the study of the question raised by the Cracow Conference. It accordingly decided to propose that the Advisory and Technical Committee should supplement its resolution quoted above by enlarging the scope of the investigation in progress and extending it to the present position with regard to identity papers for crews employed in inland navigation, not merely for purposes of information as before, but with a view to the preparation of a report on the question. At the same time, the Committee decided to propose that, with a view to the preparation of this report, the Advisory and Technical Committee should add to the Chairman of the Permanent Committee for Ports and Maritime Navigation and the Chairman of the former Sub-Committee on Passports, the Chairman of the Permanent Committee for Inland Navigation.

### III. STATISTICS OF INLAND NAVIGATION.

At its previous meeting in March 1929, the Permanent Committee made a number of observations relating to the report of the “Committee for the Unification of Transport Statistics” on the statistics of inland navigation, and asked that Committee to reconsider certain points in its report on the basis of those observations.

The Inland Navigation Section of the Committee for the Unification of Transport Statistics met at Paris in January 1931, and, having considered the Permanent Committee's observations, accepted them, apart from a few detailed points of drafting, and amended the text of its original report accordingly.

The Permanent Committee acquainted itself with these amendments, which were submitted to it, and agreed to them.

With regard more especially to the question of statistics of goods in mixed transport, a discussion took place, from which it appeared that, in the Committee's view, it was to be clearly understood that, in order to prevent any obstacle or any unnecessary delay to shipping, the statistical declaration to be made by vessels engaged in mixed traffic at the point where the inland waterway part of their journey ends should only be required in the case of vessels which are, properly speaking, engaged in inland navigation, and that there should be no such obligation for sea-going vessels which, on leaving a sea-port situated on a river (*e.g.*, Hamburg, Rouen, Braila, etc.), use on their way to the sea the part of the river below the port down to its mouth.

\* \* \*

M. Rossetti having drawn the attention of the Permanent Committee for Inland Navigation to the results of the Conference for the Unification of River Law, held at Geneva from November 17th to December 9th, 1930, the Committee expressed the view that it might be desirable to ask M. Rossetti to give the Advisory and Technical Committee a brief statement of the position reached in the investigation of the various questions dealt with by the Conference, in order to enable the Advisory and Technical Committee to give the Permanent Committee any instructions it might think fit as to the action to be taken in these matters.

\* \* \*

Lastly, the Chairman informed the Permanent Committee that he had received the following letter from M. Delmer :

“Geneva, May 27th, 1931.

“I shall have the honour to send you shortly the report I have been asked by the Advisory and Technical Committee for Communications and Transit to make on the co-ordination and codification of regulations for inland navigation.

“You may perhaps think it desirable to place the question of regulations for inland navigation on the agenda of our next session, thus complying with the recommendation made by the National Shipping Congress held at Brussels.

(Signed) A. DELMER.”

The Committee took note of this letter, and decided to place the question which it raises on the agenda of its next session.

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**Appendix.**

**QUESTIONNAIRE.**

1. Are foreign vessels permitted to navigate :  
Either on all your national waterways ?  
Or on only some of those waterways, and, if so, which ?
2. If they are so permitted, is there equality of treatment as regards all transport operations between national and foreign vessels, their cargoes and their passengers, from every point of view, more especially in respect of : tolls and dues (navigation dues, deck dues, lock dues, harbour dues, etc.) ; Customs duties and other duties levied on the vessels or on goods of the same origin and provenance or destination ; professional and other taxes payable on receipts, profits, capital, income, etc., by shipping companies ; the allotment of berths and warehouses in ports, etc. ?
3. If there is any discrimination between national and foreign vessels as regards treatment, in what does that discrimination consist ? In particular, are cabotage and towage reserved on your national waterways ?
4. Is special treatment reserved for the shipping of certain countries only in virtue of multilateral or bilateral treaties or agreements (including the application of the most-favoured-nation clause or the national treatment clause), and what are the provisions of these instruments ?
5. Is any change in the existing regime at present contemplated ?

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**ANNEX 9.**

[C.C.T./485.]

**DECISION OF THE COUNCIL CONCERNING THE STUDY  
OF THE QUESTION OF THE TERRITORIAL SEA.**

The Secretary-General of the Advisory and Technical Committee for Communications and Transit has the honour to draw the attention of the members of the Committee to the following resolution, adopted by the Council on May 15th, 1930, as to the action to be taken on the work of the Conference for the Codification of International Law, held at The Hague from March 13th to April 12th, 1930, and relating to the question of the territorial sea :

“The Council of the League of Nations,

“Having considered the work of the Conference for the Codification of International Law, which met at The Hague in March and April 1930, in accordance with the Assembly’s decision of September 27th, 1927, approves the report of the representative of Italy and decides as follows :

“1. . . . .

“2. . . . .

“3. The Council notes the resolution<sup>1</sup> adopted by the Conference on the subject of the territorial sea and decides as follows :

“(a) The Secretary-General shall communicate to the Governments of the Members of the League, and of the non-member States invited to the Conference, the articles dealing with the legal status of the territorial sea which were drawn up by the Conference and provisionally approved with a view to their possible incorporation in a general convention on the territorial sea. The Secretary-General shall at the same time, on behalf of the Council, invite the various Governments to continue, in the light of the discussions of the Conference, their study of the question of the breadth of the territorial sea, and questions connected therewith, and to endeavour to discover means of facilitating the work of codification.

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<sup>1</sup> The text of the resolution and of the articles drawn up by the Conference at The Hague, concerning the legal status of the territorial sea, is reproduced on pages 15 to 17 of document C.228.M.15.1930.V.

“(b) The Council adjourns to a subsequent session its decision as to its ultimate action on paragraphs 3 and 4 of the resolution, but (1) decides that the Secretary-General, when making to the Governments the communication contemplated by paragraph (a) above, shall inform them that the Council will be glad to receive and consider any views which they may desire to express as regards the action contemplated by the said paragraphs 3 and 4 ; (2) invites the Organisation for Communications and Transit of the League of Nations to follow, in a general manner, the development of the problem of codification of the law relating to the territorial sea, with a view to presenting recommendations to the Council on the subject when it finds it possible to do so.

“4. The Council refers for consideration to the Organisation for Communications and Transit the recommendations formulated by the Conference concerning inland waters.”

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**ANNEX 10.**

[C.C.T./484.]

**LETTER FROM THE SECRETARY-GENERAL OF THE INTERNATIONAL RAILWAY UNION TO THE SECRETARY-GENERAL OF THE COMMITTEE FOR COMMUNICATIONS AND TRANSIT RELATING TO THE SYSTEM OF TRANSPORT FOR DAILY AND SIMILAR NEWSPAPERS IN INTERNATIONAL TRAFFIC.**

Paris, December 9th, 1930.

[*Translation.*]

In the Final Protocol of its meeting of November 25th, 1929, the European Conference convened at Geneva by the League of Nations approved, in principle, the proposals made by the International Railway Union concerning the transport of newspapers and periodicals by rail, in response to the recommendations of the Conference of Press Experts in August 1927.

As a result of this approval, I have the honour to communicate to you the text<sup>1</sup> of the regulations adopted by the Managing Committee of the International Railway Union at its last meeting in order to define the principles and to lay down, in consequence, certain rules to be applied by the administrations members of the union.

The actual coming into force of these rules will necessitate preliminary agreements, particularly with the Customs and other Government administrations ; and, apart from the Government authorisations which will have to be obtained, detailed Customs provisions and certain tariff provisions will probably have to be fixed.

The Managing Committee has instructed me to ask the Advisory and Technical Committee of the League of Nations to approach the various Governments in order to induce them to take the necessary action.

The delegates of the railway administrations of a very large number of countries have intimated verbally at the meetings of the Managing Committee of the International Railway Union that their respective administrations were prepared to apply the regulations as soon as the measures in question were adopted. These countries are the following : Belgium, Bulgaria, France, Great Britain, Hungary, Lithuania, the Netherlands, Poland, Portugal, Roumania.

The delegates of Germany and Finland stated that the transport of newspapers in their countries was reserved for the postal administrations, and that it was the latter which would have to take the necessary measures.

Switzerland is in the same position as regards the importation of political newspapers.

(Signed) Gaston LEVERVE.

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**Appendix.**

[*Translation.*]

**REGULATIONS FOR THE TRANSPORT OF NEWSPAPERS IN INTERNATIONAL TRAFFIC.**

*Article 1.*

The administrations belonging to the International Railway Union, including the administrations of Great Britain, shall set up an accelerated newspaper transport service between themselves, based on the provisions set out below. In those countries where the transport of newspapers is reserved for the postal administration, the latter shall continue to ensure their

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<sup>1</sup> See Appendix.

transport ; in this case a special agreement based on the present Regulations shall be drawn up between the postal and the railway administrations of the country concerned.

*Article 2.*

DEFINITION.

The following shall be deemed to be newspapers for the purpose of the present Regulations :

(1) Daily newspapers (including their free supplements) which are normally published at least six times per week. Financial newspapers published on each day on which the Stock Exchange is open shall be regarded as daily newspapers.

(2) Newspapers which are published regularly on fixed days in the place of the newspapers mentioned in (1).

These Regulations do not apply to periodicals.

*Article 3.*

The consignor shall give the forwarding administration adequate notice of the despatch of newspapers, together with particulars of the stations of departure and arrival, the names of the newspapers, the approximate number and weight of the packages to be carried daily, and the probable number of copies in each of the packages.

The forwarding railway shall promptly advise the railway undertakings concerned in the transport and shall fix, in agreement with them, the trains to be used in order to ensure the quickest possible transport, regard being had to the requirements of railway operation. At the same time it shall ascertain from these administrations the rates applicable on their lines and the accessory costs (Customs formalities expenses, police charges, etc.) which may be incurred during transport and which have also to be paid by the consignor.

*Article 4.*

LEGAL BASIS.

The international transport of newspapers shall be regulated by the International Convention concerning the Transport of Goods by Rail (C.I.M.), supplemented by the provisions of the present Regulations. Each consignment shall be accompanied by an international passenger-train (*grande vitesse*) way-bill.

As regards countries in which the transport of newspapers does not come under the C.I.M., transport shall be effected by means of a special way-bill and shall be regulated by the law in force on each of the lines used, supplemented by the present Regulations. (The special way-bill shall correspond to the one provided for in Annex II of the C.I.M. ; it shall not, however, contain the words : "laid down in the International Convention on the Transport of Goods by Rail and those . . . ")

*Article 5.*

The names and addresses of the consignor and consignee and the name of the station of destination shall be indicated very legibly on the packages of newspapers.

*Article 6.*

HANDING OVER AND ACCEPTANCE FOR TRANSPORT.

The consignor shall hand in his packages and the way-bills during fixed hours at the office of the station of departure (luggage office or some other office specially designated) reserved for this purpose by the forwarding administration. Administrations may, if they wish, authorise the consignor to place his consignment direct on the train which is to convey it.

After verifying the consignment (state of the packing, weight, address, etc.), the said office shall stamp the way-bill.

*Article 7.*

LOADING, TRAIN AND ROUTE TO BE FOLLOWED.

Loading shall be carried out by the office designated in Article 6 or, if authorisation has been given, by the consignor himself.

The route to be followed shall be fixed in accordance with the rules in force for registered luggage—that is to say, newspapers should be carried as far as possible by through trains.

Special trains made up of rolling-stock which does not belong to the railway companies, such as those of the International Sleeping-Car Company, the Mitropa, etc., may only be used for the

forwarding of newspapers subject to agreements to be concluded between all the administrations concerned in the lines over which the trains in question run. Consignments carried by these trains shall be liable to an extra charge.

Consignments transhipped *en route* shall be sent on by the proper train connections.

*Article 8.*

DELIVERY TO CONSIGNEE.

Delivery to the consignee shall be effected by means of a receipt immediately on the arrival of the train and, as far as the railway administrations consider it possible, at the luggage van of the train conveying the consignment. Newspapers not withdrawn on the arrival of the train shall be treated as passenger-train (*grande vitesse*) packages.

*Article 9.*

RATES AND PAYMENT OF COSTS OF TRANSPORT.

The costs of transport shall be fixed by each administration for the part of the journey effected on its line.

Carriage for the whole distance and all costs incurred *en route* shall be invoiced in the consignor's name by the forwarding station. The forwarding railway shall agree with the consignor on the method of payment to be adopted (payment by instalments, bank deposit, periodical payments, etc.).

*Article 10.*

Consignments of newspapers payable on delivery, or subject to charges or to a declaration of interest in delivery, shall not be given the benefit of the provisions of the present Regulations.

*Article 11.*

RESPONSIBILITY.

Should consignments made in accordance with the arrangements in the present Regulations and benefiting by reduced rates be damaged, lost or delayed, the compensation payable may not exceed 0.10 gold franc per kilogramme.

*Article 12.*

CUSTOMS AND POLICE PROVISIONS.

Customs formalities at frontiers shall be carried out in the same way as for luggage. Instead of the traveller, the agents of the railway administration shall present the packages of newspapers at the Customs, giving the necessary written declarations, or giving them verbally if the Customs so allow. The consignor is not bound to make Customs declarations if these are not required by the Customs authorities.

Formalities required *en route* by the fiscal authorities, the police, or other administrative authorities, shall be carried out by the railway company.

*Article 13.*

CIRCUMSTANCES PREVENTING TRANSPORT AND DELIVERY.

If transport or delivery is prevented—in particular, as a result of difficulties with the Customs or police—the consignor shall be informed by the railway telegraphically and at his own expense, in so far as this is allowable under the legal provisions applicable in the country where the consignment was held up.

The railway company, however, does not assume any responsibility for non-observance of this stipulation.

*Article 14.*

COMBINED RAIL AND AIR TRANSPORT.

Special arrangements shall be made, where necessary, with air navigation companies for combined rail and air transport of newspapers.

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ANNEX 11.

[C.C.T./C.R./47.]

REQUEST CONCERNING MOTOR-DRIVERS' CLAIMS SENT BY THE  
SECRETARY OF THE INTERNATIONAL TRANSPORT WORKERS'  
FEDERATION TO THE SECRETARY OF THE PERMANENT  
COMMITTEE ON ROAD TRAFFIC.

A. SOCIAL QUESTIONS.

I. LEGAL QUESTIONS REGARDING CONDITIONS OF LABOUR AND EMPLOYMENT. •

1. When legislation for the protection of workers is introduced and (or) collective contracts concluded, it should be the object of all countries to ensure due consideration being given to the following minimum demands :

Eight-hour day or forty-eight-hour week.

The fixing of a maximum number of overtime hours per day and per week.

Payment for overtime.

Annual leave on full pay.

Suitable rest-periods during working hours.

Weekly day of rest.

The fixing of conditions of employment and dismissal.

Pay to continue during illness, absence from work owing to measures taken by the authorities, etc.

Protection against weather.

Further, the social legislation applicable to industrial workers should be similarly applicable to professional motor-drivers.

II. SOCIAL INSURANCE, CIVIL LIABILITY, PROTECTION OF THE LIFE AND HEALTH OF THE  
PROFESSIONAL DRIVER, PREVENTION OF ACCIDENTS AND SICKNESS.

2. Institution of satisfactory legal systems of insurance against professional invalidity and death, and of old-age pensions.

3. Legal obligation for all motor-owners to take out an insurance policy for both the driver and the vehicle.

4. Prohibition of motor-driven vehicles by combustion engines if not provided with self-starters.

B. ISSUE OF DRIVING LICENCES.

APPRENTICESHIP, MOTOR-DRIVING SCHOOLS, EXAMINATIONS, DRIVING-LICENCE, INTERNATIONAL  
DRIVING CERTIFICATE.

5. All candidates wishing to obtain a licence to drive a mechanically propelled vehicle must submit themselves to medical inspection as a test of their physical qualifications. This inspection should mainly relate to sight, hearing, state of the heart, and general condition. In the course of the general examination, it should be ascertained whether the candidate suffers from any disease or physical defect likely to make a motor vehicle driven by him a source of danger to the public.

6. Persons under 21 years of age may not in any circumstances be given a driving-licence for a mechanically propelled vehicle of any kind whatever.

7. Establishment of uniform regulations for the training and medical, theoretical and practical examination of candidates as drivers.

8. Public institutions (the State, provinces, communes or public welfare organisations) shall alone be authorised to establish and conduct motor-driving schools. All such schools must be under the supervision of the authorities. The boards entrusted with the supervision of schools shall include, in addition to representatives of the competent authorities, associations of motor-car owners and owner-drivers, representatives also of professional organisations of motor-car drivers.

9. Persons entrusted with practical instruction in driving-schools must have followed for at least five years the occupation of motor-driving and must pass an examination as to their teaching capacities.

10. Persons not possessing the teaching qualifications mentioned in (9) and not officially authorised to give lessons in driving-schools shall be forbidden, under pain of severe penalties, to teach driving.

11. All candidates wishing to obtain a driving-licence must pass a theoretical and practical examination. They must produce a certificate confirming that they have successfully passed through a motor-driving school.

12. Representatives of professional drivers' organisations should be admitted as examiners at the practical and theoretical tests to be passed by candidates.

13. After having successfully passed the practical and theoretical tests, candidates shall be entitled to a driving-licence. Licences, of different types for amateur and professional drivers, shall be issued for the following categories :

- (a) Motor-cycles ;
- (b) Light cars ;
- (c) All other motor vehicles.

14. At the seat of all authorities entitled to issue, on the recommendation of the examining board, driving-licences, or to withdraw such licences, a commission shall be formed, which shall include also representatives of the professional drivers' trade union, and shall have the sole right to decide whether the withdrawal of a licence is warranted.

15. Issue in all countries of international driving-certificates valid for all countries which have acceded to the International Convention on Motor Traffic.

#### C. OTHER QUESTIONS OF PROFESSIONAL INTEREST.

16. Exemption of the professional driver from joint responsibility arising from the laws regarding compulsory insurance and liability in case of accident.

17. Formation in all countries, at the seat of the central administration, of advisory committees, on which professional drivers' organisations shall be suitably represented.

18. Governments to draw up statistics of traffic accidents and their probable causes, classified as motor accidents, tramway accidents, and other traffic accidents (horse-drawn vehicles and bicycles).

#### D. CLAIMS REGARDING THE INTERNATIONAL CONVENTION OF OCTOBER 11TH, 1909, ON MOTOR TRAFFIC.

The International Convention of October 11th, 1909, on Motor Traffic should be supplemented as follows :

19. Professional motor-car drivers making a stay abroad in the exercise of their occupation shall continue to enjoy all the rights secured them by their contract of employment and by the legislation of their own country.

20. Establishment of uniform regulations regarding apprenticeship ; minimum uniform stipulations respecting the practical, theoretical and medical test for driver-candidates.

21. Issue in all countries of international driving-certificates for professional drivers valid for all countries which have acceded to the International Convention on Motor Traffic.

22. Conclusion of an international Convention on road traffic generally (motor vehicles, horse-drawn vehicles, cyclists, pedestrians).

23. Adoption in all continental countries of uniform regulations stipulating the right-hand rule of the road.

24. Institution of international rules on the right of way at bifurcations and cross-roads.

25. Improvement of roads in all countries by modern paving.

26. Compulsory enforcement of the provisions regarding the placing of road signs and pictorial signs (without written directions, so that chauffeurs of all countries may be aware of the danger) at level-crossings and dangerous points on the roads.

27. Fitting of motor vehicles with mechanical signalling devices which can be illuminated at night.

28. If the brake of a trailer cannot be worked from the driver's seat of the motor vehicle, the trailer should carry a brakeman, irrespective of the total weight. The driver of the motor vehicle and the brakeman on the trailer must be able to communicate with one another.

29. Drivers' seats on motor-lorries and on trailers should be padded, fitted with springs and protected against wind and weather.

30. The reliable working of all motor vehicles should be verified every year, as often as their age and degree of wear require it, by an officially authorised technical institution or by qualified technical officials.

ANNEX 12.

[C.C.T./480.]

LETTER FROM THE DIRECTOR OF THE INTERNATIONAL LABOUR  
OFFICE CONCERNING MOTOR-DRIVERS' CLAIMS.

The Secretary-General of the Advisory and Technical Committee for Communications and Transit has the honour to circulate to the members of the Committee the text of a letter which he has received from the Director of the International Labour Office in reply to the request made by him to that Office with a view to obtaining, in accordance with the decision adopted by the Committee at its last session, the opinion of the Labour Office on the programme of motor-drivers' claims transmitted by the International Transport Workers' Federation.

\* \* \*

Geneva, February 21st, 1931.

[Translation.]

In your letter of January 3rd, 1931, you were good enough to transmit to me a copy of the programme of motor-drivers' claims<sup>1</sup> received by you from the International Transport Workers' Federation. You added that this programme had been submitted to the Advisory and Technical Committee for Communications and Transit which, at its fifteenth session, decided to postpone consideration of it and to request the Secretariat of the Committee to obtain the views of the International Labour Office on the matter.

As soon as I received this communication, I requested my services to examine the motor-drivers' claims. In point of fact, the programme put forward covers the whole of the claims of those workers. It includes questions exclusively within the province of the International Labour Organisation, others which are partly within its province, and others, again, which appear to be outside it. I have had lists of the first two groups of questions drawn up; these lists must not, of course, be regarded as final, but should, I think, make it possible to determine to some extent the organisations competent to deal with these questions.

Of the questions included in the programme of the International Transport Workers' Federation, the majority are of interest to the International Labour Office and appear to me to fall either wholly or partly within its competence. I should like to analyse those questions by examining the grounds on which our competence rests and whether international labour conventions or recommendations applicable to them are already in existence, and also whether it would be possible for the Labour Office to investigate them. From the point of view of the International Labour Organisation, these questions can, I think, be divided into five groups.

The first group consists of questions connected more or less directly with the professional drivers' labour contract or conditions of employment. These are Questions 1, 14 and 17. As regards the first question, this certainly falls wholly within the province of the International Labour Organisation; it is a matter of labour law in the strict sense of the term (individual labour contracts or collective agreements). There is at present no international labour convention or recommendation dealing with this matter. It is probable, however, that we shall shortly examine the problems of collective agreements, at all events from the general standpoint, if not from the special point of view of drivers. This general study should, however, furnish much useful information to professional drivers.

As regards Question 14 (establishment of a commission to decide questions relating to driving-licences, this commission to include representatives of professional drivers' trade unions), the International Labour Organisation is at least partly competent to deal with this question, as it relates to the co-operation of workers with employers in professional questions (paritary committees, conciliation and arbitration, works councils). No international labour convention or recommendation has as yet been adopted in this connection, but we are going to publish very shortly studies on conciliation and arbitration. In this case, also, these studies will deal with general problems and not with questions of special interest to drivers.

The same reply can be given to Question 17, which deals with the formation of an advisory committee on which professional drivers' organisations would be represented.

The second group of questions relates either directly or indirectly to the problem of social insurance. These are Questions 2, 3, 16 and 19. There is no doubt that, at all events as regards Question 2, the Labour Office is fully competent to deal with the matter, and is also competent to a large extent as regards Questions 3, 16 and 19. The position of professional motor-drivers differs in some respects according to whether they are in the employ of undertakings or of private persons. In the first case, they invariably benefit by existing social insurance laws. In the second case, they are usually assimilated to domestic servants, who, in many countries, are excluded from the benefit of social insurance laws, and, in particular, from sickness insurance or accident insurance. I therefore consider that motor-drivers belonging to the first category, at least, are covered by the two International Labour Conventions adopted in 1925 and 1927, the former dealing with workmen's compensation for accidents and the latter with sickness insurance. The former covers all paid workers of undertakings, and therefore does not apply to motor-drivers in the service of private

<sup>1</sup> See Annex 11.

persons, since it was not possible in the existing state of national law to extend the Convention to domestic servants. However, the second Convention applies, not only to workers in the service of industrial and commercial undertakings, but also to domestic servants, and consequently covers motor-drivers, even if they are in the service of private persons. The International Labour Office has not, so far, examined the special situation of motor-drivers from the point of view of social insurance. These investigations would be somewhat lengthy and complicated, since they would have to cover, not only the situation of motor-drivers under existing social insurance laws and the special examination of the problem of accident insurance and the responsibility of the driver in the case of accident, but also the possible conflict of national law, as regards drivers on routes situated partly in foreign countries.

The third group of questions relates to industrial hygiene. These are Questions 5, 6, 7 and 29. The International Labour Organisation is undoubtedly competent to deal with them. All that concerns the medical examination of industrial workers is within its province, and this consequently applies to the medical inspection of candidates prior to the issue of the driving-licence. At the present time, there is no international labour convention and no recommendation governing these four questions. The problem of medical examination is, however, now being raised in many countries, and has been, and is still being, discussed by medical associations, both professional and scientific. We will merely mention the discussions which have recently taken place in France and Belgium. Moreover, there are countries in which medical examination is already required by law. The International Labour Office is at present collecting information on the matter. A brief summary has already been given in the article "Transport", which is being prepared for the *Encyclopædia of Industrial Hygiene*, and the Labour Office is collecting further particulars with a view to more detailed investigations which we may possibly be asked to undertake.

The fourth group refers to the prevention of accidents : these are Questions 4, 18, 28 and 30. As regards Question 4, this appears to lie entirely within our province, as the sole object is to make it possible for the driver to use the self-starting apparatus. This is not a question of public safety or of road safety, but of safety for the driver—that is to say, for a paid worker. I should also like to make certain reservations with regard to the technical wording of this question. It seems to me that the precautions to be taken should apply, in particular, to cases in which the self-starter fails to act.

As regards Questions 18, 28 and 30, they appear to concern chiefly paid drivers and are consequently of interest to us. Except in the matter of labour accidents, these questions are not at present regulated by any international labour convention. Questions 28 and 30 deal with actual conditions of safety for the direct protection of paid drivers.

Finally, the last group of questions deals with the professional training of motor-drivers. These are Questions 8, 9, 10 and 20. As you are aware, professional training forms part of the programme laid down for us in Part XIII of the Peace Treaty. There is, as yet, no international labour convention governing these questions. The professional training of motor-drivers has not been specially examined by us, but it is to a large extent covered by the general survey which we have begun of the methods employed in vocational training. If necessary, we could easily collect information and make a special study of the question.

In short, of the questions mentioned in the Federation's programme, a certain number appear to fall solely within our province : these are Questions 1, 2, 4 and 19. There are others with which we are competent to deal, at any rate, in part ; these are Questions 3, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 20, 22, 23, 24, 26, 27, 28, 29 and 30. In the case of the first group, I do not think the Advisory and Technical Committee for Communications and Transit is called upon to take any action whatsoever. If it should think fit to deal with the second group, the International Labour Office should, I think, be asked to give its opinion and probably to co-operate with the Committee.

These are the initial observations which seem to me to be called for by the programme of motor-drivers' claims. Needless to say, I shall be happy to furnish any additional explanation you may desire and, in particular, to examine, in conjunction with yourself, the conditions of any co-operation which might be arranged in this matter between the Communications and Transit Organisation and the International Labour Office. -

(Signed) Albert THOMAS.

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ANNEX 13.

[C.C.T./473 (a).]

DRAFT BUDGET OF THE COMMUNICATIONS  
AND TRANSIT ORGANISATION FOR 1932.

The Secretary-General of the Advisory and Technical Committee for Communications and Transit has the honour to communicate herewith to the members of the Committee the draft budget of the Communications and Transit Organisation for 1932, as approved by the Supervisory Commission.

SCHEDULE N. CHAPTER III, ITEM 21.

NOTE ON SCHEDULE N.

*Explanation of details.* — In view of the necessity which has arisen, by reason of the Disarmament Conference, of restricting the other activities of the League of Nations for the year 1932, the provision for appropriations under Sub-heads 2 and 6 has been cut down for 1932 by 26,000 and 4,000 francs respectively.

As regards Sub-head 4, in the case of which the expenditure in 1928 and 1929 considerably exceeded the budget estimates, the figure of 20,000 francs has been retained for 1932, in view of the fact that the expenditure in 1931 has been below this figure. It must, however, be remembered that it will always be very difficult to estimate exactly the amount of the expenditure under this sub-head of the budget.

	1932	Estimated expenditure 1931 Swiss francs.	1930	Actual expenditure 1930
1. General Conference.....	—	49,000	—	—
2. Meetings of the Communications and Transit Organisation (sessions of the Advisory and Technical Committee, Committees, Sub-Committees and special conferences) and technical work of experts.....	110,000	136,000	136,000	119,095
3. Printing of documents :				
(a) For meetings and work for which provision is made in Sub-head 2, with the exception of conferences.	16,000	18,000	18,000	17,200
(b) For the collection and exchange of information on communications and transit (including miscellaneous expenses) .....	14,000	14,000	14,000	13,903
4. Conciliation of disputes submitted to the Committee and examination of similar questions submitted to the Committee by the Council .....	20,000	20,000	20,000	16,441
5. Salaries (permanent Secretariat).....	.....	.....	.....	.....
6. Travelling and removal expenses of the Secretariat .....	26,000	30,000	24,000	23,716
7. Cablegrams, telegrams and long-distance telephone communications, and miscellaneous expenditure .....	5,000	5,000	4,000	5,630

ANNEX 14.

[C.C.T./495.]

REPORT BY M. DE VASCONCELLOS REGARDING  
THE WIRELESS STATION OF THE LEAGUE OF NATIONS.

On October 4th, 1930, the Secretary-General signed four contracts, with the following companies : Marconi's Wireless Telegraph Co., Ltd., Telefunken, Compagnie générale de T.S.F., and Bell Telephone Manufacturing Co., for the purchase of supplies for the wireless station of the League of Nations. The station is to be installed and ready for use by December 1st, 1931, on which date it will be put into operation by the Société anonyme Radio-Suisse on its own behalf and on behalf of the League of Nations, according to the principles laid down in the agreement between the Secretary-General of the League of Nations and the Société Radio-Suisse.

The Assembly, at its eleventh session, in 1930, approved the various proposals of the Supervisory Commission, comprising an estimate of 2,280,264 Swiss francs for construction costs, according to the contracts concluded.

At the beginning of 1931, a change in the arrangement of the aerials was proposed, the experience of the last few years having shown that we are now going through a period of somewhat serious magnetic and radio-electric disturbances, which may last at least for several more years, and which will make it necessary to utilise other wave-lengths in the near future. This change

involves an increase of 50,000 Swiss francs in the construction costs (making a total of 2,330,264 Swiss francs), which was approved by the Supervisory Commission.

The rapid development of radio-electric science will very probably involve supplementary expenditure in the near future for the supply of up-to-date equipment or instruments, or for making unforeseen changes in order to improve the service and increase the utility of the station.

The station will be established on the land and in the buildings belonging to the Radio-Suisse. The ground has been purchased, and the enlargement of the buildings will have been completed by the end of July ; but the contractors will be able to begin the work of assembling the station on June 15th, 1931.

The engineers of the different firms met at Geneva on February 26th, 1930, for a final examination of the plans and of the difficulties not yet solved.

In order to fix the wave-lengths, the Communications and Transit Section got into touch with various countries, notably Brazil, the Argentine, Japan and the Dutch Indies. After an exchange of telegrams, the wave-lengths were provisionally fixed for the different directions, the final decision being possible only after the station has been put into operation. As regards North America, a provisional wave-length of about 20 metres on a temporary aerial has been proposed. The experience of the last few years has shown that this wave-length gives the best results on the Europe-North America circuit, this circuit being the most hindered in its traffic on short waves by magnetic disturbances. A report on the relation between magnetic and radio-electric disturbances is in preparation and will be submitted to the Committee as soon as it is ready.

In order to ensure traffic with South America, the Communications and Transit Section has got into touch with the C.R.I.C. (Commercial Radio-Electric International Committee) in Paris. This Committee represents four big firms : the Radio Corporation, the Marconi Company, the Compagnie générale de T.S.F., and the Telefunken Company, and provides communication with South America by means of two stations, at Buenos Aires and Rio de Janeiro, belonging to these four companies. The Committee expressed its willingness to open a regular service through its two South American stations with the Geneva station, for official and commercial traffic exclusively from and to Switzerland.

The Japanese Government has also declared its willingness to open a daily service with Geneva, for half an hour twice a day to begin with, and perhaps for longer periods later on.

The visit of the Director of the Section to China and Japan has had as immediate result that direct liaison with these countries is assured.

The chief engineer of the wireless service of British India, Mr. Ryan, stated during his visit to Geneva that, as soon as his Government possessed a short-wave station, a direct service with Geneva could be considered.

The Government of the Netherlands and of the Dutch Indies also declared its willingness to open a regular service with Java for traffic exclusively from and to Switzerland.

These different proposals will be submitted to the Committee of Experts, which will probably meet in September.

Experiments over a period of one week have been carried out with the medium-wave station belonging to the Radio-Suisse. These showed that, in practice, it will be possible to enter into direct relations with all the countries of Europe, but that there are still several countries which, owing to their weak stations, can only communicate unilaterally with Geneva. These experiments will be supplemented by others provided for in the agreement with the Radio-Suisse.

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#### ANNEX 15.

[C.C.T./494.]

### DOCUMENTS RELATING TO THE COLLABORATION BETWEEN THE NATIONAL GOVERNMENT OF CHINA AND THE COMMUNICATIONS AND TRANSIT ORGANISATION.

Geneva, May 29th, 1931.

The Secretary-General of the Advisory and Technical Committee for Communications and Transit has the honour to transmit to the members of the Committee the following documents :

- (1) Telegram from the National Government of China, dated January 7th, 1931, and reply of the Secretary-General of the League.<sup>1</sup>
- (2) Correspondence exchanged between the Minister of Finance of the National Government of China, Vice-Chairman of the Executive Yuan, and the Director of the Communications and Transit Section of the League.

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<sup>1</sup> This invitation was accepted by the Council at its sixty-second session on January 19th, 1931 (see *Official Journal* February 1931).

(3) Note by the Secretary-General of the League of Nations transmitting to the Council suggestions<sup>1</sup> concerning the telegram addressed to him by the National Government of China.

I. TELEGRAM FROM THE NATIONAL GOVERNMENT OF CHINA AND REPLY  
OF THE SECRETARY-GENERAL OF THE LEAGUE.

*Secretary-General, League of Nations, Geneva.*

The Chinese Government desires to express its appreciation of the prompt arrival of Dr. Rajchman, Director of the League's Health Organisation. It is understood that Sir Arthur Salter, Director of the League's Economic and Financial Organisation, is now in India, and the Government would be glad if he could arrange to make a brief visit to China to discuss questions relating to the effect on China's economic activities of the present world depression. The Chinese Government also would be glad if M. Robert Haas, the Director of the League's Transit and Communications Organisation, could also make a brief visit to China for the purpose of discussing problems of inland waterways and land reclamation. The Chinese Government hopes that, as a result of this preliminary consultation, practical collaboration with the several technical organs and experts of the League may, on examination, be found feasible.—CHIANG KAI-SHEK T. V. SOONG, Nanking, January 7th, 1931.

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*Excellencies Chiang Kai-shek T. V. Soong, Nanking.*

I have the honour to acknowledge with great appreciation the receipt of your telegram relating to mission of Dr. Rajchman and proposing that Salter and Haas should respectively visit China with eventual possibility of further practical collaboration between China and technical organisations of the League.

I will submit this suggestion at once to the Council for its approval at next session beginning January 19th, and, in case of acceptance, will telegraph you with a view to arranging dates and other details.—AVENOL, Acting Secretary-General.

II. CORRESPONDENCE EXCHANGED BETWEEN HIS EXCELLENCY DR. T. V. SOONG, MINISTER OF FINANCE OF THE NATIONAL GOVERNMENT OF CHINA, VICE-CHAIRMAN OF THE EXECUTIVE YUAN, AND THE DIRECTOR OF THE TRANSIT SECTION OF THE LEAGUE.

Nanking, March 19th, 1931.

In conformity with the terms of the telegram of invitation sent by General Chiang Kai-shek and yourself to the Secretary-General of the League of Nations concerning my mission to China, as well as in conformity with the general directions which General Chiang Kai-shek and you were willing to give me, I have examined, after conferring with the Ministers and officials concerned, who all endeavoured to facilitate my task, various problems of communications and river conservancy which seemed to preoccupy the National Government of China.

As a result of these conversations, I understand that the Chinese Government proposes to include in a first programme of national development (1) the beginning of the execution of the scheme for the Hwai River improvement, submitted to it by the Hwai River Commission; (2) the organisation of a Technical Civil Engineering Field Station.

As regards the Hwai River improvement, the Government would propose, before the carrying out of the scheme is actually started, to submit the technical plans to a committee of specialised engineers, including some experts who have been engaged abroad on work of a similar character and importance. Such a committee would advise the Hwai River Commission and the Government on the best technical measures to be taken for the application of the scheme and suggest, if necessary, any adjustments or modifications which might be deemed expedient. The Government would also invite these experts to make a preliminary enquiry into the problems under consideration at the North China River Commission, and it would be the Government's desire that they be so chosen that they, or at least one of them, be in a position to be consulted on the technical aspects of a proposal relating to harbour development in the area of Greater Shanghai.

As for the Technical Civil Engineering Field Station, the main objects of the station would be to facilitate the training of civil engineers, to help in the preparation and supervision of future enquiries and surveys, concerning, in particular, road-building and river conservancy work and to form a nucleus of a National Service of Civil Engineers. The station might incidentally serve as an intermediary with appropriate institutions abroad for the organisation, through fellowships, of an interchange of experienced civil engineers. In the opinion of the Government, the creation of this station would benefit at the beginning by outside technical assistance. This assistance, to have its full value, ought to conform to the principles and methods already adopted for the existing

<sup>1</sup> These suggestions were approved by the Council at its sixty-third session, on May 19th, 1931 (see *Official Journal*, July 1931).

Health Station. It would be temporary and limited, and conducted with the object in view of permitting the outside assistance to be dispensed with as soon as possible.

I understand that it is the desire of the National Government that the Transit Organisation of the League should give it its assistance : (a) to secure the collaboration of experts for the final drawing up of a detailed plan of work to be undertaken in connection with the Hwai River and for the carrying out of the other duties referred to above, and (b) to help in the organisation and development of the Technical Civil Engineering Field Station. If such a request were formulated, the detailed scheme of collaboration would be submitted to the Government by the Transit Committee and, in conformity with the rules and work of the Transit Organisation, a Chinese member would be invited to participate in the deliberations on this subject of the Transit Committee or of any special committee created by the Transit Committee for that purpose.

(Signed) Robert HAAS,  
*Director of the Communications and Transit Section.*

\* \* \*

Ministry of Finance,  
Nanking, March 20th, 1931.

In answer to your letter of March 19th, I beg to confirm that the views expressed in this letter correspond with those of the National Government of China.

The main purpose of the invitation which the National Government of China sent to you to visit China was to enable the Government to discuss with you the measures which could be taken in order to secure a closer collaboration between the Chinese Government and the Transit Organisation of the League of Nations for the solution of problems of communications and land reclamation met with in China.

As a result of the conversations which have taken place, the National Government would be pleased if the Transit Organisation could give its assistance : (a) to secure the collaboration of experts for the final drawing up of the plan of work to be undertaken in connection with the Hwai River, these experts being also entrusted with the other duties mentioned in your letter and relating to the North China River System and to harbour work in the area of Greater Shanghai ; and (b) to help in the organisation and development of a Technical Civil Engineering Field Station.

The Government would be glad if the present request could be transmitted as soon as possible to the League's Transit Committee. It understands that the detailed scheme of collaboration would be submitted to it by the Transit Committee and that a Chinese member would participate in the deliberations on this subject of the Transit Committee or of any special committee created by the Transit Committee for that purpose. The Government considers that, in order to facilitate this collaboration, it would be a distinct advantage if the Transit Organisation could for a short period detach in China a technical official who could help in particular in the organisation of the Technical Field Station. The Government would also welcome all efforts which could be made toward securing the closest contact between the Transit Section of the Secretariat and the Government.

(Signed) T. V. SOONG.

[C.326.1931.]

### III. NOTE BY THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS AND TELEGRAM FROM THE NATIONAL GOVERNMENT OF CHINA.

Geneva, May 15th, 1931.

The Council, at its session in January 1931, received a telegram from the National Government of China expressing its appreciation of the prompt arrival of the Director of the League of Nations Health Organisation, and inviting the Director of the Economic and Financial Organisation and the Director of the Transit and Communications Organisation to visit China, in order respectively to discuss the effect of the present world depression on China's economic activities and also problems of inland waterways and the reclaiming of land. The Chinese Government expressed the hope that, as the result of this preliminary consultation, practical co-operation with the several technical organs and experts of the League might, on examination, be found feasible.

The Council approved the acceptance of this invitation and unanimously decided to render all possible assistance to the Chinese Government. The two Directors accordingly proceeded to China.

On April 25th, the Chinese Government sent a further telegram, referring to the January invitation and the subsequent conversations in China with the three Directors of the technical organisations. This telegram, which is attached, announces the setting up of a National Economic Council and asks that the technical organisations of the League be continuously available for advice to the Government and the Economic Council in connection with its plan of reconstruction.



If the Council decides to accept the proposal of the National Government of China, it seems desirable to define the manner in which the competent League Organisations would be called upon to act. I would suggest the following procedure for the approval of the Council :

(1) The officer whose services are requested for such limited period as might be practicable and as might be convenient to the Government should be competent to give information on the working of the League's technical organisations and the manner in which they might be utilised by the Chinese Government. For this purpose, the Secretary-General considers that one of the Directors of the technical organisations should be authorised to pay a further visit to China.

(2), (3) and (4) Proposals for collaboration would be transmitted by the Secretary-General to the competent technical organisations, for action subject to the approval of the Council, as required by the rules of procedure.

(5) Similarly, the Secretary-General would refer to the International Committee on Intellectual Co-operation for action by its executive organ, the Institute of Intellectual Co-operation, and by the International Educational Cinematographic Institute questions relating to the educational system and intercourse between intellectual centres in China and abroad.

Preliminary action in this sense has been taken in regard to a letter on this subject received from the Chinese Ministry of Education.

(6) Should the Chinese Government ask for the convocation of a technical conference, the Secretary-General would communicate the request to the Council for decision.

With regard to the budgetary aspect of the matter, the Secretary-General would draw the attention of the Council to the following passage in the report of the Supervisory Commission (document A.5.1931) :

"25. The Commission noted the explanations of the Secretary-General regarding the new appropriation of 480,000 francs for *Liaison with China*. The expenses of the various experts which the League of Nations will place at the disposal of the Chinese Government will be covered by this new item of the budget.

"The Chinese Government having given formal assurances regarding the payment of its contributions, including arrears, the Commission does not raise any objection to the inclusion of the new appropriation in the 1932 budget.

"26. For the present year, in fact, it would, on account of the desirability of immediate action along the lines desired by China, agree that, if the sums allocated by the Council for the purpose out of those which are at its free disposal (Article 3 of the Budget) proved insufficient, the Secretary-General might, as a quite exceptional measure and as a derogation from the Financial Regulations, be authorised to utilise part of the arrears which the Chinese Government will pay in 1931, to meet the otherwise uncovered portion of the expenditure of the various missions. Naturally, the derogation in question will only be possible if the Assembly explicitly consents."

\* \* \*

Nanking, April 25th, 1931.

*Secretary-General, Nations, Geneva.*

Referring our telegram January 7th and resulting conversations with your three Directors in China, am instructed by Chairman Chiang Kai-shek to state Chinese Government having set up National Economic Council for planning reconstruction requests collaboration League. For this purpose asks that League's technical organisations assist as advisers above Council for framing carrying out reconstruction plans as follows :

1. First, in the stage of first planning and organisation, the League might be able to send someone, as it has already done in the special domain of health work, for such limited period as might be practicable and convenient to the Government in order to help with his advice both as to the plan itself and as to any subsequent methods by which the League could assist it.

2. Secondly, in the execution of particular projects, the League might, at the request of the Government, send or propose officers, representatives or experts who, apart from their own competence, could be in contact with the relevant technical organisation in Geneva.

3. Thirdly, in appropriate special cases, a League Committee, whether a standing committee or one appointed *ad hoc*, might at the request of the Government help to frame or improve some particular scheme.

4. Fourthly, the League might in several ways help in the training of China's own officers, who will be required for the more extended work of later years. In the domain of health, the League has already been able to arrange for technical education in practical work in other countries sometimes with the aid of fellowships.

5. And, in addition, the League might help the Government to find advisers to assist the development of the Chinese educational system and facilitate the intercourse between the centres of intellectual activity in China and abroad.

6. Lastly, China might sometimes desire to initiate League action in some sphere in which international co-operation or the co-ordination of the policy of a number of countries might be required in order to remove some obstacle to China's development.

In general, the technical organisations of the League would in this way be continuously available for advice to the Government and National Economic Council in connection with its plan of reconstruction.—T.V. SOONG, Vice-Chairman Executive Yuan.

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**ANNEX 16.**

[C.141.]

**REPORT TO THE COUNCIL BY THE REPRESENTATIVE OF SPAIN  
RELATING TO THE PRESENT STATE OF NEGOTIATIONS  
BETWEEN LITHUANIA AND POLAND.**

Geneva, January 24th, 1931.

I have already placed before the Council a first report summarising the conclusions of the Advisory and Technical Committee for Communications and Transit and the observations by the Governments particularly concerned and referring to the resolutions already adopted by the Council during the consideration of the relations between Lithuania and Poland in so far as those resolutions are capable of affecting the study of those questions relating to communications and transit now before the Council.

As a conclusion to the discussion that has already taken place on that report, I have the honour to propose to the Council the adoption of the following resolution :

“The Council :

“Requests the Permanent Court of International Justice to give an advisory opinion under Article 14 of the Covenant on the following question :

“Do the international engagements in force oblige Lithuania in the present circumstances, and, if so, in what manner, to take the necessary measures to open for traffic or for certain categories of traffic the Landwarow-Kaisiadorys railway sector ?

“The Secretary-General is authorised to submit this request to the Court, to give all necessary assistance in the examination of the question and, if necessary, to make arrangements to be represented before the Court.

“The Advisory and Technical Committee for Communications and Transit is requested to provide the Court with any assistance it may need for the examination of the question submitted to it.”

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**ANNEX 17.**

[C.C.T./491.]

**RESOLUTION ADOPTED  
BY THE COMMISSION OF ENQUIRY FOR EUROPEAN UNION  
RELATING TO TRANSPORT AND TRANSIT OF ELECTRIC POWER.**

The Secretary-General of the Advisory and Technical Committee for Communications and Transit has the honour to communicate herewith to the members of the Committee the text of a resolution adopted by the Commission of Enquiry for European Union and approved by the Council at its meeting of May 22nd, 1931, with regard to the transport and transit of electric power :

“The Commission of Enquiry requests the Council to ask the Communications and Transit Organisation to study the question of the regime of international exchanges of electric power in Europe and to secure the collaboration of the Belgian, Czechoslovak, Norwegian and Spanish Governments in the matter.”

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ANNEX 18.

[C.706.M.298.1930.VII.]  
[C.E.U.E./3.]

PROPOSALS PUT FORWARD BY THE BELGIAN GOVERNMENT  
FOR THE AGENDA OF THE COMMISSION OF ENQUIRY  
FOR EUROPEAN UNION.

Geneva, December 19th, 1930.

1. It is desirable to make a list of the questions which the League of Nations has already taken up and which, in view of their nature, might usefully be made the subject of special study from the European point of view.

Some of these questions are essentially European questions, and were raised as such from the outset. Others have been considered from a world-point of view, but have a European aspect to which it would be desirable to give special consideration. If the study of these questions were limited to this continental aspect, it would be possible to overcome the difficulties which have so far in several cases delayed their solution.

2. In this connection, the Belgian Government desires to call attention to the question of the transmission and transit of electric power.

Recent technical advances in the field of electricity have led to a considerable development of the long-distance transmission of power. This has become a necessary condition for the economical utilisation of sources of electric power. For some years past, the chief industrial countries which have common frontiers have been linked by high-tension lines, and the exchanges between them are increasing in importance.

These exchanges and the establishment of the systems in question are governed by national legislations, which in some cases have a restrictive effect. We must already look forward to the time when these exchanges can no longer be limited to two neighbouring countries, but when they will have to extend to the whole continent, which will have to be covered by an immense network of power distribution. It is important that national legislations should not stand in the way of such a programme and that a definite statute should be established to enable it to be carried into effect.

The League of Nations has already touched upon the problem on the basis of Article 23 of the Covenant. The first General Conference on Communications and Transit, held at Barcelona in March 1921, recognised that it was desirable that States possessing an abundant supply of electrical power should concede a part of it to States in want thereof, and recommended that this question should be examined. At the second Conference, held at Geneva in November and December 1923, two Conventions were drawn up—one relating to the development of hydraulic power, and the other to the transmission of electric power.

These Conventions were to apply to the whole world. Their provisions had little immediate practical importance. Only four or five European countries ratified them and, consequently, their entry into force could not have any real effect.

The Belgian Government considers that, under present technical conditions, such a problem is essentially a continental one; that its solution on the European plane would be of immediate practical value; and that, if continued on that plane, the work previously started by the League of Nations might lead to useful results.

3. In the same connection, the Belgian Government thinks it advisable to call the attention of the Commission of Enquiry for European Union to the draft Convention on the Treatment of Foreigners. The Conference which studied this question comprised the representatives of forty-seven countries. It was unable to reach an agreement at its first session. In its final Protocol, the Conference directs attention to the expediency of establishing the proposed Convention on the most liberal bases. Following this recommendation, certain European Governments have entered into negotiations among themselves. The Belgian Government proposes to inform the Commission of the results of these negotiations as soon as they have led to the acceptance of fundamental principles representing a genuine advance on the present situation.

4. The essential object of the European Union of which it is proposed to lay the foundations is to establish a system of constant co-operation among the peoples of Europe. The European Union represents an attempt to strengthen the links uniting these peoples and to develop their mutual relations, but it implies primarily that every European country should refrain, as far as possible, from taking any steps that might injure other European countries.

It must, however, be recognised that action taken on grounds of national interest tends as a rule to be somewhat neglectful of the interests of other nations. This is particularly true in economic matters during a period of crisis. Faced by serious difficulties, the authorities in every country act in isolation by a kind of reflex instinct of self-preservation. Thinking only of the internal position, they consequently find themselves injuring the interests of their neighbours; and thus, arousing resentment and giving ground for reprisals on the part of those neighbours, they not merely fail to cure the trouble, but very likely aggravate it.

In the field of tariff policy, the Commercial Convention concluded at Geneva on March 24th, 1930, laid down a principle which ought to be adhered to. If a contracting State decides to increase existing duties or to impose new duties, a procedure for notification and redress is established for

the benefit of the other contracting States. The latter are thus enabled to uphold their own interests and to ask for any redrafting or adjustment that may be necessary.

This principle might usefully be extended to other subjects connected with the exchange of goods, the circulation of capital, the treatment of persons and the system of communications and transport.

There can, of course, be no question of encroaching upon the prerogatives of Governments or Parliaments. The example of the Commercial Convention shows, however, that it is possible, within those limits, to arrange for consultations and to allow for necessary adjustments to prevent measures taken in the national interest from injuring the interests of other countries and being regarded by them as vexatious.

The Belgian Government accordingly suggests that the Commission should consider to what subjects and in what manner the application of the principle defined above might properly be extended.

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**ANNEX 19.**

[C.C.T./492.]

**RESOLUTION ADOPTED BY THE COMMISSION OF ENQUIRY  
FOR EUROPEAN UNION RELATING TO CUSTOMS  
EXEMPTION FOR LIQUID FUEL.**

The Secretary-General of the Advisory and Technical Committee for Communications and Transit has the honour to communicate herewith to the members of the Committee the text of a resolution adopted by the Commission of Enquiry for European Union and approved by the Council at its meeting on May 22nd, 1931, with regard to Customs exemption for liquid fuel :

“The Commission of Enquiry requests the Council to ask the Communications and Transit Organisation to study this question, if necessary in collaboration with the Economic Organisation, and invites the States Members of the Commission to forward to the Secretariat the documentary material relating to the regulations applied in this connection in the different countries.”

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**ANNEX 20.**

[C.316.M.146.1931.VII.]  
[C.E.U.E.29.]

**PROPOSAL BY THE GERMAN REPRESENTATIVE ON THE COMMISSION  
OF ENQUIRY FOR EUROPEAN UNION RELATING TO CUSTOMS  
EXEMPTION OF FUEL FOR MOTOR TRANSPORT CROSSING FRON-  
TIERS BY LAND, WATER AND AIR.**

Geneva, May 15th, 1931.

[*Translation.*]

Recent years have witnessed an extraordinary growth in the use of motor transport in European traffic, by land, water and air alike. On the road, the motor is predominant for the conveyance of both passengers and goods ; in water-borne traffic, whether by sea or inland waterways, there has been a constant increase in the equipment of vessels with motors ; air transport has so far been confined exclusively to motor-driven craft.

The provisions at present in force in the various European States as regards the Customs clearance of motor fuel for transport crossing the frontiers have failed to keep pace with the rapid growth of traffic ; moreover, they differ in almost all countries. To facilitate traffic between the European States, it would be desirable to have uniform regulations for Europe, such regulations to take equal account of modern traffic requirements and of the fiscal interests of the European countries.

The German Government accordingly considered that it should place this issue before the Commission of Enquiry for European Union.

It proposes, with a view to the further examination of the question :

(1) That the Communications and Transit Committee of the League be instructed to study the matter further, in consultation, if necessary, with the Economic Committee of the League ;

(2) That the Governments of the States represented on the Commission of Enquiry for European Union be requested to send to the Secretariat information concerning the relevant regulations at present in force in the different countries.

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Geneva, June 13th, 1931.

## LEAGUE OF NATIONS

### ADVISORY AND TECHNICAL COMMITTEE FOR COMMUNICATIONS AND TRANSIT.

## RESOLUTIONS

Adopted by the Committee at its Sixteenth Session  
held at Geneva from May 28th to June 2nd, 1931.

### I. PREPARATION OF INTERNATIONAL CONVENTIONS.

The Advisory and Technical Committee,

Having received the request for an opinion contained in Section IV of resolution 1 adopted by the Assembly on October 3rd, 1930, with regard to the ratification of international conventions concluded under the auspices of the League of Nations :

Considers, in view of the resolution of the Assembly of December 9th, 1920, and of the provisions of the Statute of the Communications and Transit Organisation adopted at the First and Third General Conferences on Communications and Transit, that the procedure followed by the Transit Organisation for the preparation of general conventions is among the cases mentioned by the Assembly where " previous conventions or arrangements have established a special procedure " and that, consequently, the new procedure proposed by the Assembly does not involve a modification of the rules at present followed by the Communications and Transit Organisation ;

Notes that the said rules followed by the Transit Organisation and this Organisation's practice, which involve continuous contact for the study of all questions with those specially concerned by means of discussions and enquiries carried on by the Advisory and Technical Committee and by its permanent Committees, are inspired by the prudent considerations which guided the Assembly in the adoption of the resolution of October 3rd, 1930, and that experience has shown that these methods, being peculiarly adapted to the study of the technical problems of communications and transit, guard against the premature summoning of international conferences which may be called upon to conclude conventions.

Apart from the case of communications and transit conventions, the Advisory and Technical Committee desires to draw the Assembly's attention to the fact that, within the terms of the resolution of October 3rd, 1930, it will no doubt be frequently necessary to make use of the exception provided for by the said resolution " owing to the nature of the questions to be treated or to special circumstances ". It seems clear that, even if no special difficulty arises during the preparatory studies, a strict application of the rules laid down by the Assembly would involve the elapse of about four years between the moment when the attention of an organ of the League is drawn to a question on which an international convention is desirable and the moment when this convention can be concluded.

### II. STUDY OF THE QUESTION OF THE TRANSPORT OF AGRICULTURAL PRODUCTS.

The Advisory and Technical Committee,

Noting the information supplied by its Secretary-General ;

Considering it impossible to study accurately the problems concerning the transport of agricultural products as long as the policy of economic co-operation between States in agricultural matters has not been sufficiently fixed :

Decides to retain this question on its agenda and instructs its Chairman to arrange, when the time comes, for the application of the resolution adopted by the Committee at its last session, on the understanding that, as regards the number and choice of the experts and the scope of the enquiry to be undertaken, the Chairman shall be authorised to adjust the procedure laid down in the said resolution to any new circumstance.

### III. ADJUSTMENT OF RAILWAY TARIFFS.

The Advisory and Technical Committee,

Having taken cognisance of the note communicated by the Economic Relations Section of the Secretariat containing a statement of the position of the Economic Organisation's work with regard to the question of indirect protectionism :

Considers that it would be difficult to propose to States with any serious prospects of adoption measures aimed at restricting their freedom of action in regard to railway tariffs and going beyond the provisions of the Convention and the Statute on the Freedom of Transit and of the Convention and Statute on the International Regime of Railways, as long as the principles of a closer co-operation in economic matters have not been previously fixed and accepted by States on more general lines ;

Requests its Secretariat to keep in touch with the Secretariat of the Economic Organisation and to keep the Committee informed of the progress of this Organisation's work with regard to the question of indirect protectionism ;

Notes that a study of the treaties of commerce and other bilateral agreements containing provisions with regard to railway tariffs connected with the problem of indirect protectionism comes within the province of the Committee instructed by the Permanent Legal Committee to study the question of the codification of international law with regard to communications, and draws this Committee's attention to the point.

### IV. EXTENSION OF INTERNATIONAL AGREEMENTS RELATING TO TRANSPORT BY RAIL.

The Advisory and Technical Committee,

Notes that this question is within the province of the Committee instructed by the Permanent Legal Committee to study the question of the codification of international law with regard to communications, and therefore refers to this Committee for examination the resolution adopted in this connection by the Preliminary Conference with a view to Concerted Economic Action of February-March 1930.

### V. CONSTRUCTION OF AN AERODROME NEAR THE SEAT OF THE LEAGUE OF NATIONS.

The Advisory and Technical Committee,

Decides to submit to the Council for transmission to the Assembly the report prepared by the Committee of Experts appointed to study the question of the construction of an aerodrome near the seat of the League of Nations and to request the Secretary-General of the League to attach to this report any supplementary information on the financial aspects of the problem which may be obtained before the Assembly meets.

### VI. TRIPTYCH SYSTEM.

The Advisory and Technical Committee,

Having taken cognisance of the replies received from the Governments to Circular Letter C.L. 277. 1930. VIII. of October 20th, 1930 :

Notes that nearly all the replies are favourable to the adoption of the minimum rules laid down in the resolution which it passed at its fifteenth session.

The Committee decides to send the replies of the Governments to the Permanent Committee on Road Traffic so that the latter may be in possession of complete documentary information, and requests the Secretary-General of the League to remind those Governments which have not yet communicated their views, of the above-mentioned Circular Letter, and to ask them to forward their reply as soon as possible.

### VII. CONTINUATION OF THE WORK OF THE EUROPEAN CONFERENCE ON ROAD TRAFFIC RELATING TO COMMERCIAL MOTOR TRANSPORT.

The Advisory and Technical Committee,

Having noted the resolution adopted by the European Conference on Road Traffic held at Geneva in March 1931, concerning the suspension of the work on commercial motor transport:

Requests the Secretariat to collect documentary material on the national laws of the various States concerned relating to commercial motor transport, as also on economic conditions prevailing in the different countries which are liable to influence the development of such transport ;

Asks the Permanent Committee on Road Traffic to take such action on the above-mentioned resolution of the European Conference on Road Traffic as may be necessary and to secure for its further enquiry the co-operation of experts who are especially well qualified to deal with the economic and legal aspects of the question.

VIII. RECOMMENDATION OF THE EUROPEAN CONFERENCE ON ROAD TRAFFIC WITH REGARD TO LIGHT SIGNALLING.

The Advisory and Technical Committee,

Decides to refer to the Permanent Committee on Road Traffic the recommendation adopted by the European Conference on Road Traffic held at Geneva in March 1931, relating to the problem of light signalling.

IX. RECOMMENDATION OF THE EUROPEAN CONFERENCE ON ROAD TRAFFIC WITH REGARD TO THE SIGNALS TO BE MADE BY OFFICIALS DIRECTING TRAFFIC AND DRIVERS OR VEHICLES.

The Advisory and Technical Committee,

Decides to refer to the Permanent Committee on Road Traffic the recommendation adopted by the European Conference on Road Traffic, held at Geneva in March 1931, relating to the signs to be made in the various countries by officials directing traffic and by drivers of vehicles.

X. PASSPORT AND VISA FORMALITIES FOR MIGRANTS.

The Advisory and Technical Committee,

Having noted the information communicated to it by the International Labour Office in accordance with the resolution adopted by the Committee at its fifteenth session :

Decides to ask the Secretariat to collect all useful information from the Governments regarding the formalities entailed by the system or systems in force in connection with the admission of immigrants.

XI. EXEMPTION OF THE ADVERTISING MATTER OF RAILWAY ADMINISTRATIONS FROM CUSTOMS DUTY.

The Advisory and Technical Committee,

Having noted the letter of December 19th, 1930, from the Secretary-General of the International Railway Union concerning the exemption from Customs duty of advertising matter exchanged by the railway administrations of the various countries :

Decides to forward this request to the Economic Committee with its approval.

XII. CUSTOMS DUTIES ON CARDS FOR MACHINES USED FOR STATISTICAL PURPOSES.

The Advisory and Technical Committee,

Having noted the letter of December 19th, 1930, from the Secretary-General of the International Railway Union transmitting a request from the Managing Committee of the Union that the Advisory and Technical Committee should take action in favour of the removal of Customs duties on the special cardboard used in statistical machines :

Decides to inform the International Railway Union that, as the request contained in the letter in question raises an extremely general question in connection with the establishment of statistics of all kinds, it considers that, regarding the matter from the point of view of the interests which it represents, it does not feel justified in taking any action in the matter.

XIII. EXTENSION OF INTERNATIONAL AGREEMENTS REGARDING INLAND NAVIGATION.

The Advisory and Technical Committee,

Having noted the report of the Permanent Committee on Inland Navigation :

Approves the procedure proposed by this Committee for the examination of the question of the extension of international agreements regarding inland navigation raised by the Preliminary Conference with a view to Concerted Economic Action held at Geneva in February-March 1930 ;

Approves the despatch on behalf of the Advisory and Technical Committee of the questionnaire prepared by the Permanent Committee for Inland Navigation to the Governments of the European countries, the Secretariat of the Committee being further requested to undertake an enquiry with a view to supplying the Committee with information on the international regime of inland navigation in the different countries of America, account being taken in particular of the work of the Pan-American congresses.

XIV. PASSPORT AND VISA FORMALITIES FOR PERSONNEL IN INLAND NAVIGATION.

The Advisory and Technical Committee,

In accordance with the proposals of the Permanent Committee for Inland Navigation :  
Decides that the study provided for in its resolution of September 1930 on passport and visa formalities for officers and seamen shall extend to the identity papers of inland navigation personnel.

The report to be prepared by the Secretariat in conformity with the resolution adopted by the Committee in September 1930 shall be drawn up under the direction of the Chairman of the former Passports Sub-Committee, of the Chairman of the Permanent Committee on Ports and Maritime Navigation and of the Chairman of the Permanent Committee on Inland Navigation.

XV. RECOMMENDATION OF THE CONFERENCE FOR THE UNIFICATION OF RIVER LAW RELATING TO ATTACHMENT (*saisie conservatoire*).

The Advisory and Technical Committee,

Decides to refer to the Committee on River Law the recommendation adopted by the Conference for the Unification of River Law, held at Geneva in November-December 1930, to the effect that a convention relating to attachment (*saisie conservatoire*) should be prepared in the near future.

XVI. RECOMMENDATION OF THE CONFERENCE FOR THE UNIFICATION OF RIVER LAW IN THE MATTER OF ASSISTANCE AND SALVAGE.

The Advisory Technical Committee,

Decides to bring to the notice of the Committee on River Law the recommendation adopted by the Conference for the Unification of River Law, held at Geneva in November-December 1930 relating to assistance and salvage in regard to river navigation and to draw the special attention of the said Committee to the passage in this recommendation in which the conclusion of a convention on assistance and salvage is advocated.

XVII. FINAL AGENDA OF THE FOURTH GENERAL CONFERENCE ON COMMUNICATIONS AND TRANSIT.

The Advisory and Technical Committee,

Requests the Secretary-General of the League of Nations to inform the Governments and organisations invited to the Fourth General Conference on Communications and Transit that, during the Advisory and Technical Committee's present session, the representatives of the International Chamber of Commerce have informed the Committee that the International Chamber of Commerce proposes to raise the following questions when the Fourth General Conference deals with item 1 on its agenda (Examination of the Report on the Work done by the Advisory and Technical Committee for Communications and Transit since the Last General Conference) : (a) negotiability of railway transport documents ; (b) hindrances to maritime navigation.

The Secretary-General of the League is requested to forward to the Governments and organisations invited to the Conference the document attached to the present resolution and communicated to the Committee by the representatives of the International Chamber of Commerce, it being understood that the Advisory and Technical Committee takes no responsibility for this document and that any observations which may be submitted by the Governments on receipt of this document will, if they so request, be published and forwarded to the Governments and organisations invited to the Conference.

XVIII. STUDY OF THE QUESTION OF THE TERRITORIAL SEA.

The Advisory and Technical Committee,

Having noted the resolution of May 15th, 1930, in which the Council requested the Communications and Transit Organisation to follow in a general manner the development of the problem of codification of the law relating to the territorial sea with a view to presenting recommendations to the Council on the subject when it finds it possible to do so :

Requests its Chairman to appoint a committee of three members to submit to the Advisory and Technical Committee a preliminary report on the difficulties to which the international examination of this question have given rise and on such methods as might be adopted to facilitate as far as possible their solution.

The Secretariat of the Advisory and Technical Committee will communicate to this committee all the information received from the various Governments in pursuance of point 3 (a) of the Council's resolution as well as any other useful information which the Secretariat may be able to obtain.

The Chairman of the Advisory and Technical Committee may, at the special committee's request, attach to it specialists with a view to the examination of any particular question.



**XIX. RECOMMENDATION CONCERNING INLAND WATERS ADOPTED BY THE CONFERENCE ON THE CODIFICATION OF INTERNATIONAL LAW.**

The Advisory and Technical Committee,

Having noted the resolution of May 15th, 1930, in which the Council requested the Communications and Transit Organisation to examine the recommendation adopted by the Conference on the Codification of International Law held at The Hague from March 15th to April 12th, 1930, with regard to inland waters ;<sup>1</sup>

Considering any procedure to be inadvisable which would, for the present, involve any modification of the Convention on the International Regime of Maritime Ports :

Instructs its Chairman to appoint, in consultation with the Chairman of the Permanent Committee on Ports and Maritime Navigation and the Chairman of the Permanent Legal Committee, a special committee of three or four members to examine what measures, if any, could be proposed to the Governments for adoption either in the form of agreements supplementary to the Convention on the International Regime of Maritime Ports or in the form of agreements independent of that Convention.

**XX. UNIFICATION OF TRANSPORT STATISTICS.**

The Advisory and Technical Committee,

Takes cognisance of the summary report of the work of the Mixed Committee of the Communications and Transit Organisation and of the International Institute of Statistics and notes that the conclusions of the Mixed Committee are in agreement with the results of the work previously done by the Committee for the Unification of Transport Statistics.

In accordance with the recommendation of the Mixed Committee, the Advisory and Technical Committee decides to communicate the report of the Mixed Committee to the International Railway Union. Should the latter undertake an enquiry with regard to the compilation of statistics relating to the movement of goods by rail, the Committee would ask the Union to be good enough to inform it of the results.

The Committee notes the communication from the Secretariat, to the effect that the final report of the Committee for the Unification of Transport Statistics can be submitted to it at its next session. It decides that this report shall, after adoption by the Advisory and Technical Committee, be forwarded to the Governments concerned, which would be asked to have it examined by their competent services and to inform the Advisory and Technical Committee of any proposal which these services might think well to make—in the light of the particular conditions obtaining in each country—with regard to the methods of applying the principles set forth in the report.

**XXI. CONTINUATION OF THE WORK WITH REGARD TO BUOYAGE OF THE CONFERENCE FOR THE UNIFICATION OF BUOYAGE AND LIGHTING OF COASTS.**

The Advisory and Technical Committee,

Associating itself with the resolution adopted by the Conference for the Unification of Buoyage and Lighting of Coasts on October 23rd, 1930, concerning the continuation of the work for the unification of buoyage :

Requests the Council to take the necessary steps for the interrupted work to be resumed in 1932, or at latest at the beginning of 1933.

It requests its Chairman to communicate the present resolution in good time to the Secretary-General of the League for transmission to the Council, the Chairman being authorised to set up a preparatory Committee to facilitate the work of the Conference, should he consider such a course desirable.

**XXII. RECOMMENDATION OF THE CONFERENCE FOR THE UNIFICATION OF BUOYAGE AND LIGHTING OF COASTS CONCERNING THE BAND OF FREQUENCIES ASSIGNED FOR RADIO-BEACONS.**

The Advisory and Technical Committee,

Requests the Secretary-General of the League of Nations to forward to the Governments of the States Parties to the Radio-Telegraphic Convention of 1927, and of the Bureau of the Telegraphic Union, the recommendation contained in the Final Act of the Conference for the Unification of Buoyage and Lighting of Coasts held at Lisbon in October 1930, with regard to the band of frequencies assigned for radio-beacons.

<sup>1</sup> The Conference recommends that the Convention on the International Regime of Maritime Ports signed at Geneva on December 9th, 1923, should be supplemented by the adoption of provisions regulating the scope of the judicial powers of States with regard to vessels in their inland waters.

**XXIII. REQUESTS FROM THE INTERNATIONAL RAILWAY UNION CONCERNING THE SYSTEM OF TRANSPORT FOR DAILY AND SIMILAR NEWSPAPERS IN INTERNATIONAL TRAFFIC.**

The Advisory and Technical Committee,

Having noted the text of the regulations adopted by the International Railway Union with regard to the transport of newspapers and periodicals, in accordance with the recommendation adopted by the Conference of Press Experts in August 1927 and with the provisions of the Final Protocol dated November 25th, 1929, of the European Conference convened by the Council of the League of Nations :

Requests the Secretary-General of the League to communicate the text of these regulations to the Governments of the States invited to the said Conference.

The Advisory and Technical Committee requests the Governments invited to the Conference of November 1929 to consider as quickly as possible the introduction of measures to permit of the application in their territories of the regulations adopted by the International Railway Union.

It observes that the effective application of these measures will necessitate previous agreements, particularly with the Customs and other Government Administrations, and that, independently of the Government authorisation to be obtained, it will probably be necessary for the same purpose to fix detailed Customs regulations and to enact certain tariff measures.

The Committee thanks the International Railway Union for the prompt and effective manner in which it has co-operated in the application of the resolutions adopted by the Conference of November 1929.

**XXIV. ANNUAL REPORT OF THE MEMEL HARBOUR BOARD.**

The Chairman of the Advisory and Technical Committee is requested to draw the attention of the Secretary-General of the League of Nations to the importance of each member of the Committee being able to obtain a copy of the annual report of the Memel Harbour Board if he so desires.

**XXV. COMPOSITION OF PERMANENT COMMITTEES.**

The Advisory and Technical Committee, on the proposal of its Chairman,

Decides to appoint M. VON HEIDENSTAM as member of the Committee on Ports and Maritime Navigation to replace M. Hoernell, and His Excellency M. FELDMANS as member of the Permanent Legal Committee to replace His Excellency M. Duzmans ;

Decides to ask M. HOERNELL to continue to act as Chairman of the Permanent Committee on Electrical Questions ;

Decides to appoint M. PILOTTI chairman of the Permanent Legal Committee and M. VAN SLOOTEN Vice-chairman of the same Committee.

**XXVI. PROGRAMME OF CLAIMS OF PROFESSIONAL MOTOR DRIVERS.**

The Advisory and Technical Committee,

Having noted the letter of the Director of the International Labour Office dated February 21st, 1931, replying to the request made to him in conformity with the decision adopted by the Committee at its last session :

Considers :

(a) That Questions 1, 2, 3a<sup>1</sup> and 19 should be studied exclusively by the International Labour Office ;

(b) That Questions 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 20, 28, 29 and 30 should be studied jointly by the International Labour Office and the Communications and Transit Organisation ;

(c) That Questions 3b, <sup>2</sup> 15, 21, 22, 23, 24, 25, 26 and 27 should be studied exclusively by the Communications and Transit Organisation.

The Advisory and Technical Committee requests the Permanent Committee on Road Traffic to take the necessary action on the present resolution as far as the Communications and Transit Organisation is concerned.

<sup>1</sup> Insurance of the driver.

<sup>2</sup> Insurance of the vehicle.

**XXVII. FIFTEENTH INTERNATIONAL NAVIGATION CONGRESS.**

The Advisory and Technical Committee,

Decides to accept the invitation of the Italian Government to be represented at the fifteenth International Navigation Congress, which will meet at Venice and Rome in September 1931, and appoints as its representative His Excellency M. SEELIGER, the Committee's delegate on the Permanent International Committee for the Association of Navigation Congresses.

**XXVIII. APPOINTMENT OF REPRESENTATIVES OF THE COMMUNICATIONS AND TRANSIT ORGANISATION TO SERVE ON THE MIXED COMMITTEE OF THAT ORGANISATION AND THE FISCAL COMMITTEE FOR THE QUESTION OF CUSTOMS AND FISCAL DUTIES APPLICABLE TO NEWSPAPERS AND PERIODICALS.**

The Advisory and Technical Committee,

Appoints M. GRÜNEBAUM and M. SINIGALIA, members of the Committee, and M. SCHOELLER, Director of the Messageries Hachette, to be representatives of the Communications and Transit Organisation on the Mixed Committee of that Organisation and the Fiscal Committee for the question of Customs and fiscal duties applicable to newspapers and periodicals.

**XXIX. DRAFT BUDGET OF THE COMMUNICATIONS AND TRANSIT ORGANISATION FOR 1932.**

The Advisory and Technical Committee,

Notes the draft budget of the Communications and Transit Organisation for 1932, as adopted by the Supervisory Commission.

**XXX. REPORT OF THE CHAIRMAN ON THE MISSIONS CARRIED OUT BY HIM SINCE THE LAST SESSION OF THE COMMITTEE.**

The Advisory and Technical Committee,

Notes the report of M. Herold, the retiring Chairman, on the missions carried out by him since the last session of the Committee.

**XXXI. REQUEST SUBMITTED BY THE INTERNATIONAL CONFEDERATION OF INTELLECTUAL WORKERS.**

The Advisory and Technical Committee,

Having noted the request of the International Confederation of Intellectual Workers for the introduction of reduced rates for the journeys of persons going to international congresses : Requests the Permanent Committee for Transport by Rail to consider this question and supply the Secretariat with data for a reply to the Confederation.

**XXXII. REPORT ON THE LEAGUE WIRELESS STATION.**

The Advisory and Technical Committee,

Takes note of the report submitted to it by M. de Vasconcellos on the present position with regard to the construction of the wireless station of the League of Nations.

**XXXIII. CO-OPERATION BETWEEN THE CHINESE NATIONAL GOVERNMENT AND THE COMMUNICATIONS AND TRANSIT ORGANISATION.**

The Advisory and Technical Committee,

Being informed of the correspondence between the Minister of Finance of the Chinese National Government, Vice-President of the Executive Yuan, and the Director of the Communications and Transit Section of the League ;

Having taken cognisance of the telegrams addressed by the Chinese National Government to the Secretary-General of the League on January 7th, 1931, and April 25th, 1931, and the decisions of the Council in the matter ;

Noting the declarations and information submitted to the Committee by the Director of the Communications and Transit Section concerning his mission to China :

Expresses its gratification that, as a result of that mission, it has been judged possible, in conformity with the hope expressed by the Chinese National Government in its telegram of January 7th, to establish practical co-operation between the Chinese Government and the Communications and Transit Organisation of the League ;

Accepts, on behalf of the Communications and Transit Organisation, the duties devolving upon the Organisation, in conformity with the aforesaid letters, telegrams and decisions.

The Advisory and Technical Committee assures the Chinese National Government that it will spare no effort to justify the confidence placed in it by the Government and to assist the Chinese National Government to pursue its work of economic reconstruction in the sphere of communications and public works.

The Chairman of the Advisory and Technical Committee is authorised to transmit, for an opinion, to the Committee of Enquiry, for the study of questions relating to the training of public works engineers,<sup>1</sup> all questions concerning the organisation of the technical civil engineering field station submitted with this object, by the Secretary-General of the Committee. All questions raised in the course of co-operation between the Communications and Transit Organisation and the Chinese National Economic Council concerning the establishment of a programme of public works and national technical equipment should similarly be transmitted to the Committee of Enquiry for the study of general questions relating to public works.<sup>2</sup>

The Chairman of the Advisory and Technical Committee is requested to ensure co-ordination, whenever necessary, between the work of the two above-mentioned Committees.

The Chairman of the Advisory and Technical Committee is authorised to name the experts appointed to give opinions to the Chinese Government concerning the scheme for the development of the Hwai River ; such experts shall also be responsible for the other duties mentioned in the correspondence between the Chinese Government and the Director of the Communications and Transit Section. The Chairman of the Advisory and Technical Committee is authorised, further, to take subsequently all suitable steps to ensure the co-operation on the spot of any other experts whose services may be found necessary.

The Chairman of the Advisory and Technical Committee may, should he desire to do so, apply to one or more members of that Committee to assist him in discharging the duties entrusted to him under the present resolution.

#### XXXIV. QUESTIONS OF INTERNAL ORGANISATION : CONSTITUTION OF TWO COMMITTEES OF ENQUIRY.

##### A.

The Advisory and Technical Committee,

Considering it desirable to study the methods of training public works engineers in order to be able to comply more easily with requests for opinions such as that submitted by the Chinese Government ;

Being of opinion that such study should be entrusted to a special body consisting of persons in touch with a number of the principal institutions for the training of public works engineers :

Requests its Chairman to take the necessary steps without delay, with a view to the creation of a Committee of Enquiry to study questions relating to the training of public works engineers.

##### B.

The Advisory and Technical Committee,

Being anxious to be able to comply more easily with requests for opinions on general questions relating to public works and national technical equipment such as that submitted by the Chinese Government ;

Considering it advisable to have at its disposal for this purpose the services of a Committee of Enquiry, composed as far as possible, of experts already belonging to the Permanent Committees of the Advisory and Technical Committee ;

Requests its Chairman to take the necessary steps without delay with a view to the creation of a Committee of Enquiry to study general questions relating to public works.

#### XXXV. PRESENT STATE OF NEGOTIATIONS BETWEEN POLAND AND LITHUANIA.

The Advisory and Technical Committee,

Having noted the resolution adopted by the Council on January 24th, 1931 :

Instructs its Chairman to take all appropriate measures to give the Permanent Court of International Justice such assistance as it may desire.

<sup>1</sup> See Resolution XXXIV, A.

<sup>2</sup> See Resolution XXXIV, B.

#### XXXVI. TRANSPORT AND TRANSIT OF ELECTRIC POWER.

The Advisory and Technical Committee,

Having received the request of the Commission of Enquiry for European Union approved by the Council at its meeting of May 22nd, 1931, concerning the transport and transit of electric power :

Requests the Secretary-General of the League to ask the Belgian Government, which raised this question, to forward to the Committee all supplementary information which may be desirable to define the different aspects of the problem it has proposed for study and any preliminary suggestions it may feel able to make.

The Secretariat is requested to prepare documentation on the national legislations and on the international agreements in force in the different European countries with regard to the international exchange of electric power.

The Chairman of the Committee is requested, after consulting the Chairman of the Committee on Electric Questions and as soon as the supplementary information asked from the Belgian Government has been received, to set up a committee competent to deal with this question as a whole.

The Advisory and Technical Committee, in accordance with the request of the Commission of Enquiry, decides to associate the Belgian, Czechoslovak, Norwegian and Spanish Governments in the examination of this question by the Communications and Transit Organisation ; these Governments will therefore be invited to appoint temporary members of the Advisory and Technical Committee for the examination of this question.

#### XXXVII. CUSTOMS EXEMPTION FOR LIQUID FUEL.

The Advisory and Technical Committee,

Having received the request of the Commission of Enquiry for European Union, approved by the Council at its meeting of May 22nd, 1931, concerning Customs exemption for liquid fuel :

Considers it desirable that the States represented on the Commission of Enquiry should forward to the Secretariat, in addition to documentation with regard to the regulations applied in the different countries, all information or observations which these States may desire to submit on this question. The same request will also be addressed to the International Air Navigation Commission, the International Air Traffic Association, the International River Commissions, the International Shipping Conference, the International Association of Recognised Automobile Clubs, the International Tourist Alliance, the International Commercial Motor Transport Federation, and the International Chamber of Commerce.

The Chairman of the Committee is requested to set up in due course for the study of this question a special committee to which the documentation collected will be transmitted.

#### XXXVIII. FREIGHTING OF VESSELS BY FOREIGNERS.

The Advisory and Technical Committee,

Having noted the letter sent to the Director of the Communications and Transit Section of the Secretariat by the Director of the Opium and Social Questions Sections ;

Decides to refer this question to the Committee on Ports and Maritime Navigation, which is requested to add to its numbers for the study of this question one or more members of the Permanent Legal Committee appointed by the Chairman of that Committee.

#### XXXIX. APPOINTMENT OF AN INDIAN NATIONAL AS EXPERT.

The Advisory and Technical Committee instructs its Chairman to appoint on its behalf an Indian national as corresponding member of the Committee in the capacity of expert.

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