

Article 1(b) - The definition of "Contract of carriage"

ARTICLE 1

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Dans la présente Convention les mots suivants sont employés dans le sens précis indiqué ci-dessous:

In this Convention the following words are employed with the meanings set out below:

b) "Contrat de transport" s'applique uniquement au contrat de transport constaté par un connaissement ou pour tout document similaire formant titre pour le transport des marchandises par mer; il s'applique également au connaissement ou document similaire émis en vertu d'une charte-partie à partir du moment où ce titre régit les rapports du transporteur et du porteur du connaissement.

b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

ILA 1921 Hague Conference
Text submitted to the Conference

[xlvi]

In this Code:

(b) "Contract of carriage" means a bill of lading or any similar document of title relating to the carriage of goods by sea.

First day's proceedings - 30 August 1921

Mr. J. S. McConechy:

[29]

We have come to the view that as overseas bills of lading exist at present there you get an open bill of lading, and you are in the open market, and, if you cannot get what you want of one, you can go to another, and there is freedom of contract there. But when you have to deal with the conference liners, they, of course, quite in a business way, all combine to have certain bills of lading worded in a certain way, so that they may work in conference, and they cannot get out of it, and, with such clauses in the bills of lading as there are now, no cargo owner can make any bargain with the shipowner. He has simply to ship his goods in accordance with the bills of lading which exist in the conference lines, or otherwise to have his cargo shut out or refused. He

cannot go to another company and say: Give me a bill of lading upon lines upon which you and I can agree.

[65]

Mr. H. J. Knottenbelt: We are, in principle, ready to vote in favour of the first resolution, but, Mr. Chairman, I think that resolution ought to be amended if we want to have a clear vote to-morrow, that is to say, in two respects. The first resolution relates to all contracts for the carriage of goods by sea, and now I wish to point out that the Code to which the same draft resolution refers only refers to bills of lading, that is to say, to carriage of goods under a bill of lading, and that is not by mere accident, but it is purposely done in that way. Originally, the authors of the Code had the intention to provide rules for all carriages by sea, but they intentionally altered that, and left the carriage of goods under charter-parties free, and only wanted to regulate the carriage of goods under a bill of lading. Now, I say that however much we are in favour of rules regulating the bills of lading, we cannot vote favourably to that resolution because in our opinion it goes too far.

Second day's proceedings - 31 August 1921

The Chairman:

[75]

Then "Article I. Definitions. In this Code (a) 'Carrier' includes the owner or the charterer, who enters into a contract of carriage with a shipper. (b) 'Contract of carriage' means a bill of lading or any similar document of title relating to the carriage of goods by sea".

Mr. W. W. Paine: There is one slight amendment there, Sir, merely as a matter of words. We have to remember that there are such things as through bills of lading, and we want these Rules to govern that part of through bills of lading which relates to contracts of carriage by sea. I suggest, therefore, the insertion after the word "relating" of the words "wholly or in part", so as to cover the question of through bills of lading.

Sir Alan Anderson: It is intended, Sir, to exclude carriage on rivers? The point raised by Mr. Paine is one of the two points I was proposing to raise, where the voyage is partly by train and partly by sea. There is also a good deal of carriage on lakes and rivers, to which I imagine the same rules should apply. That is one point. Then I have one other point. In these definitions "(a) 'carrier' includes the owner and the charterer". Are we [76] dealing with full cargoes or are we dealing with parcels bills of lading?

The Chairman: The answer to (a), I know from my acquaintance with the work of the Executive, is that the terms under (a) are intended to include all goods, both full cargoes and parcels. With regard to carriage upon navigable waters, not being the high seas, the question arises, which I would suggest to Sir Alan is best to be raised after the present amendment has been disposed of. It arises upon later words, and is matter of definition. No doubt navigable fresh water would not be included in the term here - at least, that is my present view. Mr. Paine has proposed that the words "wholly or in part" be introduced after the word "relating" in the second line. Does any member offer any observation upon that proposal?

Sir Norman Hill: Sir Henry, I do not think we could quite adopt those words. It is the definition of contract of carriage, and the rules apply to the whole contract of carriage, it if comes within the definition. Mr. Paine's suggestion is that that part of the through bill of lading which applies to the ocean transport is a contract of carriage, but

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you will have to use some very careful words to make that clear. It will not be sufficient to use words which will make a through bill of lading a contract of carriage, or you will find your rules applicable to the railway portion of the bill of lading.

The Chairman: Mr. Paine, no doubt, has considered the difficulty which Sir Norman Hill has raised. Does any other member desire to offer any observation upon the proposed amendment? May I say to Mr. Paine and to the Committee that it became necessary for me at one stage to reflect upon the generality of this paragraph, and it did appear to me that the definition in the terms provided here would probably give to underwriters and bankers the degree of certainty they required; but it may be that this is a matter which ought to be further considered when the Executive Committee, which deals with the approved draft, is in session. Does Mr. Paine press the amendment at the present time?

Mr. Paine: No; I am quite willing to leave it in that way: but I do want it to be quite clear, and I think we are all in agreement (I think it is only a question of drafting) that where a banker, or anybody else, is dealing with a through bill of lading, he does get the benefit of these rules in so far as that bill of lading relates to carriage of goods by sea. That is the only point.

[77]

Sir. Norman Hill: Sir. I think the amendment should be in Article 2, and not in the definition of contract of carriage. I am afraid we shall get into difficulties if we try to put this point in the definition. It should be in the operative Article, Article 2.

Mr. Paine: I am absolutely at your service in putting it anywhere.

The Chairman: If Mr. Paine is content with the further consideration of it as a matter of drafting, I think the Committee then will be satisfied to pass on.

.....

Mr. J. M. Cleminson: Mr. Chairman. Arising out of what you have said in regard to the interpretation clause, and what Sir Alan Anderson has said about parcel cargoes, I think it necessary to say this, that as we understand the draft it excludes charter-parties, but will include bills of lading when they are given under charter-parties. The general cargo trade of the country - I am speaking now of the United Kingdom - has been trying very hard to bring itself entirely within the scope of this code. It is very anxious to co-operate to give effect to any extension of trade, and I think there is every reason to hope that the general cargo trade may be able to acquiesce in that view. But as the result of the discussion here, it is quite obvious that it might be impossible to get the shipowners to agree unanimously that this code should apply, as drafted to-day, entirely to bills of lading given under charter-parties; and the particular point which concerns them very much is that relating to the rights and conditions of the general cargoes shipped by what you might call the tramp ships. And I think it is quite clear, from the discussion we have had during the last two or three days, that, if it is desired to put the code through, special attention will have to be directed by this Drafting Committee to meet the wishes of the shipowners and the merchants, and, I should like to emphasise that point, it is the real wish of the merchants, as well as the shipowners, that that shall be left in its present position. The whole agitation for restrictive legislation of this kind arises quite naturally out of the [78] modern conditions of liner carriage, where you have the lines established regularly running from one port to another, carrying all kinds and conditions of cargo, where there is no preliminary agreement between the particular shipowner and the particular shipper as to the conditions applicable to the particular cargo. In regard to tramp ships the position is utterly different. There you do have first of all a charter-party, which is invariably negotiated as the common form between the shipowner's representative and the cargo owner's representative, and an

agreement is invariably reached in regard to the general form, and then the particular contract is made between the particular shipowner and the particular shipper on the basis of that form.

The Chairman: Mr. Cleminson, might I call your attention to the fact that upon Article II, which subjects contracts generally to the operation of the rules, the observations you are making would directly arise? I am not sure that they arise upon the definition in Article 1.

Mr. Cleminson: You suggest that they arise on Article 2?

The Chairman: Yes, Article 2. "Subject to the provisions of Article V, under every contract of carriage of goods by sea". It seems to me that, if there is to be a limitation on the generality of the provision, it arises for consideration there - that is, for effectual consideration - upon Article 2, upon the word "every".

Mr. Cleminson: It may be there, Sir.

The Chairman: And that a qualifying phrase which should refer the contracts you are mentioning to the Drafting Committee, or Executive Committee, would probably be a more effectual mode of dealing with the question you properly want to raise, than by discussing it upon the definition of "Contract of carriage".

Mr. Cleminson: Yes, I think that is quite so.

The Chairman: Then perhaps we may postpone this until we come to Article 2.

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Now, returning to 1 (b). The amendment which Mr. Paine has proposed is referred to a Committee which is to consider drafting.

[86]

Sir Norman Hill: It is very difficult to suggest a solution, but one does appreciate that "The number of packages or pieces, the quantity or weight" are not very appropriate when you are dealing with a full cargo carried under a charter-party. I do not think it is possible to give full effect to what I personally understand to be the wishes of the cargo interests, to distinguish between a tramp bill of lading and a liner bill of lading. I think a bill of lading is a bill of lading. If it is a fully negotiable document I do not think in law it is possible to distinguish between the one that is issued by the liner and the one issued by the tramp. I do not think it would be satisfactory to anybody. I do not think it would be satisfactory to the tramp if he was putting on to the market, for the purpose of assisting the credit of the merchants and the bankers, anything in the nature of an inferior bill of lading. I do not think that would be fair or right. It would be oppressive to the tramp, and it seems to me, so long as it is a negotiable bill of lading it will have to come under to the code. If it comes under the code, is it possible to think of any words, to be put into what will be now paragraph (b), qualifying the responsibility in regard to - I would prefer it if it were possible - the bulk cargoes? I do not think it would be a very happy way of putting it to qualify it by saying that these are bills of lading issued in respect of a cargo carried on a ship which has been chartered.

Text adopted by the Conference

[255]

In these RULES

.....
(b) "Contract of carriage" means a bill of lading or any similar document of title IN SO FAR AS SUCH DOCUMENT RELATES to the carriage of goods by sea.

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CMI 1922 London Conference
Text submitted to the Conference
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[362]

In these Rules

.....
 (b) "Contract of carriage" means a bill of lading or any similar document of title in so far as such document relates to the carriage of goods by sea.

Morning sitting of Tuesday 10 October 1922

[325]

Mr. Otto Liebe (Denmark): When the Hague Rules were adopted a year ago the commercial world of Denmark - I thereby mean the merchants, the bankers, the underwriters - hailed them with the utmost satisfaction. Above all they were very glad to see the conditions about the abolition of the negligence clause. A question that had been I think on the order of the day for a long series of years, and which had given rise to many disputes and much litigation was thereby settled in a just and equitable way. The commercial world I say appreciated in the highest degree the admirable way in which this question has been brought forward, and we feel grateful to the shipowners of Great Britain and of the United States who voluntarily complied with the desires of merchants. Since the Hague Rules were adopted the whole [326] situation is however changed in some way, and in a fundamental way I should say. I do not speak about the modifications that have taken place, though I know that shipowners over in Denmark are not quite sure that the alterations are improvements. But there is another thing that seems to us to be of paramount importance. The Hague Rules were originally destined only to be the basis of a voluntary agreement between shipowners and merchants. Now it is proposed to embody them in an International Convention, that is to make them into legal rules binding upon all shipowners, with or without their consent. I could say we are entirely in sympathy with the proposal, but of course that makes a great difference; and now by all means we must see that we do not go too far, that we do not get Rules binding for the shipowners which are not absolutely needed in order to protect the just interests of the merchants. The shipowners of Denmark (I am only a lawyer; I am not an expert at all, therefore I only have to repeat what the experts say; but there is present here a shipowner who will perhaps explain it to you) say: "Well, that is all right for the liners, but some of the provisions could not be applied to tramps with bulk cargoes". They use very strong expressions; they say that some of the provisions are almost disastrous to tramp vessels with bulk cargoes. On the other hand the other parties in Denmark, the merchants, the bankers, the underwriters, say: "Well, we do not care so much for having made the Rules applicable to tramp ships with bulk cargoes. There we shall always have a special charter party, and there we will be quite able to protect our interests; we do not ask for [327] any help from you; but what is interesting to us is to have these rules made applicable in the first instance to liners, to have the negligence clauses abolished by liners with general cargo".

Under these circumstances we Danish delegates would perhaps suggest that it would be better now, at least for the time being, in the first term, if I may use the expression, to leave the whole question of tramp vessels with bulk cargoes out of the Convention, or perhaps to make a sharp distinction between the rules which can be applied to all vessels, and the Rules which can only be applied to liners with general cargoes. That is the first thing I should take the liberty of saying.

[329]

Mr. Otto Liebe (Denmark):

Well, to make a long story short, as you say here in England, we, the Danish delegates, approve the idea, we are in sympathy with the idea, of embodying these Rules in an International Convention; but at the same time we would suggest that for the time being you should not say too much about the tramp vessels with bulk cargoes, and, secondly, that it is allowed to the signatory powers to take some reservation when they sign, to say that they are not prevented by this Convention from deeming a carrier liable also to the *bona fide* purchaser of the [330] bills of lading for the accuracy of the description of the goods in the bill of lading. In this way we should have no need to change our law on fundamental principles; and on the other hand we believe that we shall get hold of the most eminent provisions of the Hague Rules. (*Applause*).

Mr. A. P. Möller (Denmark): Mr. Chairman and Gentlemen. My compatriot said he was only a lawyer. I feel it incumbent upon me speaking in a gathering like this to say that I am only a shipowner. Further I am a tramp shipowner, and although I am here as a delegate for the entire shipping of Denmark my feelings are naturally coloured by my calling, and I would also ask your pardon if in the following remarks I should make some criticisms, and I would ask them to be attributed to the natural feeling of impatience of the man who is receiving medicine when there is nothing wrong with him. (*Laughter*).

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[331]

I have always had the feeling that if there had been a somewhat more liberal sprinkling of tramp shipowners at the Meeting at the Hague, these Rules might have either been made applicable to liners only or some simple amendment might have been made which would have made them to our view more applicable to both liners and tramps. However that was not so. The Hague Rules 1921 were put before shipowners at large at the International Shipping Conference in London in November last year, and they were put before them by British gentlemen. The British owners and their legal advisers impressed strongly on us the advisability and desirability of our passing these Rules. That was done in order to try to forestall the British legislation on the subject. The liner owners came somewhat more prepared to accept the Rules than the tramp owners and I consider naturally so. The tramp owners had very great qualms, but we were told by eminent British lawyers to whom we naturally as laymen applied that these Rules as they then stood were not nearly so dangerous for us as they looked. When I look at the Rules for the Carriage of Goods by Sea some of the safeguards that we were referred to at that meeting in London [332] are not in the Rules, and naturally therefore our anxiety about accepting the Rules for tramp shipping generally has become greater than our anxiety about accepting the Hague Rules of 1921 as they stood. I should say that impressed by all that had been put before us, we accepted the Rules to the extent that we undertook to recommend them to our Authorities at home for voluntary acceptance by shipowners, after that they have been thoroughly discussed both by shipowners as man to man and in open shipowners Conferences, and we have come to the conclusion that the Rules could and probably should be introduced voluntarily by liner owners. No doubt there would be some features which would be objectionable to them but they could and should probably be introduced with a view to gain practical experience and in the hope that practical experience would come to bear on these Rules so as to cause them to be amended as time proved that it was necessary. We came to the conclusion that they would not do for tramp ship-

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ping and that moreover they were not really called for tramp shipping. It must be remembered that the call for reform and the reason that these Rules have been brought into being at all, as far as I understand it, has been owing to the position as regards liner bills of lading. Everyone knows the liner bill of lading is full of clauses in small print that few people have the good eyes to read and no one has time to read. Merchants could justly say that there was no freedom of contract in liner bills of lading, and so far as I understand it the whole agitation for reform arose through that circumstance. Now as regards tramp shipping the position has always been and is to day quite [333] different. Tramp shipping is done on a basis of free contract. The bill of lading is not the primary document; the primary document is the charter party, and the charter party is gone through by both parties and signed by both parties. It is generally signed by the merchants and signed over by a representative of the shipowner, at any rate he acts for the owner and the owner must abide by what he does. Therefore the cargo interests are as regards tramp shipping in a much better position to protect their interests, and as there are so many trades in the world it is natural that there will be different charter parties, and it is possible for both parties, and convenient for both parties to be able to do so, to put such special conditions into any given charter party that any given special trade may demand. Therefore I do not really see any need, and as far as my knowledge goes, I never heard of any call, for reform of the present condition of things as regards tramp shipping. I would suggest that a clause should be introduced into these Rules somewhat like this: "Where the carriage is governed by a charter party signed by both parties or by representatives of both parties the relations between carrier, shipper and receivers may be regulated by such charter party and the present Rules shall not apply to such instances". It seems to me that it would be a practical thing to introduce a Rule like that, and then in time you could gain experience, and if it turned out in a few years that a modification of that kind was not possible and did not meet with the reasonable desires of the parties concerned it could be amended, but it seems to me that it is always [334] very dangerous to go beyond what is necessary and to go the whole hog at once, and it is much better to leave well enough alone.

[340]

Mr. Möller: I have already occupied your time rather long and I have some further objections, but I do not think that I should enter into them now. I would simply say to finish up, that tramp owners are not inimical to the Rules; they are not inimical to the adoption of a uniform standard which shall govern these things, but the tramp shipping is of a more varied description than liner shipping, and new trades constantly crop up, and an owner wants to be careful not to draw lines too close, because there may always be new trades that require special circumstances, and we also desire such simple alterations in the Rules as are important for tramp owners, and which to our view cannot be objectionable to the interests of merchants. (*Applause*).

[345]

Sir Norman Hill:
 There is one great big point and that is: should or should not tramps come under the Code. That is a great big point and as you answer that you settle a great many [346] questions. May I point out that there is nothing in the Rules which affects in any shape or form the operation of a ship under a charter party. Any cargo owner can charter any ship on any terms that he can agree with the shipowner. He is absolutely a free man from first to last and all the time. But, if, under that charter party, bills of lading are issued, then the bills of lading come under the Code, not the charter party. Is that right

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or is that wrong? If we are going to satisfy the cargo interests what we have to aim at doing, is to put the bills of lading on the same footing as a bill of exchange. It must connote in every market of the world, whether you are buying or selling grain or sugar or whether you are arranging your finance or whether you are arranging your insurance, the minimum responsibility on the shipowner as defined by the Code. If you are not going to do that you have not taken the one step which as I understand the cargo owners want. (*Hear, hear*). The merchants, the bankers, the underwriters have come to us shipowners and have said "Give us a document with which we can deal with the same confidence and the same certainty as we deal with a bill of exchange". We cannot do that if we draw a distinction between bills of lading issued under charter-parties and liner bills of lading. If we could think of any terms of doing it what would be the result? If the cargo interests are right, that this negotiable bill of lading, this standard bill of lading, is of great advantage to cargo, would not the liners at once get an extra preference. They would say to the cargo owners: "We are the only people who carry according to the standard bill of lading: the others are still outsiders; you have not [347] an idea what your security is; you do not know if you have any security". Now believe me, I know, and it is quite true (I have been bred up amongst the liners and I am regarded as a liner man), if we had started this on that other tack that we were going to make a liner bill of lading which would satisfy the cargo interests we should have had all our friends the tramp coming to us saying that we were trying to steal their business. That is what would have happened. If this is going to be good work, if what we are going to produce is going to be a good article, the man who produces that good article will command the market or get a better freight, when it comes to sailing. All the points that are raised with regard to these charters were known, and it is the fact that there has been enormous labour spent in adjusting charters as between trade and shipowners; it has been a free bargain; one knows all that; and in some of these charters Mr. Möller has told us it is expressly declared "weight unknown" or "number unknown". Is there anything to stop businessmen who adjust those charters from putting those words on the bills of lading which are issued under the charters. They could give the numbers or they need not give the numbers. You must remember that all these number and weight clauses only start to operate at the instance of the shipper of the goods. If he says nothing the shipowner needs to put nothing on the bill of lading. If the charterer is content to take his goods without a negotiable bill of lading that is his affair, and it is only he and the shipowner who are interested in the transaction, and there is no *bona fide* holder for value who could ever become interested without full notice of [348] what is in the charter party. If he chooses to take over the charter party I suppose he will read it. But remember that the whole case made against us is: "In the flow of business, in the rapidity with which it has to be handled, the multitude of people through whose hands it has to pass, there is not time to go into detail; we must have a document which we can work on and we must all know without examination that that document carries a minimum of responsibility on the shipowner".

That is what we are after to day. It may be all non-sense. I troubled you at the Hague with my belief that all this codification, getting away from absolute freedom of contract was a mistake, and I still hold that view, and, having worked for months trying to find out exactly what it is that all the cargo interests want, and having tried to find out exactly what all the shipowners would agree to, I have come to the conclusion that if you left them to make their own bargain it would be infinitely better than trying to do the work you have been trying to do. But there is hardly anybody else who agrees with me. Everybody has this idea that we must have this negotiable document put on a firm basis. Well, if they are right and I am wrong, and that does increase the interchange of commodities all over the world, then we shipowners have done a good job and we have helped for a useful purpose. If it does not, well sooner or later we shall

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drift back to freedom, that I am perfectly clear about, until we find the right way of promoting the interchange of commodities all over the world.

I hope I have not wearied you with my true views as to principles. (*No! No!*).

[350]

Sir Norman Hill:

I have dealt with the point that was raised by Denmark as to whether the tramps are to be included or not, and I believe, Sir, that is a matter of very gravest importance to the tramp owners. Suppose we recommend that we are to exclude tramps from these Rules, that we are not to give the cargo owners who chose to ship by tramps the benefit of these Rules upon which their hearts are set, it will end up in a pink bill of lading, or a blue bill of lading or something like that which the tramp owners will have to use, and which will be an inferior bill of lading on the markets of the world. I do not believe even if we did that we should ever accomplish what the cargo interests want. If you buy and sell wheat in the world, when you come to tender it on the wheat market you satisfy your contract with the bill of lading. Are all the wheat markets in the world to provide either for a liner bill of lading or a tramp bill of lading? Is it to be the same with regard to cotton, timber and such things? They will be inferior bills of lading in the markets of the world if there is any value in this standard uniform negotiable bill of lading.

Afternoon sitting of Tuesday 10 October 1922

[368]

Sir Stephen Demetriadi:

I do not want to deal with the technical side of it for the moment; I do not think that is your desire, but I did hear this morning a question of charter parties being discussed. I have heard it said in some quarters that a bill of lading issued after a charter party has been signed will not follow these Rules. I am here as representing trade and in all my business career I have yet to learn that a charter party has ever been entered into without following in its wake a bill of lading, and our view is that, if there is a bill of lading, that bill of lading under the charter party will follow the lines of these Rules. I want to make that clear.

The Chairman: I understood Sir Norman Hill to say that was his view, Sir Stephen.

Sir Stephen Demetriadi: Sir Norman I think agrees with me on that point, but I want to make it quite clear that, if there is a charter party, there follows a bill of lading in due course. Very likely in the time charters it may not always be the same; they may not always have [369] the same effect because the charterer then takes upon himself the responsibilities of a shipowner, and therefore the Rules have a different governance, but as a general rule a charter party has a bill of lading following in its wake, and I think the intention is - that is certainly what we understand - that that bill of lading will follow the lines of these Rules.

I do not think I have anything else to say, Sir. I think I have explained as briefly as possible and in as few words as possible the cardinal points which have guided us in our deliberations. (*Hear, hear*). I would like to thank you once more, Sir, for giving me an opportunity of speaking before this Meeting.

The Chairman: On the technical question which has just been referred to I think Sir Leslie Scott would say a word which will be useful.

Sir Leslie Scott: Mr. President, if Sir Stephen Demetriadi would be good enough to interrupt me and ask any further questions if I do not deal with the point as fully as

he intended or I do not satisfy his criticism that he made just now, I should be grateful. Of course in the great majority of cases where charters are issued the charter itself contains a clause that masters will sign bills of lading as required in one form or another, but a certain number of charter parties do not contain that clause. I have come across quite a considerable number in the course of my experience, which I suppose is fairly wide. Even where the charter party does provide for the issue of bills of lading and a bill of lading is issued, there are an appreciable number of transactions in [370] commerce where the charterer retains that bill of lading in his own hands, particularly those cases where the charterer is shipping raw material from across the water to works of his own on this side. For instance take an illustration which may be familiar to our friends from Holland. A considerable amount of phosphate rock comes from the other side of the Atlantic to super-phosphate works in Holland. In those cases, if I am right in my recollection, charters for part cargoes, weight cargoes, are issued, (the ship filling up with measurement afterwards) in which there is no provision for the issue of bills of lading. No doubt there would be a mate's receipt to acknowledge the quantity received by the ship. But even if there be a bill of lading according to English law, and I suspect that it is so in Continental law also, the charter remains of a contract and although the bill of lading is expressed in the form of a contract its terms do not supersede the terms of the charter party; in other words as our Courts put it, it remains a mere receipt for the goods. That being so, you have to make up your mind what is intended by the Hague Rules as a matter of substance in regard to shipments of that type under charter party. Where a bill of lading is issued and retained in the hands of the charterer, are the terms of the Hague Rules to govern that shipment or are they not? One decision or the other may be taken according as the business men present think the one is better than the other. I do think it is essential to be clear as to what is intended on that point.

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Dr. Eric Jackson: The view of the Federation which I represent is that, if there is a bill of lading, whether it is issued under a charter party or not, the Hague Rules will be *ipso facto* incorporated in that bill of lading.

Sir Leslie Scott: That is obvious.

Dr. Eric Jackson: It seems to me that on this point [373] the American representatives could give us useful information because as I understand their Harter Act it applies to all bills of lading whether issued under a charter party or not, and they must, I should have thought, have had experience during the past 20 years as to what is the effect of a bill of lading under a charter party. But certainly, as far as the Federation are concerned, our views is that, if a bill of lading is once issued then under any statute law that was passed in this country, the clauses of the amended Rules would be deemed to be incorporated in that bill of lading, whether the bill of lading came into existence because of a prior charter party or not. I think if the other view is taken we should do away with uniformity brought about by legislation (*hear, hear*), because I do not know what the definition of a charter party is, but I see no reason why any contract note of affreightment, even though it may be only for carrying two bags of wheat from America to this country, is not in effect a charter party. Therefore, if the other view were taken, it seems to me that the shipowner would escape any legislative sanction upon him to incorporating the amended Rules by simply giving a freight note beforehand and saying: "I agree to carry your two bags on my vessel" so and so, which as far as I know would be legally a charter party though not the ordinary charter party which is known to commerce.

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Mr. W. W. Paine: Mr. Chairman and Gentlemen. I must apologise for the absence of my colleague, Sir James Hope Simpson, who, jointly with myself, represented the Bankers at the Hague Conference. I regret to say that Sir James Hope Simpson has been ill. He is at present absent in Canada. I wish he were here to represent the Bankers to-day.

I had not the privilege of hearing the discussion this morning, and I do not know that I can add anything usefully to what little of the results of that discussion I have heard since I came into this room. But I think it may perhaps be convenient to the Conference if I state very shortly and in purely general terms the general attitude of the Bankers towards the questions involved in these Rules. That attitude is shortly this. The Bankers were represented, as I have told you, at the Hague [377] Conference, and they are very anxious to see that the good preliminary work which was done at that Conference is not thrown away. They thought that by aiding those discussions at that Conference they were helping towards a certain measure of uniformity in regard to bills of lading to be issued in all maritime countries which would be so helpful to the commerce of the world; and therefore they are extremely anxious to see effect given to the Hague Rules in the form in which they have now been modified. That must mean, if anything like uniformity is to be secured throughout the world, a Convention between the different maritime states which will recognise the validity of those Rules. (*Hear, hear*). And it must also mean, as we now know, legislation in Great Britain and her Dominions; and I hope concurrent legislation on similar lines in the United States of America, and I imagine that that would perhaps be followed by domestic legislation in the various States which became parties to the Convention.

The real object and desideratum from the Bankers' point of view (and of course I speak from that point of view; there are many of you here who are much more competent to speak of the general view of commerce than I am) is to obtain a document which, as you all know, is the very foundation of commerce in some respects, at all events in essential respects, of a uniform character; so that the Bankers who have to handle those documents by the thousand every week, shall know, without too close an examination, that those bills of lading conform to a particular standard. It does seem to me that, if those regulations, whatever they are called, Hague [378] Rules, or anything else, are embodied in a Convention which is adopted by the maritime states, and are embodied in legislation such as I have described, we shall have made very great progress towards that uniformity which has been the object of all people interested in commerce for many years past.

I do not know that I am competent to touch at all upon this question which has been raised in regard to charter parties. I am open to correction, but I would like just to state what my personal view in that regard is. From the Bankers' point of view the essential thing is that the document which passes from hand to hand as representing the title to goods should be of a uniform character. We are not concerned as Bankers with the terms of charter parties which are entered into between individuals who, so far as we are concerned, can make their own bargain. But we become at once concerned and considerably interested as soon as a bill of lading, which may be negotiated with us, or may pass from hand to hand, is issued. Therefore very strongly I say that, if and so far as bills of lading are issued under Charter parties, they must conform to the Hague Rules. Beyond that I do not care to go, because I must leave it to others to say whether there is any necessity in the case of a charter party, which merely represents a bargain between two individuals, the shipper and the shipowner, for us to attempt to deal with that by these Rules or by legislation in which they may be embodied. From the banking point of view I do not think it is necessary. I can conceive cases, such as Sir Leslie Scott has put, where there is no necessity for any negotiation of

any document at all, and where [379] the parties may wish to make their own bargain quite untrammelled by legislation such as is embodied in these Rules, and personally I do not at the moment see any objection to leaving that outside the Rules so long as, and always so long only as, there is not a document of title which comes into circulation. In that case I think that document must conform to whatever legislation there is. I do not think, Sir, there is anything else that I can usefully add. (*Applause*).

Sir Ernest Glover: I do not want to make a speech, I just want to ask a question, Sir, in reference to what Sir Leslie Scott was telling us just now. In the first place I do not think there is any general custom anywhere of not signing bills of lading under a charter party.

Sir Leslie Scott: No, I quite agree.

Sir Ernest Glover: There is always a bill of lading signed; but there are many cases where the Bill of Lading is not negotiated; where the shipper and the receiver are practically the same person, and the bill of lading is simply forwarded by the shipper to the receiver. The question I wanted to ask therefore is this: If the shipper and the receiver are the same person, and the bill of lading is signed on different terms from the Charter party, will the Charter party supersede the bill of lading or *vice versa*, on the assumption that the bill of lading is not negotiated? It is a question that you touched on, Sir, but will you make it clear to us?

Sir Leslie Scott: By your leave, Sir, I will answer the question put by Sir Ernest Glover. As a matter of [380] fact I have just written this down, and I will ask Lord Sterndale and the President of the Admiralty Division, and Sir Maurice Hill to listen to what I have written, and tell the Conference whether they agree; and if they do not agree we will have a Court of Appeal of merchants. It is this: "As in English law a bill of Lading which remains in the hands of the charterer is not a contract, but a mere receipt, any Convention and any legislation to carry it out must say whether that Rule is to continue or to be replaced by a statutory provision that such a bill of lading is to be deemed a contract, and to regulate the terms of the carriage by sea of those goods". In answer to Sir Ernest Glover in the case which he referred to, where the shipper or charterer and receiver is the same person, which is the case that I had in mind mainly, the bill of lading in English law does not become the contract and does not supersede the charter party. The charter party remains the contract and regulates all the relations between the parties. Even if the bill of lading which is issued contains terms different from the charter party, the general rule of the Courts is that that bill of lading is a mere receipt, that you disregard those terms and look only to the charter party. I think there might be cases conceivably where the operation was such as to show an intention between the charterer and the shipowner to supersede the charter party and make a new contract by the bill of lading. That is a possibility, and there are one or two recorded cases in the books, as I expect our American friends will agree; but the ordinary position is what I have said, that the charter party remains the contract, and is not superseded by the bill [381] of lading. As the Code of Rules is drawn, that would be reversed, and the bill of lading would supersede the charter party. If the Conference is of opinion, as I imagine it is, that in what you may call characteristic charter party shipments, it is desirable to leave to the parties freedom of contract, then you must in the Rules say, and it can be done with two or three words, that, were the parties make a charter party, the bill of lading as between the charterer and the shipowner shall be a mere receipt, and it is only when it is negotiated, as Mr. Paine said, and gets into the hands of a third party that it will represent the conditions of carriage and constitute the contract between the endorsee, the holder of the bill of lading, and the shipowner, enforceable against the ship, either by the receiver or by the bank as the case may be, in the name of the receiver. It is only that I want to have that point clear, as it is a matter of great commercial importance, because it is essential to decide whether in

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charter party shipments proper, the ordinary type of charter party shipments, you want to control the terms of the carriage by these new Rules, or whether you want to leave the parties free. I have always understood up to now that the intention, at The Hague and subsequently, always has been in those cases to leave freedom of contract unaffected.

Sir Norman Hill: Might I ask the Solicitor General this: The only difficulty that arises is because under these charter parties you are using a document in the form of a bill of lading, which you call a bill of lading, but which our Courts say is merely a receipt.

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Sir Leslie Scott: Quite so.

Sir Norman Hill: Is not the short cut, Sir, that if you want to go on doing that, you use a receipt, and you do not use a bill of lading? That is what we did at The Hague. Our Code was quite complete. All these transactions would have come under Article 5, and there would be no bill of lading issued. Now we are sure to get into trouble; there are sure to be difficulties, if we allow two forms of bills of lading to come on the market. There should only be one form of bill of lading, and everything which is called a bill of lading, which is in the shape of a bill of lading, should come under the Code, if we really want to put it on an equality with a bill of exchange. We can pay our debts in all kinds of form without the use of a bill of exchange. There is nothing to stop it. If we have a charter party and we want to maintain charter party conditions, and nothing else, then there must not be created a document in the form of a bill of lading; some other document that that will meet the case.

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Sir Leslie Scott: I agree it might be possible, apart from Customs Regulations to do that, but there are many charter party shipments where at the outset the charterer may like to keep a free hand as to whether he shall be the receiver himself, or whether he will negotiate his document.

Sir Norman Hill: Under the Code?

Sir Leslie Scott: Under the Code, and the point I wanted to get clear was: where he decides to keep the bill of lading in his own hands and not negotiate it, in that case are the relations between him and the ship to be regulated by the contract contained in the charter party, or are those relations to be superseded by the bill of lading? Perhaps Lord Sterndale would just say a word as to whether he agrees with my statement of the legal position?

Lord Sterndale: Mr. President, I am very sorry that I cannot comply with my learned friend's request to say whether he is right in his law, and I will tell you why. The question whether he is right or not may come before Mr. Justice Hill, or Sir Henry Duke, and it may [384] come before me on appeal from them, and I do not think I ought standing here, and not sitting judicially, to give any deliverance upon the state of the law. I do not quarrel with what the Solicitor General said, but I do not think it would be right for me here, occupying the position I do of President of the Court of Appeal, to state off hand and generally any proportion that I think as to the English law. But I do wish to say this: I entirely agree with the Solicitor General that this matter should be made clear. It should be made quite clear what is intended in the case of a charter party shipment as he calls it in the ordinary course. If this rule as it stands is put into the form of legislation, there is a statutory obligation upon every shipowner who is carrying goods, whether under charter or not, to give a bill of lading on demand, and if he gives a bill of lading, it seems to me, looking at the definition clause of

“contract of carriage” and Article 2 that, under this Rule, if it were so made into a statute, that would be the governing document as to the rights and obligations of the shipowner and the charterer respectively. I do not know whether that is intended or not, but if this is carried into legislation as it is now, it seems to me that that would be very likely at any rate the effect; and I quite agree with the Solicitor General that it should be made quite clear whether that is intended, or whether it is not.

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Mr. E. B. Tredwen:

With regard to some of the objections that have been raised as to bills of lading issued against charters, I take it that, as we no doubt shall have legislation making either the Hague Rules or something like them compulsory upon all bills of lading, then whenever a charter party is going to be signed, which will contain the clause that the captain shall sign bills of lading as required, because even under a charter party the shipper must usually have a bill of lading, the shipowner, knowing that whatever bill of lading he issues must be a statutable bill of lading, because then there will be a statutable bill of lading when the legislation has taken place, knows exactly what responsibility he is undertaking when he signs that charter, the responsibility [391] to issue bills of lading in conformity with the Hague Rules. I do not think that shipowners generally object to accepting the heavier liabilities which they do under the Hague Rules, because they know exactly what their liabilities are; they know what they have to insure; and similarly the merchant who receives statutable bills of lading of this kind knows exactly what are his privileges and what are the liabilities that he has to insure against. I think that if these Rules are generally adopted voluntarily in the meantime, but subsequently by the law in this country, and I hope throughout the maritime nations, it will be an immense step forward, because then we shall know that a bill of lading, issued in whatever country, gives the same rights to the receiver as any other bill of lading, that there is no variation in the responsibilities of the shipowner. (*Applause*).

The Chairman: A question was raised which was not discussed just now in the observations Sir Leslie Scott made. I think Sir Stephen Demetriadi is now in a position to tell the Conference what his view is as to the rather thorny topic of the necessity of including the transaction between two individuals under what one may call an old-fashioned charter party, for want of a better term, in the restrictions of the proposed Code.

Sir Stephen Demetriadi: Perhaps Dr. Eric Jackson can answer for me.

The Chairman: Certainly, if Dr. Eric Jackson finds it more convenient to reply, or you think so.

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Dr. Eric Jackson: I am afraid that we feel on this side that we are in rather a difficulty at the moment in quite appreciating what we are asked to give away, or, it may not be to give away, what we are asked to agree with regard to these charter parties or the various bills of lading that may come into existence thereunder. For myself I have not yet appreciated what is the requirement that is made against us, to exclude any bill of lading whatever, whether they come under a charter party or not?

The Chairman: I do not think it has been suggested that you should exclude any bill of lading. The question was, and I understood from a communication which had reached me, that Sir Stephen and his friends were in a position to say, whether they wanted to include charter parties in the definition of bills of lading. That is really what it comes to.

Dr. Eric Jackson: I hope I made it clear that we did think the Rules were so drafted

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that they included every bill of lading whether issued under charter parties or not.

The Chairman: I understood that was so. If there is not an understanding about it, I am not going to take up the time of the Conference in trying to elicit one.

Dr. Eric Jackson: At the moment there is none.

*Text adopted by the Conference
(CMI Bulletin No. 65 - Gothenborg Conference)*

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No change.

*Conférence Diplomatique - Octobre 1922
Séances de la Commission
Première Séance - 19 Octobre 1922*

[15]

M. de Rousiers, Délégué de la France, propose de modifier la rédaction de la définition du contrat de transport à l'article 1 (b), en remplaçant le mot "signifie" par l'expression "s'applique uniquement au contrat de transport constaté par un connaissement".

M. Langton, Délégué de la Grande-Bretagne, propose de spécifier, en outre, que cette expression comprend tout connaissement ou tout document similaire émis en vertu ou à la suite d'une charte-partie à partir du moment où pareil connaissement est négocié.

Troisième Séance - 21 Octobre 1922

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A l'article 1 (b), **M. Langton** a proposé d'ajouter "...y compris tout connaissement ou tout document similaire, comme dit ci-dessous, émis en vertu ou à la suite d'une charte-partie du moment où pareil connaissement est négocié". (Adopté).

*Conférence Diplomatique - Octobre 1922
Sixième Séance Plénière - 24 Octobre 1922*

[123]

Le Président (M. Louis Franck) . . .

*Diplomatic Conference - October 1922
Meetings of the Commission
First Session - 19 October 1922*

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Mr. de Rousiers, French delegate, proposed changing the wording of the definition of contract of carriage in article 1(b) by replacing the word "means" with the expression "applies only to contracts of carriage covered by a bill of lading".

Mr. Langton, delegate from Great Britain, proposed specifying further that this expression included all bills of lading and all similar documents issued under or pursuant to a charter party from the moment at which such bill of lading is negotiated.

Third Session - 21 October 1922

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Mr. Langton had proposed adding to article 1(b), "...including any bill of lading or similar document, as above mentioned, issued by means of or pursuant to a charter party from the moment such bill of lading is negotiated". (Adopted).

*Diplomatic Conference - October 1922
Sixth Plenary Session - 24 October 1922*

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The Chairman (M. Louis Franck)

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La première observation de la Commission est relative à l'article 1 (b), qui contient un certain nombre de définitions. Il s'agit, dans l'amendement de la Commission, de la définition du contrat de transport. Ici, la Commission propose deux modifications. D'après un amendement du Délégué français, elle a admis que l'article devrait être libellé comme suit:

“Contrat de transport s'applique uniquement aux contrats de transport constatés par un connaissement ou par tout document similaire faisant titre, pour autant que ce document se rapporte au transport de marchandises par mer”.

Le second amendement, proposé par la Grande-Bretagne et admis à l'unanimité, consiste à ajouter à cette définition du contrat de transport: “Y compris tout connaissement ou tout document similaire comme dit ci-dessus, émis en vertu ou à la suite d'une charte-partie, à partir du moment où pareil document est négocié”. Y a-t-il opposition? (*Non*). Donc, ces amendements sont adoptés en principe, réserve faite concernant la rédaction.

M. Henriksen. - Il est de pratique courante de mettre dans la charte-partie la clause suivante: “Le capitaine devra signer les connaissements tels qu'ils lui sont présentés, sans préjudice des clauses de la charte-partie”. Est-ce que sous l'empire de cette définition, la portée de cette clause, qui est relative au recours éventuel de l'armateur contre l'affréteur, est restreinte? Et si oui, l'armateur peut-il se faire garantir par l'affréteur contre les conséquences pouvant résulter pour lui de pareille restriction?

Sir Leslie Scott. - Je suggérerais que cette question fût posée à M. le Juge Hough; mais, provisoirement et au point de vue du droit anglais seulement, ma réponse est la suivante: Beaucoup de chartes-parties, mais pas toutes, contiennent cette clause; mais, dans tous les cas, d'après le droit anglais, les droits et obligations des contractants sont réglés par la charte-partie aussi longtemps qu'aucun connaissement n'a été négocié et ne

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The commission's first comment concerned article 1(b), which contains a certain number of definitions. The commission's amendment dealt with the definition of the contract of carriage. Here the commission proposed two changes. After an amendment from the French delegate, it accepted that the article should be drawn up as follows:

“Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea.

The second amendment, proposed by Great Britain and accepted unanimously, consists of the addition to this definition of the contract of carriage: “including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading is negotiated”. Is there any opposition? (*No*). Then these amendments are adopted in principle, with a reservation concerning drafting.

Mr. Henriksen. - Is it common practice to include in the charter party the following clause: “The captain must sign bills of lading as they are presented to him, without prejudice to the clauses of the charter party”. Under this definition, will the scope of this clause, which is relevant to the eventual redress of the shipowner against the charterer, be restricted? And if so, can the shipowner indemnify himself, through the charterer, against the consequences that might result for him from such a restriction?

Sir Leslie Scott. - I would suggest that this matter be put to Judge Hough; but provisionally and strictly from an English point of view, my response would be as follows: Many charter parties, but not all, contain this clause. But in all cases, under English law, the rights and obligations of the contracting parties are regulated by the charter party as long as no bill of lading has been negotiated and is not found in the hands of a third party. As far as the charterer and

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se trouve pas entre les mains d'un tiers. En ce qui concerne l'affrèteur et l'armateur, c'est la charte-partie qui règle leurs droits contractuels.

Le droit de recours de l'armateur contre l'affrèteur, dont parle M. Henriksen, ne peut donc surgir que lorsque le capitaine a signé un connaissement qui comporte pour l'armateur de plus grandes obligations que celles stipulées dans la charte-partie. Dans ce cas, d'après le droit anglais, l'armateur a le droit de demander garantie par l'affrèteur pour la différence existant entre les clauses du connaissement et celles stipulées dans la charte-partie.

M. Henriksen désire savoir quelle sera la situation, dans un pareil cas, lorsque la convention actuellement en discussion sera devenue la loi. Si l'armateur, en vertu de la charte-partie, a moins d'obligations que celles que lui impose la convention, il peut ne pas émettre de connaissement et dans ce cas, il peut se contenter d'un fret inférieur; mais si l'affrèteur désire insérer dans son contrat que le capitaine devra signer les connaissements tels qu'ils sont présentés, l'armateur peut dire à l'affrèteur: C'est très bien, votre fret sera d'autant plus élevé si vous demandez l'insertion de cette clause et le sera d'autant moins si vous ne la demandez pas. Je voudrais savoir ce que M. le Juge Hough en pense.

M. le Juge Hough. - J'inviterais M. Henriksen à se rapporter à l'article 5, tel qu'il a été amendé par la Commission. Il verra que la seconde phrase du texte, tel qu'il a été établi à la Conférence de Londres, a été amendée d'après la proposition française, en ce sens: "Aucune [125] disposition de la présente convention ne s'applique aux chartes-parties; mais si des connaissements sont émis dans le cas d'un navire sous l'empire d'une charte-partie, ils sont soumis aux termes de la présente convention".

Il me semble que c'est là la réponse à la question de M. Henriksen. Mon avis personnel est que l'armateur peut se faire donner cette garantie dans la charte-partie, par référence, à l'article 5.

shipowner are concerned, it is the charter party that regulates their contractual rights.

The right of redress for the shipowner against the charterer, of which Mr. Henriksen spoke, cannot therefore arise except when the captain has signed a bill of lading entailing for the shipowner greater obligations than those stipulated in the charter party. In this instance, under English law, the shipowner has the right to ask for an indemnity from the charterer for the difference between the clauses in the bill of lading and those set out in the charter party.

Mr. Henriksen wants to know what the position would be in a similar case when the convention presently under discussion had become law. If the shipowner, by means of the charter party, had fewer obligations than those that the convention imposes upon him, he may not in that case issue a bill of lading. He can content himself with an inferior freight. But if the charterer wishes to include in the contract that the captain must sign the bills of lading as they are presented, the shipowner can say to the charterer: "that's fine, your freight charge will be all the higher if you ask for the insertion of that clause and will be all the lower if you do not". I would like to hear Judge Hough's opinion on this.

Judge Hough. - I would invite Mr. Henriksen to look at article 5, as it was amended by the commission. He will see that the second sentence of the text as it was written at the London Conference has been amended, following the French proposal, in the following way: [125] "The provisions of this convention shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this convention".

It seems that that is the response to Mr. Henriksen's question. My personal opinion is that the shipowner can obtain his indemnity through the charter party, with reference to article 5.

Sir Leslie Scott. - J'ai dit que c'était l'affaire de l'armateur d'exiger un taux de fret plus élevé pour cette garantie.

M. Beecher. - Depuis le temps, très court, que nous avons reçu le rapport de la Commission, je n'ai pas encore pu me rendre exactement compte de la portée de cette définition, dont nous nous occupons en ce moment, mise en rapport avec l'article 5, tel qu'il est amendé. La difficulté, pour moi, est la suivante: Sera-t-il possible d'émettre, en vertu d'une charte-partie, un connaissement qui ne sera pas soumis à ces règles? Si j'examine la définition dont il s'agit en ce moment, il me semble que l'intention est de permettre l'émission de pareils connaissements, pourvu qu'ils ne soient pas négociés. D'autre part, l'article 5 stipule qu'aucun connaissement émis en vertu d'une charte-partie ne pourra violer les règles. Il me paraît qu'il y a opposition entre ces deux propositions et il serait important de savoir exactement si l'on peut émettre un connaissement contenant une clause exonérant le transporteur de toute responsabilité?

M. le Président. - Je comprends votre proposition, mais c'est là une question à discuter quand nous serons arrivés à l'article 5.

M. de Rousiers. - Je crois que l'observation de M. Beecher provient d'un léger malentendu dans la traduction hâtive qui a été faite hier. Je croyais être d'accord avec les auteurs anglais de la proposition en disant que l'intention véritable est celle-ci: En principe, tout connaissement ou document similaire émis en vertu d'une charte-partie tombe sous l'empire de ces règles du moment que ce connaissement est négociable. Il est entendu qu'au moment où le connaissement est émis, on ne sait pas s'il sera négocié. Je comprends l'observation de M. Beecher, mais je crois qu'il peut avoir tous ses apaisements puisque l'article 5 est clair à ce sujet et qu'il y est bien dit: "connaissement, etc., à condition qu'il sera négociable".

Sir Leslie Scott. - Je crois qu'il n'y a pas de différence au fond entre l'opinion

Sir Leslie Scott. - I said that it was the shipowner's business to demand a higher freight charge for this indemnity.

Mr. Beecher. - In the very short time since we received the commission's report, I have not yet been able to grasp precisely the scope of this definition that we are now looking at, related to article 5, as amended. The difficulty for me is as follows: Will it be possible to issue, by means of a charter party, a bill of lading that will not be subject to these rules? If I look at the definition in question, it seems to me that the intention is to allow just such bills of lading to be issued, providing that they are not negotiable. On the other hand, article 5 states that any bill of lading issued under a charter party will not be able to violate the rules. It appears that these two proposals are in opposition and so it is important to know precisely whether one can issue a bill of lading containing a clause exonerating the carrier from all liability?

The Chairman. - I understand your proposal, but it is a question for discussion when we reach article 5.

Mr. de Rousiers. - I believe Mr. Beecher's comment arises from a slight misunderstanding in the hasty translation made yesterday. I thought I was in agreement with the English authors of the proposal in saying that the true intention was that, in principle, any bill of lading or similar document issued under a charter party falls under the jurisdiction of these rules from the moment when the bill of lading is negotiable. It is understood that at the moment when the bill of lading is issued it is not known whether it will be negotiated. I understand Mr. Beecher's comment, but I believe he can be quite relieved because article 5 is clear on the matter and it is well stated there that: "bill of lading, etc., on condition that it is negotiable".

Sir Leslie Scott. - I believe there to be no basic difference between Mr. de

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de M. de Rousiers et celle des délégués anglais, mais au moment même où le connaissement est signé, il devient, dans un certain sens, négociable, parce que, dès ce moment, l'affréteur a le droit, selon la loi, de faire négocier le connaissement.

Mais, jusqu'au moment où le connaissement est réellement négocié, l'affrètement reste sous l'empire de la charte-partie. C'est seulement au cas où le connaissement est un instrument négociable que nous sommes d'accord pour lui appliquer ces règles. En effet, si nous voulions entreprendre de régler la matière des contrats par chartes-parties, je crains bien que nous ne rencontrions beaucoup d'opposition. C'est pourquoi il faut s'arrêter au moment où le connaissement est négociable et, dès ce moment, le connaissement sera soumis à toutes les règles de la convention. Quand l'affréteur reçoit le connaissement, il sait qu'il a le droit de le négocier, et quand le document sera négocié, celui à qui il sera endossé aura tous les droits que confère la convention.

M. le Président. - Ce n'est pas la même chose! D'après M. de Rousiers, si le connaissement contient la clause "à ordre ou au porteur", il doit être en règle avec la convention. D'après Sir Leslie Scott, tant que l'affréteur garde le connaissement dans son portefeuille, il peut comprendre toutes les clauses "à ordre" ou "au porteur", ou toutes autres, sans être soumis à la convention.

Sir Leslie Scott. - Je ne dis pas cela, puisqu'il n'est pas possible de modifier les clauses du connaissement après que ce dernier aura été émis.

M. le Président. - Précisément! Il sera donc plus précis de dire que si le connaissement émis en vertu d'une charte-partie contient la clause "à ordre" ou "au porteur", il doit être conforme à la convention.

M. de Rousiers. - C'est ce que nous entendons par "connaissement négociable" ou "connaissement à personne dénommée". En fait, les connaissements négociables sont l'immense majorité.

Rousiers's opinion and that of the English delegates, but at the very moment when the bill of lading is signed it becomes, in a certain sense, negotiable because, from that time, the charterer has the right, as is the law, to trade the bill of lading.

But, until the time when the bill of lading is actually negotiated, the freight remains under the charter party. It is only in the case where the bill of lading is a negotiable instrument that we agree to the application of these rules. In effect, if you wish to undertake the regulation of the matter of contracts by charter party, I am afraid we shall encounter a good deal of opposition. That is why we must stop at the time when the bill of lading becomes negotiable and, from that time, the bill of lading will be subject to all the rules of the convention. When the charterer receives the bill of lading he knows that he has the right to negotiate it and, once the document is negotiated, the person to whom it is endorsed will enjoy all the rights that the convention confers.

The Chairman. - It is not the same thing. According to what Mr. de Rousiers said, if the bill of lading contains the clause "to order" or "to bearer" it must be in conformity with the convention. According to Sir Leslie Scott, as long as the charterer has the bill of lading in his wallet, it can include the clauses "to order" or "to bearer", or any others, without being subject to the convention.

Sir Leslie Scott. - I am not saying that, because it is not possible to change the clauses of the bill of lading after its issue.

The Chairman. - Exactly! It would be more precise to say, therefore, that if the bill of lading issued by means of a charter party contains the clauses "to order" or "to bearer" it must be in conformity with the convention.

Mr. de Rousiers. - That is what we understand by "*connaissement négociable*" (negotiable bill of lading) or "*connaissement à personne dénommée*" (bill of lading for a designated person). In fact, negotiable bills of lading are the vast majority.

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M. Beecher. - Pour autant que je comprends Sir Leslie Scott, il semble croire que ces règles, telles qu'elles sont définies, ne s'appliquent qu'aux connaissements qui sont négociés ou négociables. Or, l'avis de la conférence de Londres était (et, d'après moi, cela est essentiel) que ces Règles s'appliquent à tous les connaissements, qu'ils soient négociables ou non. On me dit qu'un connaissement qui n'est pas considéré négociable en Angleterre l'est sur le continent.

M. le Président. - Non pas négociable, mais simplement transmissible, selon les règles relatives au transfert d'obligations civiles, d'après le droit commun.

M. Beecher. - Mais Sir Leslie Scott semble se méprendre sur ce que nous comprenons comme étant l'objet de ces règles. C'est pourquoi je désire me rendre compte du point de savoir si les règles s'appliquent à tous connaissements indistinctement qu'ils soient négociables ou non.

M. le Président. - Que dit le Harter Act à ce sujet?

M. Beecher. - Il s'applique à tous les connaissements indistinctement.

Sir Leslie Scott. - C'est la même chose ici. Les règles s'appliquent à tous les connaissements, mais il n'y a rien dans cette convention qui dise que lorsqu'un affréteur, en vertu de sa charte-partie, reçoit de l'armateur un connaissement, ce dernier constitue un nouveau contrat entre lui et l'armateur.

M. Beecher. - Moi je dis oui. Lorsque ce connaissement est émis, il constitue un contrat nouveau et la charte-partie ne vaut plus.

Sir Leslie Scott. - Je persiste à croire qu'au fond il n'y a là qu'une différence de termes et non une différence de principe.

M. le Président. - Voulez-vous dans tous les cas y réfléchir et discuter entre vous? Je ne crois pas que ce soit là une question qui doive faire l'objet d'une discussion générale.

M. Alten. - J'attire l'attention de la Conférence sur la définition qui est donnée du mot "marchandise". On fait une

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Mr. Beecher. - In so far as I understand Sir Leslie Scott, he seems to believe that these rules, as they are defined, only apply to bills of lading that are negotiated or negotiable. But the opinion of the London Conference was (and in my opinion, that is essential) that these rules apply to all bills of lading whether negotiable or not. I am told that a bill of lading that is not deemed negotiable in England is so on the Continent.

The Chairman. - Not negotiable, but simply transferable under the rules concerning the transfer of civil obligations according to law.

Mr. Beecher. - But Sir Leslie Scott seems to be mistaken about what we understand as the subject of these rules. This is why I want to know whether the rules apply to all bills of lading indiscriminately, whether negotiable or not.

The Chairman. - What does the Harter Act say on the matter?

Mr. Beecher. - It applies to a bills of lading indiscriminately.

Sir Leslie Scott. - It is the same here. The rules apply to all bills of lading, but there is nothing in the convention that says that when a charterer by means of his charter party receives a bill of lading from the shipowner, it constitutes a new contract between him, and the shipowner.

Mr. Beecher. - I say it does. When this bill of lading is issued it constitutes a new contract and the charter party is no longer valid.

Sir Leslie Scott. - I persist in believing that underneath it all there is only a difference in terms and not a difference in principle.

The Chairman. - At all events, do you want to reflect and discuss among yourselves? I do not think that it should be a matter that should be made the object of general discussion.

Mr. Alten. - I would like to draw the conference's attention to the definition given of the word "goods". We have made an exception for live animals and cargo carried on deck. This exception

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exception pour les animaux vivants et les cargaisons transportées sur le pont. Cette exception a été fondée sur la considération que le transport d'animaux vivants et de marchandises en pontée entraîne des risques qu'il n'est pas juste de mettre à charge du transporteur. L'exception porte, je crois, sur l'article 4, mais il résulte de la forme générale de l'exception dans la rédaction, qu'elle porte aussi sur la responsabilité pour la "description" dans le connaissement et, de ce chef, je crois que l'exception n'est pas fondée. Je n'éprouve aucune difficulté à l'énoncé du nombre, de la qualité ou du poids dans les cas exceptés. En somme il faut, je crois, distinguer plus nettement que ne le font ces règles entre ces deux sortes de responsabilités: la responsabilité pour la description dans les connaissements et celle pour le transport et la livraison des marchandises mêmes.

M. le Président. - Et quelle est votre proposition?

M. Alten. - Je n'ai aucune proposition; j'ai tenu seulement à faire l'observation.

Septième Séance Plénière - 25 Octobre 1922

M. le Président.

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Revenons maintenant à l'article 1 (b), qui a été réservé. Avec tout le respect possible pour les auteurs de cette proposition, je ne trouve pas qu'elle soit très claire. Allez-vous exclure les connaissements appelés "connaissement à personne dénommée"?

Sir Leslie Scott. - Je crois que la délégation française considère la rédaction comme suffisante. Cette rédaction porte "constaté par un connaissement ou par tout document similaire faisant titre pour le transport de marchandises par mer: Il comprend également le connaissement ou document similaire somme spécifié ci-dessus émis en vertu ou à la suite d'une charte-partie, du moment où ce connaissement régit les rapports entre

was based on the consideration that the carriage of live animals and goods on deck carries risks that it is not fair to put upon the carrier. This exception, I believe, bears on article 4, but it results from the general form of the exception in the drafting, which also bears on liability for the description on the bill of lading, and on this count I believe the exception to be unfounded. I have no difficulty with the wording: of the number, quality, or weight in the excepted cases. In brief, it is necessary, I believe, to distinguish more clearly than these rules do between the two sorts of liability: the liability for the description on the bill of lading and the liability for the carriage and delivery of the goods themselves.

The Chairman. - So what is your proposal?

Mr. Alten. - I have no proposal. I simply had to comment.

Seventh Plenary Session - 25 October 1922

The Chairman.

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Let us now return to article 1(b), which we had left to one side. With all possible respect to the authors of this proposal, I do not find it very clear. Do you intend to exclude those bills of lading called "*connaissements à personne dénommée*" (bills of lading for a designated person).

Sir Leslie Scott. - I believe the French delegation considers the drafting adequate. This drafting has: "covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading governs the

le transporteur et un porteur du connaissement.

relations between the carrier and the holder of the bill of lading”.

*Conférence Diplomatique - Octobre 1923
Séances de la Sous-Commission
Première Séance Plénière - 6 Octobre 1923*

*Diplomatic Conference - October 1923
Meetings of the Sous-Commission
First Plenary Session - 6 October 1923*

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M. Alten, en se référant aux observations de son Gouvernement, explique que les armateurs norvégiens voudraient voir cette convention limitée au transport effectué par les navires marchands des lignes et aux autres transports de marchandises par mer dans lesquels le contrat est conclu suivant des conditions générales fixées par le transporteur sous forme d'annonces ou d'invitations au public. C'est à la suite des plaintes des assureurs concernant les clauses d'exonération insérées dans leur connaissements par les grandes lignes de navigation, que les Règles de La Haye ont été établies. Mais dans le cas des trampsteamers, la situation est toute différente car les conditions de transport sont librement discutées entre parties, et pour les différentes sortes de cargaisons il a été établi de commun accord entre armateurs et transporteurs des connaissements types. Les armateurs scandinaves sont d'avis que sous ce rapport, l'expérience n'a pas révélé des abus justifiant l'intervention d'une législation d'ordre public et que par conséquent il faut laisser aux parties intéressées leur pleine liberté de contracter.

Mr. Alten, referring to the comments of his government, explained that the Norwegian shipowners would like to see the convention limited to carriage by merchant ships and to other carriage of goods by sea in which the contract is concluded according to general conditions fixed by the carrier in the form of notices or invitations to the public. The Hague Rules were established as a result of complaints from insurers regarding the exoneration clauses inserted by the large shipping lines in their bills of lading. But in the case of tramp steamers the position was quite different because the conditions of carriage were a matter of free discussion between the parties, and for different types of cargo common agreement had been established between shippers and carriers on types of bills of lading. Scandinavian shipowners were of the opinion that, under this arrangement, experience had not revealed abuses that justified the intervention of public policy legislation and consequently the interested parties should be left with complete freedom of contract.

M. le Président suggère que la délégation scandinave établisse un texte précisant sa proposition. Il n'est pas facile de définir la distinction aisée en pratique entre des vapeurs de ligne et les trampsteamers. Mais cette question devrait être laissée provisoirement en attendant que l'on aborde l'examen de l'article 7.

The Chairman suggested that the Scandinavian delegation should draw up a text detailing its proposal. It was not easy to define the distinction in practice between liners and tramp steamers. However the question should be left temporarily until discussion of article 7.

M. Bagge se demande si, a coté du connaissement l'armateur pourrait par une convention spéciale avec le chargeur stipuler que ce dernier aura à rembourser à l'armateur toute [36] indemnité que ce dernier aura à payer au porteur du connaissement parce que la "négligence

Mr. Bagge wondered whether, apart from the bill of lading, the shipowner might by special agreement with the shipper stipulate that the latter would have to reimburse the shipowner for the whole [36] indemnity that the shipowner would have to pay the holder of the bill of lading be-

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clause" ne pourra plus être insérée dans le connaissement.

M. le Président estime que pareil accord ne serait pas valable parce qu'il aboutirait en réalité à éluder la convention.

M. Bagge craint que rien n'interdise pareilles conventions entre armateurs et chargeurs.

En effet, l'article 3 § 8 déclare nulle toute clause d'exonération insérée dans un contrat de transport. Or, à l'article 1 B il est dit que par "contrat de transport" on entend uniquement le contrat de transport constaté par un connaissement ou par tout document similaire formant titre. Un accord préalable entre l'armateur et le chargeur n'est donc pas un contrat de transport au sens de l'article 1 B, et par conséquent l'article 3 § 8 n'y est pas applicable. Pour empêcher un pareil accord, il faudrait l'interdire par un texte plus clair. Au surplus à l'article 5 il est dit qu'aucune disposition de la présente convention ne s'applique aux chartes-parties. Rien n'empêchera l'armateur de faire aussi pour de très petits lots de marchandises des chartes-parties, où il pourra mettre des clauses d'exonération, qui régiront les rapports du transporteur et du chargeur. Aussi M. Bagge propose-t-il de substituer dans l'article 1 (b) les mots "contrats de transport s'applique uniquement au contrat de transport constaté par un connaissement ou par tout document similaire formant titre pour le transport des marchandises par mer" par les mots "contrat de transport s'applique à tous documents concernant le transport de marchandises par mer à l'exception des contrats, qui selon l'usage suivi jusqu'ici, sont exprimés par des chartes-parties".

M. le Président propose de reporter l'examen de cette question à l'article 6 qui prévoit la conclusion de contrats spéciaux moyennant certaines conditions, s'il le faut des précisions pourront empêcher qu'on l'appelle charte-partie ce qui serait en réalité un reçu de bord délivré aux chargeurs. Mais, même si la rédaction adoptée n'est pas parfaite il importe de ne pas modifier le cadre de ces Règles qui ont donné lieu à de longues discus-

cause the negligence clause could no longer be inserted in the bill of lading.

The Chairman judged that such an agreement would not be valid since its real aim was to evade the convention.

Mr. Bagge feared that nothing would prevent such agreements between shipowners and shippers.

In effect article 3(8) declared void any exoneration clause inserted in a contract of carriage. Article 1(b) stated that "contract of carriage" means only the contract of carriage established by a bill of lading or by any similar document of title. A legal agreement between the shipowner and the shipper was not, therefore, a contract of carriage in the sense of article 1(b), and consequently article 3(8) was not applicable. To prevent such an agreement, we must outlaw it by a clearer text. Moreover, in article 5 it says that no provision in the present convention applies to charter parties. Nothing will prevent the shipowner from likewise making charter parties for very small lots of goods where he would be able to include immunity clauses that would govern the arrangements between carrier and shipper. Mr. Bagge also proposed replacing in article 1(b) the words "contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea" with the words "contract of carriage" means any document governing the carriage of goods by sea, except for contracts that according to the practice followed heretofore, are expressed in charter parties".

The Chairman proposed relating the examination of this question to article 6, which provided for the conclusion of special contracts by means of certain conditions, if more precise details were needed that would prevent calling a charter party what was really an "on board" receipt issued to suppliers. But even if the drafting adopted were not perfect, it was important not to alter the frame-work of the rules, which had produced long discussion and to which it

sions et auxquelles il semble préférable d'apporter le moins de modifications possible.

seemed preferable to make as few changes as possible.

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M. Berlingieri, d'accord avec le professeur Ripert, trouve que le texte ne s'accorde pas avec les idées et les principes des codes italiens et français. Par exemple: l'expression "document formant titre pour le transport de marchandises" est la traduction de "document of title". Mais quelle différence y a-t-il entre la charte-partie et le document formant titre pour le transport de marchandises par mer? L'expression française ne le dit pas. Ce ne sont pas simplement des questions de rédaction, mais bien des questions qui affectent le fond car les lois nationales devront traduire les principes adoptés dans un langage juridique et il est certain qu'une modification de la forme a fatalement pour effet de changer en une certaine mesure le fond, et cependant si une convention est conclue, c'est afin qu'elle soit exécutée intégralement dans chaque pays.

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Mr. Berlingieri, in agreement with Professor Ripert, found that the text did not agree with the concepts and principles of the Italian and French codes. For example, the expression: "*document formant titre pour le transport de marchandises*" (document giving title for the carriage of goods) and its translation as "document of title". But what difference was there between the charter party and the document of title for the carriage of goods by sea? The French expression does not say. These were not simply questions of drafting but questions that went to the heart of the matter because national laws will have to translate the principles adopted into a judicial language and clearly a change in format had the inevitable effect of changing to some extent the fundamentals. However, the purpose of concluding a convention was to have it enacted in full in each country.

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M. Sindballe demande si les mots "contrat de transport" de l'article 1 s'appliquent également en cas de connaissance direct.

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Mr. Sindballe asked whether the words "contract of carriage" in article 1 applied equally in the case of a through bill of lading.

[41]

M. Alten fait remarquer que "document of title" est à l'article 1 (b) traduit d'une autre façon qu'à l'article 3 parag. 7 où il est dit "document donnant droit à ces marchandises". Il propose aussi d'ajouter les mots "à son bord" après les mots "transports des marchandises par mer".

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Mr. Alten pointed out that "document of title" in article 1(b) was translated differently than in article 3(7), where it said "*document donnant droit à ces marchandises*" (document giving title to these goods). He also proposed adding the words "on board" after the words "carriage of goods by sea".

M. le Président fait observer qu'il est stipulé également que la Convention s'applique depuis le moment du chargement des marchandises à bord jusqu'au moment de leur déchargement et puisqu'il faut interpréter les clauses les unes par les autres tout est donc fort clair.

The Chairman commented that it was also stipulated that the convention applied from the time of loading of goods on board until their unloading, and since it was necessary to interpret these clauses in relation to one another, everything was therefore crystal clear. On the other hand,

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D'autre part, les mots "formant titre pour le transport des marchandises" indiquent nettement la portée de ces Règles. Quant aux documents qui seraient substitués au connaissement (par exemple une lettre de voiture concernant le transport par mer, qui constitue un document similaire mais n'est pas signé), ils sont soumis aux mêmes clauses.

M. Berlingieri se demande quelle différence il y a entre une "charte partie" et un "document formant titre".

M. le Président lui répond qu'une "charte-partie" ne constitue pas un titre à des marchandises déterminées.

M. Sohr estime qu'il y a une erreur dans la traduction française. Il y est dit "document similaire formant titre pour le transport" alors que le texte anglais portait "any similar document of title in so far as it relates to carriage of goods".

M. Berlingieri estime également que le texte anglais est précis mais que le texte français ne l'est pas.

M. Sohr trouve que les mots "formant titre" n'ont aucun sens en français et qu'il serait suffisant de dire "document similaire".

Sir Leslie Scott ne le croit pas; à son avis il est important de limiter les "documents similaire" au seuls "Documents of Title".

M. Berlingieri signale que cette idée est exprimée dans les observations de la délégation allemande où il est dit "document donnant au porteur légitime droit aux marchandises transportées".

Sir Leslie Scott ajoute que c'est le document qui peut être négocié chez le banquier.

M. Ripert demande si l'on appliquera ces règles à un connaissement nominatif?

M. le Président répond que oui sauf quand il s'agit d'un connaissement non négociable. Dans ce dernier cas l'article 6 s'applique.

M. Ripert constate que les règles ne s'appliquent pas à un connaissement qui n'est pas négociable et il estime qu'il faudrait le faire remarquer à l'article 1.

the words "*formant titre pour le transport des marchandises*" (giving title for the carriage of goods) indicated clearly the range of these rules. As to the documents that would be substituted for the bill of lading (for example, a "*lettre de voiture*" [bill of carriage] concerning the carriage by sea, which constituted a similar document but was not signed), they were subject to the same clauses.

Mr. Berlingieri wondered what difference there was between a "charter party" and a "document of title".

The Chairman replied that a "charter party" did not grant title to specified goods.

Mr. Sohr judged there to be an error in the French translation in which it said "*document similaire formant titre pour le transport*" while the English text had "any similar document of title, insofar as such document relates to the carriage of goods".

Mr. Berlingieri also felt that the English text was precise while the French was not.

Mr. Sohr found that the words "*formant titre*" had no meaning in French and that it would be sufficient to say "similar document".

Sir Leslie Scott did not think so. In his opinion it was important to limit the "similar documents" to "documents of title" alone.

Mr. Berlingieri indicated that this idea was expressed in the comments of the German delegation, where it said "document giving to the legitimate holder the right to the goods carried".

Sir Leslie Scott added that it was a document that could be negotiated with a banker.

Mr. Ripert asked if one might apply these rules to a nominal bill of lading?

The Chairman replied that one could, except when it was a matter of a non-negotiable bill of lading. In such a case article 6 could apply.

Mr. Ripert verified that the rules did not apply to a bill of lading that was non-negotiable and felt that this should be pointed out in article 1.

Sir Leslie Scott observe que cela résulte de l'article 6.

M. le Président estime qu'il y a une distinction à faire. Autre chose est de dire que la convention ne s'applique pas à un document non négociable et autre chose de prévoir que quand il n'est pas négocié, on peut convenir de ne pas appliquer la Convention. Tous les connaissements sauf stipulation contraire tombent sous l'empire de la Convention. Mais en ce qui concerne le connaissement à personne dénommée, il appartient aux parties de régler leurs affaires comme elles l'entendent, d'autant plus que ce document reste toujours transférable. On pourrait essayer de chercher une formule donnant satisfaction à l'observation de M. Berlingieri.

M. Struckmann rapproche la traduction qui se trouve dans l'article 3 par. 7 "Document donnant droit à ces marchandises" de celle de l'article 1 (b) où il est dit "formant titre pour le transport des marchandises par mer". Il faudrait employer la même formule.

[42]

M. le Président fait remarquer que c'est une simple question de rédaction, mais que tous les délégués sont d'accord; qu'il s'agit du connaissement ou d'un document similaire à l'exclusion des chartes-parties.

M. Ripert demande quel peut être ce document similaire.

Sir Leslie Scott répond que cela pourrait par exemple être le "Mate's receipt". On veut éviter que les parties puissent échapper à la Convention en adoptant un document similaire qui n'est pas dénommé connaissement.

M. le Président ajoute qu'en effet il peut y avoir un connaissement non signé comme on en emploie dans le petit cabotage et que quelquefois des transports se font sur simple relevé de marchandises. Il ne faut pas permettre d'éluder la convention par ces moyens.

M. Richter demande si "Mate's receipt" est un document similaire.

M. le Président estime que oui, s'il

Sir Leslie Scott observed that that happened in article 6.

The Chairman felt that there was a distinction to be made. It was one thing to say that the convention did not apply to a non-negotiable document and another to provide that when it was not negotiated one could agree not to apply the convention. All bills of lading without declaration to the contrary fell under the jurisdiction of the convention. But as far as the straight bill of lading was concerned, it was up to the parties to regulate their affairs as they saw fit, even more so when the document remained transferable. We might try to find a formula that would satisfy Mr. Berlingieri.

Mr. Struckmann compared the translation found in article 3(7), "*document donnant droit à ces marchandises*" (document giving title to these goods), with that in article 1(b), where it said "*formant titre pour le transport des marchandises per mer*" (giving title insofar as related to the carriage of goods by sea). The same formula should be used in both.

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The Chairman observed that it was a simple question of drafting, but that all delegates agreed: it was a matter of the bill of lading or a similar document with the exception of the charter party.

Mr. Ripert asked what this similar document might be.

Sir Leslie Scott replied that it might be, for example, the "Mate's Receipt". The desire was to avoid the possible sidestepping of the convention by the parties through the adoption of a similar document that was not called a bill of lading.

The Chairman added that, in effect, there could be a non-signed bill of lading as used in small coastal trades and that sometimes carriage occurred on a simple statement of goods. Such means should not be allowed to circumvent the convention.

Mr. Richter asked whether a "mate's receipt" was a similar document.

The Chairman felt it was, if used like a bill of lading. Ordinarily this was not

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est utilisé comme un connaissance; ordinairement cela n'est pas le cas puisqu'il sert pour les opérations à quai. Le Président voudrait faire appel à M. Ripert et lui demander de rechercher avec M. Sohr une formule qui rendrait son idée.

M. Ripert revient sur l'adjonction au paragraphe (b) faite à la dernière réunion de la Conférence, il comprend également le connaissance ou document similaire émis en vertu de la charte-partie à partir du moment où ce connaissance régit les rapports du transporteur et d'un porteur du connaissance.

Sir Leslie Scott dit que quand il y a une charte-partie elle règle les droits et responsabilités du chargeur et de l'armateur. Que si en même temps l'armateur donne un connaissance au chargeur qui a contracté avec lui ce connaissance ne règle que les relations entre eux: mais que si le chargeur négocie le connaissance c'est le porteur de ce document qui devient le co-contractant de l'armateur, dès ce moment-là le connaissance règle les relations entre l'armateur et le réclamateur des marchandises.

M. Ripert est d'accord avec Sir Leslie Scott mais il fait remarquer que dans ce dernier cas il y a un contrat de transport régi par un connaissance et que le second alinéa est dès lors inutile.

Sir Leslie Scott observe que si l'armateur donne au chargeur un connaissance ce dernier n'abolit pas la charte-partie et que c'est seulement au moment où ce connaissance est remis à un tiers qu'il règle seul les relations entre transporteur et réclamateur de la marchandise.

M. Sohr ajoute que c'est pour ce motif que Sir Leslie Scott avait proposé d'abord le texte: "From the moment the bill of lading is negotiated".

M. Ripert trouve que l'expression "connaissance émis en vertu d'une charte-partie" est sujette à doute. En cas d'affrètement d'un navire en "time-charter" par ex-[43]emple, un connaissance émis en vertu de la charte-partie tombe-t-il sous l'application des règles de La Haye?

the case since it served for operations on the quay. The Chairman wishes to appeal to Mr. Ripert and ask him with Mr. Sohr to look for a formula that could embody his idea.

Mr. Ripert came back to the amendment to paragraph (b) made at the last meeting of the conference. It encompassed equally the bill of lading or similar document issued by virtue of the charter party from the time when the bill of lading regulated the relations between the carrier and the holder of the bill of lading.

Sir Leslie Scott said that when there was a charter party it regulated the rights and responsibilities of the shipper and the shipowner. That if at the same time the shipowner gave a bill of lading to the shipper who had contracted with him, then this bill of lading did not regulate their relationship. However, if the shipper negotiated the bill of lading it was the holder of this document who became the other contracting party with the shipowner. From that moment the bill of lading regulated the relationship between the shipowner and the claimant of the goods.

Mr. Ripert agreed with Sir Leslie Scott but felt it necessary to observe that in the latter case there was a contract of carriage regulated by a bill of lading and that the second sub-paragraph was then redundant.

Sir Leslie Scott remarked that if the shipowner gave the shipper a bill of lading it did not abolish the charter party. It was only at the moment when the bill of lading was remitted to a third party that it regulated only the relations between the carrier and the claimant of the goods.

Mr. Sohr added that it was for this reason that Sir Leslie Scott had first proposed the text: "From the moment the bill of lading is negotiated".

Mr. Ripert found that the expression "bill of lading issued pursuant to a charter party", was subject to doubt. In the case of affreightment on a ship under "time charter", for example, [43] did a bill of lading issued pursuant to the charter party fall

M. le Président estime que oui, si il est négocié.

M. Ripert propose le texte suivant “connaissance émis en vertu d’une charte-partie à partir du moment où il est remis à un tiers”.

Sir Leslie Scott objecte que le tiers pourrait être un agent du chargeur.

M. le Président se contenterait d’une mention au procès-verbal indiquant qu’on a eu en vue les cas où le titre est négocié.

M. Struckmann dit qu’il faut distinguer ou bien un armateur conclut une charte-partie avec un affrèteur général et en même temps donne un connaissance à cet affrèteur. Dans ce cas le connaissance ne sera pas soumis aux Règles de La Haye, mais il le sera du moment où ce connaissance est négocié. Ou bien un affrèteur général donne un connaissance à un chargeur qui est une tierce personne, dans ce cas le connaissance est soumis aux Règles de La Haye même lorsqu’il est entre les mains du premier porteur du connaissance. **M. Struckmann** croit qu’on peut régler ces deux cas en ajoutant les mots “Porteur du connaissance qui n’est pas partie à la charte-partie” ou “qui n’est pas intéressé à la charte-partie”. Peut-être suffirait-il simplement de dire “porteur du connaissance” en expliquant le sens de ces mots au procès-verbal.

M. le Président propose les mots “du tiers porteur du connaissance”.

M. Ripert estime que ce qui reste obscur c’est le sens de “en vertu d’une charte-partie”. Si celui qui a un navire d’après une charte-partie émet un connaissance en vertu de cette charte-partie, les Règles de La Haye sont immédiatement applicables à ce connaissance parce qu’il y a un tiers porteur. Il serait préférable de dire “délivré à l’affrèteur en vertu d’une charte-partie”.

M. le Président croit inutile de modifier l’alinéa 6 à ce sujet puisque les législations nationales pourront adopter tout texte qui en exprimera le sens sur lequel tout le monde est d’accord.

M. Richter demande si par charte-

under the application of the Hague Rules?

The Chairman felt that it did if it were negotiated.

Mr. Ripert proposed the following text: “bill of lading issued pursuant to a charter party from the moment it is re-mitted to a third party”.

Sir Leslie Scott objected that the third party might be an agent of the shipper.

The Chairman found it sufficient to make a note in the proceedings indicating that what one had in mind were cases where the title was negotiated.

Mr. Struckmann said that it was necessary to distinguish whether a shipowner concluded a charter party with a general charterer while at the same time giving a bill of lading to this charterer. In such a case, the bill of lading would not be subject to the Hague Rules, but it would be from the moment it was negotiated. But when the general charterer gave a bill of lading to a shipper who was a third person, the bill of lading was subject to the Hague Rules even when it was in the hands of the first holder of the bill of lading. **Mr. Struckmann** believed that one could regulate the two cases by adding the words: “Holder of the bill of lading who is not a party to the charter party” or “who has no interest in the charter party”. Perhaps it would suffice to say “holder of the bill of lading”, explaining the meaning of these words in the proceedings.

The Chairman proposed the words “of the third-party holder of the bill of lading”.

Mr. Ripert judged that what was still unclear was the meaning of “pursuant to a charter party”. If the person who had a ship under a charter party issued a bill of lading pursuant to this charter party, the Hague Rules were immediately applicable to this bill of lading because there was a third-party holder. It would be preferable to say “issued to the charterer pursuant to a charter party”.

The Chairman felt it pointless to amend sub-paragraph 6 on this matter because national laws would be able to adopt any text that expressed the meaning to which everyone agreed.

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partie on doit entendre un contrat pour un navire entier ou pour une partie de navire seulement.

M. le Président admet que c'est là une vieille expression. Actuellement "Charte-partie" comprend tous les modes d'affrètement.

M. Richter observe qu'elle est autre chose qu'un contrat de transport et voudrait voir mentionné au procès-verbal que charte-partie est le contrat ayant pour objet un navire déterminé ou une partie de ce navire (adhésion).

M. Bagge redoute l'emploi à propos d'une stipulation obligatoire du mot "*charte-partie*" qui a un sens différent selon les pays. En Suède, la charte-partie s'entend de tout contrat écrit qu'il s'agisse d'un navire entier, d'une partie du navire ou même d'un petit lot de marchandises, c'est toujours une charte-partie. C'est pourquoi M. Bagge a dit à l'article 1 (b): "...concernant le transport de marchandises par mer, exceptés les contrats qui selon l'usage suivi jusqu'ici sont exprimés par la *Charte-partie*".

M. le Président fait observer qu'il appartiendra aux tribunaux de décider dans chaque cas s'il y a un connaissement c'est-à-dire un document représentant la marchandise à bord d'un navire déterminé donnant droit à la délivrance.

M. Bagge objecte que les armateurs pourront aussi pour de petits lots faire désormais des chartes-parties où ils pourront mentionner les clauses d'exonération, interdites par la Convention pour les connaissements mais qui régiront tout de même les rapports entre transporteur et chargeur.

M. le Président propose de reprendre cette question à l'article 6. Il constate que l'article 1 (b) précise la portée de la convention et établit une distinction très nette.

[44]

Sir Leslie Scott voudrait voir à l'article 1 (b) éliminer le mot "tiers porteur" qui vient d'y être ajouté car il y a des cas où le chargeur par charte-partie reçoit un connaissement qui, par suite d'un arran-

Mr. Richter asked whether one should understand by "charter party" a contract covering an entire ship or only a part of a ship.

The Chairman admitted that it was an old fashioned expression. At present, "charter party" encompassed all modes of affreightment.

Mr. Richter observed that it was more than a contract of carriage and wanted to see mentioned in the proceedings that a charter party was the contract that had as its subject a specific ship or a part of this ship (agreement).

Mr. Bagge dreaded the use of any obligatory provision à propos the word "charter party" that had a different meaning depending on the country. In Sweden, the charter party was understood as any written contract that dealt with a whole ship, part of a ship, or even a small load of goods. That was always a charter party. That was why Mr. Bagge said of article 1(b) "...governing the carriage of goods by sea, except for contracts that, according to the practice followed heretofore, are expressed in charter parties".

The Chairman pointed out that it would be up to the courts to decide in each case if there were a bill of lading, that is to say, a document representing the goods on board a specific ship giving title to delivery.

Mr. Bagge objected that the shipowner might henceforth create charter parties for small lots where he might include exoneration clauses forbidden by the convention for bills of lading, but which would all the same govern the relations between carrier and shipper.

The Chairman proposed returning to this question in article 6. He affirmed that article 1(b) described concisely the scope of the convention and established a very clear distinction.

[44]

Sir Leslie Scott wanted to see in article 1(b) the elimination of the words "holder for value", which had just been added, because there were cases where the shipper by means of a charter party

gement avec l'armateur, régit les rapports entre l'armateur et lui même. Cela n'est pas fréquent mais cela peut arriver. Il vaudrait mieux dire "régit les rapports entre le transporteur et le porteur du titre".

M. Ripert constate que Sir Leslie Scott désire que les Règles de La Haye s'appliquent même dans les relations entre le transporteur et le chargeur du moment où c'est le connaissement qui régit les relations entr'eux.

Dans ce cas, il faut modifier la rédaction admise et mettre: "Du moment où un connaissement est émis" au lieu de "au porteur".

M. Sohr signale le cas suivant: Des usines achètent des matières premières qu'elles expédient à leur propre destination. En ce cas le connaissement est un simple reçu pour les marchandises à bord. Mais puisqu'il n'y a aucun tiers intéressé, ce connaissement n'est pas régi par la Convention, même si l'usine envoie ce document à son agent à l'étranger.

M. le Président propose de laisser cette question pour une deuxième lecture du texte. Il semblait que les mots "tiers porteur" équivalaient à "holder of Bill of Lading".

M. Sindballe rappelle qu'il avait été précédemment proposé que le transporteur serait tenu pour toute la période s'écoulant à partir du moment où il reçoit la marchandise jusqu'à la délivrance. Il ne veut pas reprendre cette proposition parce qu'il ne voit pas de chance de la faire adopter, mais il y a certains cas pour lesquels il serait de la plus haute importance pour certains intérêts commerciaux de voir modifier la définition acceptée, notamment au cas où il est émis un connaissement "reçu pour embarquement" instrument négociable du plus grand intérêt pour le commerce, à partir de la délivrance de ce document le capitaine devrait être responsable.

M. le Président fait remarquer que ce document avait été soustrait intentionnellement aux Règles de la Convention; on a fini par admettre qu'à un document constatant la réception de la marchandise "pour embarquement" soit substitué

received a bill of lading which, as a result of an arrangement with the shipowner, regulated the relations between the shipowner and himself. It was not a frequent occurrence, but it could happen. It was better to say "regulates the relations between the carrier and the holder".

Mr. Ripert stated that Sir Leslie Scott wanted the Hague Rules to apply even in relations between carrier and shipper from the moment when the bill of lading regulated their relationship.

In this case, it was necessary to change the present draft and put "From the moment when a bill of lading is issued" instead of "to the holder".

Mr. Sohr indicated the following case: Some factories buy raw materials that they send to their own address. In this case, the bill of lading is a single receipt for the goods aboard. But since there is no third-party interest, this bill of lading is not governed by the convention, even if the factory sends this document to its agent abroad.

The Chairman proposed leaving this question for a second reading of the text. It appeared the words "*tiers porteur*" were the equivalent of "holder of a bill of lading".

Mr. Sindballe recalled that he had earlier proposed that the carrier would be held responsible for the whole period following receipt of the goods until delivery. He did not wish to repeat this proposal because he saw no chance of having it adopted, but there were certain instances in which it would be of the highest importance for certain commercial interests to see the accepted definition modified, notably where a bill of lading was issued "received for shipment", a negotiable instrument of the greatest interest for trade. As soon as this document was issued, the captain ought to be responsible.

The Chairman pointed out that this document had been removed intentionally from the rules of the convention. It had been finally agreed that a real bill of lading should be substituted for a document confirming the receipt of goods. It

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un véritable connaissement; mais il ne semble pas que puisse être reconnue l'existence de ce document qui n'est pas considéré comme un connaissement régulier dans le droit belge.

M. Berlingieri déclare qu'en Italie le B/L "received for shipment" n'est pas un connaissement dans le sens strict de la loi.

M. Bagge demande si le Président estime qu'en cas de connaissement "reçu pour embarquement" la Convention ne s'applique pas du tout.

M. le Président répond qu'à son avis rien dans cette convention ne doit sanctionner la pratique des connaissements "reçus pour embarquement". Elle ne doit contenir aucune clause qui puisse être considérée comme admettant leur régularité ou leur validité. Mais si après la délivrance d'un connaissement "reçu pour embarquement", la marchandise est effectivement embarquée ce connaissement tombera sous le coup de la Convention; parce que le transport de la marchandise s'entend depuis le chargement à bord jusqu'au déchargement.

M. Bagge fait observer que d'après ce que Sir Norman Hill a déclaré à la Commission du Parlement anglais, c'est parce qu'il y a eu des difficultés à introduire les mots "received for shipment B/L" dans les Règles de La Haye, que l'on s'est servi des mots neutres "document of title". Les Règles de La Haye s'appliqueraient donc à un connaissement "reçu pour embarquement" parce que c'est un "document of title". Il conviendrait de dire clairement à l'article 3 (3) si c'est le cas ou non.

M. le Président n'est pas du tout d'accord avec l'interprétation de M. Bagge. D'après lui, les essais tentés en vue de faire accepter la pratique du connaissement pour embarquement ont rencontré la plus vive opposition lors de l'établissement des Règles.

[45]

M. Bagge demande si en cas de marchandises transportées par canal et ensuite par mer, il faut admettre que le

did not seem that the existence of this document, which was not considered as a normal bill of lading under Belgian law, could be recognized.

Mr. Berlingieri declared that in Italy the "received for shipment" bill of lading was not a bill of lading in the strict sense of the law.

Mr. Bagge asked whether the Chairman felt that in the case of the "received for shipment" bill of lading the convention applied at all.

The Chairman replied that in his opinion nothing in this convention should sanction the practice of "received for shipment" bills of lading. It should not contain any clause that might be deemed to admit their regularity or their validity. But if, after the issue of a "received for shipment" bill of lading, the goods were effectively shipped, this bill of lading would fall within the provisions of the convention because the carriage of goods was understood to extend from loading to unloading.

Mr. Bagge observed that according to what Sir Norman Hill had declared to the committee of the English Parliament, it was because there had been difficulties in introducing the words "received for shipment" bill of lading into the Hague Rules that the neutral words "document of title" had been used. Therefore the Hague Rules applied to a "received for shipment" bill of lading because it was a "document of title". It would be appropriate to state clearly in article 3(3) if this were the case or not.

The Chairman was not at all in agreement with Mr. Bagge's interpretation. According to him, the efforts made with a view to the acceptance of the practice of received for shipment bills of lading had met with the liveliest opposition at the time of the setting up of the Rules.

[45]

Mr. Bagge asked if, in the case of goods transported by canal and then by sea, it was necessary to admit that car-

transport par canal ne tombe pas sous l'empire des Règles.

M. le Président répond que les Règles s'appliquent au transport par tout navire de mer, c'est à la loi nationale qu'il appartient de définir ce qu'il faut entendre par navire de mer. Le Président estime quant à lui qu'un navire de mer est celui qui est capable d'aller en mer et qui y va habituellement. Certaines législations considèrent comme navire de mer les navires qui font le trafic dans les eaux maritimes des fleuves. En Hollande, on considère comme navires de mer ceux qui trafiquent par les canaux avec les pays limitrophes.

M. Bagge demande si un navire à vapeur circulant sur un canal ne serait pas un navire de mer parce qu'ordinairement il ne va pas en mer.

M. le Président répond que la législation nationale aura à trancher cette question. En droit belge, il ne serait pas un navire de mer mais serait considéré comme un bateau d'intérieur.

M. Bagge regrette ce manque d'uniformité.

M. Richter observe que dans le texte français il est dit que c'est un navire qui transporte des marchandises par mer mais il n'y est pas dit qu'il doit les transporter habituellement par mer. Donc dans ce cas spécial le navire mentionné par M. Bagge tomberait sous la Convention.

M. le Président distingue deux cas, tout d'abord le navire est en mer ou va en mer pour transporter des marchandises. Il n'y a aucune discussion possible même si c'était un [46] bateau d'intérieur, au contraire le navire de mer entre dans les fleuves ou dans les canaux navigables, il y est encore soumis aux règles de la Convention. Mais quant à savoir quand un navire est un navire de mer, c'est ce que chaque pays sera libre de décider.

M. Richter demande ce qui constitue la période indiquée s'écoulant entre le chargement et le déchargement. Veut-on dire le chargement et le déchargement complet ou s'agit-il du commencement du chargement?

M. le Président répond que c'est depuis le moment où le chargement com-

riage by canal did not fall under the authority of the rules.

The Chairman replied that the rules applied to the carriage by every sea-going vessel. It was for national law to define what was understood by a sea-going vessel. The Chairman felt that in his opinion a sea-going vessel was one that was capable of putting to sea and that usually did so. Certain legislation deemed a sea-going vessel to be one that traded in the ocean waters or rivers. In Holland, sea-going vessels were considered to include those that trafficked in the canals with neighboring countries.

Mr. Bagge asked whether a steamship travelling on a canal was a sea-going vessel if it ordinarily did not put to sea.

The Chairman replied that national legislation would have to tackle this question. Under Belgian law, it would not be a sea-going vessel but would be considered an inland boat.

Mr. Bagge regretted this lack of uniformity.

Mr. Richter observed that in the French text it was said to be a ship that carried goods by sea but it did not state that it had to carry them habitually by sea. Therefore, in this special case, the ship mentioned by Mr. Bagge would fall under the convention.

The Chairman distinguished two cases: first, the ship was at sea or going to sea to carry goods. There was no possible debate here, even if it were an [46] inland boat. On the other hand, the sea-going vessel entered the rivers or navigable waters but was still subject to the rules of the convention. As far as knowing when a ship was a sea-going vessel, that was what each country would be free to decide.

Mr. Richter asked what constituted the period indicated between loading and unloading. Did one mean the complete loading and unloading or was it the beginning of the loading?

The Chairman replied that it was from the moment when the loading began to when the unloading was finished.

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mence jusqu'à celui où le déchargement est achevé.

Mention en sera faite au Procès-verbal.

A note to this effect would be included in the proceedings.

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[72]

M. Bagge croit devoir reprendre ici la question qu'il a soulevée à l'article 3 concernant les lettres de garantie. L'article 5 stipule qu'aucune disposition de la convention ne s'appliquera à certains documents comme des chartes-parties et l'article 1(b) dispose que le contrat de transport s'applique uniquement au contrat constaté par un connaissement ou un document similaire. Or, il peut y avoir un accord qui n'est, ni une charte-partie ni un connaissement ou document similaire, par exemple une convention par laquelle le transporteur demande au chargeur de prendre à son compte l'indemnité que le transporteur pourrait avoir à payer au porteur du connaissement. Afin de n'avoir qu'une seule définition concernant l'application de la convention, on devrait comme cela a été proposée, transférer la seconde phrase de l'article 5 à l'article 1(b), faute de quoi on ne saura pas comment interpréter la convention lorsqu'il s'agit de tels accords conclus en dehors du connaissement.

M. le Président croit que la portée de la convention ne dépend pas de cette modification; il a examiné les articles 5 et 6 au point de vue des craintes exprimées par M. Bagge: celui-ci redoute que lorsque la convention entrera en vigueur les armateurs ne se disent: "Nous allons être liés envers les tiers-porteurs, mais nous allons nous faire garantir en faisant une charte-partie et en disant aux chargeurs qu'ils doivent se faire garantir contre notre propre négligence". Le Président estime que cela ne serait pas valable [73] et que l'article 6 l'empêche, car il dit expressément qu'on ne peut faire des contrats dérogatoires, qu'à la condition qu'aucun connaissement ne soit émis et que l'accord intervenu soit

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[72]

Mr. Bagge believed that it was now time to re-examine the question he had raised in article 3 concerning letters of guarantee. Article 5 stipulated that no provision in the convention would apply to specific documents like charter parties and article 1(b) provided that the contract of carriage applied solely to a contract confirmed by a bill of lading or similar document. Thus one might have an agreement that is neither a charter party nor a bill of lading or similar document - for example, an agreement by which the carrier asked the shipper to indemnify the carrier for damages paid to the holder of the bill of lading. So as to have only one definition concerning the application of the convention, one should, as had been proposed, transfer the second sentence of article 5 to article 1(b). Without this, one would not know how to interpret the convention when dealing with such agreements concluded outside the bill of lading.

The Chairman believed that the scope of the convention did not depend on this amendment. He had examined articles 5 and 6 from the point of view of the fears expressed by Mr. Bagge, who was afraid that when the convention entered into force the shipowners would say "we are going to be bound to the holders, but we are going to protect ourselves by making a charter party and by telling the shippers to protect themselves against our negligence". The Chairman felt that that would not be valid [73] and that article 6 prevented it, because it expressly said that one should not make derogatory contracts, except on the condition that no bill of lading be issued and that the agreement reached be embodied in an acknowledgment, which would be

inséré dans un récépissé qui sera non négociable; cette disposition spéciale ne peut être appliquée pour les cargaisons ordinaires.

M. Bagge objecte qu'à l'article 3(8) on parle de "toutes clauses, conventions ou accords dans un contrat de transport", c'est-à-dire dans un connaissance. Or, l'accord dont il vient de parler n'est pas un contrat de transport; par conséquent, la disposition de l'article 3(8) n'est pas applicable à pareil accord.

M. le Président dit que l'article 1(b) parle de documents similaires formant titre pour le transport de marchandises.

M. Bagge répond qu'un accord comme celui auquel il fait allusion n'est ni un connaissance, ni un document similaire formant titre ni une charte-partie: Pour des envois de petits lots on émet un connaissance mais on fait en même temps un accord spécial par lequel le chargeur s'engage à rembourser à l'armateur ce que celui-ci aurait à payer au porteur du connaissance et cela parce que l'armateur n'a pu insérer une "négligence clause" dans le connaissance.

M. Sindballe ajoute qu'un accord qui a été fait avant l'embarquement des marchandises ne peut pas être un document formant titre.

Sir Leslie Scott répond qu'il n'y a que deux hypothèses possibles: ou bien il y a un document représentant les marchandises, ou il n'y en a pas. Dans le premier cas pareil accord se rapportera aussi au contrat de transport et en pareil cas c'est un document similaire. Si au contraire il n'y a pas de documents représentant les marchandises, la convention ne s'applique pas du tout.

M. Bagge dit que l'article 3(8) ne s'appliquerait pas puisqu'il n'y aurait pas un document similaire formant titre.

M. le Président répond que si l'accord des parties résulte de plusieurs documents différents qui se complètent, cela ne constitue cependant qu'un accord unique et le juge annulera une convention de ce genre parce qu'elle n'a été faite qu'en vue du transport.

M. Ripert objecte que cet accord

non-negotiable. This special provision could not be applied for ordinary cargoes.

Mr. Bagge objected that in article 3(8) one spoke of "any clause, covenant, or agreement in a contract of carriage" that is, in a bill of lading. The agreement that had just been spoken of was not a contract of carriage. As a result, the provision in article 3(8) was not applicable to such an agreement.

The Chairman said that article 1(b) spoke of similar documents of title for the carriage of goods.

Mr. Bagge replied that an agreement like the one to which he alluded was not a bill of lading or a similar document of title, and not a charter party. For sending small lots, the practice was to issue a bill of lading while at the same time making a special agreement by which the shipper undertook to reimburse the shipowner for what he had to pay to the holder of the bill of lading. That was done because the shipowner had not been able to insert a "negligence clause" in the bill of lading.

Mr. Sindballe added that an agreement that had been made before the shipment of the goods could not be a document of title.

Sir Leslie Scott replied that only two hypotheses were possible: either there was a document representing the goods, or there was not. In the first case, such an agreement would be relevant to the contract of carriage as well and, in such a case, it was a similar document. If, on the other hand, there were no documents representing the goods, the convention would not apply at all.

Mr. Bagge said that article 3(8) would not apply because there would be no similar document of title.

The Chairman replied that if the agreement of the parties was the result of several different documents that were complimentary, that that still only constituted one agreement and the judge would annul such an agreement because it had only been made for the purpose of carriage.

Mr. Ripert objected that this agree-

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pourrait avoir pour objet une série de transports. Il demande la suppression dans l'article 3(8) des mots "dans un contrat de transport".

Sir Leslie Scott s'y oppose.

M. Sindballe comprend que l'on veut dire par document formant titre que tous les contrats de transport doivent être soumis à ces règles.

C'est l'avis de **Sir Leslie Scott**: tous les contrats de n'importe quel genre qui sont aussi "documents of title" sont réglementés par la convention. Si on rédige un contrat sur un morceau de papier et le "document of title" sur un autre avec l'intention que le premier papier réglera les conditions du second, le juge considère les deux écrits comme formant une seule convention.

M. Bagge objecte qu'il est permis de faire de la sorte des contrats distincts pour des chartes-parties.

Sir Leslie Scott répond que la charte-partie n'est pas réellement un "document of title".

M. Bagge signale que le transporteur peut mettre dans une charte-partie une stipulation d'après laquelle l'affrètement rembourse ce que le transporteur aurait à payer à raison de ce connaissement. L'article 3(8) ne parle que du contrat de transport. Si des connaissements sont émis, ils sont soumis à la convention; mais la charte-partie ne l'est pas.

Sir Leslie Scott répète que si les parties mettent sur un morceau de papier séparé des conditions modifiant celles du connaissement, pareil écrit est absolument nul et sans valeur d'après la convention.

[74]

M. le Président constate que là-dessus il n'y a aucun doute.

M. Richter dit qu'il subsiste un doute au sujet des mots "si des connaissements sont émis dans le cas d'un navire sous l'empire d'une charte-partie"; car à l'article 1(b) il est dit que le contrat de transport comprend également le document similaire émis en vertu d'une charte-partie à partir du moment où il régit les rap-

portements pourraient avoir pour objet une série de voyages as its subject. He asked for the deletion in article 3(8) of the words "in a contract of carriage".

Sir Leslie Scott opposed this.

Mr. Sindballe understood that what was meant by a document of title was that all contracts of carriage must be subject to these rules.

That was the opinion of **Sir Leslie Scott**: all contracts, no matter what type, that were also "documents of title" were regulated by the convention. If one drafted a contract on one slip of paper and the "document of title" on another, with the intention that the first paper would regulate the conditions of the second, the judge would deem the two written items to form a single agreement.

Mr. Bagge objected that it was permitted to make differing contracts for charter parties in this way.

Sir Leslie Scott replied that the charter party was not really a "document of title".

Mr. Bagge indicated that the carrier could include in a charter party a stipulation in which the charterer would reimburse what the carrier would have to pay by reason of the bill of lading. Article 3(8) spoke only of the contract of carriage. If bills of lading were issued, they were subject to the convention, but the charter party was not.

Sir Leslie Scott repeated that if the parties were to put conditions altering those in the bill of lading on a separate slip of paper, such a written claim was completely null and without value under the convention.

[74]

The Chairman confirmed that there was no doubt in the matter.

Mr. Richter said that a doubt remained concerning the words "if bills of lading are issued in the case of a ship under a charter party" because in article 1(b) it was said that the contract of carriage also included the similar document issued under a charter party from the moment when it regulated the relations

ports du transporteur et du tiers porteur. Or, on dit maintenant que les connaissements émis en vertu d'une charte-partie sont soumis dès le commencement aux termes de cette convention.

M. le Président répond que la convention devient applicable à partir du moment où ces connaissements sont négociables et entre les mains d'un tiers porteur; la rédaction anglaise est conforme au texte français sur ce point. Le procès-verbal constatera cette interprétation. Lorsqu'on dit que ces connaissements sont soumis à toutes les dispositions de la présente convention, on se réfère naturellement à la définition de l'article 1(b).

M. Beecher demande si l'article 5 signifie que le connaissement émis en vertu d'une charte-partie n'est pas soumis à la convention s'il n'est jamais négocié. Dans ce cas il paraît y avoir contradiction entre l'article 5 et l'article 1(b) puisque l'article 5 parle simplement de connaissement émis dans le cas d'un navire sous l'empire d'une charte-partie mais la disposition ne dit pas que si ce connaissement est négocié dans la suite, il sera soumis aux termes de la convention.

M. le Président répond qu'il est clair, qu'en mettant les deux dispositions en concordance l'on veut dire la même chose.

M. Beecher conclut que lorsqu'un connaissement est émis en vertu d'une charte-partie il peut s'écarter des Règles de La Haye; mais que si ce connaissement est négocié dans la suite il tombe sous la convention. Cependant un connaissement émis conformément à la charte-partie est un document parfaitement légal.

M. le Président répond que oui mais que pareil document n'a pas d'utilité.

M. Beecher dit que le chargeur peut dans la suite le négocier; or ce document deviendrait alors absolument nul bien qu'au moment de son émission il fût un document parfaitement légal et régulier.

M. Langton dit qu'il y a malentendu car l'article 1(b) définissant le contrat de transport s'applique aux connaissements

of the carrier and the holder. One was now saying that the bills of lading issued under a charter party were subject from the beginning to the terms of this convention.

The Chairman replied that the convention became applicable from the moment when these bills of lading became negotiable and were in the hands of a third-party holder. The English drafting conformed to the French text on this point. The proceedings would confirm this interpretation. When one said that these bills of lading were subject to all the provisions of the present convention, naturally one was referring to the definition of article 1(b).

Mr. Beecher asked if article 5 meant that the bill of lading issued under a charter party was not subject to the convention if it had never been negotiated. In this case there seemed to be a contradiction between article 5 and article 1(b) because article 5 spoke simply of a bill of lading issued in the case of a ship under a charter party, but the provision did not say that if this bill of lading was subsequently negotiated, it would be subject to the terms of the convention.

The Chairman replied that it was clear that by making the two provisions agree, one meant the same thing.

Mr. Beecher concluded that when a bill of lading was issued under a charter party, it could deviate from the Hague Rules - but that if this bill of lading were later negotiated it would fall under the convention. However, a bill of lading issued in conformity with the charter party was a perfectly legal document.

The Chairman replied affirmatively, but said that such a document had no utility.

Mr. Beecher said that the shipper could later negotiate it. This document would then become absolutely null and void, although at the time of its issue it had been a perfectly legal and normal document.

Mr. Langton said that there was a misunderstanding because article 1(b), defining the contract of carriage, applied

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ou à tout autre document du moment où il règle les rapports entre le transporteur et le porteur du connaissement. Prenant maintenant l'exemple de M. Beecher, le connaissement émis en vertu d'une charte-partie aussi long-temps qu'il ne règle pas les rapports entre le transporteur et le porteur du connaissement, n'est pas intéressant pour la convention puisqu'elle ne s'y applique pas. Ce que M. Beecher a en vue, c'est le connaissement qui règle les rapports entre armateur et chargeur, mais qui n'est pas encore négocié. Pareil document doit être conforme aux stipulations de la convention dès qu'il devient le contrat de transport réglant les rapports entre les deux parties. Mais c'est là un cas qui ne se présentera jamais car lorsqu'on demande un connaissement ce n'est évidemment pas pour le garder dans son coffre-fort, mais bien pour le négociier selon la pratique du commerce.

to a bill of lading or any other document from the time when it regulated relations between the carrier and the holder of the bill of lading. Taking Mr. Beecher's example, the bill of lading issued under a charter party, so long as it did not regulate relations between the carrier and the holder of the bill of lading, held no interest for the convention because the convention did not apply to it. What Mr. Beecher had in mind was the bill of lading that regulated relations between shipowner and shipper but that had not yet been negotiated. Such a document should conform to the stipulations of the convention when it became the contract of carriage regulating the relations between the two parties. But that was a case that would never arise because when one demanded a bill of lading it was evidently not for keeping it in one's safe, but rather for negotiating it according to commercial practice.

Quatrième Séance Plénière-8 Octobre 1923

[81]

L'examen de la convention étant terminé, M. le Président rappelle qu'une question importante a été réservée et doit encore être discutée: celle de savoir si cette convention doit s'appliquer aux *tramp-steamers* ou s'il faut la restreindre aux lignes régulières de navigation. A cet objet se rattache une réserve qui figure dans le *Bill* anglais, mais qui ne touche pas à la base de la convention.

[82]

M. Alten rappelle qu'il a antérieurement déjà expliqué les raisons pour lesquelles les armateurs scandinaves désirent laisser les *tramp-steamers* en dehors de la convention. Il désire connaître l'attitude des différentes délégations à l'égard de cette question.

M. le Président résume la question comme suit: cette convention réclamée depuis longtemps par le commerce international et sur laquelle un accord s'est

Fourth Plenary Session - 8 October 1923

[81]

The examination of the convention being finished, the Chairman recalled that an important question had been set aside and still had to be discussed, namely whether this convention should apply to tramp steamers or whether to restrict it to regular lines of navigation. A reservation featured in the English bill referred to this subject but did not affect the basis of the convention.

[82]

Mr. Alten recalled that he had previously explained the reasons why the Scandinavian shipowners wished to exclude the tramp steamers from the convention. He wanted to know the opinions of the different delegations on this question.

The Chairman summarized the question as follows: This convention, which had been called for by international trade for such a long time, and on which

fait entre les représentants des divers intérêts devra-t-elle être limitée aux lignes régulières de navigation? Les armateurs scandinaves se sont depuis longtemps mis d'accord avec les intérêts cargaison, sur des types uniformes notamment de la charte-partie des bois dite "Scanfin", et sur des formules de connaissements s'y rapportant. Puisque ce système marche bien, disent-ils, et ne donne pas lieu à réclamations, pourquoi nous imposer une convention que personne de notre côté ne demande? Voilà l'argument essentiel. On ajoute que la situation des armateurs de vapeurs ordinaires est bien différente de celle des armateurs de lignes régulières; les propriétaires des *tramp-steamers* n'ont pas les moyens d'imposer une véritable contrainte aux chargeurs. Ce sont au contraire eux qui doivent se ranger aux exigences des chargeurs.

Les arguments qu'on invoque contre cette thèse sont de fait et de droit. En droit, on dit que si dans la pratique commerciale on sait ce que c'est qu'un *tramp-steamer* et un vapeur de ligne régulière, il serait cependant impossible de traduire cette différence en une formule légale; que l'idée de la distinction selon que l'on fait un appel public à des offres de frêt ou non, serait une base trop vague à la réglementation réclamée; pareille distinction permettrait beaucoup d'abus puisqu'il suffirait de se donner l'apparence d'un *tramp-steamer* pour échapper à la convention. On ajoute que s'il est facile de distinguer entre les grandes compagnies de navigation comme la *Cunard Line* et les *Messageries Maritimes* et des armateurs norvégiens ou belges qui n'ont que quelques vapeurs, il y a tout une catégorie de gens qui font tantôt du trafic régulier et tantôt pas. Certains armateurs ont des lignes régulières en hiver et un service irrégulier en été. Ensuite il arrive constamment que des agents maritimes organisent pendant un, deux ou trois ans un service régulier au moyen de navires affrétés.

Enfin on a fait observer que si des principes sont justes, il faut les appliquer à tout le monde et qu'on ne voit pas

agreement had been reached by the representatives of various interests - should it be limited to the regular lines of navigation? The Scandinavian shipowners had long ago agreed with the cargo interests on common forms, notably, of timber charter parties called "Scanfin", and on formulae for related bills of lading. Since this system worked well, they said, and did not give rise to claims, why impose upon us a convention that no one on our side has asked for? That is the argument in a nutshell. We should add that the position of the owners of ordinary steamships is quite different from that of the owners of the regular lines. The owners of the tramp steamers do not have the means to impose any real constraint on shippers. It is they, on the contrary, who must fall in with the demands of the shippers.

The arguments invoked against this thesis are both factual and legal. The law says that commercial practice knows the difference between a tramp steamer and a regular liner. However, it would be impossible to translate this difference into a legal formula. The distinction according to which one makes a public appeal for offers of freight or not would be too vague a basis for the desired regulation. Such a distinction would allow considerable abuse because it would be sufficient to give oneself the appearance of a tramp steamer to evade the convention. One could add that if it was easy to distinguish between the large shipping companies like the *Cunard Line* and the *Messageries Maritimes* and the Norwegian or Belgian shipowners who have only a few steamers, there is a whole category of people who sometimes have regular traffic and sometimes do not. Certain shipowners have regular routes in winter and an irregular service in summer. Therefore maritime agents commonly organize a regular service by means of chartered vessels for one, two, or three years.

Finally, it should be pointed out that if these principles are fair, they should be applied to everyone and that there is no

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pourquoi les armateurs de *tramps* se plaindraient, puisque d'après la convention rien ne gênerait leur commerce. S'ils n'emploient pas de clauses de négligence excessives, ils auront tout le bénéfice de la convention. Que notamment au point de vue de la "navigabilité", la convention constitue un progrès certain. Que les armateurs de *tramps* anglais ont été consultés et qu'ils sont d'accord aussi bien que les "*Liners*". Il y a eu à Gothembourg un échange de vues à ce sujet avec les armateurs scandinaves et il leur a été rappelé qu'après le *Harter Act*, sont venus l'*Act* Australien, puis l'*Act* de la Nouvelle-Zélande, après cela la loi Canadienne. Les armateurs n'empêcheront pas ce mouvement de s'étendre. Or, quand on consulte ces diverses législations on constate qu'elles sont plus dures pour l'armement que la convention proposée. Il existe maintenant un moyen d'avoir une convention internationale qui va mettre tous les armateurs sur le même pied et réglera toutes ces questions une fois pour toutes, car on ne pourra toucher à cette convention que de l'assentiment de tous; ainsi les armateurs jouiront d'une protection certaine et ils auront l'avantage que les armateurs du monde entier seront traités sur le même pied.

M. Loder croit qu'il n'y a aucune raison d'admettre l'exception proposée. Il faut une règle générale qu'on applique à tout le monde. Il n'existe d'ailleurs aucune raison décisive pour faire une exception.

M. Beecher estime aussi qu'il n'a pas été donné de raisons suffisantes de la part des armateurs de *tramp-steamers* qui rendraient nécessaire une modification de la convention à leur profit. Aux Etats-Unis, le *Harter Act* s'applique aux *Liners* comme aux *tramps*.

Sir Leslie Scott est d'avis qu'il est tout à fait impossible de faire une distinction entre les armateurs de lignes régulières et ceux de *tramp-steamers*.

M. Berlingieri ne peut accepter cette exception en faveur des *tramps*. Il y a des armateurs qui ont un service régulier à des départs tous les deux ou trois mois. Est-

reason for the tramp steamer owners to complain, since under the convention nothing will hinder their trade. If they use no excessive negligence clauses, they will enjoy the full benefit of the convention. From the point of view of "seaworthiness", in particular, the convention represents a certain amount of progress. The English tramp steamer owners have been consulted and are in agreement as much as the "liners". There has been an exchange of views at Gothemborg on this matter with the Scandinavian shipowners, and they have been reminded that after the Harter Act came the Australian Act, the New Zealand Act, and finally the Canadian statute. The shipowners cannot prevent this movement from spreading. If the various statutes were examined, it would be seen that they are more harsh on shipowning interests than the proposed convention. There now exists a means of creating an international convention that will put all shipowners on the same footing and regulate all questions once and for all, because one cannot alter this convention without the agreement of all. In this way the shipowners will enjoy certain protection and have the advantage that shipowners the world over will receive equal treatment.

Mr. Loder believed that there was no reason to allow the proposed exception. What was needed was one general rule applying to all. Moreover, there was no compelling reason to make an exception.

Mr. Beecher also felt that insufficient reasons had been advanced by the tramp steamer owners to make an amendment to the convention in their favor necessary. In the United States, the Harter Act applied to liners and tramp steamers alike.

Sir Leslie Scott was of the opinion that it was quite impossible to make a distinction between owners of regular lines and those of tramp steamers.

Mr. Berlingieri could not accept this exception in favor of the tramp steamers. There were shipowners who had a regular service with departures every two or three months. Was this a regular line or

ce là une ligne régulière ou sont-ce des *tramps*? La solution de pareille question entraînerait des difficultés insurmontables.

[83]

M. Ripert a reçu des instructions formelles de ne pas accepter cette distinction qui ne se justifie ni en droit ni en fait.

M. Matsumani n'a pas d'opinion spéciale à ce sujet.

M. Struckmann dit que pareille distinction serait très difficile à établir.

M. Straznicky n'accepte pas l'exception en faveur des "tramp-steamers".

M. Sindballe regrette de devoir prendre encore une fois la parole. Plusieurs des membres présents se souviendront que lors de la conférence du Comité Maritime International à Gothenbourg, il y a eu une réunion des armateurs scandinaves avec des membres du Comité Maritime International. A cette occasion, M. le Président, était d'avis qu'il n'était pas possible d'excepter les tramp-steamers de la convention, mais qu'il pourrait être possible de permettre aux divers pays d'insérer une réserve en vertu de laquelle certains commerces, notamment le commerce des bois, ne serait pas soumis à l'application de ces règles.

M. le Président demande l'avis de la commission à ce sujet.

M. Loder trouve que cela serait très dangereux et voudrait qu'on lui fasse connaître les motifs de pareille exception.

M. le Président fait observer que les "tramp-owners" ne pourraient échapper en aucun cas à certaines dispositions des Règles de La Haye et par conséquent ne pourraient avoir pleine liberté, par exemple pour ce qui concerne la navigabilité, les soins à prendre de la marchandise, le bon arrimage, etc.

M. Sindballe dans ces conditions renonce à sa proposition.

M. le Président remercie les délégués des pays scandinaves pour leur intervention. Il fait appel à eux pour qu'ils fassent ratifier la convention par leur pays. Il

were they tramp steamers? The solution of such a question would involve unsurmountable difficulties.

[83]

Mr. Ripert had received formal instructions not to accept this distinction, which could not be justified either in law or in reality.

Mr. Matsumani had no particular feeling on the matter.

Mr. Struckmann said that such a distinction would be very difficult to draw.

Mr. Straznicky did not accept the exception in favor of "tramp steamers".

Mr. Sindballe regretted having to take the floor once again. Several members present would remember that, at the time of the Conference of the Comité Maritime International at Gothenborg, there had been a meeting of Scandinavian shipowners with members of the Comité Maritime International. On this occasion the Chairman had been of the opinion that it was not possible to except the tramp steamers from the convention, but that it would be possible to permit the various countries to insert a reservation by virtue of which certain trades, notably the timber trade, would not be subject to the application of these rules.

The Chairman asked the opinion of the commission on this matter.

Mr. Loder found that it would be extremely dangerous, and wanted the motives behind such an exception to be made known.

The Chairman pointed out that the "tramp owners" could in no way evade certain provisions in the Hague Rules and consequently would not be completely free. For example, in so far as concerned seaworthiness, responsibility for accepting the goods, proper stowage, etc.

Mr. Sindballe abandoned his proposal in these circumstances.

The Chairman thanked the delegates from the Scandinavian countries for their intervention. He appealed to them to ratify the convention on behalf of their

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rappelle que ceux-ci ont toujours été à l'avant-garde du progrès en matière maritime, et ont donné l'exemple puisqu'ils ont été les premiers à élaborer entre eux un code maritime uniforme. L'intérêt de l'uniformité est si grand qu'ils seront d'accord avec la Commission cette fois encore; au fond, il n'y a pas d'intérêt pratique à faire des exceptions.

M. Berlingieri signale que les navires vagabonds qui vont aux Etats-Unis sont assujettis actuellement aux lois américaines bien plus dures, tandis que dans la convention il y a pour eux de grands avantages.

Sir Leslie Scott considère comme très important l'appui des pays scandinaves à l'œuvre de l'unification du droit maritime et se joint au Président pour faire appel à ses collègues scandinaves pour qu'ils veuillent bien considérer dans cette question et exprimer aussi à leur gouvernement le vœu unanime de tous les autres pays représentés, d'aboutir à la solution préconisée. Il exprime ensuite le désir d'attirer encore l'attention de la commission sur l'article 1. Ayant appris que le mot "*tiers*" a été ajouté dans la dernière ligne du paragraphe 3, il voudrait que l'on discute cette question en se souvenant que la délégation anglaise a demandé de supprimer ce mot.

M. Ripert croit que ce mot n'est plus exact depuis les explications qui ont été données et que même un connaissance nominatif est soumis à la convention.

M. le Président propose de supprimer le mot "*tiers*" en disant simplement "les rapports du transporteur et du porteur de ce connaissance, ou de ce document" (Assentiment).

M. Bagge, au sujet de l'interprétation de l'article 1, résume ce qui a été dit quant aux mots "contrat de transport". Dans le terme "contrat de transport" mentionné à l'article 1, paragraphe (b), est compris tout accord entre transporteur et chargeur rapporte à un connaissance ou à un document similaire formant titre. C'est bien là le résultat auquel on est arrivé lorsqu'on a discuté la question des lettres de garantie.

countries. He mentioned that they had always been in the vanguard of progress in maritime matters and had led the way because they had been the first to draw up among themselves a uniform code. The interest of uniformity was so great that they would agree with the commission. Fundamentally, there was no practical point in making these exceptions.

Mr. Berlingieri indicated that the tramp steamers that went to the United States were presently subject to considerably harsher American laws while there would be great advantages for them in the convention.

Sir Leslie Scott considered the support of the Scandinavians very important to the work of unification of maritime law and joined with the Chairman in appealing to his Scandinavian colleagues so that they would really consider this question and would also express to their government the unanimous wish of all the countries represented to reach the agreed solution. He then expressed the desire to draw the commission's attention once more to article 1. Having learned that the word "third-party holder" had been added in the last line of paragraph 3, he wanted to discuss this question, mindful of the fact that the English delegation had asked for the deletion of these words.

Mr. Ripert believed that, following the explanations that had been given, these words were not correct and that even a nominal bill of lading was subject to the convention.

The Chairman proposed deleting the words "third-party holder", and simply saying "the relations between a carrier and a holder of this bill of lading" or "this document". (Carried).

Mr. Bagge, on the matter of the interpretation of article 1, summarized what had been said about the words "contract of carriage". Included in the term "contract of carriage", mentioned in Article 1(b), was every agreement between carrier and shipper relating to a bill of lading or a similar document of title. That was the real result achieved in

M. le Président confirme cette déclaration. Il n'y a que la charte-partie qui soit exceptée.

[84]

M. le Président. - "Qu'on le fasse en un document ou en plusieurs documents c'est toujours à cela que réfère l'article 1, à l'exception cependant de la charte-partie".

M. Bagge croit qu'il aurait été utile de stipuler ce qu'on entend par une charte-partie, mais il n'insiste pas.

M. le Président dit que c'est une question de bonne foi; on ne peut entendre par là une charte-partie qui serait simplement un connaissance. On oppose par ces termes le transport de marchandises à la location du navire et on conserve toute latitude de préciser le sens dans la législation nationale ou lors de la mise en vigueur de la convention puisque ce n'est pas réglé par cette dernière.

Septième Séance Plénière - 9 Octobre 1923

[123]

M. Richter voudrait qu'à l'article 1, où il est dit: "...ou tout document similaire formant titre pour le transport des marchandises par mer" il soit mis: "ou tout document similaire donnant droit aux marchandises y mentionnées".

M. le Président rappelle que ce texte n'a pas été accepté. Il s'agit d'un document qui contient les clauses de la convention et se rapporte à des marchandises effectivement transportées, donnant le droit d'en réclamer la délivrance.

the discussion of the question of "received for shipment" bills of lading.

The Chairman confirmed this statement. Only the charter party would be excepted.

[84]

The Chairman. - Whether one did it in one document or several documents, that was what article 1 referred to, with the exception, however, of the charter party.

Mr. Bagge believed that it would have been useful to stipulate what was meant by a charter party, but did not insist on this point.

The Chairman said that it was a question of good faith. One could not understand by it a charter party that would be simply a bill of lading. In these terms one contrasted the transport of goods with the hiring of the ship, and one preserved complete latitude in defining the meaning in national legislation at the time of the entry into force of the convention because it was not regulated there.

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[123]

Mr. Richter wanted it to say in article 1, where it presently said "...or any similar document of title, insofar as it relates to the carriage of goods by sea", "or any similar document entitling one to the goods concerned".

The Chairman recalled that this text had not been accepted. What was intended was a document that contained the clauses of the convention, and referred to the goods actually carried, entitling one to claim delivery of them.