THE CONVENTIONS ON MARITIME LAW

On January 18 last the Senate of the United States advised and consented to the ratification of the Convention for the Unification of Certain Rules of Law regarding Assistance and Salvage at Sea[1] which was signed at Brussels September 23, 1910, by 54 delegates to the International Conference on Maritime Law representing 25 Powers, namely: Germany, Argentine, Austria, Hungary, Belgium, Brazil, Chile, Cuba, Denmark, Spain, United States, France, Great Britain, Greece, Italy, Japan, Mexico, Nicaragua, Norway, Holland, Portugal, Roumania, Russia, Sweden and Uruguay.

The treaty as signed is the same as that drafted at the nineteen hundred and nine session of the conference and commented upon editorially in our April, 1910, number, page 412, and in our January, 1911, number, page, 192, with the exception of apparently immaterial verbal changes in or additions to Articles 6, 7, 9, 16 and 18.

In view of the lengthy comment already made on this convention, in previous numbers of the JOURNAL, it will be sufficient at this time to supplement what has already been said by the following extract from the report of the American delegation to the Secretary of State which will serve to sum up the effect of this convention on American law:

At the opening of the conference we stated that we were authorized to sign the convention relating to collisions with certain reservations and that we were authorized to sign without reservations the convention relating to salvage. At the same time we stated that under the Constitution of the United States of America no treaty can become effective until approved by the Senate.

On September 23, 1910, we signed the convention relating to the law of salvage, making one reservation as follows:

The government of the United States of America declares that it reserves the right to adhere to said convention and to denounce it for the insular possessions of the United States of America.

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The convention on salvage makes few changes in our own or the British law except that article 5 provides that "remuneration is due notwithstanding that the salvage services have been rendered by or to vessels belonging to the same owner." This provision will permit the officers and crew of a salving vessel to recover for their services notwithstanding identity of ownership. It will also affect the right of subrogation of underwriters. The provision would, of course, apply only in a limited number of cases; but we deemed the provision just and unobjectionable.

[1] Printed in SUPPLEMENT, 4:126.

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Article 9 contains a reasonable provision for salvors of human life, limiting the recovery, however, to cases where property also has been salved.

Article 10 prescribes a limitation period of two years for bringing suits for salvage.

On the same day, September 23, 1910, the Convention for the Unification of Certain Rules in regard to Collisions was also signed by the delegates of the same countries. This convention, however, has not as yet been approved by the Senate. As compared with the draft prepared at the session of 1909 of the conference, the signed convention contains certain modifications or additions to Articles 1, 10, 14, 16, and an "additional article" suspending the effect of Article 5 "until the high contracting parties shall have arrived at an agreement on the subject of the limitation of liability of shipowners."

As the printed report of the American delegation may not be available to all of our readers, and as the convention relating to collisions, if ratified, will change a well-settled rule of admiralty law in this country, it may not be out of place to reprint here certain extracts from this report:

At the opening of the conference we stated that we were authorized to sign the convention relating to collisions with certain reservations. * * * These reservations are as follows:

The delegates of the United States of America to the International Conference on Maritime Law deem it their duty to demand that entry be made in the protocol relating to the international conventions for the unification of certain rules in the matter of collisions, that said delegates sign said convention in the name of the United States only under the following reservations:

1. The provisions of article 4 of said convention shall not affect the operation or enforcement of the act of Congress entitled "An act relating to navigation of vessels," etc., approved February 13, 1893, commonly known as the Harter Act.

2. The provisions of articles 1 and 4 of said convention shall not create in the United States a right of action for damages caused by death until such provisions shall have been supported by appropriate action of the Congress of the United States.

3. The provisions of article 6 of said convention shall not in any way affect legal presumptions created by the laws of the United States.

4. The provisions of said convention with respect to fault and damages, as well as remedies, shall be applicable in the United States only in the courts of admiralty and maritime jurisdiction.

On September 23, 1910, we signed the convention, subject to the foregoing reservations and subject also to the reservation which we made with regard to the convention on salvage, as follows:

The government of the United States of America declares that it reserves the right to adhere to said conventions and to denounce them for the insular possessions of the United States of America.

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The most important change in our law made by the convention on collisions is the substitution of several liability in proportion to the gravity of fault for joint liability to be shared equally by the *tort feasors* as between themselves. Article 4 provides that —

> If two or more vessels are in fault, the liability of each vessel is in proportion to the degree of the faults respectively committed, provided that, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or, if it appears that the faults are equal, the liability is apportioned equally.

This article provides further that damages caused to cargoes or property of crews, passengers, or other persons on board a vessel are to be borne by the vessels in fault "in the above proportions."

In cases of mutual fault our courts of admiralty divide the damages arbitrarily in equal parts, the vessel slightly at fault and the vessel grossly at fault bearing the same burden.

In our report to the Secretary of State of the proceedings of the conference in 1909 we stated at length our reasons for recommending the adoption of a provision which apportions responsibility according to the degree of liability. We were convinced that proportional liability was not only more rational than our present rule, but was also thoroughly practicable. We expressly limited the effect of the new rule, however, so that it should be applied in the United States not in the common law courts, but only in courts of admiralty and maritime jurisdiction.

The extension of the rule of proportional liability to cargo damage undoubtedly limits the existing rights of cargo owners, who, under our present law in case of a collision, due to the fault of two vessels, may recover the whole of their damages from the noncarrying vessel even though the carrying vessel is protected from liability by the Harter Act. Cargo owners are thus able to take advantage of an anomalous situation. If a cargo is lost or damaged through a collision resulting from a fault or error in navigation or in the management of a carrying vessel, the owner of which has used due diligence to make her seaworthy, the Harter Act deprives the cargo owner of any remedy. If the loss results from the negligence of the carrying vessel, combined with the negligence of a noncarrying vessel, the cargo owner may collect his whole damage from the noncarrying vessel, which pays not only for its own negligence, but for that of the carrying vessel, obtaining, however, under the decisions of the Supreme Court, notwithstanding the Harter Act, contribution from the carrier. The result is that if a carrying vessel does all the damage it pays nothing; if it does part of the damage it pays one-half.

As the Harter Act, which we assume defines the policy of the United States, relieves shipowners from direct responsibility for injury to cargo, it seems logical that shipowners should be relieved from indirect responsibility.

Doubt having arisen as to the effect of articles 4 and 10 of the convention on the Harter Act, we made the reservation numbered 1. It was impossible to preserve the rule of our courts making the noncarrying vessel liable in the first instance for the whole amount of the damage caused by the cargo. Such a rule would contravene the underlying principles of the convention.

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The second reservation, which provides that "Articles 1 and 4 of the convention shall not create in the United States a right of action for damages caused by death until such provision shall have been supplemented by appropriate action of the Congress of the United States," was necessary, as Congress has not yet legislated on this subject, and we deemed it our duty not to seek to establish a remedy by treaty when the matter was already before Congress for action.

The third provision, with regard to presumptions created by the laws of the United States, is not of great importance, as there are few statutory or other legal presumptions relating to collisions in our law. There are many such presumptions, however, in the laws of other countries, and it was for that reason that the conference adopted article 6, which provides that "all legal presumptions of fault in regard to liability for collision are abolished."

Article 5, which establishes liability in case of collision caused by the fault of a pilot, even though compulsory, brings the general law into harmony with our own.

Article 7 prescribes a limitation period of two years for bringing suits for collision, which we deemed a reasonable provision.

MARYLAND V. WEST VIRGINIA

The Articles of Confederation of July 9, 1778, finally adopted in 1781, declared, in the ninth article, that the "United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever." The method of settling disputes was by means of a temporary court of commissioners or judges chosen by consent of the parties representing the States, or from a list of thirty-nine commissioners, of whom not less than five should sit and determine the case. The Federal Convention of 1787 rejected the method of temporary courts composed of commissioners or judges, for one Supreme Court, which, among other powers, was invested, by Article 3, Section 2, with the power to try and determine "controversies between two or more States."

Since the establishment of the Supreme Court, thus provided for by the Constitution, there have been many suits between the States adjudicated by it. Boundaries between nations are regarded as political questions; boundaries between States of the American Union as judicial questions; and the Supreme Court, possessing original jurisdiction in cases to which States are a party, has frequently been called upon to determine questions of boundary. A consideration of these various cases and of the principles of law invoked by the parties and laid down by the Court, would form an interesting article, as it would show not merely

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